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CLOSING ESSAY: DEVELOPING A COLLECTIVE MEMORY TO IMAGINE A BETTER FUTURE

Robert S. Chang*

I am thankful for the opportunity to close this symposium that helps to inaugurate UCLA Law School's concentration in Critical Race Studies.¹ When I graduated from law school ten years ago, it was inconceivable to me that a major law school would structure a curriculum around Critical Race Studies. Yet this is precisely what has happened at UCLA. It is the first program of its kind. My hope is that it will serve as a model for other schools.

I attended law school during the rise of Critical Race Theory.² Although there was very little Critical Race Theory in my classes,³ I was exposed to it at Duke's annual Frontiers of Legal Thought Conferences.⁴ At

* Professor of Law and J. Rex Dibble Fellow, Loyola Law School, Loyola Marymount University. A.B., Princeton University; J.D., M.A. Duke University. © 2002 Robert S. Chang. I'd like to thank Professor Devon Carbado and the *UCLA Law Review* for inviting me to write the closing essay in this symposium. I'd like to thank Muneer Ahmad, Devon Carbado, Jerome Culp, and Leti Volpp for their helpful comments. Thanks also to my research assistant, Windy Watson. Versions of this paper were presented at the Critical Race Theory Colloquium sponsored by the University of North Carolina's Program in Cultural Studies and the Law School, the Southern California Regional Conference for the Association of Asian American Studies, Loyola Marymount University, February 2, 2002, and at the Asian Law Journal's 10 Year Anniversary Celebration held in San Francisco on March 21, 2002. I am grateful for feedback that I received from the participants at each of these venues.

1. For the story about how the program came to be, see Cheryl I. Harris, *Critical Race Studies: An Introduction*, 49 *UCLA L. REV.* 1215 (2002).

2. For accounts about the development of Critical Race Theory, see *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT*, at xiii–xxxii (Kimberlé Crenshaw et al. eds., 1995); *CRITICAL RACE THEORY: THE CUTTING EDGE*, at xiii–xv (Richard Delgado ed., 1995). For a countervailing narrative that credits student movements rather than academics, see Sumi Cho & Robert Westley, *Critical Race Coalitions: Key Movements that Performed the Theory*, 33 *U.C. DAVIS L. REV.* 1377 (2000).

3. Jerome Culp, a leading Critical Race Theorist, taught a course on Black Legal Scholarship that was offered once during my time at Duke Law School. For reasons that escape me, I did not take the course. I encountered some Critical Race Theory in a Feminist Legal Theory course taught by Madeline Morris and a Legal Theory course taught by Stanley Fish.

4. A documentary record of those conferences can be found in Symposium, *Frontiers of Legal Thought: Gender, Race, and Culture in Law*, 1991 *DUKE L.J.* 274 (including contributions by Martha Fineman, Joan Williams, Ruth Colker, Paulette Caldwell, Trina Grillo, and Stephanie Wildman); Symposium, *Frontiers of Legal Thought II: The New First Amendment*, 1990 *DUKE L.J.* 375 (including contributions by J.M. Balkin, Charles R. Lawrence, III, and Nadine Strossen); Symposium, *Frontiers of Legal Thought III*, 1990 *DUKE L.J.* 625 (including contributions by Gerald Torres, Kathryn Milun, Robert A. Williams, Jr., Duncan Kennedy, Gary Peller, and Leslie Bender).

the conferences, and in the pages of law reviews, I heard the voices of critical race scholars who were challenging the dominant modes of thinking about race and the law. They were questioning the limits of Title VII, which treats identity and discrimination as existing along separate axes without understanding that one could be discriminated against for being both Black and a woman.⁵ They were challenging First Amendment orthodoxy by proposing that hate speech could and should be regulated.⁶ They were claiming that ways of legal knowing were limited and that narrative provided a powerful methodology to expose false objectivity and the operation of power.⁷ Their challenges provoked vigorous responses and attacks.⁸

As a bystander during law school, it was exciting to watch. But watching made me want to participate. Hearing those voices at the conferences and in the law reviews made me believe that there might be a place for me and my ideas in the legal academy.⁹ So I wrote.

Nine years ago, I announced an "Asian American Moment," a time "marked by the increasing presence of Asian Americans in the legal academy who [were] beginning to raise their voices to 'speak new words and remake old legal doctrines.'"¹⁰ Looking back, it seems presumptuous for me to have made such an announcement when the evidence for such a moment was largely lacking. Although the number of Asian American law professors entering the academy was increasing, there were still very few.¹¹ And legal

5. See, e.g., Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139; see also Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990).

6. See generally MARI J. MATSUDA ET AL., *WORDS THAT WOUND: CRITICAL RACE THEORY, ASSAULTIVE SPEECH, AND THE FIRST AMENDMENT* (1993).

7. See generally, e.g., PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991); Mari J. Matsuda, *Public Response to Racist Speech: Considering the Victim's Story*, 87 MICH. L. REV. 2320 (1989).

8. See generally, e.g., Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives* 45 STAN. L. REV. 807 (1993); Randall L. Kennedy, *Racial Critiques of Legal Academia* 102 HARV. L. REV. 1745 (1989); Mark V. Tushnet, *The Degradation of Constitutional Discourse*, 81 GEO. L.J. 251 (1992).

9. For an excellent examination of the difficulty that people of color have in finding their place and voice in the legal academy, see Jerome McCristal Culp, Jr., *Autobiography and Legal Scholarship and Teaching: Finding the Me in the Legal Academy*, 77 VA. L. REV. 539 (1991).

10. Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CAL. L. REV. 1241, 1245-46 (1993), 1 ASIAN L.J. 1, 5-6 (1994) (quoting Jerome M. Culp, Jr., *Toward a Black Legal Scholarship: Race and Original Understandings*, 1991 DUKE L.J. 39, 40).

11. See Pat K. Chew, *Asian Americans in the Legal Academy: An Empirical and Narrative Profile*, 3 ASIAN L.J. 7 (1996) (observing that there were sixty-one tenure-track or tenured Asian American law faculty identified in the 1992-93 Association of American Law Schools Directory of Law Teachers). Based on the 1999-2000 AALS Directory, the number of "Asian (Pacific Islander)" law professors at the full, associate, and assistant levels was 138. See ASSOCIATION OF AMERICAN LAW SCHOOLS TABLE 1B: ALL FACULTY IN THE 1999-00 DIRECTORY OF LAW TEACH-

scholarship about the place of Asian Americans in racial and legal discourse was virtually nonexistent.¹² Yet in some ways, that was precisely why I wrote that article with an aspirational title—*Toward an Asian American Legal Scholarship*.¹³

As a newcomer to the legal academy and legal scholarship, I hoped that through my speech-act of announcing the moment and writing about Asian American legal scholarship, that it would come to be. I closed my article by imagining that the work that remained might be compared with the work my mother does as an artist:

She begins her work by putting together a frame. She stretches the canvas, tightly so that the surface will be smooth. Then her work begins in earnest. She looks at the broad expanse of canvas. She looks at that empty space. She looks. And then, from somewhere within, she calls up her vision and fills the void.¹⁴

I imagined the canvas for Asian American legal studies¹⁵ to be blank, waiting to be filled.

In retrospect, this strikes me to be a mistake. The canvas isn't really blank. There are layers and layers and layers of what has been painted before, the residue of the past, which operates to contain and constrain what

ERS—BY ETHNIC GROUP & GENDER, at <http://www.aals.org/statistics/T1B.htm> (last visited January 31, 2002). The 1999–2000 number can be compared with the overall number of law professors at the full, associate, and assistant levels—5785. See *id.* Thus, Asian (Pacific Islander) law professors constitute 2.39 percent of law faculties (at the ranks mentioned).

12. Those writing about the place of Asian Americans in legal and racial discourse included Williamson B.C. Chang, Neil Gotanda, Mari Matsuda, and Eric Yamamoto, all of whom are identified in some way with Critical Legal Studies and/or Critical Race Theory. For examples of these scholars' work, see generally Williamson B.C. Chang, *The "Wasteland" in the Western Exploitation of "Race" and the Environment*, 63 U. COLO. L. REV. 849, 856–59 (1992); Neil Gotanda, "Other Non-Whites" in *American Legal History: A Review of Justice at War*, 85 COLUM. L. REV. 1186 (1985) (book review); Neil Gotanda, *Asian American Rights and the "Miss Saigon Syndrome,"* in *ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY 1087* (Hyung-Chan Kim ed., 1992); Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329, 1330 (1991); Mari Matsuda, *We Will Not Be Used*, 1 ASIAN AM. PAC. ISLANDS L.J. 79 (1993); Eric K. Yamamoto, *Korematsu Revisited—Correcting the Injustice of Extraordinary Government Excess and Lax Judicial Review: Time for a Better Accommodation of National Security Concerns and Civil Liberties*, 26 SANTA CLARA L. REV. 1 (1986). Legal historian Charles McClain, although not crit-identified, also made very important contributions. See, e.g., Charles J. McClain, Jr., *The Chinese Struggle for Civil Rights in Nineteenth Century America: The First Phase, 1850–1870*, 72 CAL. L. REV. 529 (1984).

13. Chang, *supra* note 10.

14. *Id.* at 1322–23.

15. Unlike some movements, such as Critical Race Theory and LatCrit, no name has stuck for the body of work that might be described as being on Asian Americans and the law. Jerry Kang at UCLA uses Asian American Jurisprudence. Sumi Cho prefers APA Critical Legal Scholarship. Lisa Iglesias uses APA Crit. See Elizabeth M. Iglesias, *Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community*, 53 U. MIAMI L. REV. 575 (1999).

may be painted today and in the future.¹⁶ Part of the work is sifting through them. And then building upon it to repair the parts that are damaged, where the canvas is torn, and to imagine new worlds upon it. In the same way that I imagined this as the project for a critical Asian American legal studies, it is the project for UCLA's concentration in Critical Race Studies.

The articles and essays in this symposium do this hard work of remembering and imagining.¹⁷ This is especially evident in the contribution by Rachel Moran.¹⁸ In her article, Moran articulates a notion of counterhistory. She works from Michel Foucault¹⁹ and Robert Gordon's²⁰ visions of counterhistory to argue for a counterhistory that can provide alternative visions of imagined community, enriching the discourse about a just society. Moran makes the point, though, that not all stories about racial injustice provide useful "counterhistory," and that part of the task of those engaging in Critical Race Studies is to sift through the past to find that which allows us imagine a more just community.

Laura Gómez, in *Race Mattered: Racial Formation and the Politics of Crime in Territorial New Mexico*,²¹ works through an exercise in remembering in order to demonstrate the kind of empirical work that needs to be done to understand how race is socially constructed. She points out that many Criti-

16. I am reminded of the chain novel analogy used by Ronald Dworkin to explain legal analysis. See Ronald Dworkin, *Law as Interpretation*, 60 TEX. L. REV. 527 (1982). But see Stanley Fish, *Working on the Chain Gang: Interpretation in Law and Literature*, 60 TEX. L. REV. 551 (1982) (criticizing Dworkin's theory).

17. I discuss several of the articles and essays as they relate to the themes of remembering and imagining. The articles that I do not discuss contribute to the symposium in important ways, but not as directly to the themes addressed in my Essay. The pieces I do not discuss are Gary Blasi, *Advocacy Against the Stereotype: Lessons from Cognitive Social Psychology*, 49 UCLA L. REV. 1241 (2002); Devon W. Carbado, *Race to the Bottom*, 49 UCLA L. REV. 1283 (2002); Carole Goldberg, *Descent Into Race*, 49 UCLA L. REV. 1373 (2002); and G. Mitu Gulati, T.M. Thomas Isaac & William A. Klein, *When a Worker's Cooperative Works: The Case of Kerala Dinesh Beedi*, 49 UCLA L. REV. 1417 (2002).

18. Rachel F. Moran, *Race, Representation, and Remembering*, 49 UCLA L. REV. 1513 (2002).

19. *Id.* at 1522 ("The effort to focus on particular historical moments builds on Michel Foucault's concern with the 'residues of the struggle between unruly persons and the power that would subjugate or expel them.'" (quoting CATHERINE GALLAGHER & STEPHEN GREENBLATT, *PRACTICING NEW HISTORICISM* 68 (2000)).

20. *Id.* at 1524. Moran writes:

For Robert Gordon, a "critical history" is "any approach to the past that produces disturbances in the field—that inverts or scrambles familiar narratives of stasis, recovery, or progress; anything that advances rival perspectives . . . for surveying developments; or that posits alternative trajectories that might have produced a very different present—in short any approach that unsettles the familiar strategies that we use to tame the past in order to normalize the present."

Id. (quoting Robert W. Gordon, *Foreword: The Arrival of Critical Historicism*, 49 STAN. L. REV. 1023, 1024 (1997)).

21. Laura E. Gómez, *Race Mattered: Racial Formation and the Politics of Crime in Territorial New Mexico*, 49 UCLA L. REV. 1395 (2002).

cal Race Theory scholars have embraced Michael Omi and Howard Winant's *Racial Formation* but that they "have been slow to systematically apply 'the theory of racial formation' to legal settings."²² Her work points out the importance of doing historical work and paying attention to the way that race is not a static and stable concept, that one needs to pay careful attention to its temporal and geographic dimensions. Also, by showing not just how race mattered, but what social forces operated to change the construction of race, one may gain insights into points of intervention today and in the future.

Gómez's careful attention to the particulars of how race is constructed is especially important today when some persons on the left and the right on the political spectrum misunderstand or misuse the insight that race is socially constructed. Darren Hutchinson, in his article, takes on those on the left who argue that "society should abandon the concept of race and that people of color should lead this effort."²³ Hutchinson is particularly critical of the way that "progressive race blindness" ignores the very real material impact of race. One can only ignore the materiality of race if one engages in a willful forgetting of the past.

The need for collective memory is highlighted by two authors who challenge in different arenas the way that colorblind neutrality that does not take history into account will bring to fruition the first Justice Harlan's proclamation in *Plessy v. Ferguson* that the White race is and shall always be the dominant race in the United States.²⁴ Marion Crain explores whether "a 'colorblind,' class-focused union organizing ideology [can] dismantle the racial caste structure of the American labor market."²⁵ She rejects this because it ignores the way race was a crucial element in helping to form White working-class identity. The birth of labor-organizing took place and consolidated around Whiteness, which offered a pathway to belonging for White European immigrants.

Spencer Overton takes on the rules regarding campaign finance.²⁶ At first blush, one might wonder what neutral rules regarding campaign finance have to do with race. Overton's article understands that political expression in our democratic system is not expressed solely through votes that are cast but also through financial contributions to politicians, political parties, and other interest groups. Insofar as today's allocation of resources is reflective of

22. *Id.* at 1397.

23. Darren Lenard Hutchinson, *Progressive Race Blindness?: Individual Identity, Group Politics, and Reform*, 49 UCLA L. REV. 1455, 1457 (2002) (criticizing Reginald Robinson, Christi Cunningham, and Richard Ford).

24. *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).

25. Marion Crain, *Colorblind Unionism*, 49 UCLA L. REV. 1313, 1315 (2002).

26. Spencer Overton, *Racial Disparities and the Political Function of Property*, 49 UCLA L. REV. 1553 (2002).

a history of racial discrimination in which some racial groups were heavily disfavored, Whites as the dominant group are able to wield political power far beyond their numerical voting strength. Wealth has a multiplier effect so that "one person, one vote" becomes a fiction that masks the way our system really operates. There is a myth that "one person, one vote" creates a horizontal plane of equal citizenship that erases the tremendous inequalities that exist in this nation and that severely limit political participation. Thus, even though much has been made about the coming majority of color, Whites need not fear that their political power will be severely undercut so long as the current system of campaign finance continues to exist.

Another aspect that needs to be remembered involves the relationship between race and nation. Kevin Johnson and Leti Volpp explore this theme in their respective articles. Johnson criticizes the way that civil rights operate within a narrow vision that excludes immigration law by focusing on domestic minority populations and ignoring immigrants of color.²⁷ He argues that this is a mistake for two reasons. First, it ignores the history of the intertwined operation of race, immigration policy, and border jurisprudence. Second, changing demographics are necessarily changing the way we think about immigrant communities that are simultaneously constructed as a racial and foreign other. Johnson is making an important point about our past and our future.

Leti Volpp examines the way that the current crisis can lead to a reconfiguration of who can claim to be part of the "we" in "We the People." With the racial profiling that is targeting persons of apparent Middle Eastern and South Asian ancestry, a new privileged position—"loyal American"—is emerging, and "[o]ther people of color have become 'American' through the process of endorsing racial profiling."²⁸ Volpp regards this as a failure of the imagination.

I turn now to develop briefly how the collective memory of Asian Americans can be called upon to imagine a better future.

Lisa Lowe stated that "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."²⁹ Conceived in this way, Asian Americans can serve as a resource, as a repository of collective memory that can be called on to remind us of what can happen when our nation fails to live up to those principles embedded in the U.S. Constitution.

27. Kevin R. Johnson, *The End of "Civil Rights" as We Know It?: Immigration and Civil Rights in the New Millennium*, 49 UCLA L. REV. 1481 (2002).

28. Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575, 1584 (2002).

29. LISA LOWE, IMMIGRANT ACTS: ON ASIAN AMERICAN CULTURAL POLITICS 21 (1996).

So what is our collective memory? What is it we should remember? Many of us came to the United States after 1965.³⁰ Of what do we need to be reminded?

We might start with the racialized Asian body as the site for collective memory. The racialized Asian body bore the mark of foreignness³¹ that justified Asian exclusion, which might be understood to have included a racial bar on both immigration³² and naturalization.³³ As perpetual foreigners, Japanese Americans bore the nation's anxieties during World War II.³⁴ And more recently, as a perpetual foreigner, Wen Ho Lee became the spy that this country needed as an outlet for its anxieties about China.³⁵

Connecting each of these episodes is a conception of Asian Americans as existing outside of the American national body. The exclusion of Asians helps to define what is American. The recent headline in the *Seattle Times* after Sarah Hughes won the gold medal for women's figure skating in the 2002 Winter Olympics shows how pervasive and pernicious this racial profile is: "Hughes Good as Gold; American outshines Kwan, Slutskaya in skating surprise."³⁶

30. Discriminatory immigration laws against persons of Asian ancestry remained in place until 1965. For a discussion of the impact of the lifting of these discriminatory restrictions, see generally BILL ONG HING, *MAKING AND REMAKING ASIAN AMERICA THROUGH IMMIGRATION POLICY 1850-1990* (1993).

31. See Neil Gotanda, *supra* note 12, at 1186. For an excellent examination of the process by which meanings get mapped upon bodies, see Neil Gotanda, *Comparative Racialization: Racial Profiling and the Case of Wen Ho Lee*, 47 *UCLA L. REV.* 1689 (2000).

32. See Gabriel J. Chin, *Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 *UCLA L. REV.* 1 (1998) (discussing statutes and cases upholding immigration restrictions against persons of Asian ancestry on the basis of the plenary power doctrine).

33. *United States v. Thind*, 261 U.S. 204 (1923); *Ozawa v. United States*, 260 U.S. 178 (1922); *In re Ah Yup*, 1 F. Cas. 223 (Cir. Ct. D. Cal. 1878) (No. 104).

34. See generally PETER IRONS, *JUSTICE AT WAR* (1983); MICH WEGLYN, *YEARS OF INFAMY: THE UNTOLD STORY OF AMERICA'S CONCENTRATION CAMPS* (1976).

35. See, e.g., Gotanda, *supra* note 31; Frank H. Wu, *Profiling Principle: The Prosecution of Wen Ho Lee and the Defense of Asian Americans*, 7 *Asian Pac. Am. L.J.* 52 (2001); Tom W. Joo, *Presumed Disloyal: Wen Ho Lee, the War on Terrorism and the Construction of Race* (unpublished manuscript, on file with author).

36. Jayda Evans, *Hughes Good as Gold; American Outshines Kwan, Slutskaya in skating surprise*, *SEATTLE TIMES*, Feb. 22, 2002, at C1. Four years earlier, the same paper ran a story about the mistake MSNBC made when Tara Lipinski beat Michelle Kwan in the 1998 Winter Olympics and ran a headline: "American Beats Kwan." See Eric Sorensen, *Asian Groups Attack MSNBC Headline Referring to Kwan*, *SEATTLE TIMES*, Mar. 3, 1998, at A15. The *Seattle Times* ran an editorial apologizing: "Some of us at The *Seattle Times* can remember our disbelief four years ago when an Internet news site carried a headline implying that Olympic figure skater Michelle Kwan isn't an American. Disbelief turned to deep embarrassment when we did the same this year." Michael R. Fancher, *Times Won't Forget Readers' Reminder on Kwan Headline*, *SEATTLE TIMES*, Mar. 3, 2002, at A2.

I should note, though, that the racialization of the Asian body is not monolithic. Competing with and simultaneously nurturing the notion of Asian Americans as foreigners is the construction of Asian Americans as a model minority.³⁷ Through this construction, our bodies become a pawn in the game of racial stratification. Our successes were incorporated into our nation's narrative of racial progress, in which race is no longer a bar to success. In such a world, where our successes prove that race no longer limits one's opportunities, other racial groups and poor Whites are told, "If you don't make it, then it's your fault." Also, the story of our successes renders invisible the poverty and violence in many of our communities.

Then there's the racialized Asian body that is the target of violence. Vincent Chin comes to mind. Vincent Chin was a Chinese American killed by two White male autoworkers, Ronald Ebens and Michael Nitz, in the Detroit area in 1982.³⁸ They encountered each other in the Fancy Pants Lounge, a strip club. Ebens and Nitz were upset that Chin was enjoying the show. The race of the dancers may have played a role in their displeasure. A fight ensued. It was broken up, and they were sent outside. Chin was still angry and yelled, "Come on you chickenshits, let's fight some more." Ebens went to his car, and got a baseball bat and menaced Chin and Jimmy Choi, the only other Asian American in the group. Chin and Choi's White friends were not menaced. Eventually, after a chase, Chin was beaten to death by Ebens and Nitz.

How are we to understand this violence? I believe that Ebens and Nitz were suffering a double displacement. People like Chin were making people like Ebens and Nitz lose their jobs. And here was Chin displacing them as (the rightful) consumers of sexual attention. Economics, race, gender, and sexuality all came together. Loss of jobs entailed a loss of masculinity. The loss of masculinity was caused by a racial and foreign other, an Asian man who in many ways was just like them. The bonding that might have taken place between men in a strip club was disrupted by Chin's Asian-ness. Further, the Asian man was improperly consuming the sexual attention of a White woman, which he was able to do because he was doing well economically, by displacing people like Ebens and Nitz from their jobs. There was a double displacement along with a threat to racial purity, a threat to the very Whiteness that provided their sense of place and entitlement in America.

37. The literature on Asian Americans as a model minority is quite extensive. There is an often unmentioned gendered dimension to the model minority construction. See Sumi K. Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong*, 1 J. GENDER RACE & JUST. 177, 186 n.35 (1997).

38. The following account is drawn from Robert S. Chang, *Dreaming in Black and White: Racial-Sexual Policing, in The Birth of a Nation, The Cheat, and Who Killed Vincent Chin?*, 5 Asian L.J. 41, 57-58 (1998).

Chin's body, simultaneously constructed as foreign and as a model minority, became available for Ronald Ebens and Michael Nitz to express their belongingness and their masculinity through his exclusion.

So how do we use collective memory?

The attacks of September 11, 2001, were likened to the bombing of Pearl Harbor. Those in power invoked that memory to organize and to unite the country. As a patriotic duty, we have been told that we must accept the sacrifices that some members of our community must bear because of their national origin or religion. Over a thousand persons of Middle Eastern and South Asian ancestry have been detained by federal authorities. Perhaps more than five hundred remain in custody and have little or no access to lawyers. Over five thousand males between the ages of eighteen and thirty-three, of Middle Eastern ancestry and with visas from countries having Al Qaeda operations, have been questioned by federal and local authorities.

Journalist Steven Brill quotes one of the men subjected to this questioning: "They were very polite, but you still feel violated by having someone from the FBI knock on your door You submit, because you figure they'll be watching you if you don't, but it was not pleasant."³⁹ Brill discounts this experience by saying, "People being blown to bits in office towers isn't pleasant either. And this doesn't seem too high a price for the FBI . . . to have established contacts" in Arab American communities. Brill, though, makes the wrong comparison. It's not the FBI who is paying the price. The primary burden, the racial tax as it were, falls on Arab and Muslim Americans.

When the price is being paid by someone else, it is very easy to ignore.

During World War II, Koreans in Hawai'i had to wear badges identifying them as Japanese because Korea was then a protectorate of Japan. They were permitted, however, to add on their badges that they were Korean. On the mainland, some persons of Chinese ancestry wore badges identifying themselves as Chinese.⁴⁰ Today, people perceived to look Arab or Middle Eastern—who are in fact not Arab, Muslim, or Middle Eastern—are engaging in similar acts of disidentification. This impulse to distance oneself from the targeted group is understandable. After all, who wants to be the victim of misdirected hate? While understandable, it plays into maintaining the status quo. You gain a little, but you give up a lot. You give up the opportunity to challenge the racial terms upon which American identity is implicitly and explicitly articulated.

39. Steven Brill, *The FBI Gets Religion*, NEWSWEEK, Jan. 28, 2002, at 32, 33.

40. Leti Volpp discusses this in her article, *The Citizen and the Terrorist*, *supra* note 28, at 1590-91.

Aaron McGruder, in his Boondocks comic, plays with the impact the heightened racial profiling of Arab Americans has had on African Americans. One of his characters celebrates a news bulletin that recent polling has revealed that African Americans are now the third most-hated minority group in the United States, up, or down depending on your perspective, from being the most hated. McGruder of course is being ironic and does not think that this is cause for celebration in African American communities. The comic reminded me of a political cartoon that appeared in a Negro paper about a hundred years ago when Asian exclusion was being enacted. It showed a Black man being hit by a brick that was labeled Asian exclusion. The author of the cartoon understood that even though the immediate targets of the discriminatory immigration legislation were persons of Asian ancestry, such legislation ultimately reinforces the system of racial stratification and discrimination under which African Americans will continue to suffer.

None are free until all are free.

That is one of the lessons that we can learn by using the racialized body as a site for collective memory. In other words, part of our collective memory should reflect an understanding of the ways in which racial discrimination against one group is connected to racial discrimination against another. Of course there are differences. But there are convergences as well.

We must be insistent in remembering the past. For those of us who have forgotten it, we must be reminded. Those of us who have not learned, we must be taught. The UCLA School of Law's new concentration in Critical Race Studies will do the important work of remembering, reminding, and teaching.