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Teaching Asian Americans and the Law: Struggling with History, Identity, and Politics

Robert S. Chang[†]

I often begin my class on Asian Americans and the Law with two confessions: first, I am a proud beneficiary of affirmative action and without it, I would not be in front of the class¹; second, I am a recovering Oriental.² To grow up Asian American in the United States is to grow up as a recovering Oriental, a term that contains not only the question, “What are we recovering from?” but also, “What are we trying to recover?” These two questions serve as the organizing themes for much of my work. The first is a question of history, opening a discussion of past and present treatment of persons of Asian ancestry. The second question is about identity and politics. They address what persons of Asian ancestry have lost and what we are trying to gain in our quest to make the United States our home. For me, history, identity, and politics are inextricably linked.

In my course on Asian Americans and the Law, I try to include in the weekly reading packets history, narratives, and cases. I include the narratives because I have found that the students often have a difficult time relating to the history without them. After all, narratives bring life to history, making it easier for students to relate to and/or identify with the historical persons who occupy very different subject positions with regard to race, nationality, immigration history, class, and gender. Also, I include cases because they simultaneously document enactments of power directed against persons of Asian ancestry and stand as examples of active

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[†] Professor of Law and J. Rex Dibble Fellow, Loyola Law School, Loyola Marymount University. This essay is based on a talk presented at the New Developments in Asian American Jurisprudence Panel at Columbia Law School held on March 20, 2001. In formulating my course materials for my Asian Americans and the Law class, I have benefited from materials and syllabi shared by Keith Aoki, Neil Gotanda, Bill Hing, Jerry Kang, and Leti Volpp.

1. I discuss more fully my experience with affirmative action in Robert S. Chang, *Reverse Racism!: Affirmative Action, the Family, and the Dream that Is America*, 23 HASTINGS CONT. L.Q. 1115 (1996).

2. In an earlier essay, I describe this phrase as recognizing “that I exist in the American imaginary as an Oriental, as the object of American Orientalism. As a recovering Oriental, I am in transit. I am between places: my imaginary homeland and the mythic America; between identities, Oriental and Asian American.” Robert S. Chang, *The Nativist’s Dream of Return*, 9 LA RAZA L.J. 55, 58 (1996).

resistance by those persons in the face of state and private power.

I typically ask students at the beginning of the course: Do you identify yourself according to race or ethnicity? If so, what is it? If you are a person of Asian ancestry, do you identify as Asian American? I do not ask for public responses. Rather than putting people on the spot about their racial and/or ethnic identification, I ask the students to think about these questions throughout the semester. A number of students write about these questions in early reflection papers. At the end of the course, I ask them to consider the questions again, and whether their responses to them have changed, not just in terms of yes to no or no to yes, but in terms of how they engage with racial or Asian American identity and how their answers have shifted and may continue to shift over time, space, and context. I begin and end the course with such questions of self-reflection because I consider my course to be a site where Asian American identity is both resisted and produced. I recognize the dangers Professor Neil Gotanda has discussed about the limitations of identity-based courses.³ But identity and ideology are closely linked. Identity is always already about politics. Questioning identity opens up questions about the operation of power, how identities are constrained and/or enabled by power, along with what is at stake in the game of identity politics.

In between, I focus on the question of history. I invite persons of Asian ancestry to identify with those members of earlier Asian immigrant groups as fellow Asian Americans.⁴ In doing so, I recognize that these earlier persons of Asian ancestry were not Asian Americans in a technical sense, as the term Asian American was not coined and popularized until the late 1960s.⁵ But even though the term may not have existed, the bodies certainly did. The bodies were available for meanings to be mapped upon them. Orientals were identified as inscrutable, mendacious, and un-American.⁶ The border was inscribed upon their bodies, which became targets of legal and extralegal violence.⁷ It is through this history that

3. Neil Gotanda, Panel Presentation, New Developments in Asian American Jurisprudence Panel at Columbia Law School (Mar. 20, 2001) (notes on file with author).

4. For my students who are not of Asian ancestry, I invite them to explore by comparison of their own racial or ethnic identities.

5. Yuji Ichioka is one of the people credited with coining the term "Asian American." See K. Connie Kang, *Yuji Ichioka, 66, Led Way in Studying Lives of Asian Americans*, L.A. TIMES, Sept. 7, 2002, at B16.

6. Neil Gotanda's work on the mechanics of racialization is especially instructive in understanding how meanings or profiles are mapped onto bodies. See generally Neil Gotanda, *Comparative Racialization: Racial Profiling and the Case of Wen Ho Lee*, 47 UCLA L. REV. 1689 (2000).

7. See Robert S. Chang, *A Meditation on Borders*, in IMMIGRANTS OUT! THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN THE UNITED STATES 244, 249 (Juan F. Perea ed., 1997) (discussing the way foreignness is inscribed upon Asian American bodies to "render[] them suspect, subject to the violence of heightened scrutiny at the border, in the workplace, in hospitals, and elsewhere").

Asian Americans came into being.

When looking at history and how different nationality groups have been treated, I stress commonalities. First, the Chinese came and they encountered discrimination.⁸ Then the Japanese came and they encountered discrimination.⁹ Then a few Koreans came and they encountered discrimination too, but then the Japanese government stopped the Koreans from coming.¹⁰ South Asians came and they were described as “the Hindoo problem” and became the target of Asiatic exclusion leagues.¹¹ Then Filipinos came and they encountered discrimination.¹² Then there was the internment of Japanese Americans.¹³

Eventually, things began to get better, at least with regard to formal discrimination. The racial bar to naturalization was lifted.¹⁴ Then the overtly racist immigration quotas were eliminated in 1965.¹⁵ Then many of us came.¹⁶ Perhaps more than the powers that be expected or wanted.¹⁷ And we encountered discrimination, not just because of membership in narrow national origin categories. We encountered discrimination as Asian Americans.¹⁸ As we encounter and acknowledge this experience of discrimination, more Asian Americans are produced. Therefore, by confronting this history and current day reality, the course becomes a site where Asian American identity is both resisted and constructed.

But, as Professor Leti Volpp has often reminded us, there are dangers in constructing a “we” that is not reflective of the differences that exist in

8. See SUCHENG CHAN, *ASIAN AMERICANS: AN INTERPRETIVE HISTORY* 25-61 (1991); RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS* 79-131 (1989).

9. See CHAN, *supra* note 8, at 25-61; TAKAKI, *supra* note 8, at 179-229.

10. See CHAN, *supra* note 8, at 55.

11. See Sucheta Mazumdar, *Race and Racism: South Asians in the United States*, in *FRONTIERS OF ASIAN AMERICAN STUDIES: WRITING, RESEARCH, AND COMMENTARY* 25 (Gail M. Nomura et al. eds., 1989).

12. See RICK BONUS, *LOCATING FILIPINO AMERICANS: ETHNICITY & THE CULTURAL POLITICS OF SPACE* 31-42 (2000); CARLOS BULOSAN, *AMERICA IS IN THE HEART* (1943).

13. See MICHIE WEGLYN, *YEARS OF INFAMY: THE UNTOLD STORY OF AMERICA'S CONCENTRATION CAMPS* (1976); ERIC K. YAMAMOTO ET AL., *RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT* (2001).

14. Although the Walter-McCarran Act of 1952, 8 U.S.C. § 1101 (1988), removed the final racial bar to naturalization, the lifting of Asian exclusion was a piecemeal process. See Neil Gotanda, *Towards Repeal of Asian Exclusion: The Magnuson Act of 1943, the Act of July 2, 1946, the Presidential Proclamation of July 4, 1946, the Act of August 9, 1946, and the Act of August 1, 1950*, in *ASIAN AMERICANS AND CONGRESS: A DOCUMENTARY HISTORY* 309 (Hyung-Chan Kim ed., 1996).

15. Immigration Act of 1965, Pub. L. 89-236, 79 Stat. 911 (1965).

16. BILL ONG HING, *MAKING AND REMAKING AMERICA THROUGH IMMIGRATION POLICY 1850-1990*, 80 (1993).

17. Cf. Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. REV. 273, 277-78 (1996).

18. Hate crimes are perhaps the clearest contemporary examples that show students that discrimination is often not directed along ethnic national origin lines, but is directed against a broader Asian racial group.

the various communities that make up Asian America.¹⁹ The temptation of telling the simplified, serial, episodic tale described above is that it emphasizes commonality and erases differences. Attention must be paid to the operation of gender and sexuality, and the effects of U.S. colonialism in conjunction with our imperial adventures in Asia. The study of Asian America would not be complete without understanding the interplay of race, sex, and sexual orientation and the way that different identity characteristics are mutually constitutive.²⁰ How Asia and Asians were/are treated during our colonial and imperial encounters marks the development of American Orientalism which then gets transposed onto Asian Americans in the United States.²¹

So, how do we tell the more complicated story where differences have its due place? I will offer three examples that I have found useful when exploring how differences complicate the question of a common identity. When thinking about these examples, I ask my students to consider the following: Where is Asian America in these three examples? In what way does it make sense to talk about Asian Americans?

The first example is drawn from Chris Friday's book, *Organizing Asian American Labor*,²² which examines the canneries in Alaska and provides a rich account of Whites, Mexicans, Filipinos, Chinese, and Japanese involved in the racially stratified labor force. The book explores how difference was constructed and managed by capital, and how identity was manipulated by some workers trying to organize for social change. But conflicts arose between Filipino workers, and the more established Chinese workers and Chinese contractors. When there are conflicts between different ethnic or nationalist groups, in what way is Asian American in this context a relevant identity formation?

My second example is drawn from the events surrounding World War II, when some persons of Chinese ancestry wore buttons that proclaimed them to be Chinese in order to avoid anti-Japanese sentiment. Persons of Korean ancestry in certain parts of Hawai'i were required to wear buttons identifying them as Japanese, but were allowed to add a notation that also identified them as Korean. What effect did this racial distancing have on the possibility of asserting an Asian American identity?

My final example involves incidents in Los Angeles of intra-ethnic exploitation. For example, Thai garment contractors enslaving Thai

19. Leti Volpp, Panel Presentation at the Columbia Law School on New Developments in Asian American Jurisprudence (Mar. 20, 2001) (notes on file with author).

20. Peter Kwan, *Complicity and Complexity: Cosynthesis and Praxis*, 49 DEPAUL REVIEW 673 (2000).

21. See Neil Gotanda, *Toward Repeal of Asian Exclusion*, in ASIAN AMERICANS AND CONGRESS: A DOCUMENTARY HISTORY, 309 (Hyung-Chan Kim ed., 1993) (discussing American Orientalism).

22. CHRIS FRIDAY, ORGANIZING ASIAN AMERICAN LABOR: THE PACIFIC COAST CANNED-SALMON INDUSTRY, 1870-1942 (1994).

garment workers,²³ Korean restaurant owners exploiting Korean and Latino workers,²⁴ and an Indonesian family enslaving their Indonesian domestic worker.²⁵ It would be a mistake to say that a Korean employer cannot participate in racism against a Korean employee. The employee's race and class and perhaps gender may render the employee susceptible to hyper exploitation by any employer, but the common ethnic tie makes it often likely that the exploiter/employer will be Korean.

Whether dealing with commonalities or differences, the connecting point is history, and for my students the key question with which they will leave my course is what will be their relationship to history? An individual is constituted by his or her memory,²⁶ and this memory can be limited to one's own experiences, or it can be based on a sense of group identity or affiliation such that the group's experiences and history is incorporated into and is reflected in the individual's identity as an individual and as a member of that group.

My Asian Americans and the Law course serves as a place where this kind of identification is made possible through the formal study of the history and current day legal treatment of persons of Asian ancestry. This kind of identification and the development of a collective memory give Asian Americans a unique and important perspective from which they can stand vigilant against the repetition of the sins of the past visited on Asian Americans or upon new groups.²⁷ An example of this kind of vigilance can be seen when Natsu Saito comments on the achievement of Japanese American redress:

We have at this time a unique opportunity and, I would argue, Japanese American legal scholars and activists have a responsibility to ensure that the redress provided furthers the struggle for equality and justice in this country. How it is cast will affect reparations for other groups, and will influence whether Asian Americans reinforce or challenge racial hierarchy in this country.²⁸

This kind of vigilance can also be seen in a recent letter calling for Attorney General John Ashcroft's removal, signed by "members of the legal teams that helped overturn the convictions of Fred Korematsu,

23. See Julie A. Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, 1 J. GENDER, RACE & JUST. 405 (1998).

24. See, e.g., K. Connie Kang, *Activism Opens Generational Rift in Koreatown Workers*, L.A. TIMES, Sept. 6, 1998, at A1.

25. Nora Zamichou, *Amid U.S. Opulence, A Life of Servitude*, L.A. TIMES, Feb. 25, 2001, at A1.

26. See MARITA STURKEN, *TANGLED MEMORIES: THE VIETNAM WAR, THE AIDS EPIDEMIC, AND THE POLITICS OF REMEMBERING 1* (1997) (discussing how memory provides the very core of identity).

27. See LISA LOWE, *IMMIGRANT ACTS: ON ASIAN AMERICAN CULTURAL POLITICS* 1-36 (1996) (discussing how Asian Americans, with the history of being constituted as "aliens," have the collective memory to be critical of the notion of citizenship and the liberal democracy it upholds).

28. Natsu T. Saito, *Symbolism Under Siege: Japanese American Redress and the "Racing of Arab Americans as "Terrorists,"* 8 ASIAN L.J. 1, 3 (2001).

Gordon Hirabayashi and Minoru Yasui in the mid-1980s for their refusal to obey the military orders aimed at Japanese Americans during World War II.”²⁹ In this letter, they warn that what they describe as Ashcroft’s war on civil rights bears an eerie resemblance to the war on civil rights that took place during World War II.

Although not all of us experienced this history directly and not all of us were members of legal teams that won important civil rights victories, we are all capable of learning this history. Once learned, it is then up to us to remember it. Once remembered, it can lead us to act.

Courses such as Asian Americans and the Law are sites where this learning and remembering take place. It is a site where my students and I continue to struggle with history, identity, and politics.

29. Letter from Lorraine Bannai, Gordon Hirabayashi, Gary Iwamoto, Karen Kai, Rod Kawakami, Fred Korematsu, Dale Minami, Peggy Nagae, Robert Rusky, Donald K. Tamaki, and Eric Yamamoto (Nov. 12, 2002) (on file with author).