

The Treatment of the “Model Minority” as a Monolithic Ethnic Group: The Reason Why Affirmative Action is Causing Problems for Asian Americans

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I. INTRODUCTION

“He’s quiet and, of course, wants to be a doctor.”¹

When the United States Education Department’s Office for Civil Rights first investigated Harvard University’s handling of Asian American applicants in the admissions process in 1990, it found that Harvard’s evaluators were stereotyping applicants, such as the above comment made about one Asian American candidate.² This evaluator’s comment reflects the growing stereotype of Asian Americans in the United States and the designation of Asian Americans as the “model minority”: the belief that Asian Americans have overcome adversity to achieve academic and professional success through their “hard work, uncomplaining perseverance, and quiet accommodation.”³ While this characterization can arguably be viewed as positive, the perception that all Asian Americans fit this “model minority” mold can have, and have had, detrimental effects to particular subgroups within the broader classification of Asian Americans in the context of affirmative action, particularly in higher education.⁴

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¹ Daniel Golden, *Harvard Targeted in U.S. Asian-American Discrimination Probe*, BLOOMBERG (Feb. 2, 2012, 4:01 a.m.), <http://www.bloomberg.com/news/2012-02-02/harvard-targeted-in-u-s-asian-american-discrimination-probe.html> (last visited May 11, 2014).

² *Id.*

³ Linda Chen Einsiedler & Todd A. DeMitchell, *Affirmative Action and the Model Minority in Higher Education Admissions: A Conundrum for Asian Americans*, 131 ED. LAW. REP. 877, 880 (1999).

⁴ This Article seeks to examine affirmative action exclusively in the higher education context, rather than in the employment context. For more information regarding Asian Americans and affirmative action within employment, see Corey A. Ciocchetti & John Holcomb, *The Frontier of Affirmative Action: Employment Preferences & Diversity in the Private Workplace*, 12 U. PA. J. BUS. L. 283 (2010); see also John Cocchi Day, *Retelling the Story of Affirmative Action: Reflections on a Decade of Federal Jurisprudence in the Public Workplace*, 89 CAL. L. REV. 59 (2001).

In the discussion about affirmative action in higher education, the recent United States Supreme Court decision in *Schuette v. BAMN*⁵ holds a significant spot not just for what is said about minorities and affirmative action, but for what is not. In *Schuette*, the Supreme Court upheld Michigan’s state constitutional amendment that banned racial preferences in state university admissions.⁶ However, in what ran across 5 opinions and over 100 pages, the word “minority” appeared more than 100 times throughout the decision while the word “Asian” was never mentioned.⁷ As one commentator noted, “Justice Sonia Sotomayor wrote a passionate, [fifty-eight]-page dissent highlighting the continuing difficulty of certain minority groups to get into the nation’s most prestigious colleges and graduate schools. But not Asian Americans. As minorities, they apparently don’t count, at least when it comes to discrimination in higher education.”⁸ This comment demonstrates the consequences of the Asian American stereotype and the appellation of “model minority” as applied to affirmative action – the perception that all Asian Americans achieve a certain academic and professional success that eludes other racial minorities and as such, do not need, and in fact, suffer at the hands of affirmative action.⁹ As Professor Neil Gotanda explained, white Americans are deeply rooted in the belief that “racism

⁵ *Schuette v. BAMN*, No. 12-682, slip op. (U.S. Apr. 22, 2014).

⁶ Ilya Somin, Ilya Somin, *Asian-Americans, Affirmative Action, and the “Political Restructuring” Doctrine: Does the Doctrine Work When There are Minority Groups on Both Sides of the Issue?*, THE WASHINGTON POST: THE VOLOKH CONSPIRACY (Apr. 22, 2014, 3:34 p.m.), <http://www.washingtonpost.com/news/volokh-conspiracy/wp/2014/04/22/asian-americans-affirmative-action-and-the-political-restructuring-doctrine-does-the-doctrine-work-when-there-are-minority-groups-on-both-sides-of-the-issue/>.

⁷ Daniel Fisher, *Asian Americans are the Hidden Bystanders in Michigan Affirmative Action Case*, FORBES (Apr. 23, 2014, 9:24 a.m.), <http://www.forbes.com/sites/danielfisher/2014/04/23/hidden-bystanders-in-michigans-affirmative-action-case-asian-americans/>.

⁸ *Id.*

⁹ While the focus of this Article is to highlight this particular perception of Asian Americans and its consequences, many other arguments have been made for and against affirmative action for Asian Americans. For more information regarding the debate over affirmative action, see generally Nancy Chung Allred, *Asian Americans and Affirmative Action: From Yellow Peril to Model Minority and Back Again*, 14 ASIAN AM. L.J. 57 (2007).

directed against Asian Americans is insignificant or does not exist”¹⁰ – a result of the stereotyping perceptions of the “model minority.”

The consequences of this stereotype ring loudly particularly in the context of affirmative action. Asian Americans have always been viewed and treated as one broad minority class. And as affirmative action programs have evolved throughout the years and the population of Asian American students in higher education has grown, Asian Americans have come to be considered collectively as the “model minority” – hardworking, intelligent and successful in educational endeavors. However, this Article will posit that this treatment is negatively affecting various subgroups within that broader classification of a minority group. This classification fails to take into account the vastly diverse subgroups within it – including subgroups who are poor or poorly educated and do not actually fit the “model minority” mold.

This Article will address this idea that a broad classification of Asian American hurts more than helps the subgroups that comprises it. Part II will briefly outline the development of affirmative action throughout history and how it has applied to higher education admissions.¹¹ Part III will then examine the effects in higher education admissions of grouping all the various subgroups that comprise Asian Americans into one broad classification.¹² Finally, Part IV will look at the consequences of giving the same treatment to everyone considered Asian American in the affirmative action context and discuss why the stereotype of the “model minority” is actually hurting subgroups within that class.¹³

¹⁰ Miranda Oshige McGowan & James Lindgren, *Testing the “Model Minority Myth”*, 100 NW. U. L. REV. 331, 336 (2006).

¹¹ *See infra* Part II.

¹² *See infra* Part III.

¹³ *See infra* Part IV.

II. THE DEVELOPMENT OF AFFIRMATIVE ACTION IN THE UNITED STATES

The term “affirmative action” was first used by President John F. Kennedy when he created the Equal Employment Opportunity Commission through Executive Order 10925, which prohibited federal government contractors from discriminating on the basis of race or national origin and required them to take “affirmative action” in preventing this type of discrimination.¹⁴ After President Kennedy coined this term, the groups intended to benefit from affirmative action programs emerged as African Americans, Latinos, Asian Americans and Native Americans.¹⁵ Congress passed the Civil Rights Act of 1964, barring discrimination on the basis of race “by private employers, agencies, and educational institutions receiving federal funds.”¹⁶ President Lyndon B. Johnson then issued Executive Order 11246, which provided for equal opportunity in federal employment and prohibited discrimination based on “race, creed, color, or national origin.”¹⁷ Affirmative action programs were initially implemented in the context of employment and later expanded to include higher education admissions.¹⁸

Affirmative action programs typically “seek[] to remedy the significant under-representation of members of certain racial, ethnic, or other groups through measures that take group membership or identity into account.”¹⁹ The original theory was based on the remedial rationale, aiming to equalize the starting point and “compensate those who had suffered discrimination, making them whole again, thereby enabling them to compete equally in

¹⁴ Nancy Chung Allred, *Asian Americans and Affirmative Action: From Yellow Peril to Model Minority and Back Again*, 14 *ASIAN AM. L.J.* 57, 65 (2007).

¹⁵ Adrian Liu, *Affirmative Action & Negative Action: How Jian Li’s Case Can Benefit Asian Americans*, 13 *MICH. J. RACE & L.* 391, 399 (2008). In the mid-1960s, these groups were called “Negroes, Spanish Americans, Orientals and American Indians” on federal forms. *Id.*

¹⁶ *Id.*

¹⁷ *Id.* (internal quotations omitted).

¹⁸ *Id.* at 65-66.

¹⁹ Einsiedler & DeMitchell, *supra* note 3 (internal quotations omitted).

society.”²⁰ The later developed diversity rationale explains that universities have a strong interest in maintaining racial diversity within their student bodies.²¹ Furthermore, the various perspectives of a diverse student body would help to defeat racial stereotyping as to what is considered the “minority viewpoint.”²² This diversity rationale is what has been promulgated by universities and upheld by the Supreme Court in various cases.

In 1978, the United States Supreme Court first addressed this question of affirmative action in the context of higher education at the University of California-Davis Medical School in *Regents of the University of California v. Bakke*.²³ In *Bakke*, the Court considered the constitutionality of the university’s “race-conscious” admissions program.²⁴ Justice Lewis F. Powell, representing a plurality of the Court, held that the admissions program, which reserved 16 out of 100 spots for minority applicants, constituted a racial quota that violated the Fourteenth Amendment.²⁵ Though the Court found the university’s admissions program discriminatory and unconstitutional, Justice Powell did, however, note that race was a permissible consideration in the admissions process if it was simply one of many factors that were taken into account.²⁶ The Court again looked to this question of affirmative action in *Grutter v. Bollinger*²⁷ with a 5-4

²⁰ Allred, *supra* note 14, at 66. “[T]he narrative goes like this: There was once in this country ugly, overt and systematic discrimination based on race or ethnicity... There had to be a corrective device, the thinking went, by which these institutions that had previously treated race and ethnicity of certain groups as a negative could flip the script and treat it as a positive. Some people saw it as a reparation, a historical payoff. But it was more of an acknowledgement that discrimination leaves behind vestiges, and institutions that once went out of their way to be unwelcoming to certain groups now had to go out of their way to be welcoming to those groups by taking applicants’ race and ethnicity into account.” Ruben Navarrette, *Why a Minority Opposes Affirmative Action*, CNN OPINION (Apr. 24, 2014, 2:33 p.m.), <http://www.cnn.com/2014/04/24/opinion/navarrette-affirmative-action/>.

²¹ *Id.*

²² *Id.*

²³ *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978).

²⁴ Liu, *supra* note 15.

²⁵ *Id.*

²⁶ *Id.* “Race-conscious policies can be justified by the substantial state interest in promoting diversity at schools.” *Id.*

²⁷ *Grutter v. Bolinger*, 539 U.S. 306 (2003).

majority affirming diversity as a compelling state interest in higher education.²⁸ In *Grutter*, the Court found that while the university sought a “critical mass” of racial minorities, its policy did not constitute a strict quota and the program considered a variety of factors as well as race.²⁹

III. THE EFFECTS OF AFFIRMATIVE ACTION ON ASIAN AMERICANS AS A BROAD CLASS

Following the government’s lead, admissions offices at higher education institutions began implementing affirmative action programs shortly thereafter and within a couple decades, the academic success of Asian Americans resulted in their numbers growing too high at elite higher education institutions.³⁰ Asian Americans are viewed as the fastest growing minority group in the United States, and are also the fastest growing population with higher education.³¹ In fact, Asian Americans have ceased to be viewed as minorities in higher education admissions policies since they are no longer underrepresented.³² In 2012, the mean SAT score of Asian Americans was sixty-three points higher than that of whites and these elite schools were attempting to keep the numbers of Asian American admissions down.³³

As one commentator noted, “[i]f you look at the Ivy League, you will find that Asian-Americans never get to [twenty] percent of the class...[t]he schools semiconsciously say to themselves, ‘We can’t have all Asians.’”³⁴ As Jews faced quotas at Harvard University, Princeton University, and other Ivy League schools in the first half of the twentieth century,

²⁸ Allred, *supra* note 14, at 68.

²⁹ Liu, *supra* note 15, at 400. “[A]dmissions policies that only consider race as a ‘plus’ factor are constitutionally permissible in order to attain a diverse student body.” *Id.* at 399. For more information on the diversity rationale, see *id.* at 409-14. For more information on the effects of *Bakke* and *Grutter* on affirmative action for Asian Americans, see Victoria Choy, *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 (2005).

³⁰ *Id.*

³¹ Einsiedler & DeMitchell, *supra* note 3, at 879.

³² Sharon S. Lee, *The De-Minoritization of Asian Americans: A Historical Examination of the Representations of Asian Americans in Affirmative Action Admissions Policies at the University of California*, 15 ASIAN AM. L.J. 129, 129 (2008).

³³ *Id.*

³⁴ *Id.*

several academic studies have found that Asian Americans are now over-represented at top universities relative to their population and therefore must meet higher standards than other applicants.³⁵ According to Princeton sociologist Thomas Espenshade, in 2009, Asian Americans needed to score 140 points more than whites, 270 points more than Latinos and 450 points more than African Americans out of a maximum 1600 on the SAT to have the same chance of admission to a private college, if all else was equal.³⁶

IV. THE NEED FOR GREATER ATTENTION TO THE VARIOUS SUBGROUPS THAT COMPRISE THE LARGER GROUP CLASSIFIED AS ASIAN AMERICANS

Though Asian Americans are part of one race, they are not a monolithic group; rather, they are comprised of various different ethnic subgroups.³⁷ Madeline Hsu, director of Asian-American Studies at University of Texas at Austin, has noted that many of the Asian American groups who are performing well academically have parents with college and graduate degrees.³⁸ She attributes this partly to regulations that sought to attract skilled immigrants.³⁹ However, as Hsu then notes, “[w]hat we need now is not to group everyone together into some mythic model minority but to have greater nuance in understanding Asian-American groups. We need greater help for Southeast Asians and Pacific Islanders.”⁴⁰ This idea that different subgroups within the broader Asian American classification need varying levels of help is one that is shared by other scholars with Asian American backgrounds. Asian Americans cannot be fairly and accurately

³⁵ Golden, *supra* note 2.

³⁶ Golden, *supra* note 2.

³⁷ Einsiedler & DeMitchell, *supra* note 3, at 882.

³⁸ Ethan Bronner, *Asian-Americans in the Argument*, THE NEW YORK TIMES (Nov. 1, 2012), http://www.nytimes.com/2012/11/04/education/edlife/affirmative-action-a-complicated-issue-for-asian-americans.html?pagewanted=all&_r=1&.

³⁹ *Id.*

⁴⁰ *Id.*

represented without the recognition of the various underrepresented Asian American subgroups that exist.

Asian Americans generally take one of two positions in the debate over affirmative action: the “community-based” position or the “face-value” position.⁴¹ The “community-based” position posits that Asian Americans are not a homogenous group and classifying them as such, whether as the “model minority” or other descriptions, would be misleading.⁴² This approach recognizes that within this broader group of Asian Americans, there exists a diverse variety of smaller groups.⁴³ In contrast, the “face-value” position focuses solely on the group as a whole and ignores the presence of subgroups.⁴⁴ Groups like the Asian American Legal Foundation (“AALF”), who adhere to the “face-value” position, promotes a strict no-discrimination policy,⁴⁵ which is ultimately the same goal as groups who adopt the “community-based” position. Though the underlying goal for groups that take either position is the same, AALF takes a different approach in achieving that end and in doing so, ignores the heterogeneity of the Asian American community.⁴⁶

Groups like the Asian American Center for Advancing Justice (“AACAJ”), however, argues that fairness and anti-discrimination requires the presentation of various Asian American

⁴¹ Bryan T. Ikegami, *An Urgent Opportunity: Unifying the Asian American Stance on Affirmative Action*, 17 *ASIAN PAC. AM. L.J.* 82, 92 (2012).

⁴² *Id.*

⁴³ *Id.* The Asian American Center for Advancing Justice takes the “community-based” position with the express goal “to protect and promote the civil rights of Asian Americans.” *Id.*

⁴⁴ *Id.* The Asian American Legal Foundation, a San Francisco-based organization, takes the “face-value” position, founded “to protect and promote the civil rights of Asian Americans, but is dedicated to the principle that Americans of all races and ethnicities have the right to be treated as individuals, free of discrimination.” *Id.* The author, Bryan T. Ikegami, notes that while its purpose is laudable, it comes with the caveat that anti-discrimination comes first. *Id.*

⁴⁵ *Id.* at 93.

⁴⁶ *Id.* at 93-94. For example, AALF’s position does not consider that in 2000, 38.1% of Vietnamese students, 49.6% of Laotian students, 53.3% of Cambodian students and 59.6% of Hmong students received less than a high school education. *Id.* at 94.

subgroups in higher education institutions.⁴⁷ When considering the diversity within the Asian American community, the “community-based” position reflects that admissions decisions cannot be made “by focusing solely on the average score of the aggregate group without considering the average scores of subgroups.”⁴⁸ This position also recognizes the reality that not all Asian Americans receive high SAT scores or outperform their peers⁴⁹ –not all Asian Americans fall neatly into the classification of the “model minority.” This reality is essentially an unavoidable result of grouping together individuals from various backgrounds, upbringings and socioeconomic situations, and classifying them as one particular minority class for the purposes of affirmative action.

Many Asian scholars have argued that the stereotype of the “model minority” and the socioeconomic success of Asian Americans actually “obscures the plight of many struggling Asian Americans.” The “model minority myth” depicts Asian Americans as studious and academically successful, but this identity is manipulated to maintain the status quo, according to some scholars.⁵⁰ The stereotype inappropriately groups all Asian Americans together – including third- or fourth- generation Chinese or Japanese Americans with recent immigrants or refugees who are in drastically different situations.⁵¹ Moreover, the classification of Asian Americans into one larger group “masks large differences between subgroups, with high poverty rates among Cambodians (29.3%) and the Hmong (37.8% and low rates among Filipinos (6.3%) and Japanese (9.7%).”⁵² As such, this classification as the “model minority” conceals the reality that certain Asian American subgroups are poor and poorly educated and consequently,

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Citadelle B. Priagula, *Examining Race-Conscious Remediation Through the Pilipino/a American Experience*, 15 ASIAN PAC. AM. L.J. 135, 139 (2010).

⁵¹ McGowan & Lindgren, *supra* note 10, at 336.

⁵² *Id.* (internal quotations omitted).

perpetuates the mistaken perception that no Asian Americans need assistance in obtaining educational or economic success.⁵³ This perception

V. CONCLUSION

While the debate over the use of affirmative action for Asian Americans continues, the underlying goal remains the same: all Americans, including Asian Americans, should be treated equally, regardless of race, ethnicity or national origin. However, the perception that has grown and the stereotypes that have emerged about the “model minority” are skewing the reality for many Asian Americans – the reality that they are recent immigrants or refugees and may be struggling academically or financially. Studies in the past have shown that Asian Americans have achieved educational success, and as a result, admissions processes at higher education have at times functioned to the detriment of Asian American applicants. However, the classification of Asian Americans as the “model minority” creates a perception that affirmative action no longer needs to be applied to the Asian American minority class because they have already achieved the socioeconomic success that other minority classes have not. However, viewing the Asian American minority class as one monolithic ethnic group without considering the subgroups that comprise it becomes a detriment to those who do not conform to the “model minority myth.”

As the Supreme Court has ruled repeatedly on the constitutionality of various affirmative action programs, it is important to acknowledge that these programs cannot be effective if the minority groups that they are intended to benefit are not actually benefiting. The myth of the

⁵³ *Id.* “People simply assume, according to Asian critical scholars, that ‘Asian Americans don’t need public assistance or culturally specific programs, don’t deserve private foundation support, and don’t need educational help.’ *Id.* at 336-37.”

“model minority” characterizes Asian Americans as hard-working individuals who deserve the successes they have achieved; however, stereotypes of a group often mistakenly attribute certain characteristics to every member of that group and in this case, these stereotypes have perpetuated a perception that ultimately negatively affects the subgroups within the broader classification of the Asian American minority group.