Rethinking Asian American Jurisprudence

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In 1995, the anthropologist Sylvia Yanagisako published an analysis of undergraduate introductory Asian American history classes taught at several universities in the late 1980s. She was interested to observe how these classes had served to shape what she noted was a paradoxical goal: the desire for a unified Asian American identity, despite the enormous diversity in and among Asian American communities, and despite the antipathy for the historical lumping of all Asians as one in a world split into East and West. What she found was both fascinating and instructive for a consideration of the integration of Asian American studies and law. Her research suggests that we contemplate how Asian American Jurisprudence classes both reflect and construct a particular Asian American identity.

I. TEACHING ASIAN AMERICAN HISTORY

Yanagisako observed a great similarity between the history classes in terms of topics, how time was periodized, how periods and topics were linked, and in required readings. Classes typically began with the mid-nineteenth century experience of Chinese immigrants, the political and economic context of Chinese migration, and legal attempts to regulate immigration, citizenship, and miscegenation. Courses then moved onto Japanese immigration, with a focus on agricultural labor, exclusion, and then internment. Following this, attention often shifted to the experiences of Filipino migrant laborers. Classes focusing on the post-World War II era covered new immigrants, especially Southeast Asians, and the resurgence of anti-Asian violence.

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2. See id. at 275.

3. Id. at 280.

4. Id.
The content of these classes reflected certain theoretical limitations, according to Yanagisako, that were compounded by particular dilemmas rooted in representational politics of Asian American studies. First, she notes that a working-class past was privileged, molding a uniform ethnic and social class consciousness out of more divergent material realities. Yanagisako theorizes that this privileging served to bridge two particular gaps in the construction of a unifying and politically mobilizing identity. One gap was between early and more recent immigrants, a gap that instructors and students could elide by “celebrating the laboring pasts of their ancestors,” constructing a seemingly stable Asian American working-class identity over time that spanned past communities and economically disenfranchised new immigrants. The second gap was between Asian Americans and other people of color in the United States, given the desire of founders of Asian American studies to stand in solidarity with other people of color and the fact that Asian Americans, broadly speaking in socioeconomic terms, are more like white Americans than African Americans, Chicanos, and American Indians. Again, the focus on a working class past enabled this gap to disappear.

In addition, Yanagisako found that a masculinist past was privileged. Rather than simply understanding this to be the product of sexism, she traces the marginalization of women to two particular dilemmas of Asian American identity. The first is the history of the Orientalist equation of Asia with the feminine and the corresponding demasculinization of Asian American men, which is then countered through an emphasis on the active agency of men in Asian American history. As Yanagisako points out, such a move to restore masculine dignity relies upon the reproduction of gender hierarchy and, we should explicitly add, heterosexism.

Secondly, and more complicatedly, Yanagisako links the privileging of a masculinist past to historical demands for exclusive national allegiance by the United States that were replicated through the curricular inclusion of only people, relations, communities, and institutions located on U.S. soil as the field of inquiry in Asian American studies. To explain the gendered consequences of this territorial focus, she points to the fact that the study of “Asian Americans” as, for example, “lonely bachelors” denies that at least half of the Chinese “bachelor” population was married, with wives and children in China. These were transnational family groups that pursued

5. Id. at 284
6. Id.
7. Id.
8. Id. at 284-85. Given the enormous socioeconomic diversity within the Asian American racial category, this would not be true of particular Asian American communities.
9. Id. at 286.
10. Id. at 287.
11. Id. at 288.
12. Id. at 290. Recognizing these transnational marriages among early Chinese immigrants
coordinated economic strategies in spite of immigration exclusion but are ignored under a narrow ethnocentric definition of family that presumes residence under the same roof. Yanagisako suggests that abandoning a nationalist Asian American historiography would, as demonstrated by this example, allow the revelation of what are otherwise suppressed relationships and histories.13

Yanagisako’s analysis of how an Asian American history course can structure a group-based identity, through privileging certain identities and muting others, provides a productive basis for critically considering Asian American Jurisprudence. We can think about the relationship between these courses and identity as a dialectic. How these courses are structured tends to reflect prevalent assumptions about Asian American identity, and these courses, in turn, can serve an identity-producing function.

II. ASIAN AMERICAN JURISPRUDENCE

In planning my own version of a course on Asian Americans and the Law (which I have called “Asian Pacific Americans and the Law”), I wanted to counter assumptions of what would constitute the appropriate materials for such a course. Specifically, my primary concerns were to question which communities constituted the hegemonic center of the category Asian American, and to address the relationship of gender and sexuality to the question of race. My informal survey of the few Asian American Jurisprudence courses taught at that point, in 1998, suggested that the course material for these classes primarily centered on Chinese American and Japanese American experiences. The two inevitable focal points for these classes were Chinese exclusion and Japanese American internment. Legal materials foregrounding Filipino, Korean, Southeast Asian, South Asian, Native Hawaiian, and Pacific Islander communities were, when present, pressed to the margins. Gender and sexuality were tacked onto the class late in the semester, suggesting that the remainder of the material was presumptively male and heterosexual.

What I was not able to envision until I actually began teaching my own class was how disrupting the purportedly stable identity of Asian American Jurisprudence would change the content and inquiry of the class. Including the experiences of South Asians, Southeast Asians, Koreans, Filipinos, Native Hawaiians, and Pacific Islanders did not simply fill holes, broaden the circle of membership, or add on experiences of silenced communities. Instead, centering historically marginalized communities as should not elide the fact of a “plurality of queer [meaning oppositional to normal and conventional] domestic arrangements, from female-headed household networks to workers’ bunkhouses and opium dens.” NAYAN SHAH, CONTAGIOUS DIVIDES: EPIDEMICS AND RACE IN SAN FRANCISCO’S CHINATOWN 78 (2001).

13. Yanagisako, supra note 1, at 292.
“Asian American,” or “Asian Pacific American,” changed core suppositions in interesting ways. This was otherwise hidden by how the term “Asian American” or “Asian Pacific American” discursively produced a category whose existence masked particular assumptions.

One example can demonstrate the very different paths opened up by such a shift. We could begin by thinking about the kinds of specific characterizations we claim define what is known as “Asian American” or “Asian Pacific American.” These might include the model minority myth, the immigrant experience, the idea of perpetual foreignness, and the eroticization of the submissiveness of Asian women. To take one example, to what extent are these characterizations true for Native Hawaiians and Pacific Islanders? They are not. Their racialization has been primarily accomplished through the processes of colonization, dispossession, and deracination, and through claims about the purported primitiveness of their cultures. Looking at how Native Hawaiians and Pacific Islanders are made invisible by their decentering reminds us that other histories and experiences that would reshape the terrain of “Asian American” are also erased.

In what may be the most obvious way this happens, we are reminded that the Philippines were also colonized by the United States and that the racial classification of Filipinos vis-a-vis other Asian Americans has long been at issue, as demonstrated not only by historical controversy as to whether Filipinos were covered under miscegenation statutes originally designed to target Chinese and Japanese Americans, but also by the rejection by Filipinos of the equation between “Asian” and “yellow” (as opposed to “brown”) in the early 1970s. Centering Native Hawaiian, Pacific Islander, or Filipino experiences also importantly opens up the question of the role of U.S. colonialism in shaping racial formation.

The failure to use the lens of colonialism means we are more likely to unquestioningly adopt the presumption that anti-subordination means the right to equal citizenship in the nation-state, which is to be remedied by granting civil rights. But what does this definition of anti-subordination mean, for example, for Hawaiians? Or for Asian Americans? It presumes a remedy within the borders of the nation. Think about the Supreme Court decision, Rice v. Cayetano, where the Court struck down a voting

15. Id.
restriction that had only allowed Native Hawaiians to vote for trustees of the Office of Hawaiian Affairs. The contemporary logic of civil rights, stripped of historical context, premised upon colorblindness and the legitimacy of claims of reverse discrimination, justified the ruling of the majority in favor of the white challenger, Howard Rice, to this restriction. There was no space within the Supreme Court majority’s analysis, or within their idea of civil rights, for the question of sovereignty to be addressed; in fact the use of civil rights served to preclude addressing questions of dispossession and self-determination.

For Asian Americans, thinking critically about whether anti-subordination can be achieved through equality within the nation-state may help provide some recognition of the limits of liberalism. I would suggest that the Asian American desire for recognition as “American” is a fraught project that is frustrated by the way in which “Asian” and “American” have historically been posed as antithetical terms. I would argue as well that the desire for national belonging unnecessarily circumscribes claims for justice. The contemporary moment, post-September 11, sharply presents both the lure and the dangers of understanding equality within the nation as the limit of one’s ambit of concern.

Thus, this one example I hope demonstrates the very different inquiries presented by shifting the focus of attention. Obviously the category Asian American or Asian Pacific American is contingent and used strategically. But so long as the category is used to purportedly represent all these communities, it is important to think about what centering different experiences opens up.

In structuring my class, I have also attempted to combat a focus on race that marginalizes questions of gender and sexuality. I try to set up my course so race, gender and sexuality are understood as mutually constitutive of one another. This can be illustrated through Chinese exclusion, which is understood primarily as a racial phenomenon, secondarily as a product of class tensions between Chinese immigrants and white laborers. Occasionally, Chinese exclusion is discussed as a gendered experience, in terms of how restrictions produced a “bachelor society”—but

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19. I argue elsewhere that this historically has been a futile claim given the way in which the American citizen has been defined against the idea of the Asian, who is believed to exemplify certain traits that defy one’s ability to exercise citizenship. See Leti Volpp, “Obnoxious to Their Very Nature”: Asian Americans and Constitutional Citizenship, 8 ASIAN L.J. 71, 84-85 (2001). The historical desire of many Asian Americans for national belonging led to such disturbing attempts to prove loyalty and super-patriotism as the World War II era advocacy of Mike Masaoka, then head of the Japanese American Citizens League, for Japanese Americans to brand themselves for easy identification and to form a suicide battalion with their parents held as hostages to ensure they would go through with their mission. See Chris Iijima, Reparations and the “Model Minority” Ideology of Acquiescence: The Necessity to Refuse the Return to Original Humiliation, 40 B.C. L. REV. 385, 406 (1998).
never is Chinese exclusion related to the question of sexuality. Richard Fung, the Canadian filmmaker, made a film called *Dirty Laundry*, which documents how testimony by government officials about Chinese immigrants as sodomites, engaged in vice and unnatural practices, played a role in Chinese exclusion in Canada.\(^{20}\) I show this film very early in the semester, since I want students to understand that race always involves gender and sexuality as well. To this end, I have students read work that simultaneously theorizes race and sexuality, such as Jeeyuen Lee’s essay analyzing both colonialism and heterosexism in shaping Korean American history,\(^{21}\) Nayan Shah’s analysis of queer South Asian American organizations,\(^{22}\) Peter Kwan’s writing on the construction of the “Oriental woman” in film,\(^{23}\) and David Eng’s work on the misogyny and homophobia of Asian American cultural nationalism of the 1960s and 1970s that attempted to resuscitate an Asian American subject who was not the object of scorn.\(^{24}\) From the very first week students are asked to consider how gender specifically shapes racial questions, through readings that examine how phenomena such as exclusion and citizenship were shaped by gender. The course also foregrounds the question of culture, which plays a very large role in Asian American racialization, because of the prevalent notion that the Asian American is a culturally motivated (as opposed to rational) actor. Culture is a site that sharply raises questions of gender, since claims to cultural difference often involve the treatment of women.

**CONCLUSION**

To conclude, I return to the question Yanagisako raised as her opening query, namely the relationship of classes such as these to the construction of an Asian American or Asian Pacific American identity.\(^{25}\) Are these courses spaces for Asian American students to engage in identity politics and consciousness raising or are they providing opportunities for students to engage in academic inquiry? To my mind, while both can be important goals, the purpose of the course is the latter. This purpose has interestingly been assisted by the identities of the students in the class. The student composition of my “Asian Pacific Americans and the Law” course has shifted over the years, from one entirely Asian American (although with

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demographics that would be considered unusual historically, with no Japanese American presence, small Chinese American presence, and more considerable Vietnamese American, Filipina/o and South Asian American presence), to one largely Asian, with a few white and Latina/o students, to one half Asian and one quarter white and one quarter black. With a class that was not entirely Asian American there could not be the purported bonding of shared experiences. Statements had to be explained to listeners who were not always presumed to immediately understand because of their identity, which made for much more careful argument and made the ellipses necessary to the constructing of a group-based identity impossible. The class composition helpfully made it more difficult to assume the equation made between identity, experience, and knowledge.26

Identity politics are only possible when there is a fixed identity from which one can make claims for political goals. When the predictable content of Asian American Jurisprudence and the predictable center of Asian American identity are destabilized, students are forced to shift paradigms and encounter the unexpected. In teaching “Asian Pacific Americans and the Law,” I hope to create a spirit of critical inquiry and a sense of intellectual agency among my students. The goal is to produce a space where students, by the end of the semester, will have questioned concepts they have encountered in other classes in law school and in other arenas of their lives, so that they can think in new and more complicated ways about questions of race, culture, rights, rationality, citizenship, identity, and justice.
