

# Co-Synthesis of Dynamics Behind the Dearth of Asian American Law Professors: A Unique Narrative

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## INTRODUCTION

When his faculty directed him not to hire an Asian American woman<sup>1</sup> as a law professor, the law Dean resigned in protest. Professor Derrick A. Bell, Jr., then Dean of the University of Oregon Law School, quit at the end of a tumultuous two-hour faculty meeting on February 6, 1985, after his staff decided against hiring the Asian American woman a faculty position. In an interview, Bell said, "I am not charging my faculty with racism . . . I just could not deal with the hypocrisy inherent in my remaining as Dean and presiding over an ever-dwindling number of minorities on law faculties."<sup>2</sup>

Today, there remains a dearth of Asian American female law professors. By "Asian American,"<sup>3</sup> I refer to persons of Asian descent who live in the United States, regardless of citizenship status. In 2007, Asian Americans constituted five percent of the population, but less than one percent of law professors were Asian American women.<sup>4</sup> This statistic is

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1. She was then practicing corporate law and international law with Baker & McKenzie in San Francisco, and had degrees from Stanford and the University of Texas at Austin.

2. Pat K. Chew, *Asian Americans: The 'Reticent' Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1, 3 (1994).

3. Leti Volpp, *Obnoxious to Their Very Nature: Asian Americans and Constitutional Citizenship*, 8 ASIAN AM. L.J. 71, 72 n.1 (2001). Asian Americans—encompassing more than thirty nationalities from (1) East Asia: Chinese, Japanese, Korean, Mongolian; (2) South Asia: Indian, Sri Lankan, Bangladeshi, Pakistani, Nepalese, Bhutanese; and (3) South East Asia: Vietnamese, Filipino, Myanmese, East Timorese, Singaporean, Thai, Malaysian, Cambodian, Laotian, Indonesian, etc.—form a broad and diverse group. Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1243, 1245-46 n.7 (1993). The term "Asian American" "can serve as a unifying identity based on the common experiences of Asian Americans because of the inability of most non-Asian Americans to distinguish between different Asian groups." *Id.*

4. See ASS'N OF AM. LAW SCHOOLS, STATISTICAL REPORT ON LAW FACULTY 2007-2008 11, 16, available at <http://www.aals.org/statistics/report-07-08.pdf>. In 2007, out of 10,780 law professors, 157 (1.4 percent) were Asian American men while 107 (0.99 percent) were Asian American women.

particularly alarming when Asian Americans are the largest minority group in first-year law school admissions, consisting of about eight percent of all applicants admitted annually.<sup>5</sup> As a point for comparison, there were 10,780 full-time law school faculty members nation-wide in 2007-2008.<sup>6</sup> At a mere one percent (compared to the 1.4 percent of Asian American male law professors), females constitute only two-fifths of all Asian American law professors.<sup>7</sup>

Many scholars have written about the academic and professional achievements of Asian Americans as encapsulated by the "model minority" stereotype. In contrast, the negative effect of the stereotype's corollaries on Asian American female law professors as seen from the unique perspective of Asian American women is absent from the discourse.

Providing explanations and solutions for the dearth of Asian American female law professors is important as the paucity of Asian American women in the legal academy has significant societal consequences. By serving as role models and teachers to future generations of lawyers through their academic writings and discussions, law professors are influential in both society and the legal profession. Excluding Asian American women from these roles denies them the authority of these positions<sup>8</sup> and access to the network of law professors in the legal academy. More directly, the contributions of professors to law review articles and journals often influence how judges apply and interpret the law; here, professors can voice their opinions and concerns regarding policies that have real consequences for society. Most importantly, the absence of Asian American female law professors would deny them the opportunities to voice their unique Asian American perspectives, and to impact decisions that ultimately affect themselves.<sup>9</sup>

What are the reasons for the dearth of Asian American female law professors? One of the few senior Asian American women in this group told me in April of 2010:

I certainly think you are right to ask this question. Most Asian women I talk to have experienced stereotyping. Our profession rewards intellectual audacity and verbal sparring, but this behavior is not expected from Asian women and not tolerated at the same level, so how are you supposed to

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5. Lydia Lum, *When Work Experience is Not Enough*, DIVERSE ISSUES IN HIGHER EDUCATION (May 14, 2009), available at <http://diverseeducation.com/article/12560>.

6. *Id.*

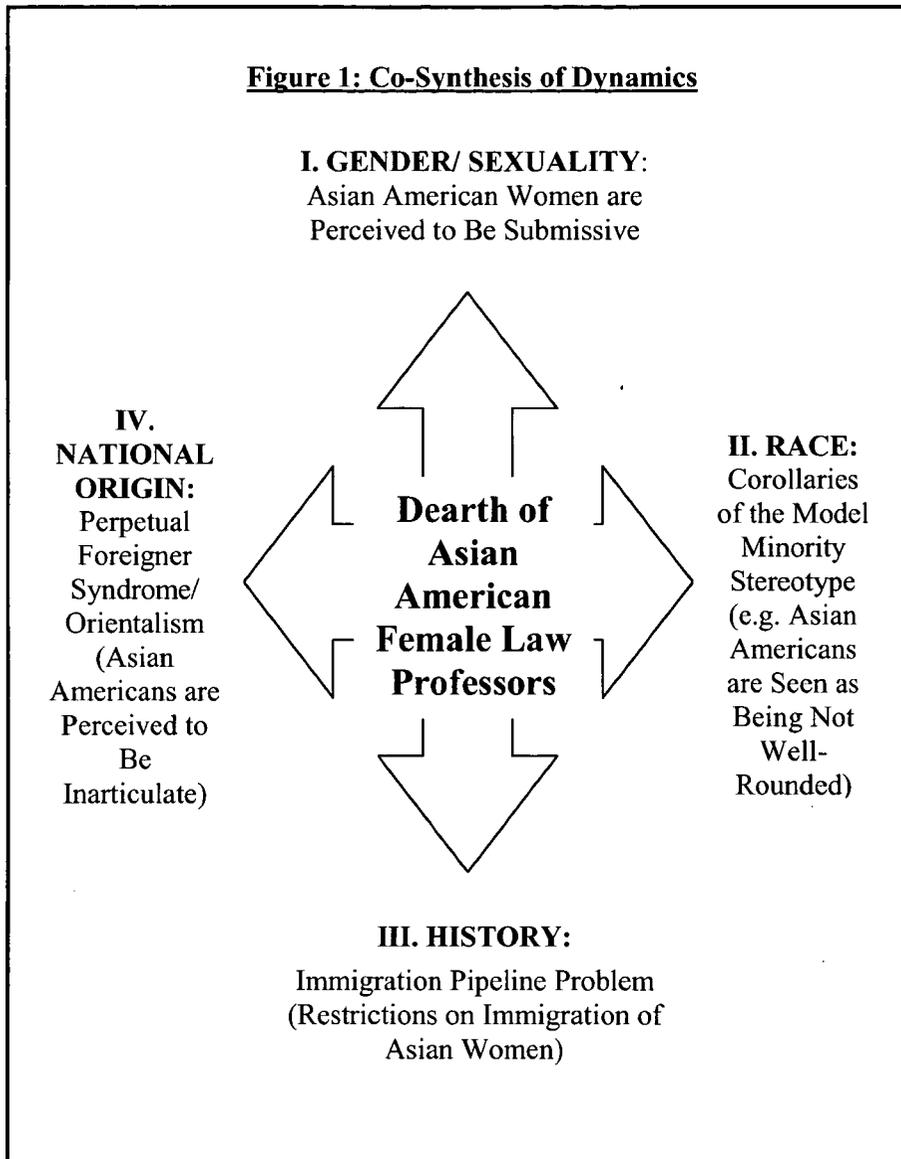
7. *See id.* This number was calculated by using data from the 2007-2008 academic year reporting a total number of 10,780 law professors. One percent (representing Asian American female law professors) of 10,780 law professors equates to approximately 40 percent of the aggregate 2.4 percent of Asian American law professors in the United States.

8. *See* Chew, *supra* note 2, at 65.

9. *Id.*

insert yourself into the conversation?<sup>10</sup>

At first blush, it may be thought that the dearth of Asian American female law professors stems from prejudice against Asian Americans. But the problem is more capacious than that. I argue that the reasons for the dearth are complex and encompass an intriguing narrative—they are an intricate tapestry of (1) gender/sexuality, (2) race, (3) history, and (4) national origin.<sup>11</sup>



10. E-mail (Apr 14, 2010, 16:08) (on file with author) (The professor wishes to remain anonymous.).

11. See Figure 1.

This Article's framework is as follows: in Part I, I critically examine the statistical data regarding Asian American female law professors in the United States. In Part II, I unpack the co-synthesis of dynamics incorporating (1) gender/sexuality, (2) race, (3) history, and (4) national origin—these dynamics synergistically reinforce each other in maintaining a subordinating effect on the hiring of Asian American female law professors. Finally, in Part III, I conclude by analyzing possible strategies for increasing the pool of Asian American female law professors.

#### I. STATISTICS OF ASIAN AMERICAN FEMALE LAW PROFESSORS IN THE UNITED STATES

This Article begins by critically examining the statistical data that provide evidence of discrimination against Asian American female law professors in the United States.

The dominant narrative regarding Asian Americans in the U.S. media is the "model minority" stereotype, which posits that Asian Americans achieve a higher degree of success than the population average in education, income, and family stability.<sup>12</sup> The excellent credentials of Asian American female law professors burnish this stereotype—many have attended prestigious undergraduate and law schools, served as judicial clerks, and have interdisciplinary graduate degrees.<sup>13</sup> Yet despite these credentials, the voices of Asian American female law professors bemoan the discriminatory treatment and feelings of exclusion.<sup>14</sup> Their sentiments—a fascinating counter-narrative<sup>15</sup>—are understandable for the following reasons.

First, Asian American female law professors are underrepresented in U.S. law schools, especially for tenured positions with their benefits of job security and the freedom to publish dissenting views. It was not until 1998 that the United States had its first tenured Asian American female law professor<sup>16</sup> at the University of California, Los Angeles, School of Law. Harvard Law School did not hire an Asian American woman for a tenure

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12. ERIC K. YAMAMOTO, MARGARET CHON, CAROL L. IZUMI, JERRY KANG & FRANK H. WU, RACE, RIGHTS, AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT 258-71 (2001).

13. Pat K. Chew, *Asian Americans in the Legal Academy: An Empirical and Narrative Profile*, 3 ASIAN AM. L.J. 7, 16, 27 (1996).

14. *See id.* at 36-37.

15. Margaret Chon, *On The Need For Asian American Narratives In Law: Ethnic Specimens, Native Informants, Storytelling And Silences*, 3 ASIAN PAC. AM. L.J. 4, 22, 31 (1995) ("In storytelling, there is no magic home of infinite agreement . . . multiple perspectives are not only possible but inevitable . . . . As there is no single, essential or unitary Asian American perspective, any voice that is raised will tend to be over-emphasized and over-privileged vis-a-vis other voices" (citing PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS: DIARY OF A LAW PROFESSOR* 50-51 (1991))).

16. Professor of Law Mari Matsuda is currently teaching both at Georgetown University and the University of Hawaii.

track position until 2006.<sup>17</sup> As a means of comparison, the first wave of African American women became law professors in the 1970s.<sup>18</sup>

In 1990, Asian Americans constituted about 3.5 percent of law school student bodies, yet only comprised 0.9 percent of law faculties.<sup>19</sup> In 2007, Asian Americans formed about five percent of the overall U.S. population yet only comprised 2.4 percent of law faculties, with less than 1 percent of law professors being Asian American women.<sup>20</sup> Put in perspective, even though Asian Americans are the largest non-white population in American law schools, its graduates compose merely 2.4 percent of all law school faculties.<sup>21</sup> Even more striking is that Asian American women make up only two-fifths of this overall 2.4 percent.<sup>22</sup>

Hence, Asian American women—who encompass more than 30 nationalities—constitute only a small percentage of the law professors in the United States.<sup>23</sup> Professor Pat K. Chew argued that the underrepresentation of Asian American female law professors is caused by discrimination and gender bias that disfavor Asian American women in law faculty hiring and promotion,<sup>24</sup> which in turn discourages Asian American women from joining the legal academy. This probably explains why Harvard Law Professor Jeannie Suk expressed that "[v]ery few Asian women students come and say they want to be (law) professors . . . [and that she has] gotten used to going it alone."<sup>25</sup>

Second, although there have been various attempts to increase minority faculty hiring, Asian Americans have generally been excluded from such efforts. For example, a window of hiring for law professors of color opened in the early 1990s. Law schools openly practiced affirmative action hiring during this time, and minority group law professors were hired at rates far exceeding their proportionate group numbers in applicant pools.<sup>26</sup> However, Asian American applicants (including women) were the sole exception, as they were excluded from affirmative action hiring efforts.<sup>27</sup>

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17. Jeannie Suk was hired as Assistant Professor of Law.

18. Rachel F. Moran, *Taking Stock: Women of All Colors in Legal Education*, 53 J. LEGAL EDUC. 467, 471 (2003).

19. Eric K. Yamamoto, *We Have Arrived, We Have Not Arrived*, 3 ASIAN AM. L.J. 1, 3-4 (1996).

20. See ASS'N OF AM. LAW SCHOOLS, *supra* note 4, at 11, 16. In 2007, out of 10,780 law professors, 157 (1.4 percent) were Asian American men while 107 (0.99 percent) were Asian American women.

21. Lum, *supra* note 5.

22. *Id.*

23. See Chew, *supra* note 13, at 21.

24. *Id.* at 8.

25. E-mail from Jeannie Suk, Professor of Law, Harvard Law School, to Shawn Ho, LLM Student, Columbia Law School (April 15, 2010, 10:02) (on file with author).

26. Yamamoto, *supra* note 19; Alfred Yen, *A Statistical Analysis of Asian Americans and the Affirmative Action Hiring of Law School Faculty*, 3 ASIAN AM. L.J. 39, 40-43, 48 (1996).

27. *Id.*

Third, despite excellent credentials, Asian American female law professors begin their teaching careers at lower positions and at less prestigious law schools than their male Asian American<sup>28</sup> and White<sup>29</sup> counterparts. My manual count of the full-time faculty in the Top 14 U.S. law schools<sup>30</sup> revealed that there are only nine (0.66 percent) Asian American female professors<sup>31</sup> at these law schools, as opposed to 28 (two percent) Asian American male professors out of a total of 1360 law professors. In our email exchanges, Seattle Law Professor Margaret Chon said, "What happens as one moves up the food chain of law schools, as it were, is that the culture shifts in favor of a certain type of pedagogy and identity in front of the podium. In a nutshell, 'elite' schools are still very color-coded and gender-coded as white and male, especially in terms of who belongs on the faculty."<sup>32</sup>

Finally, the achievements of some Asian American female law professors may allow society to camouflage the discrimination that they suffer. It has been postulated that because a de facto quota of Asian American law faculty members may exist, only those Asian American female candidates with extraordinarily impressive backgrounds receive one of the few admission tickets to law professorships.<sup>33</sup>

We turn next to examining the post-intersectionality theory of "co-synthesis."

28. This is consistent with Merritt and Reskin's study of minority female law professors which concludes that minority women—who they call the "double minority"—have significantly lower status, enter at lower ranks, teach at less prestigious schools, and are more likely to teach low-status courses as compared to minority men. *See* Chew, *supra* note 13, at 15-16. This bifurcation in status exists despite the fact that 47 percent of Asian American female law professors were on law review, as compared to 25 percent of Asian American male professors; over 40 percent of Asian American female faculty had served as editors, in contrast to 18.2 percent of Asian American male professors. *Id.*

29. *See* Ming M. Zhu, *An Empirical Study of Race and Law School Hiring*, 16 MICH. J. RACE & L. 1, 4 (2010).

30. The methodology for my manual count was as follows: first, I looked at the list of tenure-track and tenured law faculty members (including emeritus professors) on the official websites of the top 14 law schools—in alphabetical order, these law schools are Berkeley, Chicago, Columbia, Cornell, Duke, Georgetown, Harvard, Michigan, New York University, Northwestern, Pennsylvania, Stanford, Virginia, and Yale; second, I identified the law professors whom I knew from personal experience to be Asian American (*e.g.*, Professors Mari Matsuda, Jeannie Suk, etc.); third, I examined the remaining tenure-track and tenured law faculty members' profiles (*e.g.*, courses taught, academic institutions that they attended, and the title of their academic papers, etc.).

31. The nine Asian American female law professors at these law schools are Professors Sarah Song (Berkeley), Leti Volpp (Berkeley), Arti K. Rai (Duke), Mari Matsuda (Georgetown), Jeannie Suk (Harvard), Smita Narula (New York University), Aditi Bagchi (Pennsylvania), Jayashri Srikantiah (Stanford), and Amy Chua (Yale). Professor Leti Volpp, who has one parent who is Asian American, is included in the list as she self-identifies as Asian American. Chicago, Columbia, Cornell, Michigan, Northwestern, and Virginia Law Schools currently do not appear to have any Asian American female law professors (as of Apr. 13, 2010).

32. E-mail from Margaret Chon, Professor of Law, Seattle University School of Law, to Shawn Ho, LLM Student, Columbia Law School (Apr. 15, 2010, 10:02) (on file with author).

33. Chew, *supra* note 13 at 37.

## II. CO-SYNTHESIS OF DYNAMICS BEHIND THE DEARTH OF ASIAN AMERICAN FEMALE LAW PROFESSORS

In analyzing the dearth and experiences of Asian American female law professors, a theory that encompasses the intersection of race and gender is essential to avoid a "single-axis analysis" that focuses exclusively on feminist or racial theory.<sup>34</sup> Intersectionality has illustrated that the failure to examine the problem of intersecting subordination leads to a theory that centers around the lives of relatively privileged individuals. For example, the exclusion of a racial subjugation analysis from feminist theory necessarily narrows the discussion to the needs and experiences of White women who have not suffered the unique effects of racial oppression.<sup>35</sup>

Intersectionality has the following advantages. First, it avoids gender essentialism, the concept that "a unitary, 'essential' women's experience can be isolated and described independently of race, class, sexual orientation, and other realities or experience," and thus, avoids the prospect of marginalizing one voice while privileging another.<sup>36</sup> In other words, intersectionality obviates the assumption that all women share common feminine characteristics that are fixed and unaffected by cultural conditioning. Second, as race and gender coexist in the identities of women of color,<sup>37</sup> it makes sense to focus on intersections of racism and sexism.<sup>38</sup> Analyses of both axes are crucial; the exclusion of one would risk overgeneralizing the conditions and narratives of several groups of women of color, thereby diluting the pertinence of such a study.

Professor Katherine L. Vaughns has observed that "[w]omen of color who teach law share their gender with their white female counterparts and their race with men of color in law teaching. But their experiences in law teaching differ significantly because of their particular vantage point at the intersection of gender and race. Theirs is a unique perspective."<sup>39</sup>

Intersectionality captures the unique location of women of color in

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34. Peter Kwan, *Invention, Inversion And Intervention: The Oriental Woman in the World of Suzie Wong, M. Butterfly, and the Adventures of Priscilla, Queen of the Desert*, 5 *ASIAN AM. L.J.* 99, 109, 134 (1998) (The "Oriental Woman cannot fully be described simply in terms of a racial construction, nor can an account of the Oriental Woman fantasy be fully explained strictly within feminist parameters.").

35. Darren Lenard Hutchinson, *Identity Crisis: "Intersectionality," "Multidimensionality," and the Development of an Adequate Theory of Subordination*, 6 *MICH. J. RACE & L.* 285, 308 (2001).

36. Angela P. Harris, *Race And Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581, 585 (1990).

37. Virginia W. Wei, *Asian Women and Employment Discrimination: Using Intersectionality Theory to Address Title VII Claims Based on Combined Factors of Race, Gender, and National Origin*, 37 *B.C. L. REV.* 771, 805 (1996).

38. See Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241, 1242 (1991).

39. Katherine L. Vaughns, *Women Of Color in Law Teaching: Shared Identities, Different Experiences*, 53 *J. LEGAL EDUC.* 496, 496 (2003).

dominant American social relations and their unassimilability into the discursive paradigms of gender and race domination.<sup>40</sup> Intersectionality theorists have shown that the intersection of gender and racial domination affects the lives of women of color in "areas as diverse as domestic violence, sexual assault, reproductive control, and criminal law."<sup>41</sup>

However, legal scholars have also begun post-intersectionality work.<sup>42</sup> One of the most important post-intersectionality models is the "co-synthesis" paradigm, which enhances the intersectionality analysis by developing a more holistic theory of categories that goes beyond static and autonomous notions of categories that stand next to or within others.<sup>43,44</sup> By taking the assumptions of intersectionality one step further, this paradigm examines how the combination of race, gender, sexuality, and class mutually develops a subordinating effect for various groups of individuals, including women of color.<sup>45</sup>

Importantly, co-synthesis provides a framework for the various dynamics to synergistically support each other—these dynamics mutually reinforce, interact, and rely upon one another for meaning.<sup>46</sup> The co-synthesis paradigm posits that identity categories are sometimes constructed upon themselves, or are synthesized out of and rely upon other categorical notions. Therefore, this mutually defining, synergistic, and complicit relationship between identity categories is a dynamic model of multiple subordinating gestures.<sup>47</sup>

Finally, a co-synthetic analysis invites us to consider how each of us might have a stake in the struggles of other communities. The politics of coalition building logically flows out of the theory of co-synthesis. Co-synthesis allows us to better understand that individuals are made up of many axes all supporting the others and together constituting the whole.<sup>48</sup> Further, Professor Phillip Atiba Goff has shown that the interconnectedness of gender and racial identities also affects how people are perceived, that is,

40. Cheryl Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1719 n.34 (1993).

41. Hutchinson, *supra* note 35, at 308.

42. Robert S. Chang & Jerrome McCristal Culp, Jr., *After Intersectionality*, 71 UMKC L. REV. 485, 485-486 (2002); see Hutchinson, *supra* note 35, at 310.

43. See Peter Kwan, *Jeffrey Dahmer and the Cosynthesis of Categories*, 48 HASTINGS L.J. 1257, 1292 (1997); Peter Kwan, *Complicity And Complexity: Co-Synthesis And Praxis*, 49 DEPAUL L. REV. 673, 688 (2000).

44. Other post-sectionality theories include Francisco Valdes's "inter-connectivity" theory and Darren Hutchinson's "multidimensionality" theory. See generally Francisco Valdes, *Sex And Race in Queer Legal Culture: Ruminations On Identities And Inter-Connectivities*, 5 S. CAL. REV. L. & WOMEN'S STUD. 25 (1995); Darren Lenard Hutchinson, *Out Yet Unseen: A Radical Critique of Gay and Lesbian Legal Theory and Political Discourse*, 29 CONN. L. REV. 561 (1997).

45. Kwan, *supra* note 34, at 109.

46. See Kwan, *supra* note 43.

47. Hutchinson, *supra* note 35, at 311.

48. Kwan, *Complicity and Complexity*, *supra* note 43, at 689.

how people are stereotyped.<sup>49</sup>

Against this backdrop, we turn next to examining how the first dynamic, gender stereotypes about Asian American women, synergistically reinforce other dynamics (e.g. race, history, and national origin) in maintaining a subordinating effect on the hiring of Asian American female law professors.

*A. Gender/Sexuality: Asian American Women are Perceived to be Submissive*

Gender stereotypes about Asian American women indicate that they lack the attributes commonly associated with law professors, such as assertiveness and the ability to communicate effectively. For example, Asian American women are perceived to be submissive, non-assertive,<sup>50</sup> and too quiet.<sup>51</sup> Such socio-cultural perceptions of Asian American women carry tremendous force, shape American societal attitudes, and correspondingly affect the treatment of Asian American women in the employment context.<sup>52</sup>

Such beliefs are detrimental to Asian American women aspiring to become law professors.<sup>53</sup> The people in charge of hiring law professors may have the perception that a candidate who is Asian American and female is too nice. In contrast, a White female candidate is not perceived in the same way. Hence, the interaction of race (Asian American) and gender (female) changes how Asian American women aspiring to be hired as law professors are perceived. At best, Asian American women are considered "too nice" to be intellectually demanding and rigorous law professors.<sup>54</sup> At its worst, these stereotypes may cause Asian American women to be perceived as ill-equipped to lead class discussions (especially the cut and thrust of the Socratic Method), unsuitable for leadership positions such as Dean and Associate Dean, and unable to serve as effective law professors.<sup>55</sup>

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49. Phillip Atiba Goff et. al., *"Ain't I a Woman?": Towards an Intersectional Approach to Person Perception and Group-Based Harms*, 59 *SEX ROLES* 392, 393, 402 (2008).

50. See Darren Seiji Teshima, *A "Hardy Handshake Sort Of Guy": The Model Minority and Implicit Bias about Asian Americans in Chin v. Runnels*, 11 *ASIAN PAC. AM. L.J.* 122, 130 (2006); Chew, *supra* note 2, at 38.

51. Adrian Liu, *Affirmative Action & Negative Action: How Jian Li's Case Can Benefit Asian Americans*, 13 *MICH. J. RACE & L.* 391, 415 n. 117; Christopher Shea, *Victim of Success?: Are Asian American Students Discriminated Against in College Admissions?*, *BOSTON GLOBE* (Nov. 26, 2006), available at [http://www.boston.com/news/education/higher/articles/2006/11/26/victim\\_of\\_success](http://www.boston.com/news/education/higher/articles/2006/11/26/victim_of_success).

52. See Wei, *supra* note 37, at 786.

53. See Vaughns, *supra* note 39, at 498: Such beliefs are also detrimental to the advancement prospects of Asian American female law professors as students' perceptions of a professor's ability may be tinged by societal evaluations of gender and racial inferiority (i.e. stereotypes).

54. See Chew, *supra* note 2, at 41.

55. See Lydia Lum, *Asian-Americans Hope To Build Pipelines to College Presidencies*, *DIVERSE ISSUES IN HIGHER EDUCATION* (Oct. 5, 2009), available at <http://diverseeducation.com/article/13097/asian-americans-hope-to-build-pipelines-to-college-presidencies.html>; see also Vikram D. Amar &

What is the genesis of the submissive Asian American woman stereotype? I assert that it is the recombinant reaction of historical racialized gender stereotypes (e.g., Chinese prostitutes in the United States during the nineteenth century),<sup>56</sup> colonialism (e.g., in the Philippines),<sup>57</sup> Asian women acting as sexual servants to U.S. soldiers during military engagements in Asia (World War II, Korean War, and Vietnam War),<sup>58</sup> the Asian war-bride<sup>59</sup> and mail-order bride<sup>60</sup> phenomena, and a male-dominated mass media.

Historically, Chinese men formed the first wave of Asian immigrants to the United States. This bachelor community led to the importation of Chinese women<sup>61</sup> as prostitutes in the nineteenth century.<sup>62</sup> The perception that most female Chinese immigrants during that time period were prostitutes may have been fairly accurate; census reports indicate that 70 percent of the Chinese women living in San Francisco in 1870 were prostitutes.<sup>63</sup>

Representations of sexualized Asian women were used in enacting, the Page Act of 1875,<sup>64</sup> a federal immigration restriction that only sustained the presumption that immigrant women from Asia were sex workers.<sup>65</sup> In statements that encapsulated the synergistic reinforcement of the Asian

Kevin R. Johnson, *Why U.S. News and World Report Should Include a Faculty Diversity Index in its Ranking of Law Schools*, (Apr. 9, 2010), <http://writ.news.findlaw.com/amar/20100409.html>, ("[S]ome have also claimed that law faculties have relied on stereotypes of the 'passive' Asian to argue that Asian American faculty candidates whose scholarship was strong nevertheless would not do well in the classroom, and thus to decline to hire them.").

56. Sumi K. Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where The Model Minority Meets Suzie Wong*, J. GENDER, RACE & JUST. 177, 182 (1997).

57. *Id.* at 193.

58. See Wei, *supra* note 37, at 801.

59. Lisa C. Ikemoto, *Male Fraud*, 3 J. GENDER RACE & JUST. 511, 517 (2000).

60. Eddy Meng, *Mail-Order Brides: Gilded Prostitution and the Legal Response*, 28 U. MICH. J.L. REFORM 197, 201 (1994).

61. Keith Aoki, *Foreign-Ness & Asian American Identities: Yellowface, World War II Propaganda, and Bifurcated Racial Stereotypes*, 4 ASIAN PAC. AM. L.J. 1, 31 (1996). An anti-Chinese diatribe of the day cast Chinese women as willing prostitutes, declaring that "the word 'Chinawoman' is synonymous with what is most disgusting and vile." *Id.*

62. See Cho, *supra* note 56, at 184.

63. Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 650, 654 (2005). Of course, prostitution was not an exclusively Chinese phenomenon. Throughout the west coast, prostitution was prevalent wherever men migrated without families. Even in Chinese neighborhoods of San Francisco, there were native-born Whites, European immigrants, Latin American immigrants (mostly from Mexico), a smattering of African American women, and Native Americans working as prostitutes. Still, Chinese prostitutes outnumbered all of the others combined, probably due to the greater gender disparity among Chinese immigrants, the unique conditions of poverty in China at the time, and the tongs' procurement of prostitutes from China. See *id.*

64. An Act Supplementary to the Acts in Relation to Immigration (Page) Act of Mar. 3, 1875, ch. 141, 18 Stat. 477 (repealed 1974) (classifying as undesirable any individual from China, Japan, or any Oriental country who was coming to America to be a contract laborer, any Asian woman who would engage in prostitution, and all people considered to be convicts in their own country).

65. See Ikemoto, *supra* note 59, at 517.

women's gender, sexuality, race, and national origin, then-Senators articulated the congressional intent of the legislation: "to prevent the importation of these female coolies (Asian prostitutes)" whose "'servile disposition' was 'inherited from ages of benumbing despotism.'"<sup>66</sup>

The mutually reinforcing effects of their race and national origin added to the perception of Asian female prostitutes as docile and submissive: if Asian men were innately coolies willing to indenture themselves into servitude, then it followed that Asian women were innately prostitutes willing to indenture themselves under sexualized terms.<sup>67</sup> Even in contemporary reformulations, Asian American men are stereotyped as feminized and emasculated<sup>68</sup> while Asian American women are stereotyped as submissive, and metaphorized as "lotus blossoms."<sup>69</sup>

Additionally, the power relations between the United States and Asia have also shaped this stereotype of the submissive Asian American women—a perception that likely began with U.S. colonialism and neo-colonialism in the Philippines.<sup>70</sup> During the twentieth century, U.S. military involvement in Asia (during World War II, the Korean War, and the Vietnam War) led to the commercialization of civilian life in Asia for consumption by U.S. military personnel,<sup>71</sup> which included Asian women acting as sexual servants for the U.S. soldiers.<sup>72</sup>

The Asian sex tourism industry,<sup>73</sup> coupled with the arrival of Asian war brides<sup>74</sup> and Asian mail-order brides<sup>75</sup> in America, continually reproduced the stereotype of submissive Asian women in the United States. Some Americans continue to see Asian American women in this light, buying into the stereotype that Asian American women are only ideal for the domestic sphere as perfect wives, which runs counter to the recognition of Asian American women as professionals in their own right.<sup>76</sup>

Perhaps the most damaging development for Asian American women is the amplification of the subordinating effects of the synergistic

66. See Abrams, *supra* note 63, at 658-59.

67. *Id.* at 656, 658.

68. Robert S. Chang & Adrienne D. Davis, *An Epistolary Exchange Making Up is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J.L. & GENDER 1, 29 (2010); Harvey Gee, *Review Essay: Asian Americans, Critical Race Theory, and the End of the Model Minority Myth*, 19 TEMP. POL. & CIV. RTS. L. REV. 149, 176 n. 273 (2009).

69. See Cho, *supra* note 56, at 184.

70. *Id.* at 193.

71. See Ikemoto, *supra* note 59, at 517.

72. See Wei, *supra* note 37, at 801.

73. See Cho, *supra* note 56, at 193.

74. See Lisa C. Ikemoto, *supra* note 59, at 517. Between 1947 and 1964, approximately 72,700 Asian women immigrated as war brides—45,853 Japanese women, 14,435 Filipino women, approximately 6,000 Chinese women, and 6,243 Korean women. 1947-75 ANN. REP. OF THE COMM'R OF IMMIGRATION AND NATURALIZATION, Table 6.

75. See Meng, *supra* note 60, at 201.

76. See Wei, *supra* note 37, at 801.

reinforcement of their gender, sexuality, race, and national origin in the male-dominated, U.S. mass media, which has objectified Asian American women as both hyper-sexualized<sup>77</sup> and submissive creatures who desire domination by White males.<sup>78</sup>

The stock portrayal of obedient and servile Asian American women in popular culture intensifies the model minority stereotype of passivity.<sup>79</sup> For example, in some popular movies,<sup>80</sup> the White emancipated female characters are cast as independent and undesirable, while the Asian American female characters are depicted as truly "feminine"—passive, subservient, dependent, and domestic.<sup>81</sup> Reinforced by writings and movies, such as James Michener's depiction of Asian and Polynesian women as demure and docile, American society often thinks of Asian American women as "small, quiet, beautiful, submissive, soft, loving, self-sacrificing, uncomplaining, and eager to serve."<sup>82</sup>

Asian American women, of whatever ancestry, are aware of this "open-ended constellation of pernicious fetishistic associations" within U.S. popular culture and media.<sup>83</sup> In a thoroughly haphazard and indiscriminate fashion, sexually and racially charged representations are made of "[g]eishas, opium, belly dancing, kimonos, lotus blossoms, Suzie Wong, China Girl, Miss Saigon, Madame Butterfly,<sup>84</sup> Mata Hari, . . . Connie Chung, silk, bound feet, submission, dominance, eroticism, servitude, and treachery cluster and collide on the site of the female Asian body. Filtered through the distorting lens of American 'Orientalism,' *race, ethnicity, class, gender, (and national origin) intersect problematically.*"<sup>85</sup>

Asian American females who want to be hired as law professors can directly contradict this stereotype of submissive Asian American women. The women who tackle this stereotype head-on, however, must be prepared to pay a heavy price both at a professional and personal level.

At a professional level, when women depart from traditional stereotypes, they tend to be subjected to adverse evaluations by students,

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77. Sunny Woan, *White Sexual Imperialism: A Theory of Asian Feminist Jurisprudence*, 14 WASH. & LEE J. CIVIL RTS. & SOC. JUST. 275, 278 (2008). Other women of color have different images, for example, African-American women are portrayed as hyper-sexualized yet masculine and aggressive. *See id.*

78. This is the epitome of male hegemony that dominance feminists like Catharine MacKinnon rail against.

79. *See* Cho, *supra* note 56, at 186.

80. *See e.g.*, *Love is a Many-Splendored Thing* (1955); *The World of Suzie Wong* (1960).

81. Chang & Davis, *supra* note 68, at 26 n.66.

82. *See* Chew, *supra* note 2, at 40.

83. *See* Aoki, *supra* note 61, at 45.

84. *Madame Butterfly* was ranked by Opera America as one of the most performed operas in the United States. *See* Vintage Hifi Experience, <http://vintagehifisexperience.blogspot.com/2009/05/top-20-most-performed-operas.html> (May 20, 2009, 22:23).

85. *See* Aoki, *supra* note 61, at 45 (emphasis added).

marginalization by colleagues, and lower ratings in advancement assessments.<sup>86</sup> At a personal level, Asian American females suffer from a double bind: if they try to be model Asian American females, they may not be radical enough for feminists; meanwhile, if they try to be model feminists, they may be too radical for their Asian American community. As Professor Pat K. Chew, an Asian American female law professor, candidly admitted:

I am Asian and I am a woman—a double minority. Sometimes I tell myself that this dual status makes me special and gives me challenges that I should feel honored to have. Other times, I realize that it puts me into binds, and not just double binds but multiple often competing binds. I am trying to be a role model for women and for Asians, but being a model feminist is sometimes very different from being a model Asian woman. I am not radical enough for one group but too radical for the other.<sup>87</sup>

University of California, Davis, School of Law Professor Lisa Ikemoto lamented similarly that "[t]he stereotypes of Asian American women place us in a very narrow box. For example, if a woman does seem to fit the submissive image, she loses. On the other hand, if she is too unsubmitive, she loses because she makes others uncomfortable. She may be more likely than a woman of a different race to be perceived as over-demanding, unreasonable, etc., exactly because the bar is set so low for Asian American women. Many persons are more comfortable interacting with 'others' who seem to align with the stereotypes."<sup>88</sup>

In short, Asian American females who want to be hired as law professors are subject to gender stereotypes. If they wish to challenge these stereotypes, they must be prepared to pay a heavy price both at a professional and personal level.

### *B. Race: Corollaries of the Model Minority Stereotype*

The model minority stereotype espouses the idea that Asian Americans, through hard work, intelligence, and emphasis on education and achievement, have been successful in American society.<sup>89</sup> An often-cited statistic reports that about half of all Asian American adults have a

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86. Deborah L. Rhode, *The Unfinished Agenda: Women and the Legal Profession*, ABA COMM'N ON WOMEN IN THE PROFESSION, *passim* 5, 15 & 29 (2001), available at <http://womenlaw.stanford.edu/pdf/aba.unfinished.agenda.pdf>. This may be one of the reasons explaining why for full professors among Asian American law professors, males (52.3 percent) outnumber females (17.7 percent). Chew, *supra* note 13, at 35. For Asian American law faculty in general, males (72 percent) substantially outnumber females (28 percent). *Id.* at 19.

87. *Id.* at 14.

88. E-mail from Lisa Ikemoto, Professor of Law, Univ. of Cal., Davis, School of Law, to Shawn Ho, LLM Student, Columbia Law School (Apr. 18, 2010, 15:51:34) (on file with author).

89. Chew, *supra* note 2, at 24.

college degree.<sup>90</sup> Like many racial stereotypes, while the model minority stereotype may contain some truth, it is often presented without causes and contexts.<sup>91</sup>

Many Americans believe the following corollary of the model minority stereotype: Asian Americans are not well-rounded individuals as they are overly focused on academic achievement.<sup>92</sup> Asian Americans are characterized as "one-dimensional,"<sup>93</sup> not well-balanced,<sup>94</sup> and thought to participate in fewer extracurricular activities<sup>95</sup> than their White counterparts. Consequently, while Asian Americans may score well on academic ratings, they are deemed to perform less adequately when assessed as part of a "total package".<sup>96</sup>

This view that Asian Americans are not well-rounded individuals impacts how Asian American women who aspire to be law professors are perceived, as there may be doubts as to whether they can effectively handle all the pertinent duties of the profession: publishing in law journals, teaching, working in committees, carrying out administrative responsibilities, and other ad hoc matters. Hence, adherence to the model minority stereotype creates inherent biases regarding the hiring of Asian American law professors because—in addition to high grades—law schools look to "law employment, judicial clerkship, teaching interest, and prior law school teaching" as favorable requisites to employment.<sup>97</sup>

This typecast of Asian Americans as not being well-rounded can be debunked as fallacious for the following reasons. First, the perception that Asian Americans avoid extracurricular activities is meritless as shown by numerous university studies conducted by Harvard, University of

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90. See C.N. Le, *A Closer Look at Asian Americans and Education*, NEW HORIZONS FOR LEARNING (2001), available at <http://www.newhorizons.org/strategies/multicultural/le.htm>. Regarding the rise in the number of Asian Americans in college, Don Nakanishi noted that this can be explained by demographic changes; for example, the Asian American population increased from 1.5 million (1970) to 3.5 million (1980) to 7 million (1990). Don Nakanishi, *A Quota on Excellence? The Asian American Admissions Debate*, CHANGE, Nov.-Dec. 1989, at 38, 41.

91. Frank H. Wu & William Kidder, *Perspectives: Asian Americans Aren't White Folks' 'Racial Mascots'*, DIVERSE: ISSUES IN HIGHER EDUCATION (October 4, 2006), available at <http://diverseeducation.com/article/6480/1.php>.

92. See Le, *supra* note 90.

93. Grace W. Tsuang, *Assuring Equal Access of Asian Americans to Highly Selective Universities*, 98 YALE L. J. 659, 664 (1989); Report to the Corporate Committee On Minority Affairs From Its Sub-Committee on Asian American Admissions, 9 (Feb. 10, 1984).

94. Chew, *supra* note 2, at 63.

95. Irene Chen, *Two Students Challenge Asian American Admission Discrimination*, BROWN DAILY HERALD (Feb. 9, 2007), <http://www.browndailyherald.com/campus-news/two-students-challenge-asian-american-admission-discrimination-1.1674972>.

96. Timothy Egan, *The Little Asia on the Hill*, N.Y. TIMES, Jan. 7, 2007, available at <http://www.nytimes.com/2007/01/07/education/edlife/07asian.html>.

97. *Uncloaking Law School Hiring: A Recruit's Guide to the AALS Faculty Recruitment Conference*, THE ASSOCIATION OF AMERICAN LAW SCHOOLS, <http://www.aals.org/frs/jle.html> (last visited Apr. 15, 2011).

California, Berkeley, and Brown University.<sup>98</sup> Further, a study of 58,000 high school students by the Department of Education found that approximately the same percentage of Asian Americans vis-à-vis Caucasians took part in band, orchestra, varsity athletics, debating, and drama.<sup>99</sup> In fact, Asian Americans, as compared to Caucasians, had higher participation rates for student government (21 percent versus 16 percent respectively) and honorary clubs (28 percent versus 17 percent respectively).<sup>100</sup> Another study of high school students found that Asian American students were "more likely to participate in social, ethnic, or community organizations than other SAT candidates."<sup>101</sup>

Second, Asian American women who aspire to be law professors are usually from elite law schools which seek to admit well-rounded leaders. It would be ironic if women (of Asian American heritage), who are usually seen as multi-taskers, are simultaneously typecast as not being well-rounded.<sup>102</sup>

While the aforementioned corollary of the model minority stereotype (i.e., Asian Americans are not well-rounded individuals as they are overly focused on academic achievement) is an externally created stereotype about Asian Americans, the following two corollaries of the stereotype are perpetuated within the Asian American community itself.<sup>103</sup>

One corollary of the model minority stereotype is that Asian Americans are brought up in Asian households, which strongly prefer their progeny to enter the fields of medicine and the hard sciences.<sup>104</sup> Duke Law Professor Arti K. Rai believes that one reason for the dearth of Asian American female law professors is the "social pressure (on Asian Americans) to enter the sciences."<sup>105</sup> One Asian American female law professor elaborated further:

[It is] helpful to think about the influence/social pressures within (Asian) communities, for example, which professions do middle-class Asian American parents, especially those who are first generation immigrants,

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98. See Tsuang, *supra* note 93, at 663-65.

99. Peng, *School Experiences And Performance Of Asian—Pacific American High School Students*, Table 9 (1984) (U.S. Dept. of Education publication).

100. *Id.*

101. The College Board, *Profiles, College-Bound Seniors*, xix (1985).

102. See Richard Gray, *Scientists Prove That Women are Better at Multitasking Than Men*, TELEGRAPH, Jul. 17, 2010, available at <http://www.telegraph.co.uk/science/science-news/7896385/Scientists-prove-that-women-are-better-at-multitasking-than-men.html>.

103. It may be said that the stereotypical restraints placed by Asian American parents on their own progeny can be an even more insidious breed of typecasting vis-à-vis an externally created stereotype.

104. See Amar & Johnson, *supra* note 55 (stating that "Asian Americans historically have been underrepresented in law, often because of societal pressures that funneled them into math and the sciences").

105. E-mail from Arti K. Rai, Professor of Law, Duke Law School, to Shawn Ho, LLM Student, Columbia Law School (Apr. 17, 2010) (on file with author).

wish their children will pursue? Do they pressure their children to become doctors or engineers, as opposed to say, law (professors)? Growing up, my parents had always wanted me to become a doctor and if not a doctor, then an attorney. I think they were a little bit disappointed when I decided to go to graduate school (to join the legal academy), but they were supportive.<sup>106</sup>

Another corollary of the model minority stereotype is that Asian Americans are brought up in strict and authoritarian households that discourage the verbal sparring found in the legal academy.

The experience of Harvard Law Professor Jeannie Suk, however, challenges this popular paradigm:

As for my experience, for whatever reason, my tendency in law school was to be vocal and argumentative, and that helped. This went against my cultural upbringing, in which my parents would actually punish me and think I was disrespectful, as a child, if I was outspoken or disagreeing with adults.<sup>107</sup>

Though such prejudices may arise, qualified candidates should not be discouraged from seeking professorships. Several Asian American female law professors have fought against (and triumphed over) the inbred stereotypes—neither pursuing a career in medicine and the hard sciences, nor molded to be a meek student—suggesting to others that they are able to overcome the cultural restraints perpetuated within the Asian American community itself.

In summary, the corollaries of the model minority stereotype negatively affect Asian American females seeking legal professorships by impacting how they are perceived, thereby giving rise to unfair biases within law school hiring. For example, the perception that Asian Americans are not well-rounded individuals may cast doubt on whether Asian American women can effectively handle all the pertinent duties of legal academia, such as publishing in law journals, teaching, working on committees, carrying out administrative responsibilities, and other ad hoc matters. Asian American women may also be viewed as not being sufficiently vocal or argumentative for the law academy.

### *C. History: Immigration Pipeline Problem and the Restriction of Asian American Women*

The dearth of Asian American female law professors can also be attributed to a historical pipeline problem—the Asian American community has essentially been a bachelor society for most of its history in

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106. Email, *supra* note 10.

107. E-mail from Jeannie Suk, Professor of Law, Harvard Law School, to Shawn Ho, LLM Student, Columbia Law School (Apr. 15, 2010, 17:20:04) (on file with author).

the United States. In 1852, of the 11,794 Chinese in California, only seven were women.<sup>108</sup> In 1870, women comprised only 7.2 percent of the 63,199 Chinese in the country.<sup>109</sup>

The immigration of Asian women into the United States was virtually barred from 1875 to the end of World War II. In 1875, Congress passed the Page Act—the first federal restrictive immigration statute that prohibited the entry of Asian immigrants who were considered undesirable (e.g., prostitutes), thereby drastically reducing the immigration of Asian women to the United States.<sup>110</sup> The National Origins Act of 1924 banned immigration from East Asia entirely; even Chinese wives of American citizens could not enter the United States.<sup>111</sup>

Reflecting the subordinating effects of the synergistic reinforcement of gender, sexuality, race, and national origin, these restrictive immigration laws stemmed from concern that female Asian immigrants would spawn successive generations of Asians in the country.<sup>112</sup> With these laws in place, there were gross gender imbalances in virtually every Asian immigrant group in the United States until the Immigration and Naturalization Act of 1965.<sup>113</sup>

For example, from 1849 (the California Gold Rush) to 1882 (Chinese Exclusion Act), well over 90 percent of the Chinese in the United States were adult males.<sup>114</sup> In 1890, the ratio of Chinese men to women in the country was 27 to 1.<sup>115</sup> The ratio of Chinese men to women in the early twentieth century progressed as follows: 18.9 to 1 (1900), 14.3 to 1 (1910), 7 to 1 (1920), 3.9 to 1 (1930), and 2.9 to 1 (1940).<sup>116</sup> Japanese women comprised 4 percent of the Japanese population on the U.S. mainland in 1900, and 12.6 percent in 1910. Of the Filipinos admitted into California between 1920 and 1929, only 6.7 percent were women. Korean women comprised 25 percent of the Korean population on the U.S. mainland in 1920, and 34 percent in 1930. During this period, out of the 474 Asian Indians in America, none were women.<sup>117</sup>

108. Natsu Taylor Saito, *Model Minority, Yellow Peril: Functions of "Foreignness" in the Construction of Asian American Legal Identity*, 4 ASIAN AM. L.J. 71, 87 n.102 (1997).

109. GARY Y. OKIHIRO, MARGINS AND MAINSTREAMS: ASIANS IN AMERICAN HISTORY AND CULTURE 67-68 (1994).

110. See Abrams, *supra* note 63, at 643. In 1882, the Chinese Exclusion Act barred Chinese laborers from the United States. Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. REV. 405, 467 (2005).

111. See Wei, *supra* note 37, at 793.

112. See Abrams, *supra* note 63, at 662.

113. See Cho, *supra* note 56, at 183.

114. ROGER DANIELS, ASIAN AMERICA: CHINESE AND JAPANESE IN THE UNITED STATES SINCE 1850 9 (1988).

115. See Abrams, *supra* note 63, at 702.

116. See DANIELS, *supra* note 114, at 68-69.

117. See Wei, *supra* note 37, at 793.

The gender imbalance among Asian Americans was not rectified until sometime after World War II.<sup>118</sup> The immigration of Asian women to the United States only increased pursuant to the War Brides Act of 1945.<sup>119</sup> Even then, immigration of Asian persons into the country was capped at a mere 2,000 persons annually until the Immigration and Naturalization Act of 1965.<sup>120</sup>

Seen from this pipeline perspective, it is perhaps understandable that it was only after the 1980s that Asian American women gained positions as law professors.<sup>121</sup> Many U.S. law schools hired their first Asian American professor (usually male) only after 1991.<sup>122</sup> In 2007, less than 1 percent of law professors were Asian American women.<sup>123</sup> As a result of their more recent entry into the legal academy, most Asian American women are still in the more junior ranks, and many have yet to attain tenure.<sup>124</sup> In fact, it was not until 1998 that the United States had its first tenured Asian American female law professor at the UCLA School of Law.

#### *D. National Origin: Perpetual Foreigner Syndrome/Orientalism*

Asian American females aspiring to be law professors also suffer from the perpetual foreigner syndrome. Asian Americans are viewed as a unit<sup>125</sup> of "perpetual foreigners."<sup>126</sup> The "palimpsest of Asian origin is never fully erased in the U.S.,"<sup>127</sup> even though the majority of Asians in America are citizens.<sup>128</sup> And even when the "Asian Americans are born [in the United States], have lived here for many years, are highly educated and dressed in American attire, and have no distinguishable foreign accent, some Americans may still unconsciously perceive Asian Americans as

118. For example, women made up almost 90 percent of Chinese immigrants from 1946 to 1952. See Abrams, *supra* note 63, at 702. Male dominance in the Chinese American community dropped from 65.5 percent in 1950 to 57.4 percent in 1960. See DANIELS, *supra* note 114, at 312.

119. ERIC K. YAMAMOTO ET AL., *supra* note 12, at 261.

120. Gabriel J. Chin et al., *Beyond Self Interest: Asian Pacific Americans Toward a Community of Justice: A Policy Analysis of Affirmative Action*, 4 ASIAN PAC. AM. L.J. 129, 144 (1996). Admittedly, some of the later waves of Asian immigrants were well educated and came from "well-to-do families." See Wei, *supra* note 37, at 796.

121. See Moran, *supra* note 18, at 471.

122. See Yamamoto, *supra* note 19, at 2.

123. See *Statistical Report on Law Faculty 2007-2008*, *supra* note 4, at 11, 16.

124. See Chew, *supra* note 13, at 15.

125. Kara Miller, *Do Colleges Redline Asian-Americans?*, THE BOSTON GLOBE (Feb. 8, 2010), available at [http://www.boston.com/bostonglobe/editorial\\_opinion/oped/articles/2010/02/08/do\\_colleges\\_redline\\_asian\\_americans](http://www.boston.com/bostonglobe/editorial_opinion/oped/articles/2010/02/08/do_colleges_redline_asian_americans).

126. Matthew Yi & Ryan Kim, *Asian Americans Seen Negatively: Results of Landmark Survey Called Startling, Disheartening*, CHRONICLE STAFF WRITERS (Apr. 27, 2001), available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2001/04/27/MN199998.DTL>.

127. See Aoki, *supra* note 61, at 4.

128. See U.S. CENSUS BUREAU, THE AMERICAN COMMUNITY—ASIANS: 2004 4 (Feb. 2007). About seven of every ten Asians are U.S. citizens. *Id.*

foreigners".<sup>129</sup>

Professor Pat K. Chew noted that Asian Americans are viewed as a "model minority" but not "model *Americans*."<sup>130</sup> With Asian Americans stereotyped as being "foreign," anti-Asian sentiment is a particular type of bigotry and racism unique to Asian Americans.<sup>131</sup> In that sense, Asian Americans suffer as Asian Americans, and not just generically as persons of color.

Why are Asian Americans branded as perpetual foreigners? First, Asians were the last group of immigrants prohibited by law from becoming American citizens.<sup>132</sup> Asians were precluded from being naturalized citizens of the United States until 1952, when the Immigration Act of 1952 was passed. As a result, Asian immigrants involuntarily retained alien status despite years of residence in this country.<sup>133</sup> This reflects the subordinating effects of the synergistic reinforcement of race, ethnicity, and national origin.

Second, due to physical characteristics, Asian Americans find it difficult to blend into U.S. society. Physical qualities of Asian Americans, such as the shape of the eyes, the color of the hair, and the complexion of the skin, make Asian Americans stand out.<sup>134</sup> Though immigrants of European ancestry could shed their past relatively easily due to physical similarities to other whites in the United States, the same could not be said about the Asian Americans, as "[Asian Americans] are still not fully integrated into the mainstream because of [their] yellow skin and almond eyes. Much has changed in 100 years (since the Exclusion Act), but [they] cannot escape the distinction of (the integration of national origin and race)."<sup>135</sup>

Third, echoing the integration between race, ethnicity, culture, and national origin, American society has been bombarded with sociocultural constructions of Asians as being culturally different. For example, the media has portrayed Asian American actors and actresses as speaking broken English, Pidgin English, or with a foreign accent.<sup>136</sup> Asian towns in the United States, such as Chinatown, Koreatown, and Japantown, are perceived to reflect the quaint Orientalism of all Asian Americans.

The U.S. courts have worsened matters for Asian Americans by

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129. See Chew, *supra* note 2, at 35.

130. *Id.* at 32-33.

131. Kris Song, *The Present Contours of Asian American Legal Scholarship: Its Themes, Objectives, and the Search for an Asian American Legal Perspective*, 9 ASIAN PAC. AM. L.J. 83, 88 (2004).

132. See Gee, *supra* note 68, at 160.

133. See Chew, *supra* note 2, at 35.

134. See Wei, *supra* note 37, at 787.

135. See DANIELS, *supra* note 114, at 344.

136. KENT A. ONO & VINCENT PHAM, ASIAN AMERICANS AND THE MEDIA 70 (2009)

suggesting that individuals of Asian descent are too different to assimilate. For example, Justice Harlan's famous dissent in *Plessy v. Ferguson* acknowledged this presumption in derogatory remark: "There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States . . . I allude to the Chinese race." Such a perception has become seared into the American psyche.<sup>137</sup>

Finally, post-9/11, the War on Terror has exacerbated the feeling of foreignness and alienation for some Asian Americans (e.g., South Asian women). For example, U.S. airlines have racially profiled and singled out Muslim Asian women wearing head coverings for passenger security checks.<sup>138</sup> At Chicago's O'Hare Airport, National Guard troops put a young Pakistani American woman through a degrading strip search.<sup>139</sup> Statistics have shown that law enforcement efforts directed towards South Asian women have increased.<sup>140</sup> The singling out of these communities has macabre echoes of the mass internment of Japanese in the United States during World War II.

The perception of Asian Americans as perpetual foreigners has detrimental consequences for Asian American women aspiring to be hired as law professors. For example, Asian Americans may be perceived to be inarticulate and have poor communication skills.<sup>141</sup> Under this stereotype, Asian Americans do not fit the image of articulate law professors—those with foreign accents, especially, are seen by some as speaking poor English.<sup>142</sup> Asian American professors who have accents are often criticized for such cultural markers and receive negative evaluation comments such as "Can't speak English," "We aren't learning a thing in class," and "Why can't we get real American teachers?"<sup>143</sup>

In a study by Professor Donald L. Rubin, the participants not only "heard" a foreign accent (where there was none) when they listened to a tape-recorded speech while looking at a photograph of an Asian American female instructor, but also understood less of what she said as a result of the "accent."<sup>144</sup> The perception that Asian Americans have poor

137. See Chew, *supra* note 2, at 35 (citing *Plessy v. Ferguson*, 163 U.S. 537, 561 (1896)).

138. Charu A. Chandrasekhar, *Flying While Brown: Federal Civil Rights Remedies to Post-9/11 Airline Racial Profiling of South Asians*, 10 ASIAN AM. L.J. 215, 219 (2003).

139. *Id.* at 216.

140. Andrea J. Ritchie et al., *In the Shadows of the War on Terror: Persistent Police Brutality and Abuse of People of Color in the United States*, DEPAUL J. FOR SOC. JUST., 175, 179 (2008).

141. See Chew, *supra* note 2, at 41. "This impression of Asian Americans may reveal themselves in subtle ways. As one Asian American law professor described the experience as a student, 'professors and students refused to engage me intellectually even though I had high grades. My questions were never really answered.'" *Id.*

142. Professor Claude Steele's stereotyped threat may be a factor.

143. Mari J. Matsuda, *Voices of America: Accent, Antidiscrimination Law, and a Jurisprudence for the Last Reconstruction*, 100 YALE L.J. 1329, 1353 (1991).

144. See Chang & Davis, *supra* note 68, at 53. "Rubin had sixty-two study participants, all

communication skills is severely damaging for Asian American women who want to enter legal academia, where law professors generally need to be skillful wordsmiths who speak and write well.<sup>145</sup>

Professor Jerry Kang explained that the nature of stereotyping is largely related to how our minds process the world. He stated that generally, "[w]e see what we expect to see. Like well-accepted theories that guide our interpretation of data, schemas incline us to interpret data consistent with our biases."<sup>146</sup> As a result of the perpetual foreigner syndrome, the negative student evaluations and perception of Asian Americans as inarticulate and having poor communication skills probably put pressure on the administration to decline hiring Asian Americans.

UC Davis Law Professor Lisa Ikemoto can relate her own experiences: "When I taught in the Midwest, I received teaching evaluations in which a few students complained that they could not understand me because I had a 'foreign accent'. I'm Sansei, third generation Japanese American. Like everyone, I have an accent. Mine is a typical Western U.S. accent. I can imagine some faculty anticipating student resistance or hostility and using that as a reason to not hire. . . ."<sup>147</sup> Seattle Law Professor Margaret Chon further noted:

Students can discipline and even haze professors through the formers' unconscious biases and because they out-number the professor. This happens with inexperienced women of color professors, but it can happen anytime the dynamics are threatening to the majority of students. Law students tend to be anxious and fearful to begin with, so classrooms can be difficult to handle until one develops a teaching 'schtick'. It is hard for women of color to develop that 'schtick'. The dragon lady can be a little over the top for most students, even though they will welcome a hard Socratic White male. One does not want a Geisha, while a kind man is great.<sup>148</sup>

The generalization that Asian Americans' command of English is poor

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undergraduates at a large southeastern university, listen to one of several tape-recorded speeches lasting about four minutes. The tapes were all recorded by a single speaker who was a doctoral student in speech communications and a native English speaker raised in central Ohio. As the participants listened, a slide representing a photo of the speaker was projected on a screen. Participants were shown a picture of either a Caucasian or an Asian woman. Both women were similarly dressed, were of similar size and hairstyle, and were photographed in the same setting and pose standing at a lectern in front of a chalkboard. Rubin found that comprehension was 'lower for the groups exposed to an Asian visage, and higher for groups that saw a Caucasian instructor.' Moreover, "accent was perceived as more foreign and less standard in the case of the Asian instructor's photograph." *Id.*

145. See Chew, *supra* note 13, at 18-19.

146. Jerry Kang, *Trojan Horses of Race*, 118 HARV. L. REV. 1489, 1515 (2005).

147. E-mail from Lisa Ikemoto, Professor of Law, Univ. of Cal., Davis, School of Law, to Shawn Ho, LLM Student, Columbia Law School (Apr. 18, 2010, 15:51) (on file with author).

148. E-mail from Margaret Chon, Professor of Law, Seattle Univ. School of Law, to Shawn Ho, LLM Student, Columbia Law School (Apr. 15, 2010, 10:02) (on file with author).

can be challenged. Relative to other groups, a larger proportion of Asian American female law professors are articulate individuals with moot court experience and participation on law review (with about half assuming editorial roles).<sup>149</sup> Based on data from the 2004 Census, most Asian Americans speak only English at home or speak English well.<sup>150</sup> One Asian American female law professor attests to this:

When I was growing up, my parents spoke only English at home. I immigrated to the U.S. from East Asia when I was young. We lived in the Midwest in a Kansas City suburb, and my first grade teachers stressed the importance of speaking English at home (this was the early 1980s when there was probably a stronger emphasis on English immersion at school and at home). Unfortunately, I lost my ability to speak my native language (I regained some of it by studying it in college). I think speaking English at home probably helped my English at school from a very early age.<sup>151</sup>

In addition to stereotypes defining Asian Americans as inarticulate individuals, another ramification of the perpetual foreigner syndrome is that Asian American professors are perceived to be uncaring, diffident, and "less attentive, less candid, or otherwise less engaged with the material than other American faculty members."<sup>152</sup> Hiring committees believing such stereotypes will logically deny Asian Americans professorship offers because such notions suggest that Asian Americans lack the "people skills" to effectively communicate, connect, and ultimately teach their students.

At a more general level, the consequence of the perpetual foreigner syndrome is that Asian American women may be subjected to bias based on the synergistic reinforcement of race, national origin, and images of foreign identity.<sup>153</sup> Asian Americans are viewed by whites as being inferior to whites.<sup>154</sup> Studies of white Americans reveal that they view Asian Americans as less intelligent, more violence-prone, lazier, and more likely

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149. See Chew, *supra* note 13, at 16.

150. U.S. CENSUS BUREAU, *supra* note 128, at 14.

151. E-mail, *supra* note 10.

152. Deborah J. Merritt, *Bias, the Brain, and Student Evaluations of Teaching*, 82 ST. JOHN'S L. REV. 235, 259 (2008). "Hand gestures and body movement also differ significantly by race and culture. African Americans, on average, use more intense body language than white Americans do. Conversely, Chinese Americans, Japanese Americans, and Korean Americans use less expressive body language than whites, and display their emotions less visibly. Japanese Americans are also less assertive than white Americans during verbal interactions. Disparities like these can prompt white students, still the majority in most law school classrooms, to view African American professors as more hostile than white ones, while they view Asian American professors as cold, uncaring, or diffident." *Id.*

153. See Wei, *supra* note 37, at 800-01.

154. See Teshima, *supra* note 50, at 128. It is paradoxical that what may be transformative (i.e., Asian Americans being commended as a model minority instead of being seen as a competitor) can also be deeply legitimizing of the status quo (i.e., Asian Americans are still seen as an inferior minority to Whites).

to prefer living off welfare than whites.<sup>155</sup> Perceptions of Asian American female candidates may thus be tinged by societal evaluations of racial inferiority, and the implicit characterization of Asian women as subordinate to white women.<sup>156</sup> It has also been suggested that the societal casting of Asian Americans as foreigners may unconsciously lead to Asian American law professors being limited to particular teaching and research specialties, such as international law.<sup>157</sup>

I turn next to analyzing the possible ways of increasing the pool of Asian American female law professors.

### III. GOING FORWARD: WAYS TO INCREASE THE POOL OF ASIAN AMERICAN FEMALE LAW PROFESSORS

Going forward, I propose the following strategies to increase the pool of Asian American female law professors. In the short term—that is, within the next 3 to 5 years—law schools can begin by setting up Asian American recruitment coordinator positions. In the long term, efforts should be focused on promoting Asian American female law professors as role models, and creating a mentoring group for Asian American women aspiring to be law professors.

Creating Asian American recruitment coordinator positions can reduce the hurdles faced by Asian American women aspiring to be law professors. These recruitment coordinators can help law faculties recognize and overcome stereotypes about Asian American women pertaining to race, gender, and national origin.<sup>158</sup>

Recruitment coordinators can work with the faculty hiring committee to seek out and invite qualified Asian American female law professor candidates to give presentations at the law school. This procedure will allow the faculty to evaluate a candidate's research interests, communication skills, personality, and fit with regard to her potential to become a law professor at the school. In addition, this opportunity will elevate the profile of these Asian American female law professor candidates, giving them direct contact and exposure to faculty members and students. To further enhance the profile of these candidates, the recruitment coordinators should ensure that the candidates have the opportunity to give presentations at several law schools within the same vicinity; for example, Columbia, Fordham and New York University Law Schools can constitute one group.

The recruitment coordinators should also invite existing Asian American female law professors to hold lunch-time talks, roundtable

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155. See Chew, *supra* note 2, at 32.

156. See Cho, *supra* note 56, at 188.

157. See Chew, *supra* note 13, at 37.

158. See Tsuang, *supra* note 93, at 677.

discussions, and information sessions at the law school. These law professors can speak on their personal experiences and the challenges and rewards of pursuing an academic career as an Asian American female. These sessions should be open to the public, and are likely to attract Asian American female students who are thinking of becoming law professors. Interested students would benefit from understanding the research interests and perspectives of Asian American women in the law academy. Seeing the Asian American female law professors in action would send a powerful message to these students about the possibility of their own futures in the legal academy.

The law schools should be required to submit annual reports to the Asian American recruitment coordinators documenting the faculty recruitment rates for Asian American females.<sup>159</sup> Such a requirement should be included as part of the faculty diversity index in law school rankings, such as the U.S. News and World Report,<sup>160</sup> to ensure that the reporting requirement is taken seriously by the law school leadership. The law schools' annual reports should also be made public and include detailed statistics on the gender and racial profile of its faculty.

Long term efforts should highlight Asian American law professors as role models to combat the various negative stereotypes heaped upon Asian American women.<sup>161</sup> Professor Jerry Kang has highlighted the importance of positive role models, and has "explained how exposure to positive exemplars of subordinated categories can decrease implicit bias."<sup>162</sup>

Implementation of these efforts may face challenges. For example, it is difficult for any one role model to reflect the diversity of Asian American women. However, in the aggregate, a group of Asian American female law professors will be an effective representation of Asian American women and serve as a useful long-term strategy to renegotiate the Asian American female law professors' identities pertaining to race, gender, and national origin.<sup>163</sup> These Asian American role models can help debunk negative perceptions of Asian American females by demonstrating that Asian American female law professors are articulate, confident, and high achievers in legal academia with well-rounded lives. Meanwhile, various stereotypes of Asian American females are commonplace and have been etched deeply into our consciousness through contemporary media. These perceptions are exacerbated by the fact that the control of the media

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159. *Id.* at 678.

160. Amar & Johnson, *supra* note 55.

161. Gabriel Chin noted that, "This is not to say that people can have role models of only their own race. Nonetheless, in America today, race continues to have social salience such that the successes of a minority individual will often inspire other individuals of the same race to imagine and attempt similar success." See Chin et al., *supra* note 120, at 136 n.28.

162. See Kang, *supra* note 146, at 1557.

163. See Aoki, *supra* note 61, at 58-60.

is in the hands of increasingly fewer owners.<sup>164</sup> However, it is argued that such representations pertaining to gender, race, and national origin are socio-culturally constructed signs susceptible to varying degrees of negotiation and resistance. By contesting such meanings, these signs are challenged and re-coded along shifting cultural, economic, and legal lines. By engaging in such contests through the promotion of Asian American female role models who are law professors, stereotypical images are destabilized, and space is created for transformational restructuring and renegotiation of Asian American female identities.<sup>165</sup>

Finally, there should be a mentoring group by Asian American female law professors for Asian American women who aspire to enter legal academia.<sup>166</sup> This can be based loosely on the "Northeast Corridor Collective," a mentoring group for African American female professors.<sup>167</sup> Asian American women who wish to enter the legal academy should be encouraged to seek out Asian American female law professors as mentors, perhaps through the assistance of recruitment coordinators.

Professor Katherine L. Vaughns has described the benefits she received from the mentoring provided by the Northeast Corridor Collective founded in 1988:

Those of us on the East Coast were fortunate enough to have been beneficiaries of a group of African-American women in law teaching known as the Northeast Corridor Collective. It was the brain child of Emma Coleman Jordan and Linda Greene, whose early guidance and mentoring were enormously helpful to me . . . informal groups like this one are still very much needed for women of color in particular. Today the collective continues to provide women of color a safe place for scholarly feedback, as well as mentoring for the third wave of non-white women now entering the legal academy.<sup>168</sup>

Some commentators have suggested that women of color who obtain tenure may be scarred by the arduous process of achieving tenure and thus, unlikely to be effective mentors. However, as evidenced from the Northeast Corridor Collective, it is likely that Asian American female professors will likewise, be willing and able to mentor capably Asian American women who aspire to go into the legal academy.<sup>169</sup>

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164. *Id.* at 4.

165. *See id.*

166. The importance of minority networks was highlighted in Ming M. Zhu's article. *See* Zhu, *supra* note 29, at 26.

167. *See* Vaughns, *supra* note 39, at 498. For completeness, Professor Patricia Williams has pointed out that in its early years, the Northeast Corridor Collective included Native American, Hispanic, and Asian American women (*e.g.*, Professor Mari Matsuda).

168. *Id.* at 498-99.

169. *Id.*

## CONCLUSION

The dearth of Asian American female law professors is important, as the paucity of Asian American women in the legal academy has significant societal consequences. Law professors are influential in both society and the legal profession; excluding Asian American women from this role denies them the authority of these positions and access to the network of law professors in the legal academy.

I have argued that the reasons for the dearth of Asian American female law professors are complex and encompass an intriguing narrative: they are a co-synthesis of dynamics, including (1) gender/sexuality, (2) race, (3) history, and (4) national origin. These dynamics synergistically reinforce each other in maintaining a subordinating effect on the hiring of Asian American female law professors.

I have also endeavored to fill the literature's omission of Asian American female law professors describing their experiences with discriminatory treatment and feelings of exclusion, which provide a fascinating counter-narrative to the dominant media narrative of Asian Americans as a model minority (i.e., Asian Americans facing little or no discrimination).

Finally, I have recommended several strategies, both short-term and long-term, to increase the pool of Asian American female law professors.