Excesses of Culture: On Asian American Citizenship and Identity

Leti Volpp

Follow this and additional works at: http://scholarship.law.berkeley.edu/aalj

Recommended Citation

Link to publisher version (DOI)
http://dx.doi.org/https://doi.org/10.15779/Z38XS2W

This Article is brought to you for free and open access by the Law Journals and Related Materials at Berkeley Law Scholarship Repository. It has been accepted for inclusion in Asian American Law Journal by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.
The Excesses of Culture: On Asian American Citizenship and Identity*

Leti Volpp†

INTRODUCTION

In his book, *Contagious Divides: Epidemics and Race in San Francisco’s Chinatown*, the historian Nayan Shah writes that from the mid-1800s to the early twentieth century, Chinese immigrants to San Francisco were characterized repeatedly in terms of “excess”: of the diseases they were believed to have spawned (smallpox, leprosy, tuberculosis, syphilis and the bubonic plague); of the density of their living arrangements (which was very high); and of their number (which was considered too many).

This notion of “excess” is one that still haunts the idea of the Asian American, although not through claims about numbers or disease. Asian Americans are characterized by the idea of excess today, through claims about culture.

By “culture,” I am referring to practices both assumed to be positive and negative. Asian Americans are believed to engage in cultural practices of discipline and hard work, which are believed to constitute Asian Americans as the “model minority.” At the same time, Asian Americans are characterized as engaging in negative cultural practices, which reflect the idea of Asians as unutterably foreign and different from what is considered American.

These ascriptions of cultural difference constitute two sides of the same coin. Both are problematic in that they rely upon certain limiting.

---

* This article was presented at the second annual Neil Gotanda Lecture in Asian American Jurisprudence in Spring 2009.
† Professor of Law, University of California, Berkeley, School of Law (Boalt Hall). I am honored to have been asked to deliver the Second Annual Neil Gotanda Lecture in Asian American Jurisprudence. Many thanks to Joseph Bui, Anson Lau, Linfong Tzeng, and Rebecca Nichols for their helpful comments.
3. See Kim, supra note 2, at 107.
conceptions about culture, and in how they function to racialize Asian Americans. The idea that Asian Americans have an excessive attachment to culture has a profound impact on positioning the Asian American outside the center of what is considered the American citizen.

I will first explain why I think Asian Americans are considered to be excessively motivated by culture, and second, turn to some of the problems produced by this mode of thinking. I will then address what these thoughts might mean for ideas about Asian American identity and citizenship, and lastly conclude by thinking through these concerns in the world we now find ourselves today.

I. EXCESSIVE CULTURE

I first began thinking about the idea that Asians were considered to be excessively motivated by culture many years ago in encountering “cultural defenses” in criminal cases, where immigrant defendants have presented evidence as to how their cultural backgrounds may have shaped their mental states. Cultural defenses seemed to surface frequently in cases involving Asian immigrant defendants, especially in two specific contexts of interpersonal violence: when a man rapes or kills his wife or girlfriend and when a mother tries to kill her children and herself in what has been called parent-child suicide.

In thinking through the different arguments about the pros and cons of admitting this kind of evidence, I was struck by certain assumptions that animated the debate. Asians were presumed to engage in fixed, traditional, cultural practices, which failed to change across time and space, as if we traveled in “hermetically sealed boxes” from cradle to grave. Moreover, the culture that Asians were believed to practice seemed less a reality than a strange fantasy. As one example of this: in the 1989 New York case, People v. Dong Lu Chen, the defendant, an immigrant from Toisan (Taishan), was sentenced only to probation for murdering his wife by beating her to death with a hammer. An anthropologist presented testimony claiming that Chen, as someone from “mainland China,” would react differently—namely, more violently—than a “typical American” to the thought of his wife being unfaithful. During this testimony, the anthropologist made dubious claims about China and about Chinese

---

6. The expert witness stated that “the events that you [the defense attorney] have described, the reactions that you have described would not be unusual at all for Chinese in that situation, for a normal Chinese in that situation. Whether this person is normal or not I have no idea . . . . If it was a normal person, it’s not the United States, they would react very violently.” See Volpp, (Mis)identifying Culture, supra note 4, at 65 (citing Record at 68-69, People v. Dong Lu Chen, No. 87-7774 (N.Y. Sup. Ct. Dec. 2, 1988)).
immigrants, such as the claim that Chinese immigrants rarely, if ever, assimilate into American society and that they have a harder time adjusting to U.S. society than any other Asians. He admitted that he could not recall a single instance where he had actually heard about a man in China killing his wife, yet concluded that killing a wife due to the suspicion she had an affair would be accepted in mainland China. The judge, apparently persuaded, sentenced Chen to only probation—even while, had Chen murdered his wife in mainland China, Chen would have likely been executed. Indeed, in recent years, defendants have been executed in the People’s Republic of China for such offenses as tax fraud and stealing hogs and cattle—let alone, for murder.

How was this vision of “Chinese culture” possible? This vision was not unique to this case. A 2002 law review article states that its authors predict that, of all the communities in the United States, “Asian American immigrants” are the group “most at risk” for wife murder today, since they come from cultures that do not value the rights of women, but, instead, see them as “devalued, dependent, and destined to serve and obey the male head of family.”

This claim is not grounded in empirical fact, but in stereotype. There is an imputing of cultural difference to Asians and Asian immigrants, which reflects a particular legacy, that of Orientalism, which constructs the West as rational, democratic, modern, and progressive, against the idea of the East as despotic, primitive, traditional, and barbaric. This distinction making the East the negative counter to the West continues to circulate today in ideas about Asian Americans, and specifically, here, in ideas about women and Asian American culture.

Let me explain why I think these ideas persist. The belief in aberrant levels and kinds of gendered violence in Asian communities is created through a process whereby incidents of sexual violence or gender subordination in the West are frequently thought to be exceptional, as reflecting the behavior of a few deviant individuals—rather than as part of Western culture. In contrast, incidents of violence in Asia or Asian American communities are thought to characterize the cultures of entire nations. This is what I have called a selective “blaming of culture for bad behavior,” whereby the identity of the actor shapes how the act is

---

7. See id. at 72 (citing Record at 102, Chen (No. 87-7774)).
8. See id. at 70 (citing Record at 106-07, Chen (No. 87-7774)).
9. The court sentenced Dong Lu Chen to five years probation for second degree manslaughter. See id. at 64 (citing Record at 309-10, Chen (No. 87-7774)).
perceived.\textsuperscript{13}

This selective blaming is fed by the assumption that Asian cultures are not only more sexist, but also that those cultures are frozen and static entities. Asian cultures are considered traditional, and made up of unchanging and longstanding practices that warrant submission to cultural dictates. In contrast, those identified with the West are thought to have their behavior shaped by rational acts, political forces, and psychological pressures. As a result, when white Americans behave in particular ways, they are usually thought to be individuals either acting rationally, or if irrationally, because of psychological pressures, rather than because of their culture.\textsuperscript{14}

Let me provide three examples to demonstrate how cultural difference has been imputed to Asian immigrants. My first example would return us to the \textit{Dong Lu Chen} case. A number of authors have looked at this case, and others, and suggested that wife killing and wife beating constitute cultural practices brought by Asian immigrants from their countries of origin.\textsuperscript{15} But we know that domestic violence constitutes an epidemic in the United States, and that in a 1998 survey, thirty-one percent of American women reported being physically or sexually abused by a husband or boyfriend at some point in their lives.\textsuperscript{16} The culture that could motivate a man to kill an unfaithful wife was presented as “Chinese” in the Chen case—but we find encoded in American law the manslaughter/provocation doctrine, which means that in most jurisdictions, the sight of a wife’s adultery is understood as a reasonable motivation to kill, and can mitigate a charge of murder to a voluntary manslaughter conviction.\textsuperscript{17} Of course, Chen’s attorney was trying to provide him with the most zealous defense possible—and how to think about the admission of cultural evidence in criminal cases is a complicated topic. But one must ask why the idea of domestic violence murder as a Chinese cultural practice was not rebutted by the prosecutor and was believed so easily by the judge.

Secondly, we could look at narratives about cases of women who kill their children. You may recall the case of Andrea Yates, who was convicted of drowning her five children in Texas. Her killing of her children was primarily explained as a result of mental illness, with a diagnosis of postpartum psychosis.\textsuperscript{18} While there was some discussion

\begin{footnotes}
\item 13. See \textit{Volpp, Blaming Culture for Bad Behavior}, supra note 12.
\item 14. See generally \textit{Volpp, (Mis)identifying Culture}, supra note 4.
\item 18. See, e.g., Andrew Cohen, \textit{Texas Justice Isn’t Same as American Justice}, \textit{BALT. SUN}, Mar. 22,
suggesting Andrea Yates inhabited a particular cultural location due to her family’s Christian beliefs—which engendered their living in a school bus left by a traveling preacher, or that led her to keep having children without using birth control because the children came from God—-the primary lens through which her behavior was understood was psychological. We thus heard about her experience with the mental health system, medications she had stopped taking and suicide attempts. Her irrational behavior, the killing of her children, was explained through a narrative of psychology.

We could compare the coverage of Andrea Yates with other cases involving mothers who killed their children. One such case involved Khoua Her, a Hmong immigrant, who, in Minnesota in 1998, strangled her six children and then hanged herself in a failed suicide attempt. Police had been called to the family’s home at least sixteen times in the previous two years, and there was a long history of domestic violence. In searching for explanations, the media invoked a “cultural clash,” and “the American pull to be an individual versus the Hmong orientation of putting the group first.” A popular radio talk show described the Her case as the worst mass murder in Minnesota memory, and then proceeded to list it alongside tales of animal cruelty, religious sacrifice of small dogs, the statistic that nearly half of the Hmong community was on state welfare, a string of gang rapes, and a thirteen-year-old who smothered her newborn. The host concluded with, “Those people should either assimilate or hit the road.”

We see here the process of selective blaming of culture. The same act is understood as the product of Hmong culture in one case, but not white American culture in the other. Rather, Andrea Yates, whether she be condemned or pitied, is primarily depicted as a mother under enormous

---

20. See, e.g., Lisa Falkenberg, Texas Gets Bum Rap on Killer Moms, HOUSTON CHRON., July 29, 2009, available at http://www.chron.com/disp/story.mpl/metropolitan/falkenberg/6553845.html, which explicitly rejects religious or cultural explanations for Andrea Yates’ or three other mothers’ decisions to take the lives of their children:

[T]he women also said their crimes were influenced by God or the devil. But blaming religion for the brutal killings is as absurd as blaming culture or geographic location. In each of these three cases, and that of the San Antonio mother, Otty Sanchez, the mothers had a history of mental illness.

Id.
21. See, e.g., Cohen, supra note 18; Falkenberg, supra note 20.
23. See id.
24. See id.
25. See Kristen Schamberg, Surviving Culture Shock, BALT. SUN, Mar. 8, 1999, at 1A. According to the reporter, this talk show host articulated what some Minnesotans had been thinking for many years but never dared to utter publicly. Id.
psychological pressure, with her life uninflected by a racialized culture. Khoua Her, in contrast, is described as if her life is completely circumscribed by a racialized culture.26

As a final example, we could consider arranged marriages in South Asian communities. As political theorist Bhikhu Parekh writes, “[M]any liberals would like to ban or at least discourage the practice on the grounds that it offends against the values of personal autonomy and choice . . . . [T]here is no justification for holding up personal autonomy and choice as universal values, especially in such culturally crucial matters as marriage.”27

At the outset, we should understand arranged marriage as a method of entering marriage, which functions as a counterpart to what some call “love marriage.” There is a wide range of practices that could constitute how one enters an arranged marriage, from situations where bride and groom can exercise no consent to situations where a third party introduces bride and groom, who decide if they want to get married. Moreover, in some sense, all of our marriages (or romantic partnerships) are “arranged.” We tend to begin relationships because we are introduced to another person by a third party we know in common; or through the use of personal ads, whether in the newspapers or on the internet; or through meeting people in some shared social space—rather than through beginning relationships with individuals at complete random.28 While many fuse the idea of “arranged marriages” with “forced marriages” and violent outcomes, there is no reason why one should assume that a “love marriage” will not have a violent outcome,29 and no reason why one should link the idea of “arranged,” given the broad continuum of practices that constitute “arranged,” with “forced.”

Nonetheless, the idea of arranged marriages is linked to assumptions about traditional pasts, about coercion and about strong communal ties that connect families through marriage for reason of property or wealth—in


contrast to the idea of romantic marriage, which is associated with the concepts of individual choice, love, freedom and modernity.  

To start to untangle these assumptions, we could look at a forthcoming television show, brought to you by the producers of *Project Runway* and *Top Chef*, entitled *Arranged Marriage*. The current casting announcement on the show’s website asks: “Are you ready? Be a cultural pioneer and part of something big—a whole new way of looking at and finding love! ... It’s a way of finding a lifelong mate that works in many cosmopolitan cultures of today.”

“Today’s arranged marriages are not that far off from the practice of using a matchmaker—a practice that is becoming more and more popular.”

“We are looking for four people who will ask their closest loved ones—whether family or friends—to team up and choose a spouse for them . . .”

This forthcoming show follows the 2003 television show *Married by America*, which provided arranged marriages courtesy of the “viewing audience.” The *Married by America* website asked:

> Are you ready to be “MARRIED BY AMERICA?” In America, people usually find love and marriage in the traditional way. You meet, fall in love and tie the knot. But the failure rate is pretty high.

What if there’s a better way?

MARRIED BY AMERICA is a groundbreaking reality-based show that invites the viewing audience to be your personal matchmaker.

With the help of relationship experts, potential mates will be hand picked, especially for you. Then, your closest friends and family will have the chance to meet these singles, and winnow them down to two.

All the while the home audience will be getting to know you and what you’re looking for in love, so they can weigh in and make the final decision—which of these partners is right for you.

---

30. According to one commentator:

The practice of arranged marriages in particular has aroused the ire of many Norwegians as it so clearly conflicts with ideals of individuality and equality that the Norwegians hold so dear. Arranged marriages are not forbidden in Norway although forced marriages are. But obviously the Norwegians are unlikely to understand an ideology which puts the interests of the family before those of the individual in a society where many parents, if not most, breathe a sigh of relief when sons and daughters finally leave the nest at the age of 19-20.


We're looking for singles, men and women who've never been married, who are interested in being setup in an arranged marriage and willing to get engaged to someone they've never met.\textsuperscript{34}

Thus, the "home audience"—providing comfort in its invocation of "home," as opposed to viewing "public" or "complete strangers"—has the final decision as to whom participants marry. I am of course not suggesting that this show exemplifies a huge shift in American cultural practice. Nonetheless, it is fascinating that when people generally talk about arranged marriages, they function not, as suggested in the \textit{Married by America} and \textit{Arranged Married} websites, as a remedy to failed romantic marriages; or as a practice engaged in by participants turning from the "traditional way" to a "groundbreaking" show; or as the activity of "cultural pioneers"—but, instead, as a sign of difference practiced only by immigrants mired in traditional practices.\textsuperscript{35}

Behavior that is considered problematic is blamed on racialized culture in a selective way, so that the identity of the actor shapes whether the act is marked as individual or the product of a group based culture: "They" have culture. "We" do not.\textsuperscript{36} Those not motivated by culture are considered to act, if dysfunctionally, because of psychological pressures, or, if functionally, because they are rational actors engaging in free choice and agency.

\section*{II. Effects of Culturalist Thinking}

In thinking about why this might be a problem, we could recall that the Western definition of what makes one human depends on the notion of agency and the ability to make rational choices. Thus, to thrust some communities into a world where their actions are determined only by culture is deeply dehumanizing, for it suggests that some have no capacity to engage in the mental processes—the ability to exercise one's will, the capability to make individual choices, the capacity to reason—that not only characterize the rational actor of law and economics, but differentiate the human from the rest of the animal kingdom.\textsuperscript{37}

\textsuperscript{34} See \textit{Married by America}, http://www.marriedbyamerica.com (on file with author).

\textsuperscript{35} I should point out here that the negative characterizations of "arranged marriage" have been made of marriage more generally. There is a long critique of "romantic" marriage as not, in fact, a choice, but, instead, as a hegemonic institution pressuring individuals into a particular privileged arrangement that is used to police the boundaries of social acceptability; as still retaining vestiges of coverture; and as a failed institution. See generally MARtha ALBERTSON FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES (1995).

\textsuperscript{36} Or in the words of Wendy Brown, "'We' have culture while culture has 'them,' or we have culture while they are a culture." WENDY BROWN, REGULATING AVERSION: TOLERANCE IN THE AGE OF IDENTITY AND EMPIRE 151 (2006).

\textsuperscript{37} See, e.g., Leti Volpp, \textit{Feminism Versus Multiculturalism}, 101 COLUM. L. REV. 1181, 1195-99 (2001); Leti Volpp, "Obnoxious to Their Very Nature": Asian Americans and Constitutional
The way that culture is considered in these contexts and others is also very depoliticizing. By this, I mean that there is an assumption that culture is stripped away from the political and economic realms, as if culture were solely made up of unchanging practices and ritual, completely insular to a community and unaffected by outside forces, such as the state and material reality. Let me give you two examples to illustrate this point. First, we could think of the idea of Chinatowns and the prevalent misconception that Chinatowns sprang up and existed solely because Chinese immigrants were incapable of assimilation, and had no interest in political engagement with American institutions, and, instead, prioritized ethnic links. As we know from John Tchen’s book, *New York Before Chinatown*, while conventional opinion is that New York’s Chinatown came into being “solely because of some in-group clannishness, blithely isolated from the rest of the city, the community’s very existence was established in the crucible of racism.” The assumption that Chinatowns were a product of certain “Chinese” cultural values would completely elide the fact that, for example, in San Francisco in 1890 the city supervisors passed an ordinance requiring all Chinese to move to the toxic industrial section of the city, since the Chinese community, like slaughterhouses and hog butcheries, was considered to also harm the public health and comfort. Thus, we see here that the use of a cultural explanation—in-group clannishness—denies the fact of racism on the part of the state and the dominant community in shaping what took place.

As a second example, linked to this first, let us consider the idea of the model minority—namely, the idea that a strong work ethic and family cohesion has led to Asian American success, without the need to rely on government welfare. As many have documented, the idea of the model minority is a myth that belies extreme poverty and disenfranchisement, including very high welfare use in certain Asian American communities, as well as poverty in those Asian American communities considered to exemplify the idea of the model minority. The impetus for the idea of the model minority was to discipline other persons of color in the United States, who are considered deficient minorities. But what I want to emphasize, here, is that the success touted is economic success, not

---

*Citizenship, 8 ASIAN L.J. 71, 84 (2001); Leti Volpp, *Talking Culture: Gender, Race, Nation, and the Politics of Multiculturalism*, 96 COLUM. L. REV. 1573, 1588-89 (1996).*  
39. S.F., Cal., Board of Supervisors Order No. 2190 (Feb. 17, 1890) (repealed 1890); *see Shah, supra* note 1, at 71-72; *see also In re Lee Sing*, 43 F. 359 (C.C.N.D. Cal. 1890) (holding the ordinance unconstitutional and in violation of the Burlingame Treaty with China). For a discussion of this ordinance, see Charles J. McClain, In re Lee Sing: The First Residential-Segregation Case, in *CHINESE IMMIGRANTS AND AMERICAN LAW* 223 (Charles J. McClain ed., 1994).  
41. *See id.*
Arguably, Asian Americans suffer from a relative lack of political success. We could, as just one example, note that New York City only elected its first Asian American to citywide or statewide office in 2001, with the election of John Liu to the New York City Council, despite the fact that Asian Americans constituted over ten percent of the city’s population. And some have suggested that this represents particular cultural features of Asian Americans: that they are clannish, concerned primarily about kinship and community ties, and more interested in their own ethnic groups than in participating in American society. But this, I would suggest, reflects a particular history. This history would include specific legal enactments that served to construct the identity of the Asian American as incapable of political participation in democratic society—as excluded aliens, non-citizens, and those incapable of owning property, all of which obviously had an impact both on the strategies Asian Americans used to survive, and on the perceptions of Asian Americans in the eyes of others. Thus, to suggest that Asian “cultural values” produce the economically successful “model minority”—and the politically incapable alien—obliterates the role of historical processes in shaping what is perceived as “Asian American” culture.

III. CITIZENSHIP

These problematic understandings of culture, and the fact that cultural difference is overly imputed to Asian Americans, may implicate the ability of Asian Americans to exercise citizenship. (I have already hinted at this with my example about the construction of the Asian American as politically incapable). The idea that Asian Americans are characterized by excessive culture negatively affects the ability to be perceived as an American citizen.

Pivotal to this argument is the claim that ideas about citizenship

---

42. See Kim, supra note 2, at 118: [T]he model minority myth does not claim that Asian Americans are culturally assimilated into White society: instead, it posits their material success and attributes this to their ongoing cultural distinctiveness. It also suggests that Asian Americans are too busy getting ahead and making money to worry about politics, thus echoing the old trope of Asian American apoliticalness.


44. See, e.g., Volpp, “Obnoxious to Their Very Nature,” supra note 37, at 78-79.

45.racial restrictions as to eligibility for naturalization continued for Asian Americans until 1943 (Chinese), 1946 (Indians and Filipinos/as), 1950 (Guamians), and 1952, when the barriers to naturalization were universally lifted. See, e.g., Volpp, “Obnoxious to Their Very Nature,” supra note 37, at 73-74; Leti Volpp, Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage, 53 UCLA L. REV. 405, 411-16 (2005).

presume liberal universals, devoid of culture, against which we find racialized Asian immigrants, overlaid with culture. The assumption is that attachments to culture—and specifically, a connection with a prior Asian national origin, which is believed to manifest in certain Asian cultural practices—are thought contradictory to American citizenship. In the words of Lisa Lowe, author of the foundational text, *Immigrant Acts: On Asian American Cultural Politics*, “the American of Asian descent remains the symbolic ‘alien,’ the *metonym* for Asia[,] who by definition cannot be imagined as sharing in America.”

She writes, “[a] national memory haunts the conception of the Asian American, persisting beyond the repeal of actual laws prohibiting Asians from citizenship and sustained by the wars in Asia, in which the Asian is always seen as an immigrant, as the ‘foreigner-within,’ even when born in the United States and the descendent of generations born here before.”

We could examine how these attachments that produce the Asian as foreign may inhibit one’s ability to engage in several distinct forms of citizenship. Here we could rely upon the work of legal academic Linda Bosniak, who has suggested separating citizenship into four different discourses: citizenship as formal legal status (the citizen versus the alien); citizenship as rights (these would be the rights necessary to exercise “full citizenship;” if you don’t have them, you’re a “second class citizen”); citizenship as political activity/civic republicanism (an idea both pivotal at the founding of the U.S. against ideas of monarchism and feudalism as well as in recent scholarly writing); and citizenship as identity (connoting affective solidarity and kinship).

In thinking through these distinct forms of citizenship, I want to focus, here, on the question of excesses of culture in the form of an attachment to a different political and cultural tradition and its implications for the ability to exercise citizenship. We could look at the historical requirements that were created to limit who could gain citizenship as formal legal status, specifically who could naturalize as a United States citizen. In 1790, Congress passed a law restricting naturalization to free white aliens. Following the Civil War, Congress discussed the wisdom of striking racial restrictions to naturalization altogether, but concerns about granting the

---

48. *See id. at 5.*
50. Nancy Cott suggests that to be “naturalized” is to be embraced by the state in a legal fiction of rebirth; only immigrants able to mimic the citizen who “naturally” belonged to the national community could be naturalized. *See Nancy F. Cott, Marriage and Women’s Citizenship in the United States, 1830-1934, 103 Am. Hist Rev. 1440, 1445 (1998).* For a critique of the reproductive and heterosexist presumptions contained within the concept of naturalization, see Siobhan B. Somerville, *Notes Toward a Queer History of Naturalization, 57 Am. Q. 659 (2005).*
privileges of citizenship to Native Americans and Chinese immigrants precluded such a shift.\textsuperscript{51} When we look at the congressional debates on this question, fascinating detail is revealed. Key in the discussion was the following idea: that opening the door to citizenship by Asians would mean an end to democracy in America.\textsuperscript{52} Chinese were considered to be incapable of understanding or exercising American citizenship, since they had no comprehension of any form of government but despotism.\textsuperscript{53} Their deep seated, ineradicable cultural differences rendered them undesirable as members of the U.S. political body.\textsuperscript{54} As a result, in 1870, Congress only partially lifted the ban so as to allow persons of African descent or nativity to also naturalize, so that Asian immigrants were precluded from naturalizing as U.S. citizens until legislative enactments lifted the racial bar in a piecemeal fashion between 1943 and 1952.\textsuperscript{55} This history took place against a background of immigration exclusion of anyone from Asia, as well as alien land laws in certain states, which prevented aliens ineligible for citizenship from the right to own, rent or devise property.\textsuperscript{56} The racially defined inability to own property, to naturalize, and to immigrate created a triple disability that constituted, in opposition to the citizen, the alien, one unable to engage in the basic functions of the citizen, and, therefore, politically powerless.

Caroline Chung Simpson’s book, \textit{An Absent Presence: Japanese Americans in Postwar American Culture, 1945-1960}, provides us with some additional, fascinating material demonstrating the construction of

\begin{itemize}
\item[51.] See Volpp, "Obnoxious to Their Very Nature," supra note 37, at 73.
\item[52.] Prior to the 1870 legislation, one senator warned:
\begin{quote}
[Whether this door [of citizenship] shall now be thrown open to the Asiatic population, . . .] for the Pacific Coast, this would mean] an end to republican government there, because it is very well ascertained that those people have no appreciation of that form of government; it seems to be obnoxious to their very nature; they seem to be incapable either of understanding it or of carrying it out.
\end{quote}
\item[53.] In the words of one senator, the Chinese were "pagans in religion" and "monarchists in theory and practice," because the Chinese were considered unable to vote independently of the Chinese government, an "edict from China" would "sway the political destiny of the Pacific coast." See \textit{Cong. GLOBE}, 41st Cong., 2nd Sess. 5150 (1870) (statement of Sen. Stewart).
\item[54.] As Rogers Smith has described, for some members of Congress the survival of "republican institutions" was the primary threat posed by Chinese immigration, as republics required "a homogenous population," and not what one representative called an "ethnological animal show." \textsc{Rogers M. Smith}, Civic Ideals: Conflicting Visions of Citizenship in U.S. History 36 (Yale Univ. Press 1997).
\item[55.] Act of July 14, 1870, ch. 254, § 7, 16 Stat. 254, 256. This bar was lifted to assist blacks in the United States from Africa and the West Indies who previously had been unable to naturalize. That they were few in number, and were not a "mighty tide" who would pour into the United States, was key to this amendment. See \textit{Cong. GLOBE}, 41st Cong., 2nd Sess. 5157 (1870).
\item[56.] As Lucy Salyer shows us, military service began to provide a means for otherwise ineligible noncitizens to naturalize after World War I. See Lucy E. Salyer, Baptism by Fire: Race, Military Service, and U.S. Citizenship Policy, 1918-1935, 91 J. AM. HIST. 847 (2004).
\end{itemize}
beliefs about Asian American culture. As she documents, during the time of internment, it was typical to depict the camps as model communities, where Japanese Americans were being trained to be better citizens so they could assimilate into mainstream American culture. At the same time, the War Relocation Authority established an anthropological study of Japanese Americans in the camps for the explicit purpose of developing theories of Japanese behavior that would be useful after the war when the United States occupied Japan. As Chung Simpson argues, this not only reflected the American propensity for seeing Japanese Americans as Japanese aliens, but also assisted in constructing a particular idea about the culture and character of both Japanese and Japanese Americans. What the anthropologists theorized was the idea of a tense duality between Japan and America—played out as intergenerational conflict between Issei and Nisei—suggesting that the Japanese American had to be freed from the value of filial piety into a modern existence in America. This idea of intergenerational conflict, narrated as tradition versus modernity, and Japan versus America, led to certain policies in occupied Japan, where the aim by the U.S. government was to break the old, patriarchal Japanese traditions and replace them with the model of American democratic capitalism.

Japan was perceived as a country of naughty children; General Douglas MacArthur testified before a Senate subcommittee that the Japanese “would be like a boy of 12 as compared with our development of 45 years.” Japanese customs were thought to inhibit the “natural” development of character that would allow one to progress to adulthood. We can see here the vision of the Asian motivated by culture, stuck in the feudal past and in an infantile state, in contrast to the modern American. To progress and be acknowledged as a citizen, the Asian American had to shed a cultural connection to Asia that kept the Asian American from being considered capable of rational engagement.

Some of these ideas linger on. Asian Americans are still at times believed to be under the sway of cultural connections to Asia that inhibit their ability to engage in American democratic institutions. There is much contemporary interest in the idea of civic republicanism, which suggests that civic virtue and political participation are the defining features of

59. See id. at 34.
60. See id. at 44.
61. See id. at 45.
62. See id. at 48. Issei refers to the first generation of Japanese immigrants in the United States and nisei to the second generation, which was also the first generation born in the United States.
63. See id.
64. See CHUNG SIMPSON, supra note 58, at 74.
65. See id. at 48.
citizenship. Civic republicanism requires one to approach one’s engagement in the republic, free of corruption and free of other ties of loyalty. But we could pause here and consider these requirements. Freedom from corruption and other ties of loyalty constitute particular sore points in the racialization of Asian Americans. Asian Americans have long been stereotyped as caught in the thrall of foreign despots, as putative spies, as enemy aliens, and as engaged in loyalties based upon kinship, filial and community ties that inhibit their ability to follow the rule of law. We could trace a very specific history of stereotypes that concern the ideas of cheating, trickery and deceit that continue to animate assumptions about Asian Americans, and, I would argue, fueled both the “Asian campaign finance” scandals of 1996 and the prosecutions of Wen Ho Lee and other naturalized citizens (Korean American and Chinese American) which has led to what some call a new form of racial profiling: not “driving while black or brown,” but “downloading data while Asian.”

These ideas impact the ability of Asian Americans to be elected to office. We could think about being elected to office as perhaps the ultimate marker of citizenship, whereby the representative both literally and symbolically represents the people. Asian Americans have experienced considerable difficulty in being chosen to symbolize We, the people.

IV. PRESENT DAY

Let me conclude by turning to our present circumstances, by examining, post-September 11, how some of these ideas about culture, identity and citizenship have shifted, and how some have not, and make something of an ethical argument.

In her book Immigrant Acts, Lisa Lowe suggests that Asian Americans have a particular collective memory—that of being constituted as aliens—that allows us to be critical of the notion of citizenship and the fault lines in the liberal democracy it upholds. Asian Americans share a collective

68. While both John Huang and Charlie Yah-lin Tric, implicated in the campaign finance scandals, were naturalized U.S. citizens, the media conflated Asian and Asian American with each other and with political corruption and foreign subversion. See Volpp, “Obnoxious to Their Very Nature,” supra note 37, at 80.
71. See LOWE, supra note 47, at 21.
memory of imputed foreignness, of being marked as the enemy within.72

The late nineteenth-century policing of Chinese immigrants led to the creation of a new administrative bureaucracy.73 As Gabriel J. Chin has argued, we can link the rise of the administrative state to the policing of Asian exclusion.74 Lisa Lowe, in turn, suggests this regulation has, in recent years, been “refocused particularly on ‘alien’ and ‘illegal’ Mexican and Latino workers.” As such, Asian American culture can be “the site of remembering, in which the recognition of Asian immigrant history in the present predicament of Mexican and Latino immigrants is possible.”75

I would suggest that we see this kind of collective memory exemplified in Fred Korematsu’s brief challenging the imprisonment of hundreds of prisoners on Guantanamo in the Supreme Court’s deliberations of Rasul v. Bush, which addressed whether or not the prisoners had the right to challenge their confinement through statutory habeas.76

The brief began:

More than sixty years ago, as a young man, Fred Korematsu challenged the constitutionality of President Franklin Roosevelt’s 1942 Executive Order that authorized the internment of all persons of Japanese ancestry on the West Coast of the United States. He was convicted and sent to prison. In Korematsu v. United States, this Court upheld his conviction, explaining that because the United States was at war, the government could constitutionally intern Mr. Korematsu, without a hearing, and without any adjudicative determination that he had done anything wrong.

More than half a century later, Fred Korematsu was awarded the Presidential Medal of Freedom, the nation’s highest civilian honor, for his courage and persistence in opposing injustice. In accepting this award, Mr. Korematsu reminded the nation that “We should be vigilant to make sure this will never happen again.” He has committed himself to ensuring that Americans do not forget the lessons of their own history.

Because Mr. Korematsu has a distinctive, indeed unique, perspective on the issues presented by this case, he submits this brief to assist the Court in its deliberation.77

72. See id. at 5 (noting that the Asian is always seen as the “foreigner-within”).
75. See LOWE, supra note 47, at 21.
77. See id. at 1-2.
The historical experience of subordination of a community can create a lens, a way to see, which I would argue lends itself to an ethical argument: that it behooves us, as Asian Americans, to be particularly sensitive to the communities today subjected to the unjust treatment that has characterized treatment of our own community. I think this is precisely what Fred Korematsu did.

This is a very particular argument about politics. This does not say that our political activity should focus on Asian American bodies. This says that we should think about what we know from our past experience—and what we have learned from this experience—to think critically about who is being treated in this way now, and that the bodies that this is happening to now, whether Asian American or not, should be a focus of our concern.

If we think about this on the terrain of culture, I think it is unarguable that the people today subject to the most violent expulsion from membership are Muslims. Post-September 11—and the wars in Afghanistan and Iraq—the West has been ever more defined as progressive, democratic, civilized and feminist, in stark contrast to Islam and to Muslims. 78

There are myriad examples which could help demonstrate this. Let me give just one, which shows how a single event crystallizes these ideas.

On New Year’s Day of 2008, seventeen-year-old Sarah and eighteen-year-old Amina Said were shot to death by their father, Yaser Said, an Egyptian-born Muslim, in a suburb of Dallas, Texas. Just before the murders, the sisters and their mother had moved to Oklahoma to escape Said and his violence. He had been accused of sexual abuse by both girls when they were eight and nine years old in 1998, although charges were dismissed after they recanted their accusations the following year. 79 Friends and relatives reported years of physical and emotional abuse perpetrated by Said against his children. 80 Their maternal aunt reported that she had told one of the girls when they returned from Oklahoma to Dallas on New Year’s Eve that they needed to get a restraining order. 81


80. See id.

The motive of Yaser Said, who is still at large, in killing his daughters remains unclear. In interviews, Sarah and Amina Said's mother angrily rejected the idea that her husband's religion or culture had anything to do with the murders, as did their brother. The deaths of Sarah and Amina Said could be understood through the rubric of family violence or as an act of individual pathology, explanations which would narrate their murder in a way that would not exaggerate the difference of Yaser Said from "us." Nonetheless, former Dutch MP and current American Enterprise Institute fellow Ayaan Hirsi Ali took the opportunity last year to tell a crowd of five hundred in Dallas that the sisters were the victims of an "honor killing." "I want to tell you why their father killed them," she said. She asserted that the daughters had dressed in Western apparel and dated non-Muslims, and that, in her estimation, the perceived disgrace spurred Yaser Said to murder his daughters. "The essence of a woman in this culture is reduced to the value of their hymen. In countries ruled by Islam, women are treated as slaves or pets," Hirsi Ali said.

Certain narratives persuade because of already existing scripts about gender, culture, immigration and Islam. Across the blogosphere, the "honor killing in Texas" has been used to buttress claims that Islam is evil, and that the worst fate imaginable is to be born female into a Muslim family. According to these commentators, Muslims engage in honor killings, illustrating their barbaric essential nature; in contrast, "we" do not. How individual cases are categorized both reflects and further fuels

83. See id.
84. See id.
85. To give another example of a recent case where the motive is unclear but Islam is to blame: in December 2007, sixteen-year-old Aqsa Parvez was murdered in Ontario, Canada by her father, a Pakistani immigrant. The friend at whose home Aqsa had been living prior to her death asserted that there were many sources of conflict between the girl and her father; that whether Aqsa wore a hijab outside the house was only one of these sources of conflict; and that other women in the Parvez family did not wear the hijab. A number of imams described the murder as the product of family violence, and as against the teachings of Islam. But articles with titles like "Horror Under the Hijab" immediately circulated, claiming that Aqsa was strangled by her father for defying her father's command to wear a hijab and asserting that she was yet another victim of an honor killing. See, e.g., Stephen Brown, Horror Under the Hijab, FRONT PAGE MAGAZINE, Dec. 14, 2007, available at http://97.74.65.51/readArticle.aspx?ARTID=29219, Canadian of Pak Origin Kills His Daughter for Not Wearing Veil, THE TIMES OF INDIA, Dec. 13, 2007, available at http://timesofindia.indiatimes.com/World/Canadian_of_Pak_origin_kills_his_daughter_for_not_wearing_veil/articleshow/2618165.cms.
86. See these and other comments on Michelle Malkin's blog. See Michelle Malkin, http://michellemalkin.com/.
87. I will not focus on honor killings here, other than to say that it is important to note scholarship observing that honor killings in the "East" and crimes of passion in the "West," though differentiated in their victims (daughters, sisters and mothers versus wives, ex-wives, girlfriends and ex-girlfriends), are similar in how they are tolerated in both Arab and U.S. legal systems. See Lama Abu-Odeh, Comparatively Speaking: The "Honor" of the "East" and the "Passion" of the "West," 1997 UTAH L.
already existing perceptions. In the words of the geographer Alan Pred:

[1]If one young Turk viciously stabs his sister outside a Stockholm discotheque, if one Lebanese beats his twenty-one-year-old former wife to death in Malmo, if a fifteen-year-old girl of Iraqi background is murdered in Umeå by her brother and cousin, it confirms that all Muslim men are guided by their female-oppressing scriptures of Islam, that they will not permit “their” women the freedoms of Swedish women, that they will mete out violent punishment if family “honor” is blemished by sisters, daughters, or wives who dress or behave in a sexually “provocative” manner. Always have done so and always will do so. Uniform and unchanging. It’s in Their culture—but not Ours. 88

These scripts are very powerful, and have the capacity not only to shape how stories about individual cases are told, but also to motivate legal reform. Across Europe, legislation has been enacted in the last several years that seeks to address practices of forced and arranged marriage, honor based violence, female genital mutilation/cutting and the wearing of a hijab or headscarf. 89 The concern about “traditional” practices of Muslim women, in particular, has intensified against a backdrop of concern about global terrorism. As part of the effort to combat terrorism, Western governments seek to transform Islam with, for example, the U.S. State Department’s program “Muslim World Outreach,” which attempts to disseminate “American values” of “democracy, women’s rights, and tolerance” by using teams specialized in military psychological operations, covert CIA operatives, think tanks, and U.S. funded media. 90 As the purported most abject victims of Islam, women are seen as the entry point in the project to “bring democracy” to Islam. 91

The intensification of concern about Muslim women has also concurred with the turning away from multiculturalism in Western liberal democracies, most of which are now no longer calling for integration but for assimilation. In Sherene Razack’s words, Muslims are being cast out from belonging in a political community in both Europe and North America, through stigmatization, surveillance, incarceration, abandonment, torture and bombs. 92

---

92. See Razack, supra note 30.
As Asian Americans, we need to turn our attention to this and not enjoy any sense of complacency that this does not concern us, that this is not happening to us. To return to where I began, in *Contagious Divides*, Nayan Shah documents a shift from the Chinese perceived as a site of disgust and disease, to the 1930s and ‘40s, when Chinese Americans in San Francisco began to be seen as deserving citizens. Shah’s argument is that Chinese Americans only became allowed to be seen as deserving citizens through efforts to highlight those Chinese persons who had adapted to middle class norms in consumer tastes, hygiene, and respectable domesticity. This strategy had dire consequences for the Chinese male bachelors in Chinatown, who were ignored in the quest for welfare resources and housing entitlements available to the Chinese American family community. Thus, Shah argues, Chinese immigrants were allowed to become citizens by demonstrating they would engage in proper conduct, distinguishing them from both internal aliens (the Chinese bachelors) and external aliens (Chinese in China). To gain acceptance, two categories of Chinese people were created: the modern and assimilated, on the one hand, and the ignorant and backward, on the other. But, as he points out, this did not deny the perpetual difference of all Chinese Americans from “true” citizens (white American citizens). Some Chinese Americans could now be model minorities: model, to be sure, but still minorities. This history is useful to us now in considering the ambit of who is the object of our concern. I hope this shapes whether we frame our issues within a narrow lens or a broad one, whether we make connections with other communities within the U.S. nation and across the globe, when we consider on whose behalf we struggle. I ask that we think carefully about the uses of cultural logics, about historical positioning, and present day legacies that help construct Asian American citizenship and identity.

93. See SHAH, supra note 1.
94. See id. at 204-45.
95. See id. at 224.