

33 Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space

ROBERT S. CHANG

OF THE different voices in which I speak, I have been most comfortable with the one called silence. Silence allowed me to escape notice when I was a child. I could become invisible, and hence safe.

Yet now I find myself leaving the safety of my silence. I wonder if this is wise. I teach legal writing; I want to teach substantive law.¹ I have been told that engaging in nontraditional legal scholarship may hurt my job prospects, that I should write a piece on intellectual property, where my training as a molecular biologist will lend me credibility.

I try to follow this advice, but my mind wanders. I think about the American border guard who stopped me when I tried to return to the United States after a brief visit to Canada. My valid Ohio driver's license was not good enough to let me return to my country. He asked me where my passport was. I told him that I did not have one and that it was my understanding that I did not need one, that a driver's license was sufficient. He told me that a driver's license is not proof of citizenship. We were at an impasse. I asked him what was going to happen. He said that he might have to detain me. I looked away. I imagined the phone call that I would have to make, the embarrassment I would feel as I told my law firm in Seattle that I would not be at work the next day, or maybe even the day after that—until I could prove that I belonged. I thought about my naturalization papers, which were with my parents in Ohio. I thought about how proud I had been when I had become a citizen.

Before then, I had been an alien. Being a citizen meant that I belonged, that I had the same rights as every other American. At least, that is what I used to believe. Things have happened since then that have changed my mind. Like the time I was driving in the South and was refused service at a service station. Or the time I was stopped in New Jersey for suspicion of possessing a stolen vehi-

81 CALIF. L. REV. 1241 (1993). Copyright © 1993 by the Asian Law Journal and the California Law Review, Inc. Copyright © 1994 by the Asian Law Journal. Reprinted by permission.

cle. At first, it was just two cops. Then another squad car came. Four big (white) policemen for one small (Asian) man, in a deserted parking lot—no witnesses if it came to that. Perhaps they were afraid that I might know martial arts, which I do, but I am careful never to let them know. When my license and registration checked out, they handed back my papers and left without a word. They could not even say that one word, "Sorry," which would have allowed me to leave that incident behind. I might have forgotten it as a mistake, one of those unpleasant things that happen. Instead, I have to carry it with me because of the anger I feel, and because of the fear—fear of the power that certain people are able to exercise over me because of this (contingent) feature that makes me different. No matter how hard I scrub, it does not come clean. No matter how hard I try, and I do try, I can never be as good as everyone else. I can never be white.

These are the thoughts that intrude when I think about intellectual property. I try to push them away; I try to silence them. But I am tired of silence.

And so, I raise my voice.

PROFESSOR Jerome Culp raised his voice when he proclaimed boldly to the legal academy that it was in "an African-American Moment," a time "when different and blacker voices will speak new words and remake old legal doctrines."² He also cautioned that "[t]hose in the legal academy who cannot speak the language of understanding will be relegated to the status of historical lepers alongside of Tory Americans and Old South Democrats."³ It remains to be seen whether his prophecy will come true. The mainstream legal academy has largely ignored his proclamation and the work of other critical race scholars, if frequency of citation is to be taken as a measure of attention, and some legal scholars have condemned the methods of critical race scholarship.

Nevertheless, the time has come to announce another such moment, an Asian American Moment. This Moment is marked by the increasing presence of Asian Americans in the legal academy who are beginning to raise their voices to "speak new words and remake old legal doctrines."⁴ This Moment brings new responsibilities for Asian American legal scholars. This Moment brings new challenges. This Moment also brings us hope.

Many people remain unaware of the violence and discrimination that have plagued Asian Americans since their arrival in this country. Moreover, those who know the history often fail to make the connection between the history and the problems that continue to plague Asian Americans today. The philosopher George Santayana said that "[p]rogress, far from consisting in change, depends on retentiveness. . . . Those who cannot remember the past are condemned to repeat it."⁵ When I look at certain recent events, such as the rise in the incidence of hate crimes directed toward Asian Americans, or the rhetoric of the official English movement and of politicians such as Patrick Buchanan, or even the uproar caused by the sale of the Rockefeller Center and the Seattle Mariners to Japanese investors, I question how much progress we have made. I wonder if Santayana is

right, because when I look at those events, I see a replay of the past, variations on the tired theme of anti-Asian sentiment.

Violence Against Asian Americans

Anti-Asian sentiment has historically expressed itself in violent attacks against Asian Americans. The killing of Vincent Chin in Detroit is one variation on this theme. Chin was the Chinese American killed in 1982 by Detroit autoworkers Ronald Ebens and Michael Nitz. Ebens, according to one witness, said "that it was because of people like Chin—Ebens apparently mistook him for a Japanese—that he and his fellow employees were losing their jobs." The two men pleaded guilty to manslaughter and were each given three years' probation and fines of \$3,780. They did not serve a single day in jail for the killing of Vincent Chin.

When criticized for the light sentence, Judge Kaufman defended himself in a letter to a newspaper:

He said that in Michigan, sentences are tailored to the criminal and not just to the crime. According to him, since Ebens and Nitz had no previous criminal record, were longtime residents of the area, and were respectably employed citizens, he thought there was no reason to suspect they would harm anybody again. Hence, the light sentences.⁶

Following efforts by several California congressmen and a Detroit-based community organization, the United States Justice Department brought federal civil rights charges against the two men. During the initial federal civil rights trial, Ebens was found guilty and sentenced to twenty-five years; Nitz was acquitted. Ebens' conviction was overturned on appeal. When his case was retried, it was moved to Cincinnati upon a motion for change of venue. Ebens was ultimately acquitted. The change in venue may have played an important role in this acquittal. Cincinnati residents and jurors had little exposure to Asian Americans; they were also unfamiliar with the level of anti-Asian sentiment then rampant in Detroit.⁷

I relate this story not to point out a miscarriage of justice—others have done so more eloquently than I ever could. And I understand that our judicial system is not perfect. Instead, I tell the story to begin developing the thesis that the killing of Vincent Chin is not an isolated episode. Violence stems from, and is causally related to, anti-Asian feelings that arise during times of economic hardship and the resurgence of nativism.⁸

Another variation on the theme of anti-Asian sentiment is the killing of Navroze Mody. Mody was an Asian Indian who was beaten to death in 1987 in Jersey City by a gang of eleven youths. The gang did not harm Mody's white friend. No murder or bias charges were brought; three of the assailants were convicted of assault, while one was convicted of aggravated assault.

To understand the significance of this attack, it must be placed in context.

Asian Indians were the fastest-growing immigrant group in New Jersey; many settled in Jersey City. Racially motivated hostilities increased with the growth of the Asian Indian community and the transformation of Jersey City as Asian Indians opened shops and restaurants. Earlier in the month that Navroze Mody was killed, a Jersey City gang called the Dotbusters had published a letter in the *Jersey Journal* saying that they "would 'go to any extreme' to drive Indians from Jersey City."⁹ Violence against Asian Indians began the next day, leading up to and continuing after the killing of Mody. One community leader said that "the violence worked. . . . People moved out, and others thinking of moving here from the city moved elsewhere."¹⁰

These recent events read in some ways like a page from the book of history. They resemble other racially motivated incidents of the past, such as what happened in 1877 in Chico, California. While attempting to burn down all of Chico's Chinatown, white arsonists murdered four Chinese by tying them up, dousing them with kerosene, and setting them on fire. The arsonists were members of a labor union associated with the Order of Caucasians, a white supremacist organization which was active throughout California. The Order of Caucasians blamed the Chinese for the economic woes suffered by all workers.

The Chinese Massacre of 1885 also took place in the context of a struggling economy and a growing nativist movement. In Rock Springs, Wyoming, a mob of white miners, angered by the Chinese miners' refusal to join their strike, killed twenty-eight Chinese laborers, wounded fifteen, and chased several hundred out of town. A grand jury failed to indict a single person.¹¹

I could go on, but my point is not merely to describe: I seek to link the present with the past. In linking these late-nineteenth-century events with present events, I may seem to be drawing improper associations by taking events out of context. In fact, I am doing the reverse: placing present events into context to show that today's rising incidence of hate crimes against Asian Americans, like the violence of the past, is fostered by a climate of anti-Asian sentiment spurred by economic troubles and nativism. As Professor Stanley Fish said in a different context, "I am arguing for a match at every level, from the smallest detail to the deepest assumptions. It is not simply that the books written today bear some similarities to the books that warned earlier generations of the ethnic menace: they are the same books."¹² Fish was discussing books, but there is, of course, a sometimes unfortunate link between words and deeds.

Nativistic Racism

The words accompanying the violent deeds of the present also grow out of the resurgence of nativism. This resurgence is apparent in some of the arguments marshalled against multiculturalism and in the official English movement. Some politicians have used the rhetoric of nativism to great effect, gaining support among segments of the population.

Nativism, with its message of America first, has a certain allure. Indeed, to

reject its message seems unpatriotic. However, present-day nativism is grounded in racism, and thus, is inconsistent with American values. In this way, it differs from the nativism that first swept this country in the 1840s; that nativism included anti-Catholic and anti-European strains. Present-day nativism also differs from the traditional paradigm of racism by adding an element of "foreign."

Nativistic racism lurks behind the spectre of "the Japanese 'taking over,'" which appeared when Mitsubishi Corporation bought a 51% share of the Rockefeller Center and when Nintendo purchased "a piece of America's national pastime [the Mariners]." The first problem with the notion of "the Japanese taking over" is that "the Japanese" did not buy Rockefeller Center; nor did "Japan" buy a piece of America's national pastime. In both instances, private corporations made the investments. The second problem is that there is "an outcry when the Japanese buy American institutions such as Rockefeller Center and Columbia Pictures, but not when Westerners do."¹³ Moreover, the notion of the Japanese "taking over" is factually unsupported. As of January 1992, in the midst of the clamor about the Japanese buying out America, Japanese investors owned less than 2% of United States commercial property.¹⁴

Similarly, in 1910, three years before California passed its first Alien Land Laws (prohibiting aliens ineligible for citizenship from owning real property), Japanese Americans, aliens and citizens, controlled just 2.1 percent of California's farms.¹⁵ Nevertheless, the Japanese Americans were perceived to be a threat of such magnitude that a law was passed "to discourage further immigration of Japanese aliens to California and to call to the attention of Congress and the rest of the country the desire of California that the 'Japanese menace' be crushed."¹⁶ The law was tailored to meet this aim by limiting its ambit to aliens ineligible for citizenship. In this way, European interests were protected.

The climate of anti-Asian sentiment, still present today, hurts Asian Americans because, as the death of Vincent Chin has demonstrated, many non-Asian Americans persist in thinking of Asian Americans as foreign. It is this sense of "foreignness" that distinguishes the particular type of racism aimed at Asian Americans.

The Model Minority Myth

This history of discrimination and violence, as well as the contemporary problems of Asian Americans, is obscured by the portrayal of Asian Americans as a "model minority." Asian Americans are portrayed as "hardworking, intelligent, and successful." This description represents a sharp break from past stereotypes of Asians as "sneaky, obsequious, or inscrutable."

But the dominant culture's belief in the "model minority" allows it to justify ignoring the unique discrimination faced by Asian Americans. The portrayal of Asian Americans as successful permits the general public, government officials, and the judiciary to ignore or marginalize the contemporary needs of Asian Americans.

An early articulation of the model minority theme appeared in *U.S. News & World Report* in 1966:

At a time when Americans are awash in worry over the plight of racial minorities—

One such minority, the nation's 300,000 Chinese-Americans, is winning wealth and respect by dint of its own hard work.

In any Chinatown from San Francisco to New York, you discover youngsters at grips with their studies. . . .

Still being taught in Chinatown is the old idea that people should depend on their own efforts—not a welfare check—in order to reach America's "promised land."

Visit "Chinatown U.S.A." and you find an important racial minority pulling itself up from hardship and discrimination to become a *model* of self-respect and achievement in today's America.¹⁷

This "model minority" theme has become a largely unquestioned assumption about current social reality.

At its surface, the label "model minority" seems like a compliment. However, once one moves beyond this complimentary facade, one can see the label for what it is—a tool of oppression which works a dual harm by (1) denying the existence of present-day discrimination against Asian Americans and the present-day effects of past discrimination, and (2) legitimizing the oppression of other racial minorities and poor whites.

That Asian Americans are a "model minority" is a myth. But the myth has gained a substantial following, both inside and outside the Asian American community. The successful inculcation of the model minority myth has created an audience unsympathetic to the problems of Asian Americans. Thus, when we try to make our problems known, our complaints of discrimination or calls for remedial action are seen as unwarranted and inappropriate. They can even spark resentment. For example, Professor Mitsuye Yamada tells a story about the reactions of her Ethnic American Literature class to an anthology compiled by some outspoken Asian American writers:

[One student] blurted out that she was offended by its militant tone and that as a white person she was tired of always being blamed for the oppression of all the minorities. I noticed several of her classmates' eyes nodding in tacit agreement. A discussion of the "militant" voices in some of the other writings we had read in the course ensued. Surely, I pointed out, some of these other writings have been just as, if not more, militant as the words in this introduction? Had they been offended by those also but failed to express their feelings about them? To my surprise, they said they were not offended by any of the Black American, Chicano or Native American writings, but were hard-pressed to explain why when I asked for an explanation. A little further discussion revealed that they "understood" the anger expressed by the Blacks and Chicanos and they "empathized" with the frustrations and sorrow expressed by the Native Americans. But the *Asian Americans*??

Then finally, one student said it for all of them: "It made me angry. *Their* anger made *me* angry, because I didn't even know the Asian Americans felt oppressed. I didn't expect their anger."¹⁸

This story illustrates the danger of the model minority myth: It renders the oppression of Asian Americans invisible. This invisibility has harmful consequences, especially when those in positions of power cannot see:

To be out of sight is also to be without social services. Thinking Asian Americans have succeeded, government officials have sometimes denied funding for social service programs designed to help Asian Americans learn English and find employment. Failing to realize that there are poor Asian families, college administrators have sometimes excluded Asian-American students from Educational Opportunity Programs (EOP), which are intended for *all* students from low-income families.¹⁹

In this way, the model minority myth diverts much-needed attention from the problems of many segments of the Asian American community, particularly the Laotians, Hmong, Cambodians, and Vietnamese who have poverty rates of 67.2 percent, 65.5 percent, 46.9 percent, and 33.5 percent, respectively. These poverty rates compare with a national poverty rate of 9.6 percent.

In addition to government officials, this distorted view of the current status of Asian Americans has infected at least one very influential member of the judiciary and legal academy. At a recent conference of the Association of American Law Schools, Judge Posner asked two rhetorical questions: "Are Asians an oppressed group in the United States today? Are they worse off for lacking sizable representation on the faculties of American law schools?"²⁰ His questions are rhetorical because he already has answers, with figures to back them up: "In 1980, Japanese-Americans had incomes more than 32 percent above the national average income, and Chinese-Americans had incomes more than 12 percent above the national average; Anglo-Saxons and Irish exceeded the average by 5 percent and 2 percent, respectively." He also points out that "in 1980, 17.8 percent of the white population aged 25 and over had completed four or more years of college, compared to 32.9 percent of the Asian-American population."

The unspoken thesis in Judge Posner's comments, which has been stated by other proponents of meritocracy, is "that, when compared to Whites, there are equal payoffs for qualified and educated racial minorities; education and other social factors, but not race, determine earnings."²¹ If Posner is right, Asian Americans should make as much as their white counterparts, *taking into account* "education and other social factors, but not race." Yet when we look more carefully at the statistics, we find some interesting anomalies which belie the meritocratic thesis.

First, Posner's reliance on median family income as evidence for lack of discriminatory effects in employment is misleading. It does not take into account that Asian American families have more workers per household than do white families; in fact, "more Asian American women are compelled to work because the male members of their families earn such low wages."²² Second, the use of national income averages is misleading because most Asian Americans live in lo-

cations which have both higher incomes and higher costs of living. Wage disparities become apparent when geographic location is considered. Third, that Asian Americans have a higher percentage of college graduates does not mean that they have economic opportunities commensurate to their level of education. Returns on education rather than educational level provide a better indicator of the existence of discrimination. Many Asian Americans have discovered that they, like other racial minorities, do not get the same return for their educational investment as do their white counterparts.

A closer look, then, at Japanese Americans, Posner's strongest case, reveals flaws in his meritocratic thesis when individual income, geographic location, educational attainment, and hours worked are considered. In 1980, Japanese American men in California earned incomes comparable to those of white men, but "they did so only by acquiring more education (17.7 years compared to 16.8 years for white men twenty-five to forty-four years old) and by working more hours (2,160 hours compared to 2,120 hours for white men in the same age category)."²³ The income disparities for men from other Asian American groups are more glaring.

Thus, the answer to Posner's first question is yes—Asian Americans are an oppressed group in America. To accept the myth of the model minority is to participate in the oppression of Asian Americans.

In addition to hurting Asian Americans, the model minority myth works a dual harm by hurting other racial minorities and poor whites who are blamed for not being successful like Asian Americans. "African-Americans and Latinos and poor whites are told, 'look at those Asians—anyone can make it in this country if they really try.'" This blame is justified by the meritocratic thesis supposedly proven by the example of Asian Americans. This blame is then used to campaign against government social services for these "undeserving" minorities and poor whites and against affirmative action. To the extent that Asian Americans accept the model minority myth, we are complicitous in the oppression of other racial minorities and poor whites.

This blame and its consequences create resentment against Asian Americans among African Americans, Latinos, and poor whites. This resentment, fueled by poor economic conditions, can flare into anger and violence. Asian Americans, the "model minority," serve as convenient scapegoats, as Korean Americans in Los Angeles discovered during the 1992 riots. Many Korean Americans "now view themselves as 'human shields' in a complicated racial hierarchy," caught between "the racism of the white majority and the anger of the black minority."²⁴ The model minority myth plays a key role in establishing a racial hierarchy which denies the oppression of Asian Americans while simultaneously legitimizing the oppression of other racial minorities and poor whites.

IMMIGRATION AND NATURALIZATION

In 1882, the United States government passed the first of a series of Chinese exclusion acts, specifically targeting Chinese by severely restricting Chinese immigration. These acts culminated in the Geary Act of 1892, an act called the most

draconian immigration law of all time. This Act remained in force for over fifty years. To enforce these exclusionary immigration laws, the government set up a special immigration station in 1910 near San Francisco. Here, hundreds of would-be immigrants were detained for months and were often sent back to China. The Angel Island facility, like Alcatraz Prison nearby, was intended to be escape-proof.

The detainment of Chinese immigrants on Angel Island and the discriminatory treatment they received created a sense of alienation and powerlessness not only in the detainees but also in those Chinese already in the United States. The detainees were treated like animals or commodities, forced to live in squalid, cramped quarters. The number of persons of Chinese ancestry dropped from 107,488 in 1890 to 61,639 in 1920. As their numbers dwindled, most Chinese remained within the security and familiarity of ethnic enclave Chinatowns, while others repatriated. The decline in numbers can also be partially attributed to the gender imbalance that hindered family formation.

Immigration laws were soon passed which directly attacked the development of existing Chinese communities in the United States. When it appeared that more Chinese women were immigrating, a new immigration law was passed in 1924:

One of the law's provisions prohibited the entry of aliens ineligible for citizenship. "The necessity [for this provision]," a congressman stated, "arises from the fact that we do not want to establish additional Oriental families here." This restriction closed tightly the gates for the immigration of Chinese women. "We were beginning to repopulate a little now," a Chinese man said bitterly, "so they passed this law to make us die out altogether."²⁵

This provision crippled the development of a stable Chinese American community, and in conjunction with antimiscegenation laws in many states, it effectively emasculated an entire generation of male Chinese immigrants. Men in other Asian American groups underwent similar experiences, although the strategies employed were different.

These discriminatory measures remained largely in effect until the passage of the 1952 McCarran-Walter Act, which permitted the naturalization of Asian immigrants and set token immigration quotas. These quotas, based on national origins quotas established in 1921 and codified in the 1924 National Origins Act, were not changed until 1965 when the McCarran-Walter Act was amended to abolish the national origins system as well as the Asiatic barred zone. The 1965 amendments profoundly affected the development of Asian America.

The 1965 amendments permitted my family to emigrate to the United States from Korea. As an immigrant, I entered this country in the historical context which I have set forth. To an extent, I inherited that legacy of discrimination. I am bound by the still-present stereotype of Asian Americans as "aliens," those who do not belong here and whose presence here is not desired. My colleague at the law school mistakes me for the "copy boy." Those were not his words, but

his question as to whether I was "doing copying for the faculty" made me feel very small. When I am stopped by the police for suspicion of possessing a stolen vehicle, their actions and my reactions take place in the context of a history of nonresponsiveness to and active harassment of Asian Americans by police. Maybe it was the kind of car I was driving. Maybe it was the color of my car. Maybe, just maybe, it was the color of my skin.

I find myself in internal and external conflict when I talk about these things. The internal conflict comes from my being an immigrant, and as one I sometimes wonder if I have a right to complain. This point was brought home to me in an anonymous student evaluation after my first year of teaching in law school: "Leave the racist comments out. Go visit Korea if you don't like it here. We need to unite as a country, not drive wedges between us."²⁶ I wonder if this student is right.

However, in the same way that I inherit a legacy of discrimination against Asian Americans, I also inherit a legacy of struggle, a struggle that belongs to both foreign-born and American-born Asian Americans. Early Asian immigrants were not politically insular, as popular American history has painted them. It is our responsibility to bring our forebears back from the silence in which they have been placed. We must recognize that the early Asian immigrants were brave enough to raise their voices. We can do no less.

DISFRANCHISEMENT

When I joined the faculty at my former school, the Dean told me that I could participate in faculty meetings. On the first Tuesday of September, I felt proud to attend my first faculty meeting. I did not know then that it would be the last one I would attend that semester. As issues came up for decision, I voted, just like the other faculty members. It was only after the meeting that I was told that, as a legal writing instructor, I was not allowed to vote. My face turned red. I did not return.

The Dean had not lied to me when he told me that I was allowed to participate in faculty meetings; we simply differed in our interpretation of "participation." From my perspective, the Dean's notion of "participation" was impoverished because I included "meaningful" as part of my definition of "participation."

To an outside observer, it might appear that I stopped going because I did not care about faculty meetings. But when you listen to my story, you will understand that this is not so.

SYSTEMIC disfranchisement—whether at the level of faculty meetings or national elections—discourages many Asian Americans from participating in the political process. This political silence has been attributed to cultural differences and lack of cohesion. These reasons, however, are largely myths created to prevent the enfranchisement of Asian Americans. The low voter registration figures can be attributed to several specific barriers that prevent Asian Americans from participating in a meaningful manner.

The greatest historical barrier to Asian American participation in the political process was that Asian Americans could not become naturalized and could therefore not vote since only citizens had that right. Some states even prohibited American-born Asians from voting. This historical exclusion has an inertia that carries into the present. Yet the dominant culture, and in particular the legislature and judiciary, do not understand because they are largely unaware of this pattern of formally excluding Asian Americans.

Two current apportionment policies dilute Asian American voting strength: (1) the splitting of the Asian American population in an area into several voting districts, and (2) the establishment of at-large election systems in areas of high Asian American population. Attempts to redress Asian American vote dilution are hindered by a United States Supreme Court decision which requires that a minority group "be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district."²⁷ One problem with this requirement is that it excludes Asian Americans, many of whom are geographically dispersed, at times involuntarily, through the will of the government.

Another formal mechanism that prevents greater voter participation among Asian Americans is the use of English-only ballots. Congress, recognizing the problems with English-only ballots, amended the Voting Rights Act in 1975 and again in 1982 to provide language assistance to "language minorities." However, these measures did not take into account the distinct problems facing Asian Americans. Congress, in establishing that a language minority must constitute at least five percent of the voting age population, did not consider the diversity of languages and cultures among Asian Americans. Thus, even if the Asian American population in a given political subdivision were greater than the requisite five percent, no single Asian American language minority constituted a large enough group to benefit from the Act's provisions. As a result, no Asian American groups were able to claim the status of a "language minority" under that amendment.

This did not change until the voices of Asian Americans spoke our distinct problems into existence. Because Asian Americans were unable to constitute language minorities for the purposes of the 1982 Voting Rights Act, members of the community began to voice concerns and to protest the 1982 Act. Many participated in Roundtable Conferences on Civil Rights sponsored by the United States Commission on Civil Rights. Their efforts led to the 1992 amendment to the Voting Rights Act, which led to the enfranchisement of many Asian Americans.

Achieving enfranchisement is only the first step toward meaningful political participation and social change. The next step is to elect legislators and appoint public officials who will address and respond to the unique needs of Asian Americans. In legislative halls, executive agencies, and judicial chambers, the law is made and implemented, but Asian Americans, perhaps more so than other disempowered groups, have not yet been able to enter these domains in a significant way. Nevertheless, the voting rights example shows how legal reform can be

brought about when Asian Americans participate in the political process and give voice to our oppression and our needs.

THE JAPANESE AMERICAN INTERNMENT AND REDRESS

Although it is difficult to determine when exactly the redress movement began, it did not receive national attention until the 1978 Japanese American Citizens League (JACL) national convention. In 1978, the JACL adopted redress as its priority issue and sought a "\$25,000 compensation figure plus the creation of a Japanese American Foundation to serve as a trust for funds to be used for the benefit of Japanese American communities throughout the country."²⁸ The national attention came when Senator S.I. Hayakawa, in an interview during the convention that was carried by newspapers nationwide, called the JACL's demand for redress "absurd and ridiculous."²⁹ The media attention that followed gave Japanese Americans their first opportunity "to talk publicly about what they experienced during World War II."³⁰

Initial reactions to the movement were mixed, both within and without the Japanese American community. Within the Japanese American community, many rejected redress on the ground that no amount of money could compensate for their suffering. Others saw it as a form of welfare, while others thought that it was best not to reopen past wounds. Many were shocked a "model minority" should make such demands.

However, in 1980, the government began to respond to demands for redress with the congressional establishment of the Commission on Wartime Relocation and Internment of Civilians. The Commission held hearings in several cities, at which more than 750 Japanese American internees testified about their experiences. To many, telling their stories provided a much-needed catharsis. The stories also provided a compelling moral force to the claims of redress. One survivor related how he had felt before he was evacuated:

I went for my last look at our hard work. . . . Why did this thing happen to me now? I went to the storage shed to get the gasoline tank and pour the gasoline on my house, but my wife . . . said don't do it, maybe somebody can use this house; we are civilized people, not savages.³¹

Others described the conditions in the camps. One survivor commented, "I was too young to understand, but I do remember the barbed wire fence from which my parents warned me to stay away. I remember the sight of high guard towers. I remember soldiers carrying rifles, and I remember being afraid."³² All evacuees were given numbers; the numbering process was a particularly disheartening experience. The internment left a scar on the Nisei; it has become a "point of reference" in their lives.

The Commission released its findings in 1982, concluding that "Executive Order 9066 and the internment that it sanctioned resulted from 'race prejudice, war hysteria, and a failure of political leadership.'"³³ The Commission further presented five recommended remedies. These included a recommendation that

an official apology be issued and that each surviving internee be given \$20,000. The Commission's report and recommendations as well as the work of Japanese American congressmen paved the way for the redress bill, which was passed by the House in September 1987 and by the Senate in April 1988. The government began making payments on October 9, 1990.

Professor Chan comments that "[t]he redress movement has been a prime example of how Asian American elected officials have worked hand in hand with community activists toward a common end."³⁴ But this "end" did not come about until the "model minority" broke its silence, demonstrating the power of narrative through testimony about the injustice of the internment camps.

NOTES

1. I was teaching legal writing when I wrote this chapter; I now teach contracts. I have, to an extent, gotten my wish.

2. Jerome M. Culp, Jr., *Toward a Black Legal Scholarship: Race and Original Understandings*, 1991 DUKE L.J. 39, 40.

3. *Id.* at 41.

4. *Id.* at 40.

5. 1 GEORGE SANTAYANA, *THE LIFE OF REASON* 284 (2d ed. 1922).

6. SUCHENG CHAN, *ASIAN-AMERICANS: AN INTERPRETIVE HISTORY* 177 (1991). Professor Chan notes that "[a] number of newspaper editorials pointed out that, in essence, the message Judge Kaufman was imparting to the public was that in the state of Michigan, as long as one was employed or was going to school, a license to kill cost only \$3,000." *Id.*

7. See *id.* at 178; U.S. COMMISSION ON CIVIL RIGHTS, *CIVIL RIGHTS ISSUES FACING ASIAN AMERICANS IN THE 1990S*, at 26 (1992) ("Whereas Detroit in the early 1980s was the scene of a massive campaign against foreign imports, especially those from Japan, a campaign that inflamed anti-Asian sentiments in that city, there had not been the same type of campaign in Cincinnati.").

8. Nativism is the

intense opposition to an internal minority on the grounds of its foreign (i.e., "un-American") connections. Specific nativistic antagonisms may, and do, vary widely in response to the changing character of minority irritants and the shifting conditions of the day; but through each separate hostility runs the connecting, energizing force of modern nationalism. While drawing on much broader cultural antipathies and ethnocentric judgments, nativism translates them into a zeal to destroy the enemies of a distinctively American way of life.

Juan F. Perea, *Demography and Distrust: An Essay on American Languages, Cultural Pluralism, and Official English*, 77 MINN. L. REV. 269, 278 (1992) (quoting JOHN HIGHAM, *STRANGERS IN THE LAND* 4 (2d ed. 1988)).

9. Al Kamen, *When Hostility Follows Immigration: Racial Violence Sows Fear in New Jersey's Indian Community*, Wash. Post, Nov. 16, 1992, at A1, A6.

10. *Id.* at A6.

11. Paul Crane & Alfred Larson, *The Chinese Massacre*, in 12 ANNALS OF WYOMING 47, 47-49 (1940).
12. Stanley Fish, *Bad Company*, 56 TRANSITION 60, 63 (1992).
13. Ronald E. Yates, *Ishihara's Essays on Japan-US Ties Still Hit the Mark*, Chi. Trib., Apr. 19, 1992, at C3 (quoting SHINTARO ISHIHARA, THE JAPAN THAT CAN SAY NO: WHY JAPAN WILL BE FIRST AMONG EQUALS (1991)).
14. See *Don't Reject Japanese Pitch*, USA Today, Jan. 29, 1992, at 10A. This editorial also points out that, in other countries, United States businesses own "everything from England's Jaguar to corners near Russia's Red Square." *Id.* British investors actually own much more of the United States than do Japanese investors. See Mike Meyers, *Enduring U.S.-Japanese Rivalry Has Roots That Precede World War II*, Star Trib. (Minneapolis), Dec. 8, 1991, at 1A.
15. Edwin E. Ferguson, *The California Alien Land Law and the Fourteenth Amendment*, 35 CALIF. L. REV. 61, 77 (1947).
16. *Id.* at 62.
17. *Success Story of One Minority Group in U.S.*, U.S. NEWS & WORLD REP., Dec. 26, 1966, at 73, 73, reprinted in ROOTS: AN ASIAN AMERICAN READER 6 (Amy Tachiki et al. eds. 1971) (emphasis added).
18. Mitsuye Yamada, *Invisibility Is an Unnatural Disaster: Reflections of an Asian American Woman*, in THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR 35, 35 (Cherríe Moraga & Gloria Anzaldúa eds. 1981).
19. RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE 478 (1989).
20. Richard A. Posner, *Duncan Kennedy on Affirmative Action*, 1990 DUKE L.J. 1157, 1157 (revised text of speech delivered on January 4, 1991, at Association of American Law Schools convention).
21. Henry Der, *Asian Pacific Islanders and the "Glass Ceiling"—New Era of Civil Rights Activism?: Affirmative Action Policy*, in THE STATE OF ASIAN PACIFIC AMERICA, A PUBLIC POLICY REPORT: POLICY ISSUES TO THE YEAR 2020, at 215, 219 (LEAP Asian Pac. Am. Pub. Policy Inst. and UCLA Asian Am. Studies Ctr. eds. 1993) (discussing and discrediting the meritocratic thesis).
22. CHAN, *supra* note 6, at 169.
23. TAKAKI, *supra* note 19, at 475.
24. See Seth Mydans, *Giving Voice to the Hurt and Betrayal of Korean-Americans*, N.Y. Times, May 2, 1993, § 4, at 9 (interviewing Angela Oh, Korean American attorney and president of the Southern California Korean American Bar Association).
25. TAKAKI, *supra* note 19, at 235 (alteration in original). A portion of this law that excluded wives of American citizens was repealed in 1930. *Id.*
26. Anonymous student evaluation, Spring 1993 (copy on file with author).
27. *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986).
28. John Tateishi, *The Japanese American Citizens League and the Struggle for Redress*, in JAPANESE AMERICANS: FROM RELOCATION TO REDRESS 191, 191 (Roger Daniels et al. eds., rev. ed. 1991). The redress issue had been raised within the JACL as early as the 1970 JACL convention in Chicago, but differing views prevented the JACL from reaching a single, coherent position. *Id.*
29. *Id.* at 192. This same Senator S.I. Hayakawa made the following comment in 1971 about the relocation and internment:

All the people I know have a very positive attitude towards it. The ones I know in Chicago say, "We would have never gone to Chicago, if it hadn't been for the wartime relocation. We would have all been hung along a little strip of the Pacific coast and would have never discovered San Francisco, or New York, or Chicago, Omaha, or Minneapolis, where the Japanese are scattered all over the place. So this really gave us a chance to really become Americans instead of residents of Little Tokyo in Los Angeles."

An Interview with S.I. Hayakawa, President of San Francisco State College, in ROOTS, *supra* note 17, at 19, 21.

30. Tateishi, *supra* note 28, at 192. Before then, many Japanese Americans remained silent because they had "been infused with a philosophy that stresses: 'Let's make the most of a bad situation and push ahead,'" and had "internalized the subtle ways in which the larger society reminds one to stay in his place." Isao Fujimoto, *The Failure of Democracy in a Time of Crisis: The War-Time Internment of the Japanese Americans and Its Relevance Today*, in ROOTS, *supra* note 17, at 207, 207.

31. COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED 132 (1982) (quoting John Kimoto).

32. *Id.* at 176 (quoting George Takei).

33. CHAN, *supra* note 6, at 174.

34. *Id.*