On the Need for Asian American Narratives in Law: Ethnic Specimens, Native Informants, Storytelling and Silences

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I write. I write you. Daily. From here.¹

I foreground the silence depicted in the Asian American texts because it is a theme still often subject to reductive interpretations. I am not tempted to romanticize or exoticize it, however, or to place it above speech, thereby inverting the existing hierarchy.²

I. ASIAN AMERICAN RACIAL FORMATION

I began my civil procedure class this year by talking about one of my favorite movies, Wayne Wang's Chan is Missing. My students heard how I had seen the movie four or five times, and how I loved the title of the movie because it is a challenge and response to the Charlie Chan films that have powerfully imbued the American cultural lexicon of all Asians with images of impassivity and cryptic, accented English. The movie's plot is also a cultural response to the (cauc)Asian detective with taped eyelids, for it involves two buddies whose third buddy disappeared suddenly in San Francisco's Chinatown. The film follows the two men as they search for their friend—through the streets, inside Chinatown locations and other neighborhoods—and as they interrogate various people such as surly, hip Asian American teenagers. Chan is Missing is thus a kind of detective story, the characters of which are actually Chinese American, rather than obviously European actors impersonating Asians.

The film is also a travelogue, a narrative about a journey in a literal sense, through San Francisco in the early 80's and, in a metaphorical sense, in search of Asian American identity. By the movie's end, the two men still have not found their friend, but the viewer has had a rich visual and auditory experience of what it is like
to be a young Asian American man in a specific time and place; it is a kind of thick description of a particular segment of the Asian American community. To me, the search for Chan is a proxy for the search for an Asian American identity: constantly searching for an elusive essence, never quite sure of where it is situated, uncertain and without closure, invisible at the same time that it is quite there. I then began linking the movie to a case that I had asked my students to read, In re A.C. 3

Within the realm of outsider jurisprudence, 4 narrative methodology has been deployed less frequently by or on behalf of Asian Americans than it has been by or on behalf of others on the margins. 5 Chan is thus missing, at least partially, from the narratives that have begun to nuance legal academic discussions of race. Yet Asians occupy unique cultural spaces: spaces that cannot be reduced to the racial experiences of other non-whites within the U.S. These are sites shaped indelibly by post-colonial conditions 6 of “criss-crossed economies, intersecting systems of meaning, and fragmented identities,” 7 sites that are contingent upon the figurative and literal boundary crossings of migration, sites of cultural-geographical disjuncture and

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Before this first class, I had assigned my students to write a one-page story about the case from A.C.’s perspective. My main pedagogical goal was to show the students that the core substantive story—A.C.’s competence to testify about a caesarean—was missing from the case because of procedural decisions and omissions. The case itself gave them few clues about whether A.C. would have decided to have a caesarean even though the operation would shorten her life. A.C., sedated or in a coma, was rendered silent by procedural flaws, becoming a blank script upon which my students could project their own imaginative capacities. Thus my secondary goal was to get a little view into each of my student’s hearts and minds through the various ways they constructed someone whom they did not know and about whom there was very little personal information. The absence of A.C. in the case bearing her name seems analogous to the absence of Chan in the film bearing his name. Just as certain procedural decisions can result in the inability of a litigant to “have her day in court,” certain cultural biases and scholarly methods can prevent groups from being represented accurately within the dominant culture, including the subculture of academic discourse.


5. Feminist legal theory employing narrative methodology has permeated many legal doctrinal and jurisprudential areas. See, e.g., Katharine T. Bartlett, Feminist Legal Methods, 103 HARV. L. REV. 829 (1990); Carrie Menkel-Meadow, Mainstreaming Feminist Legal Theory, 23 PAC. L.J. 1493 (1992). For one view of Western feminism’s inability to represent non-Western women, however, see Trinh T. Minh-ha, Difference: A Special Third World Women Issue, 25 FEMINIST REV. 5 (1987); see also infra note 77.


7. Ali Behdad, Traveling to Teach: Postcolonial Critics in the American Academy, in RACE, IDENTITY AND REPRESENTATION IN EDUCATION 41 (Cameron McCarthy & Warren Crichlow eds., 1993) ("... it is no surprise that many intellectuals of the diaspora have used various figures of spatial movement—such as travel, exile, displacement, etc.—not only to reflect on their own hybrid position but to describe and theorize new conditions of possibility in the new social space.”).

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hybridity, sites that are bound up with the question of national identity and national boundary formation,\textsuperscript{8} sites that are marked more by being raced\textsuperscript{9} as non-white foreigners than as ethnic assimilators or non-white natives, sites that gain their fluidity not only from the centrifugal forces of gender, class and other differentiators such as generational distance from the immigration experience,\textsuperscript{10} but also from the terrible momentum of the diasporic experience itself and indeed the relative freedom of individual expression found in the United States compared to the old worlds. As the writer Jessica Hagedorn puts it:

While I have gotten used to this way of life in America, I straddle both worlds, like most urban Filipinos. When I speak of “home” even now, I refer to life before America, in that magical place of my childhood, the Philippines. Being of mixed parentage, I have family in Manila and the provinces, in California and the Midwest, and on my paternal side, family in Spain. In speaking of the Filipino American then, one also has to consider Hispanic roots, Chinese roots, etc. It is this hereditary mosaic that makes up the complex, unique, and dizzying Filipino culture. It is also this “elegant chaos” that definitely informs my work in style and the recurring themes of loss, yearning, alienation, rage, passion and rebellion.\textsuperscript{11}

Where is “home”? When people ask me where I’m from, I frequently don’t know what they really want to know. Even those Asian Americans who can trace their lineage within the borders of the United States for three or four generations frequently experience the conflation of foreignness with otherness, as in the oft-expressed reaction to our presence: “you speak such good English!” While multi-layered racial stratification in the United States—with whites occupying the top layer, blacks at the bottom and “other non-whites”\textsuperscript{12} such as Latinos and Asians in the middle—is arguably a relatively recent phenomenon,\textsuperscript{13} the image of the Asian as

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9. Throughout this Article, I use the verb “to race.” In doing so, I am trying to describe the idea that the “meaning and salience of race are forever being reconstituted in the present,” Michael Omi & Howard Winant, On the Rhetorical Status of the Concept of Race, in Race, Identity and Representation in Education 3, 7 (Cameron McCarthy & Warren Crichlow eds., 1993). To underscore race as an activity rather than an objective category, I describe specific acts that have the intent or effect of reinforcing racial relationships as “race-ing.”
10. Compare Lisa See, Portraits of the Past, A. Magazine, Feb./Mar.1995, at 36, 38 (“My job became one of excavation. . . . Many of the 70 relatives, friends and associates I interviewed were in their eighties and nineties and spoke little English. Because my great-grandfather, grandfather, and father married white women, I myself am only an eight [sic] Chinese; I have red hair and freckles. I may have been a relative, but I was also a foreigner.”) with Jeffrey Goldberg, The Overachievers, New York, Apr. 10, 1995, at 43, 47 (“Many second-generation Korean-Americans—and the category known within the community as the ‘1.5 generation,’ people now in their teens, twenties, and thirties. . . say they are growing tired of marginality.”)
11. Jessica Hagedorn, The Exile Within/The Question of Identity, in The State of Asian America: Activism and Resistance in the 1990s 173, 175 (Karin Aguilar-San Juan ed., 1994); see also Lisa Lowe, Heterogeneity, Hybridity, Multiplicity: Marking Asian American Differences, 1 Diaspora: A Journal of Transnational Studies 24, 27 (1991) (“Asian American discussions of ethnicity are far from uniform or consistent; rather, these discussions contain a wide spectrum of articulations that includes, at one end, the desire for an identity represented by a fixed profile of ethnic traits, and at another, challenges to the very notions of identity and singularity which celebrate ethnicity as a fluctuating composition of differences, intersections and incommensurabilities.”); Mari J. Matsuda, When the First Quail Calls: Multiple Consciousness as Jurisprudential Method, 11 Women’s Rts. L. Rep. 7, 8 (1989) (“This constant shifting of consciousness produces sometimes madness, sometimes genius, sometimes both.”).
13. Neil Gotanda, Asian American Rights and the “Mis Saigon Syndrome”, in Asian Americans and the Supreme Court: A Documentary History 1087, 1088 (Hyung-Chan Kim ed., 1992) (“the multilevel conception of race implicit in a racial stratification model is a sharp change from the Black-White model of race used in legal discrimination theory.”); see also Michael Omi, Out of the Melting Pot and Into the Fire:
non-white other has inevitably contained the distinct element of foreignness,¹⁴ that is, a sense of not belonging physically to the Americas. And as Robert Chang states, "[i]nsofar as you are perceived as foreign, your claim to membership in the national community is weakened, and accordingly, your justice claim will likely be ignored."¹⁵

Historically, the racialization (that is, the social construction of racial identity and meaning)¹⁶ of Asians by white lawmakers has occurred through the gradual but inexorable sedimentation of legal acts of exclusion of Asians from the larger national community: exclusion from immigration,¹⁷ from naturalization,¹⁸ from occupations,¹⁹ from ownership of property,²⁰ from marriage partner,²¹ from schools,²² from housing,²³ and from the presumption of loyalty accorded all other racial groups during World War II. The latest layers of this process can be seen in the only recent dismantling of racial barriers to immigration and naturalization,²⁴ limits to social services mandated by California's Proposition 187,²⁵ proposals to limit social

¹⁵ Chang, supra note 8, at 1.
¹⁶ Omi, supra note 13 (defining "racialization").
¹⁹ See, e.g., Gentleman's Agreement of 1908; Takahashi v. Fish & Game Comm'n, 334 U.S. 410 (1948); Oyama v. California, 332 U.S. 633 (1948); Yick Wo v. Hopkins, 118 U.S. 356 (1893); McCready v. Virginia, 94 U.S. 391 (1876); see generally KIM, supra note 17, at 40-57 (describing California legislation such as the Foreign Miners' Tax (1850)).
²⁰ See, e.g., Oyama v. California, 332 U.S. 633 (1948); Cockrell v. California, 268 U.S. 258 (1925); Frick v. Webb, 263 U.S. 326 (1923); Porterfield v. Webb, 263 U.S. 225 (1923); Terrance v. Thompson, 263 U.S. 197 (1923); see generally KIM, supra note 17, at 126-31 (describing California legislative efforts such as the Alien Land Act of 1913 and Alien Land Act of 1921).
²⁵ Gregorio T. v. Wilson, 59 F.3d 1002 (9th Cir. 1995) (upholding preliminary injunction against implementation and enforcement of a section of California's Proposition 187); see also S.B. 667-72, 218th
services to legal immigrants,26 the various English-only and English as an official language laws,27 police harassment as in the use of gang profiles,28 the exclusion from affirmative action programs and/or the imposition of ceilings on university admissions,29 and the proposed amendments to eliminate which with that family preference categories in our immigration laws, which would have the effect of reducing Asian immigration.30 These legal acts of exclusion are often accompanied by the denial of the racial aspects of the exclusion: thus the claim made by Arizonans for Official English that the English-only amendment to the Arizona Constitution is based merely on the need for government efficiency,31 or the defenders of Proposition 187 that the ballot initiative has to do with economics rather than race.32 These various legal measures are accompanied by extra-legal means of discipline, such as race-based violence33 accompanied by lack of adequate protection by the state.34

These observations dovetail with the view of race not as a natural, biological and static status that inheres to an individual through genetic descent, but rather as "historically contingent, socially mediated systems of meaning that attach to elements of an individual's morphology and ancestry,"35 and which can be disaggre-
gated through "chance, context and choice." The meanings that circulate around Asian racialization are suffused with exclusion. At any given moment and place, the room for negotiation by Asian Americans within these structures of meaning will typically be constrained by the foreignness often imputed to Asian Americans by non-Asians, and by the sense of displacement or homelessness felt by many Asian Americans themselves. The racial context is highly charged with the idea of "belonging elsewhere."

As writers such as Hagedorn can testify, the hybridity of multicultural spaces can transform cultural differences into vital sources of creative energy. But a sense of foreignness/homelessness pervades both the multiplicity of Asian American experiences and identities, and the liberating possibilities of hybrid multicultural positions. This sense is not merely an absence of a comfortable subject position within a national body insistently constructed as white. Foreignness/homelessness is an essential aspect of the formation of Asian Americans into a specifically Asian legal-racial category within the U.S.

Michael Omi and Howard Winant define racial formation as the "sociohistorical process by which racial categories are created, inhabited, transformed, and destroyed." Here, I will introduce and discuss two concepts that illustrate Asian American racial formation: the "ethnic specimen" and the "native informant."

Racial formation of Asians in America has been aptly described by Rey Chow as a process of being made into an "ethnic specimen." By that, she expresses the experience of being othered as a native of a reified exotic culture outside the literal and figurative boundaries of the dominant culture, and largely in reference to the observer's static framework of how a genuine native culture ought to be represented. The use of the word "ethnic" should not distract us from the race-ing process that is embedded within this term. The "ethnic" within this race-ing dynamic is typically the thoroughly confused and misinformed mixing of all Asian cultures into a conglomerate ethnicity that becomes synonymous with race. This is...
evident, for example, in the mistaken and fatal Japanese identity that a Chinese American, Vincent Chin, assumed in the eyes of his white murderers. A more recent example is the slaying in 1992 of a Vietnamese American college student, Luyen Phan Nguyen, after being chased by a white mob who yelled “chink,” “Vietcong,” and “sayonara.” The ambiguous role of skin color in the race-ing of Asian Americans perhaps allows us more latitude to deny that a racial formation process occurs. But other phenotypic characteristics can serve as a rough proxy for skin color in this race-ing process. In a representational framework that defines “white” as the default subject position, those who are reduced to “oriental” rather than “white” are raced. Those who are reduced to “white” fall, however uneasily, within the assimilationist framework of race relations and become part of the ‘natural’ white racial referent.

Our conglomerate ethnic image then becomes part of the “common sense of race” that commends itself to judicial and statutory notice, and thus defines a racial contingency to our legal existence. (Among other things, this racial contingency also causes Asian American legal academics to question the concepts of colorblind (or morphology-blind) constitutional jurisprudence and formal equality.) Legal and other encounters are negotiated within the synergy of our micro-understandings of race (i.e., identity) with our macro-understandings of race (i.e., social structures).

As what Gayatri Spivak astutely terms the role of the “native informant,” Asian Americans can attempt to respond to the racial formation process by various modes of “talking back” or self-representation. Native informants are those of us

44. OMI & WINANT, supra note 38, at 14-24.
45. Id. at 62.
49. See OMI & WINANT, supra note 38, at 56-61; see also Angelo N. Ancheta, Community Lauyering, 81 CAL. L. REV. 1363 (1993) (exploring this negotiation process in lawyering); Matsuda, supra note 11 (discussing this negotiation process in legal scholarship); Ewick & Sibley, supra note 4, at 218 (“If narratives contribute to hegemony to the degree that they efface the connections between the particular and the general, perhaps subversive stories are those that employ those connections, making manifest the relationship between...biography and history.”).
who, confronted and constrained by an ossified framework of representation that places a negative racial value upon us, speak for the “natives” in an attempt to construct a positive racial valence. One strategy might be to construct pan-ethnic racial rather than national ethnic identities: to give meaning to the term “Asian American” as opposed to “Chinese American,” for example.51 “Native informant”—with its ironic acknowledgement of the foreignness imputed to us—at once suggests a strategy against racial formation and problematizes that strategy. By contrast to the relative ease with which Asians in America are raced as “ethnic specimens,” Asian Americans experience tremendous difficulty in articulating or having others attend to their “authentic” native voices.52 The difficulty in verifying authenticity, the barriers to expressing these voices or having these voices heard,53 and the ever-present danger of becoming a native informant who is misrepresented or who misrepresents an essentialized Asian race to the world-at-large may account for some of the relative silence of Asian American perspectives and voices in outsider jurisprudence up to this point.

Outsider jurisprudence, whether grounded in class, gender, race or sexual orientation, has unambiguously interpreted the silence of the outsider as an “absence.” Hence what makes storytelling distinctive methodologically is its emphasis on giving voice to the subaltern, the previously silent and therefore ignored or devalued legal subject. In my examination of the Asian American native informant, I want to suggest other interpretations of the silence of the outsider. Silence can be read in many nuanced ways, including as active resistance. While certain silences may be “undesirable silences—the speechlessness induced by shame and guilt, the oppressive or protective withholding of words in the family, or the glaring oversight in official history,. . .[Asian American silences] are often overdetermined by both ancestral mores and exclusionary forces in North America.”54 Some silences can be ascribed in part to the widespread perception internalized by some Asian Americans that Asian Americans are not targets of racial animus or discrimination, a denial that Neil Gotanda has described as the “Miss Saigon” syndrome.55 But other forms of silence “are the very antitheses of passivity”56 and denial. I suggest here that Asian American silences often signify the actively engaged listening of those positioned between cultures, who must exert enormous energy to understand and mediate among two or more different cultural sign systems.

51. This strategy is evident in the formation of various pan-ethnic political groups such as bar associations. However, there is a strong pull, for reasons of language and other forms of cultural support, for Asian ethnic groups within the U.S. to organize along specific ethnic lines. See generally Michael J. Balaoing, The Challenge of Asian Pacific American Diversity and Unity: A Study of Individual Ethnic Bar Associations Within the Asian Pacific American Community of Los Angeles, 2 UCLA ASIAN PAC. AM. L.J. 1 (1994). And as Eric Yamamoto explores in this volume, differences in culture may then turn into differences in political strategies, at least in a context where Asians constitute more than a small minority of the population. Eric Yamamoto, 3 UCLA ASIAN PAC. AM. L.J. 33 (1996)

52. See David Mura, Mirrors of the Self: Autobiography and the Japanese American Writer, in ASIAN AMERICANS: COMPARATIVE AND GLOBAL PERSPECTIVES 239 (Shirley Hune et al. eds., 1991) (“Perhaps even more than for most writers, the autobiography of a minority writer centers on the struggle to be a writer, to claim access to the language.”).

53. CHOW, supra note 39, at 30-54.

54. CHEUNG, supra note 2, at 20.

55. Gotanda, supra note 13, at 1088. Of course, the denial of racism against African Americans as well as other racial minority groups is pervasive as well. See generally Patricia Williams, Spirit Murdering the Messenger: The Discourse of Fingerprinting as the Law’s Response to Racism, 42 U. MIAMI L. REV. 127 (1987).

56. CHEUNG, supra note 2, at 20.
The race-ing process that leads to the “ethnic specimen” as well as to the resulting problems of the “native informant” deserve theoretical attention, for they affect how legal categories are constructed with respect to Asian Americans.\textsuperscript{57} This Article attempts to expand on each of these phenomena. In part II, I describe in more detail the concept of the “ethnic specimen” and in part III, the “native informant.” Part III will also explore the various forms of silence, as well as other aspects of reticence that I and others have in the project of articulating an Asian American authentic native voice. My observations are intended to elaborate upon the theory of racial formation, and to describe a process of racialization in which cultural and linguistic conventions, as well as countervailing interventions, work and play prominently. These observations are also connected to the jurisprudential project of reconstrcuting the concept of race so as achieve greater justice for all racial groups.

My technique will depend largely upon unembellished storytelling. While we need to develop a much more complex and nuanced vocabulary to describe race (and therefore I rely on racial formation theory, as well as the terms “ethnic specimen,” “native informant,” and “racialization,” among others), I also want to avoid the solipsism that often accompanies jargon-laden narrative. In addition, I hope to avoid in part the privileging of the “cerebral about matters largely visceral,”\textsuperscript{58} by focussing less on abstract concepts than on their specific incarnations. This form of scholarship is also my attempt at theorizing practice, that is, at transcending the dichotomy between agency and structure, without resurrecting the radical autonomy of the Western liberal individual\textsuperscript{59} or falling into the post-structuralist trap of universal abandon of individual subject positions.\textsuperscript{60}

Through storytelling, I want to demonstrate that local experiences (such as my perspectives as a middle class, second generation, etc., Korean American woman) do not foreclose globally felt categories.\textsuperscript{61} Asian American readers—even those raised in Honolulu rather than Buffalo, or those raised by Black parents instead of Asian parents, or those whose first language is Chinese not English—may recognize the stories as their own. This shared sense that what we have experienced is significantly different than what, ceterus paribus, a non-Asian person has experienced, is in part “race” as experienced from the Asian American subject position.\textsuperscript{62} Through this shared recognition, I seek to interrupt the legal academy’s critiques and defenses of


\textsuperscript{58} Haney-Loper, supra note 35, at 23.


\textsuperscript{62} I remind the reader of Omi and Winant’s definition of race as “a concept which signifies and symbolizes social conflicts and interests by referring to different types of human bodies.” OMI & WINANT, supra note 38, at 55.
storytelling, framed in concepts such as "typicality," even as I acknowledge that the category I seek to define is contingent upon rapidly changing variables that may or may not be easily negotiated or recoded.

Throughout what might seem to be straightforward narrative technique, I disclaim any authorial privileges of authority or finality. At times I offer my reading, but many interpretations are possible. Triple dangers of authentication, essentialism and tokenism accompany the self-credentialing of the "native informant" in Western knowledge production. Through narrative, nevertheless, I tentatively try to occupy simultaneously the roles of anthropologist and native in exploring the theoretical topology of race.

II. STORIES ABOUT ETHNIC SPECIMENS

The use of a specifically Asian American narrative in my first civil procedure class did not have any apparent impact: I was soon in the throes of teaching International Shoe and Worldwide Volkswagen. As I pointed out in passing to my students, however, these cases shift the focus in jurisdictional doctrine from local to global.

A. Travel Stories: Being Othered

As Lisa Lowe has written about eighteenth century French travel narratives, portraits of the oriental world as an exotic, uncivilized counterpart of Europe were crucial enunciations of the European world as knowing, stable, and powerful. Travel literature performed these acts of symbolization . . . by figuring travelers in foreign lands encountering strange and disorienting customs and practices, the

63. Daniel Farber and Suzanna Sherry critique narrative methodology because, for example, the stories even if true, "may be atypical of real world experiences." Daniel A. Farber & Suzanna Sherry, Telling Stories Out of School: An Essay on Legal Narratives, 45 STAN. L. REV. 807, 837 (1993); see also Daniel A. Farber & Suzanna Sherry, The 200,000 Cards of Dimitri Yurasov: Further Reflections on Scholarship and Truth, 46 STAN. L. REV. 647 (1994); Mark Tushnet, The Degradation of Constitutional Discourse, 81 GEO. L.J. 251 (1992). However, Ewick and Silbey argue that "typicality or categorizing like cases" is simply not the issue in evaluating narrative. Rather, essential to the anatomy of narrative is "the way the particulars are arranged and connected." Ewick & Silbey, supra note 4, at 220 (emphasis added).


65. My own interpretative stance is inevitably defined by having been born and raised in North American, relatively racially homogenous (white) suburbs; a critical consciousness that was first pricked by gender rather than racial inequality; a one-year-old's grasp of my parents' tongue; being an American-born first-born female child of diasporic intellectuals who are descended from politically and socially progressive national elites, and who therefore aspired to Westernization while at the same time retaining a discernable national identity and pride.
trope of travel allegorized the problems of maintaining cultural institutions amidst challenging othernesses, of establishing cultural standards and norms in the context of heterogeneity and difference.  

Sometime in the mid-1980's, during one of my infrequent trips to New York City, I purchased a travel narrative, a book called *Korea and Her Neighbors*. I was thrilled to find a book written in English about an historical period in Korea of which I knew next to nothing. No doubt I was influenced heavily by the general atmosphere of ethnic inquiry that permeated U.S. college campuses in the late seventies and early eighties. Many of my white friends had gone off to far-away places, returning with hand-made crafts and color slides that celebrated the pristine beauty and lack of technological penetration of the third world, thereby exhibiting a benevolent third worldism.

I knew I had already experienced certain aspects of that pure native culture, in material but fragmented ways. Whether through food or eavesdropping on my parents' dinner table conversations or having strictures placed on my behavior, I already perceived, or even experienced as a native might, aspects that native culture. In some ways, I was a wild anthropologist, a fly-on-the-wall, the non-native who could pass for native.

But I also felt that what I knew about Korea was mostly distorted through the lack of context. My parents' behavior had often seemed bizarre to me when I was growing up. My deliberately Americanized parents nonetheless seemed often out-of-place, not only because what they retained of their Korean upbringing sometimes was juxtaposed against the different and dominant cultural practices of the U.S. but also because it was stripped of the context of their original Korean setting. I needed badly to understand them and therefore me, through a greater understanding of their native cultural traditions. Why, for example, had I experienced the feeling of being overwhelmed by the personalities of my college classmates of European descent? Why had my sense of being overly-reserved completely vanish—indeed, take on the opposite quality of being far too mouthy and flashy—when I was surrounded by my parents' Korean friends?

Answers were available, and some might be in this book that I had found in New York. I was unable to read any non-English language books besides what I managed by pursuing a college-cultivated taste for existentialist French literature. So *Korea and Her Neighbors* seemed like a discovery. Not only was it a travel narrative of Korea in 1895, a period when few Westerners observed Korea, but it was written in English by an American woman after my own heart: an intrepid, middle-aged, liberated woman who travelled alone and without any particular Christian missionary zeal—Isabella Bird, described on the back cover "as surely the most remarkable woman traveller of the nineteenth century" and whose "writing is guaranteed to produce a thirst for adventure and travel." I was thrilled that I could read something about my native culture by someone who was like my women friends who went off to India or China alone, carrying cameras and relying on their wits to survive.

I never got past the first couple of chapters. Although there was enough to keep me interested, I stumbled on numerous paragraphs such as

The physique is good. The average height of the men is five feet four and half inches, that of the women cannot be ascertained, and is disproportionately less,
while their figureless figures, the faults of which are exaggerated by the ugliest dress on earth, are squat and broad.\(^{68}\)

Bird’s text is stubbornly bivalent. The briskness of her description and the demeaned appearance of Korean women in her narrative correspond neatly to the overdetermined categories of traveller-colonizer and native-colonized.\(^{69}\) Bird’s modernist detachment from the object of her narrative, coupled with her inability to situate her detachment in a particular framework of representation, is typical of the late nineteenth century.\(^{70}\) She would have been truly extraordinary for her time if she had been able to overcome those epistemological habits that are still deeply ingrained in Western scientific discourse.\(^{71}\) Even Bird, with all the sublime gender difference that I worshipped as a first world feminist, was the straightforward narrator of the West orientalizing the unadulterated and degraded East.\(^{72}\)

Being raced, even with a positive valence for the difference, is profoundly unsettling. I am still not used to it. Yet—organized, diligent, studious, obedient, polite, seemingly docile—my high school friends’ parents had liked me, even though I did not like most of them. Under the Western gaze, the positive difference projected upon the feminine of the emasculated Asian male\(^{73}\) is still the difference of an exoticized other that is not at “home” in American culture. As I negotiated recently with a man about shovelling snow off my sidewalk, he said to me, “OK, Doll.” I

\(^{68}\) Id. at 13.

\(^{69}\) Unlike Bird’s accounts of Korea, Lady Mary Wortley Montagu’s letters from Turkey disrupted her colonizing gaze through their expressions of feminist solidarity with the Turkish aristocratic women with whom she consorted. Indeed she emulated the natives to the point of dressing “in my Turkish Habit.”

\(^{70}\) Lowe, supra note 66, at 41.


\(^{74}\) See Chon, supra note 39, at 111 (“Chinese literary history has been a history of men who want to become women. . . . Chinese women are, in terms of the structure of discourse, a kind of minor of the minor, the other to the woman that is Chinese man.”); see also Gary Y. Okihiro, Margins and Mainstreams: Asians in American History and Culture 68 (1994) (describing “Europe’s feminization of Asia, its taking possession, working over and penetrating Asia. . . .”); Williamson B.C. Chang, M. Butterfly: Passivity, Deviousness, and the Invisibility of the Asian American Male, BEARING DREAMS, SHAPING VISIONS: ASIAN PACIFIC AMERICAN PERSPECTIVES 181, 181-84 (Linda Ravea et al. eds., 1993); Diniia Smith, Face Values: The Sexual and Racial Obsessions of Playwright David Henry Hwang, NEW YORK, Jan. 11, 1993, at 41 (criticizing Hwang for “replaying Western stereotypes of Asian men as effeminate and Asian women as passive”); Jongwoo Han & L.H.M. Ling, Masculine State, Feminine Society: A Feminist-Postcolonial Interpretation of East Asia’s Capitalist Developmental State, paper presented at the 1995 American Political Science Association Meeting, Chicago, Illinois 2 (Aug. 31, 1995 - Sept. 3, 1995) (on file with author) (“[T]he West assigns itself all the privileges of Western hegemonic manhood: autonomy, rationality, conquest, and progress. It imposes upon Asia all the characteristics of Western subjugated womanhood: dependency, instability, submission, and backwardness.”).
walked back into my house and muttered to my husband, "I'm a law professor . . . I'm a China doll."  

Bird reminded me uncomfortably of the limits of solidarity based on gender. Yet I cannot find my "home," if what I mean by that is an eternally comfortable subject position, by rejecting gender and embracing race or other positions wholesale. A later chapter in Bird's book, entitled "Korean Marriage Customs," announces

Silence is regarded as the wife's first duty. . . . It may be a week or several months before the husband knows the sound of his wife's voice, and even after that for a length of time she only opens her mouth for necessary speech. With the father-in-law the law of silence is even more rigid. The daughter-in-law often passes years without raising her eyes to his, or addressing a word to him."

Was this ever true? I don't know. Can it still be true? Undeniably, I sense a lack of speech, but now more for lack of an adequate conceptual framework or vocabulary to describe the sights we see. And it affects both men and women, immigrant and U.S. born, young and old.

A Korean American male graduate comes by to visit me in my office at the law school. He describes his attempt to find a job teaching law in Korea. Those Korean men who hold law faculty positions in Korea rebuff him with various rationales. Korea has a civil law not a common law system, so a degree from a German university would be preferable to a degree from an American university. He has a professional degree rather than a Ph.D. He is trained in U.S. law, not Korean law. Set in Seoul and Syracuse, it's Rodrigo's Chronicle, the tale of a would-be law professor who just doesn't meet "our high standards." I tell him that he is on the boundaries of both cultures, and caught also in the credentialling biases of the academy. He tells me that he feels "lost."
At the border stop between Niagara Falls, N.Y. and Niagara Falls, Ontario, our caravan was being held up. Leading the way, my indomitable mother had been forced to park her car to the side although she remained inside the car. I had parked my rusted out '74 Chevelle just behind her. We both waited for my uncle, who had been inside the border station for an unusually long time. More than a little upset at my family for delaying my trip back to Michigan with my car full of wedding presents, I strode into the station. There, a Canadian border agent was just asking my uncle: “Where did you get your citizenship papers? In a church?” My uncle wouldn’t speak. He seemed to be amused, and simply smiled patiently. “I don’t believe this!” I exploded, my patience at a dead end. “This man has a Ph.D.! I can’t believe this—this—is racist!” Whereupon my aunt smiled gratefully at me, and the younger border agent—a young white woman—suddenly looked embarrassed. I can’t remember now whether they let my uncle—who has a very heavy Korean accent—in. It is one of the few times in our family when the “R” word was explicitly uttered.

More recently, another border crossing. Along with our camping gear and our children’s beach toys, we packed our passports last summer. At the border stop, one car ahead of us—in it, an older white couple. The young border guard is obviously joking with them. I pull up in our '90 Hyundai with a Sears cartop carrier on the roof. His first reaction is friendly—perhaps because we exude summer vacation, perhaps due to a residual jocularity from the previous exchange. But it quickly changes, as if he remembers what he is supposed to be about. “What citizenship are you?”

My spouse is implicated in this too, although he is white. No jokes are exchanged with the passports. Our kids, who to non-Asians look like Asians and who to Asians often look like non-Asians, sit in the back seat, watching intently and not saying a word.

B. More Travel Stories: Othering Ourselves

A Chinese American colleague visited one of her students in Korea last summer. As she describes it, her student, who in the U.S. did not seem to be overly-conscious of the hierarchy of the professor-student relationship, suddenly appeared to act in accord with Confucian hierarchical principles. She was greeted at the airport by the student and his wife, both dressed extremely formally. At dinner with the student’s family, she was seated opposite his father, who appeared to be in his fifties. All of the other dinner guests were seated in descending order of hierarchical status, beginning with her and the student’s father. As professor, she was supposedly equal to the family patriarch. As a woman, she felt “speechless,” in her own words. How could she transgress the gender line simply by relying on her teaching status? I immediately understand her strong sense of there being no preset place from which to describe much less understand the strangeness of this coupling.

My hulmoni (grandmother) on my mother’s side did not speak English. When I was fifteen, I spoke no Korean and my hulmoni came from Korea to live with us in a suburb of Buffalo, NY. Once I found my hulmoni sitting on my bedroom floor, burning the skin of her arm with incense. My bedroom had been papered by a previous owner with black and white op art wallpaper and now it smelled funny. I was very disturbed and demanded an explanation for this bizarre behavior. Isn’t she an American woman by culture(s).” Sharon K. Hom, Engendering Chinese Legal Studies: Gatekeeping, Master Discourses, and Other Challenges, 19 S.I.G.N.S. 1020, 1020-21 (1994); see also CHOW, supra note 39, at 1-26.
going to hurt herself? Can't you stop her? Is this a religious practice? I could not ask my grandmother directly; I was absolutely frustrated by inability to communicate with her and I felt profoundly that she did not "belong" here in the U.S. The sight and smell of my grandmother was more psychedelic than the wallpaper, in my not so humble opinion.

I also found my grandmother repeatedly sitting on our living room floor, watching television. She especially liked re-runs of *Bonanza*, a show I remembered watching as a small child but had discarded in favor of *Star Trek, M*A*S*H, the Mary Tyler Moore Show*, and other seventies sitcoms. Someone explained to me that hulmoni had grown fond of *Bonanza* from watching it in Korea. But it's in English, I thought. How can she enjoy a show in a language that she doesn't understand? And a cowboy show no less?

Six years later, I had matured into a slightly less bewildered young adult. My hulmoni was back in Korea, living with my mother's younger brother. I was filled with homesickness for a non-fractured identity—the same longing that motivated the purchase six years after that of the Bird book. I went to live with hulmoni for a summer—my first trip to Korea, in fact, the first trip any of the members of my family had made to Korea since my parents had left over twenty years before. Once in Korea, I quickly picked up some conversational Korean, and started learning the Korean alphabet. I lived with a Korean family—better yet, my own—and was treated like a Korean by other Koreans. Almost a "real" Korean. A pure native.

Consternation soon arose, despite my better intentions. Hearing reports of my behavior, my mother got alarmed enough to recite an allegedly Korean proverb at me during a long-distance telephone call (birds do not foul their own nests). This time, I was upset at how my hulmoni was treating my uncle's wife, who from my perspective was treated awfully, worse even than a servant. I hated watching my uncle's wife wash the entire family's clothes by hand, cook all the food for the family without any help, rise earlier than the rest of us to prepare the kitchen, and so on. I felt guilty and full of feminist principle and I moved out in the middle of the summer to more distant relations who were wealthy enough to afford paid servants. Part of the dilemma was caused by my household status as "honored guest from America," a status that was designated and enforced by my hulmoni.

When my hulmoni managed to pierce my careless adolescent consciousness with her difference, it was when she disturbed me either with her "over-the-top" ethnic behavior or with a lack of ethnic purity that enabled her to enjoy spaghetti westerns. When I was in Korea to explore her within her native context, I still could not accept her complexity, even with the best of intentions and fierce commitment to know her. I wanted her to be an ethnic specimen who only did positive things. As an American feminist,79 I was shocked to find that she embodied and enforced cultural values that disciplined another woman with mind-numbing domestic labor.

Even so, I managed to find some treasures that I still turn over and examine once in a while. Such as hulmoni's story (how was it conveyed?) about how her own mother hid hulmoni's shoes so that she could not go to school. Yet somehow she managed to teach herself to read.

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79. Lauren Seng, one of the student editors of this journal, has asked me to define "American feminist": that is, whether I mean by that term white feminists, who might hold different views from women of color. Her question highlights the importance of subject positions—of subject, narrator, author and reader, then as well as now. I have decided that rather than to give a definitive answer, I will let "American feminist" hang ambiguously in the text, and mark it with this annotation.
C. Ain't No Place Called Korea

I once encountered a young man who had written a piece called “Ain't No Place Called Korea.”

Now, I knew there was a place called Korea. At that point in time, I had not actually been in it. But I knew that my parents were from Korea. I knew that when other children asked if I were “from” China or Japan, I had to reply “Korea” in order to be truthful. A lot of people I had met didn’t know about Korea, and that the ones that did seemed always to be Korean war vets. But I felt imbued with my parents’ strong sense of ethnic identity and racial pride, even as I myself lacked much of my own. I remember vaguely trying to convince this young boy of the existence of Korea, based on the palimpsest of ethnic identity that I managed to feel.

Now I wonder if he wasn’t right.

After the civil unrest in L.A. in April 1992, Elaine Kim wrote an essay for Newsweek that, in her own words, “accus[ed] the news media of using Korean Americans and tensions between African and Korean Americans to divert attention from the roots of racial violence in the U.S.” She receives mail: “If you are so disenchanted, Korea is still there. Why did you ever leave it? Sayonara.” The prescient close-ups in Spike Lee’s “Do the Right Thing” flattened the Korean merchant into an accusatory, gibberish-speaking foreigner, adding to the babel of hot summer rage. During the week of the uprising, Koreans were primarily depicted as vigilantes, pitted against Black and Latinos, waving rifles. I could not get enough information from the media that week. I read three national newspapers each day, listened intently to NPR, even watched some television, which I normally abhor. I watched Nightline one evening. Ted Koppel hosted a multi-racial panel of residents of L.A. Not one of them was Korean. One of the panelists stated that Koreans wanted to take over the economy of southcentral L.A.—because Koreans were like the Japanese. Ain’t no place called Korea.

At the Asian American law professors conference, we watch a movie of Korean women who lost their businesses to the insurrection. I listen to these women speaking in Korean: the mellifluous and familiar intonations, inflections and pauses of their voices. The women smile and stare off-camera; they display a formality and reserve as they talk. The English subtitles display a stunning awareness of what led to the disaster in their lives, including the knowledge that they were being cast by others as the antagonists of African Americans.

As they speak, so many things resonate. I think about the way my hulmoni had treated my aunt in Korea or my mother in the U.S., how my mother had often been impatient with me as I was growing up, how I never connected with the Korean women sidewalk vendors when I worked as a lawyer in Philadelphia, how it seemed that many Korean women were so attuned to larger contexts and yet so

81. Juxtaposed against the many similar expressions of contempt were “[a] large number from African Americans, all of them supportive and sympathetic—from judges and professors who wanted better understanding between Africans and Koreans to poets and laborers who scribbled their names in pencil while on breaks at work.” Id. at 227.
83. Sai-I-Gu (Christine Choy et al., 1993).
mired in micro-drudgery and forced indifference to their conditions.\textsuperscript{84} I realize how very few media images I had seen of women that week after the insurrection. Michael Omi and Howard Winant observe: “At a rally held on 2 May 1992 in Koreatown, there were numerous calls for peace between Blacks and Koreans, while ‘[s]everal elderly Korean men left the parade route to shake the hands of Latinos and African-Americans who were watching.’ Signs demanded ‘Justice for Rodney King,’ quite a remarkable slogan given the past week’s experience.”\textsuperscript{85} I realize that I had seen no media depictions of older people, who traditionally hold great moral authority, that week. Ain’t no place called Korea.

A year after the uprising, I listened to a Korean American at a conference for Asian American studies. He delivers his paper by stating that he cannot give a paper, as he is still grieving over what happened to the Korean community in L.A. He describes the on-going trauma, the dislocation, the disillusionment, the sense of this event being a turning-point in Korean American racial consciousness.\textsuperscript{86} I realize how, during the week after the uprising, I had clung to the media for any information, how bereft and confused I had felt, how only one colleague at my institution in upstate New York had approached me to ask me about it. Ain’t no place called Korea.

The specificity of the Korean ethnic location is erased in the racial formation process. Few Koreans are represented in the media, even about events that profoundly affect their communities. Koreans who speak more articulately in Korean rather than English do not really count and therefore are rarely interviewed. Older people, women and younger children are absent except in highly racialized ways (the trigger-happy shopowner or the grade-grubbing schoolchild). Unnoticed are acts of bonding and connecting, exemplified by the Korean woman nicknamed “Smiley” by her Black customers because she had a constant smile on her face.\textsuperscript{87} Faceless, voiceless: we were always already here as the oriental other. Lisa Ikemoto writes of the prevalent media imagery: “The stories of conflict construct African American identity in opposition to Korean American identity. In the context of intergroup conflict with African Americans, the oppositional Asian is Korean; all Asians are Korean. This syllogism silently strips Korean identity of ethnic and cultural content, making “Korean” interchangeable with “Asian.”\textsuperscript{88} Ain’t no place called Korea.

D. No Place Called Home

I remember when I first met her. She was a Korean woman who had been adopted by a white family. At the time, she was tentatively exploring what that meant for her, finding some space for acceptance within a Korean women’s group. Neither of us spoke Korean—that placed us both on the fringes of that group. Both of us were middle-class professionals—that put us in the center of that group. I moved away. She stayed and wrote: “While [my older white sister] is only two years

\begin{itemize}
\item \textsuperscript{84} The social disciplining of Korean women is recorded in an article written by Grace E. Koh. Grace E. Koh, \textit{The Change}, \textsc{Magazine of the Korean Women’s Association of Greater Philadelphia} 1994, at 106.
\item \textsuperscript{85} Michael Omi & Howard Winant, \textit{The Los Angeles “Race Riot” and Contemporary U.S. Politics, in Reading Rodney King Reading Urban Uprising} 97, 106 (Robert Gooding-Williams ed., 1993).
\item \textsuperscript{86} See Edward T. Chang, \textit{America’s First Multiethnic “Riots, in The State of Asian America: Activism and Resistance in the 1990s} 101 (Karin Aguilar-San Juan ed., 1994).
\item \textsuperscript{87} SAI-I-GU, supra note 83.
\item \textsuperscript{88} Ikemoto, supra note 82, at 1592; see also Reginald L. Robinson, “The Other Against Itself”: Deconstructing the Violent Discourse Between Korean and African Americans, 67 S. Cal. L. Rev. 15 (1993).
\end{itemize}
older than I [am], I was never permitted to associate with her or her friends. . . . My adopted sister was instrumental in exacerbating my uneven treatment, abuse and scapegoating. Some poignant examples include times she allowed children to engage in discriminatory noises, remarks and gestures in front of me; even more astonishing were her own discriminatory remarks and gestures to me." Of bicultural issues, she writes "not fitting . . . being an interloper . . . duality . . . marginality . . . feeling schizophrenic (at best, fraudulent because of constantly adapting behavior to different cultures)."

One afternoon last year, I picked my biracial children up from school. The sight of three Asian people walking together was too much for one nine-year-old white boy. He began to chant fake Asian language at us, all in the presence of a white woman who did not say or do anything. My first impulse was to let it go. Then for some reason, I turned around to him and said, "You should think about the things you say. What you say can hurt other people's feelings." Immediately he was abashed although I felt that my words were absurdly inadequate. Afterwards, my kids were chastened, and I realized that this was a significant event for them. What if I had ignored the boy? I then thought about why the white woman had not said anything; was she a parent or a teacher, and didn't she understand what was happening? I wondered why the white boy thought that it was okay to say these things to an Asian adult and how often my kids had to hear these kinds of taunts when I was not around. But I did not hit the roof until I later found out from my son that the boy was on the same little league baseball team that my son had been on—and that my husband had coached.

The sense of foreignness or homelessness that pervades these narratives is one that also leads to the creation of the Asian American ethnic specimen, a racial category that even the most ardently assimilationist among us encounter daily. Internalized, and compounded in some instances by our own senses of being displaced, we may mirror back to ourselves and others the feeling that we do not "belong." While foreignness is not imputed only to Asian immigrant groups, it is re-enacted even upon second or third or fourth generation Asian Americans through symbolic exclusionary gestures and real acts of exclusion: acts that eventually cease to be performed upon those immigrant groups racially classified as whites.

Moreover, if "the concept of racialization signifies the extension of racial meaning to a previously racially unclassified relationship, social practice, or group," then narratives concerning Koreans and other relatively recent Asian immigrant groups provide recent historical evidence of rapid racialization, analogous to the much older "consolidation of the racial category of Black in the United States from Africans whose specific identity was Ibo, Yoruba, or Bakaongo among others." So, within a short period of time (1965-95), a group that had a strong ethnic but little racial identity prior to entry into the U.S. (Koreans) has been transformed into part of a category of racial other (American Oriental).

Finally, the multiplicity of possible readings of any of these acts does not detract from the claim I make here: that the process of being made into an ethnic specimen constitutes a significant racializing process for Asian Americans. We can

90. id.
91. Omi, supra note 13, at 203.
92. Id.
never be certain how much of any particular event is determined by the race-ing of us by others and how much of it is determined by things other than race. However, we can never rule out that race-ing is one significant part of the overall dynamic in any of these stories. What leads me to interpret these stories as having a significant racial character? For one thing, a consistent pattern is formed to me out of what might seem to others disparate and arbitrary occurrences. To convey the sinister behind the seemingly innocuous, the design behind the seeming accident, the constructness of what seems natural is an enormous task, to which I turn below.

III. The Problems of the Native Informant

When I received the student evaluations for the first semester of civil procedure, several of the students had made comments that centered around a theme: that I was partial to certain students, nasty, short-tempered, politically biased, and in general, not someone they liked in front of the classroom. Stunned, I thought that I had been projecting humor and flexibility. I had been especially careful to be self-deprecating when I presented what could be construed as an explicitly personal perspective or a perspective that could be viewed as a non-dominant perspective.

A. Storytelling, Part I

Patricia Williams relates a memorable story that describes how a store clerk blowing bubblegum refused to buzz her into a Benetton store in New York City.

This story has me feeling guilty everytime I wear my Benetton sweaters, which I purchased on sale without any difficulty and which I adore. I don’t usually remember law review articles that way. Her story has also become shorthand in my mind every time I am ignored by a white sales clerk who invariably turns first to the white person standing next to me even if I’ve been waiting longer and even if it’s not a jeans and no-makeup day for me. This happens often enough to me in upstate New York that I have identified it as a racial reaction, not a class reaction or a gender reaction. My story is not the exact same story as the Benetton story. There is no teenager blowing pink bubbles or locked storefront on a crowded city street. Usually, instead, in my version, there is a twentysomething clerk with big, fair hair and a stand-alone store surrounded by a snowy parking lot. From those ambiguous incidents that pile up, cumulative evidence of something different about me (an Asian American female law professor), I reach the same conclusion as Professor Williams (an African American female law professor) with her much less ambiguous tale.

In storytelling, however, there is no magic home of infinite agreement. As Patricia Williams herself acknowledges, multiple perspectives are not only possible but inevitable. I dislike intensely her piece about Tawana Brawley. Why? It seems to cross a boundary that I could not imagine credibly being able to cross. It reminds me of how many times I did not try to make conversation with the Korean women who sold me fruit from Philadelphia sidewalks. Did I want to? Yes. What were the barriers there? Many: language, class, a cultural reticence, even shame at bearing witness to a condition that my yuppie lifestyle was supposed to obviate. So

94. After relating the story itself, Williams describes reactions to it that include incredulity and hostility. Id. at 50-51.
although I am provoked negatively by a story, I am provoked nonetheless into examining the ethics of my relation to others who are like me—and unlike me.  

B. Silences, Part I

The meaning of each event is shaped as much by what is not said as by what is said. The narrative turn in legal scholarship resists the squeezing of knowledge into discipline-specific categories, rigidified by "apparently appropriate topics, subjects of study, and methodologies... [that] determine what gets named as knowledge, how it gets named and by whom, how that knowledge is generated, and by whom it is dispersed." For perspectives positioned on the margins, such representational practices are the proverbial square peg in a round hole. As Tillie Olsen wrote about women's silences, "The silences I speak of here are unnatural: the unnatural thwarting of what struggles to come into being, but cannot. In the old, the obvious parallels: when the seed strikes stone; the soil will not sustain; the spring is false; the time is drought or blight or infestation; the frost comes premature." We have literally lacked words to describe the interstices in which we often find ourselves.

Yet narrative methodology is not wholly salutary and not always liberatory. Part of the difficulty in giving events or texts a specifically Asian American reading stems from cultural contexts that may impart a different meaning to silence, and then to voice, than do the dominant Western traditions including even the more recent Western critical stances. Rey Chow has documented with dexterity, for example, some of the slippages that occur in representing Asians to a predominantly white, Western audience. In her analysis of Chen Kaige's film Yellow Earth, Chow describes the problem of female voice—literally the singing voice of the female protagonist Cuiqiao—whose "significance is to be found between [male] exteriority and [female] interiority... [because] the assertion of woman's rise to speech would be a false approach to the problems raised in this context. Indeed, one of the challenges posed by the new Chinese cinema is precisely this: not the search for a particular alternative agency, but the acceptance of the radicalness of 'elusiveness' in a context where politics, as the omnipresently agential, systematically wipes out the elusive." In this difficult passage, Chow illustrates how voice cannot simply be equated with the "facile optimism of giving [the female protagonist's] 'fate' a humanistically signifying power." Silence and its counterpart story-telling derive their specific meanings from specific contexts. In America, a female Asian protagonist may be not

95. As Mari Matsuda writes, "the instrumental use of coalition-building to achieve certain political goals is merely the beginning of the worth of this method. The deeper worth of coalition is the way in which it constructs us as ethical beings and knowers of our world." Mari J. Matsuda, Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition, 43 Stan. L. Rev. 1183, 1184 (1991); see also Deborah W. Post, Reflection on Identity, Diversity and Morality, 6 Berkeley Women's L.J. 136 (1990-91).


97. Tillie Olsen, SILENCES 6 (1978) ("These are not natural silences—what Keats called agonie ennuyeuse (the tedious agony)—that necessary time for renewal, lying fallow, gestation, in the natural cycle of creation.").

98. CHOW, supra note 39, at 27-54.


100. Id.

101. Id. (In China, "[rural women are not simply the Other, but the Other of the Other of the Other (if you start with the West, and move from there to China, to China's remote areas, then to women in these areas).]").
only doubly, but also triply or quadruply, displaced: by sexual orientation, by having a primary language other than English, by being multiracial or having parents with a different racial identity than one’s own, by having experienced a totalitarian political regime, by degree of connection to the country of origin, and class, among other things. When a voice is raised, we cannot be certain that it is primarily raised in response to being raced, or that the intervention by someone with the same characteristics but of a dominant race is an intervention that would be suitable for a non-dominant racial voice.

My analogy of Asian American self-representation to Western readings of Chinese cinema is not accidental. Asian American responses to being an “ethnic specimen” are problematic precisely because of the foreignness that is imposed upon us in the racialization process. American Orientalism immediately displaces and decenters racial representations by placing us literally outside the national body, complicating the response to race. The viewing of the Asian American as a native of a reified exotic culture means that our responding to the race-ing process must include responding to the forced foreignness. Thus I remember saying as a young child, “I am not Chinese or Japanese—I am Korean.” The questions and taunts to which I was responding, however, collapsed two different concepts: the idea of foreign-outsider status and the idea of racial inferiority within the U.S. A precise correction to the responding, however, collapsed two different concepts: the idea of foreign-outsider status and the idea of racial inferiority within the U.S. A precise correction to the responding to the forced foreignness. Thus I remember saying as a young child, “I am not Chinese or Japanese—I am Korean.” The questions and taunts to which I was responding, however, collapsed two different concepts: the idea of foreign-outsider status and the idea of racial inferiority within the U.S. A precise correction to the responding to the forced foreignness. Thus I remember saying as a young child, “I am not Chinese or Japanese—I am Korean.” The questions and taunts to which I was responding, however, collapsed two different concepts: the idea of foreign-outsider status and the idea of racial inferiority within the U.S. A precise correction to the responding to the forced foreignness.

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of labor between those who represent others and those who are represented (or who silently support those who write). 110

Western readings of Asian silence as a cultural trait that predominantly signifies passivity further complicates the work of the native informant. This interpretation flattens the silence into a single and implicitly inferior rhetorical symbol. Here, I offer evidence that silence must be read polysemously and multivalently. Silence is an active process of listening to cultural discrepancies and waiting for an appropriate moment in which to intervene. It also can be read as an act of contradiction or opposition to the autonomous, self-directing Western liberal.

In analyzing the texts of three Asian women writers, for example, King-Kok Cheung explores the rhetorical varieties of silence deployed by the authors. 111 She describes silences as "undesirable" but also "enabling," such as in "the breathtaking rendition of soundless but 'accurate and alert knowing.'" 112 Included in her analysis also are "persuasive silence," silences that signify "aesthetic restraint," "authorial silence" (contrasted to the silence of the characters themselves or even of the narrative voice), "[p]rovocative silence," and "oppressive, inhibitive, protective, stoic, and attentive silences." 113

The unpacking of silence's different meanings is not a return to cultural essentialism. Indeed, the silences may have "cross-cultural inspirations" 114 or may be otherwise multi-positional. Cheung, for example, analyzes two passages from Maxine Hong Kingston's The Woman Warrior in which Kingston depicts her inarticulateness in primary school. 115 Cheung presents several different readings of Kingston's silence, relying sometimes on the narrator's stated interpretations ("The other Chinese girls did not talk either, so I knew the silence had to do with being a Chinese girl.") and at other times on the author-narrator's adult perspectives on the small girl, as well as Cheung's readings of Kingston's 'more mature' explanations. The girl's explanation is contradicted by the talkativeness of her mother, and the Chinese-American's explanation is contradicted by the emphasis in white American culture on feminine decorum, which does not value strong speech in women. From these and other contradictions, Cheung weaves a narrative of silence such as "[t]he implied challenge of being doubly bilingual—metaphorically as a woman and literally as a pupil grappling with two disparate languages." 116 And from the apparent contradiction of the "quiet pupil [who] can nevertheless be(come) an articulate writer," 117 Cheung ties the female oral tradition given Kingston from her mother to the typically male written tradition, which for Kingston derives from a different cultural tradition and language than either of her parents. 118 By treating silence as

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12. Id.
13. Id. at 24-26.
14. Id. at 20.
15. Id. at 80-82.
16. Id. at 83-84.
17. Id. at 89.
deserving of focus in its own right, Cheung highlights rather than effaces Kingston's natural occupation of multiple subject positions.

Asian Americans often are bemused or even enraged at their parents' reticence in conveying family history. I have often been astounded at the "secrets" my parents have managed to reveal to me only recently: facts such as my mother's complete command of Japanese, the existence of my father's two half-brothers, the ways they coped with the wars on the Korean peninsula. These silences, however, can represent forms of control and hegemony over one's life as well as over one's children. Regina Austin has described how the "Black community" is not really divided into two distinct segments—one straight, the other street... [but consists also of] 'bridge people' who straddle both worlds." The Asian American community has its own bridge generations and people. There may very well be negative consequences of story-telling for the people here who are connected to people who are not here. The Chinese "paper sons" who were able to circumvent the exclusionary immigration laws after the San Francisco earthquake of 1906 can only now be revealed as such, after their children and grandchildren have become citizens. Silence as a form of control also means avoiding the reliving of tragic and painful events. Moreover, as King-Kok Cheung points out, there is bridging between cultures within the U.S., in often paradoxical and ambivalent ways.

I certainly do not want to over-emphasize either the incommensurability of different cultural interpretations of silence or silence as a method of seizing rather than relinquishing control. I am skeptical towards my own claims that a difference (here, the difference in the interpretation of silence) is always attributable to cultural differences. Yet languages themselves can be incommensurable. I remember all the neologisms that my parents—especially my mother—coined: "ricetea," "meatpads," "eggrice." How did we ever negotiate the more complex things like "independence"? Only now do I appreciate the control that she gave up by

119. Elaine Kim's story of her half-sister's experiences during the Korean War bears many resemblances to the story my father told to one of my brothers last summer. See Elaine H. Kim, War Story, in MAKING WAVES: AN ANTHOLOGY OF WRITINGS BY AND ABOUT ASIAN AMERICAN WOMEN 80 (Asian Women United of California ed., 1989).


121. See, e.g., Honorable Denny Chin, From Paper Son to Federal Judge, paper presented at Syracuse University College of Law (Mar. 31, 1995) (on file with author) ("I believe that my grandfather was one of these paper sons, because I don't know how else he would have been able to enter the United States in 1916.").

122. Recently my father told me how his mother had been tortured by the equivalent of intelligence agents in Japan-occupied Korea in the early 1930's. My grandfather had been hiding from the Japanese authorities. One night, my father woke up to find his mother gone and a Japanese soldier looking down at him. When his mother returned the next morning, she told her then eight-year-old son that she had said to her torturers, "If your wife was in my position, would you want her to disclose where you were hiding?" My father was seventy when he revealed this to me.

123. CHEUNG, supra note 2, at 97 ("Like Yamamoto, who is at once critical and appreciative of her nikkei heritage, Kingston evinces deep ambivalence toward her cultural legacy. Although the narrator of The Woman Warrior does not overcome her adolescent rancor against her mother and the culture she represents until the end of the novel, the author—possessing the wisdom of hindsight—allows her dialogic vision to pervade the entire work. . . . Most of the time, this colloquy of anger and retrospection is detectable only in the mismatch between the narrator's assertions and the author's strategies.").

124. See Lowe, supra note 11, at 36-37 (Amy Tan's Joy Luck Club "represents antagonisms that are not exclusively generational but are due to different conceptions of class and gender among Chinese-Americans.").

125. See also Yniguez v. Arizonans for Official English, 42 F.3d 1217, 1232 (1995) (Beyond conceptual differences, "words are often chosen as much for their emotive as their cognitive force"—to such an extent,
speaking my first language rather than having me speak hers. For one thing, she will never have the experience of belittling my ideas because I can't say things "right." But we both suffer from the gaps. Sharon Hom tells of finding herself at a conference "caught in the space of 'listening' between languages. I lean forward to search the faces of my Chinese colleagues from the PRC, their eyes intently inward, trying to make sense of the simultaneous translation silently transmitting itself through the bulky headphones they wear. In the question and answer period, I point to the difficulty of agreeing on translations of basic terms, like gender, sex, sexuality, the fundamental contested terms of this cross-cultural, cross-disciplinary discourse . . . at this point, I see the heads of my Chinese colleagues look up, their smiling eyes looking at me across the distance of the headphones separating us."126

I wonder also to what extent our silence is also attributable to our own forms of the "Miss Saigon" syndrome—the denial or lack of recognition that we are being raced? Our ability to "pass" in and out of certain racial situations that might entrap other minority groups gives us more latitude to overlook the race-ing that does occur.127 Silence as control may also include dampening the trauma of racialization. Soon after Vincent Chin was beaten to death with a baseball bat by two unemployed white auto workers in the streets of Detroit, my brother Richard and I walked together down a bucolic street in Ann Arbor. Although we lived in the same small town, and attended the same university, we did not get together very often. Nonetheless, we happened to be walking together that night, and I was feeling the kind of comfortable, companionable feeling that one has when in the presence of a friend, someone with whom one has a shared history.

Closer to the university buildings on the opposite side of the street, walking in the opposite direction, came a group. The group was all male, and my impression at the time was that it was all white. There were about five to ten individuals. As they neared us, a few of them began shouting words over at us. The moment I identified that they were racial words, I immediately sensed danger. My pulse accelerated as the adrenalin response took over. My hair stood on end. At the same time, I felt a strong protective instinct for my brother, who was trying to ignore them. I felt a void to my right, where there was a dark parking lot and apparently no other people. I wondered whether the students were drunk, and if so, how irrational they might be. We didn’t say anything back to them. We tried not to look at them. After they passed us, and it became clear that nothing terrible was going to happen, I still felt alarmed. Yet I couldn’t share this response with my brother. He said something in his sarcastic way, and we both tried to pretend the incident had not occurred.

I think about why I recall this racial taunting incident among so many others in which my brother and I, either separately or together, were raced. I think it was then that I realized the full extent of his vulnerability as an Asian American man. As a woman, I had myriad strategies for getting people to know, trust and accept me. I could act the demure, agreeable, head-bobbing one. This type of acceptance by the dominant white culture gives me one choice128 for controlling the impact of racism in fact, that this emotive aspect 'may often be the more important element of the overall message sought to be communicated.'" (citing Cohen V. California, 403 U.S. 15, 25 (1971)).

126. Hom, supra note 78, at 1021.
127. See generally Matsuda, supra note 13; see also Peggy McIntosh, White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women's Studies, in POWER, PRIVILEGE AND LAW 21 (Leslie Bender & Daan Braveman eds., 1995) (about one-fifth of Prof. McIntosh's list of forty-five white privileges apply to me as an Asian American).
in my life—a technique that my brother does not have even though in fact he is the
gentler one. Perhaps the shock of insights such as these form part of the impulse not
to confront the hurt that the recognition of racism brings.

When I told this story to a group of law students a few years ago, I received a
note from one of my students—an adopted Vietnamese American woman—who
told me how much it meant to her for me to reveal it. Yet even now I resist opening
up this and other stories to others. Throughout the construction of this Article, in
fact, I have had to remind myself repeatedly not to fall back into the abstract. Why?
Why didn't my brother and I discuss what happened? Why, in general, do people
shy away from viewing race as deserving of scrutiny in its own right? The interro-
gation of silence in the face of racism must include the possibility—indeed, the
certainty—that confronting racism is extremely difficult and distressing.

C. Storytelling: Coda

Certainly some of the difficulty in the representation of an authentic Asian
American voice stems from the more familiar problem of objectification that other
groups such as women experience. The "Native as Silent Object" is a key to
the orientalizing of the East by the West. Having one of the objects talk back is not
the full panacea. One obvious problem with that approach is that of tokenism.
Then there is the problem of genre. How does an authentic native talk back to a
travel narrator? How could I have responded to Isabella Bird, for example, especially
in a time when authentic ethnicity was the departure point for authentic self-realiza-
tion (e.g., Black is beautiful)? The concepts did not exist either. So I simply put the
book away.

In representing our authentic native selves, how are we in fact to know the
"original" when we see it? I almost always doubt any of my attributions of differ-
ence to cultural differences because I know my culture or that of other Asian ethnic
groups only through inferences. While I have noticed, for example, that I tend to be
more verbose than many Asian American women, I do not know with certainty that
the verbosity can be ascribed to cultural differences between the East Asian countries
and the United States. I am reminded of a critique I recently made about the bride
in Ang Lee's film The Wedding Banquet: that her aggressive sexuality and apparent
insouciance to familial expectations and obligations were uncharacteristic of any
Asian woman I had ever met. My respondent, a Chinese history professor and film
buff, and parenthetically a white male, replied that her biting repartee seemed very
characteristic of a Maoist-raised PRC woman.

One way to cure the problem of certifying authenticity is to disrupt the concept
of the reified native culture. I see an analogy to the way the Queer Nation

129. Omi & Winant, supra note 9, at 11-13 (discussing the three major intellectual paradigms of race, which rely upon ethnicity, class or nation rather than upon race per se). By contrast, First Amendment jurisprudence is founded upon the largely unquestioned assumption that religious identity is profoundly important and deserving of protection.


131. CHOW, supra note 39, at 30-36.

132. As Trinh T. Minh-ha states: "No uprooted person is invited to participate in this 'special' wo/man's issue unless s/he makes up s/his mind and paints s/himself thick with authenticity. Eager not to disappoint, I try my best to offer my benefactors and benefactresses what they most anxiously yearn for: the possibility of a difference or an otherness that will not go so far as to question the foundation of their being and makings." Minh-ha, supra note 5, at 14.
disrupts dominant heterosexual norms that nonetheless construct homosexual desire as a powerful marketing tool, so as "to consolidate a safe space for gay subjects and also to dislocate utterly the normative sexual referent."\(^3\) Keith Aoki writes that, "given the ongoing contemporary globalization of mass culture and media forms, the very pervasiveness of various racial-ized and gendered representations may actually multiply, rather than shrink the sites for contestation over the meaning of such representations."\(^1\) Rather than an "authentic" voice that demands an "original" culture that is pure, primitive, untouched, unelaborated, stable—we must insist on bastardization, hybridity, multiplicity, contradiction and flux. Our expertise lies in disrupting the reduction of our cultures to ethnic specimen—that static, self-contained and derogatory jumble of chink/gook/sayonara/eggroll/vietcong/dogeater/oriental/nip/jap/chinaman or the double-edged confusion of workhorse/powerhouse/diligent/straight A's/mathwhiz. Asian American women may need to OVER-represent themselves, such as in the aggressive style of Margaret Cho's stand-up comedy, in order to overcome the deep cultural resistances that people have to seeing them as agents with power.\(^3\) By relating the complexity of our lived experiences, in an authentic voice that is not a priori defiled by the observer's gaze or accompanied by a requirement of ethnic purity,\(^1\) we may begin albeit imperfectly to resist the ethnic conglomeration and racialization process.

D. Silences: Coda

Finally, a group of objections to narrative might pertain to our cultural positions as academicians. Does our general reluctance to foreground ourselves mean that we don't take ourselves seriously enough as subject/object of inquiry?\(^1\) How can we, Asian American women and men alike, highlight the scandal of our invisibility?

133. Lauren Berlant & Elizabeth Freeman, *Queer Nationality*, 19 BOUNDARY 2 149, 168 (New Americanists 2: National Identities and Postnational Narratives, Spring 1992) ("One form this project takes is an 'outing' of corporate economic interest in 'market segments' with which corporations refuse to identify explicitly. The New York Gap series changes the final 'P' in the logo of stylish ads featuring gay, bisexual, and suspiciously polymorphous celebrities to a 'Y'.").

134. Aoki, *supra* note 14. Yet as I noted in section II(C), media representations of affected members of a non-dominant, politically powerless group can be very thin.

135. In reference to her gay boyfriend, Margaret Cho calls him "my partner in life. We are the Cho/Silvermans, and sex never gets in the way." Jefferson Graham, *On the Edge of Fame: Cho Brings Comic and Ethnic Sensibilities to TV*, USA TODAY, June 16, 1994, at 3D.

136. Elaine Kim, *Preface to Charlie Chan is Dead: An Anthology of Contemporary Asian American Writing* (Jessica Hagedorn ed., 1993) ("Charlie Chan . . . is challenged by . . . a Korean American who writes in French, a Chinese-Panamanian-German who longs too late to know her father, a mean Japanese American grandmother, a Chinese American flame-diver or a teenaged Filipino American male prostitute. . . . To read them, we will need to go beyond cultural nationalist approaches to employ mixed strategies and practices.").

137. Regina Austin writes that in the context of writing about Sapphire . . . the stereotypical BLACK BITCH—tough, domineering, emasculating, strident, and shrill. . . . Well, I think the time has come for us to get truly hysterical, to take on the role of "professional Sapphires" in a forthright way, to declare that we are serious about ourselves, and to capture some of the intellectual power and resources that are necessary to combat the systematic denigration of minority women. It is time for Sapphire to testify on her own behalf, in writing, complete with footnotes.

bility as specific legal subjects? How can we connect up these efforts to the efforts of other relatively disempowered groups such as gays and lesbians, other racial groups, women of all colors?^{138}

We may have been more reluctant than others to engage in the "inward turn in outsider jurisprudence,"^{139} by exploring, for example, the differences between the racial formation of Asians and that of other groups.^{140} Perhaps we feel that it is inappropriate or even disloyal to highlight our marginality when others face greater needs and oppressions. But even if, as an ethical or political matter, we defer to those who have greater needs and have experienced greater historical oppressions within the political boundaries of the U.S., our experiences are not only valuable but necessary. Through the construction of us as foreigner-other, our racial identity has been used in large part to police and enforce those very political boundaries that enclose others securely. Moreover, our uncertain positioning within the racial hierarchy is itself a fertile seedbed for unique insights about race and political power.^{141}

The study of relations of power cannot be complete if we leave out even a single significant difference.^{142}

Finally, what is the role of our limited resources? There are so few of us and thus our individual choices are that much more significant. If we believe in activism towards some kind of social change, is our activism better directed in other ways?^{143} For example, is our activism better expressed in organizing students to do pro bono work or doing pro bono work ourselves? Assuming that we all agree that scholarship is important in and of itself or for the recognition that we get in the scholarly community, to what extent do we contribute to our community and group identity through storytelling? Related to that is the question of whether storytelling's potential for effecting social change outside of the scholarly community is more imagined than real, or the question of who reads the law reviews anyways?


140. Some Asian American legal scholars have employed personal narratives. See Chang, supra note 8; Chew, supra note 48; Dinesh Khosla, Select Journal Entries on Entry Fee for Inclusion, 2 COLUM. J. GENDER & L. 173 (1992); Hing, supra note 24; Mari J. Matsuda, Voices of America: Anticdisctrimination Law, and a Jurisprudence For the Last Reconstruction, 100 YALE L. J. 1329 (1991); Mari J. Matsuda, Public Response to Racist Speech: Considering the Victim's Story, 87 MICH. L. REV. 2320 (1990). Asian American Studies is a fertile source of stories, readings and textual interpretations of Asian American experiences that could be transplanted into law. See, e.g., K. Scott Wong, Our Lives, Our Histories, in MULTICULTURAL TEACHING IN THE UNIVERSITY (David Schoem et al. eds., 1993).

141. See, e.g., Cho, supra note 46; Jerry Kang, The Internal Instability of Dworkin's Defense of Affirmative Action: The Problem of Admissions Ceilings on Asian Americans, 31 HARV. C.R.-C.L. L. REV. (1996); Matsuda, supra note 4; see also Gary Y. Okihiro, Reading Asian Bodies, Reading Anxieties, paper presented at the University of California, Davis, Humanities Institute (June 1, 1995) (on file with author) ("Asians . . . pose a fundamental problem to the dualisms that comprise the conventions of race (black and white), gender (female and male), and sexuality (homosexual and heterosexual.").


IV. POSTCARDS FROM THE EDGE

In the midst of finishing this Article, a controversy erupts over Senator Alphonse D’Amato’s “yellowface” mockery of Judge Lance Ito. Senator D’Amato is scheduled to be our commencement speaker. There is a meeting of some concerned faculty and students with the Dean. Some of the students who attend the meeting with the Dean are from my civil procedure class. I am surprised and touched, but do not interpret their acts as having been influenced by me. I also find that I am angry, fatigued and wondering whether some might not find this Article too bleak to swallow. (Months later, however, as I am engrossed in last minute editorial revisions, I bask in what I think are unsentimental memories of my students’ eventual if ambivalent rapprochement with me. And I started this year’s class again with the story of Chan is Missing.)

I claim here that one distinct characteristic of Asian American racial formation, or being “raced” as an Asian American, is the process of being made into an “ethnic specimen” or someone who is constructed within a narrative that is committed to the narrator’s pre-existing and relatively static perceptual framework towards the Orientalized other. This perceptual framework of the American Oriental as a foreigner forever has significant legal consequences. This racial category is the departure point of authenticity for discourse, critical or otherwise.144 Despite the multiplicity of actual Asian American subject positions, the racial valence of American Orientalism continues to be relatively stable over time (even as specific incarnations of that racial valence mutate).145

I have also canvassed the many challenges to articulating authentic Asian American voices. Because there is no single, essential or unitary Asian American perspective, any voice that is raised will tend to be over-emphasized and over-privileged vis-à-vis other voices. In academic production, this translates into the dominance of the Western-educated, economically privileged native informant who may not represent the racializing experiences of other Asian Americans. How do we foreground our positions in the margins, on the edges, in the interstices of cultures, at the same time that we also occupy the centers of those cultures (first world academic)? “One cannot really ‘give voice’ to the others, without unlearning one’s privilege as speaking/making subject, or as Gayatri Chakravorty Spivak puts it, without ‘learning how to speak, so that to those women we will not seem like yet another wave of missionaries coming to develop them into humanhood or feministhood.”146


145. Aoki, supra note 14; see also Susan Faludi, Backlash: The Undeclared War Against American Women 200-26 (1991) (analyzing media imagery of women); Adeno Addis, Individualism, Communitarianism and the Rights of Ethnic Minorities, 67 Notre Dame L. Rev. 615, 670 (1992) (discussing media imagery of minorities); Wilhelmmina M. Reuben-Cooke, Communicating the Unspeaking and Seeing the Invisible, 6 Berkeley Women’s L.J. 167 (1990-91) (analyzing media imagery of African American women); Okihiro, supra note 141, at 2 (“[C]onventions acquire currency through repetition, explaining the need for and power of culture and cultural (re)production, and pointing to the inherent instability...of those conventions and their derivative and generative social relations.”).

Narrative methodology with all its drawbacks and pitfalls is a necessary tool. Problems of representation are not to be taken lightly. Yet always to acquiesce to narrative's alternative—silence—is to continue the lack of rupture of the dominant racial representations of Asian Americans, including the significance of Asian American silence itself. The master narrative of race, in which racial hierarchy is fixed in reference to white supremacy, defines race oppositionally. We are raced or othered, in a "strategy that merges ethnicity, culture, gender, and class into race." Complexity does not count. Multiple positions and dislocations are not recognized. Writing, speaking, acting from the margins are acts that are often ignored, devalued or actively opposed. And unexamined racial oppositional difference has ramifications defined, often violently, by law.

Constructing alternative accounts of race, ones that do not define race oppositionally but rather by the positive differences of cultural synergy and dynamism, will take substantial effort. Chan may be missing in the legal discourse of race; nevertheless, we must not yet or ever presume him dead.

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147. Steven L. Winter, *The Cognitive Dimension of the Agony Between Legal Power and Narrative Meaning*, 87 Mich. L. Rev. 2225, 2227 (1989) ("Narrative does not meet the threefold demands of generality, unrelexivity, and reliability that are necessary if a prevailing order is credibly to justify itself.").
148. Ikemoto, supra note 82, at 1582.