

January 2007

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Recommended Citation

Nancy Chung Allred, *Asian Americans and Affirmative Action: From Yellow Peril to Model Minority and Back Again*, 14 ASIAN AM. L.J. 57 (2007).

Available at: <http://scholarship.law.berkeley.edu/aalj/vol14/iss1/3>

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Asian Americans and Affirmative Action: From Yellow Peril to Model Minority and Back Again

Nancy Chung Allred[†]

In a fog-smothered corner of San Francisco sits an aged building known as Lowell High School. It appears to be a typical high school filled with rowdy teenagers; however, to thousands of immigrant families, this building represents a ticket to an elite university and the fast lane to the American dream. Lowell, the oldest public high school west of the Mississippi, is a top feeder school to prestigious universities, ranks fourth in the country in the number of Advanced Placement exams administered, and claims three Nobel Laureates, a California governor, and state and U.S. Supreme Court justices among its distinguished alumni.¹ Attending Lowell allows thousands of students in San Francisco to receive superb high school education at an elite college preparatory school without the burdens of expensive private school tuition.² All throughout my youth in the troubled San Francisco Unified School District, my parents and teachers lauded the school as the best, if not the only, way for future success.

I applied to Lowell in 1995, a time when the school was embroiled in the midst of a major controversy. Due to a decade-old consent decree, the highly selective college preparatory school could enroll no more than forty percent of one racial or ethnic category.³ Because of San Francisco's racial makeup, this meant that children of Chinese descent, like me, needed to produce a higher composite score from exams and grades in order to be accepted. It seemed patently unfair that my ethnicity would stunt the chances of my admittance to Lowell. Thus, from an early age, the link between race and educational opportunity has been a major area of interest for me and is the impetus for this article.

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1. Terence Abad, *Lowell by the Numbers*, http://www.lowellalumni.org/article_bythenumbers.html.

2. Approximately forty percent of Lowell students live in homes where English is not the primary spoken language. See *Did You Know?*, <http://www.lowellalumni.org>.

3. *NAACP v. San Francisco Unified Sch. Dist.*, 576 F. Supp. 34, 53 (N.D. Cal. 1983).

For years, Asian Americans⁴ have struggled with the image of being a “model minority”—a seemingly complimentary designation, but one that has come to be a double-edged sword. While this appellation recognizes the significant achievements some Asian Americans have made, particularly in higher education,⁵ it places Asian Americans in an undesirable position. Nowhere is this debate more heated than in higher education and affirmative action. Asian Americans, the argument goes, are the “natural enemies” of affirmative action, and could only stand to benefit from the dismantling of such programs.⁶ Because the overwhelming perception is that Asian Americans benefit from the destruction of affirmative action, one commentator declares, “Asian Pacific Americans who support affirmative action do so, presumably, out of yellow (or brown, as the case may be) guilt.”⁷

This paper examines the unique position Asian Americans occupy in the debate over affirmative action. Asian Americans may stand to benefit in distinct and discrete ways from the dismantling of race-conscious programs in higher education, but less drastically than some may suggest.⁸ Indeed, Asian Americans have become used as mascots by the opponents of affirmative action. This mascotting is a negative force that, rather than creating any viable advantages for Asian Americans, reinforces the pervasive “white privilege” that affirmative action programs are designed to combat. While the manufactured political debate using Asian Americans as mascots reinforces the model minority myth, white privilege remains invisible. Meanwhile, Asians Americans are isolated and pitted against other minority groups. This balkanization serves to reintroduce a modern form of the “yellow peril” that has plagued Asians since their first arrival in the Americas. In light of the harms of the model minority designation and the pervasive nature of “white privilege,” Asian Americans should not be

4. In this paper, “Asian Americans” refers to Americans of Asian descent, including Asian Indian, Cambodian, Chinese, Filipino, Hmong, Japanese, Korean, Laotian, Malaysian, Taiwanese, Thai, and Vietnamese. Other writers, including some cited in this paper, use the term “Asian Pacific American,” or “APA” for short. The Asian American population has experienced enormous growth in recent years. It grew by 48% between 1990 and 2000, passing ten million in the 2000 census, constituting between 3% and 4% of the United States population. FRANK H. WU, *YELLOW: RACE IN AMERICAN BEYOND BLACK AND WHITE* 20 (2002).

5. “In 1990, about 42 percent of Asian Americans had finished college compared with only 25 percent of the general population. . . . As of 1993, Asian Americans made up 5.3 percent of the college student body but approximately 2.9 percent of the population.” *Id.* at 50-51. Professor Wu argues that Asian Americans attempt higher education in greater numbers to “overcompensate” for a “lower return on their investment in education.” *Id.* According to a 1995 study by the U.S. Glass Ceiling Commission, “individual Asian Americans make less money than individual white Americans do in many occupational categories.” *Id.*

6. Linda Cheng Yee Lye, Comment, *The Wrong Debate*, 13 *BERKELEY WOMEN’S L.J.* 13, 14 (1998).

7. *Id.* at 14.

8. See generally William C. Kidder, Essay, *Negative Action versus Affirmative Action: Asian Pacific Americans are Still Caught in the Crossfire*, 11 *MICH. J. RACE & L.* 605 (2006).

too eager to see the immediate dismantling of affirmative action. Given the problems of balkanization, the contemporary yellow peril designation, and their current position in the racial debate, Asian Americans should seriously consider whether removing affirmative action programs in their entirety will do more harm than good.

Section I discusses the controversial litigation surrounding Lowell High School and how it so aptly illustrates the internal conflict faced by Asian Americans in the debate over affirmative action. Section II of this article presents a brief history of affirmative action, including an analysis of white privilege, in order to provide a historical basis for race conscious programs in higher education. Section III analyzes the Supreme Court's efforts to clarify the constitutionality of affirmative action in university admissions and discusses the exclusion of Asian Americans in much of the debate. Section IV considers the "mascotting"⁹ of Asian Americans by conservative voices and the battle between Asian American groups over the subject. Section V discusses the ways in which Asian Americans are cast as the "yellow peril" once again. Finally, Section VI contemplates possible alternatives and presents suggestions for policy changes.

I. LESSONS FROM LOWELL HIGH SCHOOL

One oft-cited example of the "negative effects" of affirmative action on the Asian American community is San Francisco's Lowell High School. The elite magnet school has been the subject of much debate precisely because of its effect on a community with a large Asian American population.¹⁰ To preserve its academic competitiveness, the school maintained stringent admission policies. Due to an anti-discrimination policy, implementing the policy required higher index scores from Chinese American students. In July 1994, several Chinese American students filed a lawsuit, *Ho v. San Francisco Unified School District*, in the United States District Court for the Northern District of California, challenging Lowell's race-conscious admissions policies.¹¹

The *Ho* lawsuit arose out of a 1983 consent decree intended to end de facto segregation in the school system, which spelled out a variety of measures intended to increase racial diversity.¹² The consent decree

9. By "mascotting," I refer to a term coined by legal scholars to describe the adoption of a racial group for another's political use. See *infra* note 93.

10. See, e.g., Caitlin M. Liu, Recent Development, *Beyond Black and White: Chinese Americans Challenge San Francisco's Desegregation Plan*, 5 ASIAN L. J. 341 (1998); Selena Dong, Note, *Too Many Asians: The Challenge of Fighting Discrimination Against Asian-Americans and Preserving Affirmative Action*, 47 STAN. L. REV. 1027 (1995).

11. 965 F. Supp. 1316 (N.D. Cal. 1997).

12. See generally *San Francisco NAACP v. San Francisco Unified School Dist.*, 576 F. Supp. 34 (1983). The San Francisco branch of the NAACP brought the case in 1978, charging that the school district used discriminatory practices that maintained a segregated school system. The consent decree is attached to the opinion as Exhibit A. See also Liu, *supra* note 10, at 342.

designated nine racial and ethnic categories and, among other things, prohibited “alternative schools” like Lowell from enrolling more than forty percent of their student body from any single racial or ethnic group.¹³ By the time the *Ho* lawsuit was filed, however, the consent decree had turned into what some called “affirmative action for whites.”¹⁴ Due to changing demographics¹⁵ in the city of San Francisco, Lowell had been forced to continually raise its admission standards for Chinese American applicants in order to maintain the required forty percent cap.¹⁶ The controversial “racial caps” meant requiring varied index scores from applicants depending on their racial and ethnic backgrounds.¹⁷ Scores for admittance to Lowell, calculated from standardized test scores and middle school grade point averages, were higher for students of Chinese background. “Chinese Americans expressed their feelings of frustration and disillusionment at seeing their children excluded from schools because there were ‘too many Chinese.’”¹⁸ Students of Chinese descent had the lowest acceptance rate of any racial or ethnic group at Lowell. The school accepted only thirty-five percent of its Chinese American applicants while accepting sixty-five percent of white applicants, notwithstanding the fact that the accepted white students had lower entrance scores than accepted Chinese American students.¹⁹

The plaintiffs in the *Ho* case argued that the consent decree’s mandate of racial distinctions could not survive the Equal Protection Clause of the Fourteenth Amendment.²⁰ By the time *Ho* was decided, the Supreme Court had laid down a “strict scrutiny” test for race-based classifications, requiring racial classifications to be narrowly tailored while serving a

13. *San Francisco NAACP*, 576 F. Supp. at 63. The nine designated racial and ethnic groups were as follows: Spanish-surnamed, Other White, Black, Chinese, Japanese, Korean, Filipino, American Indian, and Other Nonwhite.

14. Liu, *supra* note 10, at 343.

15. The Asian American population in San Francisco increased from 146,186 in 1980 to 207,155 in 1990, to 239,565 in 2000. This represented an increase from 21.5% of the population in 1980 to 28.6% in 1990 to 30.8% in 2000. The Chinese American population alone had increased from 82,480 to 127,140 to 152,620 in 1980, 1990, and 2000, respectively. San Francisco Population Tables, <http://www.asianinc.org/sfPopTables.html>.

16. See Dong, *supra* note 10, at 1030. See also Liu, *supra* note 10, at 343 (students of Chinese descent had increased from 19.5% of the city’s population in 1983, when the consent decree was signed, to nearly a third of the school age population in 1993).

17. “To be admitted for the 1992-1993 academic year, Chinese students had to score at least sixty-six (out of a sixty-nine point index); white, Japanese, Korean, Filipino, American Indian, and ‘other non-white’ students, fifty-nine; and black and Spanish-surnamed students, fifty-six.” Dong, *supra* note 10, at 1033. These caps changed each year along with the demographics of the applicants. When the author applied for the class of 1999, Chinese students had to score sixty-three out of sixty-nine, still the highest of any ethnic group, in order to secure admission to Lowell.

18. David I. Levine, *The Chinese American Challenge to Court-Mandated Quotas in San Francisco’s Public Schools: Notes from a (Partisan) Participant-Observer*, 16 HARV. BLACKLETTER J. 39, 61 (2000).

19. Liu, *supra* note 10, at 343.

20. *Ho v. San Francisco Unified Sch. Dist.*, 965 F. Supp. 1316, 1316 (N.D. Cal 1997).

compelling government interest.²¹ The case finally settled in last minute pre-trial negotiations in February 1999.²² The terms of the settlement provided instant relief for the *Ho* plaintiffs with a “preliminary injunction, which would remove the racial/ethnic guidelines immediately, and would govern assignment of students beginning with the 1999-2000 school year.”²³ Among other things, the settlement also provided for termination of the consent decree no later than December 31, 2002, the immediate development of a new student assignment plan with input from both the *Ho* plaintiffs and the San Francisco NAACP, and a reevaluation of the plan in a few years once data was available.²⁴

The *Ho* case is significant because of its seeming contradictions. The plaintiffs, Chinese American students, were attacking a consent decree designed to desegregate the schools as a remedy to the discrimination of years past. This historical discrimination included measures that negatively affected Asian Americans, such as separate “Mongolian” schools set up for Chinese children at the turn of the century.²⁵ Supporters of affirmative action found this case to be particularly difficult because the plaintiffs were minority students. The *Ho* plaintiffs found attorneys who took the case because they believed this situation seemed to “reflect[] the downside of affirmative action policies that emphasized race and ethnicity to the exclusion of all else.”²⁶

Were Asian Americans, who had historically been considered second-class citizens, again being disadvantaged by the system set up to help them? Was it a sign that signaled the end of the need for affirmative action? This case split the Chinese American community, with the Chinese American Democratic Club (C.A.D.C.), which had led the *Ho* lawsuit on its inception, on one side and Chinese for Affirmative Action on the other.²⁷ While both were Chinese American groups involved in advocating for civil rights for Asian Americans, their battle illustrates the split within the Asian American community, with most Asian American political leaders supporting affirmative action.²⁸

21. See *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 277 (1995) (all racial classifications by governmental actors must be reviewed under strict scrutiny: furthering a compelling governmental interest and narrowly tailored to achieve that interest).

22. Levine, *supra* note 18, at 99.

23. *Id.* at 102.

24. *Id.* at 101. For a detailed discussion of the settlement negotiations and the final settlement terms, see *id.* at 94-108.

25. Harvey Gee, *Changing Landscapes: The Need for Asian Americans to be Included in the Affirmative Action Debate*, 32 GONZ. L. REV. 621, 631 n.51 (1997).

26. Levine, *supra* note 18, at 59.

27. Harvey Gee, *From Bakke to Grutter and Beyond: Asian Americans and Diversity in America*, 9 TEX. J. ON C.L. & C.R. 127, 157 (2004).

28. *Id.*

II. WHITE PRIVILEGE – EVERYWHERE AND NOWHERE

White privilege has been defined as “the pervasive, structural, and generally invisible assumption that white people define a norm and Black people are ‘other,’ dangerous, and inferior.”²⁹ Asian Americans are significantly absent from this definition; they are, by omission, neither the “norm” nor the “other”—a virtual nonentity in many discussions on race. Still, an understanding of White privilege is the key to providing the tools necessary to change the course of conversations about affirmative action. White privilege has two crucial characteristics. First, it is systemic, pervading all levels of American life. Second, it is invisible—especially to those who possess it.

White privilege has been described, in a well-known essay by Peggy McIntosh, as “an invisible weightless knapsack of special provisions, maps, passports, codebooks, visas, clothes, tools, and blank checks.”³⁰ The effects penetrate all of society, creating a “societal norm” that all individuals in the community are judged against.³¹

In my class and place, I did not see myself as a racist because I was taught to recognize racism only in individual acts of meanness by members of my group, never in invisible systems conferring unsought racial dominance on my group from birth.³²

McIntosh catalogs some of the daily effects of white privilege in her life—circumstances that she has come to take for granted but that her friends of color cannot. These include the ability to move into a new neighborhood without fear of harassment, finding “flesh-colored” bandages that match her skin tone, and doing well in challenging situations without being called a “credit to her race.”³³

White people have the option to not think of themselves in terms of their race:

When people are asked to describe themselves in a few words, Black people invariably note their race and white people almost never do. Surveys tell us that virtually all Black people notice the importance of race several times a day. White people rarely contemplate the fact of our whiteness—it is the norm, the given. It is a privilege to not have to think about race.³⁴

Many white people never worry about the effect that their skin color

29. Sylvia A. Law, *White Privilege and Affirmative Action*, 32 AKRON L. REV. 603, 604 (1999).

30. Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, excerpted from *White Privilege and Male Privilege: A Personal Account of Coming to See Correspondences Through Work in Women's Studies*, available at <http://seamonkey.ed.asu.edu/~mcisaac/emc598ge/Unpacking.html>.

31. Stephanie M. Wildman, *The Persistence of White Privilege*, 18 WASH. U. J.L. & POL'Y 245, 247.

32. McIntosh, *supra* note 30.

33. *Id.*

34. Law, *supra* note 29, at 604-05. For a comprehensive discussion of privilege, see generally Stephanie M. Wildman, *PRIVILEGE REVEALED* (1996).

has on hailing a cab in New York City,³⁵ driving without fear of a police stop,³⁶ or even purchasing a home.³⁷ Other advantages include never being asked to speak for all people of their racial group and never needing to educate their children on systemic racism for their own protection.³⁸ It is emblematic of this invisible privilege that most white Americans conduct these prosaic activities without a second thought of skin color. It is their privilege to ignore issues of race: "Those with privilege can afford to look away from mistreatment that does not affect them personally."³⁹

White privilege extends to college admissions as well, though many beneficiaries of this privilege attempt to frame the issue solely in terms of "merit." Colleges routinely accept "legacy" applicants in spite of lower test scores, simply because they are related to a graduate of the school.⁴⁰ Given the racial makeup of most college alumni, this system only extends the privilege to those already privileged.⁴¹ For example, a U.S. Department of Education investigation found that legacy preferences "disproportionately help[] white applicants . . . because 96 percent of all living Ivy League alumni are white."⁴² However, a 1990 Department of Education study "found that mean SAT scores of legacy acceptances at Harvard were thirty-five points below the scores for all admitted students."⁴³ Another study found that "children of alumni, who are overwhelmingly white, constitute between twelve and twenty-five percent of some of the top schools in the country."⁴⁴ Other applicants are admitted with letters from politicians or bureaucrats who often recommend the sons or daughters of well-heeled

35. Professor Law, a white woman, tells how she regularly walks her African American friends to the street to help them catch a cab in Manhattan because cabbies routinely refuse to pick them up. Law, *supra* note 29, at 605-06.

36. Much has been written documenting the DWB, or Driving While Black (or Brown), phenomenon. Black drivers, especially the young and male, can expect to be stopped and questioned by police officers even while obeying traffic laws. *Id.* at 606-07.

37. Racial discrimination is common in the contemporary housing market, and there has historically been little effort to enforce current anti-discrimination laws. *Id.* at 608.

38. See WILDMAN, *supra* note 34, at 18 (1996).

39. Wildman, *supra* note 31, at 247.

40. "At Harvard, despite affirmative action programs, more white students gain entry as 'legacy admits' than do the total number of Black, Hispanic, and American Indian students." Law, *supra* note 29, at 624. See also Lani Guinier, Comment, *Admissions Rituals as Political Acts: Guardians at the Gates of Our Democratic Ideals*, 117 HARV. L. REV. 113, 186-87 (2003) (discussing how legacy preferences "account for a larger percentage of admissions at selective colleges than do racial or ethnic factors"); Mark Megalli, *So Your Dad Went to Harvard: Now What About the Lower Board Scores of White Legacies?*, 7 J. BLACKS HIGHER EDUC. 71, 72 (1995) (finding that despite lower GPAs and SAT scores and weaker extracurricular activities, legacy applicants are twice as likely to be admitted to Harvard and Yale and almost three times as likely to be admitted to Princeton).

41. See Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953, 995 n.184 (1996).

42. Megalli, *supra* note 40, at 72.

43. CHARLES R. LAWRENCE & MARI J. MATSUDA, *WE WON'T GO BACK: MAKING THE CASE FOR AFFIRMATIVE ACTION*, 96 (1997).

44. Sturm & Guinier, *supra* note 41, at 995.

supporters.⁴⁵ “A recent scandal at the University of California revealed that affirmative action opponents on the UC Board of Regents . . . were using their position [of power] to attempt to curry favor in the admissions process for their friends and relatives.”⁴⁶

White privilege defines the norm, which is the ability to take back the discourse and place its own concerns at the center.⁴⁷ This explains why legacies are rarely, if ever, brought into the discourse. As a result, it is imperative that discussions about affirmative action not ignore the inherent white privilege that runs alongside the remedies that affirmative action seeks to distribute to racial minorities; white privilege is the background against which affirmative action is developed. Many recognize that minorities may suffer disadvantages, but the existence of a distinct *advantage* that exists for whites is not as widely accepted.

In the affirmative action debate, Asian Americans are rarely included despite a long history of discrimination in the United States.⁴⁸ Many discussions of white privilege still center around a black/white paradigm that assigns Asian Americans to one side or the other.⁴⁹ Once again, Asian Americans are invisible. This fluidity and uncertainty makes the Asian American experience crucial to the creation of solutions to the challenges of race relations and affirmative action.

III. A BRIEF HISTORY OF AFFIRMATIVE ACTION

In his famous 1966 speech at Howard University, President Lyndon B. Johnson explained:

You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race, and then say, “You are free to compete with all others,” and still justly believe that you have been completely fair.

Thus it is not enough to open the gates of opportunity. All our citizens must have the ability to walk through those gates.

This is the next and more profound stage of the battle for civil rights. We seek not just freedom but opportunity—not just legal equity but human

45. LAWRENCE & MATSUDA, *supra* note 43, at 96.

46. *Id.*

47. Wildman, *supra* note 31, at 257.

48. The history of racial discrimination against Asian Americans is a long and shameful one, reflecting a xenophobic animus towards Asians as perpetual foreigners. For example, even though large numbers of Chinese immigrants helped to build and shape the western frontier, these immigrants later became scapegoats for the nation's economic problems, culminating in the Chinese Exclusion Act of 1882, which restricted Chinese immigration. Even in the twentieth century, anti-Asian sentiment led to the internment of over 112,000 Americans of Japanese ancestry for the duration of World War II. See Gee, *supra* note 25, at 628-34 (1996) (detailing the history of racial discrimination against Asian Americans in America).

49. See generally Janine Young Kim, *Are Asians Black? The Asian-American Civil Rights Agenda and the Contemporary Significance of the Black/White Paradigm*, 108 YALE L.J. 2385 (1999). See also Gee, *supra* note 25, at 648.

ability—not just equality as a right and a theory but equality as a fact and equality as a result.⁵⁰

The idea of affirmative action dates back to the passage of the Fourteenth Amendment of the Constitution.⁵¹ The Supreme Court wrote in *Strauder v. West Virginia* that the Fourteenth Amendment was designed to “secure[] to a race recently emancipated, a race that through many generations had been held in slavery, all the civil rights that the superior race enjoy.”⁵²

Affirmative action in its current form grew out of the Civil Rights Movement of the 1960s, and was implemented on the federal level during the Kennedy administration as a program designed to remedy the adverse consequences on minorities that stem from a history of discrimination.⁵³ “President John F. Kennedy first used the term in Executive Order 10925, which created the Equal Employment Opportunity Commission.”⁵⁴ The Order barred federal government contractors from discriminating on the basis of race or national origin, and required them “to take affirmative action” to prevent this discrimination.⁵⁵ Congress continued to make positive steps toward remedying historic disadvantages by passing the Civil Rights Act of 1964, which prohibited discrimination on the basis of race “by private employers, agencies, and educational institutions receiving federal funds.”⁵⁶

President Johnson continued Kennedy’s civil rights agenda by issuing Executive Order 11246, which provided for “equal opportunity in Federal employment for all qualified persons . . . [and] prohibit[ed] discrimination in employment because of race, creed, color, or national origin.”⁵⁷ Affirmative action programs, while initially promulgated in the area of employment, eventually expanded to other areas that include admissions in

50. LAWRENCE & MATSUDA, *supra* note 43, at 24.

51. U.S. CONST. amend. XIV, § 1. See also Corinne E. Anderson, Comment, *A Current Perspective: The Erosion of Affirmative Action in University Admissions*, 32 AKRON L. REV. 181, 185 (1999).

52. *Strauder v. West Virginia*, 100 U.S. 303, 306 (1879).

53. Theodore K. Cheng, Commentary, *Clarifying Some Misconceptions About Affirmative Action in Higher Education for Asian Americans*, 1 J.L. & SOC. CHALLENGES 129, 129 n.1 (1997). President Kennedy in 1961 established the President’s Committee on Equal Employment Opportunity and imposed “affirmative action” obligations on federal contractors. *Id.*

54. Victoria Choy, Note, *Perpetuating the Exclusion of Asian Americans from the Affirmative Action Debate: An Oversight of the Diversity Rationale in Grutter v. Bollinger*, 38 U.C. DAVIS L. REV. 545, 549 (2005). The Equal Employment Opportunity Commission operates as a vehicle for reviewing federal affirmative action policies and enforcing subsequent regulations. Anderson, *supra* note 51, at 190.

55. Exec. Order No. 10,925, 3 C.F.R. 448 (1961); Anderson, *supra* note 51, at 190.

56. 42 U.S.C.A. § 2000d provides in pertinent part: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation ‘in,’ be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

57. Exec. Order No. 11,246, 3 C.F.R. 339 (1964-1965).

higher education.⁵⁸

Although largely left out from public debates over affirmative action, Asian Americans have taken a strong interest in the development of equal protection jurisprudence surrounding the constitutionality of race-conscious affirmative action programs. Affirmative action was first instituted in the United States as a means to remedy the effects of past discrimination in the employment context. Extending it to higher education, the courts have offered two justifications for the use of affirmative action: “remedying the present effects of past discrimination and attaining student body diversity.”⁵⁹

The remedial, or compensatory, rationale was the original theory of affirmative action,⁶⁰ which was to equalize the starting point and “compensate those who had suffered discrimination, making them whole again, thereby enabling them to compete equally in society.”⁶¹ In contrast, the diversity rationale posits that universities have a strong interest in maintaining a racially diverse student body, and that the “contribution of differing perspectives based on racial diversity and the manner in which intraracial diversity of perspective helps to defeat racial stereotyping about what is the ‘minority viewpoint.’”⁶²

The Equal Protection Clause of the Fourteenth Amendment states, “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.”⁶³ Because the Supreme Court considers race to be a “suspect classification” in its interpretation of the Equal Protection Clause, race is subject to strict scrutiny.⁶⁴ Classifications based on race must then meet two requirements: they must further a compelling governmental interest and must also be narrowly tailored to achieve that interest.⁶⁵ As currently interpreted by the Supreme Court, university affirmative action programs that rely on racial classifications must meet both criteria.⁶⁶

The Supreme Court first addressed the question of affirmative action in higher education in *Regents of the University of California v. Bakke*.⁶⁷ Allan Bakke, a white male, applied to the Medical School at the University of California, Davis (herein UC Davis)⁶⁸ and was rejected in 1973 and

58. Anderson, *supra* note 51, at 191.

59. See Choy, *supra* note 54, at 549.

60. See *supra* text accompanying note 50.

61. Erin E. Byrnes, *Therapeutic Jurisprudence: Unmasking White Privilege to Expose the Fallacy of White Innocence: Using a Theory of Moral Correlativity to Make the Case for Affirmative Action Programs in Education*, 41 ARIZ. L. REV. 535, 545 (1999).

62. Angela Onwuachi-Willig, *Using the Master's "Tool" to Dismantle His House: Why Justice Clarence Thomas Makes the Case for Affirmative Action*, 47 ARIZ. L. REV. 113, 124 (2005).

63. U.S. CONST. amend. XIV, § 1.

64. See *Regents of the Univ. of California v. Bakke*, 438 U.S. 265, 305 (1978).

65. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 220 (1995).

66. *Bakke*, 438 U.S. at 305-06.

67. See *id.* at 305.

68. *Id.* at 276.

1974.⁶⁹ He filed suit to compel his admission to the school based on the allegation that the Medical School's "special admissions program" violated the Equal Protection Clause.⁷⁰ This "special admissions program" was designed to assure the admission of a specified number of minority students to the Medical School, for a class of one hundred.⁷¹ Bakke was rejected in 1973 through the regular process despite the four "special admissions" slots that remained open at the time, each of which was eventually filled by a disadvantaged minority student.⁷² The Superior Court of California struck down the program but denied him admission, and the case was transferred directly to the Supreme Court of California "because of the importance of the issues involved."⁷³ In the process of applying strict scrutiny, the California Supreme Court found that the special admissions program, while furthering a compelling state interest, was not the least intrusive means of furthering those goals; thus, it affirmed the lower court's decision enjoining the program.⁷⁴ The Supreme Court granted certiorari.⁷⁵

In a plurality opinion by Justice Lewis Powell, the Supreme Court affirmed the legitimacy of the school's interest in attaining a diverse student body. However, it found that Davis' "quota" system failed to meet constitutional requirements.⁷⁶ Four justices, including Justices Brennan and Marshall, voted to maintain the constitutionality of affirmative action programs while the remaining four justices voted to strike down the Medical School's program.⁷⁷ UC Davis identified four purposes for its special admissions program:

(i) reducing the historic deficit of traditionally disfavored minorities in medical schools and in the medical profession; (ii) countering the effects of societal discrimination; (iii) increasing the number of physicians who will practice in communities currently underserved; and (iv) obtaining the educational benefits that flow from an ethnically diverse student body.⁷⁸

Of these four purposes, Justice Powell's opinion supported only the diversity rationale, holding that "the attainment of a diverse student body . . . clearly is a constitutionally permissible goal for an institution of higher education."⁷⁹ However, the Court held that ethnic diversity "is only one

69. *Id.*

70. *See id.* at 277-78.

71. *See id.* at 269-70, 272.

72. *See id.* at 276.

73. *See id.* at 279.

74. *Id.*

75. *Id.* at 281.

76. *See id.* at 311-12, 315.

77. *See id.* at 324, 406. The four justices that joined Justice Powell in keeping affirmative action constitutional were Justice Brennan, Justice White, Justice Marshall, and Justice Blackmun. The four justices that joined with Justice Powell to strike down Davis' "quota" system were Justice Stewart, Justice Rehnquist, Justice Stevens, and Chief Justice Burger.

78. *Id.* at 306.

79. *Id.* at 311-12.

element in a range of factors a university properly may consider in attaining the goal of a heterogeneous student body . . . [and] constitutional limitations protecting individual rights may not be disregarded.”⁸⁰ Unlike the diversity rationale, Powell disapproved of the remedial justification, saying that it serves to aid “persons perceived as members of relatively victimized groups at the expense of other innocent individuals.”⁸¹ Powell also took issue with the “quota system” as a means to achieving student body diversity. Instead, he pointed approvingly to Harvard College’s affirmative action program, which considered race a “plus” in an applicant’s file but did not “insulate the individual from comparison with all other candidates for the available seats.”⁸² Thus, affirmative action programs in higher education were saved.

However, *Bakke* was inconclusive because there was no decisive majority opinion. This led to doubt from the lower courts in applying the decision. The Ninth Circuit affirmed the diversity rationale as a compelling state interest.⁸³ In *Hopwood v. Texas*, the Fifth Circuit struck down the University of Texas Law School’s affirmative action program, rejecting Justice Powell’s diversity rationale.⁸⁴ Other circuit courts either followed these opinions or declined to address the question at all.

The Supreme Court finally resolved to address the circuit split when it granted certiorari to *Grutter v. Bollinger*.⁸⁵ Barbara Grutter was a white Michigan resident who was rejected from the University of Michigan’s prestigious law school and filed suit challenging the law school’s race-conscious admissions program.⁸⁶ The program, rather than assigning specific percentages for each racial group, only considered race as a “plus,” much like the Harvard program that Justice Powell had approvingly referred to in *Bakke*.

Justice Sandra Day O’Connor, writing for a slim 5-4 majority, affirmed diversity as a compelling state interest in the higher education context.⁸⁷ She deferred to the educator’s and university’s “educational autonomy” in deciding that “attaining a diverse student body is at the heart of the Law School’s proper institutional mission, and that ‘good faith’ on the part of a university is ‘presumed’ absent ‘a showing to the contrary.’”⁸⁸ The opinion cited studies showing the educational benefits from student body diversity.⁸⁹ However, the opinion affirmed *Bakke*’s finding that

80. *Id.* at 314.

81. *Id.* at 307.

82. *Id.* at 317.

83. *See Smith v. University of Washington*, 233 F.3d 1188 (9th Cir. 2000).

84. *See Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996).

85. *Grutter v. Bollinger*, 539 U.S. 306, 322 (2003).

86. *Id.* at 316.

87. *Id.* at 329.

88. *Id.*

89. *Id.* at 330.

“quota systems” were unconstitutional, but consideration of race as a “plus” factor as found in Michigan’s program was narrowly tailored enough to satisfy equal protection.⁹⁰

Just as in *Ho v. San Francisco Unified School District*,⁹¹ Asian Americans found themselves on both sides of the *Grutter* litigation. The Asian American Legal Foundation, based in Northern California, sided with the white plaintiffs in *Grutter* and *Gratz*, while other Asian American political organizations such as the Asian Law Caucus and the Asian Pacific American Legal Center filed amicus briefs in support of the Michigan admission policies.⁹² After *Grutter*, affirmative action in higher education was preserved, but only in the name of diversity. The remedial rationale was invalidated by Justice Powell’s repudiation of it in *Bakke*. By saying that the goal of remedying past discrimination has no place in higher education, the Supreme Court effectively closed its eyes to history and to white privilege. Instead, the Supreme Court insisted on wiping clean history’s slate, thereby maintaining the pervasiveness and invisibility of white privilege.

IV. THE “MASCOTTING” OF ASIAN AMERICANS

Both rationales for affirmative action have come under fire by critics who use Asian Americans as “mascots” for their arguments. The term “racial mascotting” was first proposed by Professor Sumi Cho at a conference in 1994 and soon was adopted by scholars in the field.⁹³ Professor Cho introduced it thus:

The adoption of a racial group, or even an individual of color by a white political figure or constituency—a practice I refer to as mascotting—is necessary to deflect charges of racism and preserve the redeemed status of whiteness. Indeed, is it possible to imagine a winning campaign by the anti-affirmative action movement absent the conservative deployment of racial mascots? It hasn’t happened yet.⁹⁴

90. *Id.* at 334. Justice O’Connor concluded with the famous paragraph putting a “sunset” on the use of affirmative action:

We take the Law School at its word that it would ‘like nothing better than to find a race-neutral admissions formula’ and will terminate its race-conscious admissions program as soon as practicable. It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education. Since that time, the number of minority applicants with high grades and test scores has indeed increased. We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.

Id. at 343.

91. *Ho v. San Francisco Unified Sch. Dist.*, 965 F. Supp. 1316 (1997).

92. *Gee, supra* note 27, at 152.

93. Gabriel Chin et al., *Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice, A Policy Analysis of Affirmative Action*, 4 ASIAN PAC. AM. L.J. 129, 161 n. 161 (citing Sumi Cho, *A Theory of Racial Mascotting, Remarks at the First Annual Asian Pacific American Law Professors Conference* (Oct. 14, 1994)).

94. Sumi Cho, *Redeeming Whiteness in the Shadow of Internment: Earl Warren, Brown, and a*

The opponents of affirmative action advance many arguments against the use of race in university admissions.⁹⁵ One argument contends that all minorities will be stigmatized by their classmates' presumption that they entered an institution of higher learning with lower standardized test scores or grade point averages.⁹⁶ Empirical studies have challenged this conclusion.⁹⁷ Another portrays affirmative action as a violation of the principle of color blindness, which is propagated as an ideal state of race relations.⁹⁸ However, this would ignore the intense color consciousness built into our legal system and the very fabric of our society.⁹⁹ Several arguments against affirmative action directly implicate Asian Americans, utilizing the "model minority" stereotype to bolster their troubling claims. One commentator deplores this "mascotting" of Asian Americans, calling it "model minority mascotting designed to make the resegregation of law schools more politically palatable by deploying APAs as a buffer group."¹⁰⁰ Depicting Asian Americans as the victims of affirmative action seemingly lend its attackers more credibility by questioning the effectiveness of a system that supposedly works against a historically disadvantaged minority group.

a. Merit

The first argument adopting the strategy of "mascotting" contends that the dismantling of affirmative action would remove artificial barriers from the truly meritorious, which could only help the "model" Asian American students. Because Asian Americans are not included in many university affirmative action programs, the argument goes, then in the zero-sum game of university admissions the other minority applicants are taking spots away from the "more qualified" Asian American (and white) students. Conservative pundits like Newt Gingrich seized onto Asian Americans as the perfect example of the shortcomings to affirmative action. According to Gingrich, affirmative action hurts the hard-working, smart Asian Americans by taking away their spots in favor of unqualified minorities.¹⁰¹

Theory of Racial Redemption, 19 B.C. THIRD WORLD L.J. 73, 169-70 (1998).

95. For a comprehensive look at and responses to the major arguments against affirmative action, see generally Richard Delgado, *Ten Arguments Against Affirmative Action—How Valid?*, 50 ALA. L. REV. 135, 150 (1998).

96. See *id.* at 138-39 (discussing the concept of stigma).

97. See also Frank Wu, *Neither Black or White: Asian Americans and Affirmative Action*, 15 B.C. THIRD WORLD L.J. 225, 275 (1995); Ashley Hibbett, *The Enigma of the Stigma: A Case Study on the Validity of the Stigma Arguments Made in Opposition to Affirmative Action Programs in Higher Education*, 21 HARV. BLACKLETTER J. 75 (2005) (questioning the validity of the stigma argument).

98. Delgado, *supra* note 95, at 147.

99. *Id.*

100. William C. Kidder, *Situating Asian Pacific Americans in the Law School Affirmative Action Debate: Empirical Facts About Thermstrom's Rhetorical Acts*, 7 ASIAN L. J. 29, 38 (2000). See also Cho, *supra* note 94, at 169.

101. LAWRENCE & MATSUDA, *supra* note 43, at 96.

Similarly, conservative professors Stephen and Abigail Thernstrom argued in the *UCLA LAW REVIEW*: "The cost of racial double standards in admissions is currently being paid by many Asian students. When preferences are eliminated, they derive the greatest benefit. Thus, Asian-American enrollments at the UCLA School of Law jumped by 73% when race-neutral admissions went into effect."¹⁰² But this argument requires closer scrutiny.

With the largest Asian American population of any state, California is an appropriate model for studying the effects of affirmative action on Asian Americans.¹⁰³ Led by Governor Pete Wilson and then University of California Regent Ward Connerly, voters in California passed measures that resulted in the dismantling of carefully cultivated programs designed to maintain diversity in California's public universities. In 1996, Proposition 209 (Prop. 209) and the UC Regents' SP-1 Resolution ended race-conscious affirmative action at the University of California.¹⁰⁴ Three years after the implementation of Prop. 209 and SP-1, William Kidder conducted an empirical study of Asian American law school applicants to three of the UC law schools—Boalt Hall (UC Berkeley), Davis, and UCLA.¹⁰⁵ What he found was that "the net result of Prop. 209/SP-1 at Boalt, Davis, and UCLA was that enrollments increased substantially for whites, were essentially unchanged for APAs, and plummeted for African Americans, Latinos, and Native Americans."¹⁰⁶ Thus, it was white applicants to the law schools, rather than Asian American applicants, who were the main beneficiaries of the ban on race-conscious affirmative action in the UC system.

A second argument that critics present against affirmative action is that Asian Americans no longer need affirmative action, essentially "prov[ing] that the playing field was fair."¹⁰⁷ The problem with this merit argument is its reliance on the model minority myth. The model minority myth suffers from two major problems. First, it treats Asian Americans as a monolithic ethnic group, ignoring the struggles faced by certain Asian

102. Stephen Thernstrom & Abigail Thernstrom, *Reflections on The Shape of the River*, 46 *UCLA L. REV.* 1583, 1629 (1999), cited in Kidder, *supra* note 100, at 30. The Thernstroms were technically correct that Asian American enrollment at UCLA Law School increased from 48 to 82 in 1997, a jump of 73%. What they failed to mention was that this also happened to be the year that UCLA enrolled its largest class in over a decade. The Law School compensated the next year by enrolling a much smaller class, including only 49 Asian American students. *Id.* at 40.

103. Kidder, *supra* note 100, at 37.

104. The text of SP-1 stated, "[T]he University of California shall not use race, religion, sex, color, ethnicity, or national origin as criteria for admission to the University." ANDREA GUERRERO, *SILENCE AT BOALT HALL: THE DISMANTLING OF AFFIRMATIVE ACTION* 84 (2002). The year after the implementation of SP-1, Boalt Hall enrolled only one African American student in 1997, Eric Brooks. *Id.* at 113.

105. See Kidder, *supra* note 100, at 39 (comparing admissions data from the three years before Prop. 209 and SP-1 with the three years after the ban on affirmative action).

106. *Id.* at 41.

107. GUERRERO, *supra* note 104, at 61.

ethnic groups which have yet to achieve the success enjoyed by East Asian groups. For example, even though Southeast Asians are seriously disadvantaged according to any marker of social class, they are classified as "Asian" and are thus excluded from the benefits of affirmative action. "Nearly half of all Americans of Southeast Asian descent live in poverty."¹⁰⁸ Large numbers of Southeast Asian Americans are first-generation Americans who arrived as displaced political refugees, and are beneficiaries of public assistance at high rates.¹⁰⁹ By contrast, the model minority myth assumes that all Asian Americans are doing well, despite the enormous differences among the various constituent groups. This ignorance maintains the invisibility of discrimination against certain Asian American groups. Second, the model minority myth pits Asian Americans against other minority groups. Conservative groups often portray Asian Americans as brilliant success stories, thus using Asian Americans as mascots in their arguments against race-conscious policies.

b. Balkanization—

Asian Americans' Amorphous Role in a Black and White World

The use of Asian Americans as mascots, however, may be directly related to a third argument against affirmative action. This argument posits that affirmative action injures the relationship between the races, causing a balkanization effect that promotes antagonism and ethnic strife, especially between Asian and whites on one hand, and blacks and Latinos on the other.¹¹⁰ Professor Frank Wu calls this argument "disingenuous," because:

it pits Asian Americans against African Americans, as if one group could succeed only by the failure of the other. Asian Americans are encouraged to view African Americans, and programs for them, as threats to their own upward mobility. African Americans are led to see Asian Americans, many of whom are immigrants, as another group that has usurped what was meant for them. Indeed, Asian Americans frequently are imagined as beneficiaries of special consideration, although they almost always are excluded from race-based college admissions and employment programs.¹¹¹

Asian Americans are isolated from both sides of the black/white paradigm. African Americans and Hispanic Americans may resent Asian Americans for their perceived success.¹¹² On the other hand, whites are also

108. Jerry Kang, *Negative Action Against Asian Americans: The Internal Instability of Dworkin's Defense of Affirmative Action*, 31 HARV. C.R.-C.L. L. REV 1, 41 n.193 (1996).

109. For example: Hmong Americans (64.7%), Laotian Americans (57.3%), Cambodian Americans (52.5%), and Vietnamese Americans (50.7%). Harvey Gee, *Why Did Asian Americans Vote Against the 1996 California Civil Rights Initiative?*, 2 LOY. J. PUB. INT. L. 1, 49 n.190 (2001).

110. Delgado, *supra* note 95, at 147.

111. Wu, *supra* note 97, at 226.

112. See generally Taunya Lovell Banks, *Both Edges of the Margin: Blacks and Asians in Mississippi Masala, Barriers to Coalition Building*, 5 ASIAN L. J. 7 (1998) (discussing the hurdles to

not eager to claim Asians as their own. The perpetual foreigner¹¹³ stereotype belies any alliance between Asian Americans and whites, as does the very term "model minority." By specifically calling Asian Americans a minority, it sets them apart as the "other." Because of the changing positions that Asian Americans have occupied in American society, it is the model minority designation, rather than affirmative action, that is responsible for creating much of the discord between the races.

The balkanization argument against affirmative action is especially remarkable because of the amorphous role Asian Americans have occupied throughout America's history. Though the proponents of the model minority stereotype try to position Asian Americans closest to whites, they have "historically been located somewhere between black and white."¹¹⁴ Depending on the time period, "Asian Americans have been seen as racially 'black' or as a group 'outwhiting the whites.'"¹¹⁵ The published opinions of the Supreme Court have reflected this uncertainty. Justice Marshall Harlan's famous dissent in *Plessy v. Ferguson* is oft-quoted for his open-minded declaration that "Our Constitution is color-blind, and neither knows nor tolerates classes among citizens."¹¹⁶ Yet a few paragraphs later, he strikes a more ominous tone: "There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to it are, with few exceptions, absolutely excluded from our country. I allude to the Chinese race."¹¹⁷ Justice Harlan's comment is remarkable for its recognition of the exclusion of those of Asian descent. It indicates that because the Chinese were prohibited from attaining citizenship, the logical corollary would be that the Constitution would permit discrimination against them. Then, as now, "few Americans distinguish between Chinese Americans and other Asian Americans,"¹¹⁸ and continue to have difficulty positioning Asian

alliances between African Americans and Asian Americans).

113. See *infra* text accompanying note 151.

114. Michael Omi & Dana Y. Takagi, *Situating Asian Americans in the Political Discourse on Affirmative Action*, in RACE AND REPRESENTATION: AFFIRMATIVE ACTION 271, 272 (Robert Post & Michael Rogin, eds. 1998). See generally GARY Y. OKIHIRO, MARGINS AND MAINSTREAM: ASIANS IN AMERICAN HISTORY AND CULTURE (1994) (positing the question: "Is yellow black or white?").

115. Omi & Takagi, *supra* note 114, at 272 (citing *Success Story: Outwhiting the Whites*, NEWSWEEK, June 21, 1971). See *People v. Hall*, 4 Cal. 399.

116. *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896).

117. *Id.* at 561.

118. WU, *supra* note 4, at 13. During World War II, Time Magazine published a guide to distinguish the U.S.'s allies, the Chinese, from the "enemy" Japanese, accompanied by pictures:

HOW TO TELL YOUR FRIENDS FROM THE JAPS: Virtually all Japanese are short. Japanese are likely to be stockier and broader-hipped than short Chinese. Japanese are seldom fat; they often dry up and grow lean as they age. Although both have the typical epicanthic fold of the upper eyelid, Japanese eyes are usually set closer together. The Chinese expression is likely to be more placid, kindly, open; the Japanese more positive, dogmatic, arrogant. Japanese are hesitant, nervous in conversation, laugh loudly at the wrong time. Japanese walk stiffly erect, hard heeled. Chinese, more relaxed, have an easy gait, sometimes shuffle.

Naito Taylor Saito, *Model Minority, Yellow Peril: Functions of "Foreignness" in the Construction of*

Americans in a black/white paradigm.

More than thirty years after *Plessy*, the Supreme Court seemed to have made little progress in its assessment of Asian Americans. In *Gong Lum v. Rice*, the Supreme Court upheld the "separate but equal" doctrine from *Plessy v. Ferguson* against an American-born Chinese girl.¹¹⁹ Martha Lum, a nine-year-old girl of Chinese descent living in Bolivar County, Mississippi, was barred from attending a "white" school.¹²⁰ The Court upheld the lower court's division of the school children into "those of the pure white or Caucasian race, on the one hand, and the brown, yellow and black races, on the other, and therefore that Martha Lum of the Mongolian or yellow race could not insist on being classed with the whites under this constitutional division."¹²¹ Because Martha Lum could attend the colored school, the Court said, she was not denied equal protection of the laws.¹²² Thus, in contrast to students of the "pure white or Caucasian race," Martha Lum was considered "colored" and not fit to attend the segregated white schools in Mississippi.¹²³

Similarly, modern-day Asian Americans have also been uncertain of their status in a black and white world. During World War II, a Chinese laundry owner posted a sign in his own self-defense during the Harlem riots: "Me Colored Too."¹²⁴ Spike Lee used this scene for his 1989 movie *Do the Right Thing*, portraying a Korean shopkeeper in New York City escaping race riots by claiming a shared spirit and camaraderie with the African Americans.¹²⁵ Given the ambiguity of Asian Americans' status—at once people of color and then outwhiting the whites—the resentment and balkanization between Asian Americans and other minority groups is also of the same amorphous quality.

The occasional bitterness between the races has manifested itself in shocking ways. In 1990, the Reverend Al Sharpton led boycotts of Asian-owned stores in New York City based on a rumor that the owners of a

Asian American Legal Identity, 4 ASIAN L. J. 71, 83 (1997).

119. *Gong Lum v. Rice*, 275 U.S. 78, 84 (1927). See also *Plessy*, 163 U.S. 537 (1896).

120. *Gong Lum*, 275 U.S. at 84.

121. *Id.* at 82.

122. The case then reduces itself to the question whether a state can be said to afford to a child of Chinese ancestry, born in this country and a citizen of the United States, the 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. . . . Were this a new question, it would call for very full argument and consideration; but we think that it is the same question which has been many times decided to be within the constitutional power of the state legislature to settle, without intervention of the federal courts under the federal Constitution. . . . The decision is within the discretion of the state in regulating its public schools, and does not conflict with the Fourteenth Amendment.

Id. at 85-87.

123. *Id.*

124. WU, *supra* note 4, at 19.

125. *Id.*

certain store had assaulted a customer.¹²⁶

African American activists called for Asian immigrants to surrender their stores to African Americans. Rappers such as Ice Cube sang of brutalizing Asian entrepreneurs with lyrics such as, "Pay respect to the black fist, or we'll burn your store right down to a crisp" . . . and Chubb Rock led a concert crowd in chanting, "Fuck you, eggroll."¹²⁷

The animus has sometimes resulted in horrifying violence on both sides. Fifteen Asian American small business owners were killed in Los Angeles in 1993, many by African Americans; on the other hand, in 1992, a white judge gave probation to a Korean American shopkeeper for shooting to death a fifteen-year old African American girl over a bottle of orange juice.¹²⁸ Another, less violent example, occurs in the context of a simple misunderstanding: "The Mandarin Chinese words that can be translated 'that one' sounds like the n-word; it is not unheard of for Chinese immigrants to create a problem for themselves by saying 'that one' within earshot of African Americans, especially if they are pointing toward something near a black person."¹²⁹ There is no doubt that balkanization exists; in many cases, "Asians and Blacks separately try to improve their position within the racial hierarchy—often at the expense of each other—by appeasing Whites."¹³⁰

Given the sources of this resentment, however, balkanization as an argument against affirmative action is disingenuous. The resentment by white Americans against those who fill "their" spots in the relatively minor programs of affirmative action in education cannot compare to the resentment by those who have to deal with racism on a daily basis. The United States is a great nation, but it owes a portion of its greatness to centuries of minority oppression.¹³¹ Although the remedial rationale is no

126. *Id.* at 30.

127. *Id.*

128. *Id.* at 31.

129. *Id.* at 25. This phrase, 那個, is pronounced in Mandarin as "nei ge," or "na ge." The author has observed this phenomenon on multiple occasions, causing much consternation among African American passersby and native English speakers familiar with the offensive connotations of those two syllables in the United States.

130. Banks, *supra* note 112, at 10.

131. Chinese immigrants to the United States in the 19th century were tolerated largely for supplying manpower in facilitating the fledgling nation's westerly expansion, particularly for their construction work on the transcontinental railroad. See Joyce Kuo, Comment, *Excluded, Segregated, and Forgotten, A Historical View of the Discrimination of Chinese Americans in Public Schools*, 5 ASIAN L. J. 181, 184 (1998). African slaves were forced into humiliating and backbreaking lifetime labor for no pay. The obvious profitability of over two hundred years of free labor was such that "American slavery was an economic and political necessity without which the new republic would have certainly failed." Gerald A. Foster, *American Slavery: The Complete Story*, 2 CARDOZO PUB. L. POL'Y & ETHICS 401, 409-410 (2004). The African slaves were forced to work land that had been seized or otherwise unlawfully taken from Native Americans, who were forced onto unwanted "reservation" land. Alice Eng, Book Review, *Through the Greed, Ignorance, and Power Behind the Law, A People Still Remain*, 18 B.C. THIRD WORLD L. J. 293, 305 (1998) (reviewing Michael Lieder and Jake Page, *WILD JUSTICE: THE PEOPLE OF GERONIMO VS. THE UNITED STATES* (1997)).

longer in use as a constitutional justification for affirmative action in university admissions, it serves as a valid counterargument to “resentment” as a justifiable attack on affirmative action.

Instead, it is the “model minority” appellation that creates this resentment between the races. By recognizing the “minority” status of Asian Americans while setting them up as a “model,” the sometimes explicit but always implicit message to other minority groups is that they are substandard.¹³² The model minority myth, in mascotting Asian Americans, attempts to justify the subordination of African Americans by suggesting that African Americans are themselves responsible for their situation.¹³³ Professors Gabriel Chin, Sumi Cho, Jerry Kang, and Frank Wu, in their article in the *UCLA ASIAN PACIFIC AMERICAN LAW JOURNAL*, call on Asian Americans to reject this approach:

Pitting racial minority groups against one another represents the worst form of divide-and-conquer political strategy. . . . APAs must refuse to buy into derogatory stereotypes that other people of color have no achievements or shirk hard work. History teaches us that not long ago, the exact same criticisms were leveled at us: that we were the stupid, the unassimilable, the depraved, the criminal. And our own experiences, whether they be of racial epithets, glass ceilings, or hate crimes, reveal the continuing existence of racial prejudice.¹³⁴

Because of these subtle but ubiquitous campaigns against minorities, however, it is no wonder that there exists a certain amount of resentment between Asian Americans and African Americans. Presenting Asian Americans as mascots and holding them up as the model minority creates indignant and embittered parties on all sides. This infighting buttresses and reinforces the power of the white majority.

c. Inferiority

Another argument against affirmative action postulates that affirmative action reinforces stereotypes of inferiority born of racial prejudice and results in greater injury to the supposed beneficiaries. This presumes that all students of color admitted under affirmative action policies will suffer from feelings of inferiority given the possibility of being admitted under “special” policies. Professor Jim Chen, a leading Asian American critic of affirmative action, posits that “affirmative action as practiced perpetuates stereotypes of nonwhite inferiority”¹³⁵ and its “putative beneficiaries may internalize the message of inherent inferiority

132. Saito, *supra* note 118, at 92.

133. *Id.* at 93.

134. Chin et al., *supra* note 93, at 151.

135. Jim Chen, *Is Affirmative Action Fair? Diversity in a Different Dimension: Evolutionary Theory and Affirmative Action's Destiny*, 59 OHIO ST. L. J. 811, 900 (1998).

and thereby inflict lasting damage to their self-esteem.”¹³⁶ Justice Clarence Thomas, also a noted opponent of affirmative action, stated in his dissent in *Grutter*:

This problem of stigma does not depend on determinacy as to whether those stigmatized are actually the “beneficiaries” of racial discrimination. When blacks take positions in the highest places of government, industry, or academia, it is an open question today whether their skin color played a part in their advancement. The question itself is the stigma—because either racial discrimination did play a role, in which case the person may be deemed “otherwise unqualified,” or it did not, in which case asking the question itself unfairly marks those blacks who would succeed without discrimination.¹³⁷

It is true that affirmative action programs may cause some stigmatization, but minorities in today’s society suffer from stigmatization regardless of affirmative action programs. “In the end, the uncertain extent to which affirmative action diminishes the accomplishments of blacks must be balanced against the stigmatization that occurs when blacks are virtually absent from important institutions in the society.”¹³⁸ Substitute “Asian Americans” for “blacks” and the same is true. The solution is not to remove programs designed to address racism (the ultimate form of stigma) because of a potential stigma resulting from affirmative action programs. Additionally, this argument ignores the other beneficiaries of affirmative action, such as the student body as a whole.

An equally valid argument might be that affirmative action policies can actually improve the self-esteem of students of color.¹³⁹ After all, a student’s perception of her inferiority while at Harvard may be less damaging than a perception of inferiority while not at Harvard. As anyone who has ever received a rejection letter would know, it is also damaging to one’s self-esteem to be rejected from universities. Students who are accepted to universities have the choice to attend, while rejected students do not. Thus, affirmative action should not be terminated on the basis of the inferiority argument alone. Affirmative action may either increase or decrease minority students’ self-esteem. The inferiority argument overlooks the stigmatization linked directly to America’s history of discrimination. It also conveniently overlooks legacies, who logically should also be suffering from these self-esteem problems. It seems disingenuous to profess concern over some minority students’ academic

136. *Id.* at 900-01.

137. *Grutter v. Bollinger*, 539 U.S. 306, 373 (2003).

138. Randall Kennedy, Commentary, *Persuasion and Distrust: A Comment on the Affirmative Action Debate*, 99 HARV. L. REV. 1327, 1331 (1986).

139. See generally Thomas E. Hanson, Jr., Note, *Rising Above the Past: Affirmative Action as a Necessary Means of Raising the Black Standard of Living as Well as Self-Esteem*, 16 B.C. THIRD WORLD L.J. 107 (1996) (discussing affirmative action’s potential for creating enhanced self-esteem among the African American population, particularly in the employment context).

esteem issues while ignoring legacies, white privilege, and the “stigma that is altogether removed from affirmative action.”¹⁴⁰

V. A NEW KIND OF YELLOW PERIL

Those who benefit from white privilege should not continue to use Asian Americans as mascots if and when their numbers become too threatening. After all, “no effort has been made to dismantle white preferences that continue to hurt Asians.”¹⁴¹ Instead, history will likely repeat itself as Asian Americans are cast as the “yellow peril” yet again.

Labeling Asian Americans as the “yellow peril” was originally a xenophobic response to the mass immigration of nineteenth century Chinese and Japanese workers; nonetheless, it may soon represent the perceived influx of competitive Asian Americans in higher education. This section considers how easily perceptions of Asian Americans can shift from complimentary to hostile and how the model minority will no longer be considered as such when it poses a perceived threat to the majority, both in the secondary and college education contexts.

In the past, the threat of the “yellow peril” has resulted in populist rallying cries such as “The Chinese Must Go!” as well as overtly anti-Asian government acts such as the Chinese Exclusion Act and Japanese American internment during World War II.¹⁴² When they first arrived in the United States, the Chinese were considered “very contemptible . . . cunning and corrupt, treacherous and vindictive, [given] to lechery, dishonesty, xenophobia, cruelty, despotism, filth and intellectual inferiority.”¹⁴³ The Chinese Exclusion Act of 1882 prohibited the entry of Chinese persons, “lunatics,” and “idiots” into the United States for ten years.¹⁴⁴ In *Chae Chan Ping v. United States*,¹⁴⁵ otherwise known as “The Chinese Exclusion Case,” the Supreme Court wrote that the Chinese Exclusion Act was necessary because “their [Chinese] immigration was in numbers approaching the character of an Oriental invasion.”¹⁴⁶ This sentiment

140. *Id.* at 132.

141. Adrien Katherine Wing, Book Note, *USA 2050: Identity, Critical Race Theory, and the Asian Century*, 99 MICH. L. REV. 1390, 1400 (2001) (reviewing ROBERT S. CHANG, *DISORIENTED: ASIAN AMERICANS, LAW, AND THE NATION-STATE* (1999)).

142. See WU, *supra* note 4, at 61 (describing racial attacks on 19th century Chinese and Japanese immigrants on the West Coast, including the Rock Springs, Wyoming massacre of 1885). See also Saito, *supra* note 118, at 73.

143. Rhoda J. Yen, *Racial Stereotyping of Asians and Asian Americans and Its Effect on Criminal Justice: A Reflection on the Wayne Lo Case*, 7 ASIAN L. J. 1, 6-7 (2000) (citing STUART CREIGHTON MILLER, *THE UNWELCOME IMMIGRANT: THE AMERICAN IMAGE OF THE CHINESE, 1785-1882*, 76-77). During this time, Chinese immigrants were reported as “eating vermin, murdering young girls to drink certain bodily fluids, and acting generally as less than human beings.” *Id.* at 7.

144. *Id.* at 7. Because the ban was extended in 1888, 1892, and 1902, the Act was not repealed until 1943. *Id.*

145. 130 U.S. 591 (1889).

146. *Id.* at 595.

continued in 1905, when the *San Francisco Chronicle* published a series of articles warning of the “yellow peril” posed by “Japanese immigrants [who] were spies, massive hordes who plotted to take away white property, and criminals who preyed on white women.”¹⁴⁷ During World War II, over 120,000 Japanese Americans, many of whom were American citizens, were rounded up and sent to internment camps under the premise of military necessity.¹⁴⁸ Despite this disgraceful blemish on American history, it was not until 1980 that the United States government finally issued an official apology.¹⁴⁹

Whenever the majority has perceived that Asians have done “‘too well’ [it] has resulted historically in political disenfranchisement and exclusionary laws in the late nineteenth to early twentieth century, and in ‘English-only’ initiatives and more stringent curbs on immigration and foreign capital investment today.”¹⁵⁰ Although Asian Americans may no longer have to fear outright, state-sponsored acts of discrimination like the Chinese Exclusion Acts or Japanese American internment, the yellow peril has transformed into its modern form, including what is known as the “perpetual foreigner” syndrome, positing the Asian “as being totally unassimilable.”¹⁵¹ The perpetual foreigner syndrome can be described as an “irrebuttable presumption” that “the Asian American is still inherently ‘from’ Asia, in a way that a second-generation German American or Irish American would not be.”¹⁵² Manifestations of the syndrome range from the ubiquitous queries of “Where are you from? . . . No, where are you really from?” to the less benign “If [you] have a problem [with any aspect of American society], [you] should go back to where [you] came from?”¹⁵³

The perpetual foreigner syndrome and the model minority myth unite to create this new form of “yellow peril.” In the context of education, especially, perceptions have already begun to shift from the flattering language of “model minority” back to negative language depicted by the graffiti scrawled on the School of Engineering building at the University of California, Berkeley: “Stop the Asian Hordes.”¹⁵⁴ The image of the coolie

147. Yen, *supra* note 143, at 6 n.24.

148. Saito, *supra* note 118, at 73.

149. *Id.* at 74.

150. Omi & Takagi, *supra* note 114, at 276-77.

151. Jean Shin, *The Asian American Closet*, 11 *ASIAN L. J.* 1, 5 (2004). See also WU, *supra* note 4, at 79-129 (detailing personal and historical experiences of Asians as perpetual foreigners); *Chae Chin Ping*, 130 *U.S.* at 595 (“[T]hey remained strangers in the land, residing apart by themselves, and adhering to the customs and usages of their own country. It seemed impossible for them to assimilate with our people, or to make any change in their habits or modes of living.”). It should also be noted that the phrase “our people” is used four different times in the text of this opinion.

152. Shin, *supra* note 151, at 7.

153. *Id.*

154. WU, *supra* note 4, at 48. Other examples of the hostility toward Asian Americans in universities include jokes that “MIT” stands for “Made in Taiwan,” UCLA stands for “United Caucasians Lost Among Asians,” and UCI (University of California at Irvine) is an acronym for

Chinese laborers crowding America's shores is replaced by the image of competitive, spectacle-wearing engineering students overcrowding university classes.¹⁵⁵

Generally speaking, Asian Americans do seek higher education in statistically greater numbers than other racial or ethnic groups.¹⁵⁶

As of 1993, Asian Americans made up 5.3 percent of the college student body but approximately 2.9 percent of the generation population. Their desire for education is increasing even as that of other groups is decreasing. Between 1979 and 1989, Asian Americans increased their numbers of Ph.D. recipients by 46 percent while whites and blacks decreased their numbers by 6 and 23 percent, respectively. By 1997, Asian Americans were receiving 12 percent of the doctorates conferred by U.S. universities, and they received more than one-quarter of the doctorates in engineering disciplines.¹⁵⁷

Professor Wu explains this phenomenon as "overcompensating": because Asian Americans are generally paid far less than whites with the same educational level, they receive a lower return on their educational investment and must thereby seek higher education with greater fervor.¹⁵⁸

At present, Asian Americans continue to increase in numbers at the various University of California campuses. Officials at UC Berkeley stated that "if we keep getting extremely well-prepared Asians (and we are), we may get to the point where whites will become an affirmative action group."¹⁵⁹ A task force at UC Berkeley was especially suspicious of the imposition of a minimum SAT verbal score and charged the university with instituting clandestine policy changes that intentionally discriminated against Asian Americans.¹⁶⁰ Recent immigrants tended to score lower on the verbal section and higher on the math section, cumulating in a total score sufficient for admission.¹⁶¹ This new policy had a disproportionate effect on Asian applicants, who comprised 80 percent of the immigrant student population.¹⁶²

A recent front-page article in the Wall Street Journal illustrates recent reactions to this contemporary "yellow peril."¹⁶³ Entitled "The New White Flight," the article discusses how white parents in the Silicon Valley are opting out of two local public high schools in large numbers despite the schools' stellar academic reputations and their outstanding college

"University of Chinese Immigrants." *Id.*

155. See, e.g., *id.* at 56 ("At an extreme, to study is no longer to study but to be Asian American. Study makes a person Asian American; Asian Americans as a group are defined by study.")

156. *Id.* at 51.

157. *Id.*

158. *Id.*

159. Liu, *supra* note 10, at 343 n.77.

160. GUERRERO, *supra* note 104, at 38-39.

161. *Id.* at 39.

162. *Id.*

163. Suein Hwang, *The New White Flight*, WALL ST. J., Nov. 19, 2005, at A1.

placement records.¹⁶⁴ These concerned parents are pulling their children out of or avoiding Monta Vista and Lynbrook High Schools, both among the nation's top public high schools, because they are considered "too Asian."¹⁶⁵ One white parent who dissuaded another family from moving to the area, confided, "This may not sound good, but their child may be the only Caucasian kid in the class."¹⁶⁶ Other parents' excuses are couched in language about the over-competitive nature of the schools or their narrow focus on math and science at the expense of liberal arts and extracurricular activities.¹⁶⁷

To many of Cupertino's Asians, some of the assumptions made by white parents—that Asians are excessively competitive and single-minded—play into stereotypes. Top schools in nearby, whiter Palo Alto, which also have very high test scores, also feature heavy course loads, long hours of homework and overly stressed students . . . But whites don't seem to be avoiding those institutions, or making the same negative generalizations, Asian families note, suggesting that it's not academic competition that makes white parents uncomfortable but academic competition with Asian-Americans.¹⁶⁸

The article describes this phenomenon as a "new white flight"—an apt term for this reaction to the new yellow peril. Unlike the Chinese Exclusion Act or Japanese American internment orders of years past, this "suburban segregation"¹⁶⁹ is a social rather than a political ostracism. At Monta Vista and Lynbrook, and in other schools around the nation,¹⁷⁰ Asian Americans are no longer the model minority. Because the white majority is being threatened, those very (stereotypical) features that made Asian Americans mascots are now transformed. Diligent study habits and aspirations of attending college are no longer esteemed; instead, Asian American students are disparaged and their parents deemed "uptight."¹⁷¹

The model minority myth has shifted considerably into something much uglier. Asian Americans have now become stigmatized for the very things for which they were praised. A new species of yellow peril has

164. *Id.* ("Over the past ten years, the proportion of white students at Lynbrook has fallen by nearly half, to 25% of the student body. At Monta Vista, white students make up less than one-third of the population, down from 45%—this in a town that's half white.") The term "white flight" was coined in the 1960s to describe the exodus of whites from the cities to the suburbs, inspired by the growth of minority populations in the cities. *See id.*

165. *Id.* Cupertino, where Monta Vista is located, is now 41% Asian, up from 24% in 1998.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. Hwang's article details similar exoduses in Maryland and New Jersey. *See id.*

171. *Id.* An episode from Season 2 of *Law & Order* illustrates the tragic consequences of this threat. In the episode, a promising Chinese American honors student is killed by the family of a white classmate, his chief rival for a prestigious scholarship. His murder was motivated not only by academic competition, but also on racial grounds. *Law & Order: Intolerance* (NBC television broadcast April 14, 1992).

emerged. Asian Americans are still despised for occupying spots that supposedly belong to “real” Americans, but the focus has shifted from the employment to the educational context. Because Asian Americans are still viewed as a threat to the invisible yet pervasive status of white privilege, the concept of yellow peril, while ever-present, has changed to include their perceived successes. Still perceived as incapable of blending in with the white majority, Asian Americans are singled out for working to achieve what is supposed to be the American dream.

VI. CONCLUSION: WHERE DO WE GO FROM HERE?

Since *Ho v. San Francisco Unified School District*, Lowell High School continues to struggle to maintain racial diversity while upholding its rigorous academic standards. As an initial response to the lawsuit, the school board “established a single cutoff score for all races, but set aside twenty percent of the freshman class for those with lower scores.”¹⁷² In 2001, the school endured criticism for “lowering the bar” by attempting to include criteria like “drive and ambition” in its admissions decisions.¹⁷³ At the time, over 60% of Lowell students were of Asian descent, 20% were white, and blacks and Latinos accounted for less than 10% of Lowell’s enrollment.¹⁷⁴ In recent years, Lowell’s application process has become increasingly similar to that of a major university, with one major divergence: race is no longer a significant or decisive factor in admissions decisions, giving way to subjective factors like “extenuating circumstances” and “family information.”¹⁷⁵ Lowell seems to have embraced a “diversity” rationale much like the one used in *Grutter v. Bollinger*.

The Lowell experience is significant for what it conveys about the conflicts faced by many Asian Americans when considering the arguments for and against affirmative action. Yet the difficulties encountered by the school district also illustrate the complexity of any proposed solution. Like some universities, Lowell has chosen to explicitly deny race as a factor, while possibly allowing subjective criteria like “family information” to

172. *Ho v. San Francisco Unified Sch. Dist.*, 965 F. Supp. 1316, 1319 n.2 (N.D. Cal. 1997) (citing G. Pascal Zachary, *Class Action: Need, as a Substitute for Race Preferences, Is Just as Hot an Issue*, WALL STREET, April 10, 1997, at A8).

173. Ken Garcia, *Hey Kids: Slack Off to Get Ahead at School; S.F. Schools Lowering the Bar; Admissions Rules Get Watered Down*, S.F. CHRON., Nov. 6, 2001, at A15.

174. Julian Guthrie, *Schools’ Diversity Plan up for Vote; Admissions Proposal for Lowell, Arts*, S.F. CHRON., Oct. 22, 2001, at A9.

175. Lowell admissions criteria for the 2006-07 school year include: final grades for the first and second semesters of seventh grade and the first semester of eighth grade; CAT-6 test scores (the standardized test administered to all seventh graders in the school district); an essay written during school under exam conditions; and extra information, including information about “extracurricular activities demonstrating leadership skills, extenuating circumstances, demonstrated ability to overcome hardship, and family information.” See “Lowell High School Enrollment Information for 2006-07,” <http://portal.sfusd.edu/template/index.cfm?page=policy.placement.enroll.lowell>.

substitute for race in order to maintain a racial balance.

Much ink has been spilled on the topic of race-conscious admissions policies, especially in the higher education context. Professor Jim Chen has given up on this debate, noting the numerous articles written on the subject, especially when, according to him, "the only issue at stake is the marginal difference between a seat at an elite school and a seat at a somewhat less elite school."¹⁷⁶ But these elite schools are where America's leaders are made and policies are shaped. At the time of this writing, five of the current Supreme Court Justices graduated from Harvard Law School.¹⁷⁷ Perhaps affirmative action is merely a stopgap measure, but its importance in modern society is such that alternative measures should be developed and implemented before the elimination of current affirmative action policies.

Many scholars believe that "proposals for class-based affirmative action programs warrant more careful consideration."¹⁷⁸ According to Professors Michael Omi and Dana Takagi, Asian Americans may actually benefit from class-based affirmative action:

[C]lass preferences will present a clear *racial* advantage for Asian American applicants to all UC campuses. If socioeconomic status is used as an admissions criterion instead of race, UC officials predict that Asian American enrollment will *increase* by 15 to 25 percent while African American enrollment will drop 40 to 50 percent, Latino enrollment will fall 5 to 15 percent, and white enrollment will stay about the same.¹⁷⁹

However, others disagree. Angelo Ancheta describes how "substituting class for race ignores the basic problem of racial discrimination in American society. Class-based affirmative action is an anti-poverty policy, not an anti-racism policy."¹⁸⁰ In an ideal world, students of color would not have to deal with the realities of racism and the burdens of white privilege. A system that looks beyond simply class or race to combine these factors—to look at race, class, and the myriad of factors that remedies disadvantages—is preferable. The "diversity" rationale, despite its problems, is an improvement on strict race-based or class-based preference programs because it involves a more comprehensive approach to addressing disadvantages in American society. Rather than functioning as a substitute for racial balancing, if applied correctly, the diversity rationale should not hurt Asian Americans in the ways feared. Southeast Asians, for

176. Chen, *supra* note 135, at 908.

177. Chief Justice John Roberts, Justice Antonin Scalia, Justice Anthony Kennedy, Justice David Souter, and Justice Stephen Breyer graduated from Harvard Law School. Justice Ruth Bader Ginsburg attended Harvard but transferred to Columbia Law School after two years. The other Supreme Court justices also attended elite schools. Justice John Paul Stevens graduated from Northwestern University School of Law, Justice Samuel Alito and Justice Clarence Thomas from Yale Law School.

178. Harvey Gee, Book Review, 13 *GEO. IMMGR. L.J.* 635, 646 (1999) (reviewing ANGELO N. ANCHETA, *RACE, RIGHTS, AND THE ASIAN AMERICAN EXPERIENCE* (1996)).

179. See Omi & Takagi, *supra* note 114, at 278.

180. ANGELO N. ANCHETA, *RACE, RIGHTS, AND THE ASIAN AMERICAN EXPERIENCE* 165 (1998).

example, who are historically more economically disadvantaged, would not be “capped out” of affirmative action programs.

It is clear that Asian Americans fall on both sides of the affirmative action debate. What is not apparent is whether affirmative action programs are unquestionably “good” or “bad” for Asian Americans as a whole. Attempting to prove one or the other is to fall into the same “model minority” trap—treating Asian Americans as a monolithic ethnic group without any differences or subtleties. While it is true that affirmative action may now serve to “cap out” certain groups of Asian Americans, it is equally true that other difficulties will almost certainly arise should these “barriers of merit” be removed. A “model minority” student may be changed into the “yellow peril” in the blink of an eye, yet the student remains unchanged. Rather, what is different is merely society’s perception of her; and universally valid are the realities of racism and racial disadvantaging in society. Removing affirmative action in its entirety will do nothing but harm society as a whole, and Asian Americans are no exception.