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Blood Debt

Sawyer Thanh Nash

ABSTRACT

Scholars have long criticized the model minority myth as harmful to Asian Americans and rooted in anti-Blackness. Fewer scholars, however, have analyzed whether and to what extent the contemporary Asian American identity emerged from and depends on the model minority myth and with it, anti-Blackness. Even fewer have done so using a Vietnamese-American vantage point. This Article does both.

This Article elevates Vietnamese American voices to disrupt anti-Black narratives in the model minority myth and casts doubt on the usefulness of the very concept of Asian American racial identity. The model minority myth is so intertwined with the Asian American identity that any deconstruction of the myth must also deconstruct the Asian American identity. This Article builds on two preexisting critiques of the model minority myth—flattening and anti-Blackness—from a uniquely Vietnamese American vantage point by elevating the disruptive narratives of Vietnamese Americans and Viet-Black coalition building. By adopting this vantage point, this Article builds on a tradition of narrative in critical legal scholarship and women-of-color feminist coalitional politics to dismantle the model minority myth, elevate Viet experiences, and demonstrate the promise of solidarity.

ABOUT THE AUTHOR

JD, Cornell Law School. This Article emerged as a paper in Ezra Young's Spring 2023 Critical Race Theory seminar at Cornell Law School. As always, I am incredibly grateful for Ezra's unconditional support for me as a scholar and a person. Special thanks to Chan Tov McNamarah for helpful comments and always encouraging me to write, to Alexis Hoag-Fordjour and Grace Carson for guiding me through the publication process, and to Kylee Nguyễn for her enthusiasm for this project. Thanks to Blaine Tracy for reading countless drafts and putting up with me using words like "framework" in casual conversation. Shoutout to the APALJ editors for their helpful edits and more importantly, their commitment to advancing Asian American scholarship. Above all, I thank my family and ancestors for trusting me with our stories. I never wanted to be the first, but I am so grateful that I will not be the last.

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Today, to get a degree, many of you have been in debt of thousands of dollars for school; but for me, I have owed a debt of blood, bone, flesh of million Vietnamese since my safe time to study here costs the death, suffering of my people, destruction in my country — Vietnam.
 Nguyễn Thái Bình¹

I. INTRODUCTION

I have a story to tell. It's the story of a friendship between two radical individuals: Martin Luther King, Jr. and Thích Nhất Hạnh.² King, of course, is well-known for his role in the Civil Rights movement but less well-known (and certainly less celebrated) for his opposition to the Vietnam War.³ Thích Nhất Hạnh, or Thầy,⁴ as Pure Land Buddhists⁵ call him, is well-known

1. Nguyễn Thái Bình, *Commencement Address at the University of Washington, 1972* (transcript available in the University of Washington Library) (hereinafter "Blood Debt") <https://digitalcollections.lib.washington.edu/digital/collection/pioneerlife/id/20703> [<https://perma.cc/UWU5-24LQ>].

2. Throughout this Article, I will refer to the names of Vietnamese historical figures in the order that they traditionally appear: surname followed by given name. I will refer to Vietnamese names using their full name instead of only their surname to avoid confusion with common Vietnamese last names, like Nguyễn. I endeavor to use proper accents when known. All spelling and accent mistakes are my own.

3. On April 4th, 1967, exactly one year before he was assassinated, Martin Luther King, Jr. gave a speech titled "Beyond Vietnam." See generally Martin Luther King, Jr., *Beyond Vietnam — A Time To Break Silence*, <https://www.americanrhetoric.com/speeches/mlkatimetobreaksilence.htm> [<https://perma.cc/QGQ5-3HUY>]. For a summary on the significance of *Beyond Vietnam*, see generally Việt Thanh Nguyễn, *The MLK Speech We Need Today Is Not the One We Remember Most*, TIME, (Jan. 17, 2019), <https://time.com/5505453/martin-luther-king-beyond-vietnam/> [<https://perma.cc/HD4M-HLHB>].

4. "Thầy" means "teacher" in Vietnamese.

5. Pure Land Buddhism is a form of Mahayana Buddhism.

in Mahayana Buddhist circles for his role as a leader in Buddhist opposition to the War.

King and Thầy first met in 1966 after Thầy wrote to King to praise of his work and request support in opposing the War.⁶ In this letter, now titled *In Search of the Enemy of Man*, Thầy spoke about the recent self-immolation by Buddhist monks in protest of the War's repression, which Thầy noted had been difficult for Americans to understand.⁷ While many Americans, coming from a western Christian worldview, understood the monks' actions as acts of suicide, Thầy contextualized these acts as sacrificial expressions of self-construction—of commanding attention, speaking with authority, and using one's body to forge an optimistic future for generations to come.⁸ As Thầy wrote, “[t]o burn oneself by fire is to prove that what one is saying is of the utmost importance. There is nothing more painful than burning oneself. To say something while experiencing this kind of pain is to say it with the utmost of courage, frankness, determination and sincerity.”⁹ One year later, in 1967, King and Thầy met in Chicago, where King told Thầy that he “[felt] compelled to do anything to help stop this war.”¹⁰ King incorporated anti-war politics into his activism by speaking out against the War and its imperial roots.¹¹ In Vietnam, Thầy explained, King was viewed by many Vietnamese people as a *bodhisattva*: one who works for the well-being and emancipation of others.¹²

To me, this friendship reflects a historical juncture where the aspirations of Black Americans and Vietnamese people were harmonious rather than adversarial. Certainly, Jim Crow presented staunchly different struggles for African Americans as compared to the hardships endured by the Vietnamese during the War. While African Americans contended with the legacy of chattel slavery and questions of inclusion in the American polity, Vietnamese grappled with the legacy of colonization and the violence of decolonization and nation-building. Different as the origins of these struggles may be, at the core of these struggles is a common desire for self-determination and questions about how to build a better future. Sacrifice for the prospect of a better future is quintessentially Black and Vietnamese.

All too often, however, being both African American—specifically the descendant of enslaved people—and Vietnamese places me in an uncomfortable racial third space. On one hand, being a Black man has pathologized me

6. Thích Nhất Hạnh, *In Search of the Enemy of Man*, PLUM VILLAGE, (hereinafter “Enemy of Man”) <https://plumvillage.org/about/thich-nhat-hanh/letters/in-search-of-the-enemy-of-man> [<https://perma.cc/2V3N-JVCV>] (last visited Jan. 3rd, 2024).

7. *Id.*

8. *See id.*

9. *Id.*

10. Thích Nhất Hạnh, *Letter after hearing of Dr. Martin Luther King, Jr.'s assassination*, (Apr. 4, 1968), (hereinafter “Assassination Letter”) <https://plumvillage.org/about/thich-nhat-hanh/letters/letter-after-hearing-of-dr-martin-luther-king-jr-s-assassination> [<https://perma.cc/UHM3-CAF5>].

11. *See generally* Nguyễn, *supra* note 3.

12. *See* Assassination Letter, *supra* note 10 (explaining a bodhisattva as “an enlightened being trying to work for the emancipation of other human beings.”).

as a troublemaker, as inherently criminal, lazy, and suspect. Being Asian, however, has valorized me as a model student and hard worker, a poster American that Black people could become if they simply tried harder. These stereotypes are at odds with each other and incompletely describe my experience as someone racialized on multiple fronts.

Now, more than ever, I am aware of the uncomfortable third space I occupy. In April 2022, Florida Governor Ron DeSantis signed into law the Stop WOKE Act, a vaguely-worded law that prohibits the teaching of “divisive” concepts and prohibits the teaching that some groups are privileged or marginalized based on their race or sex.¹³ The Act’s greatest consequence, perhaps, is that it prevents AP African American studies from being taught in Florida schools.¹⁴ One year later, in May 2023, Governor DeSantis signed into law a bill requiring the teaching of Asian American Pacific Islander history in K-12 schools.¹⁵ But, as the friendship between King and Thầy tells, what is Asian American history without African American history?

This Article builds on Frank Wu’s assertion that “[a]rguably, the perception of Asian Americans as a racial group, as distinct from separate ethnic groups, i.e., Chinese Americans, Japanese Americans, Korean Americans, Vietnamese Americans, etc., would be impossible without the model minority myth.”¹⁶ Rather than join the chorus of scholarship critiquing the model minority myth alone, I invoke a distinctly Black and Vietnamese American voice to show that the model minority myth is so intertwined with the Asian American identity such that any deconstruction of this myth must also include the deconstruction of the Asian American identity.

Part I orients the reader by offering an overview of Asian Americans generally, Vietnamese Americans, the model minority myth, and its main critiques. Specifically, this Part calls attention to two critiques of the model minority myth, both of which frame this Article—flattening and anti-Blackness. Flattening lumps diverse and differently positioned communities, including Vietnamese American communities, into one distilled “model

13. See generally Fl. H.B. 7 (2022), <https://www.flsenate.gov/Session/Bill/2022/7> [<https://perma.cc/26G7-4Y9G>]; Kathryn Russell-Brown, “*The Stop WOKE Act*”: *HB 7, Race, and Florida’s 21st Century Anti-Literacy Campaign*, UF Law Faculty Publications (2022).

14. See generally Ileana Najarro, *How AP African American Studies Came Under Attack: A Timeline*, EDUCATIONWEEK (Feb. 13, 2023), <https://www.edweek.org/teaching-learning/how-ap-african-american-studies-came-under-attack-a-timeline/2023/02> [<https://perma.cc/LCL3-V84S>].

15. See generally Fl. H.B. 1357 (2023), <https://www.flsenate.gov/Committees/BillSummaries/2023/html/3161> [<https://perma.cc/Q4HX-XVFC>]; Ileana Najarro, *Florida Is Latest State to Require Teaching Asian American and Pacific Islander History*, EDUCATIONWEEK (May 26, 2023) <https://www.edweek.org/teaching-learning/florida-becomes-latest-state-to-require-teaching-aapi-history/2023/05> [<https://perma.cc/GGM7-HMJP>].

16. Frank H. Wu, *Neither Black Nor White: Asian Americans and Affirmative Action*, 15 B.C. THIRD WORLD L.J. 225, 252 (1995).

minority,” which elevates all Asian Americans as tokens that Black Americans ought to emulate.¹⁷

Part II expands on flattening, grounding this framework within women-of-color feminist critiques of mainstream feminist movements, to explain how flattening operates within the Asian American racial identity. By flattening the diverse experiences and needs of the United States’ heterogenous Asian ethnic groups, Vietnamese communities find themselves folded into a singular pan-Asian identity where all are presumed to share the same experiences.

Part III explores how anti-Blackness laid the foundations of Asian American identity through the legal system by exploring how political scientist Claire Jean Kim’s theory of racial triangulation has manifested in the legal system. Two Supreme Court cases, *Ozawa v. United States* and *Gong Lum v. Rice*, exemplify racial triangulation at work by marking Asian Americans both as superior to African Americans and as racial pariahs inferior to white Americans.

Finally, Part IV builds on a longstanding tradition of narrative within the Critical Legal Studies tradition by offering Vietnamese American stories as interventions and models for community advocacy and coalition building. Through these narratives, we can envision a post-flattening and post-triangulation future where marginalized communities build coalitions with each other and align against white supremacy.

“ASIAN AMERICANS” AND THE MODEL MINORITY MYTH
Je ne connais de mon pays que des photos de la guerre
Un film de Coppola, des hélicoptères en colère
Un jour, j’irai là-bas, un jour dire bonjour a mon ame.
Un jour, j’irai là-bas, te dire bonjour, Vietnam.
 Quynh Anh, *Bonjour Vietnam*¹⁸

Broadly, “Asian American” refers to a myriad of ethnic groups that trace their heritage from the Asian subcontinent.¹⁹ Sociologist Raul S. Casarez describes the broad swath of identities comprised under the Asian American

17. Indeed, one of the earliest usages of the term “model minority” appeared in a New York Times article titled “Success Story, Japanese-American Style.” In this article, the author juxtaposes African Americans, which he labels “problem minorities,” with Japanese Americans, which he labels “model minorities.” See generally William Petersen, *Success Story, Japanese-American Style*, NEW YORK TIMES (Jan. 9, 1966) <https://www.nytimes.com/1966/01/09/archives/success-story-japaneseamerican-style-success-story-japaneseamerican.html>

18. I don’t know you except for the images of war/A film by Coppola, the helicopters in anger/One day I’ll go there, one day to say hello to my soul/One day I’ll go there to say hello, Vietnam. Quynh Anh, *Bonjour Vietnam* (Universal 2006).

19. There is no clear geographic line demarcating what countries are in Asia versus outside Asia. The Census Bureau, for example, defines “Asian” as “a person having origins in any of the peoples of the Far East, Southeast Asia, or the Indian Subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.” United States Census Bureau, *About the Topic of Race*, <https://www.census.gov/topics/population/race/about.html> [<https://perma.cc/48HR-2NFB>] (last visited May 9, 2023).

umbrella, explaining that “[t]here is considerable phenotypic variation (e.g. skin color) amongst Asians and even variable recognition as Asian, pointing to a wide range of encounters faced by this group and substantial ethnic differences in race, (pan)ethnic, or American identifying.”²⁰ He further explains that “[w]hile Asian Americans are a rapidly growing demographic, they remain highly ethnically heterogeneous, with ethnicity strongly shaping how group members view race, ethnicity, and nationality as important identities.”²¹

“Asian American” is simultaneously a census designation and a culturally weighty term. It is an identity marker of groups raced as perpetual foreigners, once on eugenicist grounds and still currently on supposed “cultural” grounds.²² The contemporary racialization of Asian Americans can be traced back to the racialization of Chinese Americans through the Chinese Exclusion Acts as well as the racialization of Japanese Americans through the Gentlemen’s Agreement and World War II internment.²³ This historical context transformed “Chinese” and “Japanese” from mere indicators of national origin into the racialized categories of “Mongolian” and “Asiatic,” categories that applied to descendants of all immigrants from the Asian subcontinent and restricted access to the American polity.²⁴

A. *Vietnamese Americans*

Vietnamese Americans occupy a distinct place as the largest refugee community in the United States.²⁵ Broadly, Vietnamese immigration to the United States occurred in three waves, with refugees in each wave bringing markedly different experiences and positionalities with each successive wave.²⁶ The Fall of Saigon in 1975 led to the first large wave of Vietnamese refugees, most of whom belonged to South Vietnam’s privileged elite who fled North Vietnam’s communist rule and resettled in the United States.²⁷ The second wave, significantly larger than the first, began in late 1977 as hundreds of thousands of South Vietnamese refugees fled the newly reunified Vietnam

20. Raul S. Casarez, Allan Farrell, Jenifer L. Bratter, Xiaorui Zhang & Sharan Kaur Mehta, *Becoming Asian (American)? Inter-ethnic Differences in Racial, Ethnic, and American Identities for Asian American Adults*, 22 *ETHNICITIES* 347, 349 (2022).

21. *Id.* at 363–65.

22. I use scare quotes here because “cultural,” in this context, is a dog whistle used to perpetuate the model minority myth. See discussion *infra* Part III.

23. See Robert S. Chang, *The Invention of Asian Americans*, 3 *U.C. IRVINE L. REV.* 947, 954 (2013).

24. *Id.* at 953.

25. Linda Ho Peché, Alex-Thai Dinh Vo & Tuong Vu, *Introduction*, in *TOWARD A FRAMEWORK FOR VIETNAMESE AMERICAN STUDIES: HISTORY, COMMUNITY, AND MEMORY* 3 (2023). Although some Vietnamese lived in the United States prior to 1965, most arrived after 1965. See Stacy M. Kula, Vinh Q. Tran, Iraise Garcia, Erika Saito & Susan J. Paik, *Vietnamese Americans: History, Education, and Societal Context*, 16 *J. OF S.E. ASIAN AM. ED. & ADVANCEMENT* 1, 4 (2021).

26. Linda Ho Peché, Alex-Thai Dinh Vo & Tuong Vu, *Introduction*, in *TOWARD A FRAMEWORK FOR VIETNAMESE AMERICAN STUDIES: HISTORY, COMMUNITY, AND MEMORY* (2023) 8–9.

27. *Id.*

by boat or land.²⁸ The third wave of the late 1980s and early 1990s, enabled in part by family reunification programs and other favorable immigration policies, facilitated the migration of individuals with ties to the United States, its citizens, or the former South Vietnamese government.²⁹

The unique qualities of each wave paint a picture of how Vietnamese diaspora communities sit atop two complicated legacies: war and migration. Fleeing the War³⁰ and the demise of South Vietnam, Vietnamese immigrants have carried South Vietnamese nation-building and civic engagement to the United States.³¹ Of all immigrant groups, Vietnamese Americans have the highest rate of naturalization and have used this organizing power to push for laws preserving a distinctly South Vietnamese identity in the United States.³² As a migrant community, Vietnamese Americans navigate both the perpetual foreign status that many Asian groups share, but perhaps contradictorily, have benefitted from (at least facially) receptive immigration policies due to the War's legacy.³³ However, despite these immigration policies, Vietnamese Americans occupy an uncomfortable third space in the American public imagination, experiencing prejudiced reception from a country reeling from the aftermath of the War.³⁴ As Kula explains, "[t]he Vietnam War ignited fiery debates in the United States in the 1960s. Some Americans saw the war as a fight against communism, while others viewed it as a tragic loss of American lives. With such division and hostility, Vietnamese refugees were stuck in the

28. Peché, *supra* note 26, at 10.

29. *Id.*

30. I use the term "war" instead of "Vietnam War" because the latter narrowly construes the War and its impact on other ethnic groups. Việt Thanh Nguyễn explains that "in considering Vietnamese refugee memory and the way it serves the interests of the Vietnamese Diaspora, we should be skeptical of how the so-called 'Vietnam War' is retold as a story in which the Vietnamese are the victims but not the victimizers. The very name 'The Vietnam War' is a misnomer, not only because Viet Nam is a noun and not an adjective, a country and not a war; it's a misnomer because in the very naming, in the way Viet Nam burns in memory, other Southeast Asians are erased, other names displaced." *Speak of the Dead, Speak of Viet Nam: The Ethics and Aesthetics of Minority Discourse*, 6 NEW CENTENNIAL REV. 7, 33 (2006).

31. See, e.g., Tuan Hoang, *The August Revolution, The Fall of Saigon, and Postwar Reducation Camps: Understanding Diasporic Vietnamese Anticommunism*, in TOWARD A FRAMEWORK FOR VIETNAMESE AMERICAN STUDIES: HISTORY, COMMUNITY, AND MEMORY (2023) 76–94 (explaining how South Vietnamese refugees transported anticommunist activism from the homeland to the United States, manifesting, for example, in a 1999 protest against a VCR store that displayed the Vietnam flag and a poster of Hồ Chí Minh).

32. Peché, *supra* note 26, at 13 ("Vietnamese, especially the first generation, have used their voting power to push for laws and regulations that help preserve their ideals, values, and identities, such as adopting the flag of South Vietnam as the symbol of the Vietnamese community in the United States.").

33. Kula et al., *supra* note 25, at 4 ("As the Vietnamese community arrived after 1965, they faced fewer challenges and barriers in terms of government policies than other Asian groups that came earlier when immigration from Asia was highly restricted.").

34. *Id.* at 3.

middle of a controversy.”³⁵ Việt Thanh Nguyễn describes this controversy as a debate over who truly counts as “American,” recalling:

Even if I no longer remember how old I was when I saw these words, I have never forgotten them: ANOTHER AMERICAN DRIVEN OUT OF BUSINESS BY THE VIETNAMESE. Perhaps I was 12 or 13. It was the early 1980s, and someone had written them on a sign in a store window not far from my parents’ store. The sign confused me, for while I had been born in Vietnam, I had grown up in Pennsylvania and California, and I had absorbed all kinds of Americana: the Mayflower and the Pilgrims; cowboys and Indians; Audie Murphy and John Wayne; George Washington and Betsy Ross; the Pledge of Allegiance; the Declaration of Independence; the guarantee of life, liberty and the pursuit of happiness; all the fantasy and folklore of the American Dream.³⁶

B. *The Model Minority Myth*

Understanding the model minority myth is integral to understanding the emergence of the Asian American identity.³⁷ As this myth goes, Asians have assimilated into mainstream (white) America by adopting the mainstream’s values of individualism, meritocratic success, and hard work.³⁸ Legal scholar Nicholas Loh explains:

In an example of interest convergence between Asian Americans and white Americans, the model minority myth exists and is promoted at the expense of Black Americans. It exists and allows for less openly racist treatment of Asian Americans but also the continued degradation of Black Americans. The model minority myth allowed for dominant white culture to romanticize Asian Americans pulling themselves up by their bootstraps without a “welfare handout” and, at the same time, critique other BIPOC [Black, Indigenous, and People of Color] communities for not doing the same. This was an evolution of the ways in which Black Americans and Asian Americans have been traditionally pitted against each other, going back as far as the 1800s.³⁹

Thus, while Asian Americans may appear phenotypically distinct from white Americans, they have at times embraced a form of constructive whiteness⁴⁰ by aligning with whites and against other communities of color,

35. *Id.* at 10.

36. Việt Thanh Nguyễn, *Asian Americans Are Still Caught in the Trap of the ‘Model Minority’ Stereotype and it Creates Inequality for All*, TIME (June 26, 2020), <https://time.com/5859206/anti-asian-racism-america/> [<https://perma.cc/4C6T-FT8T>].

37. For a historical overview of the model minority myth, see generally Wu, *supra* note 16, at 228–36.

38. See Nicholas Loh, *Diasporic Dreams: Law, Whiteness, and the Asian American Identity*, 48 FORDHAM URB. L.J. 1331, 1346–47 (2021).

39. *Id.* at 1348

40. Harris explains that, as immigrants arrived in the U.S., “the question was not so much ‘who is white,’ but ‘who may be considered white,’ as the historical pattern was that various immigrant groups of different ethnic origins were accepted into a white identity shaped around Anglo-American norms.” Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707, 1742–43 (1993).

especially Black Americans. As Wu articulates, “the model minority myth posits that Asian Americans gain prosperity and acceptance into the mainstream only if they reject the lead of ‘problem minorities’ who challenge racial hierarchy.”⁴¹

Scholars across disciplines have critiqued the model minority myth. Frank Wu distills these critiques into six main points, writing that the myth: (1) ignores Asian American history; (2) ignores African American history; (3) ignores discrepancies in Asian American educational attainment; (4) unreliably depends on family income figures; (5) ignores socioeconomic differences between Asian ethnic groups; and (6) whitewashes anti-Asian discrimination.⁴² Though these points often interact with one another, this Article explores the second and fifth critiques. By ignoring socioeconomic differences between Asian ethnic groups, the model minority myth flattens a diverse range of Asian American experiences. By ignoring African American history, the model minority myth perpetuates anti-Blackness.

These two critiques serve as an outline for deconstructing the Asian American identity and demonstrate that, like the model minority, the concept of “Asian American” is a myth resting on false assumptions about race and ethnicity. Furthermore, Viet activists and scholars have long disrupted the model minority myth and thus can serve as inspiration for a path forward—one that envisions a future beyond the Asian American myth.

II. FLATTENING

*It's all prophecy and if I gotta be sacrificed for the greater good
Then that's what it gotta be.*

Kendrick Lamar & The Weeknd, *Pray for Me*⁴³

Wu's fifth point—that the model minority myth ignores socioeconomic differences—reflects a broader concern that the myth flattens the diverse range of Asian ethnic experiences. Flattening refers to the compression of a wide variety of experiences to fit into a singular narrative. In particular, “ethnic flattening” refers to the process by which individual, distinct ethnic groups become members of larger, generalized racial classifications. This Article argues that the ethnic flattening process consists of three interrelated processes. First, the experiences of several ethnic groups are standardized—all ethnic groups subject to the general classification are assumed to share the same experiences. Second, the needs of these ethnic groups are standardized—since these groups share the same experiences, they are thought to share the same needs. Finally, a new racial identity forms and the racial category is standardized. Flattening creates identities built on the assumption that those within the flattening scheme are more similar to each other

41. Wu, *supra* note 16, at 239.

42. *See id.* at 244–46.

43. KENDRICK LAMAR & THE WEEKND, *Pray for Me*, on *BLACK PANTHER: THE ALBUM* (Aftermath Records 2018).

than to those outside the flattening scheme. Indeed, the concept of flattening is reflected in the reference to Asian Americans in general, as opposed to referring to different ethnic groups by name or even region. One term implies one experience.

Flattening builds on the decades-old critiques that Black feminists have continuously made against mainstream (white) feminist movements. These critiques remarked that mainstream feminist movements, usually led by white feminist organizers, homogenized women's experiences and marginalized, dismissed, or outright ignored the unique experiences of women of color.⁴⁴ Mainstream liberal feminist movements in the 20th century focused on achieving inclusion within the prevailing social order, but failed to critique or challenge the supposed necessity or value of this social order.⁴⁵ These mainstream movements often ignored that this very social order perpetrated violence against women marginalized on various fronts.⁴⁶ For example, mainstream feminist movements, dominated by affluent white women, rejected the stereotype of women as frail, passive individuals confined to domestic roles while failing to consider the inapplicability of this stereotype to many women of color.⁴⁷ Critically, these movements overlooked the deeply rooted racial and colonial frameworks embedded within the system they wished to join, perhaps because they benefited from these very frameworks.⁴⁸ Moreover, they failed to recognize the intricate interplay between their own concept of women and women's struggles and the pervasive racial and colonial stereotypes regarding womanhood.⁴⁹ For example, critical race feminist scholar

44. For a discussion of this critique in the legal context, see generally Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Policies*, 1989 U. CHI. L. F. 139 (1989) [hereinafter *Demarginalizing*] (explaining how the tendency to view discrimination through a single-axis framework excludes and erases the lived experiences of Black women, thus excluding Black women from the protections of antidiscrimination laws).

45. For an overview of liberal feminism, see generally Lucy E. Bailey, *Feminism, Liberal*, in THE WILEY BLACKWELL ENCYCLOPEDIA OF GENDER AND SEXUALITY STUDIES (2016).

46. See, e.g., Sierra Brewer & Lauren Dundes, *Concerned, Meet Terrified: Intersectional Feminism and the Women's March*, 69 WOMEN'S STUD. INT'L F. 49, 49–50 (2018) (summarizing both the historical and contemporary disconnects between mainstream white feminists and Black feminists).

47. See generally María Lugones, *Radical Multiculturalism and Women of Color Feminisms*, 13.1 J. CULTURAL & RELIGIOUS THEORY 68, 69 (2014) (“Colonialism in early and late modernity was constituted both by a Eurocentrist conception of knowledge and culture and by the racialization of labor, of heterosexuality, and of gender. In the development of twentieth century feminisms, this connection between gender, class, heterosexuality as racialized was not made explicit. That feminism centered its struggle and its ways of knowing and theorizing against a characterization of women as fragile, weak in both body and mind, secluded in the private, and sexually passive. But it did not bring to consciousness that those characteristics only constructed white bourgeois womanhood. Indeed, beginning from that characterization, white bourgeois feminists theorized white womanhood as if all women were white.”)

48. *Id.*

49. *Id.*

María Lugones notes that the characterization of white women as weak and unfit for labor sharply contrasts the characterization of women of color, especially Black women, as biologically designed for labor.⁵⁰

In response to both the historical racialization of gender and contemporary understandings of intersectionality,⁵¹ Lugones critiques the very idea of “woman” as a gender. She explains:

The intersecting [of oppressions] hides the fusion. That is, the intersection hides the inseparability of oppressions. Gender and race, for example, do not intersect as separate and separable categories of oppression. Rather, gender oppression and race oppression impinge on people without any possibility of separation. That is why there are more than two genders. There is a multiplicity of genders. It is not that femininity and masculinity are two sets of characteristics that constitute “man” and “woman.” Rather, females racialized as non-white are not of the same gender as white females.⁵²

To Lugones, then, white women and women of color do not share the same gender; gender is intertwined with race such that different raced experiences produce different gendered experiences. Flattening thus draws on Lugones’ intervention and names the process by which universalizing terms like “woman” come into parlance. The experiences of multiple sub-groups and individuals within these groups are standardized such that these sub-groups are presumed to share the same experiences. White women and women of color—are presumed to share the same gendered experiences, which results in mainstream feminist movements operating under the incomplete assumption that all women face the same experiences and thus require the same interventions.⁵³ Through these two assumptions, a larger identity group forms, reliant on these assumptions about shared experiences and needs, with white women’s experiences constituting the standard. This process is how the term “woman” emerges as a discrete identity. This is also where flattening merges with critiques of the model minority myth, namely Wu’s overarching critique that the myth “blurs and glosses over markedly different patterns among Asian ethnic groups. The model minority myth enshrines the insult, ‘they all look alike,’ implying that ‘they are all alike.’”⁵⁴

50. See *id.* at 70 (“Historically, the characterization of white European women as fragile and sexually passive opposed them to non-white, colonized women, including women slaves, who were characterized along a gamut of sexual aggression and perversion, and as strong enough to do any sort of labor.”).

51. Kimberlé Crenshaw coined the term “intersectionality” in *Demarginalizing*. See generally Crenshaw, *supra* note 44.

52. Lugones, *supra* note 47, at 76.

53. See, e.g., Crenshaw, *supra* note 44, at 144–45 (“For white women, claiming sex discrimination is simply a statement that but for gender, they would not have been disadvantaged. For them there is no need to specify discrimination as *white* females because their race does not contribute to the disadvantage for which they seek redress. The view of discrimination that is derived from this grounding takes race privilege as a given.”).

54. Wu explains that “[s]tatistically, the socioeconomic positions of Vietnamese and other Southeast Asian refugee groups resemble the position of African Americans, rather

A glance at Census data helps expose the flaws in flattening and its role in the construction of Asian American identity. Vietnamese data in particular cut against the notion that all Asians face similar struggles and thus have similar needs. In 2020, Asians made up 7.2 percent of the U.S. population.⁵⁵ Of these, the Vietnamese population makes up 10 percent of all Asians in the United States.⁵⁶ In terms of education, the Vietnamese population largely mirrors that of the entire U.S. population, but significant gaps exist between the U.S.-born Vietnamese population and the foreign-born Vietnamese population.⁵⁷ For example, as of 2019, 19 percent of U.S.-born Vietnamese have a high school education or less, as compared to the 51 percent of foreign-born Vietnamese who have a high school education or less.⁵⁸ In 2019, the median annual household income for all Asians in the United States was \$85,800.⁵⁹ Among all Vietnamese in the United States, the median annual household income was \$69,800.⁶⁰ U.S.-born Vietnamese had a median income of \$82,400, whereas foreign-born Vietnamese had a median income of \$66,000.⁶¹ These statistics reject the conception of Asians and Asian Americans as a monolith. When education and income attainment differ among all Asians versus Vietnamese Asians, who is the “model”? Even among Vietnamese Americans, one’s U.S.-born versus foreign-born status is significant. What is the value of a pan-Asian identity when the socioeconomic conditions of Vietnamese Americans are so different?

A. *Standardized Experiences: Viet War Narratives*

One means by which the standardization of Asian experiences has marginalized Vietnamese people is exemplified in how the early pan-Asian movement, composed largely of non-Viet Asians, appropriated uniquely Vietnamese war narratives. Asian Americans saw the War as another example of racial subordination similar to what they experienced in the United States and thus mobilized around anti-War efforts as an extension of anti-racist activism.⁶² Hidden in the margins, however, are the stories of Viet

than that of whites.” Wu, *supra* note 16, at 245–46.

55. This figure includes multiracial people who identify as Asian. See U.S. CENSUS BUREAU, *Race and Ethnicity in the United States: 2010 Census and 2020 Census*, <https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html> [<https://perma.cc/5AUL-PUHL>] (last visited May 9, 2023).

56. Abby Budiman & Neil G. Ruiz, *Key Facts about Asian Americans, a Diverse and Growing Population*, PEW RSCH. CTR. (Apr. 29, 2021), <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-americans/> [<https://perma.cc/GZV3-EC2V>].

57. *Id.*

58. *Id.*

59. Abby Budiman, *Vietnamese in the U.S. Fact Sheet*, PEW RSCH. CTR. (Apr. 29, 2021), <https://www.pewresearch.org/social-trends/fact-sheet/asian-americans-vietnamese-in-the-u-s-fact-sheet/#economic-characteristics-of-u-s-vietnamese-population-2019> [<https://perma.cc/Q4TQ-F3KZ>].

60. *Id.*

61. *Id.*

62. See Ly Thuý Nguyễn, “*Thái Bình Means Peace*”: (Re)positioning South Vietnamese Exchange Students’ Activism in the Asian American Movement, 16 INT’L J. COMM. 4602,

activists who invoked distinctly Viet identities and aspirations in challenging the War, all while navigating its complexities. One such example is the story of Nguyễn Thái Bình.⁶³

Nguyễn Thái Bình was one of a cohort of Vietnamese exchange students chosen by the South Vietnamese government and the United States Agency for International Development (USAID) to attend college in the United States.⁶⁴ Part of an effort to squash communist institution-building among decolonizing countries in the Asia-Pacific, the USAID program was a Cold War solution to the growing pains of decolonization.⁶⁵ Under this program, South Vietnamese students were educated (read: Americanized) in the United States so that they would return to Vietnam and spread pro-U.S. sentiment.⁶⁶ USAID sought to train a new, pro-American Vietnamese elite for South Vietnam's nation-building.⁶⁷ Jointly overseen by the U.S. State Department and South Vietnam, students were chosen for their presumed allegiance to South Vietnam.⁶⁸ Because foreign government-sponsored academic programs were highly competitive at the time, high academic achievement and adherence to South Vietnamese anticommunism were a must.⁶⁹ Indeed, the chosen students reflected an ideological mixture of French colonialism, South Vietnamese nationalism, and the civilian extension of Nixon's Vietnamization policy.⁷⁰ Students who succeeded in South Vietnam's French-style education system had an advantage.⁷¹ Catholic applicants had an advantage in that they were, by reason of their faith, presumed anticommunist.⁷² While South Vietnam had agency in selecting students and asserted itself as an equal collaborator in the USAID program, ultimately USAID had the final say—an exercise of power that South Vietnam found paternalistic.⁷³

4605–07 (2022) (hereinafter *(Re)Positioning*).

63. See generally *id.* For a retelling of Nguyễn Thái Bình's story, see generally Ann Tran, *A Bloody Solidarity: Nguyễn Thái Bình and the Vietnamese Antiwar Movement in the Long Sixties*, 2020 BOLLER REV.: J. UNDERGRADUATE RSCH. & CREATIVITY 1 (2020).

64. Ly Thuý Nguyễn, *(Re)Positioning*, *supra* note 62, at 4607–08. For a recounting of USAID's South Vietnam efforts during the War, see generally Nguyet Nguyen, *Accidental Activists: USAID Builds a Vietnamese Antiwar Elite*, 46 DIPLOMATIC HIST. 549 (2022).

65. Ly Thuý Nguyễn, *Revolutionary Others: Migratory Subjects and Vietnamese Radicalism in the U.S. During and After the Vietnam War* (2021) (Ph.D. dissertation, University of California San Diego) at 31 (hereinafter *Revolutionary Others*).

66. *(Re)Positioning*, *supra* note 62, at 4608.

67. *Revolutionary Others*, *supra* note 65, at 26.

68. Nguyet Nguyen, *supra* note 64, at 565–66.

69. *Id.* at 555–66.

70. As Nguyet Nguyen describes, “The [USAID] program was also intended to support the goal of ‘Vietnamization.’ As early as 1965, U.S. officials expressed concern about the need to reduce U.S. military spending in Vietnam . . . It made more economic sense to have Vietnamese work as civil servants in such fields as education, engineering, healthcare, and agriculture, instead of having to send expensive Americans there.” *Id.* at 553.

71. *Id.* at 556.

72. *Id.* at 556–57.

73. *Id.* at 557–58.

The Vietnamese students were ushered into a handful of U.S. colleges, into programs and majors deemed useful for building a post-war capitalist Vietnam.⁷⁴ As such, participants were expected to return to Vietnam and either work for the South Vietnam government or at a U.S. embassy.⁷⁵ Nguyễn Thái Bình belonged to the second cohort of students, with the first cohort arriving in March of 1968.⁷⁶

Many of the students in the cohorts, however, joined the antiwar movement.⁷⁷ Nguyễn Thái Bình and many other Viet exchange students found their calling in campus activism during a time when college campuses served as organizing hubs.⁷⁸ Nguyễn Thái Bình called for peace and an immediate end to the injustice of the Vietnam War. Growing increasingly radical and increasingly frustrated with a war embodying imperialist domination of indigenous peoples, Nguyễn Thái Bình joined multiple antiwar protests despite threats of deportation from immigration officials.⁷⁹ At one protest, he carried a banner with the words “blood debt” across the front—allegedly written in his own blood.⁸⁰ When Nguyễn Thái Bình graduated from the University of Washington in 1972, he gave a commencement speech titled “Blood Debt,” invoking the figurative and literal image of blood to juxtapose his relative safety and privilege in the United States with the carnage across the sea.⁸¹ On this blood debt, he reminded the audience that “[a]ll of you have owed that blood debt too since the American people must bear responsibility for the magnitude of war crimes being committed by the United States government against the people in Vietnam, as well as in Indochina.”⁸²

By the time Nguyễn Thái Bình delivered his commencement address, he had long been protesting and speaking out against the Vietnam War, which caught the attention of both the U.S. and South Vietnamese governments.⁸³ As a result of his activism, his graduate scholarship was revoked and he was ordered deported.⁸⁴ Shortly before his flight back to Vietnam, Nguyễn Thái Bình wrote a short and cryptic letter to his friends, calling his departure a

74. *Revolutionary Others*, *supra* note 65, at 27.

75. *Id.*

76. *Id.* at 51.

77. *Id.*

78. See Ly Thuý Nguyễn, *(Re)Positioning* at 4609 (“Although conceived as a site of containment and (re)education, the American university also served as a contact zone, a site of encounter where exchange students joined antiwar and antiracist groups. The antiracist movements of the ‘long 1960s’ converted universities into sites of struggle, where students, scholars, and community members alike used campuses as strategic locations not only to demand institutional changes but also to devise and experiment with various strategies and tactics.”)

79. *Id.* at 4611.

80. See generally Tran, *supra* note 63.

81. See Blood Debt, *supra* note 1.

82. *Id.*

83. See generally Ann Tran, *A Bloody Solidarity: Nguyễn Thái Bình and the Vietnamese Antiwar Movement in the Long Sixties*, 2020 BOLLER REV.: J. UNDERGRADUATE RSCH. & CREATIVITY 1 (2020).

84. See generally *id.*

“[d]ay of action” and expressing hope that “[h]owever difficult our way is, I still believe that peace, and independence will return to our Vietnamese people and our country.”⁸⁵

In a series of events best told elsewhere,⁸⁶ during his flight back to Vietnam, Nguyễn Thái Bình took five bullets to the chest after unsuccessfully attempting to hijack a plane.⁸⁷ The exact circumstances of Nguyễn Thái Bình’s death remain unclear—in the United States, he has been portrayed as an air pirate situated within a larger trend of rogue skyjacking incidents in the 1960s and 1970s,⁸⁸ a “son of a bitch” according to the man who shot him.⁸⁹ To antiwar and Third World activists, however, Nguyễn Thái Bình’s death was a murder.⁹⁰ After his death, he became a symbol of the Third World and Asian American movements of the 1960s, which invoked his image as a symbol of anti-imperialism, especially against the War.⁹¹

Yet, as scholar Ly Thuý Nguyễn notes, “Vietnamese political actors, and to a larger extent, Vietnamese people, sit uncomfortably at the margin of conversations about the Vietnam War, its legacy, meaning, and aftermath—even among those that look at them as radical inspiration.”⁹² Asian American activists looked to the War and Nguyễn Thái Bình as inspiration for their own struggles on U.S. soil, viewing Vietnam not as home or a site of violent decolonization but as “a figurative elsewhere where radical revolution and extreme violence alike provide political lessons for American activists.”⁹³ Many Asian American activists found anti-war activism as a site of U.S.-centric organizing, viewing the War as an allegory for United States racism—a metaphorical representation of white American dominance transported overseas.⁹⁴

85. Nguyễn Thái Bình, Nguyễn Thái Bình letter to Nguyen Huu Ann regarding his flight home to Vietnam (July 3, 1972),

UNIV. OF WASH. LIBRARIES, SPECIAL COLLECTIONS, <https://digitalcollections.lib.washington.edu/digital/collection/pioneerlife/id/20702/rec/9> [<https://perma.cc/2HYJ-6NNW>] (last visited Jan. 3, 2024).

86. For a retelling of the incident on the flight, see generally Tran, *supra* note 63.

87. *Id.* at 4602–03.

88. See, e.g., Brendan I. Koerner, *Nguyễn Thái Bình Picked the Wrong Plane to Hijack*, SLATE (June 18, 2013), <https://slate.com/human-interest/2013/06/nguyen-thai-binh-picked-the-wrong-plane-to-hijack.html> [<https://perma.cc/3YN8-TXNT>] (stating that “[i]n the summer of 1972, American airline pilots were livid over the inability of both their employers and the federal government to curtail the skyjacking epidemic” and referencing Nguyễn Thái Bình as “[s]eething over his expulsion [from the United States] as well as the carpet-bombing of North Vietnam, Binh had decided to hijack his flight home as an ‘act of revenge.’”).

89. See Paul L. Montgomery, *Hijacker Killed in Saigon; Tried to Divert Jet to Hanoi*, NEW YORK TIMES (July 3, 1972), <https://www.nytimes.com/1972/07/03/archives/hijacker-killed-in-saigon-tried-to-divert-jet-to-hanoi-south.html>

90. See generally Tran, *supra* note 63.

91. See Ly Thuý Nguyễn, *(Re)Positioning*, *supra* note 62, at 4612–13 (describing the means by which various Asian American groups incorporated Nguyễn Thái Bình’s name and story into their protests).

92. *Id.* at 4613.

93. *Id.* at 4606.

94. See *id.*

Vietnamese people were not seen as literal bodies entangled in violence and nation-building but rather as avatars of racial resistance.⁹⁵ Thus, Nguyễn Thái Bình's legacy morphed into a story of pan-Asian American struggles against white American racism.

Telling Nguyễn Thái Bình's story from a Vietnamese vantage point, however, contextualizes his story as uniquely Vietnamese and resituates him as the protagonist in his own narrative. Nguyễn Thái Bình's story is valuable not only for the utility it provides others in the creation of a pan-Asian American consciousness but also for its account of what it meant—and still means—to exist in a Vietnamese body. The War was central to Nguyễn Thái Bình's positionality in the United States, not because it could be analogized to domestic racial hierarchies and hypocrisies, but because it was literally killing the people in his homeland. Indeed, his emphasis on physical Vietnamese bodies during his commencement speech—the “blood, bone, flesh”—exemplifies how the War, rather than existing as a figurative elsewhere for Nguyễn Thái Bình, was tied up in his embodiment.⁹⁶

The War's legacy continues. Vietnamese presence in the United States stems not from pursuit of economic opportunities, unlike many other Asian immigrant groups, but largely from the War itself.⁹⁷ Vietnamese Americans encounter different socioeconomic experiences than those of Asian Americans generally.⁹⁸ These experiences stem, at least in part, from the legacy of the War⁹⁹ and its impact on post-War Viet generations.¹⁰⁰ Despite the uniqueness of the Vietnamese experiences, these narratives have been subsumed into larger pan-Asian struggles, appropriated by those who do not live with the War's legacy as an attempt to establish a larger identity.¹⁰¹

95. See *id.*

96. See Blood Debt, *supra* note 1.

97. According to Kula et al., “[w]hile Asian immigrants have been immigrating to the United States since the 1800s, the Vietnamese presence was not prominent until the 1970s. According to Takaki (1998), there were just 603 South Vietnamese living in the United States in 1964, comprised of students, professionals, and political ambassadors. While early Asian immigrants came to the United States mostly for economic reasons, the Vietnamese were forced to relocate their lives to the United States due to the aftermath of the Vietnam War. The first wave of Vietnamese were not immigrants by choice, but rather by necessity, as refugees.” Kula, *supra* note 21, at 6.

98. See *supra* text notes 21–26.

99. Kula et al. note that “[w]hen thinking of Asian groups by region, Southeast Asian groups who immigrated as a result of the Vietnam War have experienced the most divergent educational outcomes, and the Vietnamese community is by far the largest of these groups. Their more recent and more complex history in the United States warrants further investigation into how factors of immigration and incorporation may have played a role in their educational outcomes.” Kula, *supra* note 25, at 2.

100. For example, one study notes that some Vietnamese American college students come to understand their ethnic identity through the legacy of the Vietnam War. See Elaine N.Y. Le & Sonia H. Ramrakhiani, *Know Family, Know Self: Exploring the Influence of Family on Vietnamese American College Students' Experiences*, 7 J. COMMITTED TO SOC. CHANGE ON RACE & ETHNICITY 84, 108–09 (2021).

101. In reflecting on how War narratives appear in Asian American art, Việt Thanh

B. *Standardized Needs: The Erasure of Amerasians*

Another way by which ethnic flattening has marginalized uniquely Viet needs in favor of a pan-Asian identity can be found in the case of Amerasians. “Amerasian” is a term of art, largely confined to the immigration context, typically referring to the children of U.S. citizens and Asian nationals. In her article *Aren’t These Our Children? Vietnamese Amerasian Resettlement and Restitution*, Bonnie Kae Grover uses the term to refer to the children of Vietnamese mothers and American fathers, usually soldiers or otherwise affiliated with the U.S. military.¹⁰² In its policy manual, the United States Citizenship & Immigration Services (USCIS) begins its discussion of Amerasians with a statement that “[d]uring the Korean and Vietnam Wars, some U.S. military personnel fathered children with Asian nationals while stationed in Asia.”¹⁰³ The Amerasian Act of 1982, however, applies to individuals “born in Korea, Vietnam, Laos, Kampuchea (Cambodia), or Thailand” during a statutorily specified timeframe.¹⁰⁴ The Amerasian Homecoming Act of 1987, however, extends only to Amerasians born in Vietnam.¹⁰⁵ Thus, the word “Amerasian” itself refers to different groups at different times, all supposedly united in their origins on the Asian subcontinent.

Tens of thousands of Amerasian children were born in Vietnam during the War era, often to working-class women.¹⁰⁶ Despite most of these children having American citizen fathers, these children were not born U.S. citizens due to their birth in Vietnam¹⁰⁷ out of wedlock.¹⁰⁸ Grover notes that

[b]ecause of their appearance and ancestry, the Amerasians had no home country. They did not belong in Vietnam and under United States immigration law they could not easily be brought home to America. The same government which sent hundreds of thousands of young male troops to Vietnam and did little in the way of instilling in them a sense of social responsibility, had created during the previous two hundred

Nguyễn explains: “From Latin America to Africa to Europe, the war is remembered by the left as the struggle of a heroic, valiant Asian people against an imperial power. That collective countermemory of the global left is as false and distorting as many American versions of the war. In the end, remembering the Vietnamese as heroic revolutionaries or suffering victims says much more about the desires of the one who remembers than those memories say about the Vietnamese themselves. We must ask of Asian America not only what it remembers but how it does so, for what purposes, and in whose interest.” Việt Thanh Nguyễn, *supra* note 31, at 15.

102. I recognize the strangeness of the term “Amerasian” but I will use it throughout this section anyways. See Bonnie Kae Grover, *Aren’t These Our Children? Vietnamese Amerasian Resettlement and Restitution*, 2 VA. J. SOC. POL’Y & L. 248–49 (1995).

103. *Amerasian Immigrants*, U.S. CITIZENSHIP AND IMMIGR. SERVICES., <https://www.uscis.gov/policy-manual/volume-7-part-p-chapter-9#footnote-1> [<https://perma.cc/QHB9-TEED>] (last updated Dec. 20, 2023).

104. *Id.*

105. *Id.*

106. See Grover, *supra* note 102, at 253.

107. Interestingly, my uncle, who was born on a U.S. military base in Vietnam, possessed dual Vietnamese and American citizenship until the age of eighteen.

108. See Grover, *supra* note 102, at 253–54.

years a complicated morass of citizenship and naturalization laws whose effect was to deny citizenship to many of the persons who most desperately needed it.¹⁰⁹

Amerasians reflect the unique needs of Vietnamese communities for two reasons. The first reason is social. The general American public was unaware about the existence of Amerasians because these children lived abroad in a country that, for several decades, had little to no diplomatic relations with the United States.¹¹⁰ These children were, in effect, out of sight and out of mind. Amerasians remained largely unknown until advocates for a prisoner of war/missing in action (POW/MIA) resolution pushed for some degree of public diplomacy, however strained, with the now-unified Vietnam.¹¹¹ This social context is unique because unlike other Asian countries, knowledge of Vietnam is comparatively new in the collective memory of Americans. Additionally, as the link between POW/MIA efforts and Amerasian awareness demonstrates, addressing Amerasian needs first required addressing the legacy of the War.

Admittedly, the Amerasian Acts reflected some rudimentary understanding that the U.S. needed to address its Cold War imperial legacy and move towards normalized relations with Vietnam. It addressed this legacy, however, by assuming its legacy was universal across countries and contexts. Underlying the Amerasian Act of 1982 is an assumption that all Amerasian children, whether from Vietnam, Korea, or Thailand, face the same circumstances in their homelands such that one immigration policy can fix the legacies of multiple wars. However, the Act spans five countries and multiple wars.¹¹² It covers a thirty-two-year timeframe and applies only to children fathered by a U.S. citizen, thus rendering it inapplicable to children fathered by noncitizen U.S. soldiers.¹¹³ All children falling under these circumstances are amalgamated into the “Amerasian” label and subjected to the same immigration policies—a single solution spanning a large geographic, temporal, and contextual space.

Indeed, the standardization of Amerasian experiences was apparent in the disregard for the geopolitical context of U.S.-Vietnam relations after the War. As mentioned earlier, after the War ended, U.S.-Vietnam relations remained strained if not entirely absent.¹¹⁴ These relations worsened due to largely ineffective legislation aimed at ameliorating the Amerasian issue. For example, the Amerasian Immigration Act of 1982 offered an immigration path for Amerasian children on the condition that the mothers of these children relinquish all rights to their child.¹¹⁵ This condition offended the Vietnamese

109. *Id.* at 259–60.

110. See *id.* at 254–55.

111. See *id.* at 255–56.

112. *Amerasian Immigrants*, *supra* note 103.

113. *Id.*

114. See Grover, *supra* note 102, at 254–55.

115. Specifically, the Act required that “in the case of an alien under eighteen years of age, (i) the alien’s placement with a sponsor in the United States has been arranged by an appropriate public, private, or State child welfare agency involved in the intercountry

government, who refused to help enforce this part of the statute. In response, families of Amerasians were permitted to enter the United States only under refugee status, which again offended the Vietnamese government.¹¹⁶

To understand both the necessity and the inadequacy of the Amerasian Acts from a Vietnamese vantage point, we must understand the early days of the Communist regime in newly reunified Vietnam. Although many South Vietnam affiliates had fled during the first exodus from the country, many more remained, and still more held a commitment to South Vietnamese anticommunism.¹¹⁷ To deal with these dissidents and remain in control, the Vietnamese Communist Party (VCP) imprisoned South Vietnamese loyalists and anticommunists in brutal, dehumanizing, and violent re-education camps.¹¹⁸

To the South Vietnamese, nationalism, decolonization, and anticommunism were intimately intertwined.¹¹⁹ South Vietnamese leaders saw themselves not as puppets of the American war machine but as autonomous individuals pursuing an independent Vietnam and protecting Vietnamese culture from communism's attack.¹²⁰ Re-education prisons, in addition to the violence they inflicted upon South Vietnamese bodies, further denigrated South Vietnamese political prisoners by removing this autonomy.¹²¹ Guards referred to prisoners as "puppets" and "hired soldiers for American imperialists," denying the agency of the South Vietnamese people.¹²² While imprisoned, South Vietnamese prisoners were required to describe themselves using these terms during the re-education process.¹²³

Thus, to be South Vietnamese in the newly reunified Vietnam was both to have a target on one's back and to be denigrated as an American imperialist conspirator, one whose politics stemmed from foreign brainwashing. It is

placement of children and (ii) the alien's mother or guardian has in writing irrevocably released the alien for emigration." See PUB. L. 97-359, 96 STAT. 1716 (Oct. 22, 1982) See also Grover, *supra* note 102, at 263-65.

116. *Id.*

117. Tuan Hoang, *August Revolution, Fall of Saigon, and Postwar Education Camps*, in TOWARD A FRAMEWORK FOR VIETNAMESE AMERICAN STUDIES: HISTORY, COMMUNITY, AND MEMORY at 86-87.

118. See *id.* at 87-93 (describing the experiences of political prisoners in Vietnamese communist re-education camps).

119. See Y Thien Nguyễn, *Legacies and Diasporic Connectivity: Dialogues and Future Directions of Vietnamese and Vietnamese American Studies*, in TOWARD A FRAMEWORK FOR VIETNAMESE AMERICAN STUDIES: HISTORY, COMMUNITY, AND MEMORY at 29 ("For South Vietnam, national formation was inextricably tied to the project of creating an anticommunist society. As oft-repeated across the Republican era, the task to 'build the nation' (dựng nước) must go hand in hand with the mission to 'save the nation' (cứu nước) from communism.").

120. Hoang, *supra* note 117, at 81-82.

121. See *id.* at 89-90 ("Very often, and especially during the first few years of incarceration, [re-education] camp authorities berated prisoners for supporting the 'imperialist Americans' and fighting against the revolution.").

122. *Id.* at 92.

123. *Id.*

no wonder, then, that Amerasians faced (and continue to face) discrimination for their parental status. In Vietnam, many of these children are visibly multiracial and thus subject to discrimination, existing as a visual representation “that their mothers consorted with a hated enemy.”¹²⁴

As discussed earlier, different groups have been subsumed into a series of immigration policies that seek to address the legacies of US intervention in East and Southeast Asia through a singular set of immigration policies.¹²⁵ While groups need compassionate immigration policies, broad traditional immigration avenues may be insufficient when geographically contextualized. Amerasians in particular reflect a uniquely Vietnamese need in terms of immigration law, stemming from a uniquely Vietnamese (and Indochinese) war legacy. It also requires a solution tailored to the lived experiences of Vietnamese communities, especially Amerasian communities. Though a comprehensive policy solution is outside the scope of this Article, perhaps a country-specific set of policies would be an improvement.

Through Nguyễn Thái Bình and Amerasians, we can see how the flattening of Vietnamese people into a pan-Asian identity co-opts our stories and marginalizes our unique experiences and needs.

III. ANTI-BLACKNESS AND RACIAL TRIANGULATION

*I hate to admit this, brother, but there are times
When I'm eating fried chicken
When I think about nothing else besides eating fried chicken,
When I utterly forget about my family, honor and country,
The various blood debts you owe me,
My past humiliations and my future crimes—
Everything, in short, but the crispy skin on my fried chicken.
Linh Dinh, Eating Fried Chicken¹²⁶*

Anti-Blackness, the ultimate project of the model minority myth, has historically laid the foundation for what it means to be Asian American. This foundation-building has occurred in two stages. First, it occurred in the pre-civil rights era through litigation, as East Asian litigants attempted to obtain their civil rights by holding themselves out as distinctly non-Black. Next, after the civil rights era, it occurred (and continues to occur) through the proliferation of the model minority myth and the juxtaposition of “Asian cultural values” with “Black cultural values,” whether explicit or veiled. Through both stages, an Asian American identity emerged.

Claire Jean Kim’s racial triangulation theory offers a lens for critically examining the role of anti-Blackness in the model minority myth and, by

124. Grover, *supra* note 102, at 254.

125. See notes 104–114 for a discussion on immigration policies covering Vietnam, Thailand, and Korea.

126. Linh Dinh, *Eating Fried Chicken*, <https://www.poetryfoundation.org/poems/54624/eating-fried-chicken> [<https://perma.cc/H72N-YEAA>].

extension, the Asian American myth.¹²⁷ Kim proposes this theory as an alternative to two other dominant frameworks for analyzing the experiences of non-Black people of color, each of which inadequately accounts for the structure of the United States' racial caste system.¹²⁸ Kim explains:

Asian Americans have not been racialized in a vacuum, isolated from other groups; to the contrary, Asian Americans have been racialized relative to and through interaction with Whites and Black [people]. As such, the respective racialization trajectories of these groups are profoundly interrelated. The problem with the racial hierarchy approach, on the other hand, is that its notion of a single scale of status and privilege is belied by the fact that Whites appear to have ordered other racial groups along at least two dimensions or axes historically. Angelo Ancheta, for instance, points out that Black [people] have been denigrated as inferior while Asian Americans have been denigrated more often as outsiders or aliens.¹²⁹

In contrast, racial triangulation accounts for the means by which Asian Americans, as neither Black nor white, have been racialized vis-a-vis these two groups on multiple axes—superior/inferior and insider/foreigner.¹³⁰ Indeed, Kim's geometric conception of institutional racism stems from a need to go “beyond Black and white” and understand how groups are differently raced and how they are raced with reference to each other.¹³¹

Racial triangulation occurs in two simultaneous, compounding processes. The first, relative valorization, describes the process by which the white dominant group elevates and privileges Asian Americans relative to African Americans while still maintaining white supremacy.¹³² White Americans cast Asian Americans as the “model minority,” embodying hard work and apolitical complacency within the status quo.¹³³ White supremacy praises these stereotypes insofar as they represent the opposite of African Americans, stereotyped as lazy, criminal, and eager to agitate the status quo in search of “special rights.”¹³⁴ The valorization of Asian Americans is less of a genuine

127. See generally Claire Jean Kim, *The Racial Triangulation of Asian Americans*, 27 *POLITICS & Soc'y* 105 (Mar. 1999).

128. *Id.*

129. *Id.* at 106.

130. *Id.* at 107.

131. See *id.* at 106 (proposing the “field of racial positions” framework as a means of moving beyond binaristic Black/white racial analyses).

132. See *id.* at 107 (describing relative valorization as the process “whereby dominant group A (Whites) valorizes subordinate group B (Asian Americans) relative to subordinate group C (Black [people]) on cultural and/or racial grounds in order to dominate both groups, but especially the latter”).

133. *Id.* at 121.

134. See, e.g., *id.* at 120 (describing how, by praising Asian Americans as “proxy whites,” conservatives can pursue a racial retrenchment agenda and “indirectly convey a denigrating image of Black [Americans]—that they are lazy, that they want something for nothing, that they bring crime and chaos with them wherever they go—while avoiding charges of racism.”).

appreciation for the contributions of Asian Americans throughout history and more accurately a backhanded stab at African Americans.

On the other hand, civic ostracism, the second process, ensures white supremacist dominance over Asian Americans by casting them as perpetual foreigners, unassimilable racial pariahs excluded from the political process.¹³⁵ Asian Americans are never truly conceived as Americans. Rather, they are viewed as possessing inherent ties to their ancestral homelands such that they remain a latent (or, at times, explicit) outsider threat to the United States—the yellow peril.¹³⁶ Thus, if relative valorization confers marginal acceptance onto Asian Americans by positioning them as superior to Black Americans, civic ostracism counterbalances this conditional valorization by ensuring that whiteness remains superior.

Decades after its emergence, the enduring insight of racial triangulation remains.¹³⁷ Although scholars have noted that racial triangulation lacks a class dimension¹³⁸ and fails to account for settler colonialism and Indigenous genocide as a pillar of white supremacy,¹³⁹ it retains its place within an arsenal of critical analytical frameworks for examining Asian American activism. In particular, Shireen Roshanravan uses racial triangulation as a starting point for what she terms the *racial third space*, encompassing the peculiar positionality of Asian racial identity and the dual modes of resistance presented to Asian Americans.¹⁴⁰ She explains that Asian Americans “inhabit the unrep-

135. See *id.* at 107 (describing civic ostracism as the process “whereby dominant group A (Whites) constructs subordinate group B (Asian Americans) as immutably foreign and unassimilable with Whites on cultural and/or racial grounds in order to ostracize them from the body politic and civic membership.”).

136. See *id.* at 126 (“White opinionmakers continue to police the boundary between Whites and Asian Americans by imputing permanent foreignness to the latter. They do not overtly deny civic membership to Asian Americans; yet their skepticism about the legitimacy of Asian American participation in public life and their readiness to see Asian American public figures as *agents of a foreign power* powerfully constrain what civic privileges Asian Americans do enjoy.”) (emphasis added).

137. For recent scholarship incorporating racial triangulation theory, see, for example, Vinay Harpalani, *Racial Triangulation, Interest-Convergence, and the Double-Consciousness of Asian Americans*, 37 GEORGIA STATE UNIV. L. REV. 1361 (2021).

138. See generally Calvin Cheung-Miaw, *Asian Americans and Multiracial Politics: The Contribution and Limits of Racial Triangulation Theory*, 10 POL., GROUPS, & IDENTITIES 461 (2022) (noting the absence of a class component in racial triangulation theory).

139. See Nguyen Vu Hoang, *Trapped Within the White Frame: Vietnamese Americans in Post-Katrina New Orleans*, at 181, in TOWARD A FRAMEWORK FOR VIETNAMESE AMERICAN STUDIES: HISTORY, COMMUNITY, AND MEMORY (Linda Ho Peché, Alex-Thai Dinh Vo & Tuong Vu ed. 2023) (noting that racial triangulation “fails to consider the position of Native peoples in the United States and the role of colonialism.”). The term “pillar of white supremacy” originates from Andrea Smith’s insight that the United States is structured under the three pillars of slavery/capitalism, genocide/colonialism, and orientalism/war. See generally Andrea Smith, *Heteropatriarchy and the Three Pillars of White Supremacy: Rethinking Women of Color Organizing*, in COLOR OF VIOLENCE: THE INCITE ANTHOLOGY (2006).

140. See generally Shireen Roshanravan, *Weaponizing Our (In)visibility: Asian American Feminist Ruptures of the Model-Minority Optic*, in ASIAN AMERICAN FEMINISMS

resentable ‘third space’ not only in their flesh-and-blood resistance but also *in their hegemonic racialization as neither-black-nor-white model minorities*.¹⁴¹ Like Kim, Roshanravan notes the historical uncertainty of where Asian Americans fall on the Black-white fault line, but explains that this racial third space presents Asian Americans with two modes of resistance: engage in coalition-building with Black people or align with white interests.¹⁴² She concludes,

I am thus invoking the consigned racial third space of Asian America to understand the voiced frustrations of Asian Americans about our sense of racial invisibility as US subjects of color (often expressed in relation to a hypervisible Blackness) and the particular communicative barriers toward a racial visibility that does not feed anti-Black state logics. Because the black/white binary is central to the construction of our racial ambiguity, it necessarily shapes our resistant possibilities both in maneuvering the model-minority construction to evade violent targeting by the racial state and in rupturing model-minority erasures of state-sponsored racism against us.¹⁴³

Consequently, Asian Americans have two distinct choices: adopt the model minority stereotype and align with whiteness or reject this stereotype and build alliances with Black communities. Nevertheless, within the legal sphere, some Asian American litigants have historically resisted state-sponsored racism by aligning with white interests and positioning themselves as legally distinct from Black populations.¹⁴⁴ Anti-Blackness has been invoked in the legal context as early Asian immigrant groups sought to establish equal rights in the U.S. racial caste system. Two cases, *Ozawa v. United States*¹⁴⁵ and *Gong Lum v. Rice*,¹⁴⁶ demonstrate the ways by which Asian plaintiffs sought to assimilate into whiteness by holding themselves out as markedly not Black.

A. *Ozawa and Civic Ostracism*

Ozawa v. United States (1922) concerned a Japanese man, Takao Ozawa, seeking naturalization.¹⁴⁷ Ozawa had lived in the United States for twenty

AND WOMEN OF COLOR POLITICS (2018).

141. *Id.* at 268.

142. *See id.* at 270 (“In short, Asian American hegemonic consignment to the *racial third space* in the United States compels us to face the ever-present choice between becoming legible to the US public through a portal of whiteness that prescribes closed insularity away from other nonwhite peoples, or through a portal that effectively commits one to forge an identity in relation to those ejected from the purview of white inclusion.”).

143. *Id.* at 269–70.

144. *See* discussion *infra* Parts III.A and III.B. For early lower court cases where immigrants with Asian ancestry held themselves out as white for naturalization purposes, see, for example, *In re Ah Yup*, 1 F. Cas. 223 (D. Cal. 1878) (considering whether Chinese were white for naturalization purposes and answering in the negative); *In re Halladjian*, 174 F. 834 (D. Mass. 1909) (considering whether Armenians were white for naturalization purposes and answering in the affirmative); *In re Mudarri*, 176 F. 465 (D. Mass. 1910) and *Dow v. United States*, 226 F. 145 (4th Cir. 1915) (considering whether Syrians were white for naturalization purposes and answering in the affirmative).

145. 260 U.S. 178 (1922).

146. 275 U.S. 78 (1927).

147. *See Ozawa*, 260 U.S. at 189. For early lower court cases where immigrants with

years and had attended high school and college in California.¹⁴⁸ As the Supreme Court noted, “[he] had educated his children in American schools, his family had attended American churches and he had maintained the use of the English language in his home.”¹⁴⁹ Despite these supposed marks of Americana, Ozawa’s petition for naturalization was rejected because he was born in Japan and “of the Japanese race.”¹⁵⁰ At the time, naturalization was restricted to “free white persons and to aliens of African nativity and to persons of African descent,” which therefore excluded Ozawa.¹⁵¹

Though not a lawyer, Ozawa filed his own brief with the District Court of Hawai‘i.¹⁵² His brief shows his grappling with the statutory language of “free white persons” as well as his positionality within an American Black/white racial paradigm.¹⁵³ On “white,” Ozawa contended that “the term ‘white’ was not used to exclude any race at all. It was used simply to distinguish [B]lack people from others . . .,”¹⁵⁴ conceiving of whiteness as the absence of Blackness.¹⁵⁵ He made an exception, however, for Chinese immigrants, who Ozawa dismissed as an exceptional third racial category.¹⁵⁶ The Chinese Exclusion Act of 1882, which severely restricted Chinese immigration into the United States, was “a special law” and an outlier in American racial norms.¹⁵⁷ Thus, absent special statutory circumstances, Ozawa argued, all but Black people could claim whiteness.

Japanese ancestry held themselves out as white for naturalization purposes, see, for example, *In re Knight*, 171 F. 299 (D.N.Y. 1909) (considering whether a man with an English father and multiracial Chinese and Japanese mother was white for naturalization purposes, and answering in the negative). For early lower court cases where immigrants with Japanese ancestry sought naturalization on other grounds and were denied due to their ancestry, see, for example, *In re Buntaro Kumagi*, 163 F. 922 (W.D. Wash. 1908) and *Bessho v. United States*, 178 F. 245 (4th Cir. 1910) (finding that the Japanese ancestry of noncitizen veterans served as a bar to naturalization).

148. *Id.*

149. *Id.*

150. *Id.* at 189–90.

151. *See id.* at 190 (describing § 2169 of the Revised Statutes as rendering Ozawa ineligible for naturalization).

152. *See generally* Brief for Petitioner, *Ozawa v. United States*, 260 U.S. 178 (1922) [hereinafter *Ozawa’s* brief].

153. *Id.*; see also Devon W. Carbado, *Yellow by Law*, 97 CALIF. L.R. 633, 647–63 (2009) (explaining Ozawa’s personal history as well as the arguments in his brief).

154. Ozawa’s brief, *supra* note 152, at 16.

155. *See* Carbado, *supra* note 153, at 653 (“Ozawa argued that the 1790 naturalization statute did not rely on a racial classification scheme. The term ‘free white person’ was ‘used simply to distinguish black people from others.’ For Ozawa, slavery was a normative racial baseline; the naturalization statute did no more than reflect this baseline and did not establish new racial classifications”).

156. *See* Ozawa’s brief, *supra* note 152, at 6 (“Again, if the expression ‘free white person’ meant to exclude all races except Caucasians, there [is] no necessity of making any special law prohibiting particular nationalities from naturalization. Yet in 1882, the Congress made a special law against Chinese. This will prove that the expression ‘Free White Person’ was not used to exclude any race at all.”).

157. *See id.*

The District Court of Hawai'i evidently found Ozawa's argument unpersuasive, and his case landed in the Supreme Court.¹⁵⁸ The Court considered two questions of statutory interpretation.¹⁵⁹ On the subject of Ozawa's race, the Court inquired:

By § 7 of the Act of July 14, 1870, the naturalization laws were "extended to aliens of African nativity and to persons of African descent." Section 2169 of the Revised Statutes . . . restricts the privilege to the same classes of persons, viz: "to aliens [being free white persons, and to aliens] of African nativity and persons of African descent" . . . *Is appellant, therefore, a "free white person" within the meaning of that phrase as found in the statute?*¹⁶⁰

Ozawa navigated an immigration system explicitly born out of racial exclusion and the failed promise of Reconstruction.¹⁶¹ Originally, under the Naturalization Act of 1790, only free white immigrants were eligible for naturalization.¹⁶² During the Reconstruction Era, as the Court noted, Congress amended the Naturalization Act to include Black immigrants.¹⁶³

Ultimately, the Court held that Ozawa, as a Japanese man, was not of white descent¹⁶⁴ and therefore barred from naturalization.¹⁶⁵ In so ruling, the Court equated white with Caucasian and established "a zone of more or less debatable ground outside of which, upon the one hand, are those clearly eligible [for citizenship], and outside of which, upon the other hand, are those clearly ineligible for citizenship."¹⁶⁶ Those who fall within the zone of racial ambiguity are resigned to have their race determined by courts on a case-by-case basis.¹⁶⁷

Ozawa's obvious significance is that it interpreted the naturalization laws in a way that barred Japanese nationals from U.S. citizenship.¹⁶⁸ Perhaps more significantly, however, it marked an attempt at assimilation by defining oneself as white. Ozawa urged a means of interpreting the statute such that "free white person" constituted everyone besides Black people and Native Americans.¹⁶⁹ He then sought to include Japanese people in this definition.

158. *Ozawa v. United States*, 260 U.S. 178 (1922).

159. Ozawa raised no Equal Protection arguments. *See id.* The Supreme Court considered two issues: (1) Is the Naturalization Act of June 29, 1906, limited by the provisions of § 2169 of the Revised Statutes of the United States? (2) If so limited, is the appellant eligible to naturalization under that section? *Id.* at 190.

160. *Ozawa*, 260 U.S. at 195 (italics added).

161. Carbado, *supra* note 153, at 635.

162. Naturalization Act of 1790, ch. 3, 1 Stat. 103; Carbado, *supra* note 153, at 634.

163. *Id.* at 634–35.

164. The Court made no inquiry into whether Ozawa was of African descent for the purposes of naturalization. Instead, the Court asked whether Ozawa was "a 'free white person' within the meaning of [§ 2169]." *Ozawa*, 260 U.S. at 195.

165. *Id.* at 198.

166. *Id.*

167. *Id.*

168. *See id.*

169. *Id.* at 195 ("On behalf of the appellant it is urged that we should give to this phrase ["free white person"] the meaning which it had in the minds of its original framers

Whiteness became aspirational, at least to out-groups who wished to assimilate into the American mainstream. The unpersuaded Court, however, insisted on maintaining the exclusivity of whiteness¹⁷⁰ and drew a thicker line between white and Asian.¹⁷¹

Ozawa exemplifies how civic ostracism functions as a component of racial triangulation. The Supreme Court deemed *Ozawa* unassimilable despite being otherwise qualified for naturalization.¹⁷² Asian ancestry made someone “immutably foreign” and thus subject to exclusion from citizenship and full participation in political processes. No attempts at assimilating into the dominant (white) culture could de-foreignize someone—despite *Ozawa*’s American education, loyal church attendance, and use of English, he was forever a pariah in the racial caste system.

B. *Gong Lum and Relative Valorization*

Five years after *Ozawa*, the Supreme Court again bolstered the contours of “white” versus “colored” in *Lum v. Rice* (1927).¹⁷³ Lum, the father of teenager Martha Lum, filed a petition for mandamus in the State Circuit Court of Mississippi.¹⁷⁴ The petition alleged that Gong Lum had an obligation to send his daughter to a school, that the only school available was the white-only Rosedale Consolidated High School, and that her being denied attendance at Rosedale was without legal authority.¹⁷⁵ Specifically, as the Supreme Court noted, Lum argued that “because there are no separate public schools for Mongolians [sic][.] . . . [Lum’s daughter] is entitled to enter the white public schools in preference to the colored public schools.”¹⁷⁶ His argument, in essence, was that Martha Lum was either Chinese or white, but not “colored.” Thus, a preliminary question was whether Chinese people were white, “colored,” or perhaps in another racial bucket entirely. Writing for the unanimous Supreme Court, Chief Justice Taft swiftly declared that Chinese students fell into the “colored student” bucket, stating:

As we have seen, the plaintiffs aver that the Rosedale Consolidated High School is the only school conducted in that district available for Martha Lum as a pupil. They also aver that there is no school maintained in the district of Bolivar County for the education of Chinese children and none in the county. How are these averments to be reconciled with

in 1790 and that it was employed by them for the sole purpose of excluding the [B]lack or African race and the Indians then inhabiting this country”).

170. See Harris, *supra* note 40, at 1736 (explaining how the value of whiteness derives in part from its exclusivity).

171. See also Kim, *supra* note 127, at 114 (summarizing other naturalization cases whereby “the courts engaged in often tortured arguments to fortify the border between White and ‘Mongolian’”).

172. Indeed, the Court conceded that *Ozawa* was “well qualified by character and education for citizenship . . .” *Ozawa*, 260 U.S. at 189.

173. See *Gong Lum, v. Rice*, 275 U.S. 78 (1927).

174. *Id.* at 79.

175. *Id.* at 80–81.

176. *Id.* at 82.

the statement of the State Supreme Court that colored schools are maintained in every county by virtue of the Constitution?¹⁷⁷

Chief Justice Taft's statement presupposes, with no reasoning, that Chinese students are "colored" and therefore not white. After this offhanded statement and a quick acknowledgement that a "colored" high school existed in Lum's school district, the Supreme Court considered whether a state can be said to afford a child of Chinese ancestry born in this country, and a citizen of the United States, equal protection of the laws by giving her the opportunity for a common school education in a school which receives only colored children of the brown, yellow, or black races.¹⁷⁸

The Court answered in the affirmative.¹⁷⁹ Seeing no difference between segregating Black students and segregating Asian students, the Court reasoned that segregating Asian students fell within the discretion of the Mississippi state legislature and did not conflict with the Fourteenth Amendment.¹⁸⁰ Specifically, the Court drew on *Plessy v. Ferguson*'s¹⁸¹ endorsement of segregation as a matter solely reserved to the discretion of the state.¹⁸² It was precisely because of anti-Blackness and *Plessy*'s legacy that Martha Lum could not access the school of her choice. Anti-Blackness both birthed and killed *Gong Lum*.

Gong Lum is an example of relative valorization. Lum attempted to assert proximity to the dominant racial group by disavowing Blackness. He did so because unlike Blackness, being legally white offered tangible benefits.¹⁸³ As Cheryl Harris notes, "[w]hite identity and whiteness were sources of privilege and protection; their absence meant being the object of property."¹⁸⁴ Whiteness granted access to better-resourced schools, but Blackness did not. Once again, *Gong Lum* held whiteness out as aspirational, an in-group that Asians sought to enter. Indeed, white aspirations had long existed within Chinese immigrant communities in Lum's home state of Mississippi.¹⁸⁵ In the years following the Civil War, white Southern plantation owners turned to cheap Chinese immigrant labor as a replacement for enslaved Black labor.¹⁸⁶ Turning to Chinese labor served two functions. First, it maintained the economic dominance of white Southern elites through the exploitation of a racialized group.¹⁸⁷ Second, it maintained Black subordination by upholding the supposed unassimilable nature of Chinese immigrants as a positive—a

177. *Id.* at 83.

178. *Id.* at 85.

179. *Id.* at 87.

180. *Id.*

181. 163 U.S. 537 (1896).

182. *Gong Lum*, 275 U.S. at 86.

183. See generally Harris, *supra* note 40, at 1721, 1724.

184. *Id.* at 1721.

185. See Kim, *supra* note 127, at 111–12.

186. See *id.*

187. See *id.*

sign of docility and acquiescence in contrast to unyielding African Americans during Reconstruction.¹⁸⁸

Perhaps doomed from the start, Reconstruction collapsed and ushered in a full return to Southern reliance on exploited Black labor. Some Chinese American communities remained, and over time, began to make bids for whiteness or, at the minimum, sought to distance themselves from Blackness, as Kim notes:

Incremental white gestures of acceptance prompted Chinese Americans in Mississippi to dissociate from Black [people] over time. Many Chinese Americans discouraged intermarriage with Black [people], gave their children White names, attended White churches, and made donations to White organizations in a deliberate bid to become White. If the Black struggle for advancement has historically rested upon appeals to racial equality, the Asian American struggles has at times rested upon appeals to be considered White (and to be granted the myriad privileges bundled with Whiteness).¹⁸⁹

Neither Ozawa nor Lum challenged the existence of segregation itself. Instead, they sought to define themselves as deserving of legal benefits by asking the Court to view them as white, or at the minimum, not Black. They did not seek to challenge the existence of the racial hierarchy itself but instead sought to establish themselves on a higher rung of the ladder than Black people.

This persisted after the end of formal, explicit racial classifications, morphing into a competition between two supposed cultures in conflict. Kim explains:

Since the norms of colorblindness have expurgated overtly racial claims from the “public transcript” during the post-civil rights era, talk about a group’s culture often serves to disguise what are fundamentally racial claims. The field of racial positions has now been rearticulated in cultural terms: rather than asserting the intrinsic racial superiority of certain groups over others, opinionmakers now claim that certain group cultures are more conducive to success than others. Thus, Asian American cultural values are seen as more conducive to success than (read: superior to) Black cultural values. Since talk of cultural differences inevitably activates deeply entrenched views of racial differences, however, this field remains, at bottom, an ordering of racial groups qua racial groups. Culture has become code for the unspeakable in the contemporary era.¹⁹⁰

What are the “Asian American cultural values” that Kim mentions, especially in a group hailing from over twenty countries?¹⁹¹ What are the “Black cultural values,” and what makes all Asian American cultural values

188. *See id.*

189. Kim, *supra* note 127, at 112.

190. *Id.* at 117.

191. I pose this as a question, but there is no singular “Asian American culture” or “Asian culture.” Rejecting this myth is a central part of my family’s identity. My mother is a chef and has long challenged the idea of “Asian cuisine,” instead elevating Vietnamese cooking as distinctly Vietnamese.

different?¹⁹² By asking these questions, we can see that Asian American identity rests on a mixture of homogenized experiences, sweeping assumptions, and unanswered questions. As Việt Thanh Nguyễn notes:

Asian Americans are caught between the perception that we are inevitably foreign and the temptation that we can be allied with white people in a country built on white supremacy. As a result, anti-Black (and anti-brown and anti-Native) racism runs deep in Asian-American communities. Immigrants and refugees, including Asian ones, know that we usually have to start low on the ladder of American success. But no matter how low down we are, we know that *America always allows us to stand on the shoulders of Black, brown, and Native people*. Throughout Asian-American history, Asian immigrants and their descendants have been offered the opportunity by both Black people and white people to choose sides in the Black-white racial divide, and we have far too often chosen the white side.¹⁹³

The process of civic ostracism interacts with anti-Blackness in multiple ways. The dominant white class invoked Blackness as a means of keeping Asian groups out of whiteness. Chinese immigrants were deemed Black when it aided in their disenfranchisement¹⁹⁴ and later, after marginal legal gains for African Americans, Chinese immigrants were deemed non-Black. Further, attempts to challenge civic ostracism by refuting one's status as perpetually foreign have relied on anti-Blackness. As the argument goes, one is deserving of acceptance into the (white) mainstream *because* one is not Black. This is seen in the model minority myth and its assertion that the "cultural values" of Asian Americans are superior to those of other groups, namely African Americans.¹⁹⁵ Yet, this myth still buys into the idea of Asian groups as perpetual foreigners by ascribing to all Asians the status of a "foreign culture." Being Asian American means occupying a middle space where Asians are aspirationally white but explicitly not Black.

IV. THE ROLE OF NARRATIVE

*But I'm not altogether evil, there are also times
When I will refuse to lick or swallow anything
That's not generally available to mankind.
(Which is, when you think about it, absolutely nothing at all.)
And no doubt that's why apples can cause riots,
And meat brings humiliation,*

192. See Kim, *supra* note 127, at 112.

193. Việt Thanh Nguyễn, *supra* note 36 (emphasis added).

194. Some state courts conceptualized Blackness as the opposite of whiteness, thus designating Asians as legally Black. For example, in *People v. Hall* (1854), which concerned the admissibility of the testimony of a Chinese witness, the Supreme Court of California remarked that "[t]he word 'black' may include all negroes, but the term 'negro' does not include all black [sic] persons. By the use of this term ['black'] in this connection, we understand it to mean the opposite of 'White,' and that it should be taken as contradistinguished from all White persons." 4 Cal. 399, 403 (1854).

195. See Kim, *supra* note 127, at 112.

*And each gasp of air
Will fill one's lungs with gun powder and smoke.
Linh Dinh, Eating Fried Chicken*¹⁹⁶

Narrative as a legal tactic emerged in the Critical Legal Studies (CLS) movement of the 1970s, a movement that rejected the longstanding view of law as objective and neutral.¹⁹⁷ By elevating narratives, “CLS seeks to ‘unmask’ the law, revealing it to be a partisan and antinomial¹⁹⁸ human construct.”¹⁹⁹ Specifically, CLS uses narrative as a means for contextualization, which “replaces a systemic focus on legal abstractions, which obscure and falsely sanitize human problems, with social context.”²⁰⁰ As such, within the CLS tradition, narrative helps de-sterilize the law and elevate non-traditional epistemologies to the same status as traditional legal epistemologies.

Jane B. Baron and Julia Epstein, in recognizing the importance of clearly defined terms, articulated the relationship between the oft-conflated story and narrative.²⁰¹ A story is “an account of an event or set of events that unfolds over time and whose beginning, middle, and end are intended to resolve (or question the possibility of resolving) the problem set at motion in the start.”²⁰² Narratives use stories as contextual building blocks, strategically employing the “recounting (production) and receiving (reception)” of stories to articulate a culturally meaningful idea.²⁰³ In other words, a story tells an account of what happened to a particular person or people at a particular place and time. A narrative takes this story, places it in conversation with other stories, and tells the reader why they must pay attention.

The purpose of storytelling hinges on the storyteller. In his article *Storytelling for Oppositionists and Others: A Plea for Narrative*, Richard Delgado notes that stories and narratives²⁰⁴ serve different functions for in-groups versus out-groups.²⁰⁵ An in-group, in its broadest sense, is a collective vested with political, social, and/or economic influence within a given system.²⁰⁶ Conversely, an out-group is a collective without access to

196. Linh Dinh, *supra* note 126.

197. See generally Shannon O’Byrne, *Legal Criticism as Storytelling*, 23 OTTAWA L. REV. 487 (1991).

198. An antinomy is “a fundamental and apparently unresolvable conflict or contradiction.” Antinomy, Merriam Webster, <https://www.merriam-webster.com/dictionary/antinomy> [<https://perma.cc/VGG4-XD8P>] (last visited Aug. 13, 2024).

199. *Id.* at 490.

200. *Id.* at 491.

201. Jane B. Baron & Julia Epstein, *Is Law Narrative?*, 45 BUFFALO L. REV. 141, 147 (1997).

202. *Id.*

203. *Id.*

204. Delgado’s article was written before Baron and Epstein distinguished between stories and narratives. Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411 (1989).

205. *Id.* at 2412.

206. *Id.*

the privileges held by the in-group.²⁰⁷ For in-groups, the telling of stories reinforces the very identity as *the in-group* “and provide[s] it with a form of shared reality in which its own superior position is seen as natural.”²⁰⁸ For out-groups, stories build shared meanings and value, creating a “counter-reality” within a group traditionally unvalued and on the margins.²⁰⁹ In general terms, in-groups rely on narratives to uphold their privileged status and maintain the prevailing social norms that define and validate their experiences as standard. Out-groups utilize narratives for survival, but the survival of out-groups inherently challenges the hierarchy between in-groups and out-groups, so the narratives of out-groups serve as a rejection to the standard narratives. For both groups, narratives serve as a means of survival, but the terms on which survival is achieved differ.

The dominant group’s narratives receive the most attention and are often reiterated to the point of establishing the standard against which all other experiences are measured. These narratives actively shape prevailing stories and perspectives. Conversely, out-groups’ stories receive less exposure, and when acknowledged, they face the potential for marginalization or dismissal as exceptional cases outside the norm. Admittedly, the in-group/out-group dichotomy may not fully capture the intricacies of groups that may exist within a third space or individuals who simultaneously belong to in-groups and out-groups. However, the value in this framework lies in its overarching larger propositions. It suggests that narratives serve as survival mechanisms, and it emphasizes the political nature of narratives, representing struggles for hegemony, inclusion, and exclusion within the broader quest for survival.

The dual role of narratives and the interplay between the narratives of in-groups and out-groups finds its place in the central role that writing played in Women-of-Color feminism.²¹⁰ By Women-of-Color feminism, I adopt Lugones’ conception of the term as “a coalitional identity, one that stands against monologisms, not as a racial descriptor. As a coalitional identity it is one seeking identifications that are multiple, unstable, historically situated, through complex dialogues from within the interdependence of non-dominant differences.”²¹¹ Central to Women-of-Color feminism is the concept of coalition — “forg[ing] relationships based on a theory and practice of difference.”²¹² Rather than emphasize the sameness between groups, coalitional politics recognize that oppression manifests in different ways and that multiple groups have an interest in dismantling these oppressive forces, even if the oppressions

207. *Id.*

208. *Id.*

209. *Id.*

210. See, e.g., Erica E. Townsend-Bell, *Writing the Way to Feminism*, 38 SIGNS: J. WOMEN IN CULTURE & SOC’Y 127 (2012).

211. Lugones, *supra* note 47, at 80.

212. Grace Kyungwon Hong, *Intersectionality and Incommensurability: Third World Feminism and Asian Decolonization*, in ASIAN AMERICAN FEMINISMS AND WOMEN OF COLOR POLITICS 27, 38 (2018).

differ. Coalition is a “urgent and necessary strategy for dismantling interlocking oppressive forces,”²¹³ and writing helped form these coalitions.

Writing served as a tool for intervening in mainstream feminist organizing and disrupting the knowledge and narrative hegemony produced by mainstream feminist organizers.²¹⁴ For example, Erica E. Townsend-Bell notes that Women-of-Color feminists used writing both as a means of defining and explaining their own visions of feminism and defending their right to feminism.²¹⁵ Additionally, Women-of-Color-centered writing spaces elevated the lived experiences and scholarship of women of color, who took to these spaces to add, challenge, and critique the mainstream feminist discourse of the day.²¹⁶ As Townsend-Bell explains, in the 1980s, “[a] great number of independent writing spaces allowed women of color to determine the focus of the work, and the book-length format of many 1980s writings allowed for multiple authors to appear in one space, creating a literal written coalition of women of color among authors and readers.”²¹⁷

I acknowledge that my brief discussion of Women-of-Color feminism is limited, but I offer this brief retelling as an example of the power of narrative and the promise of coalition. It further has value in complicating, challenging, and dismantling in-group narratives and epistemologies and with them, their power. Narratives, survival, and coalition-building are interlinked. This Part thus builds upon this rich tradition by offering uniquely Vietnamese narratives shared in the spirit of critical legal theory and Women-of-Color coalitional politics. This version of narrative is a deliberate insertion of unheard stories as a means of rejecting and complicating dominant narratives and elevating the voices of those previously intentionally excluded. This version of narrative intentionally elevates nuanced and complicated stories of sub-groups, both inside the law and out, and asks two questions: who else can relate and what can we learn from this story?

By offering these narratives, I address what Việt Thanh Nguyễn describes as the current challenge facing Asian Americans: “to be both Asian American and to imagine a world beyond it, one in which being Asian American isn’t

213. Liza Taylor, *Coalition from the Inside Out: Women of Color Feminism and Politico-Ethical Coalition Politics*, 40 NEW POL. SCI. 119, 124–25 (2018).

214. See Townsend-Bell, *supra* note 210, at 129.

215. *Id.*

216. In particular, Townsend-Bell explains that “[i]n the case of autonomous groups—groups led and formed by women of color—delineating a feminism that spoke to their needs as Chicanas, as Puerto Rican, African American, and Asian American women was central to their writing and organization. Where minority women were able to focus on the question of definitions, there were frequent conversations about the substance of commonalities, including the possibilities for coalition; the meaning of ‘third world’; the health, economic, political, and social concerns of minority women—in essence, the very bases of minority sisterhood. These foci were most frequently taken up in independent publications, where greater autonomy provided space for more in-depth conversations.”

Id.

217. *Id.* at 129–30.

necessary.”²¹⁸ Encouraging us to move beyond the Asian American label, he explains the two paths put forward:

“Asian Americans” should not exist in a land where everyone is equal, but because of racism’s persistence, and capitalism’s need for cheap, racialized labor, “Asian Americans” do indeed exist. The end of Asian Americans only happens with the end of racism and capitalism. Faced with this problem, Asian Americans can be a model of apology, trying to prove an Americanness that cannot be proved. Or we can be a model of justice and demand greater economic and social equality for us and for all Americans.²¹⁹

In other words, Asian Americans may continue a losing assimilationist struggle, attempting to shed the image of the perpetual foreigner and become “American enough” off the backs of other raced groups. Or we can opt for the coalitional model born from Women-of-Color feminism and choose to struggle for collective liberation rather than assimilation. Telling our narratives can help us both embrace our history as Vietnamese Americans and use our stories as the foundation for building a world where being Asian American is no longer necessary, where coalition replaces identity politics. To begin this conversation, I offer two stories: the Versailles story and the Vietnamese Fishers’ story.

A. *Rejection of Ethnic Flattening Through Viet Narrative*

The story of the Vietnamese community in Versailles, Louisiana provides a narrative that cuts against the idea of Asian Americans as a monolith focused on assimilation and anti-Blackness.²²⁰ Rather than finding strength in a pan-Asian narrative, the Vietnamese community found strength not only in their national identity, but also in building inter-community ties with New Orleans’ Black community.

The story goes like this: In a section of New Orleans named Versailles, a Vietnamese enclave found their new home.²²¹ This community was largely made of Vietnamese refugees and their children, who found the climate to be very similar to that of Vietnam.²²² Hurricane Katrina’s destruction scattered

218. Việt Thanh Nguyễn, *The Model Minority Trap*, *supra* note 36.

219. *Id.*

220. My retelling of the Versailles story is a brief summary. For the entire story, see generally Bethany Li, “*We Are Already Back*”: *The Post-Katrina Struggle for Survival and Community Control in New Orleans East’s Vietnamese Community of Versailles*, 18 *ASIAN AM. L.J.* 25 (telling the story of Vietnamese activism in Versailles).

221. *Id.* at 26–27 (“The history of the Vietnamese community in New Orleans traces back to the Communists’ rise to power in Vietnam. Migration is not new to this community. In 1954, to escape Communist rule, three villages moved together from North to South Vietnam. When Saigon fell in 1975, this community fled from South Vietnam to Fort Chafee, Arkansas. The refugee community organized to remain together through church leadership, and later that year, at the invitation of a Catholic church, settled in New Orleans through a Section 8 affordable housing program.”) (internal citations omitted).

222. As Li notes, the “familiar labor industries, climate, and religion” in New Orleans made the area attractive to Vietnamese residents, who were already familiar with fishing and shrimping. *Id.* at 27–28.

the Versailles community, and when rebuilding efforts began, little attention was paid to the unique struggles of the Vietnamese residents.²²³ For example, many Asian Americans, including Vietnamese Americans, received shelter from other community members.²²⁴ Though an admirable act of community care, the absence of Vietnamese faces in public shelters rendered the Vietnamese survivors largely out of government sight and therefore out of mind.²²⁵ As Li describes,

In places such as Biloxi, Mississippi, where a significant Vietnamese American population resides, FEMA did not erect disaster relief sites until six weeks after Katrina. Additionally, policies on the rebuilding of hurricane-damaged homes effectively barred many Asian Americans from accessing assistance. Despite the severe extent of damage to their homes (some of which were inhabitable), Asian Americans who found temporary housing with family and friends were deemed to be in “permanent housing,” and therefore, ineligible for help.²²⁶

Eventually, the Versailles Vietnamese community learned that there were no plans to reconstruct Versailles as it existed before Katrina.²²⁷ Despite thousands of residents gradually returning to Versailles, the city originally proposed turning Versailles into a green space.²²⁸ As a result, this community, led by religious leaders, organized in order to save and rebuild Versailles and New Orleans East.²²⁹ In doing so, Vietnamese leaders mobilized with local Black leaders in a joint effort to address the post-Katrina social conditions that both groups faced.²³⁰ For example, Vietnamese youth organizers forged alliances with Black organizers in a joint effort to stop the construction of a landfill one mile away from Versailles.²³¹ The organizers succeeded, and as a result, “the Vietnamese community ha[d] built a relationship with the New Orleans East African American community, many of whom acknowledge[d] the role that the Vietnamese played in ensuring that the whole New Orleans East community returned after Katrina.”²³²

This story is not well-known. Perhaps it cuts against the popular conception of Asian Americans as an assimilable model minority. Regardless, implicit in the story and in the Versailles community’s activism is a latent critique of the concept of “Asian American.” The Versailles community did not

223. *See id.* at 29 (“Despite the widespread impact of Katrina on Asian Americans and their unique challenges following the storm, the media coverage on New Orleans’ Asian American communities either was largely absent, or focused primarily on feel-good stories of successful rebuilding.”).

224. *Id.* at 30–31.

225. *Id.*

226. *Id.* at 30.

227. *Id.* at 31.

228. *Id.*

229. “Father Luke, assistant pastor of the Mary Queen of Vietnam Church, declared, ‘We are already back[.]’” *Id.*

230. *See id.* at 38–41.

231. *Id.* at 41.

232. *Id.*

engage in assimilationist politics by positing their Americanness as the reason they needed resources or support. The community never relied on the term “Asian American” or used attempts to homogenize a large group of people across diverse countries—instead, they invoked their own ethnicity, heritage, and cultural myths to find strength in who they are, rather than inventing a new identity.

B. *Rejecting Anti-Blackness through a Viet Narrative*

The Kemah-Seabrook area of Galveston, Texas was home to a substantial Vietnamese fishing community.²³³ Houston and the surrounding area underwent an economic boom in the 1970s, resulting in an abundance of jobs and housing options in a relatively low cost-of-living.²³⁴ In particular, the Gulf Coast attracted Vietnamese refugees who had previously made a living by fishing in their indigenous lands because the Gulf Coast offered fishing jobs and thus an easier economic transition.²³⁵ Many Vietnamese refugees thrived in the Gulf Coast’s shrimping industry, much to the anger of non-Viet locals who viewed these fishers as an “invading force.”²³⁶ This community caught the attention of the Ku Klux Klan, who viewed the Vietnamese fishers as a threat to American (read: white) fishers.²³⁷

While non-Viet locals had long viewed the thriving Gulf Coast Vietnamese community as an economic threat, this anger turned violent in 1981.²³⁸ Arsonists attacked and destroyed Vietnamese shrimp boats, setting the scene for Klan terrorism.²³⁹ In February 1981, the Klan hosted a demonstration where they “burned a shrimp boat replica in effigy and instructed listeners on how such fires should be set.”²⁴⁰ At this Klan rally, the Texas Klan leader, a Vietnam War veteran, declared it “necessary to ‘fight fight fight’ and see ‘blood blood blood’ if this country was to survive.”²⁴¹ The Klan drove around a shrimping boat with armed Klansmen inside.²⁴² They told the owner of Saigon Harbor to “watch your boats[,] they’re easy to burn” and

233. See generally *Vietnamese Fishermen’s Ass’n v. Knights of Ku Klux Klan*, 518 F.Supp. 993, 1001–06 (S.D. Tex. 1981) (describing the fishing industry in the Kemah-Seabrook area of Galveston, Texas).

234. See Roy Vu, *Natives of a Ghost Country: The Vietnamese in Houston and Their Construction of a Postwar Community*, in *ASIAN AMERICANS IN DIXIE: RACE AND MIGRATION IN THE SOUTH* 165 (2013).

235. *Id.* at 167.

236. *Id.*

237. See *Vietnamese Fishermen’s Ass’n*, 518 F.Supp. at 1002 (“Chief Kerber [the Chief of Police of the City of Seabrook] testified further that the tension between Vietnamese and American fishermen did not stem solely from fishing conflicts. According to Chief Kerber, some American fishermen believe there are just too many Vietnamese people in Kemah-Seabrook and therefore these individuals will only be satisfied when some of the Vietnamese leave the area.”).

238. Vu, *supra* note 234, at 167–68.

239. *Id.* at 167.

240. *Id.*

241. *Vietnamese Fishermen’s Ass’n*, 518 F. Supp. at 1001.

242. *Id.* at 1001–03.

made other various threats to Vietnamese fishers, their families, and their business partners.²⁴³

From this terrorism, local activists formed the Council of Asian American Organizations, which launched a know-your-rights campaign geared towards Viet fishers and encouraged these fishers to nonviolently resist Klan intimidation.²⁴⁴ News of the Klan's Gulf Coast terrorism eventually reached Morris Dees, co-founder and, at the time, chief trial counsel for the Southern Poverty Law Center (SPLC).²⁴⁵ The SPLC took on as a client the newly formed Vietnamese Fishermen's Association, composed of the local fishing community.²⁴⁶ The Vietnamese Fishermen's Association sued the Klan and various affiliates, seeking both preliminary and permanent injunctions.²⁴⁷ Specifically, the plaintiffs sought to

enjoin[] the defendants generally from engaging in any activity, including unlawful acts of violence or intimidation, conducted for the purpose of interfering with the rights of the Vietnamese fishermen prior to and during the shrimping season, which begins on May 15, 1981.²⁴⁸

The plaintiffs alleged civil rights violations under 42 U.S.C. § 1986²⁴⁹ and 42 U.S.C. § 1981²⁵⁰ as well as the Thirteenth and Fourteenth Amendments.²⁵¹ By happenstance, this case landed on the docket of Judge Gabrielle Kirk McDonald, the first Black judge appointed to the Texas federal bench and the third Black woman federal judge in the country.²⁵² Recognizing the urgency of the issue, she granted the plaintiff's request for expedited discovery and

243. *See, e.g., id.* at 1004 (describing a series of threatening phone calls and a postcard signed by the Klan received by an American dock owner, who allowed a Vietnamese fisherman to use her docks).

244. Vu, *supra* note 234, at 167–68.

245. Denny Chin & Kathy Hirata Chin, “*Kung Flu*”: *A History of Hostility and Violence against Asian Americans*, 90 *FORDHAM L. REV.* 1889, 1931 (2022).

246. Vu, *supra* note 234, at 168.

247. Vietnamese Fishermen's Ass'n, 518 F. Supp. at 999–1000.

248. *Id.* at 1000.

249. *Id.* at 1007 (“The plaintiffs have also alleged that the defendants have violated their rights by engaging in conduct made unlawful under 42 U.S.C. § 1986. Section 1986 is a companion to § 1985. It creates a cause of action against ‘(e)very person who, having knowledge that any of the wrongs conspired to be done, and mentioned in (s) 1985, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses to do so.’”) (internal citations omitted) (mistakes in original).

250. *See id.* (“Plaintiffs have alleged that the defendants’ actions have denied the plaintiff the same right to make and enforce contracts as is enjoyed by white persons, and have further deprived plaintiffs of the full and equal benefit of laws and proceedings for the security of persons, as is enjoyed by white persons, in violation of 42 U.S.C. § 1981.”) (internal citations omitted).

251. The plaintiffs’ cases under the Thirteenth and Fourteenth Amendments were dismissed. Interestingly, in their Fourteenth Amendment claim, the plaintiffs alleged violations of both the Equal Protection clause and the Privileges and Immunities clause. *See Vietnamese Fishermen's Ass'n*, 518 F. Supp. at 1011–12.

252. Chin & Chin, *supra* note 245, at 218.

scheduled a hearing for a preliminary injunction on May 11, 1981, a mere four days before the shrimping season would commence.²⁵³

Throughout the legal battle, the Klan continued its tradition of intimidation and violence. Texas Klan leader Louis Beam²⁵⁴ attended his deposition in full Klan robes, concealed a gun underneath these robes and refused to answer any questions during the deposition.²⁵⁵ Judge McDonald ordered all further depositions to occur in the U.S. Attorney's office with a U.S. Marshall in attendance.²⁵⁶ Evidently thwarted by Judge McDonald's order, Beam attempted to remove the case from her docket.²⁵⁷ He filed a motion to disqualify her on the grounds of personal bias or prejudice, referring to her as a "negress" at the hearing on this motion.²⁵⁸ She denied this motion from the bench.²⁵⁹ Judge McDonald and her family, during the course of the litigation, also received death threats and one-way tickets to Africa.²⁶⁰

Through legal reasoning best explained elsewhere, Judge McDonald granted the injunctions on May 14th, the day before the start of the shrimping season, concluding that "[c]learly it is in the public interest to enjoin self-help tactics of threats of violence and intimidation and permit individuals to pursue their chosen occupation free of racial animus."²⁶¹ The Klan did not appeal.²⁶²

Vietnamese Fishermen's Association offers two lessons. The first is a cautionary reminder: appealing to whiteness will not liberate Asian Americans. The Klan may not have ascribed Blackness to the Vietnamese fishers, but it certainly did not ascribe whiteness to them. Indeed, the message espoused at the Klan rally—that the blood of the Vietnamese Gulf Coast community must be spilled "if this country is to survive"—reifies Vietnamese Americans as perpetual foreigners who would be better off dead than welcomed into the American polity.²⁶³

Furthermore, those who attempted to welcome the fishers into the American polity also faced threats, an example of how white supremacy

253. *Id.*

254. Louis Beam has played a significant role in the formation of modern-day white supremacist and Neo-Nazi movements. For an analysis of Beam's influence on contemporary far-right movements, see generally JON LEWIS & HARORO J. INGRAM, *FOUNDING FATHERS OF THE MODERN AMERICAN NEO-NAZI MOVEMENT: THE IMPACTS AND LEGACIES OF LOUIS BEAM, WILLIAM LUTHER PIERCE, AND JAMES MASON* (Program on Extremism at George Washington University 2023), <https://extremism.gwu.edu/sites/g/files/zaxdzs5746/files/2023-05/founding-fathers-final.pdf> [<https://perma.cc/XB22-GACC>].

255. Chin & Chin, *supra* note 245, at 1932–33.

256. *Id.* at 1933.

257. *Id.* at 1934.

258. *Id.*

259. *Id.*

260. Chin & Chin, *supra* note 245, at 1935.

261. *Vietnamese Fishermen's Ass'n*, 518 F. Supp. At 1016–17; Chin & Chin, *supra* note 245, at 1935.

262. Chin & Chin, *supra* note 245, at 1935.

263. *Vietnamese Fishermen's Ass'n*, 518 F. Supp. at 1001.

undermines class solidarity.²⁶⁴ The second lesson is slightly more positive: a path towards justice for Viet Americans can be found in coalition-building with Black communities. The Vietnamese fishers successfully obtained an injunction by invoking civil rights laws brought forth by African Americans.²⁶⁵ As such, their success in *Vietnamese Fishermen's Association* can be credited towards centuries of Black resistance.

Viet scholars and activists are uniquely positioned to deconstruct the Asian American myth. We are doubly marginalized within both mainstream (white) society and within Asian American circles. Our lived experiences flatly contradict the assumptions underlying both the model minority myth and the Asian American myth. Most importantly, our activism and resistance offer a path forward.

CONCLUSION

*won't you celebrate with me
what i have shaped into
a kind of life? i had no model.
born in babylon
both nonwhite and woman
what did i see to be except myself?
i made it up
here on this bridge between
starshine and clay,
my one hand holding tight
my other hand; come celebrate
with me that everyday
something has tried to kill me
and has failed.*

Lucille Clifton, *won't you celebrate with me*²⁶⁶

When I began writing a draft of this Article for my Critical Race Theory seminar, I knew exactly what I wanted to discuss. I wanted to discuss how mainstream narratives on affirmative action leave out Vietnamese voices. With *Students For Fair Admissions* looming on the horizon, I wanted to explore uniquely Vietnamese takes on the issue. When I began my research, however, I found very little in the way of Vietnamese legal scholarship in general, especially on affirmative action. What I did find often centered around U.S.-Vietnam relations or the Vietnam War. Many of the Vietnamese and Viet-American law professors I found specialized in private law areas and

264. See, e.g., Harris, *supra* note 40, at 1741 (explaining how whiteness shaped the interests of an emerging working class).

265. Vietnamese Fishermen's Ass'n, 518 F. Supp. at 999 (invoking various civil rights statutes as well as the Thirteenth and Fourteenth Amendments).

266. LUCILLE CLIFTON, *Won't You Celebrate With Me*, in *BOOK OF LIGHT* (1993), <https://www.poetryfoundation.org/poems/50974/wont-you-celebrate-with-me> [<https://perma.cc/R6PC-Q9RU>].

did not explore race as much as I had hoped. Frustratingly, I felt like my existence in the legal context was defined by the Vietnam War and nothing else.

The research proved more challenging than I expected. I took away two points from this challenge: first, that I would have to expand beyond affirmative action, and second, that my paper would be among the first of its kind. Expanding beyond affirmative action, especially in the writing and research context, meant forming coalitional politics of my own—I would need to get creative about sources, potential scholars, and interdisciplinary research. Being among the first meant that I had a chance to start the conversation. The mere existence of my paper would be an intervention in and of itself.

Thus, the goal of this article has shifted since its inception. It began as an attempt to intervene in a very specific issue, but gradually evolved into a larger project exploring what it means to be both Black and Vietnamese in the United States. The answer: both Black and Vietnamese, what did I see to be except myself?

APPENDIX

Educational attainment of Vietnamese population in the U.S., 2019²⁶⁷

% of those ages 25 and older, by educational attainment

Category	High school or less	Some college	Bachelor's degree	Postgrad degree
All	45	23	22	10
U.S. born	19	26	37	18
Foreign born	51	22	19	8
All Asians	27	19	30	24
All Americans	39	29	20	13

267. Abby Budiman, *Vietnamese in the U.S. Fact Sheet: Educational Attainment of Vietnamese Population in the U.S., 2019*, PEW RSCH. CTR. (Apr. 29, 2021), <https://www.pewresearch.org/social-trends/fact-sheet/asian-americans-vietnamese-in-the-u-s-fact-sheet/#economic-characteristics-of-u-s-vietnamese-population-2019> [<https://perma.cc/U6YW-X56Y>].

