AFFIRMATIVE ACTION: A DOUBLE-EDGED SWORD FOR ASIAN AMERICANS

Joann J. Ku

Introduction

Asian Americans have become synonymous with the phrase “model minority.” Often used interchangeably with the Asian American race, model minority has been defined as a model group whose unique “cultural values of diligence, family, solidarity, respect for education, and self-sufficiency have propelled it to notable success” amidst racism and persecution. ¹ However, this racial construct has been called a myth and an inaccurate concept that often hurts Asian Americans more than it helps. ² Nowhere has this debate been demonstrated more clearly than in the controversy over affirmative action programs in higher education institutions.

Due to the overrepresentation of Asian Americans in colleges and universities, they are often no longer represented as “minorities” during the admissions process. ³ In 2000, Asian and Pacific Islander Americans constituted 5.9 percent of college and university students, in comparison to only 4 percent of the United States population. ⁴ This overrepresentation has excluded Asian Americans from affirmative action programs that were implemented to remedy past discriminations.

Within the Asian American community, affirmative action is a very divisive subject with Asian American advocates and groups on both sides of the issue. ⁵ Opponents of affirmative action argue for the dismantling of such programs because it favors underqualified minorities.

³ Vincente M. Diaz, To ‘P’ or Not to ‘P’?: Marking the Territory Between Pacific Islander and Asian American Studies, 7 J. ASIAN AM. STUD. 183 (2004).
over students with higher marks and credentials.\textsuperscript{6} Yet, affirmative action advocates contend that such programs are necessary due to long injustices Asian Americans have had to face and currently face in the form of racism and discrimination.\textsuperscript{7}

This Article discusses where Asian Americans fall within the affirmative action debate. While Asian Americans have long been overlooked over the affirmative action issue, they play a pivotal role in this controversy, having much to gain and to lose. Only within the past decade have Asian Americans as a group come into the spotlight voicing their perspectives on this issue and this exposure is expected to only increase. Section I of this Article analyzes Asian Americans within the higher education setting and just why Asian Americans are so key to the affirmative action debate. Section II gives a brief overview of affirmative action litigation, describing significant cases. Section III discusses the negative effects of the model minority myth and how racism against Asian Americans can subtly creep into educational institutions. Finally, I conclude with common goals we could pursue in resolving this controversy.

I. Asian Americans in Higher Learning Institutions

Asian Americans as a whole do seek higher education in greater numbers than other racial or ethnic groups.\textsuperscript{8} Starting in the 1970s and 1980s, Asian American enrollment rates in colleges and universities began to rapidly increase. In 1976, there were approximately 198,000 Asian American students in higher education institutions, and by 1988, that number rose to approximately 500,000, doubling in percentage.\textsuperscript{9} These numbers were reflected in all universities, but most alarmingly within elite private and public institutions.\textsuperscript{10} Within that same

\textsuperscript{6} Gale Holland & Maria Goodavage, \textit{California's Asian Students Face Quandary}, USA TODAY, Aug. 23, 1995, at 1A.
\textsuperscript{8} WU, supra note 2, at 51.
\textsuperscript{10} Id.
twelve-year span, the proportion of Asian American freshmen grew from 3.6 percent to 12.8 percent at Harvard, 5.7 percent to 14.7 percent at Stanford, and 5.3 percent to 20.6 percent at Massachusetts Institute of Technology. 11 Between 1979 and 1989, Asian Americans increased their numbers of PhD recipients by 46 percent. 12

In 1993, Asian Americans composed of 5.3 percent of the college student body but represented less than 3 percent of the general United States population. By 1997, 12 percent of the doctorates conferred by U.S. universities were given to Asian Americans, with more than 25 percent of the doctorates in the engineering field. 13 Some scholars have stated that these numbers are so high because Asian Americans were being paid far less than whites at the same educational level, so they sought out higher education to attempt to level the playing field. 14

According to the 2008 United States Census, 49 percent of Americans of Asian and Pacific Islander descent, aged twenty-five and older, hold a bachelor’s degree or have a higher level of education. Asian Americans have the highest proportion of college graduates of any race or ethnic group in the country. 86 percent of Asian Americans, age twenty-five and older have high school diplomas. 20 percent of Asians Americans, age twenty-five and older hold an advanced degree (e.g., master’s degree, PhD, M.D. or J.D.), in comparison to 10 percent for all Americans age twenty-five and older. 15

II. Affirmative Action Litigation

A. Brief History of Affirmative Action

12 WU, supra note 2, at 51.
13 Id.
14 Id.
Affirmative action programs were first instituted in the United States as a means to ameliorate the government’s past discriminatory acts. Within the higher education context, courts have justified implementation of such programs to remedy the present effects of past discrimination and a means to diversity student bodies in higher education settings.  

Affirmative action was a way to “compensate those who had suffered discrimination, making them whole again, thereby enabling them to compete equally in society.” Under the Fourteenth Amendment’s Equal Protection Clause, the Supreme Court considers race to be a “suspect classification,” subject to strict scrutiny interpretation. Race classifications must therefore further a compelling governmental interest and also be narrowly tailored to achieve that interest. University affirmation action programs dependent on race classifications must meet both requirements.

1. Regents of the University of California v. Bakke

The U.S. Supreme Court first addressed the question of affirmative action in higher education in Regents of the University of California v. Bakke. Bakke, a white male, applied and was rejected to the Medical School at the University of California Davis in 1973 and 1974. He thereafter sued alleging that the Medical School’s “special admissions program,” which reserved sixteen spots out of 100 for minority applicants, violated the Equal Protection Clause. The Superior Court of California struck down the program and the California Supreme Court found that while the special admissions program furthered a compelling state interest, it was not

---

18 U.S. CONST. amend. XIV, § 1.
20 Id.
21 Id. at 276.
22 Id. at 277-78.
the least intrusive means of furthering those goals, and affirmed the lower court’s decision.\textsuperscript{23}

The Supreme Court granted certiorari.

Justice Powell delivered the Court opinion, stating that the university’s program was discriminatory and unconstitutional under the Fourteenth Amendment because it set a racial quota.\textsuperscript{24} The special program gave seats to minority applicants that white students could not compete for and thus white students were precluded from consideration solely because of their race.\textsuperscript{25} Justice Powell however stated that it is permissible to consider race in the admissions process if it is just one factor out of several in the decision because it is in the state’s best interest to promote diversity in schools.\textsuperscript{26}

2. Hopwood v. Texas

Bakke was however inconclusive in many ways because it was a plurality opinion, leaving lower courts somewhat hesitant to apply the decision. In 1996, the Court of Appeals for the Fifth Circuit struck down the application of race in university admissions in the Texas state school system.\textsuperscript{27} Hopwood, a white female, was denied admission to the University of Texas Law School and thereafter sued based on unconstitutional racial discrimination. Hopwood claimed that she had higher standardized test scores and grades than some of the admitted minority students.\textsuperscript{28}

The University had hoped to increase its minority student population and filtered minority student applicants into separate admissions piles where an admissions subcommittee

\begin{footnotesize}
\begin{enumerate}
\item Id. at 279.
\item Id. at 289-90.
\item Hopwood v. Texas, 78 F.3d 932, 968 (5th Cir. 1996).
\item Id. at 937.
\end{enumerate}
\end{footnotesize}
would look at each individual candidate’s file. White and non-preferred minority applicants were not given this same treatment and were held to a higher standard than their minority counterparts.  

Applying strict scrutiny, the Fifth Circuit struck down the affirmative action program, stating that the program failed to identify a compelling governmental interest to justify the use of racial classifications. After Hopwood, the Texas state school system banned the use of race in higher education admission processes, and shortly after enacted the “Top Ten Percent” plan.

3. Grutter v. Bollinger

The Court resolved the circuit split in Grutter v. Bollinger, where it upheld a program at the University of Michigan that used race as a factor for admissions. Since the program considered several other factors including race it passed the strict scrutiny test by the Court. Barbara Grutter, a white Michigan resident, was rejected from the University of Michigan law school and sued, challenging the race-conscious admissions program, which considered race as a “plus” rather than assigning specific percentages for each racial group.

Justice O’Connor, writing for the Court, stated that the university’s goal of having a diversified student body could serve as a compelling governmental interest under strict scrutiny analysis. Justice O’Connor yielded to the university’s “educational autonomy” in concluding that “attaining a diverse student body is at the heart of the Law School’s proper institutional

\[29\] Id. at 937-38.
\[30\] Id. at 939-41.
\[31\] Act of September 1, 1997, ch. 155, 1997 Tex. Gen. Sess. Law. Serv. (Act states that “Each general academic teaching institution shall admit an applicant for admission to the institution as an undergraduate student if the applicant graduated in one of the two school years preceding the academic year for which the applicant is applying for admission from a public or private high school in this state accredited by a generally recognized accrediting organization with a grade point average in the top 10 percent of the student's high school graduating class.”)
\[33\] Id. at 337.
\[34\] Id.
\[35\] Id. at 325.
mission, and that ‘good faith’ on the part of a university is ‘presumed’ absent ‘a showing to the contrary.’\textsuperscript{36} The opinion however found quota systems to be unconstitutional because it set aside seats that are only open to applicants of certain races, sacrificing seats that could otherwise be given to other races. But, affirmative action programs that considered race as a “plus” factor went beyond that of a quota system by encouraging diversity and not advantaging one student over another because of race.\textsuperscript{37} The Court thus allowed state universities to use race as a factor in university admissions as long as the affirmative action programs considered other factors.

Asian Americans were divided on the final outcome of Grutter. The Asian American Legal Foundation in California supported the white plaintiffs, contending that Asian Americans and whites were hurt by the admissions policy. On the other hand, other Asian American legal organizations such as the Asian Law Caucus and the Asian Pacific American Legal Center both filed amicus briefs supporting the Michigan admission policies.\textsuperscript{38}

B. The Jian Li Case

In October 2006, Jian Li, then a freshman at Yale University, filed a federal civil rights complaint against Princeton University, alleging Princeton imposed higher standards for Asians than for other minority groups.\textsuperscript{39} Li was rejected even with impressive credentials: a perfect SAT score, a near-perfect SAT II score, overseas community service work, and high rankings on his high school math and physics teams.\textsuperscript{40} Li claimed that Princeton’s affirmative action policies

\textsuperscript{36} Id. at 329.
\textsuperscript{37} Id. at 315.
\textsuperscript{38} Harvey Gee, From Bakke to Grutter and Beyond: Asian Americans and Diversity in America, 9 TEX. J. ON C.L. & C.R. 127, 152. (2004).
\textsuperscript{40} Christopher Shea, Victim of Success?: Are Asian American Students Discriminated Against in College Admissions?, BOSTON GLOBE, Nov. 26, 2006, at 3C.
penalized Asian American students because of their overrepresentation at many elite universities and yet gave preferential treatment to other minority groups.\textsuperscript{41}

In response to Li’s complaint, the Daily Princetonian, the student-run daily newspaper at Princeton, published an issue parodying Li’s case.\textsuperscript{42} The issue poked fun at various Chinese stereotypes – parodying their excellent math skills, “greasy foods,” and lack of grammatical skills. The column began with, “Hi Princeton! Remember me? I so good at math and science … I the super smart Asian. Princeton the super dumb college, not accept me … My dad from Kung Pao province. I united 500 years of Rice Wars … I love Yale. Lots of bulldogs here for me to eat.”\textsuperscript{43} The Princetonian’s editorial staff issued a formal apology but only after students and faculty condemned the issue.\textsuperscript{44}

The Office of Civil Rights converted Li’s case into a compliance review to look at Princeton’s admissions policies for Asian-American students. The investigation, which is ongoing, focuses on the admission process for the current class or applicants who were admitted for the 2006-2007 school year.\textsuperscript{45}

C. Current Status

Li’s case is a window into the depth of the controversy regarding affirmative action in United States universities. More than ten years ago, California voted to eliminate all affirmative action programs in its higher education institutions.\textsuperscript{46} Texas, Florida, Washington followed suit,

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{43} Id.
\item \textsuperscript{44} Chanakya Sethi et al., Editors' Note, DAILY PRINCETONIAN, Jan. 17, 2007, available at \url{http://www.dailyprincetonian.com/archives/2007/01/19/news/17133.shtml}.
\item \textsuperscript{45} Id., also available at \url{http://paw.princeton.edu/issues/2010/01/13/pages/9134/index.xml}.
\item \textsuperscript{46} Egan, \textit{supra} note 41, at 4a.
\end{itemize}
\end{footnotesize}
and in 2006, Michigan voted to end race-based “preferences” at the University of Michigan and other state entities.\textsuperscript{47}

In 2007, in two separate decisions, the U.S. Supreme Court limited the use of race in public school enrollment in Seattle and Kentucky, invalidating programs by declaring that race-conscious policies were discriminatory and unconstitutional.\textsuperscript{48} Public support is declining as well. In a 2003 poll, 54 percent of Americans favored affirmative action in education, but by 2006, only 36 percent were in support of such programs.\textsuperscript{49}

III. Model Minority Myth and White Flight

A. Model Minority Myth

While some Asian American and white students call for the abolishment of affirmative action programs, they do not always have each other’s best interests in mind. In the 1970s and 1980s, the admissions programs of several elite universities were questioned when increasing Asian American application rates did not coincide with increasing admissions rates.\textsuperscript{50} In 1980, a memo from a prestigious U.S. university was leaked to the press, stating, “The campus will endeavor to curb the decline of Caucasian students …. A rising concern will come from Asian students.”\textsuperscript{51} In another example, University of California Berkeley’s former Chancellor apologized for “disadvantaging Asians” in the admissions process.\textsuperscript{52}

Some critics have stated that the model minority myth can also be used as a way for white students to oppose affirmative action under the guise of acting as an advocate for Asian

\begin{flushright}
\footnotesize


\textsuperscript{49} Liu, \textit{supra} note 47, at 395.


\textsuperscript{51} Id.

\textsuperscript{52} Kim, \textit{supra} note 1, at 132 n.22.
\end{flushright}
American rights while merely benefiting themselves. Critics have stated that the model minority status can be used as rationale that other minority groups should not require additional help from affirmative action programs. Thus, when other minority groups reap the benefits from affirmative action programs, affirmative action is criticized as a type of “reverse discrimination” against Asian Americans. One outspoken critic was quoted as saying, “Because Whites are able to champion the group whose interests align with their own, in the realm of education Whites are able to ‘[take] away from Asian Americans to give to Whites,’ but if challenged, to make the claim that they are ‘taking away from Asian Americans to give to other minority groups.’”

B. White Flight

Racial discrimination against Asian Americans in the educational setting is becoming more prevalent in pre-university settings as well, particularly in California. In a 2005 Wall Street Journal article entitled “The New White Flight,” the author wrote of how white parents in the Silicon Valley were taking their children out of two local public high schools due to concern of the schools being “too Asian.” Monta Vista and Lynbrook High Schools are two of the top high schools in California, with stellar academic reputations and exceptional college placement rates. When asked why parents chose to opt out of these two schools, parents would respond

---

53 Da, supra note 50, at 327-28.
54 Id. at 328.
55 Id. at 329.
56 WU, supra note 2, at 278.
58 Id.
that the schools were too competitive or the schools focused too much on math and science and not enough on liberal arts and extracurricular activities.  

The article further stated that top schools in nearby school districts, such as Palo Alto, which has a comparable ranking and reputation, were not facing this mass exodus by white students. Therefore, a possible explanation was that white parents might be uncomfortable with their children competing in an academic environment with Asian-American students, especially in the areas of math and science. This is becoming more evident in higher institutions as well. One article referred to a Stanford University professor who asked a [W]hite student about a poor exam answer in an engineering course, only for the student to respond with, “What do you think I am, Chinese?” In another example, the former student body president of Berkeley was quoted as saying that, “Some students say that if they see too many Asians in a class, they are not going to take it because the curve will be too high.” In the same article, a Yale student stated, “If you are weak in math or science and find yourself assigned to a class with a majority of Asian kids, the only thing to do is to transfer to a different section.”

Situations like the ones in Monta Vista and Lynbrook High Schools are being commonplace, particularly in California. Critics state that Asian Americans are being stigmatized and resented because of their high academic achievements. In addition, Asian Americans are being singled out for their hard work and successes in a negative way.

IV. Conclusion

60 Id.
61 Id.
63 Da, supra note 50, at 326.
Affirmative action is a remedy for past and current discrimination of minority racial
groups and is a controversy not likely to be resolved within a short period of time or by a set of
broad laws. From the Asian American perspective, it is evident that there are ardent advocates
on both sides of the debate who believe that they have the best interests of Asian Americans in
mind. While opinions and perspectives may waiver for and against affirmative action programs
on both sides, the root of the problem will remain: society’s oftentimes false and negative
perceptions of Asian Americans. Thus, a key step in addressing the affirmative action
controversy would be to change society’s perception of Asian Americans and then address the
realities of racism and discrimination within the educational context.

But we as a society can strive to reach common goals in our pursuit to a resolution. At
the core of the affirmative action issue is the social problem of racism, which has led to
destructive thinking and stereotyping of minority groups. In an ideal society, race would no
longer be the cause of social, economic or political division, inequality, and hatred.

The American society must also recognize that amidst all the advances Asian Americans
have made in higher education and the labor force, Asian Americans still face discrimination on
a daily basis – through direct and indirect means. Asian Americans have long been kept in the
shadows in the affirmative action debate, and it is pivotal to understand that Asian Americans
can play a vital role in the controversy.

Asian Americans are in a “unique position in that they possess a ‘simultaneity’ in that
they can take the role of victim and a perpetrator of racial discrimination in the higher education
context.”64 Therefore, Asian Americans and other racial groups must step forward in this debate
and voice their opinions instead of pointing fingers at each other and having a victim mentality.

64 Eric Yamamoto, Rethinking Alliances: Agency, Responsibility and Interracial Justice, 3 UCLA ASIAN PAC. AM. L.J.
Particularly, Asian Americans should call upon liberals and conservatives to take a serious look at discrimination against their race, to reject model minority stereotypes, and most importantly, to give them a chance to participate in national debates concerning affirmative action and race.

In sum, Asian Americans are a vital part of the affirmative action debate. Therefore, a key step forward would be for Asian American groups to combine forces with others that are genuinely committed to social justice and together work toward a program that would break down the barriers that limit minority groups in the educational setting.