

# ASIAN AMERICAN POLICY REVIEW

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## Affirmative Action

The Three Percent Solution: Asian  
Americans and Affirmative Action  
*Dana Takagi*

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Affirmative Action and Asian Americans:  
Unfair Policy Causes Real Harm  
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*Asian American Policy Review*  
John F. Kennedy School of Government  
79 John F. Kennedy Street  
Cambridge, MA 02138  
Phone: (617) 496-8655  
Fax: (617) 496-9027  
E-mail: [aapr@ksg1.harvard.edu](mailto:aapr@ksg1.harvard.edu)  
Website: <http://ksgwww.harvard.edu/~aapr>

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## The Three Percent Solution: Asian Americans and Affirmative Action<sup>1</sup>

Dana Takagi

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*The author argues that Asian Americans, as the “three-percent solution,” are pivotal to the analysis of social policy debates such as affirmative action. She emphasizes the need to understand the Asian American experience as qualitatively different from that of other racial minorities. To better face social policy crises, the author contends that intellectuals, activists, and social policy analysts can learn from the exploration of three areas: the tendency for academic discourse to parallel popular discourse, the ways in which Asian American experiences shape American institutions, and assessment of the major academic perspectives on the study of Asian Americans.*

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“It is in this world context of total integrations and bureaucratization that we must understand the decline of liberalism as a style of thinking and the rise and spread of totalitarian slogan manipulation and opinion management. For the problem of mass insecurity and anxiety levels, of mental imbalances and unclear definitions of unstructured situations now form the sociological context of political and economic psychology.”

—Hans Gerth and C. Wright Mills<sup>2</sup>

“Whatever justification existed for this system [preferential policies] in the 1960s and 1970s isn’t there more than 30 years after.”

—Governor Pete Wilson, California, July 1995<sup>3</sup>

“Effective January 1, 1997, race, religion, sex, color, ethnicity or national origin shall not be the criterion for admission to the University or to any program of study.”

—University of California Regents<sup>4</sup>

This volume of the journal offers a timely moment to think about the coming year of anti-affirmative action politics and beyond. Others here will evaluate the politics of pro- and anti-affirmative action arguments, review the

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*Dana Y. Takagi is Associate Professor of Sociology at UC Santa Cruz. She is author of The Retreat from Race: Asian American Admissions and Racial Politics and various articles on Asian admissions and affirmative action. Her current research interests involve Asian admissions and nationalism.*

hard numbers on Asian Americans and affirmative action, and contextualize affirmative action as part of a more general ascendance of right-wing politics in American society. I will take up a different task, to sketch the broad outlines of an argument about the relationship of Asian Americans to racial politics, writ large: Asian American experiences, while often not the central focus of many “hot” social policy issues in American society, are key for theorizing racial politics, racial formations, and racial conflict—even those events, issues, and policies which are not clearly defined as “Asian American.” Asian Americans, though they constitute three percent of the American population, may very well turn out to be key for fully understanding the discourses, practices, and contradictions of race, equality, and democracy. My contention that Asian Americans constitute a “three percent solution” to the complexities of post-civil rights politics is more rhetorical than literal. The title of this essay is, however, meant to suggest the key role that Asian American experiences play in contemporary debates about race, equality, and democracy.

The question at hand in debates about racial preferences and affirmative action is whether the subject of race is pertinent to the ideals of democracy and equality. That we must ask this question on the eve of the 21st century is, I think, part of what C. Wright Mills was referring to some 40 years ago in his notes on the decline of liberalism in post-modern society. Or put differently, we live in an era when oft-cited notions of equality, liberty, and democracy are plagued by uncertainty rather than certainty. If Americans endorse the principles of liberalism, we are less clear on their meanings in everyday life. Mills believed that the decline of liberalism would in turn foster cynicism, distrust, and a disengagement with the political system, all of which would invite totalitarianism and fascism.<sup>5</sup>

Mills’ predictions are relevant to present day American politics, in particular to racial politics. For example, how has the decline of liberalism been linked, if it has, to racial politics? What have been the issues and discursive means by which the decline has been facilitated? And, given the course of political dominance by the right on many public policy issues—the economy, crime, welfare, and affirmative action—what are the prospects and possibilities for counter-hegemonic politics? In this essay, I offer that the beginnings of an answer to such questions pivot on our ability to better understand and analyze contemporary social policy debates and the relationship of Asian Americans to such debates. I do not mean to suggest that Asian Americans constitute the key, only that Asian American experiences have shaped social policy meanings in significant ways that have often gone unrecognized. In this essay, I make a modest effort toward the critical study

of one such contemporary social policy issue—affirmative action.<sup>6</sup>

My sketch of Asian Americans as a “three percent solution” suggests that answers to the above questions will hinge on our ability to understand Asian American experiences as qualitatively, not quantitatively, different from the experiences of other racial minorities. In this essay, I focus mainly on sketching the need for such an argument rather than filling out the specifics of the argument. Indeed, in what follows, I make three main points, each of which is meant to be suggestive of a way that intellectuals, activists, and social policy analysts either might think differently about their disciplines or orient themselves to better face the crisis of liberalism and social policy issues of the 21st century. In section one, I explore how social policy problems tend to eclipse academic discourse. In section two, I discuss the troubled but significant relationship between Asian Americans and preferences and suggest that we might invert our usual inquiry “How do social policies affect Asian Americans,” and ask instead, “how do Asian American experiences shape American institutions?” Finally, in section three, I briefly assess the major academic perspectives on the study of Asian Americans; that is, I evaluate the prevailing modes of knowledge about Asian Americans and assess the limitations of each.

### **I. Affirmative Action: Can Academic Discourses Transcend Popular Discourses?**

In this first section, I raise a troubling feature of affirmative action debates that might well be a general characteristic of the most urgent and “hot” social policy debates of our time: academic discourses tend to parallel rather than transcend popular discourses. My concern is that we faculty, graduate students, and undergraduates can only swim in the current that is ahead of us. *By this I mean that we now possess a limited capacity to intervene in the course and tenor of affirmative action debates.* The “positions” in the affirmative action debate are well defined, polarized, and, for the most part, set in stone. In 1996, the pressure is to “vote” approval or disapproval rather than reshape the meanings of the debate. Indeed, most of us were absent from shaping the campaign around affirmative action prior to the 1990s. Even the most ardent supporters of affirmative action today were probably not very passionate about this issue ten or fifteen years ago when much of the shaping of the debate was in process. Now, we can either support or oppose affirmative action, but there is little room to maneuver through the debate to thoughtfully weigh in and weigh out terms like merit, qualified/unqualified,

fairness, preferences, and quotas. It is frustrating to participate in such a debate because its terms are already set in discourses and politics that were in the making during the civil rights era.

When affirmative action was a relatively minor political topic in American society, progressive academics were hard at work on other topics. Indeed, many progressive academics were uninterested in social policy and some, quite frankly, were deeply ambivalent about affirmative action.<sup>7</sup> For community activists and leftists of a more general genre, social policy was not the central arena of progressive politics—at least not like international relations, deindustrialization, and economic policy. We had only a limited sense that the major political victories of the right would, and could, be won on stereotyped imagery of welfare queens and quota cheats. But while progressives were minding the political front of international relations and domestic economic matters, the right was touching the corners of resentment—crime, welfare, and preferences.

In addition, many who identify themselves as progressives have had a spotty record on affirmative action—support tinged by ambivalence. The arguments for affirmative action—past or present forms of discrimination, the social value of diversity, the existence of role models for future generations of minority scholars, and the provision of social services such as legal services for minority communities—do not quell the uneasy feeling that these arguments do not hit their mark. In the face of the simple conservative formula, racial equality through colorblind social policy, progressive arguments for affirmative action sound atrophied and weak.

In the time since the 1995 Regents' decision, academic discourses have not transcended popular discourses on affirmative action. Although issues of democracy, equality, and the decline of liberalism are at the heart of the affirmative action debate, academic discourses have tended to focus attention on questions about process—political, legal, and policy issues. As a result, the relationship of race to liberalism remains an open and controversial question that is relatively untouched. While I am convinced that it is important for academics to be moored in real world issues, politics, and policies, I wonder if our engagement in the affirmative action debate is, overall, a healthy sign of engagement or, alternatively, a worrisome sign of our inability to transcend the limits of popular discourse.

To transcend the limits of the debate would mean that the rhetoric of pro-affirmative action forces would carry the moral weight of persuasion (i.e., make an explicit moral argument), speak to current and widespread anxieties about limited opportunities for different sectors of the working and especially

the middle classes, and would re-inscribe an anti-racist value in American social policy. Of course, this raises a difficult question: what would a progressive, anti-hegemonic politics of social policy on affirmative action look like? Any persuasive beginning of an answer to that question will have to address the relationship of Asian Americans to the questions about rights, needs, and privileges raised by affirmative action debates.

## II. Asian Americans and the Debate about Preferences

When I interviewed the Director of Minority Recruitment at Harvard University in 1988 for my research on university admissions, the Director told me that Harvard did not give preferences to Asian American applicants unless their parents were members of the working class. The Director, hailing from a working class Asian American family in New York City, was not sympathetic to preferences for middle class Asian American minorities. In the course of our conversation, the Director revealed that on her own application for undergraduate admission to one of the “Big Three” universities, she had refused to check the ethnic/racial identification box because she wanted to make sure her admission would be on the basis of merit and not on the basis of her family background. The Director’s candid commentary pointed out to me the deeply rooted angst about merit, equality, and preferences. Although her job was to recruit minority applicants to Harvard, she was, in her own case, uneasy about the prospect of being admitted to a university based on a “tip” or “preference.” Her ambivalence is widely shared by many Asian American students and is an important indicator of the widespread uncertainty about preferences and equality of opportunity.

It is impossible to understand the course and shape of today’s debates about affirmative action without also understanding how Asian American students were part of the historical formation of the debate. Although there are those who say that Asians were “used” or their achievements were “hijacked” by conservative spin-doctors, I think that is a historically inaccurate, albeit seductive, narrative. Like the Director of Recruitment at Harvard, the Asian American student finds himself or herself “caught” in a difficult situation: ineligible for preferences/affirmative action but always counted in diversity statistics—racialized differently in different contexts.

The events of July 1995 say something about contemporary race politics: affirmative action is central to the future of politics. They also say something about higher education: the prevailing winds are to the right. The Regents’ decision is also likely to have legal ramifications—the Supreme Court,

increasingly less sympathetic to racial classifications, has simultaneously eroded the basis for racial preferences and affirmative action.<sup>8</sup> But in this section, I wish to shift the focus from the impact of the new policy on Asian Americans, race politics, and the legal status of race preferences, to ways that the events of July 1995 Regents' meeting may also have some import for how we study Asian Americans. My discussion will focus on two points.

First and foremost, we who study Asian Americans and, more generally, race relations should occasionally refuse to study the impact of Regent policy, or any other policy for that matter, on groups like Asian Americans. Instead, we should look deeper and longer into the relationship between Asian Americans and racial politics, between Asian American experiences, history, and social policy.<sup>9</sup> Policies affect the everyday life experiences and life chances of human beings. But the evolution of social policy and the shape of social policy debates (that is, the rhetorical and discursive practices that delimit policy) may reveal how everyday life experiences and what Gerth and Mills termed "character structure" shaped the institutional practices of the present.

Given the course of affirmative action debates and discussions of urban poverty, it is clear now that Asian Americans are a "hidden" part of the discussion. For example, in earlier works, I have characterized Asian Americans as being on the "sidelines" of racial politics, as much of the discussion has focused on black-white relations. I am not sure now that this is a good characterization of the relationship of Asian Americans to race politics because it constructs imagery of Asians as not being central to race politics.

Professor Michael Omi<sup>10</sup> has suggested a different and more persuasive model, one in which Asian Americans are a kind of bellwether of the state of race relations. Actually, much of this characterization is reminiscent of the notion of Asian Americans as marginal or middleman minorities—a conception that many of us refused because it failed to engender a serious critique of American social structure. Similarly, some of the work on the economic location of Asians in American political economy, as middlemen for example, also theorizes Asians as "caught" or existing in an "in-between" sort of social, economic, and political space in American society.

Without doubt, Asian Americans have been integral subjects of some of the most formative policy debates in American society—immigration (federal immigration law, preference system),<sup>11</sup> the establishment of bilingual education (*Lau v. Nichols*<sup>12</sup>), interracial conflict (Korean-black conflict in New York City, Los Angeles, and many other areas of the US), and affirmative

action in higher education (Asian American admissions).

Perhaps my second point might be better read as a plea rather than an argument. It is that the importance of Asian American experiences in racial politics is becoming increasingly clear but the location of Asian Americans in race relations remains largely under-theorized and under-analyzed. I do not mean to suggest there is not a growing literature on Asian Americans—textbooks, literature, and social science studies—but that the “hidden” quality of Asian Americans’ relationship to social institutions deserves more systematic attention from sociology.

### **III. Signs, Political Economy, and Social Policy Perspectives**

This third and final section ends with an argument: that at the close of the twentieth century, there are three major perspectives on the study of Asian Americans, each of which offers powerful insights with which to understand Asian Americans’ impact on the evolution of affirmative action debates, but none of which by itself captures the nuance and complexity of the relationship of Asian Americans to the character and social structure of post-civil rights institutions in the US. The three perspectives, which I have taken the liberty of labeling sign economies, political economies, and social policy, are admittedly gross categorizations. There are significant debates and differences within each of these categories, and perhaps this is an argument for a different scheme. But there are problems with all of the schemes and so I take, with caveats in hand, sign, political economy, and social policy as my three working categories for now.

Let me first begin with what distinguishes these three perspectives. First, they are roughly discipline-specific. What I have labeled sign economies is rooted in the humanities, not the social sciences: the study of signs, largely because some of the key terminology and its spread through higher education, originate with literary theory and is rooted in the humanities—literature, rhetoric, comparative literature, film studies, cultural studies, and, in some corners, history as well.<sup>13</sup>

Images do matter and so do stereotypes. The emphasis on representation and signs, on how Asian Americans figure into or disrupt main currents in dominant ideology, is obviously a crucial arena of study. With regard to affirmative action, for example, the study of representations of Asian American students is essential for understanding how admissions officers at most of the most selective public and private universities refused to admit that they might be enacting, consciously or unconsciously, policies that limited Asian enrollments during the 1980s. Even the Regents’ meeting—where both

Asian American Regents voted to abandon race preferences and replace them with class preferences—publicly “marks” Asian Americans as popularly anti-affirmative action. And in the pages of *Asian Week* following the Regents’ meeting, there was a scuffle in the letters column on whether Asians should responsibly be for or against affirmative action. As one writer noted, “I am appalled and feel ashamed by the actions of some Asian Americans who joined in the undignified effort to disrupt the Regents’ meeting.”<sup>14</sup>

If sign economies are loosely rooted in the humanities, political economy is similarly grounded in the social sciences, sociology, and economics in particular. The term “political economy,” perhaps not original to, but thoroughly infused with Marx’s work, has a deeply socio-structural bent. Informed by Marxists, structuralists, and a long line of American stratification researchers, a defining characteristic of political economy scholars is an abiding belief in how the economy structures opportunity, life chances, and social, cultural, and political relations. Political economists may or may not be Marxists, may or may not subscribe to structuralist theory, may or may not agree on the precise features of the world system, and may or may not agree on how many classes there are in the US. And there are significant debates that divide scholars within this category, for example, on the nature of the political economy of Asian immigrant entrepreneurs—enclave economies, ethnic economies, or middleman minorities. While I am aware that there are differences in perspective, this work has been extremely important to understanding the Asian American and Asian immigrant economic and political positionings in American society. For example, Edna Bonacich and Ivan Light’s book on Korean entrepreneurs, a survey and ethnographic study of Korean businesses in Los Angeles, illustrates how the internationalization of capital, relations with South Korea, and institutions like the Small Business Administration help contribute to Korean propensity for franchising and setting up small business ventures in the Los Angeles area.<sup>15</sup>

The study of political economy is especially critical because it examines the economic location of Asians as immigrant entrepreneurs, rather than working to plug them into the categories of working class, traditional petty bourgeoisie, new petty bourgeoisie, or capitalist. This may seem an obvious contribution but I think it is one whose significance is often missed. The immigrant small business, once thought to be a transient feature of modern society, is clearly here to stay. Indeed, based on the contributions of various political economists to the study of Asian American communities, there is the implicit argument that conflicts between and within the working and middle classes have become as significant as those between capital and labor.



Moreover, Asian immigrant entrepreneurs are the sites of exchange and social interaction among different fractions of the working and under-classes. The possibilities for coalition and friction are sharpest here.

The Regents' meeting serves as an illustration of the strength of this perspective. The two Asian American Regents, David Lee and Stephen Nakashima, both voted to abandon racial preferences. The argument could be made that these Regents, businessmen and appointees of Governor Pete Wilson, voted their class position—one steeped in Republican privilege—on July 20, 1995. Similarly, Andrew Lee, the student body president of the Associated Students of the University of California at Berkeley spoke against affirmative action and preferences. The political economy perspective also helps us understand the entrepreneur ideology that is doubly enforced in Asian communities by a belief in upward mobility through hard work and an enduring faith in the value of education as means for escaping the uncertainties of working class life. In effect, the marginal position of Asians in the economy may help us understand the in-between position of many Asian Americans' views on affirmative action. Consider, also, how an Asian American applicant whose parents are franchising a gas station in Los Angeles and receives no preference for either race or class at UC Berkeley may feel wronged or disadvantaged. She might not identify with the "angry white male" complaints about affirmative action, but she might silently feel ambivalent about preferences for African Americans and Latinos. And this sentiment might just be why there was, according to reports, an absence of Asian American students from UC Berkeley protesting the Regents' decision.

But like the sign economies perspective, the political economy perspective remains incomplete. In particular, the political economy perspective cannot fully capture the "middling" and hidden position of Asian Americans in the long durée of debates about affirmative action. American institutions have mostly expanded their juridical powers in the context of black/white race relations. The introduction of Asian Americans who fit in neither the popular discursive stereotypes of black or white experiences challenges American institutions to re-inscribe their practices to address the claims of Asian Americans. In the case of affirmative action, institutions of higher education have struggled to reconcile civil rights law with meritocratic discourses. As relatively high achieving, academically competitive applicants, Asian Americans challenged the fragile balance between merit and disadvantage in the institution of higher education that had been in place since the 1978 *Bakke* U.S. Supreme Court decision.<sup>16</sup>

The third major perspective deployed in the study of Asian Americans is a social policy approach. This perspective, properly located in schools of public administration, public policy, and education, differs from both the humanities-based sign economy perspective and the social science-based political economy perspective in that the latter two are academic disciplines while the former is rooted in professional schools. This is not to say that there are not social policy studies within the social sciences or even occasionally within the humanities. However, what differentiates the social policy perspective from the other two is its methodological approach toward the study of Asian Americans—a focus on statistical reporting informed largely by a cost-benefit analysis of human behavior.

Many of the official reports from state and government institutions are created in this genre or perspective. Inside the former Department of Health, Education and Welfare was, for example, an Office of Asian American Concerns whose function was to report on the major issues facing Asian Americans. And, not surprisingly, there are state offices like the Office of Asian American Concerns in many states across the country. The Census Bureau, on the occasion of its decennial census, publishes a special report on several minority populations, including Asian Americans and Pacific Islanders. The California Post Secondary Education Commission collects, collates, and reports on information related to Asian Americans in higher education in the state. Also notable is the UCLA Year 2000 report on Asian Americans. The Department of Justice's mammoth study *Civil Rights Issues Facing Asian Americans in the 1990s* is a collection of statistical information and descriptive analysis of violence against Asians, higher education issues, etc.

The major purpose of this perspective or genre of research is to provide the public and special constituencies with information. Certainly the number of reports that are focused on Asian Americans is a partial testament to their "counting" as a social and political category in the US. The production of information has been the basis for political claims by Asians, or on behalf of Asian Americans, to the state or its institutions.

Clearly, for many of the issues that affect Asian Americans, facts are an essential part of claims-making. In the case of the controversy over Asian admissions, for example, facts were both the basis for claims and the subject of much dispute and interpretation. Claims of discrimination were based on admissions and enrollment figures, and those same figures reinterpreted by admissions officers justified claims of over-representation of Asians.

What is limiting about the social policy perspective is its lack of contextualizing facts. Again, drawing from the admissions controversy, facts

were an essential but limiting part of the debate. Or as Colleen Lye, who is currently a graduate student in literature and was a reporter for a newspaper in Berkeley during the controversy, noted, "The only thing that is now clear about admissions is there are now more facts about which both sides can disagree."<sup>17</sup> Or to put it another way, if the Asian admissions controversy entailed lots of disputes about facts, generating thousands of pages of reports, it was not a political/institutional controversy that hinged on the facts per se, but rather a controversy that depended on the moral persuasion of various interpretations of the facts.

Similarly, statistical facts about new Asian communities—their size, time of arrival, occupations in the homeland versus occupations in the US, and even the international context of migration—do not by themselves properly describe or characterize the relationship between "character structure" and "social structure" of the immigrant entrepreneur. Statistics also miss what Chungmoo Choi in describing decolonization and South Korea calls the "interregnum"—the space in between the old and the new where "morbid symptoms appear."<sup>18</sup>

In my mapping of the three main perspectives on the study of Asian Americans at the end of the twentieth century, it is clear that each perspective contributes to the growth of important and new knowledge about Asian Americans. But I have also suggested that there are some limitations with each of the perspectives in the sense that each tends to chew on a particular aspect of Asian American experiences. The sign economies perspective tends to analyze discursive formations; the political economy perspective tends to focus on social formation, with a special emphasis on "economic" relations; and the social policy perspective tends to be largely descriptive in an effort to lobby for particular policy positions.

While it may be possible to piece together the more productive contributions of each perspective to create a new, synthetic, and holistic perspective, I will refrain from doing so. Part of my reluctance here is that these perspectives were constructed and cultivated largely within an understanding of racial politics as defined primarily by black experiences and white experiences. I am less sure that what we need is a new perspective, rather than preliminary notes, and perhaps some guidelines too, on the unique position of Asian Americans in historical and contemporary race relations and social policy.

## Concluding Remarks

This essay was driven by a practical empirical question: What is the best way to understand or make sense of the relationship of Asian Americans to contemporary social policy debates, in particular, affirmative action? The July 20, 1995, Regents meeting is a good example of the need for nuance and history in the study of Asian Americans. That day, the vote on racial preferences was not about Asian Americans in the sense that Asian American students had largely been excluded from racial preferences. But the debate was very much a product of a history of debate about the character and quality of Asian American students. In a sense then, Asian Americans were “embedded” in, but not central to the July 20 debate, discussion, and vote. How can we grapple with the study of Asian Americans when they may be hidden from immediate view but were also part of the discursive forms of talk and debate about affirmative action? Our insights come first from writers like Mills who press us to link social structure with character structure or, more simply put, to study the forms of institutional culture. Such cultures are never given, but are subject to negotiation and change as groups compete for status, power, and control of these institutions and as the political economy that frames opportunity and life chances also changes.

But the relationship between Asian Americans and contemporary institutions and culture—whether it be the debate about affirmative action, interethnic conflict in the city, or electoral redistricting movements—would be more richly informed by a conversation among the three perspectives discussed above. Of course, it is probably not so simple as “we should all sit down and talk,” but I think we may be able to better specify Gramsci’s interregnum, Mills’ relationship between character structure and social structure, and what Omi and Winant describe as “racial projects,” political, social, and cultural spaces in which representation is linked with social structure. The study of Asian Americans—the minority whom we fumble for words such as middlemen, marginal men, model minorities, and ethnic/enclave immigrant economies to describe—challenges us to better theorize or better understand not just the character of Asian Americans as a racial minority, but the character of our social institutions on the eve of the 21st century.

I would like to end on a cheerful note. What is striking about the three perspectives is their collective, and frequently unstated commitment to what Mills described as the “promise” of sociology—the ability to link and critically examine individual woes with public institutions. I remain convinced that

making sense of the variety of Asian American experiences is a fruitful route toward understanding and creating institutional change.

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## Endnotes

1. This article is an amalgamation of a paper presented at the American Sociological Association annual meetings (1995) titled, "Asian Americans and Preferential Policies: Sign Economies, Political Economies, and Social Policy," and a talk at Wellesley College, titled (after the song by Chris Ijima) "War of the Flea," and sponsored by the Asian Alliance at Wellesley on November 9, 1995. My thanks are due to those in the audiences at both presentations for their comments.
2. Hans Gerth and C. Wright Mills, *Character and Social Structure: The Psychology of Social Institutions* (New York: Harcourt Brace, 1953) 464 .
3. B. Drummond Ayres, Jr. "On Affirmative Action, Wilson's Moderate Path Veered Quickly to Right," *New York Times* 8 Aug. 1995, final: A10.
4. *SP-1 and SP-2* resolutions approved at the July 20, 1995, UC Regents' meeting.
5. I am grateful to Howard Winant for sharing with me his recent unpublished essay, "Resisting the New World (Racial) Order" (1995) which sounds the alarm on the potential for fascism at the end of the twentieth century.
6. There are, of course, many who would say that the answer is simple. The political right has taken or, in Stanley Fish's phrase, "hijacked" the vocabulary of the left of the 1960s and infused it with fresh meanings to service a conservative agenda. The position of "they stole our stuff" fails, I think, to appreciate how the social/historical context has radically changed since the 1960s, how part of the left looks like the right on social issues like affirmative action, and, more generally, how discursive practices "belong" to no one group.
7. Elsewhere I have been critical of how some sectors of the left have been as anti-affirmative action as the right. Dana Y. Takagi, *The Retreat from Race: Asian-American Admissions and Racial Politics* (New Brunswick: Rutgers University Press, 1992).
8. Curiously enough, the arguments—moral and legal—for classifications based on gender and class are not legally questionable in the same way as racial classifications. While there has been a flurry of questions raised about the legality of "race" preferences, there has been nary a whisper of challenge to Title IX or to the transformation of affirmative action into a class-based program.
9. Examples of close-up studies of Asian Americans and social policy include the following excellent books: Yen Le Espiritu, *Asian American Panethnicity: Bridging Institutions and Identities* (Philadelphia: Temple University Press, 1992); Timothy P. Fong, *The First Suburban Chinatown: the Remaking of Monterey Park, California* (Philadelphia: Temple University Press, 1994); Charles J. McClain, *In Search of Equality: the Chinese Struggle Against Discrimination in Nineteenth-Century America* (Berkeley: University of California Press, 1994); and Paul Ong, Edna Bonacich, and Lucie Cheng, eds. *The New Asian Immigration in*

*Los Angeles and Global Restructuring* (Philadelphia: Temple University Press, 1994).

10. From conversations and public talks.
11. See the excellent book by Charles J. McClain, *In Search of Equality: the Chinese Struggle Against Discrimination in Nineteenth-Century America* (Berkeley: University of California Press, 1994).
12. *Lau v. Nichols* 414 U.S. 563, 1974.
13. There are, of course, exceptions. For example, Dorinne Kondo, an anthropologist who studied factory workers in Japan, might well fall under the category of sign economies and certainly her current work, on Asian American theater and representations, places her within this perspective. See Dorinne K. Kondo, *Crafting Selves: Power, Gender and Discourses of Identity in a Japanese Workplace* (Chicago: University of Chicago Press, 1990). Outside the social sciences, certainly the work of Gina Marchetti and Lisa Lowe are within this perspective. See Gina Marchetti, *Romance and the "Yellow Peril": Race, Sex and Discursive Strategies in Hollywood Fiction* (Berkeley: University of California Press, 1993). Lisa Lowe, "Heterogeneity, Hybridity, Multiplicity: Marking Asian American Differences," *Diaspora* 1 (1991): 24-44.
14. Thian, Sun. Letter, *Asian Week* 11 Aug. 1995: 3.
15. Ivan Light and Edna Bonacich, *Immigrant Entrepreneurs: Koreans in Los Angeles, 1965-1982* (Berkeley: University of California Press, 1988).
16. *Bakke v. Regents of the University of California* 438 U.S. 265, 1978.
17. Colleen Lye, "Is There a Ceiling Under the Table?" *Berkeley Graduate* 3 (1986).
18. The term was originally coined by Gramsci. See Chungmoo Choi, "The Discourse of Decolonization and Popular Memory: South Korea," *Positions* 1.1 (1993): 77-102. The full cite from Gramsci's *The Prison Notebooks* reads, "The crisis consists precisely in the fact that the old is dying and the new cannot be born; in this interregnum a great variety of morbid symptoms appear." Antonio Gramsci, *Selections from the Prison Notebooks of Antonio Gramsci* (London: Lawrence and Wishart, 1971) 276.

## **Discrimination in the Workplace: Asian Americans and the Debate Over Affirmative Action**

*(Adapted from a series of speeches)*

Vice Chairman Paul M. Igasaki

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*The author calls for a renewed commitment to affirmative action in the workplace. He documents the continuation of employment discrimination against Asian Americans, with discussion of unfair hiring practices and barriers to career advancement. The author argues that affirmative action, when properly applied, will expand employment opportunities for Asian Americans.*

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Affirmative action has become a hot-button issue, making this very complex and important debate into a battle of soundbites and divisive rhetoric. I fear that a real understanding, both of affirmative action and of the underlying realities of race and gender relations in America today, has been lost. This debate has included references to the interests of Asian Americans by both supporters and opponents of affirmative action. For the most part, however, too few Asian American voices have been heard on this topic. The effects of affirmative action on Asian Americans in higher education have been discussed, but little attention has been paid to employment issues. As for affirmative action itself, the real issues are far more complicated than the media image of Asian Americans as the most educated and successful of minority groups in America. Debate needs to take place, and portrayal of the Asian American experience is very helpful to an understanding of affirmative action, its challenges, and potential.

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*Paul M. Igasaki is Vice Chair of the US Equal Employment Opportunity Commission, the first Asian American to hold that position. For three years prior to his appointment, he was Executive Director of the Asian Law Caucus, a San Francisco-based civil rights legal organization. Mr. Igasaki also serves as Vice Chair of the Civil Rights Committee of the American Bar Association's Section on Individual Rights and on the ABA Coordinating Committee on Immigration Law. In addition, he serves on the Executive Committee of the State Bar of California Legal Services Section and the Board of Directors of the National Legal Aid & Defenders Association. Mr. Igasaki received his JD from the University of California, Davis.*

As Vice Chairman of the Equal Employment Opportunity Commission (EEOC),<sup>1</sup> the agency that enforces America's employment discrimination laws, my day-to-day work is not essentially about affirmative action. The EEOC's work, however, does provide some understanding of the issues that are central to the affirmative action debate.

The harshest critics of affirmative action agree that vigorous enforcement of anti-discrimination laws is essential and possibly an alternative to affirmative action. There also appears to be a broad assumption by many that employment discrimination is no longer a serious problem, that we have essentially reached that oft-mentioned ideal: the level playing field. Nonetheless, the bipartisan support of affirmative action as a tool to redress the effects of discrimination is eroding because supporters believe that it has outlived its usefulness. The EEOC's experience proves quite the contrary. Employment discrimination of all kinds is occurring presently at a level as high or higher than that at any time in history, despite the fact that some forms of discrimination have become less overt.

Over the five-year period between 1991 and 1995, the number of discrimination charges filed with the EEOC increased from 63,899 in 1991 to 87,580 in 1995, an increase of 27 percent.<sup>2</sup> During the same time span, the number of charges filed by Asian Pacific Islanders did not increase significantly. Asian Americans file less than one percent of the total number of charges per year.<sup>3</sup> The number of charges filed by Asian Americans as they relate to specific issues such as discharge, hiring, and promotion in the workplace has not changed significantly over the last five years.

Despite evidence suggesting that the numbers should be higher, the number of charges filed by Asian Americans is low. According to Karen Narasaki, Director of National Asian Pacific American Legal Consortium, many Asian Americans are reluctant to file charges of discrimination because they are either unaware of their rights to equal employment opportunities or are limited by barriers in the workplace. Narasaki explains that Asian Americans have historically been underserved by the legal community and that the government has not committed the resources to reach out to and inform the Asian American community about the civil rights laws that protect them in the workplace.

Moreover, the American legal system itself, which is based on conflict, presents cultural and language barriers to many Asian Americans. Asian Americans are raised in a culture that stresses hard work and deference to authority. When Asian Americans experience discrimination in the



workplace, they are often reluctant to take any type of action which may brand them as "troublemakers" and will choose to leave a company rather than litigate. That keeps the numbers of charges filed artificially low. Unfortunately, the low number of discrimination charges filed feeds the sentiment that Asian Americans do not need affirmative action to achieve success in the employment sector.

Asian Americans face much discrimination in the workplace. Many Asian Americans feel that language issues contribute greatly to the discrimination they experience at work, regardless of whether they speak with an accent or are native born. English-only rules and the movement to make English the official language in this country fuel the idea that Asian Americans are foreigners and inferior to others.

In the workplace, racial tensions have gone through the roof. The cases that I see on a day to day basis shock me, despite the fact that I have spent my career in civil rights. The coding of applications by race, sexual harassment of the most coercive nature, and attacks against "foreign-looking" workers are just a few of the complex and serious cases that come into the EEOC each year. While not all claims are valid, there is no shortage of those that are. Fairness in the workplace for women and minorities is a long way off.

The opponents of affirmative action often express concerns about "reverse discrimination" against white males, despite evidence that women and minorities have not taken career opportunities or jobs away from them nor have replaced them in the upper echelons of management. The Department of Labor's 1995 Glass Ceiling Commission Report reveals that white male anxiety about competing with women and minorities for promotions contributes to the preservation of the glass ceiling and denies business the diversity it needs to remain competitive.<sup>4</sup>

In the name of affirmative action, discrimination has sometimes occurred due to poorly designed or implemented programs. But such unfairness is not inherent in the principles of affirmative action. Many people assume that no channels exist for white males to challenge gender or race discrimination against them. The same civil rights laws that protect equal employment opportunity for women and minorities also protect white men. All discrimination, including reverse discrimination, is prohibited by existing law.

There is actually very little evidence of pervasive reverse discrimination. The EEOC estimates that approximately two percent of current charges appear to be in the reverse discrimination category.<sup>5</sup> A *Washington Post* investigation last year discovered that, of the 3,000 cases filed in federal court between 1990

and 1994 alleging employment discrimination, 100 involved reverse discrimination, and out of those, only six claims were found to be valid.<sup>6</sup>

People who believe they have been discriminated against by an employer applying gender or racial quotas in hiring may file a charge of discrimination at any of the 50 EEOC field offices nationwide. Additionally, charges can be filed with the State and Local Fair Employment Practice Agencies with which the EEOC maintains Worksharing Agreements. Cases are pursued if there is a violation of the law.

I am proud to say that I consider my appointment as Vice Chair of the EEOC to be the product of affirmative action. I have spent a career seeking civil rights as a lawyer and advocate, and I feel confident in saying that I am well qualified for my position. Because most of the decision makers are not of my ethnic or racial background and because there is a tendency to overlook Asian Americans for government leadership positions, it took an affirmative effort to consider me. I challenge anyone to suggest that appointments such as mine are less valid because of the concern for inclusion.

Affirmative action, at its best, is designed to help seek out the best individuals for positions, despite the tendency to know and select people most like ourselves. Many employers understand that to overcome systemic discrimination or exclusion, affirmative measures are needed to achieve equality of opportunity for women and minorities. Whether an affirmative action plan is voluntary or court-ordered, the goals and timetable established by the plan must be flexible and temporary.<sup>7</sup> Affirmative action need not and, according to the law, should not involve quotas or statistical straightjackets that strictly limit consideration of applicants to certain groups in precise proportions. While some inappropriate choices are made pursuant to affirmative action, it need not happen any more than with non-affirmative action choices. I have made many hiring choices in my career, and I have experienced successes as well as mistakes, whether or not affirmative action was a consideration.

Even though some minorities and women have achieved some level of career success, they still tend to make less money, sometimes substantially less, than others in similar jobs with the same levels of education and experience. According to the 1990 census data compiled by the Office of Federal Contract Compliance Programs, a woman with a masters degree earns on average the same amount as a man with an associate degree. Black men with college degrees earn 76 percent of their white male counterparts' earnings. Similarly, the 1988 US Commission on Civil Rights Report and the 1995 Glass Ceiling Report found that higher levels of education failed to yield the same

employment opportunities, salaries, and promotions for Asian Americans as it did for white males.<sup>8</sup>

The 1995 Glass Ceiling Commission report recently confirmed that management opportunities and promotions generally remain elusive to women and minorities. The study estimated that 97 percent of the senior managers in Fortune 1000 industrial and Fortune 500 companies are white and 95 to 97 percent are male.<sup>9</sup> Those numbers are only slightly better for lower level management positions. Yet minorities and women make up two-thirds of the population and are approaching 60 percent of the working population.

Consider the nature of glass ceiling discrimination. It is human nature to hire those who look and act like yourself. It is human nature to relate to and understand best those who share your background. It is easier to perceive leadership qualities in those who fit the characteristics of leaders portrayed in entertainment, media, and historical roles. Management hiring decisions are, by their nature, very subjective. This, however, is not a valid excuse to perpetuate discrimination in the workplace. Organizations must make conscious efforts to develop successful programs committed to eliminating glass ceiling barriers for women and minorities.

A 1992 report, "New Leaders: Guidelines on Leadership Diversity in America," by Ann M. Morrison, showed that prejudice against minorities and white women continues to be the single most important barrier to their advancement into executive ranks.<sup>10</sup> Judgments on hiring and promotion are often made on the basis of a look, shape of body, or color of skin. Decisions are also made based on fears, myths, and stereotypes about a particular race or ethnic group. For example, Asian Americans are considered good workers to hire, but there is a misconception in American corporate culture that they lack leadership skills and, therefore, are not "promotable" to positions of upper management.

Many of the cultural attributes that helped Asian Americans gain entry level employment are now used to justify shutting them out of upper management.<sup>11</sup> Because most Asian Americans are viewed as non-assertive or non-aggressive, the corporate culture of America interprets such behavior as ineffective leadership. These stereotypical attitudes prevent Asian Americans from attaining promotions that would allow them to prove that they indeed are effective managers.

Traditional anti-discrimination law, difficult enough to employ when there is an individual case of apparent discrimination, becomes much more difficult when glass ceiling discrimination is involved. Employment

discrimination is often subtle and difficult to prove even if an individual can find adequate representation and can afford the money and time it takes to pursue such a claim. Glass ceiling cases are even more difficult to prove because the decision to promote is very subjective and because courts are less likely to question internal business decisions in which the decision maker does not articulate blatant discriminatory reasons. Even using these laws tends to limit one's opportunities for similar chances of promotion in the future at that company or even future employment in a particular industry. Especially in today's climate of corporate restructuring and downsizing, job insecurity alone may prevent many individuals from complaining about discriminatory acts or decisions.

Although many corporate leaders report that diversity is essential to their companies' futures, diversity at the managerial and decision making levels does not yet exist. A survey of senior-level male managers in some of America's largest companies showed that 97 percent are white, whereas 0.6 percent are African American, 0.4 percent Hispanic, and 0.3 percent Asian American.<sup>12</sup>

One of the obstacles to career advancement that some Asian American employees identified was the lack of role models in the corporate hierarchy.<sup>13</sup> CEOs interviewed for the Glass Ceiling Report admitted that the attitudes and biases of middle-level managers continue to limit the mobility of women and minorities.<sup>14</sup> Unless greater diversity is achieved in positions with hiring authority, it is unlikely that diversity will be achieved at lower levels of employment, not to mention at the managerial level.

In the high-technology industry, many Asian Americans found that they were not being considered for leadership roles, so they went out and set up small, successful companies on their own. The Asian American Manufacturers Association reported that in 1990, there were more than 200 Asian American-owned high-tech firms in the San Francisco Bay Area alone.<sup>15</sup> Disillusioned with the management opportunities in American high-tech companies, other Asian American engineers and scientists have found better opportunities in overseas enterprises, resulting in what has been described as a "reverse brain drain."<sup>16</sup>

Affirmative action, properly applied, has not changed the employment situation for women and minorities overnight, but it has expanded opportunities for them. This is why so many companies and business groups have spoken out in favor of affirmative action. For example, the president of Sara Lee Corporation has stated that it took affirmative action initiatives to open doors to women and minorities. The Clorox Company's Affirmative Action Position Statement declares that affirmative action ensures that

Clorox's workforce will reflect the demographics of the communities in which they do business and helps to ensure equal access to employment opportunities. IBM's Corporate Position on affirmative action states that regardless of the outcome of the affirmative action debate, it will continue to ensure equal opportunity. Mike Bowlin, CEO of ARCO, told ARCO executives that through affirmative action programs in the company, ARCO has expanded opportunities for qualified individuals and will continue to recruit, hire, and promote in accordance with the company's affirmative action commitments.

Many companies believe that affirmative action and the management of a diverse workforce are critical to their success. This is especially true in areas where the population is especially diverse, where companies have found affirmative action not only useful, but necessary to remain competitive. A 1993 Standard and Poor study showed that those companies that achieved some threshold level of diversity had stock market records that were almost two-and-one-half times better than those of similar companies that had not achieved such diversity.<sup>17</sup>

Nevertheless, affirmative action in the workplace is increasingly under attack, especially because many Americans are feeling less secure about their economic future during these times of public and private downsizing and these times in which permanent employees are replaced with contractors and part-time employees. Economic anxiety, however, is not a valid reason to dismantle affirmative action. Although economic insecurity has made it easier for some people to claim that women or minorities are getting the opportunities that they are not, the reality is that women and minorities are also feeling the pains, only more so.

Affirmative action should not involve hiring unqualified individuals. It might involve recruitment efforts or it could mean looking at the way jobs are defined to make them more accessible to all. In Chicago during the 1980s, city departments applied an affirmative action program that opened many public job opportunities for Asian Americans for the first time. Many departments developed recruitment programs to increase the diversity of their applicant pool. Goals based on labor statistics were used as a starting place to determine which of the more than forty city departments with dozens of job categories needed recruitment assistance and for what positions. As long as goals do not become inflexible quotas, they need not be unfair or discriminatory.

Last year's Supreme Court decision, *Adarand Contractors v. Pena*,<sup>18</sup> set new standards for the review of affirmative action programs in a case involving minority contracting programs. The Court imposed the same

“strict scrutiny” standard for review of affirmative action at the federal level that already existed at the state level.<sup>19</sup> Despite the assumption of some that the decision was a death knell for affirmative action, the Justices clearly stated that this decision was not intended to create an insurmountable barrier.

To pass a “strict scrutiny” test, programs must serve a compelling state interest. The government may consider the effects of past discrimination, including significant statistical disparities, to support reliance on race or ethnicity in decisions regarding health, education, hiring, contracting, and other programs.<sup>20</sup> To serve a “compelling interest,” the state and now the federal government will have to identify precisely the discrimination that they are seeking to remedy; historical discrimination in the society at large alone is not a compelling governmental interest. State and federal governments can remedy the effects of their own discriminatory acts or the acts committed by private parties within the government’s jurisdiction in which the government’s “passive participation” contributed to that discriminatory behavior.<sup>21</sup>

In his speech on July 19, 1995, at the National Archives, President Clinton made it clear that he continues to support the goals of affirmative action, stating, “Affirmative action is good for America,” and outlining guidelines for implementing the *Adarand* requirements. “[A Program] must be eliminated or reformed if [it]: creates a quota; creates preferences for unqualified individuals; creates reverse discrimination; and continues even after its purposes have been achieved. When affirmative action is done right, it is flexible, it is fair, and it works” (sic).

Asian Americans still need and can benefit from affirmative action in the workplace. All Asian Americans must realize that just being educated and qualified is not enough to secure and advance in a specific job. The Glass Ceiling Commission’s report makes it all too clear that Asian Americans, along with African Americans, Hispanic Americans, and women, are underrepresented in management positions. Ending affirmative action will not remedy the real problems that have fueled this debate, namely, diminishing job opportunities and falling wages. We must renew our commitment to affirmative action and only agree to end it when discrimination is a thing of the past and the playing field is truly level. As Asian Americans, we must work with all others who are affected by this struggle for equality and believe that affirmative action is a tool for fairness.

In the words of Senator Nancy Kassebaum, affirmative action is a tool that has “stood the test of time.” Clearly, fairness in the American workplace is a long way off. To the extent that programs are unfair or are not working, they should be changed. By providing for the resolution and enforcement of the

rights of those hurt by discrimination—women or men, whites or minorities—we advance the cause of justice. By submitting to misleading rhetoric we set ourselves back. Now is not the time for a precipitous change in these national policies.

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## Endnotes

1. The EEOC was created by Title VII of the Civil Rights Act of 1964 to eliminate employment discrimination based on race, color religion, sex, or national origin. In 1979, EEOC received additional jurisdictional responsibilities such as the enforcement of the Age Discrimination in Employment Act (ADEA) of 1967, the Equal Pay Act of 1963, and Section 501 of the Rehabilitation Act of 1973. In 1992, the EEOC began to enforce Title I of the Americans with Disabilities Act of 1990.
2. United States, Office of Program Operation, Equal Employment Opportunity Commission, *FY 1995 Fourth Quarter Report to the Chairman* (Washington: EEOC, 1995).
3. United States, Equal Employment Opportunity Commission, *EEOC Charge Data Systems National Data Base*.
4. United States, Glass Ceiling Commission, Department of Labor, *Good For Business: Making Full Use of the Nations Human Capital* (Washington: GPO, 16 Mar. 1995) S-17.
5. *EEOC Charge Data Systems National Data Base*.
6. Kevin Merida, "Study Finds Little Evidence of Reverse Discrimination," *The Washington Post* 30 Mar. 1995: A2.
7. See *Johnson v. Transportation Agency Santa Clara County, California* 480 U.S. 616, 1987; and *Local 28 of Sheet Metal Workers v. EEOC* 478 U.S. 421, 1986.
8. United States, Commission on Civil Rights, *Economic Status of Americans of Asian Descent; An Exploratory Investigation* (Washington: GPO, 24 Sept. 1994).
9. *Good For Business*, S-6.
10. *Good For Business*, S-5.
11. United States, Glass Ceiling Commission, Department of Labor, *An Asian Pacific American Perspective on the Glass Ceiling* (Washington: GPO, 24 Sept. 1994) 9.
12. *Good For Business*, S-6.
13. United States, Glass Ceiling Commission, Department of Labor, *The Glass Ceiling and Asian Americans* (Washington: GPO, Jul. 1994) 48.
14. *Good For Business*, S-61.
15. *Good For Business*, S-45.
16. *The Glass Ceiling and Asian Americans*, 77.

17. *Good For Business*, S-8.
18. *Adarand Contractors v. Peña* 115 U.S. 2097, 1995.
19. See *City of Richmond v. J.A. Croson Co.* 488 U.S. 469, 1989. In this case, the Court held for the first time that race-based affirmative action by state and local governments is subject to strict scrutiny.
20. There are those who believe that any statistical analysis in a discrimination context amounts to a quota. While civil rights laws include provision for disparate impact, even where employment action produces an apparent discriminatory statistical impact, a business has the opportunity to demonstrate a rational business purpose that is not discriminatory to explain the action taken. Without disparate impact provisions, discrimination would only be proven in cases where there is evidence of the employer foolish enough to discriminate explicitly. The use of statistical evidence is critical in establishing an employer's discrimination because it is the only determinative evidence. Any statistical inference can be overcome by an employer applying permissible business practices through showing that the requirement is job related.
21. *City of Richmond v. J.A. Croson Co.* 488 U.S. 469, 1989.



## Marching Towards The Dream

The Honorable Frederick F.Y. Pang

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*The United States military is arguably one of the most successfully integrated institutions in existence today. The author presents the military as a model of equal opportunity and affirmative action policies which reflect a sustained commitment to find and develop talented people from underrepresented minority groups. He argues that the military model holds important lessons for how civilian organizations can develop a more effective workforce.*

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“[A]ffirmative action remains a useful tool for widening economic and educational opportunity. The model used by the military, the Army in particular . . . has been especially successful because it emphasizes education and training, ensuring that it has a wide pool of qualified candidates for every level of promotion. That approach has given us the most racially diverse and best qualified military in our history.”

—President William Jefferson Clinton, *Affirmative Action Speech*  
(July 19, 1995)

Rigidly segregated by race just 50 years ago, today's military is more diverse, of higher quality, and offers more equal opportunity than ever before. The story of the military's progress toward the ideal of a culturally diverse meritocracy clearly demonstrates that affirmative action, one of the primary tools we have used to achieve these results, can be both fair and effective.

Military organizations, of course, differ in many ways from civilian organizations. Nevertheless, I believe the way in which the armed forces have succeeded in their efforts to ensure equal opportunity and treatment holds important lessons for civilian organizations which seek a more effective workforce.

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*As Assistant Secretary of Defense for Force Management Policy, Secretary Pang has Defense Department-wide policy responsibility for the recruitment, training, career development, compensation, retention, quality of life, equal opportunity, and readiness of active duty service members and civilian employees. He has also served as Assistant Secretary of the Navy for Manpower and Reserve Affairs and on the staff of the Senate Armed Services Committee. He retired from the Air Force in 1986 at the grade of colonel with 27 years of service. Secretary Pang was born and raised in Honolulu, Hawaii.*

Ethnic and racial minorities have often had to endure racism and discrimination while serving their country in uniform. Japanese Americans faced a particularly difficult situation during World War II. The War Department classified Japanese Americans as "4-C," or enemy nationals, at the beginning of the War and prevented them from joining the military. Eventually, after interned Japanese Americans pressed for an opportunity to demonstrate their loyalty by serving in uniform, a segregated regiment of Japanese Americans was created to fight in Europe. Prior to this, there had been no sanctioned practice of segregating Asian Americans within the military. One of the segregated units, the 442 Regimental Combat Team, is among the most decorated units in US history, boasting 9,486 purple hearts.

This war record did little to stem racism and discrimination directed at Asian Americans, just as the splendid war records of African Americans did not end racist attitudes toward them. The history of race relations in the American military shows that military necessity and leadership from the top provided the major impetus to begin the task of desegregation and the provision of equal opportunity. Recognizing this as a military value, Secretary of Defense William Perry recently called the vigilant maintenance of equal opportunity a "military necessity."

## **History**

Because the African American experience has been the most carefully documented of all ethnic minorities in the military, much of the story of affirmative action and equal opportunity in the military must be seen through the lens of the African American experience. The military services did not even collect statistical data on other minorities until the early 1970s.

Prior to and during World War II, the military service of African Americans was limited to segregated units. In 1948, this began to change with President Truman's Executive Order, which called for the equal treatment of all persons in the armed services without regard to race, color, religion, or national origin.

President Truman's Executive Order desegregated the military by breaking up larger all-black units into smaller units and assigning them to previously all-white units. There was no attempt, however, to assign whites to black platoons. While there was some progress, there were still several all-black units in the Army at the start of the Korean War. As the fighting increased, however, the Army experienced manpower shortages. As a result, blacks were individually assigned to units on an as-needed basis, and the Army began its path toward true integration.

Combat results from Korea supported the position that unit integrity and efficiency did not suffer from integration. In 1954, the Department of Defense (DoD) announced that the last all-black unit had been disbanded.

Further initiatives followed. For example, in 1954, DoD began the desegregation of schools that served the children of military personnel. In 1961, the Department implemented a policy that prohibited the use of its buildings or facilities by any organization whose membership discriminated based on race, creed, color, or national origin. While there was significant progress, there were relatively few minority officers in the military services, particularly in the senior grades.

In addition to the military leadership, the rank and file contributed to the effort to eliminate racial discrimination. Minority draftees, inspired by the Civil Rights Movement, fought against discriminatory treatment while serving in uniform. Anti-racist militancy swept through the military as did incidents of racial violence. There were riots at the US Army stockade at Long Binh, South Vietnam, the Marine Corps brig at Camp Pendleton, and at Camp Lejeune, North Carolina, where one person was killed, fifteen injured, and property was damaged. In response to these incidents, the Services established equal opportunity/human relations officers and human relations councils in all major units.

The instability of this period led many military leaders to conclude that true equal opportunity and a diverse officer corps were necessary to maintain a ready and effective fighting force. This belief, especially strong in the Army, translated into specific programs to increase minority representation in the officer corps.

### **The Military Model**

The military has achieved its remarkable success not through quotas or lower standards but through true affirmative action: a sustained commitment to find and develop talented people from underrepresented minorities. The military equal opportunity program is based on the following five key principles:

- A focus on behavior, as opposed to attitudes, and compliance with stated policy;
- Emphasis on equal opportunity and intergroup understanding as military readiness issues;
- An understanding that equal opportunity is a commander's responsibility;

- A belief that education and training can bring about the desired behavioral changes; and
- Reliance on affirmative action plans as a method for ensuring equity and diversity.

The Department of Defense's successful formula for action on equal opportunity begins with corporate-style commitment and oversight. The Defense Equal Opportunity Council, which is chaired by the Deputy Secretary of Defense and includes the Secretaries of the Military Departments, the Chairman of the Joint Chiefs of Staff, and other senior officials,<sup>1</sup> meets regularly to review current equal opportunity policies and set new ones when necessary. The example set by the top leadership is the most important factor in creating an atmosphere which discourages racial discrimination and sexual harassment. President Truman's Executive Order is just one successful example of this approach. Clifford Alexander, who was Secretary of the Army in the late 1970s, made equal opportunity in senior level promotions a priority and enabled a dramatic increase in the number of minority generals in the Army, reversing a previously unimpressive record. A task force on discrimination and sexual harassment appointed by Secretary Perry last year reached the same conclusion: if commanders are held responsible, then much of the problem can be solved.

The Department also has an enormous training capacity, the largest in the world, which gives it great capability to develop talent. Because everyone in the military has to be trained "in-house" to do his or her job, affirmative action often means ensuring that all people have the opportunity to train for any one of the military occupational specialties. Certain specialties and assignments are considered "fast track," and the Services work to see that every qualified service member, including members of minority groups, is considered equally for those opportunities. At the military service academies, equal opportunity means giving some people extra pre-matriculation classes to bring them up to the rigorous standards or offering early admission to highly qualified minority candidates.

The training capacity is also used to educate military personnel on equal opportunity itself. The Defense Equal Opportunity Management Institute in Florida, with a staff of over 100, trains officers and enlisted service members to improve the equal opportunity climate. All new general and flag officers and appointees to the Senior Executive Service attend a two-day course given by the Defense Equal Opportunity Management Institute.

Systematic reviews are also undertaken to monitor the equal opportunity

atmosphere and to provide early warnings of problems that require attention. Military Equal Opportunity Climate Surveys are conducted, at a commander's request, at the unit level. These surveys measure the perceptions of service members of a given unit in five broad areas: sexual harassment and discrimination, command behavior towards women and minorities, positive equal opportunity behavior, overt racist or sexist behavior, and perceptions of "preferential" treatment of women or minorities. At the Department-wide level, another survey, called the Military Equal Opportunity Assessment, provides the leadership with an aggregate assessment of progress in specific areas such as accessions, promotions, and attendance in senior professional military education programs.

### Current Status

By ensuring equal training, assignment, and development opportunities for minorities, the military has dramatically increased the number of minorities in leadership positions without giving individual preferences based on race. The following are some examples reflecting this trend:

- From 1984 to 1994, the percentage of commissioned officers who are members of minority groups increased by 33 percent.<sup>2</sup>
- With regard to minority representation among the more senior officers, promotions from major to colonel and lieutenant commander to captain rose more than 50 percent in just the last seven years.<sup>3</sup>
- From 1984 to 1994, the percentage of officers who are women increased by over 35 percent, from ten percent to 14.6 percent.<sup>4</sup>
- In the enlisted grades, one-third of those in the top three non-commissioned officer grades are minorities, matching their representation among all enlisted service members.

Progress for Asian Americans has been even more impressive. Since 1980, the percentage of Asian Americans in the active duty force has increased by more than 50 percent.<sup>5</sup> The progress is better still in most leadership grades. At the top non-commissioned officer grade (E-9), the proportion of Asian Pacific Islanders has nearly tripled during the last 15 years, from 1.6 percent to 4.7 percent. Among commissioned officers, the percentage of Asian Pacific Islanders has more than doubled, from 0.9 percent to 2.2 percent; that holds true at the senior field grades, too, as the percentage of colonels and Navy captains who are Asian American rose from 0.6 percent to 1.4 percent.

For all minorities, especially Asian Americans, the progress has been more

difficult at the general and flag officer ranks. Since 1980, while the total number of generals decreased by more than one-third, the number of minority generals and admirals increased from 44 to 56. This is good progress, but minorities still represent only six percent of the officers at these grades. Asian Americans are not only similarly underrepresented, but there has been a distinct lack of progress. There were two Asian American general officers in 1980; there were still only two in 1995. Secretary Perry has asked the Department to take a hard look at the officer "pipeline" to determine what artificial barriers still cause this and other promotion problems.

### **Problems Remain**

There are, of course, other problems. Despite the real and remarkable progress I have discussed, there are still incidents of discrimination and harassment in the military. Because the members of the armed forces come from the larger society, the military will never be free of discrimination until the nation as a whole is cleansed of it.

The case of Marine Corps Reserve Captain Bruce Yamashita, for instance, demonstrates some of the problems which still exist. Captain Yamashita, who is Japanese American, was subject to racial harassment by his basic training instructor and was eventually washed out of the commissioning program. However, his situation also demonstrates the military's capacity for corrective action. He appealed the decision, claiming that unfair treatment based on his race had prevented him from performing to his full capacity. We in the Department of the Navy (I was Assistant Secretary of the Navy for Manpower and Personnel at the time) eventually agreed with his claims and commissioned him as a captain, the rank he would have attained if he had graduated with his class.

What does this say about the state of racial tolerance in the military? Certainly, it says that there are still individual bigots in the ranks and that we need to work harder to improve the atmosphere in some commands. Unfortunately, with one and a half million service members and hundreds of major commands, we know that some problems will continue to exist for the foreseeable future. What is necessary is that service members who claim discrimination or harassment receive a full and fair hearing of their charges, and that we hold perpetrators and their superiors accountable for any misdeeds. In Captain Yamashita's case, I believe we held to this standard and sent the right message.

Secretary Perry has shown a genuine personal interest in combating the problems which he recognizes still exist in the armed forces. In addition to

raising senior level accountability for equal opportunity matters (his Under Secretaries must personally explain any failure to create a diversified workforce), he has created a Deputy Assistant Secretary for Equal Opportunity, established goals for civilian employment diversity, and commissioned a study to explain why minority officers are promoted at a slower rate than white officers. He clearly understands that despite the military's past successes, true and full equality of opportunity will require active leadership from the very top.

Just before the report to President Clinton on affirmative action was completed, there was another important development in equal opportunity policy. The US Supreme Court ruled, in the case of *Adarand Contractors v. Peña*, that all federal affirmative action programs must be justified by a "compelling government interest" and be "narrowly tailored" to satisfy that interest—a very rigorous legal standard.

The Department of Justice is now reviewing all federal affirmative action programs to ensure that they meet the *Adarand* test. The Department of Defense is working closely with the Department of Justice in reviewing the DoD's equal opportunity programs. I believe that the vast majority of our personnel programs will easily survive the *Adarand* test, given the careful and fair manner in which they were designed and the Court's historic deference to the military's personnel policies.

### **The Military's Lesson for Society**

President Clinton's summation of the military's equal opportunity approach, noted at the beginning of this article, provides a valuable lesson for those who want to learn from our experience. By holding fast to tough standards but working hard to ensure that everyone has access to training and education that will enable them to meet those standards, the military has succeeded where many institutions have failed. Those who ignore the fact that the legacy of racism is still with us, as well as those few who want to disregard merit in favor of quotas, will condemn our country to a continuous cycle of resentment and wasted human potential. The armed forces have moved ahead by rejecting both of these fallacies.

As the nation becomes more diverse, it will increasingly become a matter of necessity to attract and develop a diverse workforce. Creating an atmosphere of tolerance and true equal opportunity may require extra effort now, but those who discount the necessity of doing so will soon fail at achieving their mission. This explains why the armed forces is ahead of many

institutions in creating true equal opportunity: for us, the cost of failure is simply too great.

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## Endnotes

1. Other senior officials include Under Secretary of Defense (Personnel and Readiness), Under Secretary of Defense (Comptroller), Under Secretary of Defense (Policy), Under Secretary of Defense (Acquisition and Technology), Assistant Secretary of Defense (Force Management Policy), Assistant Secretary of Defense (C3I), DoD General Counsel, and the Director of Administration and Management.
2. From 10.4 percent of the total in 1984 to 13.9% in 1994.
3. From seven percent in 1987 to 11% in 1994.
4. From ten percent of the total in 1984 to 14.6% in 1994.
5. From 1.9 percent of the total in 1980 to 2.9% in 1995.



## The Presidential Review of Affirmative Action: A View from the Inside

Dennis Hayashi and Christopher Edley, Jr.

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*The authors detail the development of the Affirmative Action Review – Report to the President, released in July 1995. The review of federal programs was based on two guiding principles: (1) Whether affirmative action programs work; and (2) Whether those programs are fair. The authors offer an insider's perspective on how the framework for effective affirmative action programs, and the criteria for testing their fairness, were determined. The authors conclude that affirmative action continues to play a key role in ensuring legal equal opportunity for women and minorities, including Asian Americans.*

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On July 19, 1995, President Clinton delivered a speech in which he declared affirmative action to be a moral imperative, an institutional mandate, and a legal necessity. He stated that while affirmative action has not worked perfectly and should ideally be retired when its mission has been fulfilled, it remains an essential tool to achieve equal opportunity.

The President's policy on affirmative action was based both on his own beliefs and on the findings contained in the 96-page report entitled *Affirmative Action Review—Report to the President*. The Report, conducted by an Administration work group, was the product of a five-month review of federal affirmative action programs to determine the following: (a) whether the programs worked; and (b) whether the programs were fair. This article focuses on the initial phase of the Administration's review and the process through which the President's position was established.

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*Christopher Edley is Professor of Law at Harvard University; Dennis Hayashi is Director of the Office for Civil Rights, US Department of Health and Human Services. Both participated in the Administration work group which produced the Affirmative Action Review – Report to the President. Mr. Edley co-chaired this group with Senior White House advisor George Stephanopoulos.*

## I. Context: The Current Affirmative Action Environment

It is important to note that the environment in which affirmative action is now debated has changed dramatically since such programs were first established. At the time of the Kennedy and Johnson Administrations, the civil rights movement was at its peak and practices supporting segregation were being replaced by measures promoting integration. We will address three reasons why the current environment has become more volatile.

First, affirmative action programs now face an increased number of legal and legislative problems. Numerous lawsuits challenging affirmative action in employment, education, government procurement, and contract set-asides are either being newly-filed or are rapidly moving through federal appellate courts. This has led to legal modifications of several established programs, such as the Colorado effort at issue in last year's Supreme Court case, *Adarand Construction, Inc. v. Peña*.<sup>1</sup> Also, several bills now pending in Congress intend to eliminate federal affirmative action programs, and states such as California are moving to repeal similar state programs.

Second, the idea of integration has seemingly fallen into disfavor. A 1995 poll conducted by the *Washington Post*, in conjunction with the Henry J. Kaiser Family Foundation and Harvard University, found that virtually half of those surveyed did not feel it was important that different racial or ethnic groups should live, go to school, or work together, as long as they were treated fairly. Such an attitude alarmingly parallels past support for the doctrine of "separate but equal" which underlies legal discrimination from the Reconstruction period to the *Brown v. Board of Education* decision in 1954.

Third, the issue of race has become much more complex, owing primarily to immigration's impact on racial demographics in the United States. The number of Hispanics and Asians has grown in the past 30 years to the point where any discussion of race relations centered solely on blacks and whites is limited and incomplete. Established affirmative action programs initially designed to promote African Americans have faced challenges by other minority groups who desire to be included as well.

Indeed, non-black minorities, including Asian Americans, are now incorporated in such programs. For example, a court decree which carried goals and timetables for increased hiring and promotion of minorities in the San Francisco Fire Department did not contain any such measures for Asian Pacific Americans until 1987.<sup>2</sup> Similarly, Asian American businesses now make up 24 percent of programs receiving contracting priority given to small disadvantaged businesses, whereas a decade ago, they were less than half that

number. Finally, the Federal Glass Ceiling Commission's documentation of the institutional shortage of Asian Americans in management positions has led to discussions of how the business community should constructively respond.

In light of these three changes, any review of affirmative action policies and programs holds the potential not only to imperil the existence of such programs, but also to exacerbate growing racial tensions. We will discuss the implications of the affirmative action debate for racial relations in Section III.

## II. The Presidential Review

Why was a review like this necessary? Although various legal and constitutional aspects of affirmative action have been the subject of litigation over the past thirty years, and despite the fact that Congress has addressed the issue at various times, there had not been a Presidential review of federal affirmative action programs since their implementation during the Nixon Administration.

The Administration's review of affirmative action began with a series of groundwork discussions within the White House. Those discussions centered on a number of issues underlying affirmative action: questions about moral justification, federal legal precedent, and broad historical rationales. Included in the series of discussions with the President and Vice President were members of the Cabinet and a select group of academics, business leaders, and civil rights advocates. These discussions led to a preliminary presentation to the President of three options for a broad analytic framework within which a more detailed examination of federal programs could take place. The three options corresponded to different sets of basic principles:

- **Option One:** The first option was to embrace a rigid color-blindness. This would permit race-, ethnicity-, or gender-conscious decision-making only as a remedy for specific, proven acts of discrimination against individual victims. It was clear that the President, based on his record, would reject this because it offered too limited and ineffective a response to the remaining, pervasive problems of subtle discrimination and exclusion. But it was still important to study the arguments and settle on a well articulated basis for rejecting it. In the end, the President easily rejected the color-blind model. Months later in the *Adarand* case, seven of nine Supreme Court justices did so as well.
- **Option Two:** The second option argued that affirmative action is justified as a remedy for a broader sense of discrimination. This might include

historical societal discrimination, viewed as serious social and economic disadvantage linked loosely, rather than scientifically to the exclusions suffered by certain groups. But this needs some limiting principle, lest we rely on affirmative action when either social or economic policies—compensatory education, for example—would be effective and fair.

- **Option Three:** The third option was to add the notion of inclusion or diversity to remedial purposes. Adding a second pillar of justification would move beyond the narrow cases of perpetrator and victim to implicate values of community and integration. It would also take into account the practical conclusions of many private and public sector leaders that diversity can strengthen many institutions if it does not result in requirements for proportional representation or a group-based spoils system.

The work group's discussion centered on options two and three, and the President eventually settled on a combination of the two—(1) affirmative action is still an essential method for both remedying discrimination and its lingering effects and preventing future discrimination; (2) affirmative action is also justified, in certain circumstances, to promote inclusion in a demographically diverse society; and (3) the strength of the justification and details of appropriate policy design depend on the specific circumstances. This framework has significant consequences for Asian Pacific Americans, as its tenets implicitly recognize the importance of affirmative action to all minorities.

With this general framework in place, the work group reviewed specific federal programs within the various cabinet departments and agencies to determine whether these programs generally worked and were fair. As a starting point, the work group struggled with the task of articulating a definition of affirmative action that would cut through much of the vagueness surrounding the term. Some argued that any review should be limited to only those programs which met the legal definition of affirmative action, i.e., those programs which were implemented pursuant to a congressional mandate to take race or gender into consideration as part of federal contracting or financial assistance. This would have precluded a review of operations or programs which, for example, monitor the hiring of minorities.

It was considered too limiting to utilize a strict, narrow legal definition for a variety of reasons, not the least of which was the general public's belief that affirmative action applies to any program that has given preference on the basis of race or gender. Taking into account public perception as well as legal

considerations, the work group defined affirmative action as "any effort taken to expand opportunity for women or racial, ethnic, and national origin minorities by using membership in those groups that have been subject to discrimination as a consideration." Excluded from any general review were court orders or consent decrees which were issued to remedy specific legal complaints of discrimination.

The review, conducted by sub-cabinet officials and their staffs, was designed to ask hard questions about affirmative action programs. Most programs had not been examined since their inception; in extreme cases, programs had not been reviewed for over 30 years. The questions led to heated and intense exchanges, fueled by the deep feelings people held regarding the issue. Most participants understood, however, that such a vigorous, searching review would effectively prepare us to respond to legal and political challenges, and to fashion needed reforms. What was at stake in these deliberations was not only the Administration's position on the future of these programs, but also the future role and extended commitment of government in building and promoting constructive race relations.

As described above, two broadly-phrased questions guided the examination of federal affirmative action programs - (1) Do they work?; and (2) Are they fair? The work group addressed the question of whether a program "works" by assessing its effectiveness in facilitating equal opportunity. At the same time, it was understood that equal opportunity is not independent of merit. Ensuring equal opportunity for qualified individuals has always been the most fundamental assumption of affirmative action.

The work group concluded that an effective affirmative action program should at a minimum accomplish the following two things: (1) remedy and prevent discrimination; and (2) expand opportunity by promoting integration. The former was the original impetus for the civil rights statutes and protections. The latter goal rests on a presumption that battling individual cases of discrimination is not, in and of itself, enough to integrate minorities into the institutional and economic mainstream and break up entrenched "old boy" networks. Moreover, at a time of steady demographic change, promotion of inclusion becomes more compelling. Any program which, as practically as possible, promotes these two goals met the workability test.

Overall, the work group concluded that federal programs do create equal opportunity. For example, the Department of Education and the Department of Health and Human Services both make limited federal funds available to

educational institutions for providing minority- or gender-targeted scholarships. The purpose of such assistance, according to the *Report to the President*, is to remedy “specific continuing effects of discrimination in some institutions and fields, improve the quality of participating institutions by supporting diversity critical to that quality, and secure for the nation the broad pool of human resources needed for competitiveness and progress in the decades ahead.”<sup>3</sup>

The work group noted several studies that support the proposition that these programs enhance equal opportunities for minorities. For example, a 1994 study showed that the use of such scholarships helped one private undergraduate school to increase its minority enrollment from two percent in 1969 to 16 percent by 1989. Minority-targeted scholarships are important for four reasons: (1) discrimination continues to exist at educational institutions; (2) education is the first rung on the ladder of opportunity, making inclusion central to equal opportunity; (3) a competitive national economy depends on encouraging more Americans to fully develop their potential; and (4) diversity is critical to quality not only in education, but also in the workplace.

The increase in minority participation in educational institutions over the years, coupled with evidence that minority-targeted scholarships have a positive impact on the four concerns delineated above, certainly supports our general conclusion that affirmative action education programs work. At the same time, the work group acknowledged that ongoing reviews of the continued effectiveness of such programs need to be conscientiously undertaken with the use of equal opportunity objectives to measure progress.

The question of fairness proved to be a thornier issue. Objective evaluation of whether affirmative action is “fair” is inevitably colored to some degree by personal beliefs. Quite simply, affirmative action becomes a personal issue for anyone who believes he or she has either benefited from it or lost an opportunity to someone else who did.

The issue of fairness is also clouded by the many misperceptions about affirmative action programs. Specifically, affirmative action is typically thought to promote strict racial or gender quotas, lead to different qualification requirements for different demographic groups, penalize people for historical discrimination of which they were not a part, and award contracts to “sham” minority-owned firms. Although these commonly held beliefs lack factual basis, we thought it would be less than prudent to sidestep or disregard them. As a result, after extensive discussion and analysis, the group agreed on the following criteria to test the fairness of any given program:

- *No quotas.* Does this program effectively avoid quotas which mandate the inclusion of racial minorities?
- *Absence of Race-Neutral Options.* Has the program attempted to examine whether a race-neutral alternative would produce similar results as those produced through a “race-neutral” option?
- *Flexibility.* Is the program flexible enough to limit the use of race when appropriate?
- *Limited Duration.* Is there a limited duration to the program, or is the program subject to periodic public review to determine whether it should be ended?
- *Opportunities.* Does the program, as implemented, serve to unduly limit opportunities or benefits to those who are not direct beneficiaries?

After the work group applied these criteria to the federal programs under review, we concluded that the programs were, for the most part, fair. Where problems were identified, the group recommended that programs, particularly procurement programs, undergo revisions or modifications to eliminate aspects which were deemed unfair. Overall, however, throughout our examination of federal programs—which included contracting and procurement, military training and promotion, educational scholarships and financial assistance, broadcasting license preferences, and Federal civilian employment—the evidence showed that affirmative action has met the criteria we established for fairness, while providing significant, though relatively modest, gains to women and minorities.

In the end, it was clear that affirmative action has played, and continues to play, a key role in ensuring legal equal opportunity. But to ensure that present government efforts remain legally sound, the President issued a directive in July 1995 for a second, far more detailed review of these programs to establish their consistency with the Supreme Court’s June 1995 decision in *Adarand*. This supplemental review has already led to the elimination of a Defense Department procurement program which limited bidding on particular contracts to small disadvantaged businesses if two or more such firms were potential bidders (this is commonly referred to as the “rule-of-two” set-aside program). This review will be an ongoing one, consistent with the work group’s suggestion that affirmative action programs be regularly re-evaluated for effectiveness.

### III. The Impact on Race Relations

Beyond the question of legality, however, is the question of affirmative action's impact on this country's race relations. Opponents of affirmative action, including some Asian Americans, have claimed that when race is used as a factor to determine admission to educational institutions or receipt of financial assistance, non-minority groups and Asian Americans are "victims" of quotas. Specifically, it is argued that affirmative action programs for other racial minorities result in an artificial increase in their numbers while indirectly depressing white and Asian American numbers. This perception has led to intense division within the Asian American community and among racial minority groups.

We believe that measuring the value of affirmative action solely by examining who benefits from a defined zero-sum game is short-sighted. Affirmative action's value is tied not just to an individual job or educational slot, but to the overall health and stability of a corporation, business, campus, or society and to an acknowledgment that discrimination remains an ongoing problem. If one reviews, as we did, the history, evolution, and operation of affirmative action programs from this broader perspective, it is clear that while issues of fairness in implementation must be addressed, affirmative action remains fundamentally necessary.

To be successful in promoting, rather than impeding positive race relations, it must be acknowledged that unequal opportunity remains at the heart of racial divisiveness in this country. Affirmative action is one tool which has proven effective in bridging this opportunity gap. At the same time, these programs can and must be fair, carefully crafted, and non-paternalistic. Affirmative action, done poorly, can foster racial resentment and animosity. Done right, it can enhance efforts to build work forces, educational institutions, and business communities which are equipped to overcome differences and promote productivity.

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### Endnotes

1. *Adarand Construction, Inc. v. Peña* 115 S.Ct. 2097 (1995).
2. *US v. City and County of San Francisco* 696 F. Supp. 1287 (N.D. Cal., 1988).
3. *Affirmative Action Review—Report to the President* (1995) 76.



## **Affirmative Action and Asian Americans: Unfair Policy Causes Real Harms**

Lance T. Izumi

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*The author argues that group-based affirmative action policies harm not only members of the white majority, but also members of non-preferred minority groups, namely Asian Americans. He identifies three reasons why race-based policies such as affirmative action should be abolished: 1) group-based affirmative action hurts individuals; 2) the US Constitution and Bill of Rights protect individuals, not groups; and 3) affirmative action policies fail to address the institutional sources of inequality in our country.*

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### **Introduction**

Where should Asian Americans stand on race-based preference policies such as affirmative action? For years, the consensus among liberal Asian American advocacy groups has supported affirmative action, arguing that Asian Americans have been the victims of past discriminatory laws and practices and that any policy that attempts to rectify those past wrongs should be supported.

Unfortunately, the implications and effects of affirmative action are not so simple. Although Asian Americans have suffered from discrimination in the past, it does not necessarily follow that Asian Americans should support race-based affirmative action policies. As explained by the United States Supreme Court in *Adarand Constructors, Inc. v. Federico Pena, Secretary of Transportation, et al.* and the Board of Regents of the University of California in its repeal of race-based admissions, hiring, and contracting, group-based affirmative action is an inherently unfair and injurious policy to individuals. And, it is unfair and injurious not just to members of the white majority, but to members of non-preferred minority groups, particularly Asian Americans.

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*Lance T. Izumi is Senior Fellow in California Studies at the Pacific Research Institute for Public Policy, a San Francisco-based free-market think tank. Previously, Mr. Izumi was chief speechwriter and director of writing and research for California Governor George Deukmejian. He also served in the Reagan administration as speechwriter to United States Attorney General Edwin Meese III.*

## The Evolution of Affirmative Action

Affirmative action, in the form of government-imposed preferences for certain racial groups, is a departure from this country's historical response to discrimination against minority groups. Previously, the usual practice had been to eliminate the direct source of discrimination. For example, the Thirteenth Amendment to the Constitution eliminated the government-protected institution of slavery. The Fifteenth Amendment was passed to ensure that government did not abridge the right of citizens to vote. It came as a response to state government attempts to prevent African Americans from voting. The 1964 Civil Rights Act outlawed discriminatory racial practices such as the Jim Crow segregationist policies found in many Southern states.

Starting in the 1970s, however, this focus on eliminating barriers shifted. Interestingly, it was the Nixon administration that made the initial attempt to implement affirmative action policies that gave preferences to certain so-called "underrepresented" minority groups. This trend was eventually followed by all levels of government. Many of those who supported this change in emphasis argued that because minority groups such as African Americans have been the victims of historical discrimination and were still suffering the effects of that past discrimination, it was necessary to give them official preferences in employment, contracting, and college admissions to overcome any lingering discriminatory effects.

## Constitutional Problems

Unfortunately, government-sanctioned group preferences have serious and inherent constitutional problems. As pointed out by the Supreme Court majority in the *Adarand* case, such preferences have the effect not only of helping members of certain minority groups, but also of hurting members of both the majority and non-favored minority groups such as Asian Americans. And, as the Court emphasized, assisting the former cannot be an excuse for harming the latter.

The *Adarand* case involved a US Department of Transportation requirement that federal highway contracts contain government subsidies to serve as incentives for the principal contractor to hire minority subcontractors. Adarand Constructors, Inc., a non-minority subcontractor, submitted the lowest bid for a guardrail contract, but lost to a minority-owned construction business. Although the minority-owned business had made a higher bid, it was awarded the guardrail contract because of the subsidy program.<sup>1</sup>

The Court ruled that race-based classification schemes, such as affirmative action, are impermissible because they ignore the fact that the Bill of Rights is aimed at individuals, not groups, and is meant to protect individuals from a burdensome government. The Court stated, “[A]ll governmental action based on race—a *group* classification long recognized as ‘in most circumstances irrelevant and therefore prohibited’—should be subjected to detailed judicial inquiry to ensure that the *personal* right to equal protection of the laws has not been infringed.”<sup>2</sup> Justice Scalia, in his concurring opinion, was even more pointed in his criticism of the group rights concept:

Individuals who have been wronged by unlawful racial discrimination should be made whole; but under our Constitution there can be no such thing as either a creditor or debtor race. That concept is alien to the Constitution’s focus upon the individual.<sup>3</sup>

Despite similar assertions that any discriminatory effects of policies such as affirmative action are essentially benign, the justices in *Adarand* made it clear that “despite the surface appeal of holding ‘benign’ racial classifications to a lower standard,” as Justice Powell in his *Bakke* opinion correctly noted, “it may not always be clear that a so-called preference is in fact benign.”<sup>4</sup> This is a key point, because as Justice Thomas observed in his concurring opinion:

It should be obvious that every racial classification helps, in a narrow sense, some races and hurts others. As to the races benefited, the classification could surely be called “benign.” Accordingly, whether a law relying on racial taxonomy is “benign” or “malign”, either turns on “whose ox is being gored.”<sup>5</sup>

And in the case of affirmative action in university admissions, Asian Americans have definitely been gored.

### Asian Americans and UC Admissions

When the Board of Regents of the University of California took its historic step to ban race-based preferences in its university admissions policy, it did so largely because there was concrete and undeniable evidence that individuals of Asian descent were hurt by the UC’s affirmative action policies.

Using admissions data from the UC Office of the President, a study conducted by the Pacific Research Institute for Public Policy (PRI) found that race-based preferences in admissions policy did indeed assist underrepresented minorities such as African Americans, Hispanic Americans, and Native Americans. Those injured by the policy, however, included not just members of the white majority, but also Asian Americans.

For example, in 1993, the UC Davis School of Medicine accepted African Americans at 13 times the rate of Japanese Americans. Native Americans were accepted at nearly five times the rate of Chinese Americans, and Mexican Americans were accepted at nearly 14 times the rate of Korean Americans.<sup>6</sup> The comparison between Mexican Americans and Korean Americans is especially interesting because UC Davis had virtually the same number of applicants from each ethnic group—235 Mexican Americans and 241 Korean Americans—yet 40 Mexican Americans were accepted while only three Korean Americans were accepted.<sup>7</sup> Sizeable disparities were also found at the other UC medical schools. At the UC San Francisco School of Medicine, African Americans were admitted at 3.2 times the rate of Asian Americans.<sup>8</sup> At the UC Irvine School of Medicine, Mexican Americans were admitted at 3.1 times the rate of Vietnamese Americans.<sup>9</sup> At most of the UC medical schools, applicants from underrepresented minority groups were awarded 20 to 30 percent of the admissions, although they made up nine to ten percent of the applicant pool.<sup>10</sup>

Some affirmative action supporters have tried to explain these figures by arguing that since applicants come from different undergraduate institutions, one cannot really compare acceptance rates of various groups. To address this consideration, the PRI study held constant the differences in schools that applicants attended. Specifically, part of the study looked at those applicants who had received their undergraduate degrees at UC Irvine in 1993. It was discovered that among these UC Irvine graduates, applicants from underrepresented minority groups were nearly three times more likely to be accepted to a UC medical school than Vietnamese American applicants who, as a group, had the highest grade point average (GPA) of about 3.8.<sup>11</sup> In fact, the mean GPA of two-thirds of the Vietnamese American applicants who were denied admission was higher than the mean GPA of the underrepresented minority applicants who were admitted.<sup>12</sup>

Furthermore, race seemed to matter much more than disadvantaged economic status. Ward Connerly, the African American UC regent who authored the resolution to eliminate race preferences in UC admissions, has noted that underrepresented minorities “who score very low in academic achievement but who are from relatively affluent families get boosted towards the front of the line based on race alone.”<sup>13</sup> Conversely, says Mr. Connerly, “Asians and whites who score in the top levels on academics and who are from relatively poor families are dropped way down the admissions line based solely on race.”<sup>14</sup> The numbers in the PRI study support Regent Connerly’s assertion. From the UC Irvine graduate pool examined in the PRI study, non-

poor applicants from underrepresented minority groups were admitted at a rate of 24 percent. This was four times greater than the six percent rate of acceptance of Vietnamese American applicants who were poor.<sup>15</sup>

Such statistics demonstrate the fallacy of the "historical discrimination" argument. How fair is it to use historical discrimination as a justification for denying the admission of a son or daughter of an impoverished Vietnamese refugee in favor of a middle-class or upper-middle-class African American or Hispanic American?<sup>16</sup> Indeed, Asian Americans themselves have been the victims of historical discrimination such as the explicit anti-Asian laws passed in the early part of this century. In his testimony to the UC Board of Regents opposing affirmative action in admissions, State Assemblyman Nao Takasugi, the only Asian American member of the California State Legislature, noted that race preferences are based on the same principles that resulted in past historical discrimination such as the World War II internment of Japanese Americans:

During the internment, I saw families torn apart, ruined and deprived of their rights as Americans. Let us be clear, what we are discussing today with UC's special preferential admissions policy is nothing more or nothing less than state-mandated discrimination based on race, the same discrimination that locked me and my family away in the prison of injustice in Gila River, Arizona.<sup>17</sup>

It is hypocritical to claim that historical discrimination justifies giving race preferences to one race even if another race is completely disregarded. That is why the Supreme Court did not base its decision in the *Adarand* case on the competing claims of historical discrimination of various ethnic groups. Instead, the Court concentrated on maintaining consistency in reviewing racial preference schemes. According to the Court, "The principle of consistency means that whenever the government treats any person unequally because of his or her race, that person has suffered an injury that falls squarely within the language and spirit of the Constitution's guarantee of equal protection."<sup>18</sup>

That principle is certainly applicable to the university admission problem. Admissions are a zero sum game; admitting one person means that another person does not get admitted. Treating people unequally in the admissions process solely because of their race means that some individuals, despite their strong qualifications, will suffer the injury of not gaining a coveted place in a university. This is a clear violation of the constitutional right to equal protection before the law. In the case of UC medical school admissions, a disproportionate number of Asian Americans have not been admitted. Affirmative action has thus prevented many Asian Americans from entering

the careers of their choice despite years of hard work and sacrifice. It is difficult to think of something that could be more fundamentally unfair.

## Conclusion

Race-based preference schemes such as affirmative action should be terminated for three important reasons. First, race-based preferences cause real harm to real people. In particular, these policies, by closing off or obstructing educational and career opportunities, have made it more difficult for many Asian Americans to succeed in American society.

Second, to say that only some Asian Americans (and whites) are hurt by affirmative action while the majority are unaffected by the policy ignores the fact that the US Constitution and the Bill of Rights protects individuals, not percentages. What matters is whether an individual is hurt by a government policy, not whether others of his or her ethnic group are hurt by that policy. Furthermore, past discrimination cannot be used as a justification for present-day discrimination against an individual. While past discrimination is tragic, the constitutional rights of individuals should not be abridged simply to salve society's conscience about past wrongs.

Finally, and perhaps most importantly, affirmative action policies address the wrong end of the problem. For instance, instead of playing a racial numbers game when students reach college-admission age, more enduring results could be achieved if the government addressed the root causes of the inequalities we see in our society, such as a failing elementary and secondary public education system and a welfare system that encourages dependence. UC Regent Stephen Nakashima, a Japanese American defending the Regents' anti-affirmative action vote, observed that society's true long-term solution is to ensure that all students, of whatever race, are adequately prepared to succeed:

But for some of the critics of the Regents' action, a level playing field, where everyone has the same opportunity, is not the issue (translation: is not fair to certain minorities). To such critics I say, direct your passions and your energies to getting the underrepresented minorities to the playing field rather than criticizing the rules which govern the players when they get there.<sup>19</sup>

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## Endnotes

1. "Adarand Constructors, Inc. v. Federico Pena, Secretary of Transportation, et. al.," 63 *The United States Law Week* 13 June 1995: 4523-44.
2. "Adarand," 4530. The internal quotation is from *Hirabayashi v. United States* 320 US: 100.

3. "Adarand," 4534.
4. "Adarand," 4530.
5. "Adarand," 4534.
6. Michael Lynch, "Race-Based Admissions at University of California Medical Schools," *Pacific Research Institute for Public Policy Briefing* June 1995: 8.
7. Lynch, Appendix 2.
8. Lynch, 12.
9. Lynch, 9.
10. Lynch, Appendix 2.
11. Lynch, 15.
12. Lynch, 15.
13. "Black UC Regent Scores Liberal Racism," *Human Events* 4 August 1995: 3.
14. "Black UC Regent Scores Liberal Racism," 3.
15. Lynch, 16.
16. Government-sponsored race preferences assist well-off underrepresented minorities in numerous areas of life in addition to university admissions. The wealthy minority Fanjul family (estimated worth of \$500 million) has taken full advantage of a municipal bond set-aside program for minorities. Felix Granados, himself a wealthy Hispanic businessman who is president of the Fanjul family's financial firm, defended the Fanjuls saying that the relevant category "isn't 'economically disadvantaged.' It's 'minority.' And with a last name like Fanjul, that's just what they are." Paul Craig Roberts and Lawrence Stratton, "Proliferation of Privilege," *National Review* 6 November 1995: 43.
17. Nao Takasugi, *Statement to the University of California Board of Regents* 28 July 1995.
18. "Adarand," 4531.
19. Stephen Nakashima, "Get Underrepresented Minorities to the Playing Field Before College," *Rafu Shimpo* 28 July 1995: 3.





## **Being Used and Being Marginalized in the Affirmative Action Debate: Re-envisioning Multiracial America from an Asian American Perspective**

L. Ling-chi Wang

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*This article discusses the role of Asian Americans in the current affirmative action debate and places the debate within a political and historical context. The author argues that both proponents and opponents of affirmative action use and marginalize Asian Americans to advance their respective arguments. Asian Americans should capitalize on the attention focused on them and articulate their own positions. The author concludes that creating coalitions is necessary for building a multiracial America.*

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In the past two years, both proponents and opponents have written extensively on the topic of affirmative action. But a national dialogue has yet to take place because both sides are locked in intractable positions, unwilling and unable to listen to and understand each other. Since the beginning of 1995, the national debate has become increasingly acrimonious and polarized. The July 20, 1995 decision of the Regents of the University of California to abolish its long standing affirmative action policy on admissions, faculty and staff hiring, and contracts, as well as the anti-affirmative action California initiative, known as the California Civil Rights Initiative (CCRI), to be placed on the November 1996 ballot, have contributed to the polarization of the national debate. The recent Republican victory in the 1994 elections and several US Supreme Court decisions have greatly strengthened the forces opposed to affirmative action.<sup>1</sup> Despite clear demographic and political shifts in the past three decades, there is a conspicuous absence of any critical, yet constructive, appraisal of the policy.

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*L. Ling-chi Wang is Professor of Asian American History in the Asian American Studies Department at the University of California, Berkeley. Professor Wang is one of the original founders of the organization, Chinese for Affirmative Action, and has written numerous articles on a variety of Asian American issues, including admissions to elite universities.*

As one who has supported and worked on issues related to affirmative action during the past 28 years in the Asian American community, I would like to share my understanding and appraisal of the policy and the position I think Asian Americans should take in the national debate. While Asian Americans have slowly become more visible in the political debate, both proponents and opponents of affirmative action have largely misrepresented and marginalized the perspectives and positions of Asian Americans. I shall begin by briefly placing affirmative action in historical and political perspectives, at the risk of being redundant, since misinformation and confusion over both the intents and objectives of affirmative action policy still exist. I shall then outline where Asian Americans are situated in the unfolding national debate. Finally, I shall conclude with a critique of affirmative action as it has been practiced in the past thirty years and what Asian Americans can do to help reconfigure affirmative action within the context of a re-envisioned multiracial America. Asian Americans are central to this debate and play a vital role in shaping its outcome.

### **Affirmative Action in Perspective**

The issue of fairness and justice in the distribution of scarce resources in our race- and class-conscious society lies at the heart of the current debate over affirmative action. Scarcity invariably creates competition and conflict. In this competition, political and economic elites have the power to define universalistic and meritocratic criteria for distributing scarce resources. For example, access to a University of California (UC) education is considered a scarce resource—in 1993, only 20,413 out of 272,800 high school graduates, which is less than ten percent, were admitted into the nine-campus system. The criteria established by the Regents of the University—grade point average (GPA) and standardized test scores—are assumed to be both fair and reliable and, therefore, universal.<sup>2</sup>

The Johnson administration introduced affirmative action policies, pursuant to Executive Order 11246 in 1965, to help dismantle entrenched segregation and discrimination based on race and gender and to promote racial equality and integration. Opponents of affirmative action argue that it is unfair because it subverts meritocracy, condones mediocrity, promotes group rights, racial quotas, reverse discrimination, and above all, invites big government intrusion.<sup>3</sup> Following the logic of the US Supreme Court decision in *Bakke v. the University of California* (1978), they argue that affirmative action in college admissions is morally wrong and un-American,

despite its good intentions, because it grants *group rights* based on race and gender at the expense of *individual rights and merits*.

The July 20, 1995, decision by the UC Regents illustrates the argument against affirmative action policies in college admissions. Writing in defense of his anti-affirmative action resolution, UC Regent Ward Connerly declared,

We have not “killed” or “scrapped” affirmative action. We have not adopted an academic meritocracy. Instead, the regents have eliminated what amounts to a racial Monopoly board in which students are allowed to proceed with their college educations on the basis of their color or the origin of their ancestors . . . . The University of California still has the “welcome mat” out for students of all races. We cherish our diversity and want more of it; we just want to achieve it *naturally* rather than *artificially*.<sup>4</sup>

Likewise, explaining his anti-affirmative action position, UC Regent Stephen Nakashima wrote,

The Regents’ decision to terminate the discriminatory preference accorded to “minority” persons in hiring and contracting resulted from an increasing awareness that discrimination should not beget discrimination. The history books are full of tragedies born of what someone sincerely thought was justified to correct some prior wrong or to enhance the position of some *group* . . . . In the popular *vernacular*, “the playing field has been leveled” after years of requiring only Asians and white males to bear the burden of a tilted field.<sup>5</sup>

The arguments of Connerly and Nakashima are based on the following major assumptions: (1) the US is and should be a *naturally* color-blind society; (2) granting group rights or privileges based on race or gender in the distribution of scarce resource is *artificial* and discriminatory to Asian Americans and whites and, therefore, illegal and wrong; (3) affirmative action policies condone mediocrity and sacrifice merit and excellence; and (4) the sole criteria for the distribution of scarce resources are those based on individual merits and rights.

All four assumptions are flawed. The US has never existed *naturally* as a color-blind society. From the framing of its Constitution to its past and present policies for women and communities of color, the US has created *artificial* social barriers and relied on institutionalized segregation based on race and gender. For example, Harvard University denied admissions to qualified women and minorities for the first 328 years of its 358 year history, artificially protecting and perpetuating the group rights and privileges of white male gentiles.<sup>6</sup> Its policy of excluding women and minorities can be characterized as affirmative action for white males or a policy that condoned mediocrity. Harvard invoked the concept of individual merit only when its

protected privileged status for the white male group was challenged in the 1960s. Thus, throughout US history, artificial group rights or privileges have been used to favor white males at the expense of minorities and women.

Under intense pressure from the civil rights movement, universities reluctantly adopted affirmative action policies for minorities and women in the late 1960s as a token concession. Thus, affirmative action was introduced as a device to lend Harvard and other universities an appearance of fairness and integration. Harvard redefined “merit” by adding an “ethnic docket” to its list of other dockets, including wealthy alumni, athletes, and graduates of preparatory schools, in the admission process.<sup>7</sup> This policy was never intended to promote substantive equality or integration; rather, it was designed to allow a small number of token minorities and women into white male dominated universities and work places.

Consequently, under the guise of affirmative action, elite universities like Harvard and the University of California admit more children of well-connected alumni than underrepresented minorities under “affirmative action”. It seems that benefactors of “affirmative action” include *all* students admitted by non-competitive criteria, such as legacy, leadership qualities, athletic ability, disability, and historical racial or gender discrimination.

After 30 years of affirmative action, the racial divide in the US remains as wide and deep as that identified by President Johnson’s Commission on Civil Disorder in the wake of the urban riots in 1967. The Commission concluded in 1968,

What white Americans have never fully understood—but what the Negro can never forget—is that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintain it, and white society condones it.<sup>8</sup>

That was in 1968. Today, “white Americans” still do not understand the racial divide. Despite federal measures to abolish racial discrimination, such as the 1954 *Brown v. Board of Education* decision and the Civil Rights Act of 1964, the US has not succeeded in eliminating racial fissures. Yet many continue to believe that the US is a color-blind society.<sup>9</sup> The opponents of affirmative action rest their case on this presumption of color-blindness and demand that public policies be carried out without distinction of race, gender, color, or national origin.

### **Asian Americans in the Affirmative Action Discourse**

I will now discuss how opposing sides view and treat Asian Americans and then offer a more inclusive and multiracial vision of the US. Asian Americans have become a major focus of the national debate as both sides of the

affirmative action issue use Asian Americans to advance their respective arguments. These arguments point to the complexity of race relations in the US and the need to rethink race and race relations. Among the examples of unfairness cited most frequently by opponents of affirmative action is the policy's adverse impact on Asian Americans. For example, in the 1980s, the opponents of affirmative action seized Asian American complaints of discriminatory admission policies in several top research universities as a means to dismantle affirmative action.<sup>10</sup> More recently, the opponents of affirmative action have cited the lawsuit against the San Francisco Unified School District action, the *Brian Ho* case,<sup>11</sup> as an example of injustice engendered by affirmative action.<sup>12</sup> Opponents exploit the "model minority" myth, in which Asian Americans are portrayed as highly motivated and hardworking people, by depicting them as victims of an unfair policy that favors group rights over individual merits.

Anti-affirmative action arguments rely on three major flawed assumptions. First, they assume that Asian Americans are a homogeneous group, ignoring the diverse composition of the group—which ranges from recent refugees from Southeast Asia to descendants of California's Chinese pioneers. Secondly, they assume that a legacy of historical and institutional racism against Asian Americans does not exist. They assume that Asian Americans are integrated into the mainstream and do not face discrimination nor experience anti-Asian sentiment. Lastly, they assume that Asian Americans no longer need affirmative action programs to overcome past injustice and racial discrimination. Thus, they assume that Asian Americans, in departure from the past, no longer constitute a racial minority and are fully integrated into the white majority.

Defenders of affirmative action also view Asian Americans as a model minority; two perspectives have emerged from them. Some claim that Asian Americans no longer need or deserve to be included in affirmative action programs. With good intention, supporters use the "success of Asian Americans" as an argument for reserving affirmative action for other minorities. They argue that, while Asian Americans once experienced discrimination, they now compete on a level-playing field because of affirmative action and, therefore, no longer need affirmative action programs. In other words, affirmative action has become a sound, temporary public policy which can outlive its usefulness once those who have experienced discrimination in the past have achieved success.

Other proponents of affirmative action presume that all Asian Americans oppose affirmative action since they are already a "model minority." They see

the Asian American presence in the debate as a monkey wrench in their 'black-versus-white' paradigm of racial discourse. In their view, there is no room for an Asian American presence in both their theories and public policy formulations. In short, they want to exclude Asian Americans from racial discourse, even in times of backlash against affirmative action. They marginalize, if not exclude, those Asian Americans who strongly support affirmative action in public forums and protest rallies. In my opinion, their exclusionary posture aids and abets opponents of affirmative action.

Thus, while opponents of affirmative action divide the Asian American communities by national origin and class and pit Asian Americans against other minorities, a tactic which is both divisive and racist, supporters of affirmative action also deliberately exclude and marginalize Asian Americans in a fashion just as divisive and racist. Both sides incorrectly view Asian Americans as a model minority and erroneously assume their homogeneity and uniform success. While about half of the Asian American population is successful according to educational, occupational, and income measures, the other half—many of whom are non-English-speaking recent immigrants and refugees—is not and needs public assistance and affirmative action. Nonetheless, both halves need affirmative action—they are equally susceptible to racism and discrimination which pose a constant threat to their lives, human dignity, and basic rights.

Asian Americans should not allow themselves to be used or marginalized in intellectual discourses, policy formulations, and political debates over affirmative action. They need to speak out against these misrepresentations promoted by both sides of the debate and articulate their positions forcefully. Their presence is essential for understanding the complexity of current race relations in the US and to re-thinking race and race relations in the 21st century.

### **Re-envisioning Multiracial America**

The nation is at a critical juncture in its history. After five hundred years of racial oppression and exclusion, fundamental questions remain. What kind of society should historically oppressed communities seek for themselves and their children? What should be the vision for the US as a whole in the 21st century?

The social progress made through integration and affirmative action, including the creation of a sizeable black middle class, has fallen far short of the substantive changes necessary to create a truly equal society which is free of racism and sexism. As much as one-half to two-thirds of African

Americans still live in near or dire poverty. For millions of Americans of all races, the dream of racial equality and economic justice remains unfulfilled.

The integrationist paradigm and strategy used in the past three decades failed for five important reasons. First, affirmative action, in the final analysis, is a token concession which was granted under tremendous political pressure during the height of the civil rights movement. It promotes integration for some and alienation for most, including poor whites. It is a temporary and discretionary policy of political expediency which can be taken back at any time. Second, by adopting the terms and conditions of integration, affirmative action is judged as fair and universal when it ensures advantages to white males. Furthermore, beneficiaries of affirmative action are deemed less qualified and undeserving, even if they are fully qualified. For these reasons, affirmative action, in its current form, is denounced as a program that unfairly privileges minorities and women at the expense of white males. Third, by adopting the terms and conditions of integration, affirmative action also requires women and minority groups to fight for their own shares of the token concession. Built into these terms is a self-defeating, divide-and-conquer strategy based largely on identity politics in which minorities and women are pitted against each other in a contest to determine which group faces greater discrimination and victimization. While identity politics and victimology are necessary and empowering, they pose limits and present pitfalls. Fourth, the dominant race relations paradigm assumes a black versus white dichotomy which marginalizes other racial minorities. Under this bipolar paradigm, civil rights is a black issue, relegating the civil rights issues of Asian Americans, Chicanos/Latinos, Native Americans, and women to the fringe. This paradigm prevents a multiracial vision of America from emerging, promotes inter- and intra-minority conflict, and, above all, undermines solidarity among racial minorities, women, and poor whites in their efforts to combat racism, sexism, and economic injustice. Last but not least, the race-based policy obscures the significance of class within each racial group, especially within the Asian American communities. As a result, class interests are frequently confused with or manipulated as race-based interests and vice versa. For these five reasons, it is important to re-think race relations and civil rights. It is time to reformulate affirmative action and to re-envision America as a multiracial democracy.

The political backlash which began during the Nixon era has now become a tsunami sweeping across the nation. The backlash has been greatly reinforced by a growing sense of vulnerability among the predominantly white population as the US loses its dominant position in the global economy

and its population becomes increasingly multiracial through immigration from Asia and Latin America. This backlash is particularly evident in California, as exemplified by legislative strategies such as Proposition 187, the English-only proposition, and gerrymandering reapportionment.

There is, however, a legacy of the 1960s that has long been forgotten which deserves our attention and support. I am referring to the Third World legacy which united racial minority and white students in the fight against racial oppression and created the ethnic studies departments now found in various universities across the nation. For the first and only time in US history, racial minority groups joined hands with whites in a common cause to transform institutions of higher education. They steadfastly refused to be divided and conquered. The concept of Third World may be passé but the vision of multiracial democracy and the idea of solidarity among oppressed groups are more urgent than ever if the US is to transform itself.

Racial minorities and women in California have an opportunity and an obligation to build a new society for the US. This is especially true in multiracial cities like Los Angeles and San Francisco, where racial minorities and women are clearly in the majority. But, it is also in these cities that they are hopelessly divided and against each other, compelled by the current power structure to accept and live with political domination and economic injustice. This situation must be reversed. It must, however, also go beyond simply chipping away power and privilege from the white males and striving for group gains, and in turn, using the same power and privileges to exclude and oppress others. I hope for a new society and new government which will not repeat the same mistakes and atrocities of the past.

Toward this end, America needs a bold new vision for itself. I suggest a critical re-examination of affirmative action, especially its limits, and an attempt to learn from past mistakes. It is certainly important to build a united force of minorities, women, and white males to defeat the racially motivated backlash against affirmative action and other progressive programs. I cannot overemphasize the importance of coalition building. The backlash, however, cannot be defeated simply to return to business as usual. The nation should return to the promise of equality and justice embodied in the Declaration of Independence and mandated in our Constitution. America must re-envision itself and become a political and economic democracy that is truly multiracial, what historian Harold Cruse called "democratic ethnic pluralism."<sup>13</sup> This means that the US identity is not simply conceptualized as black and white, but as multicolor, including Asian Americans, Chicanos/Latinos, Native Americans, women, and gays of all colors and classes.



The anti-affirmative action forces issue a rare challenge for Asian Americans. They occupy a unique position in meeting this challenge and can help break the deadlock between the opposing sides of the affirmative action debate. Asian Americans could not have asked for a better opportunity and vehicle to take up this challenge. To take full advantage of this opportunity, they must have the courage to critically examine their past actions as well as their successes and failures. They must avoid repeating past mistakes and be prepared to modify past policies, including affirmative action policy. To achieve a multiracial political and economic democracy, a multiracial vision and coalition is needed. Asian Americans must join with others who share this vision to defeat the forces of reaction and to re-envision, transform, and rebuild America.

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## Endnotes

1. Recent Supreme Court decisions include *City of Richmond v. Croson* 488 U.S. 469, 1989; *Wards Cove Packing Co. v. Antonio* 490 U.S. 642, 1989; and *Adarand Contractors v. Peña* 115 S. Ct. 2097, 1995.
2. For a detailed report on the admission and affirmative action policies of the University of California, Berkeley, see *Freshman Admissions at Berkeley: A Policy for the 1990s and Beyond*, a report of the Admissions and Enrollment Committee of the Academic Senate, May 1989.
3. See Nathan Glazer, *Affirmative Discrimination: Ethnic Inequality and Public Policy* (New York: Basic Books, 1978). In this book, Glazer presents the most comprehensive attack on the justice and wisdom of shifting from individual rights to group rights in public policy formulations designed to help overcome racial discrimination. He argues that this type of policy helps only those who do not need help.
4. Ward Connery, *SN&R* (7 Sept. 1995) 13.
5. Stephen Nakashima and Ward Connery, *Pacific Citizen* (4-17 Aug. 1995) 11.
6. Troy Duster, "The Structure of Privilege and Its Universe of Discourse," *The American Sociologist* 11 (May 1976): 73-78.
7. United States, Department of Education, Office of Civil Rights, *Statement of Findings, Compliance Review No. 01-88-6009* (4 Oct. 1990).
8. National Advisory Commission on Civil Disorders, *US Riot Commission Report with a Special Introduction by Tom Wicker* (New York: Bantam Books, 1968).
9. This is exemplified in Arthur M. Schlesinger, Jr., *The Disuniting of America: Reflections on a Multicultural Society* (New York: W.W. Norton, 1992). Notions of the US as a color-blind society was dismantled by the racially divided public reactions to the O.J. Simpson verdict on October 3, 1995, and to the "Million Man March" on October 16, 1995. For a

more realistic assessment of US history and current conditions of race relations, see respectively, Tomas Almaguer, *Racial Fault Lines: The Historical Origins of White Supremacy in California* (Berkeley, CA: University of California Press, 1994) and Clarence Lusane, *African Americans at the Crossroads: The Restructuring of Black Leadership and the 1992 Elections* (Boston: South End Press, 1994).

10. Both the Office for Civil Rights of the US Department of Education and the Civil Rights Division of the US Department of Justice of the Reagan era repeatedly expressed strong interest in and support of Asian American complaints. Their expressions were communicated to me personally in writing and in telephone conversations. See also Dana Y. Takagi, *The Retreat from Race: Asian Americans Admissions and Racial Politics* (New Brunswick, NJ: Rutgers University Press, 1992).
11. In this case, a “qualified” Chinese American student was denied admission to the prestigious Lowell High School in San Francisco, California.
12. “A Question of Fairness at Lowell: Public Responses,” editorial, *San Francisco Chronicle* 6 July 1995: A19.
13. For the most forceful presentation on the failure of the integrationist ethics, see Harold Cruse, *Plural But Equal: Blacks and Minorities in America’s Plural Society* (New York: William Morrow, 1987).

## Broadening the Scope of the Affirmative Action Debate

Corinne Maekawa Kodama

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*The author argues that broadening the scope of the affirmative action debate will produce an understanding of the ways in which affirmative action policies can benefit Asian Americans. She contends that the affirmative action debate has been narrowly focused on (1) undergraduate admissions, (2) the UC Regents, (3) UC Berkeley, and (4) a racial paradigm that ignores Asian Americans.*

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Fueled by negative political campaigning in an election year and a general fear of demographic changes in America, affirmative action has become the hot-button issue of 1996. Though the debate is now taking place nationwide, it was ignited in the state of California, largely due to the efforts of Governor Pete Wilson. In particular, the debate in California has focused on the University of California's (UC) efforts to diversify the student body using affirmative action policies. A key decision in the recent debate occurred on July 20, 1995, when the UC Board of Regents (Regents) voted to end race and gender-based considerations in UC employment, contracting, and student admissions policies.

As an employee of UC San Diego whose job involves working with underrepresented populations on campus, I have been struck by the many misperceptions about the UC's affirmative action policy, the University of California system itself, and the effect of affirmative action policies on Asian Americans. I have also noticed the limited scope in which the issue has been debated, focusing only on three flashpoint topics: 1) undergraduate admissions; 2) UC Regents' leadership; and 3) UC Berkeley. The debate is

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*Corinne Maekawa Kodama is the Program Representative for the Student Affirmative Action and Human Relations Programs at the University of California, San Diego, an office that provides support, education, and advocacy for underrepresented students. She has a Bachelor of Arts degree in Music and International Studies from the University of Washington and a counseling credential from UCSD Extension.*

further limited by discussing the issue in a black/white racial paradigm that precludes Asian Americans. This restricted view of affirmative action has contributed to an inaccurate perception of the issue.

More specifically, this narrow focus has painted an incomplete picture of how affirmative action policies work, who benefits, and who should support them. It is my contention that when the debate is expanded beyond the limited focus of undergraduate admissions, the UC Regents, UC Berkeley, and a black/white paradigm, it can affirmative action policies are quite relevant to Asian Americans. Looking at the bigger picture may provide a new and entirely different perspective of affirmative action and the ways in which affirmative action policies do include and benefit Asian Americans.

### **The Focus on Admissions**

The current debate on affirmative action has focused primarily on the area of undergraduate admissions. In the UC system, however, Asian Americans are not considered subjects of affirmative action admissions programs, since as a racial group they are not underrepresented in the student body of the UC system. It is predicted that without a race-based affirmative action admissions program, Asian Americans will be admitted to UC in increased numbers. Some allege that this prediction indicates that Asian Americans are "hurt" by affirmative action admissions policies. This argument has been used both to portray Asian Americans as a minority group that does not want or need affirmative action and to raise opposition to affirmative action among Asian Americans.

Contrary to popular belief, however, student admissions is not the only area in which affirmative action policies exist. Within the UC system, four different areas are affected by affirmative action policies: 1) admissions; 2) employment; 3) business contracting; and 4) pre-admissions outreach. Asian Americans are represented at different levels within these categories. Focusing solely on Asian American representation in admissions is detrimental to the goals of Asian Americans in the other three areas. Each of these areas has its own constituency, history, and goals, which may affect individuals of the same ethnic group differently.

Broadening the affirmative action debate to include employment, contracting, and outreach policies has important implications for the Asian American community. While there may be a large number of Asian American students, there is a small number of Asian Americans employed at the higher levels of the UC staff and administration. As shown in Table 1, Asian Americans compose 26 percent of undergraduates and 13.3 percent of

graduate students within the UC system. The percentage of Asian Americans however differ at each UC campus.) Within the highest levels of the UC administration, Asian Americans hold only four percent of executive positions and nine percent of managerial and professional positions. (See Table 2)

While the focus on admissions is important, it is only one element in the affirmative action debate. The decision by the Board of Regents to rescind affirmative action programs not only changed admissions policies, but also employment and contracting policies. Specifically, the Regents approved two resolutions that affect three different areas: admissions, employment, and contracting. Thus, the Regents' decision has affected not only potential students and university employees, but also minority-owned private corporations in their ability to contract work with the University of California.

The debate over affirmative action seldom makes distinctions between different types of affirmative action programs. This confusion clouds which groups benefit from these programs and the ways in which they benefit. By looking beyond admissions policies, we can see that Asian Americans can also benefit from affirmative action policies in the areas of employment and contracting opportunities. This is particularly important given that the debate over affirmative action has spread from educational institutions to government as well as private corporations.

**Table 1**

*Undergraduate and Graduate Enrollment of Asian-Americans (does not include Filipinos) as a percentage of each campus' total student enrollment. University of California, Fall 1994.*

	Undergraduates	Graduate students
Berkeley	32.3%	11.6%
Davis	23.5%	8.9%
Irvine	40.2%	13.8%
Los Angeles	31.7%	15.9%
Riverside	27.3%	9.6%
San Diego	22.9%	11.8%
San Francisco	13.9%	23.2%
Santa Barbara	11.9%	7.0%
Santa Cruz	9.1%	6.3%
UC-Wide	26.0%	13.3%

*Source: Data compiled from UC Office of the President statistics.*

## **The Focus on the Regents as the Leadership of the UC System**

Another misperception stems from the confusion about the UC Regents' role in the day-to-day activities of the UC system. The intense publicity surrounding the Regents in the past year has given the appearance that the Regents have the support of the rest of the UC community in eliminating affirmative action programs. On the contrary, the politically-appointed Board of Regents does not reflect the true sentiments of the rest of the UC's leadership. In fact, the Regents' decision went against the wishes of the UC President and Vice Presidents, all campus Chancellors, academic Senates, campus unions, and student governments. Thus, this decision has been a great source of frustration for many people at the UC who support affirmative action.

When one considers these high-level dissents, the public opposition at the July 20, 1995, meeting and the apparent rush to make a decision before autumn, it is evident that the Regents intended to make an independent and authoritative decision. In fact, their decision reflected their political rather than educational interest. Often "the Regents' decision" is prefaced with the phrase "led by Governor Pete Wilson." Few would dispute that Governor Wilson brought the anti-affirmative action measure to the Regents' table, particularly since the timing of the debate closely coincided with his impending presidential bid. As an *ex-officio* Regent by virtue of his office, Wilson rarely intervenes in university business. For this particular issue, however, he took an unusually strong stance and actively moved to dismantle affirmative action within the UC system. Governor Wilson was very outspoken on the issue, was known to have made personal phone calls to the Regents preceding the July 20th meeting, and was present at the Regents' meeting for the first time in months. This was a clear political move by Governor Wilson and his political appointees to the Board of Regents. Indeed, all Regents who voted in favor of Governor Wilson's anti-affirmative action initiatives were appointed by Wilson or his predecessor, Republican Governor George Deukmejian.

Many of the Regents who voted in favor of Wilson's initiative were also significant contributors to his political campaigns. According to the Data Center in Oakland, California, Regent Ward Connerly, who spearheaded the campaign to pass Resolution SP-1, had contributed at least \$73,000 to Wilson's political campaigns at the time of the vote. A long-time friend of Pete Wilson, Connerly has benefited politically from their friendship, and some see his leadership on SP-1 as a payback for the various appointments and favors he

has received. The irony is that Connerly, who is an African American, registered his own company as a minority-owned business and benefited from affirmative action programs for many years. It seems that his relationship to Wilson may have contributed to his current anti-affirmative action position.

The frustration and anger that many in the UC community feel towards the Regents' decision are reflected in several events that followed the July 20, 1995, decision. Almost immediately, a petition to revoke the decision was circulated among staff and faculty members system-wide. Another initiative sought to de-politicize the process of appointing Regents to the UC Board by having the Governor's power limited to "recommending" candidates rather than appointing them directly. In addition, on the first day of classes at UC Berkeley last fall, a rally of 700 people spoke out in support of affirmative action and against the Regents' decision. And in perhaps the largest showing of support for affirmative action, faculty, staff, and students numbering in the thousands joined together for a day of protest on October 12, 1995. Teach-ins, walk-outs, and rallies to protest the Regents' decision were held at all of the UC campuses on that day. The Regents were surprised by the intense and widespread opposition to their vote.

Among the most outspoken voices against the Regents' decision are those of the UC faculty. They are displeased not only with the decision itself, but also the manner in which the decision was reached. Although the Regents have the power to make such broad policy decisions, many administrators and faculty have accused them of violating the principles of "shared governance" under which the UC system operates. Article 9, Section 9 of the California State Constitution provides that the Regents keep the oversight of the University of California free "of all political or sectarian influence." Many would argue, however, that the Regents violated their duty and, in fact, blatantly politicized the decisions on education policy. Unfortunately, the perception around the nation is that the Regents' decision is a reflection of the entire UC system when, in fact, the decision was made by a small group of political appointees without the support of the UC leadership and students.

### **The Focus on Berkeley**

The focus on UC Berkeley as the typical UC campus has also contributed to a misrepresentation of the issue. Each of the UC campuses is governed by its own administration, which has the latitude to implement its own admissions policies within general UC guidelines. Admissions policies throughout the UC system range from the examination of individual

applicants on a case-by-case basis (some campuses even conduct personal interviews) to the use of strict formulas or point systems. All campuses take into account what is considered “supplemental criteria,” such as race, economic background, and special talents. Each campus, however, is free to determine the actual weight given to the supplemental criteria within a reasonable range. Focusing the affirmative action debate solely on Berkeley denies its unique position within the UC system and also pays inadequate attention to the positions of other UC campuses. While Berkeley has long been recognized for its strong tradition of valuing diversity and advocating social justice, it is a perspective that is very different from some of the other campuses. Berkeley has a much more diverse student body and, in particular, a strong Asian American history. Berkeley also has an Asian American Chancellor, Chang-Lin Tien, who is one of the highest ranking Asian Americans in education today and an outspoken advocate of affirmative action.

**Table 2**  
*October 1995 UC Asian Employment Statistics*  
*(for Career, Non-Academic Staff)*

	Executive	MAP	A&PS	Staff	Total
Berkeley	6%	13%	14%	18%	16%
Davis	3%	7%	11%	11%	11%
Irvine	3%	8%	18%	15%	15%
Los Angeles	10%	10%	21%	17%	18%
Riverside	0%	4%	10%	6%	7%
San Diego	3%	6%	12%	15%	14%
San Francisco	3%	13%	24%	29%	27%
Santa Barbara	16%	3%	9%	6%	7%
Santa Cruz	0%	3%	8%	6%	6%
President's Office	0%	12%	13%	13%	13%
University-wide	4%	9%	16%	16%	16%

Brief description of existing staff tiers (some are to be combined within the next year or so):

- 1) Executive: Highest ranking administrators, including chancellors and vice-chancellors
- 2) MAP (Managerial & Professional): High level administrators and large department chairs
- 3) A&PS (Administrative & Professional): Mid-level administrators and other professional staff, including many Student Services positions
- 4) Staff: Primarily the administrative/clerical staff and other support positions.

*Source: UC Human Resources—Equal Opportunity/Staff Affirmative Action Office Report, February 1996*

Other campuses have a much lower enrollment of Asian American students than Berkeley, and few, if any, Asian Americans in higher levels of



campus administration. While Berkeley (32.3%), Irvine (40.2%), and Los Angeles (31.7%) have high undergraduate enrollment levels of Asian Americans, other campuses such as Santa Cruz (9.1%) and Santa Barbara (11.9%) have relatively low enrollment levels. (see Table 1). Berkeley is also among the leaders in the UC system in terms of the number of Asian Americans in the executive and managerial and professional (MAP) tiers of campus administration. Table 2 shows that Berkeley and San Francisco lead the rest of the UC campuses in the employment of Asian Americans in MAP positions with 13 percent. For executive positions, Berkeley and San Francisco are ranked third and fourth, respectively, behind Santa Barbara (16%) and Los Angeles (10%). In contrast, UC campuses at Riverside and Santa Cruz do not have any Asian Americans in executive positions.

Despite differences in admissions policies—particularly the weight each campus places on race—affirmative action has and can continue to improve Asian American representation across all UC campuses. When the debate focuses solely on Berkeley as an example of why affirmative action is not needed to ensure diversity, it obscures the fact that few of the other campuses can share Berkeley's impressive statistics. This has contributed to the public's opposition to affirmative action by focusing on the most diverse campus and ignoring the problems of representation and support at the other UC campuses.

### **The Lack of Focus on Asian Americans**

While many feel that the affirmative action debate has clearly demonstrated the fears of whites and the frustration of African Americans, they are confused about or unaware of the Asian American perspective. Historically, Asian Americans have been invisible in many of the civil rights struggles that have come to the attention of mainstream America. The issue of affirmative action is no different. Affirmative action, like many other race-related issues in the United States, is still perceived as an issue between whites and African Americans and, occasionally in Southern California, between whites and Latinos. In most opinion polls and news stories on affirmative action, rarely are Asian American included as an ethnic group that might provide insight on the debate. Asian Americans are often left out of the debate as either unimportant or irrelevant to the racial issues at hand.

Affirmative action is at the heart of the current political backlash against ethnic and racial minorities. These attacks are viewed as setbacks to the progress realized since the civil rights movement of the 1960s. In times of

dwindling resources, limited opportunities, and increased competition, the attacks on affirmative action have become yet another arm of the conservative movement. This trend is especially true in California, where a climate of fear has been validated at the ballot box. Consider Proposition 187, a ballot measure passed in 1994, which denies social services to undocumented immigrants. Many Asian Americans, presuming that the proposition did not affect them, soon found out that the measure severely affected Asian immigrants. The framing of Proposition 187 as largely a Latino/Chicano issue clouded this reality. Proposition 187 scapegoated immigrants and minorities who were perceived to be taking away a greater piece of the pie, in effect pitting different ethnic minorities against each other. The affirmative action debate has recast the same argument in a different context.

It is clear that affirmative action continues to be addressed as an issue that points out the differences between African Americans and whites, yet it is naive to ignore the impact of this policy on other populations, including Asian Americans. The perpetuation of a black/white paradigm for analyzing policies that affect all people of color further keeps the Asian American community out of the debate. As a result, Asian Americans have little understanding of how much they have benefited from affirmative action and of the need to maintain these policies for future generations. All communities of color need to be educated on how this issue affects all people of color and not remain in the narrow view of a limited racial paradigm. Asian Americans need to unite with other groups who are having their rights and opportunities challenged just as we are and assert ourselves into the debate.

### **The Notion that Asian Americans are Against Affirmative Action**

The perception that Asian Americans are against affirmative action is a common one and the direct result of the selective information mentioned earlier in this article: the focus on admissions, the focus on UC Berkeley and the Regents, and the portrayal of the debate as a black/white issue. The perpetuation of these views has not only prompted people outside the Asian American community to think that all Asian Americans are against affirmative action, but has also prompted Asian Americans to speak out against it.

As a community, Asian Americans are caught in the "model minority" paradox. Particularly because of their value of education, Asian Americans are viewed as high achievers who are comfortably assimilated into mainstream society, and successful. Many believe that they have outgrown their need for affirmative action. Thus, many critics of affirmative action feel they can count

on Asian Americans as allies: the model minority proving that affirmative action is not needed.

Many Asian Americans, however, are attached to the movement for the advancement of people of color and support the issues with which other ethnic minorities confront, including affirmative action. Yet the public perceives these issues as primarily black/white ones. From my experience, there are many Asian American organizations on campuses throughout the UC who support affirmative action. In fact, at UC San Diego, some of the most vocal student advocates of affirmative action include the Asian Pacific Islander Student Association and the Pan-Asian Staff Association. Nonetheless, the misconception that all Asian Americans oppose affirmative action has made it difficult for the Asian American community to ally with other minority communities. This barrier to coalition-building across racial communities allows the anti-affirmative action groups to divide ethnic minorities and thus weakens the support for affirmative action.

### Looking Ahead

Although the UC Regents have made a decision in their own jurisdiction, the debate over affirmative action is not over. Within the UC system, there are still a number of issues that need to be resolved; specifically, how the July 20, 1995, decision will actually be implemented and how the UC can continue to support and pursue diversity in the aftermath of this policy change.

The affirmative action debate also continues to live outside of the UC, particularly in California. Perhaps the best example is the California Civil Rights Initiative (CCRI), which proposes to amend the California State Constitution to eliminate all race and gender considerations in areas not already touched by recent decisions. The initiative, much like Proposition 187, is designed to confuse the general public with its true intentions, masking them with a clever title and phrases like "civil rights" and "equal opportunity," which make it attractive to the uninformed voter.

The political climate which gave birth to the anti-affirmative action movement is still alive and well, bringing more and more attention to the issue of race- and gender-based policies. Governor Wilson's presidential bid may be over, but his scrutiny of and opposition to affirmative action survive in the campaigns of the other Republican presidential hopefuls. Senator Bob Dole, the Republican presidential candidate, proposed the "Equal Opportunity Act of 1995" (a far-reaching bill that would eliminate most affirmative action programs in the federal government), in the Senate.

When you broaden the picture of affirmative action beyond admissions, beyond Berkeley, and beyond blacks and whites, it becomes clear that Asian Americans are affected by the debate and need to participate in it. Whether people see Asian Americans as the “model minority,” there is still a long way to go in terms of equal opportunity for Asian Americans and other people of color. Especially in the current political climate, it is important to look at the context in which affirmative action operates; it is not only the specifics of a designated policy that should concern us, but also the way in which the policy may reflect the current socio-political climate of intolerance and backlash against ethnic minorities. We must educate ourselves and others of all the aspects of important ethnic and racial issues, such as affirmative action, and understand how they affect not only the Asian American population but others as well. This is critical if we are to truly work towards creating a supportive multicultural society and upholding equal opportunity for all people in America.

# Invisibility and Overrepresentation: Affirmative Action and the Asian American Paradox

Helen H. Hyun

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*The controversy over Asian American admissions in higher education points to the inherent conflicts underlying the affirmative action debate. The author suggests that the perceived overrepresentation of Asian Americans at the University of California schools led to the end of a race-based admissions policy. While many universities consider Asian Americans as de facto whites, Asian Americans seek educational attainment as a means to overcome social and economic barriers which continue to limit communities of color. The author argues that eliminating race-based affirmative action policies for Asian Americans fails to address existing racial and gender discrimination, as well as the demographic differences within the Asian American community. In conclusion, the author suggests that affirmative action programs at institutions of higher education take into account both race and class distinctions.*

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## Introduction

The central fact was that while Asian Americans were being admitted to Stanford in numbers proportionally much larger than their representation in the California and US populations, the rate at which they had been admitted had been consistently lower than that for white students. Generally similar conditions have prevailed at other universities. Between 1982 and 1985 . . . Asian American applicants to Stanford had admission rates ranging between 66 percent and 70 percent of the admission rates for whites . . . The subcommittee found no factor that they analyzed could completely explain the differential . . .

—1985–86 Committee on Undergraduate Admissions and Financial Aid  
Annual Report to the Stanford Faculty Senate<sup>1</sup>

**D**uring the mid-1980s, Asian Americans accused several of the leading colleges and universities in the country of harboring discriminatory

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*Helen H. Hyun is a fourth-year doctoral student in higher education policy at Harvard University. Formerly, she was Assistant Director of Admissions at Boalt Hall School of Law at the University of California, Berkeley.*

quotas and review practices that effectively precluded qualified Asian American applicants from gaining admission. The debate generated national attention and prompted internal reviews at Stanford, Brown, Cornell, and Princeton, as well as federal investigations of UCLA, Harvard, and UC Berkeley by the Department of Education's Office for Civil Rights.<sup>2</sup>

Despite federal intervention and public outrage, universities that uncovered anti-Asian bias in their admissions processes—including Stanford, Brown, and UC Berkeley—publicly acknowledged that an “extremely serious” problem existed yet never acted beyond the *mea culpa* statements made by top-ranking university officials and the cultural sensitivity workshops prescribed for admissions personnel.<sup>3</sup> The underlying concerns of Asian Americans regarding latent anti-Asian bias prohibiting equal access to higher education were largely overlooked perhaps because of the relative overrepresentation of Asians on elite college campuses and of sensationalized accounts of Asians as America's successful “model minority.”

Although the Asian American admissions controversy now appears as a footnote in contemporary history, it played a crucial role in revealing the fundamental tensions and competing goals underscoring race-based affirmative action policies. Moreover, the unraveling of race-conscious admissions policies at the University of California can be traced to the politicized discourse surrounding the Asian admissions debate of the 1980s.<sup>4</sup> This paper discusses how the concerns of Asian Americans—aroused by the Asian admissions controversy over a decade ago—continue to be eclipsed by the politicization of affirmative action as a debate framed resoundingly in black-and-white terms. The paper further examines how the politicization of the Asian admissions controversy led to a re-examination of affirmative action admissions policies in general and, more specifically, to the demise of race-based preferences at the University of California. The projected outcome of this and other affirmative action admissions policies at UC Berkeley will be reviewed in terms of their disparate impact on the Asian American community. Finally, this paper argues that institutions of higher education must renew their commitment to affirmative action; they should seek to incorporate both race and class in their programs. As the demographic composition of college-eligible students shifts, and the pool of disadvantaged, minority students increases, a race- and class-based policy will be increasingly important.

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## Invisibility and Overrepresentation

. . . Asian American students and faculty have been, and continue to be, peripheral to racial politics in higher education. Although Asian American students may have been active participants *in* racial politics, Asian American experiences are for the most part not defined *by* racial politics. Instead, racial politics in higher education are determined and shaped by black experiences, on the one hand, and white experiences on the other . . . . In a sense, Asian Americans have functioned as a wild card in the racial politics of higher education—their educational experiences could be and have been incorporated into arguments both for and against discrimination, diversity, and affirmative action.<sup>5</sup>

At many colleges and universities, Asian Americans are considered *de facto* “white” applicants since they no longer receive preferential status as an underrepresented minority group. Yet, it seems clear that the educational attainment of Asians in America is driven by an attempt to overcome the social and economic barriers that continue to hamper racial and ethnic minorities. By pursuing higher education, Asians hope to eliminate some of the obstacles that impede their upward mobility. To terminate preferential treatment for Asians because they appear to be well-represented in selective postsecondary institutions myopically ignores extant racial and gender discrimination in our society, as well as the demographic realities within the Asian American community. Asian Americans represent a relatively small yet growing segment of the US population. In 1985, the Asian American population swelled to over five million, or 2.1 percent of the US population, from just under 1.5 million in 1970. By the year 2000, demographers predict Asian Americans will reach nearly ten million, or four percent of the total US population. Concomitant increases are reflected in higher education enrollment rates for Asian Americans who continue to be the fastest-growing minority group in the US. From 1976 to 1986, Asian students jumped from 198,000 or 1.8 percent of the total student populations in two- and four-year institutions to 448,000 or 3.6 percent of the total US college and university enrollment. By September 1995, Asians numbered 724,124 or 5.1 percent of the total 14,305,658 students in US postsecondary institutions<sup>6</sup>. By the year 2000, demographers predict Asian students will comprise almost seven percent of higher education enrollment.<sup>7</sup> In California, the percent of Asian American high school graduates from public schools eligible for admission to the University of California grew from 26 percent in 1983 to 40.4 percent in 1990, a significant jump when compared to an overall increase of 13.2 percent in 1983 to 18.8 percent in 1990. The eligibility rate for Asian Americans to the Cal State University system also increased from 49.0 percent in 1983 to 61.5

percent in 1990, relative to an overall increase from 29.6 percent in 1983 to 34.6 percent in 1990 for all students.<sup>8</sup>

Despite these promising indicators, a recent Census Bureau study revealed that while Asian Americans possess higher levels of education, differential wage earnings continue to plague Asian Americans.<sup>9</sup> In 1993, though college-educated Asian American women reported average earnings comparable to those of non-Latino white women working full-time, Asian American men earned a median income of \$41,220 as compared with \$47,180 for non-Latino white males. The disparity was reported to be relatively larger for those with only a high school education: "Asian and Pacific Islander women earned \$17,330 and men earned \$23,490, compared with \$28,370 for non-Latino white men and \$19,850 for women [without college degrees]."<sup>10</sup> The discrepancies within the Asian American community are perhaps even more stark than between Asians and other racial groups in the US. In California, where Asians comprise over nine percent of the state's population, the mean household income for Japanese Americans is \$24,034 whereas for Vietnamese families that figure is \$10,724. The mean number of persons in a Filipino household in California is 3.79 while that for a Hmong household is 7.05. Furthermore, while Asians are more likely to have college degrees relative to other racial and ethnic groups, higher percentages of Asians have less formal education: for Chinese in California, the percent of its community without a high school diploma is 27.4 percent and for Cambodians that percentage is 67.1.<sup>11</sup>

### **Beyond the Asian Admissions Controversy: The Evolution of Affirmative Action Using Race and Class**

In response to claims of discrimination by Asian American applicants, university officials expressed concern over the net loss to "diversity," i.e., the declining enrollments of African American and Latino students, posed by the "overrepresentation" of Asian American students. Moreover, the zero-sum nature of admissions and the importance of maintaining a racial and ethnic balance were proffered as justification for downplaying a "preference" towards Asian students.

The extent to which the perceived overrepresentation of Asian Americans contributed to the abolishment of all forms of affirmative action at the University of California by the Regents is more than incidental. At the University of California, Asian Americans comprised 30.8 percent of system-wide enrollment in 1994 as compared to their state-wide representation of



nine percent; at UC Irvine, Asian students enrolled during the fall term in 1994 comprised 45.7 percent of the student body—the single largest racial group at the University followed by Caucasian students at 35.3 percent—and at UC Berkeley, Asian students represent 34.7 percent of the student population compared to 43.7 percent of white students.<sup>12</sup> Asian American students have been portrayed as the undeserving victims of race-conscious admissions policies. As a result, the unyielding reality of limited enrollment slots pit “overachieving” Asian and white applicants against “underachieving” black, Native American, and Latino students. The politicization of the Asian admissions debate—fueled by Asian American activists and scholars but spearheaded by conservative anti-affirmative action proponents—inexorably linked the admissions controversy to a broader attack against the perceived injustices of affirmative action. More specifically, they have targeted policies which elevate group affiliation and entitlements over individual merit and rights and which institutionalize a hierarchy of oppression that undermine the extraordinary efforts of the nation’s “model minority” group.

Race-based affirmative action in higher education admissions has been viewed as an instrument for achieving a racial and ethnic balance commensurate to the proportional representation of historically disadvantaged minority groups in the US. The Asian admissions controversy was vital in challenging this limited interpretation of race-conscious affirmative action policies by articulating three key points as they relate to the myths surrounding the Asian American community. First, Asian Americans do not comprise a monolithic group, but rather a confluence of diverse subpopulations with different cultures, socioeconomic backgrounds, and immigration histories. Applying the same policy to all Asians as one racial group ignores the socioeconomic disparities evident in the community. Second, despite proportional representation or overrepresentation in higher education, Asian Americans continue to experience various forms of racial discrimination, stereotyping, and violence which translate into lower per capita earnings, occupational stagnation, and in some cases, exploitation and victimization. Finally, a class-based or race-blind affirmative action admissions policy is not a panacea, nor should it be used as a substitute for race-based preferences; the two address distinct forms of oppression in which the former is not intended to ameliorate the subconscious racism that plagues our society.

## The End of Race: Affirmative Action Admissions at the University of California

Racial preferences are by definition racial discrimination. They were wrong thirty years ago when they discriminated against African Americans. And they're wrong today, when they discriminate against Asian or Caucasian Americans. Abolishing them last July was not only necessary to meet the University of California's mission as an institution of higher learning committed to the fundamental American principles [sic] of equal opportunity and individual merit, it was critical to maintaining the university support and credibility among the millions of hard-working Californians whose taxes finance this institution.

—Governor Pete Wilson, California<sup>13</sup>

The adoption of Resolutions SP-1, "Policy Ensuring Equal Treatment—Admissions," and SP-2, "Policy Ensuring Equal Treatment—Employment and Contracting", by the UC Regents appeared to be an abrupt end to race-based preferences in affirmative action admissions and hiring policies at the University. In fact, the gradual unraveling of race-based admissions criteria and a concomitant shift towards class- or SES-based (socioeconomic-based) factors had been occurring at UC Berkeley since 1991 in the wake of the Asian admissions controversy. The admissions policy overhaul prescribed by the Academic Senate in their 1989 report titled "Freshman Admissions at Berkeley: A Policy for the 1990s and Beyond" (also referred to as the "Karabel Report") was operationalized to include a new review category of applicants from socioeconomically disadvantaged backgrounds.<sup>14</sup>

This race-blind, SES-based category accounted for 11 percent of all admissions decisions in 1991 and grew to account for 16.5 percent in 1993. Moreover, rather than increasing the enrollment figures of Native American, African American, and Chicano/Latino students which was its intended purpose, the policy had the ironic effect of increasing the number of Asian students. This unexpected consequence was due primarily to three factors: (1) the number of Asian high school students and graduates in California increased from six percent in 1981 to 14 percent in 1990; (2) within that pool, the number of Asian American students who were eligible for admission to the University of California rose from 17.3 percent in 1983 to 32.3 percent in 1990; and (3) given the bimodal distribution of social and economic characteristics evident in the Asian American community, Southeast Asian students who qualified for low-income status possessed relatively higher grades and test scores compared to African American and Chicano/Latino students with similar backgrounds.<sup>15</sup>

Prior to the UC Regents' decision to abolish affirmative action, the Office of the President released a report projecting the impact of Resolution SP-1 on system-wide enrollment figures by race and ethnicity. If race were eliminated altogether as an admissions criterion, the report estimated that the number of Asian American and white students would increase by 15 to 25 percent and five percent, respectively, while African American students would decrease by as much as 40 to 50 percent and Chicano/Latino students would drop by five to 15 percent.<sup>16</sup>

The implications of this report and the Karabel Report's experiment with class-based affirmative action at the University of California are twofold: (1) Asians have been disproportionately disadvantaged by the affirmative action admissions program in effect at UC, relative not only to other minority groups, but also to whites; and (2) both race-blind and class-based affirmative action admissions yield higher numbers of Asian students.

While race-blind and class-based admissions programs tend to increase aggregate enrollment figures for Asians, they yield different groups and classes of Asian Americans. For example, because class-based affirmative action addresses socioeconomic disadvantage as measured by parental education and income background, recent immigrants primarily from Southeast Asian countries tend to be admitted over native-born Asians who may be second or third generation. Moreover, race-blind admissions tends to yield an entering class of whites and Asians from predominantly middle and upper-middle income family backgrounds.

## Conclusion

Progressives should view affirmative action as neither a major solution to poverty nor a sufficient means to equality. We should see it as primarily playing a negative role—namely, to ensure that discriminatory practices against women and people of color are abated. Given the history of this country, it is a virtual certainty that without affirmative action, racial and sexual discrimination would return with a vengeance.<sup>17</sup>

The UC Regents' unprecedented decision to end affirmative action represents a facile approach to policy making that precludes the development of affirmative action into a truly progressive tool. Notwithstanding their mandate, other leading colleges and universities in the country such as Stanford and Harvard have reaffirmed their commitment to race-based affirmative action. In order to move beyond politically expedient rhetoric and to craft a fair and equitable admissions policy that does not disproportionately disadvantage Asians, university officials must re-examine their underlying

assumption that proportional representation and racial balancing are the hooks on which to rest their hats. Affirmative action programs must evolve to take both race and class into account, particularly given the impending demographic changes that will increase the number of disadvantaged, minority students comprising the college-going population. In order to realize a fundamental purpose of affirmative action as a redistributive measure, there must be a concerted effort to reach underserved communities by increasing resources and recruitment efforts in inner-city elementary and secondary schools. At worst, affirmative action in higher education that limits itself to proportional representation and ethnic balancing is an impediment to all minorities and to Asian Americans in particular, because it unfairly disadvantages Asians in the admissions process and invariably pits them against other minority groups. At best, affirmative action that is simultaneously race- and class-conscious can reframe progressive policies in higher education from the black-white paradigm that narrowly defines them towards a diminution of the ever-widening gap between the haves and the have-nots.

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## Endnotes

1. As quoted in Jean Fetter, *Questions and Admissions: Reflections on 100,000 Admissions Decisions at Stanford* (Stanford, CA: Stanford University Press, 1995) 97.
2. Federal compliance reviews were conducted under the auspices of Title VI of the 1964 Civil Rights Act which prohibits discrimination on the basis of race, color, or national origin.
3. See Committee on Minority Affairs—Subcommittee on Asian American Admissions, “Report to the Corporation Committee on Minority Affairs,” (Providence, RI: Brown University, 1984).
4. Dana Takagi, *The Retreat from Race: Asian American Admissions and Racial Politics* (New Jersey: Rutgers University Press, 1992).
5. Takagi, *The Retreat from Race* 11.
6. “Facts and Figures on US Higher Education.” *The Chronicle of Higher Education*, Online, 1 September 1995.
7. Arthur Levine and Associates, *Shaping Higher Education’s Future* (San Francisco, CA: Jossey-Bass Publishers, 1989) 111.
8. California Post Secondary Commission, *Eligibility of California’s 1990 High School Graduates for Admission to the State’s Public Universities* (California State University, June 1992).

9. 41 percent of Asians reportedly held at least a bachelor's degree compared to 22 percent of all Americans and 24 percent of non-Latino whites.
10. Associated Press, "Earnings Lag for Asians and Pacific Islanders," *San Francisco Chronicle* 9 December 1995: A4.
11. Office of the President Research Report, *Pacific Rim States Asian Demographic Data Book* (California: University of California, 1995).
12. University of California enrollment figures taken from "The U.C. System's Student Body," Office of the President, Fall 1994.
13. Pete Wilson, "We Must Get On With Ending Racial Preferences," *The Daily California*, 18 January 1996: 7.
14. Jerome Karabel, Chair, Report by the Committee on Admissions and Enrollment, Berkeley Division, Academic Senate. *Freshman Admissions at Berkeley: A Policy for the 1990s and Beyond* (Berkeley, CA: University of California, 19 May 1989).
15. Report to the Committee on Admissions and Enrollment of the Berkeley Division on the Academic Senate, *The Implementation of the Karabel Report on Freshman Admissions at Berkeley: 1990-93* (Berkeley, CA: University of California, 1994) 12-16.
16. J. Peltason, President, University of California, Memo to Regents of the University of California, 12 May 1995.
17. Cornel West, *Race Matters* (New York: Vintage Books, 1993) 95.



## Why Asian Pacific American Workers Support Affirmative Action

Kent Wong

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*The author focuses on the affirmative action issue from labor's perspective, a voice seldom heard in the Asian American community. Focusing on the Wards Cove case, he highlights the problems Asian American workers face in the workplace and in attempting to remedy such injustices. Through the Asian Pacific American Labor Alliance, AFL-CIO, workers have recently voiced and reinforced their support for affirmative action. The author argues that worker support for affirmative action stems from the benefits it has reaped for Asian Pacific American workers.*

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Asian Pacific American workers, who have historically faced discrimination and exploitation in the workforce and in the community<sup>1</sup> and still confront these obstacles to equal opportunity, have been helped by affirmative action and still need this important remedy. Asian Pacific American workers are showing their support for affirmative action in the face of attacks on this important civil rights remedy. This support is a continuation of a long, hard struggle against discrimination in America by women, people of color, other minorities, and all those who believe in the principle of equality.

### Historical Background

The demand for racial justice and equality, stemming from the civil rights movement in the 1950s and 1960s, inspired a whole generation of Americans. African Americans, with support from other people of conscience, challenged Jim Crow laws and risked imprisonment, fire hoses, bombings, and lynching to build a nationwide movement that challenged legal discrimination in the South and in other parts of the country. During the height of the civil rights movement, Congress passed the Civil Rights Act of 1964 which, for the first

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*Kent Wong is a founder and the national President of the Asian Pacific American Labor Alliance, AFL-CIO. He is the Director of the UCLA Center for Labor Research and Education and previously worked as staff attorney for the Service Employees International Union, Local #660.*

time, outlawed discrimination in employment and public accommodations. Yet, while blatant racial barriers were struck down, the challenge of eradicating institutional racism had just begun.

To address the pervasive problems of inequality and underrepresentation, affirmative action plans were implemented in the wake of the civil rights movement as both voluntary and remedial measures on the part of government, business, and educational institutions.<sup>2,3</sup> These plans were designed to promote the participation of women and minorities who had previously been denied opportunities. In spite of two decades of successful affirmative action programs, however, racial and gender discrimination is still pervasive, and the need for affirmative action is still evident.

Any sober review of the racial and gender composition of the US Senate, the Fortune 500 CEOs, corporate board rooms, partners of major law firms, top university administrators, and other significant positions of influence and power will reveal the extent of the problem of racial and gender discrimination. The Glass Ceiling Commission recently issued a report that found that in the nation's largest companies, women hold only three to five percent of the senior management positions, African Americans hold 0.6 percent, Latinos hold 0.4 percent, and Asian Americans hold 0.3 percent. While white males make up 43 percent of our workforce, they hold about 95 percent of the senior management positions in the country today.<sup>4</sup>

At the other end of the spectrum, the poverty rates are 33.3 percent for African Americans and 29.3 percent for Latinos, compared to 11.6 percent for whites. In 1992, more than 50 percent of African American children under the age of six and 44 percent of Latino children lived below the poverty line, while only 14.4% of white children did so. In 1993, the unemployment rate for African Americans was more than twice that of whites, while the median income of African Americans was barely more than one-half that of whites.<sup>5</sup> These figures show how far America has to go before gender and racial equality are more than just rhetoric.

### **Economic Problems Facing Asian Pacific Americans**

There are currently eight million Asian Pacific Americans, representing about three percent of the US population. Primarily due to immigration, Asian Americans are the fastest growing ethnic group in the country today. Two-thirds of the Asian Pacific American population are immigrants.<sup>6</sup>

The problems facing Asian immigrant workers today are similar to those that faced Asian immigrant workers throughout history. Many Asian immigrant workers encounter exploitation in low wage jobs within the service



and light manufacturing industries. Abuse of basic labor laws, including wage and hour provisions, is common. Many lack health care coverage and adequate job benefits. Many are discriminated against because they look or sound foreign.

For the Asian American community, general statistics showing high educational attainment and family income mask the pervasive problems of poverty and inequality. Asian Americans are concentrated in urban environments, where the cost of living is higher. In addition, there are a large number of Asian extended families living under one roof, thus, skewing reports of total household income.

Recent studies by the UCLA Asian American Studies Center have documented the high levels of poverty within the Asian American community, especially among recent immigrants and the working poor. For example, in Los Angeles County, over 124,000 Asian Americans live in poverty, which is 13 percent of the Asian American population. Cambodians and other Southeast Asians face poverty rates as high as 45 percent.<sup>7</sup>

Asian Americans have frequently been portrayed in the media as a "model minority." The "model minority" myth, which depicts Asian Americans as attaining unprecedented educational and economic success, obscures the great disparities that exist among Asian Pacific Americans, as well as the real workplace status of most Asian Pacific Americans. Although some press accounts suggest that the vast majority of Asian Pacific Americans hold professional jobs that require high levels of education, most Asian Pacific Americans work in technical jobs such as sales, service, clerical and administrative support, production, and transportation.<sup>8</sup> Thus, Asian Pacific Americans can be found in every sector of the economy, not just in a limited number of high income professions.

### **Asian Americans and Employment Discrimination**

Asian Americans today still face barriers to equal participation in the workforce. The US Commission on Civil Rights issued a report in 1992 identifying specific employment discrimination concerns impacting Asian Americans. These include the "glass ceiling," language discrimination, problems of certification of foreign-educated professionals, discrimination in the construction industry, and discrimination impacting Asian American women.<sup>9</sup>

Problems of the "glass ceiling" impact Asian Americans regardless of their immigration status or educational attainment. While Asian Americans constitute three percent of the work force, they constitute only 0.3 percent

of the senior executives in the United States. Even US-born Asians are underrepresented in managerial occupations. The Civil Rights Commission found that US-born Asian American men were between seven and eleven percent less likely to be in managerial positions than white men with similar backgrounds.<sup>10</sup> Discrimination is not limited to jobs requiring advanced levels of education, however. Asian Americans who have a high school education earn almost \$3,000 less per year than their white counterparts.<sup>11</sup>

The aerospace industry illustrates the problem of the glass ceiling. There is a large concentration of Asian American professionals in the aerospace industry, yet there are disproportionately low numbers of Asian Americans in management positions. A recent study of Asian American engineers concluded that Asian Americans were significantly less likely to be promoted into managerial positions than white engineers with similar experience and qualifications.<sup>12</sup>

Discrimination based on language involves several areas of potential concern for Asian American workers. "English only" policies have been enacted to prohibit the speaking of any Asian or other foreign languages at the workplace. The courts have issued conflicting decisions with regard to an employer's right to prohibit non-English languages from being spoken in the private workplace. English only policies have adversely impacted Asian American workers, many of whom are immigrants who feel more comfortable conversing in their first language. The implementation of English only policies has resulted in harassment, intimidation, and the exacerbation of racial tensions at the workplace.

Even those Asian Americans who speak English fluently have been subjected to discrimination due to their "accent." Asian Americans have been denied employment opportunities, denied promotions, or not hired at all simply because they speak English with a foreign accent.<sup>13</sup> The Immigration Reform and Control Act of 1986 imposed sanctions against employers who knowingly hire undocumented immigrants. As a result, many employers have refused to hire people who look or sound "foreign" for fear of potentially violating the law. The Government Accounting Office (GAO) has reported widespread discrimination against foreign-looking and foreign-sounding workers.<sup>14</sup>

The case of the Wards Cove Cannery workers is an example of blatant employment discrimination confronting Asian workers that has yet to be rectified. In 1974, the Asian Pacific American workers of the Wards Cove Corporation filed a discrimination suit to protest the "plantation style" segregation at the Alaskan cannery. All of the best jobs were held by whites,

while Asian Pacific American workers were relegated to inferior job assignments, as well as to separate dining and living facilities.<sup>15</sup>

On June 5, 1989, the Supreme Court of the United States used the *Wards Cove v. Atonio* case to establish a new and unreasonable standard for proving employment discrimination.<sup>16</sup> In a dissenting opinion, Justice Blackmun condemned the decision, stating,

The salmon industry as described by this record takes us back to the kind of overt and institutionalized discrimination we have not dealt with in years: a total residential and work environment organized on principles of racial stratification and segregation, which as Justice Stevens points out, resembles a plantation economy. This industry long has been characterized by a taste for discrimination of the old-fashioned sort: a preference for hiring nonwhites to fill its lowest level positions, on the condition that they stay there. The majority's legal rulings essentially immunize these practices from attack under a Title VII disparate-impact analysis.<sup>17</sup>

In 1991, Congress passed civil rights legislation that overturned the legal standards in the *Wards Cove* decision, as well as several other conservative Supreme Court decisions restricting civil rights.<sup>18</sup> After an expensive lobbying campaign by the *Wards Cove* company, however, Alaska Senator Frank Murkowski introduced a special interest amendment exempting the *Wards Cove* workers from the protections of the 1991 Civil Rights Act.<sup>19</sup> The amendment was included as a compromise to ensure the passage of the Civil Rights Act. Asian Pacific American workers who face discrimination in the workforce now face discrimination in Congress as well.

Many Asian Pacific American groups, including the Asian Pacific American Labor Alliance (APALA), a national organization of Asian Pacific American workers and union members, have worked hard on behalf of the *Wards Cove* workers. On June 14, 1994, the Senate Committee on Labor and Human resources voted the "Justice for *Wards Cove* Workers Act" (S. 1037) out of committee. This bill, which had the broad support of civil rights, religious, and labor communities, would have removed the *Wards Cove* exemption from the Civil Rights Act. Unfortunately, the legislation has not proceeded to the floor for a vote before Congress, and the prospects of a legislative solution in a Republican-controlled Congress are slim. The case itself was remanded by the Supreme Court to the lower courts, where it is still being debated 22 years after the case was initially brought to court. This miscarriage of justice reveals not only the continued problem of employment discrimination impacting Asian workers, but also the incredible obstacles confronting Asian workers who attempt to challenge injustice.

In the battle to eradicate employment discrimination, affirmative action, when implemented effectively, has been one of the methods which has brought about positive change. Affirmative action guidelines have frequently struck down racial and gender barriers that were either explicitly or implicitly discriminatory. In some instances, affirmative action guidelines have required a diverse pool of applicants or have set forth hiring and promotional guidelines that would help to achieve racial and gender equity. Affirmative action has also raised awareness and greater sensitivity among decision makers who have become more responsive to diversity in the workforce.

The hiring of women and people of color to the ranks of firefighters and police officers is a clear example of the benefits of affirmative action. Racial and gender barriers historically have allowed many of these agencies to remain the exclusive domain of white males. Asian Americans have been hired as firefighters and police officers as a direct consequence of affirmative action. The process of diversifying a workplace does not develop spontaneously. Diversity has inevitably been the direct result of either voluntary or court-mandated affirmative action programs and policies.

### **The Attack on Affirmative Action Today**

The attack on affirmative action must be understood in its broader context. From Richard Nixon's "Southern Strategy" to George Bush's "Willie Horton" ads, conservatives have successfully used "wedge" issues, particularly those with racial overtones, to court voters who would normally be opposed to the Republican party's pro-corporate and anti-worker agenda.<sup>20</sup> This conservative economic agenda, which is creating staggering income inequality in our society, includes tax breaks for wealthy corporations and individuals, corporate downsizing, the movement of jobs overseas, anti-union legislation, low minimum wages, no mandatory health care, the cutting of federal safety net benefits, the increase of part-time and temporary jobs, the relaxation of health and safety regulations, and the reduction of economic resources available for education, training, and infrastructure development.

In order to advance their economic agenda, Republicans promote divisive and distracting myths about immigration and affirmative action. They claim that immigrants live off welfare and government handouts and threaten "our" lifestyle and culture. They claim affirmative action gives unqualified individuals an unfair advantage and establishes arbitrary "quotas." These attempts to scapegoat immigrants and abolish affirmative action are unfair and untrue and have received little critical evaluation in the press.<sup>21</sup>

The attack on affirmative action and immigration by politicians like Governor Pete Wilson of California is rooted in political opportunism. Wilson's support for the anti-immigrant initiative, Proposition 187, was the centerpiece of his re-election campaign for governor of California in 1994. As part of his failed campaign for the President in 1995, he launched a broad attack on affirmative action programs and policies.

On July 20, 1995, Wilson attended his first University of California (UC) Regents meeting in order to personally ensure that the Regents would vote to eliminate affirmative action in student admissions and faculty and staff hiring policies within the University of California. On October 12, 1995, thousands of students throughout California staged demonstrations to protest the UC Regents' decision to eliminate affirmative action, and dozens were arrested in peaceful acts of civil disobedience.

Ward Connerly, the UC Regent who spearheaded the effort to dismantle affirmative action within the University of California, is now leading the statewide effort to generate support for the so-called "California Civil Rights Initiative" which will appear on the California ballot in 1996. This state initiative would amend the California Constitution to bar the use of race, gender, or national origin as a factor in public employment, public education, and public contracting. The "CCRI" would essentially ban affirmative action in all state programs, unless they have been mandated by federal law or court order.

The Asian Pacific American Labor Alliance is one of many Asian Pacific American groups who have announced their support for affirmative action. At a national convention in August 1995, APALA passed a resolution stating its support for affirmative action and pledging to work with unions, civil rights organizations, women's groups, and other organizations to coordinate activities in response to the various anti-affirmative action initiatives. In California, five chapters of APALA have committed resources to help defeat the California Civil Rights Initiative.

On October 21, 1995, the first national gathering of people of color and women within the US labor movement was held in New York City. APALA joined with labor organizations representing African Americans, Latinos, and women to forge a common agenda in defense of affirmative action and civil rights. At the AFL-CIO National Convention held immediately after this conference, a new national leadership, among which was an impressive number of people of color and women, was elected.<sup>22</sup> In the face of sweeping attacks on affirmative action, the new leadership of the AFL-CIO is committed to defending affirmative action and civil rights in words and in practice.

Opponents of affirmative action are trying to divide workers, as well as Asian Pacific Americans, on this issue. In response, the AFL-CIO, APALA, and many other Asian Pacific American groups have expressed their unified support for affirmative action. This declaration is more than a mere response to these attacks—it reflects a legacy of commitment by labor and the Asian Pacific American community to ensuring equality in the United States.

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## Endnotes

1. Beginning with the 1882 Chinese Exclusion Act, Asian Pacific Americans were subjected to nearly a century of racially discriminatory immigration laws. These laws went beyond simply excluding Asians from America. Asian immigrants from past generations have been denied citizenship, denied the right to vote, denied the right to own land, denied the right to marry non-Asians, and denied equal employment opportunities. The forced removal and internment of Japanese Americans during World War II was a shameful episode in American history and was only successfully challenged through the courts and through Congress after decades of effort on the part of the Asian American community.
2. A series of Executive Orders in the 1960s from Presidents Kennedy, Johnson, and Nixon further restricted discrimination and called for the adoption of affirmative action programs by the federal government and by federal contractors. The initial Order was President Kennedy's Executive Order 10925 (1961), which explicitly used the term "affirmative action."
3. Title VII of the Civil Rights Act of 1964 (42 U.S.C. §§ 200e et seq.) provides for equal opportunity in employment. Affirmative action is an available remedy under Title VII.
4. United States, House of Representatives, Subcommittee on Employer-Employee Relations of the Committee on Economic and Educational Opportunities, *Testimony of Deval L. Patrick, Assistant Attorney General for Civil Rights* 104th Cong., 1st Session (Washington: 24 March 1995).
5. *Testimony of Deval L. Patrick.*
6. United States, Economics and Statistics Administration of the Bureau of the Census, Department of Commerce, *U.S. Department of Commerce News* (Washington: GPO, May 1995) 1.
7. Paul Ong, *Beyond Asian American Poverty—Community Economic Development Policies and Strategies* (Los Angeles: LEAP Asian Pacific American Public Policy Institute, 1993) ix-xiii.
8. United States, Economics and Statistics Administration of the Bureau of the Census, Department of Commerce, *1990 Census of Population Supplementary Reports, Detailed Occupation and Other Characteristics from the EEO File for the United States* (Washington: GPO, October 1992).

9. United States, Commission on Civil Rights, *Civil Rights Issues Facing Asian Americans in the 1990s* (Washington: GPO, Feb. 1992) 130-356.
10. *Civil Rights Issues Facing Asian Americans in the 1990s* 133. In the federal sector, Asian Pacific Americans in 1993 made up 1.16 percent of Senior Executive Service jobs, 2.7 percent of the GS-14 jobs, and 4.9 percent of the GS-13 jobs.
11. United States, Economics and Statistics Administration of the Bureau of the Census, Department of Commerce, *The Asian and Pacific Islander Population in the U.S.: March 1991 and 1990* (Washington: GPO, Aug. 1992). The Department of Commerce study found that Asian Pacific American college graduates earn about \$2,000 less than white college graduates, though the difference was not statistically significant.
12. Joyce Tang, *Asian American Engineers: Earnings, Occupational Status, and Promotions* (Paper presented at 86<sup>th</sup> Annual Meeting of the American Sociological Association, Cincinnati, Ohio, Aug. 23-27, 1991), cited in *Civil Rights Issues Facing Americans in the 1990s* 133. Another study of scientists and engineers found that Asian immigrants have "a substantially lower probability of being in management" than do whites, regardless of education level, and found that "when they do enter management, they do so within the area of Research and Development." Evelyn Blumenberg and Paul Ong, "Scientists and Engineers," *The State of Asian Pacific America: Economic Diversity, Issues and Politics* (Los Angeles: LEAP Asian Pacific American Public Policy Institute: 1994) 165-189.
13. *Civil Rights Issues Facing Asian Americans in the 1990s* 138.
14. United States, Government Accounting Office, *Immigration Reform: Employer Sanctions and the Question of Discrimination* (Washington: GPO, 29 March 1990).
15. *Wards Cove Packing Co. v. Atonio* 490 U.S. 642, 1989.
16. The Court held that statistics showing a racially stratified work force did not make a *prima facie* case of employment discrimination, that employees offering disparate impact statistics must demonstrate each practice that led to discrimination, and that the employees bore the burden of persuasion on the lack of business justification. *Wards Cove Packing Co. v. Atonio* 490 U.S. 642, 1989.
17. *Wards Cove Packing Co. v. Atonio* 490 U.S. 642, 1989.
18. *Civil Rights Act of 1991* Pub. L. No. 102-166, 105 Stat. 1071 (1991).
19. According to a September 11, 1992, *Wall Street Journal* article, the Wards Cove Company paid one law firm \$175,000 in lobbying fees to work on the issue. Grace M. Kang, "Workers Fight to Have Bias Suit Covered by 1991 Civil Rights Act," *Wall Street Journal* 11 Sept. 1992
20. Nixon's "Southern Strategy" to attract George Wallace voters included limiting desegregation efforts, proposals to weaken the Voting Rights Act, the extravagant attacks on liberalism by Spiro Agnew, and two failed Supreme Court appointments of racial conservatives. According to Edsall and Edsall, "the continued success of those using race to build top-down coalitions dominated by the affluent...has created a compelling incentive to maintain race as a divisive issue in national politics" Mary Edsall and Thomas

Edsall, *Chain Reaction: The Impact of Race Rights, and Taxes on American Politics* (New York: W.W. Norton & Co., 1991) 260.

21. Contrary to the immigration myths, immigrants pay 70.3 billion per year in taxes and receive 42.9 billion in services. See Rebecca L. Clark and Jeffrey S. Passel, *How Much do Immigrants Really Cost?* (Washington, DC: Urban Institute, Feb. 1994). Immigrants (excluding refugees) use welfare less than native-born Americans. See Michael Fix and Jeffrey S. Passel, *Immigration and Immigrants: Setting the Record Straight* (Washington, DC: Urban Institute, 1994). Contrary to the myths about affirmative action, unqualified individuals cannot be hired using rigid numerical quotas under affirmative action, and the rights of white men must be protected. See Executive Order 11246 and *Wygant v. Jackson Board of Education* 476 U.S. 267, 1986.
22. The AFL-CIO amended its constitution to expand its Executive Board from 33 to 51, with ten of those seats dedicated to women and people of color.



## Racial Construction through Citizenship in the U.S.

Susan K. Lee

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*The author examines and critiques the ways in which the exclusivity of nation-state based citizenship has been used in the US to marginalize racial minorities. She uses the Asian American experience to make the case that race has become the de facto criterion for membership in US society. Recognizing the globalization of labor and capital migration and the need to reconceptualize the notion of immutable, permanent borders between nations, she explores the possibilities for a "transnational citizenship."*

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### I. Introduction

Until the onset of accelerated globalization, citizenship was conceptualized as a nation-bound identity. As each nation has sought to define itself in its nation-building process, citizenship has been used by the majority to establish an exclusive inner-circle of members who enjoy equal status among each other but is denied to the rest of the population. In the US, as this paper will argue, the inner circle has been defined by whiteness. The construction of a privileged, white, inner circle involved varying attempts at exclusion ranging from outright race-based definition of citizenship, to racially selective denial of equal protection, to finally, exclusion of discrete groups from social entitlements.<sup>1</sup>

The history of racially exclusionary citizenship, however, only challenges the ways in which accepted notions of citizenship are applied to different ethnic/racial groups and does not address the more fundamental crisis facing nation-bound definitions of citizenship. Nations have become more interdependent in the emerging global economy. The constant flow of capital, ideas, and people penetrates and challenges the notion of a fixed border. But

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*Susan K. Lee is a graduate student in the Ethnic Studies Department and the Boalt Hall School of Law at UC Berkeley. She is an instructor of Korean American Studies in the Ethnic Studies Department and the development director for the Korean Community Center of East Bay, a non-profit organization serving low-income immigrants.*

more importantly, the presence of transnational migrants provides a glimpse of the way in which globalization is connecting us in ways never before imagined. Perhaps the greatest challenge posed by transnational migrants is the idea that we are becoming connected into one, unitary system. As national boundaries are challenged, continued reliance on fixed nation-bound citizenship mask the reality of transnational existence both in individual, national, and international space. The ultimate question for citizenship discourse, then, is how universal membership in the system will be determined.

In order to begin to answer this question, we must examine the question of how we treat the immigrants in our midst because their incorporation, or lack thereof, informs us of the ways in which traditional definitions of membership clash with the reality of transnational migration and existence. Will we continue to employ a consumptive attitude toward immigrants in which we use them for whatever value they offer and then throw them away when their presence is inconvenient for us? Will we maintain them as the "enemy within" so that we can feel secure in calling ourselves "Americans?" Is the true "enemy within" our inability to redefine and reconstruct what it means to be an "American?"

This paper examines and critiques the ways in which the exclusivity of nation-state based citizenship has been used in the US to marginalize racial minorities. Part II discusses the evolution of the concept of citizenship. Part III presents the particular experience of Asian immigrants with citizenship as a case-study. Finally, Part IV proposes an alternative conceptualization of citizenship and explores the possibilities for a "transnational citizenship" befitting the globalization of labor and capital migration and the necessity for rethinking the concept of immutable, permanent borders between nations.

## **II. Concept of a Citizen**

In everyday life, citizenship is accepted as a well-established, universal concept adhered to by all nations in the world. Correspondingly, everyone is assumed to be a citizen of some place and, therefore, has a "nationality."<sup>2</sup> Although the concept of a citizen can be traced back to ancient times, contemporary understanding of citizenship, as a concept denoting membership in a nation-state, is relatively modern and originates in the West.<sup>3</sup>

Implicit in the conceptualization of citizenship is the notion of equality among citizens: everyone who is a citizen of a nation-state enjoys the same collection of rights and duties regardless of their age, race, gender, or class. As

Marshall noted in his influential study, citizenship generates "a direct sense of community membership based on loyalty to a civilization which is a common possession."<sup>4</sup> Marshall argues that, by providing equal access to social services (e.g., unemployment benefits and education), the incorporation of these social rights<sup>5</sup> in the concept of citizenship during the twentieth century, "ensure(s) that all citizens can participate equally in the social and political life of their society."<sup>6</sup>

Both assumptions, universality and realization of equality of status among citizens, as embodied in the modern concept of citizenship, however, are problematic. Precisely because citizenship was formulated within the context of nation-states, the content of citizenship varies according to the particular social, economic, and political development of each nation. Even where non-Western states have adopted Western traditions either through conquest or "modernization," the particular content of citizenship may vary with the historical specificity of that state. Hence, Turner states, "Citizenship may not be a universal concept, because it developed out of a particular conjuncture of cultural and structural conditions which may be peculiar to the West."<sup>7</sup>

Aside from the question of what citizenship entails is the question of who can be a citizen. Despite the tremendous loyalty and emotion accompanying national identity, contemporary nation-states are "imagined communities" that were constructed beginning in the eighteenth century and onward.<sup>8</sup> That nations are in fact constructed is not such a novel concept. We need only to look at the German division and reunification, competing claims to the "real China" between the People's Republic of China and Taiwan and the disintegration of Yugoslavia to understand that nation-states were and continue to be constructed, dissolved, and reconstructed. In the nation-building process begun in recent history, "classes and elite strata striving to maintain or contend for state power constructed memories of a shared past and used this historical narrative to authenticate and validate a commonality of purpose and national interests."<sup>9</sup>

Citizenship is a critical concept in the nation-building process as an articulation of who is a legitimate member of the "imagined community." Because organization of nation-states often resulted in creation of artificial borders, dividing previously united populations in some cases and mixing distinct and sometimes hostile groups together in other cases, citizenship simultaneously excludes and subordinates those persons or groups who exist within the border of the nation-state, but still fall outside of the "imagined community." Those considered to be falling outside of the national community may include stateless persons, ethnic minorities, aboriginal

groups, and other “minoritized” groups.<sup>10</sup> Citizenship is only one of many mechanisms which divide a member of the national community from an “outsider” but is, perhaps, the most visible mechanism because citizenship serves as the basic criteria by which participation in the national polity is determined.<sup>11</sup> The exclusion of groups identified as different, often along racial lines, reinforces the images of a nation composed of those who are similar and “secures the unity, cohesion and stability of social order in and through (not despite) its differences.”<sup>12</sup> For the minoritized groups, the choice is between establishment of a separate “state,” a form of apartheid, or some form of assimilation into the dominant concept of a citizen and the destruction of their original culture. Both options make the faulty assumption that citizenship leads to the equality of status among members.

Far from the common understanding of citizenship as a simple designation of membership in a nation-state, this concept presents a heavily contested terrain where the struggle for dominance in the nation-building process takes place. While the dominant powers of each nation approaches this struggle from different historical and cultural legacies, fundamental to all processes of defining a citizen is the creation and imagining of a unity and the simultaneous abrogation or subjugation of differences, whether cultural, ethnic, religious, class, or racial.

### **III. Citizenship and the Asian Immigrant Experience**

#### *A. Construction of Whiteness and Asian Immigrants*

The assumptions of universality and equality of status are particularly problematic for citizenship in the United States because “at the core of the US concept of nation has been a concept of whiteness.”<sup>13</sup> Although the content of citizenship may have remained relatively stable over the years,<sup>14</sup> successive legislative acts have grappled with the question of who can be a citizen. As a white-settler nation, citizenship in the US, from its very inception, was exclusionary toward the aboriginal population and, ultimately, resulted in the construction of separate but still subjugated “nations” of Native American tribes. Hence, when Congress passed its first citizenship statute, the Nationality Act of 1790, it specifically limited citizenship to “free white persons.”<sup>15</sup> Moreover, in *Elk v. Wilkins*, the Supreme Court stated that an Indian born in the US, but within the tribal authority, did not acquire US citizenship at birth.<sup>16</sup> As a slave society, US citizenship inherently excluded millions of Africans.<sup>17</sup>

With the passage of the Fourteenth Amendment, the US seemed to

abandon the initial exclusionary approach to citizenship by bestowing citizenship, at least, on all who were born in the US.<sup>18</sup> However, still problematic was the question of citizenship acquired after birth, generally referred to as naturalized citizenship, especially by newly entering groups of immigrants of color.<sup>19</sup> Even as Congress revisited the earlier Nationality Act of 1790 and extended the right of naturalization to persons of African descent in its 1870 legislation, Chinese immigrants were excluded because of their “undesirable qualities.”<sup>20</sup>

This exclusion bestowed upon Asians a unique status as “aliens ineligible for citizenship.”<sup>21</sup> Without the possibility of ever becoming a citizen, Asian immigrants were often singled out for discriminatory treatment under the law. Some laws assessed additional taxes;<sup>22</sup> others prohibited ownership of land by aliens ineligible for citizenship.<sup>23</sup> Congress even penalized those who chose to associate with Asian immigrants by passing the Cable Act which stated that “any woman citizen who marries an alien ineligible to citizenship shall cease to be a citizen of the United States . . . .”<sup>24</sup> Exclusion of Asians from citizenship would persist until the Chinese Repealer in 1943,<sup>25</sup> when Congress responded to charges of discrimination against citizens of an ally by passing legislation to allow the naturalization of Chinese immigrants. Subsequently, naturalization rights were extended to Filipinos in 1946<sup>26</sup> and to all Asians in 1952.<sup>27</sup>

Seen in this light, citizenship, in the nation-building process of the US, has always been a mechanism to define a white national identity in and through (not despite) racial differences.

The construction of the “American people” as white has served to justify and perpetuate the subordination of the African American population as well as to assimilate certain immigration populations and exclude others. . . . All other persons categorized as racially distinct—that is non-white—find their place above blacks but also outside of the white nation.<sup>28</sup>

Rather than being a universalizing mechanism ensuring equality of status, citizenship was a tool in maintaining hierarchical social relations between the dominant white majority and various racial minority groups. Each group was allowed access to citizenship when outright exclusion became either unnecessary or no longer politically expedient.<sup>29</sup> For minoritized groups in the US, neither the formation of a separate state (with the possible exception of Native Americans) nor assimilation was an option. Instead, these groups, until relatively recently, occupied a subordinated non-citizen status marked by their exclusion from citizenship.

Despite long-running evidence of intentional policy of race-based

exclusion, some scholars, such as Nathan Glazer, have portrayed the US as a periodically mistaken, but ultimately, righteous "land of opportunity." In this view, US polity has been defined by "a steady expansion of the definition of those who may be included in humanity: that United States has become the first great nation that defines itself not in terms of ethnic origin but in terms of *adherence to common rules of citizenship* (emphasis added)."<sup>30</sup>

This view of a benevolent United States is quite contrary to the history of Asians in this country.<sup>31</sup> As the first group specifically to be excluded by federal immigration legislation, the Asian immigrant experience poses particularly difficult challenges to the notion of universal and equal citizenship. Beyond outright exclusion from citizenship, Asians were prohibited from entry into the US through a series of discriminatory immigration legislation. Beginning with the Page Law<sup>32</sup>, which prohibited the entrance of prostitutes and led to an effective bar on the entry of all Chinese women, a series of legislation including the Chinese Exclusion Act,<sup>33</sup> the Scott Act,<sup>34</sup> the Geary Act,<sup>35</sup> and the Immigration Acts of 1917<sup>36</sup> and 1924<sup>37</sup> regulated and prohibited the entry of new Asian immigrants and the re-entry of those who traveled temporarily outside the US. Hence, Asian immigrants could not abide by Glazer's common rules of citizenship not only because they could not become citizens, but also because their very presence in the US was criminalized.

#### *B. Exclusion from Citizenship: Ozawa and Thind*

The US Supreme Court considered the role of race in naturalization in two cases, *Takao Ozawa v. United States*<sup>38</sup> and *United States v. Thind*.<sup>39</sup> In *Ozawa*, the Court considered the meaning of "free white persons" and whether Ozawa, a Japanese immigrant who had continuously resided in the US for over 20 years, could be naturalized. While conceding that Ozawa "was well qualified by character and education for citizenship,"<sup>40</sup> the Court found that Ozawa was not a "white person" within the meaning contemplated in the naturalization laws of 1790 and 1870.<sup>41</sup> In holding that the words entail a "racial and not an individual test," the Court further stated that "white person" was meant to indicate a person of Caucasian race.<sup>42</sup> Even as the Court admitted the difficulty of enforcing this categorization and establishing a "zone of more or less debatable ground," the Court found that Ozawa "is clearly of a race which is not Caucasian and therefore belongs entirely outside of the zone on the negative side."<sup>43</sup>

In *Ozawa*, the Court specifically rejected the notion that the test of who can be a citizen rested on a color line because the "test afforded by the mere color of the skin of each individual is impracticable as that differs greatly

among persons of the same race.”<sup>44</sup> Only a year after the *Ozawa* decision, however, the Court heard the case of Bhagat Singh Thind where the issue of the color line was reexamined.<sup>45</sup> As a high caste Hindu from Punjab, Thind maintained that he was a member of the Caucasian or Aryan race based on scientific linguistic classification and, therefore, should be granted citizenship.<sup>46</sup> In rejecting Thind’s claim, the Court employed the so-called “here and now” rule and said that “the term race is one which, for the practical purposes of the statute, must be applied to a group of living persons *now* possessing in common the requisite characteristics, not to groups of persons who are supposed to be or really are descended from some remote, common ancestor . . . .”<sup>47</sup> Adopting a color line reasoning, the Court stated,

It is a matter of familiar observation and knowledge that the physical group characteristics of the Hindus render them readily distinguishable from the various groups of persons in this country commonly recognized as white . . . it cannot be doubted that the children born in this country of Hindu parents would retain indefinitely the clear evidence of their ancestry.<sup>48</sup>

While *Ozawa* could not become a citizen because he was not “Caucasian,” Thind could not become a citizen because he was not “white.” Both individuals were qualified to become citizens in every other sense.<sup>49</sup> But their race created an irrefutable presumption of ineligibility that they could not overcome. Referring to the exclusion of Asian immigrants by the 1917 Immigration Act, the *Thind* court noted the primacy of race in citizenship determination by saying that “it is not likely that Congress would be willing to accept as citizens a class of persons whom it rejects as immigrants.”<sup>50</sup>

### *C. Rearticulation: Race over Citizenship*

In US citizenship discourse, race is not only relevant to the question of who can be a citizen but also to the question of what citizenship means. Although all citizens have legal equality, in several instances, most notably in the internment of Japanese Americans, citizenship was overridden by considerations of race. About a month after the Pearl Harbor bombing, Japanese, German, and Italian residents were ordered to restrict travel and conform to a curfew in the “restricted area” covering the California coast.<sup>51</sup> Over two thirds, or approximately 70,000 of 112,000 Japanese Americans incarcerated during World War II were citizens born in the United States.<sup>52</sup> All persons of Japanese ancestry, regardless of their citizenship status, were relocated from the West Coast to make-shift concentration camps established in Arizona, Utah, and other states during the war years. Most evacuees were given five days after official notice to dispose of their property and possessions. Some estimate the loss of property resulting from evacuation to

exceed \$350 million dollars.<sup>53</sup>

The decision to intern Japanese Americans rested with General J.L. DeWitt's "Final Recommendation,"<sup>54</sup> in which DeWitt advocated for mass internment of all Japanese because they were thought likely to commit acts of espionage. Despite the absence of any concrete proof of Japanese American espionage, DeWitt stated,

In the war in which we are now engaged racial affinities are not severed by migration. The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become "Americanized," the racial strains are undiluted . . . . It therefore follows that along the vital Pacific Coast over 112,000 potential enemies of Japanese extraction are at large today.<sup>55</sup>

Evidenced in this comment is the notion that race, more than any other criterion including conduct and citizenship, determines one's allegiance to a country. As a racial minority, Japanese Americans became "enemies within" by virtue of their racial difference. Even if this language is attributed to an overly zealous military general during the time of war, the willingness of the President to follow the recommendation and issue the infamous Executive Order 9066,<sup>56</sup> authorizing the internment, shows that disregard for the citizenship rights of Japanese Americans was a widespread and acceptable practice.

While the significance of US citizenship was ignored, much was made of the fact that many Japanese Americans held dual citizenship. In the case of *Hirabayashi*, in which a US-born Japanese challenged his criminal conviction for violating the curfew order, Justice Stone noted that "Congress and the Executive, including the military commander could have attributed special significance, in its bearing on the loyalties of persons of Japanese descent, to the maintenance by Japan of its system of dual citizenship."<sup>57</sup> Japan granted citizenship on the principle of *jus sanguinis* while the US, after the enactment of the 14th Amendment, based citizenship on the principle of *jus soli*. As a result, US-born Japanese Americans were citizens of Japan by ancestry but also citizens of US by birth.

There were more direct attacks on the citizenship of Japanese Americans, the most notable being the attempt by Ulysses Webb, a former Attorney General of the State of California to overturn the decision in *Wong Kim Ark*.<sup>58</sup> The lawsuit, *Regan v. King*,<sup>59</sup> attempted to secure a judicial declaration that Asians born in the US were not citizens of the United States. Although never seriously considered, the reasoning as presented in the brief for appellant is indicative of the racism underlying the attempt which, in part, asserted:

Because of the racial characteristics of the Japanese, assimilation with Caucasians is as impossible as it is undesirable . . . . Dishonesty, deceit, and hypocrisy are racial



characteristics . . . A Japanese born in the United States is still a Japanese. The presence of the Japanese in the United States has resulted and can result only in evil and this evil is intensified and multiplied by their ability to exercise the privileges of citizenship.<sup>60</sup>

The rhetoric of hate was the most visible signature of a race-based nation building process. Underlying the hostility toward and the incarceration of Japanese Americans was the enduring belief that only whites were true citizens of the US. Conversely, all those who were not white did not belong and were, therefore, not “American” no matter what their legal status. Moreover, the abrogation of the citizenship rights of US-born Japanese Americans elevated race as the most important criteria for membership in US society and permanently marked racial minorities as the outsider.

#### *D. From Race-Based Exclusion to Mediated Incorporation*

##### *1. Significance of 1965 Immigration Reform*

The Immigration Act of 1965 is seen by many as an example of the ways in which the US has rectified its racially exclusionary policies. The Immigration Act of 1965, in fact, did eliminate both the national origin quota system that favored northern and western Europeans and the carefully drawn limits on Asian immigration. This apparent shift away from racial considerations to “color-blind” scheme is misleading, however. Part of the reason for the lack of opposition to the new act lay in the understanding that the act would not have a significant impact on established immigration patterns. The emphasis upon family ties, proponents argued, would mean that the present ethnic composition of the US would be preserved.<sup>61</sup> Fears about greater Asian and African immigration were addressed by Congressman Celler who said, “There will not be, comparatively, many Asians or Africans entering this county . . . .” Since the people of Africa and Asia have very few relatives here, comparatively few could immigrate from those countries because they have no family ties in the US.”<sup>62</sup> Moreover, a last minute compromise led to a numerical ceiling on previously unrestricted immigration from the Western hemisphere.<sup>63</sup> Hence, the new “color blind” immigration act was successfully adopted because it would continue the racially exclusionary policies of the previous immigration system.

On the other hand, the pressures from the civil rights movement of the 1960s and the demands for equality by racial minorities led to a reconceptualization of the “American nation.” The new creed of cultural pluralism, best represented by Glazer and Moynihan’s *Beyond the Melting Pot*,<sup>64</sup> envisioned a new America where multiple ethnic populations would

peacefully co-exist and enjoy equal opportunity. Central to cultural pluralism is the notion that each group, through hard work, thrift, and active participation in the plural polity, would eventually become an equal partner in the building of the American nation. Since racial discrimination had been formally rejected through anti-discrimination legislation, the relative success or failure of a group to incorporate in the American plurality depended upon the group's own characteristics.<sup>65</sup>

The idea that all groups enjoy an equal playing field, however, sweeps aside the significance of race and the possibility that "there might be any special circumstances which racially defined minorities encounter in the US, circumstances which definitely distinguish their experiences from those of earlier European immigrants."<sup>66</sup> Rather than a shift away from race-based thinking, the assimilationist model facilitates the subordination of racial minorities by demanding that they conform to one set of established values and norms. In addition, this "bootstrap" argument, that each group must pull itself up by its own bootstraps, offers ample flexibility for the dominant group to utilize perceived differences in norms and values as a means to exclude certain discrete groups from the nation-building process of America. Differences may no longer be articulated in overt race terms. Instead, "code words"<sup>67</sup> signify insurmountable differences in the population and designate those who do not belong and who cannot become "American."

## *2. Racialization of Immigrant*

Increasingly in recent years, the key code words have been "immigrant" in general and "illegal alien" in particular. Characterization of not just undocumented immigrants but all immigrants as the "enemy within" are commonplace.<sup>68</sup> Although many variations of the argument exist, immigrants are often characterized as a threat or a problem because they possess qualities that are "un-American." They take away jobs from "Americans," a common argument against liberal immigration policy, implies that immigrants are not and cannot become "Americans." The recent anti-immigrant backlash in California, for example, portrays immigrants as a burden upon the education, health, and criminal justice systems and implies that such services should be reserved only for citizens. Even the name of the proposition seeking to limit illegal immigrant access to public services, the "Save Our State" initiative, implies that California must be protected from immigrants. The immigrant is the "enemy within" who must be controlled, and resources must be guarded from him. The association of undesirable characteristics with immigrants differentiates them from the rest of the

population and draws a line between who belongs here and who does not. The attempt to separate the interests of the citizen from those of the non-citizen manufactures a kind of "immigrant criminality" where to be an immigrant is, in and of itself, to be doing something wrong.<sup>69</sup> Immigrants, as subjects of debate, occupy a position outside of the system with interests that are assumed to be not only different from but actually in opposition to those of citizens. While stereotypical caricatures and generalizations abound, vast class, ethnic, and cultural differences among immigrant groups and individuals are ignored. All immigrants become objectified as an embodiment of the "foreign other" who is ultimately a threat to the citizen.<sup>70</sup>

Portes and Rumbaut note that "throughout the history of American immigration, a consistent thread has been the fear that the 'alien element' would somehow undermine the institutions of the country and lead it down the path of disintegration and decay."<sup>71</sup> The native fear is exacerbated by the fact that immigrants lack the necessary language skills and political knowledge to counter erroneous representations. Although the immigrant is "within" the society, the nativist fear of the foreigner makes her a perpetual "outsider." Immigrants of European descent may find that they, or their children, can escape being recognized as outsiders after a period of adjustment and acculturation. For immigrants of color, on the other hand, their outsider status is as permanent as the color of their skin. The racialization of immigration in the post-1965 period only made shedding the outsider status even harder.<sup>72</sup>

A key component in the rearticulation process was the actual dramatic shift in the immigration pattern. As noted above, proponents of the act believed that the act would not lead to a drastic change in the racial character of immigration, mainly because potential immigrants from Asia and Africa did not have many family ties in the US. As the post-1965 immigration pattern shows, however, immigrants from the Third World came to the US in record numbers. The top five-immigrant sending nations in 1989 were Mexico, the Philippines, Vietnam, Korea, and India.<sup>73</sup> The Asian American population grew from 1.2 million in 1965 to 7.3 million in 1990.<sup>74</sup> Hence, in the post-1965 period, more of the "foreigner outsiders" are immigrants of color.

The fact that the racial composition of the immigrant population changed, however, did not by itself constitute the racialization of immigration. Racialization of immigrants occurs when a racist system of thought, action, and belief is applied to a new group, in this case immigrants, so that the race of an immigrant becomes the primary factor in determining her social and civil rights.<sup>75</sup> While the word "immigrant" does not explicitly refer to racial minorities,

many immigrants of color, but not white immigrants, are reminded daily of their "outsider" status as they become targets of anti-immigrant sentiments ranging from hurtful words of "go back to where you came from" to vicious violence.<sup>76</sup> They are well aware that what makes them prone to open hostility is not their immigrant status per se, but rather that they can be identified as immigrants by their physical attributes and linguistic differences. Because race, rather than legal status, is the measure of an "outsider," citizens of minority descent face treatment as "outsiders" as well.<sup>77</sup>

Hence, the threat of the foreign outsider that fuels the contemporary anti-immigrant sentiment is not a generalized fear of all immigrants. Instead, the perceived threat, as well as the reaction against the threat are targeted against immigrants of color.

One example of institutional measures that contributed to the process of racializing immigrants is the passage of the Immigration Reform and Control Act (hereafter IRCA).<sup>78</sup> The sensationalization of undocumented immigration and the popular belief that the US has "lost control of its border" generated enough political pressure for passage of IRCA in 1986.<sup>79</sup> This legislation attempted to stem the flow of undocumented migration by legalization,<sup>80</sup> employers sanctions against those who hire undocumented workers,<sup>81</sup> and increased enforcement measures.<sup>82</sup> While uproar about immigrants in general and undocumented immigrants in particular continues to snowball, a report by the US General Accounting Office (GAO) in 1990 found that IRCA resulted in 19 percent of the surveyed employers instituting discriminatory hiring practices on the basis of appearance, accent, and citizenship. Of those employers, 76 percent reported having Asian or Latino employees, suggesting a disproportionate impact upon these groups.<sup>83</sup> While the act had limited success in actually controlling the undocumented flow or preventing employers from hiring undocumented workers, the act racialized the issue of immigration and lead to widespread discrimination against foreign-looking applicants.<sup>84</sup> As a result of its passage, employers have become hyper-sensitive to the race of applicants. In effect, the act has blurred the lines between legal and illegal residents and has made race a more salient factor in the economy with the predictable result of victimizing immigrants of color regardless of their legal status.<sup>85</sup>

Proposition 187 further blurs the lines between undocumented and documented immigrants while highlighting race as the indicator of "outsider status." The proposition proposes two standards in identifying immigrants who would be denied educational, social, and health services. Both standards, "determines or reasonably suspects"<sup>86</sup> and "suspected of being,"<sup>87</sup> employs an

ambiguous standard of "suspicion" and encourages enforcement officials to utilize subjective criteria in determining a person's legal status. Without clear guidelines on how a person may be suspected of being in the US illegally, there is ample room for stereotypes to play a major role in the determination process. Because of the many media portrayals of Latinos, but also Asians to some extent, as the main source of illegal immigration,<sup>88</sup> these groups will be targeted for enforcement of the measure, leading to widespread discrimination on the basis of physical and linguistic characteristics. The proposed standard does not focus on any illegal conduct or lack of proper documentation. Instead, by elevating suspicion to an enforceable legal standard, the proposition prioritizes the immigrant's membership in an identifiable group. Hence, regardless of whether one is a citizen or a legal resident, any foreign-looking individual will be required to prove her right to be in the US.

In the wake of the passage of Proposition 187, civil rights advocates have noted the increased number of instances of discrimination against foreign-looking individuals. In one instance, a woman waiting to board a bus in San Francisco was told by the bus driver, "we don't have to let any more wetbacks on this bus," before he drove off without her.<sup>89</sup> In another case, a supermarket checkout clerk in Santa Clara demanded a social security card from a Latina as she tried to purchase groceries.<sup>90</sup> Even daily and mundane activities such as riding the bus or buying groceries become hazardous for immigrants whose appearance identify them as foreigners.

Despite legal challenges against Proposition 187, the movement to deprive legal and illegal immigrants of public benefits seems to be spreading. Florida recently began a "Save Our State" initiative process with the help of sponsors of the California's proposition.<sup>91</sup> Moreover, the sponsors of Proposition 187 have begun a second "Save Our State" initiative that will deny citizenship to US-born children of undocumented immigrants.<sup>92</sup> In addition, the US House of Representatives recently passed a version of welfare reform that would bar legal permanent residents from participating in several federal welfare programs and authorizes states to deny need-based support services to legal immigrants.<sup>93</sup>

Beyond the immediate hardship for individuals and families, the result of these actions will be to further differentiate immigrants from the general population and to bolster the notion that they do not belong here. These measures do not address immigration per se but, rather, focus upon who is a true "American" and is, therefore, deserving of receiving benefits and participating in the American polity. Denial of government benefits, what

Marshall calls "social citizenship," marks immigrants as outsiders undeserving of equal treatment.<sup>94</sup> Exclusion from social citizenship may also undermine civil and political rights of non-citizens by sanctioning discriminatory treatment toward those identified as a foreign outsider. While citizenship legally guarantees membership, and immigrants can become citizens through naturalization, it does not guarantee the right to belong or the right to become an "American." Because a majority of post-1965 immigrants are racial minorities in the US and because the enforcement of the anti-immigrant measures will target groups whose differences will be seen as a threat, the current anti-immigrant sentiment continues the tradition of exclusion by race. This exclusion by race, in turn, continues the entrenched notion of the US as a white nation.<sup>95</sup>

#### **IV. Alternative Conceptualization of Citizenship**

Citizenship means different things to different people. For some, citizenship may be as central to their personal identity as religion or family while, for others, it may simply be a legal marker of their present, but not permanent, affiliation. Regardless of the varying degrees of personal meaning attached to citizenship, the significance of citizenship for each nation is much more profound. Both formal and informal processes of defining a citizen determine who can belong and exercise membership in a common polity. The question of who can belong, in turn, defines the nation. In the US, whiteness has been key to determining who can belong here. Even as legal access to citizenship has been broadened and outright exclusion on the basis of race has been abandoned, the question of who can belong continues to be defined along racial lines. In effect, racial differences have been highlighted to create an imagined unity among the white majority while relegating racial minorities to the status of citizens who are not really members.

In addition, the post-1965 influx of immigrants from the Third World poses difficult questions of who is a member and what membership means. Is presence in the US enough to denote membership? Or is some process indicating acceptance into the US polity required? Some scholars have argued for a "consensual ideal of citizenship." Under this scheme, the consent of the US government at the time of entry is a necessary requirement for citizenship. Hence, children of undocumented immigrants born in the US would not be citizens.<sup>96</sup> This consensual model is in line with the concern that citizenship has been devalued in the US, and that non-citizens have no incentive to become citizens because they can partake in all the privileges of citizenship. According to this argument, the lack of differentiation between citizens and

non-citizens devalues citizenship and thereby threatens political accountability, cultural cohesion, civic-mindedness, and emotional unity.<sup>97</sup> The contemporary “don’t give them anything” approach is a draconian interpretation of this argument: by excluding non-citizens from government programs, citizenship becomes more valuable.

As this paper has tried to argue, however, narrowing the concept of who belongs here inevitably leads to widespread racial discrimination. The legacy of racial exclusion and discrimination in the nation-building process of the US cannot be discarded as a past mistake or subjugated to an argument for national unity.<sup>98</sup> Race continues to play a central role in defining who is an American and who is an “outsider,” regardless of legal status. Citizenship does not convey equal membership because incorporation is mediated by race.

If citizenship does not confer membership, then how is membership to be determined? Is the alternative to grant equal benefits to all those who are within the borders of the US.? There are some who would argue for this approach at least in regards to permanent residents. According to these scholars, citizenship is not an adequate mechanism to denote membership in a common polity. The US immigration process itself exercises greater scrutiny of entry into the US rather than at the point of acquiring citizenship.

Furthermore, permanently residing aliens live and function much as citizens. They hold jobs, attend churches, send their children to school, and pay taxes. Children they give birth to here are United States citizens. From this perspective, the fact that aliens are not required by law to apply for citizenship is not surprising; in day-to-day terms, permanently residing aliens and citizens are already virtually indistinguishable.<sup>99</sup>

If immigrants live and function in the same way citizens do, then the only reason for imposing legal disabilities on immigrants is to preserve citizenship as a meaningful concept. Some scholars even argue that permanent residents should be able to vote.<sup>100</sup>

Because the concept of citizenship is so tied to the idea of a nation, many, like Professor Schuck, argue that devaluation of citizenship may threaten the idea of a “national community.” Just as citizenship does not necessarily denote equal membership in a “national community” for racial minorities in this country, so conversely, non-citizens are equally likely to uphold the values of being an “American.” Aleinikoff notes:

It is quite doubtful that “citizenship” is a useful category for sorting those who do and do not share an “American Creed.” What makes America attractive to immigrants are precisely those values that Americans celebrate: liberty, equality, opportunity, government under law. Indeed those who have chosen to join us—and

to give up a less happy existence elsewhere—may well feel more committed to these values than those of us who happen to have been born here.<sup>101</sup>

Beyond the argument that immigrants are already members, for all practical purpose, is the argument that nation-state bound citizenship is no longer meaningful in the context of globalization. Intuitively, we all understand the growing inter-dependence between nations and that national policies are influenced as much by domestic concerns as international ones. While we may accept the need for and the US's participation in global networks in the economic and political arena as routine, we still insist upon sanctity of borders when discussing the migration of people.<sup>102</sup> Immigration is debated almost exclusively within a domestic framework as indicated by the often heard questions, "Is immigration good for the US?"

A different characterization of the movement of people across national boundaries is transnational migration.<sup>103</sup> More and more immigration scholars are recognizing the relationship between the transnational flow of capital and the accompanying migration of people.<sup>104</sup> As nations become increasingly interdependent through the internationalization of production and investment, geographical boundaries of nation-states are no longer determinative of when and where capital and labor migrate.<sup>105</sup> In this light, immigration is not a phenomenon that can be controlled by simply erecting or lowering legal barriers to entry nor is it a moral question of defending national sovereignty. Movement of labor, whether documented or undocumented, is a process that accompanies the expansion of capitalism both on a national as well as international level and hence, cannot be controlled by a single nation.<sup>106</sup> The myopic and arrogant perception that the US's own domestic interest alone can dictate the character and flow of immigration partially explains the failure of our immigration policy, while a lack of historical perspective allows us to ignore the critical role the US's own actions abroad play in shaping migration patterns.<sup>107</sup>

Immigrants participate in this complex interplay of labor and capital flow and maintain "multi-stranded social relations that link together their societies of origin and settlement."<sup>108</sup> Contrary to the traditional understanding of immigrants as people moving from one fixed point to another, today's immigrants are active participants in a "transnational migration circuit."<sup>109</sup> Transnational migrants build social fields that cross geographic, cultural, and political borders through constant movement back and forth, the formation of family ties across borders, as well as active economic, political and social participation both in their place of origin and settlement. In many cases,



transnational migrants serve as human linkage that foster greater economic and political ties between the US and other nations.<sup>110</sup>

How should citizenship be conceptualized in the context of transnational migration? The first step in the reconceptualization of citizenship is to minimize its significance as a category for determining national membership. As more and more people straddle two or more societies, what is important is the level of their economic, social, and political participation in the national community, not whether they pledge allegiance to an amorphous national creed. Under this conceptualization, permanent residents who live and function in much the same way as citizens do should be granted equal rights, including the right to vote. After all, if immigrants live, work, worship, and pay taxes in the same communities as citizens, they should also have the right to determine how their lives are affected by government policies and practices. In addition, amnesty for undocumented immigrants should be expanded to recognize those who have continuously resided in the US. While this may seem to be a radical departure from the current citizenship structure, support for this line of reasoning is evident in previous legislation and court cases. For example, a long line of Supreme Court cases have struck down state attempts to disqualify immigrants from government employment, professional licenses, or welfare benefits, thus recognizing their right to participate in equal standing as citizens in many arenas.<sup>111</sup> Although the stringent time element made it unworkable, the amnesty provision of IRCA also seems to support the notion that membership should be determined by participation.<sup>112</sup> By granting legal status to those documenting continuous residence, the provision implicitly recognized their membership by virtue of participation.

Some may argue that this position is impractical because it would place an impermissible financial burden on a government already beleaguered by skyrocketing costs. Whether immigrants are a burden on the public sector is a hotly contested issue with widely varying estimates. While different levels of government may be affected differently and some adjustment may be needed accordingly, most reasonable estimates suggest that annual taxes paid by immigrants more than offset the costs of services received.<sup>113</sup>

Additionally, as transnational migrants challenge the concept of territorially-bound allegiance, citizenship needs to be reconceptualized to reflect the ways in which people today participate in multiple social, economic, and political processes across national borders. One way this may be accomplished is to recognize multiple citizenships whereby individuals are able to participate in affairs of several different nation-states. Dual citizenship is recognized by the US but not encouraged because of the implications for

allegiance, especially when the US and the other nation are in conflict.<sup>114</sup> Generally, a shift away from unilateral approaches may be helpful in formulating policies about migration. A multilateral approach may be beneficial because it leads to procedural, if not substantive, consistency in immigration regulation and to sharing of costs among agreeing parties. In addition, multilateral approaches may promote de-criminalization of migrants by establishing an internationally recognized immigration system. An example of this approach is evident in international attempts to address the refugee issue and in the creation of a European community whereby individuals have greater freedom of movement between nations in the community. Multilateral approaches however, also have the problem of becoming an "agreement to exclude" certain undesirable groups. The agreements may also become a way of shifting responsibility as rich nations compensate poorer nations for accepting immigrants.<sup>115</sup>

Implications of a more fluid concept of citizenship that merits participation rather than origin, that recognizes the reality of transnational existence and that values diversity within the US, are both far reaching and complex. The reconceptualization of citizenship toward a more flexible and inclusive model challenges the long-held belief in America as a white nation. The suggestions made in this article ask that we consider our nation not as a homogeneous entity but rather as a hybrid and heterogeneous space where different groups have experienced different slices of what it means to be "American" and that the multiplicity of our experiences will only increase within the context of rapid globalization. At a time when white American nativism is at its height, as embodied in the recent success of Pat Buchanan in the Republican primaries, the idea that we should challenge and abandon the idea of a white America will certainly not be implemented in the near future. Furthermore, reconceptualization of citizenship by itself will not bring immediate changes to the way in which racial minorities are marginalized and excluded. At the very least, however, rethinking citizenship confronts the history of race-based membership in the US and may push us toward rethinking what it means to be an "American."

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## Endnotes

1. The privilege associated with whiteness does not render all whites equal. The inner circle is further stratified by gender and class. Therefore, the claim is not that all whites are on equal footing but rather that whiteness has been a key criterion, among others, that define who is a member of US national polity.
2. The association between citizenship and nation-state means that stateless people (e.g.

Kurds) fall outside of this paradigm. The increasing number of people being displaced from their homes due to political upheaval, environmental degradation, and other natural and man-made calamities means an increase in the number of stateless people. This phenomenon provides a difficult challenge for traditional conceptualization of nation-bound citizenship. For further discussion of this issue, see Bryan S. Turner, "Contemporary Problems in the Theory of Citizenship," *Citizenship and Social Theory*, ed. Bryan S. Turner (London: Sage Publications, 1993) 1-18.

3. Turner, Preface vii.
4. T.H. Marshall, *Citizenship and Social Class*, (Cambridge: University Press, 1950) 40.
5. Marshall uses the term "social rights" to indicate various government sponsored entitlements including education, health, and welfare benefits. According to Turner, the social forms of citizenship were institutionalized in the welfare state. Turner 6.
6. Barry Hindess, "Citizenship in the Modern West," *Citizenship and Social Theory*, ed. Bryan S. Turner (London: Sage Publications, 1993) 1-18. 25. Marshall argues that civil, political, and social rights have been successively incorporated into the Western concept of citizenship. Marshall 27. But as Hindess notes in his article, social rights, or rights to welfare and other entitlements may not necessarily lead to equality of status between citizens since the process by which entitlements are distributed may in and of itself lead to differentiation of the recipients from the rest of the population. Hindess 26.
7. The cultural and structural conditions include development of a city culture, secularization, emergence of the idea of a public realm, decline of particularistic values, erosion of particularistic commitments, and the administrative framework of the nation-state. Turner, Preface vii.
8. Benedict Anderson explains that nations are a "cultural artifacts of a particular kind... the creation of these artifacts towards the end of the eighteenth century was the spontaneous distillation of a complex 'crossings' of discrete historical forces." Anderson defines nation as "an imagined political community" that arose in part from the breakdown of dynastic regimes and the religious communities as well as the privileging of certain languages with the development of print capitalism. Benedict Anderson, *Imagined Communities* (New York: Verso, 1991).
9. Linda Basch, Nina Glick Schiller and Cristina Szanton Blanc, *Nations Unbound: Transnational Projects, Postcolonial Predicaments and Deterritorialized Nation-States* (Langhorne, Pa: Gordon & Breach, 1994) 35.
10. Turner, 14. By "minoritized," I mean the process by which persons or groups are transformed into minorities by a process of political, economic, and social subjugation. Hence, blacks in South Africa are numerically a majority but until recently held a "minoritized" status as subordinate to the ruling whites.
11. By an "outsider," I indicate a status rather than physical presence. In referring to African American women as "outsider-within," for example, Patricia Hill Collins points to the subordination of the black women in the political economy of the US and notes that this enduring image is key in "maintaining interlocking systems of race, class and gender oppression." Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and*

*the Politics of Empowerment* (New York: Routledge, 1991) 11-13, 68.

12. Stuart Hall, "Pluralism, Race and Class in Caribbean Society," *Race and Class in Post-Colonial Society: A study of Ethnic Group Relations in the English-Speaking Caribbean, Bolivia, Chile and Mexico* (Paris: Unesco, 1977) 158.
13. L. Basch, N. Schiller, and C. Blanc, 40. For other works arguing the legal construction of whiteness, see Cheryl Harris, "Whiteness as Property," *Harvard Law Review* 106 (1993): 1707. (describes the legal construction of whiteness whereby white privilege becomes a property right).
14. There are two ways in which one can be acquire US citizenship: at birth and through administrative naturalization. Citizenship acquired at birth are based upon two principles. Under *jus soli*, "right of land," a nation confers citizenship on persons born within that nation's territory. Under *jus sanguinis*, "right of blood," a nation grants citizenship to the children of existing citizens. Citizenship may also be acquired through a naturalization process which requires lawful permanent residence, continuous residence within US for five years, good moral character, age over 18, an understanding of the English language, knowledge of civics, acceptance of the US Constitution, and rejection of certain other political beliefs (i.e. Communism). Stephen H. Legomsky, *Immigration Law and Policy* (Westbury, NY: Fourndation Press, 1992) 1028-1041. In this paper, I use the term "citizen" to refer to native born citizens. Immigrants who acquired citizenship are referred as "naturalized citizens." The term "immigrant" refers to both documented and undocumented immigrants unless a distinction is necessary.
15. Act of March 26, 1790, Ch. 3. 1 Stat. 103.
16. *Elk v. Wilkins* 112 US 94, 1884.
17. African slaves were counted as 3/5 of a free citizen for the purposes of apportioning taxes and determining the number of Representatives. US Const. Art. I d2 cl.3. In the case of Dred Scott, a black slave, who sued for this freedom. In *Scott v. Sandford*, the Court held that neither slaves nor free descendants of slaves were "citizens" within the framer's understanding of that term. 60 US (19 How.) 393 (1856).
18. US Const. amend. XIV, d 1 cl.1 See supra fn. 14.
19. Here, I specifically use "immigrants of color" to differentiate immigrants of European descent from immigrants from the Third World. Although immigrants of European descent, such as the Irish, also faced severe discrimination, they were not expressly excluded from acquiring citizenship as were immigrants of color. Generally, I use the term "immigrants of color" to refer to those immigrants who have historically experienced racial discrimination. Although the term includes all people of color, certain European immigrants such as the Irish and Italians also fall under the term in so far as they were also targeted for discrimination and violence because they were thought to be racially inferior. For a historical account of the experiences of various ethnic immigrant groups, see Ronald Takaki, *A Different Mirror* (Boston: Little, Brown & Co., 1993)

In addition, the experience among immigrants of color differ greatly depending upon the

mode of entry, ethnicity, class origin, and transformation once in the US, as well as gender. Hence, the experiences of a middle-class immigrant man from Korea will be markedly different from the experience of a working-class immigrant woman from Mexico. However, both will experience racialization upon entry into the US albeit through different mechanisms and in different ways. This paper focuses upon the legal construction of race through citizenship and therefore does not deal with the class or gender implications.

20. Act of July 14, 1870, ch. 254 d 7, 16 Stat. 254 See Bill Hing, *Making and Remaking Asian America Through Immigration Policy, 1850 - 1990* (Stanford: Stanford University Press, 1993) 23.
21. The exclusion from citizenship applied to immigrants only which meant that children of Asian immigrants who were born in the US were citizens at birth under the jus soli principle. The Supreme Court in *Wong Kim Ark*, 169 US 649 (1898) held that a child born in the United States is citizen by virtue of the Fourteenth Amendment even if the parents of the child are racially ineligible for citizenship. See supra fn. 14
22. California Foreign Miners Tax d1 (April 13, 1850)
23. Alien Land Law d 2 (May 15, 1913)
24. Act of Sept. 22, 1922, ch. 411 d 3 42 Stat. 1021 Women were discriminated in acquiring citizenship under the theory that husband and wife were one person and therefore, the wife shared her husband's nationality. See, S. Legomsky, Ch. 11, at 1039.
25. Act of December 17, 1943 d 1, 57 Stat. 600.
26. Act of July 2, 1946 d 1, 60 Stat. 416.
27. Immigration and Nationality Act of 1952, 66 Stat. 163 (June 27, 1952).
28. L. Basch, N. Schiller, and C. Blanc, 40-41.
29. The conferring of citizenship to African American in 1870 and to Asian Americans in 1952 coincided with political events that made the exclusion of these groups untenable. In the case of African Americans, the end of Civil War necessitated the legal incorporation of newly freed slaves. The end of World War II and the onset of the Cold War in the 1950s required US to take a more of an inclusionary approach toward Asian immigrants to improve US image among its Asian allies. However, for both the African Americans and Asian Americans the legal incorporation did not eliminate their vulnerability from violence and discrimination. For a discussion of the construction of race by US law. See Derrick Bell, *Race, Racism and American Law* (Boston: Little, Brown, & Co., 1992).
30. Nathan Glazer, "The Emergence of an American Ethnic Pattern," *From Different Shores: Perspectives on Race and Ethnicity in America*, ed. R. Takaki (NY: Oxford University Press, 1987) 14.
31. This paper focuses on the experience of the Asian Americans, but the experience of racial exclusion is not unique to one group. However, each group has experienced distinct processes of incorporation/exclusion. A complete overview of the particular experiences of each ethnic and racial group is beyond the scope of this paper. Instead I have attempted

to draw broad implications from the particular experience of Asian immigrants and selected current developments.

32. 18 Stat. 477 (Mar.3, 1875).
33. 22 Stat. 58 (May 6, 1882).
34. 25 Stat. 504 (Oct. 1, 1888).
35. 27 Stat. 25 (May 5, 1892).
36. 39 Stat. 874 (Feb. 5, 1917).
37. 43 Stat. 153(May 26, 1924).
38. 260 US 173 (1922). Although the particular exclusion in 1870 as well as the Chinese Exclusion Act of 1882 specifically addressed the status of Chinese immigrants, there were no particular reference to Japanese or other Asians. As a result, many Japanese immigrants had successfully been naturalized in the lower federal courts until 1906 when the US Attorney General ordered the federal courts to deny naturalized citizenship to Japanese aliens. See, Ronald Takaki, *Strangers from Different Shore* (Boston: Little, Brown, & Co., 1989) 20.
39. 261 US 204 (1923).
40. 260 US 178, at 180 (1922).
41. Ibid. at 198.
42. Ibid. at 197.
43. Ibid. at 198.
44. Ibid. at 197.
45. *United States v. Bhagat Singh Thind*, 261 US 204, 1923.
46. Ibid. at 210.
47. Ibid. at 209 .
48. Ibid. at 215.
49. Both the *Ozawa* and *Thind* courts noted that the applicants were individually qualified to become citizens and that the only questions was whether they were "free white persons." *Ozawa v. US*, 260 US 178, at 180; *US v. Thind*, 261 US 204, at 204 (1923). The reference to individual qualification allude to the residency, moral character, English proficiency and political requirement specified in the naturalization process. See supra fn. 24
50. Ibid. While the earlier exclusionary immigration acts were directed specifically at the Chinese, the 1917 Immigration Act created an "Asiatic Barred Zone." Japanese were exempt from the 1917 law because their entry was regulated by the so-called "Gentlemen's Agreement" between the US and Japan. In 1924, Congress passed a new immigration act incorporating the court's decisions in *Ozawa* and *Thind* , barring all aliens ineligible for citizenship. See Legomsky, p. 108-111.

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51. Jacobus tenBroek, Edward N. Barnhart, and Floyd W. Matson, *Prejudice, War and the Constitution* (Berkeley, University of California Press, 1954) 107.
  52. Although Japanese first generation immigrants could not become naturalized citizens, their children born in the US, the so-called nisei, were American citizens by birth. See *supra* fn. 21.
  53. Jacobus tenBroek, Edward N. Barnhart, and Floyd W. Matson, 124-125. For other accounts of the internment experience see, Michi Weglyn, *Years of Infamy* (New York: Morrow, 1976); Roger Daniels, *Concentration Camps USA: Japanese Americans and World War II* (New York: Holt, Rinehart, & Winston, 1970).
  54. Jacobus tenBroek, Edward N. Barnhart, and Floyd W. Matson, 109.
  55. US Army, Western Defense Command and Fourth Army, *Final Report: Japanese Evacuation from the West Coast*, 1942, as quoted in tenBroek, Barnhart, and Matson, 110.
  56. 7 Fed. Reg., 1407
  57. *Hirabayashi v. United States*, 320 US 31, at 97. For detailed discussion of this and other related cases, see tenBroek, Barnhart, and Matson, 211-310.
  58. 169 US 649 (1898) See *supra* fn. 21.
  59. 49 F. Supp. 222 (1942). For background information on this case, see Sucheng Chan, *Asian Americans: An Interpretative History* (Boston: Twayne, 1991) 127.
  60. Brief for Appellant in *Regan v. King*. p. 42-43 as quoted in tenBroek, Barnhart and Matson, 315.
  61. David Reimers, *Still the Golden Door: The Third World Comes to America* (New York: Columbia University Press, 1992) 73 -75.
  62. Cong. Rec. 21812 (August 25, 1965).
  63. David Reimers, 79.
  64. Nathan Glazer and Daniel P. Moynihan, *Beyond the Melting Pot* (Cambridge: MIT Press, 1970).
  65. Michael Omi and Howard Winant, *Racial Formation in the United States* (New York: Routledge & Kegan Paul, 1986) 22.
  66. Michael Omi and Howard Winant, 23.
  67. Omi and Winant describe the process of racialization as the extension of racial meaning to a previously racially unclassified relationship, social practice, or group. While the civil rights movements of the 1960's were able to rearticulate the rhetoric of democracy and rights to demand greater equality for racial minorities, the very gains of this movement were again rearticulated by the conservative backlash in the 1980's. Hence, affirmative action and other remedial measures instituted in the 1960's were seen as conferring "preferential treatment" and as constituting a "racial injustice" to whites in general and white males in particular. According to Omi and Winant, the new right has successfully
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used code words, seemingly nonracial rhetoric disguising racial issues, to mobilize a mass base threatened by minority gains. One example of a code word may be "welfare mother" referring to single black mothers on welfare, even though a majority of welfare recipients are white. 114.

68. As noted by Gary Delgado, immigrants are often thought to steal jobs, pay no taxes, go on welfare, commit crimes, clutter our hospital with AIDS patients, have babies who can become citizens, breathe all the good air, lower quality of our schools, and eat all the good vegetables (because they pick them first) Gary Delgado, "Prop. 187: Xenophobia, Absurd & Mean," *San Francisco Examiner* 25 July 1994: A15.
69. As noted in supra fn. 24, the term "immigrant" is being used here to include both the undocumented and documented immigrants. This is not to minimize the differences between the two groups or to argue that they should or should not enjoy the same treatment. Rather, the paper will argue that the targeting of immigrants for discriminatory treatment is race-based and largely ignores the difference in legal status. Of course, many current critics of immigration target their opposition to undocumented immigrants. James Coleman of L.A. Unified School District wrote, "In the 60s, we were trying to get America to treat Americans as Americans. Illegal aliens have no right to be treated like Americans. Unless they are willing to do what immigrants have done for decades—enter and remain legally—they have no right to our bounty." See James Coleman "Illegal Immigrants Are By Definition Criminals," *Los Angeles Times* 12 September 1994: B7.
70. Michel Foucault has noted that the bourgeoisie began to distance the non-proletarianized from the proletariat by criminalizing the former. They did this to avoid unity between the groups which would pose a serious danger to their hegemonic control. The non-proletarianized were also used against the proletariat in the form of strike breakers, thereby widening the division between the two groups. A similar argument could be made in the case of immigrants workers who have more common interests with the native worker in the area of economic rights. A unity between the immigrant and the native worker is thwarted by the criminalization and political scapegoating of immigrants. Michel Foucault, "On Popular Justice: A Discussion with Maoists," *Power/Knowledge* (New York: Pantheon Books, 1980) 16.
71. Alejandro Portes and Ruben Rumbaut, *Immigrant America* (Berkeley: University of California Press, 1993) 95.
72. For explanation of racialization, see supra fn. 82. Although immigrants of color have always been at the mercy of racism both at the institutional and individual level, I am arguing here that the term "immigrant" was not solely reserved for immigrants of color until the post-1965 period.
73. Immigration and Naturalization Services (hereafter INS), *Advanced Report* 1989.
74. Bill Ong Hing, 118.
75. Etienne Balibar explains, "The phenomenon of... 'racialization' which is directed simultaneously against different social groups which are quite different 'nature'... does not



represent a juxtaposition of merely analogous behaviours and discourse applied to potentially indefinite series of objects independent of each other, but a historical system of complementary exclusions and dominations which are mutually interconnected.", Etienne Balibar, "Racism and Nationalism", *Race, Nation, Class: Ambiguous Identities* (Paris: La Decouverte, 1988) 49.

76. For examples of hate violence against Asian immigrants, see Office of California Attorney General, *Final Report of Attorney General's Asian/Pacific Islander Advisory Committee* (1988).
77. It is not uncommon for an American of Asian heritage to be asked where she is from or be complimented on speaking English well. As harmless as these questions may be in a daily context, they are an indication that racial characteristics rather than immigrant status is the basis of one's identification as a foreign "outsider."

The differences among the citizen of minority descent and immigrants are vast. In many Asian American communities, for example, these differences are often translated into a hierarchy of social status as English-speaking and American-born are privileged over foreign-born and non-English-speaking. Some American-born Asian Americans attempt to as much distance between themselves and the immigrants in order to insulate themselves from the anti-immigrant hostility. Others subscribe to "identity politics" where for the sake of political unity, differences of language, gender, and class, to name only a few, are suppressed. For an enlightened discussion of the heterogeneity of Asian American communities and its significance, see Lisa Lowe, "Heterogeneity, Hybridity, Multiplicity Marking Asian American Differences," *Diaspora* Spring 1991: 24.

78. 100 Stat. 3359 (1986).
79. Some samples of the media headlines at that time describing the phenomenon of undocumented immigration are "Invasion from Mexico: It just Keeps Growing," *US News & World Report* 7 March 1983: 37-44; "Losing Control of Our Border," *Time* 13 June 1983: 26-27.
80. IRCA d 245 While legalization can be seen as an inclusive measure to incorporate long time residents, some scholars have noted that the requirement of continuous residence since January 1, 1982 by each applicant led many eligible aliens to avoid legalization to prevent break-up of families. See Carol Sanger, "For Legalization to Work, a Humanitarian Measure," *Los Angeles Times* 3 April 1988: 5 cl. 1.
81. IRCA d 274A.
82. IRCA d 111.
83. US General Accounting Office, *Report to Congress: Immigration Reform, Employer Sanction, and the Question of Discrimination* (Washington: United States, 1990) 38, 50.
84. For an insightful critique of IRCA and loopholes that protect rather than punish employers who hire undocumented workers, see Kitty Calabita, "Employer Sanctions Violations: Toward a Dialectical Model of White Collar Crime," *24 Law & Society Review* 1990: 1041.

85. Many civil rights organizations vigorously opposed the employer sanctions provision predicting that penalizing the employer would lead to widespread hiring discrimination against individuals who look foreign. See e.g. Statement of Anatonia Hernandez, Associate Counsel of Mexican American Legal Defence and Education Fund in front of *Joint Hearing before the Subcommittee on Immigration, Refugee, and International Law of the House Committee on the Judiciary and Subcommittee on Immigration and Refugee Policy of Senate Committee on the Judiciary*, 97th Cong. 2nd sess. at 21 (1982).
86. Proposition 187 dd 5 and 6.
87. *Ibid.*, d 4.
88. For examples of media portrayal, see *supra* fn.94.
89. Coalition for Immigrant and Refugee Rights Services, *CIRRS Update*, Winter (1994-1995): 1.
90. Coalition for Immigrant and Refugee Rights Services.
91. Ron Bartlett, "A West Coast Controversy Lead Our Way," *Tampa Tribune*: B1.
92. Editorial, *San Francisco Chronicle* May 28, 1995.
93. H.R. 4, 104th Cong, 1st Sess (1995). The version that ultimately passed rejected the strict ban on immigrant access. However, the bill does rely on "deeming." When a person immigrates to the U.S, she is sponsored by a relative in the US The sponsor signs an affidavit guaranteeing financial support of the immigrant if she should become indigent. Until now, the affidavit was not enforced. Under the new bill, the sponsor's income would be added to that of the immigrant applicant in determining eligibility for government benefits until the immigrant becomes a citizen. Such deeming would effectively bar most low-income immigrants from receiving the benefits. The programs affected are Supplementary Security income, non-emergency Medicaid, Food Stamps, Social Service Block Grants, and Aid to Families with Dependent Children.
94. A recent study by the Urban Institute has found that both documented and undocumented immigrants have little to no negative impact on the economy. The same study also found that immigrants generally pay more in taxes than they receive in benefits. Finally, the study also found that legal non-refugee immigrants use the welfare system at a lower rate than the general population. M. Fix and J. Passel, *Immigration & Immigrants: Setting the Record Straight* (Washington Urban Institute, 1994).
95. Lopez argues that this notion of US as a white nation is behind arguments for restrictive immigration laws which favor Europeans, where "European" serves as a not-so-subtle synonym for white. Ian F. Haney Lopez, "White By Law: Citizenship and the Legal Construction of Race," (manuscript, 1995) 22.
96. P. Schuck and R. Smith, *Citizenship Without Consent—Illegal Aliens in the American Polity* (New Haven: Yale University Press, 1985). This argument has also been adopted by several political figures such as Governor Wilson who have advocated for prohibiting US born children of undocumented immigrants from becoming citizens.
97. P. Shuck, "Membership in the Liberal Polity: The Devaluation of American Citizenship,"

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- 3 *Geo. Immigration Law Journal* (1989): 1.
98. G. Neuman, "Book Review of *Citizenship Without Consent, Back to Dred Scott?*" 24 *San Diego Law Review* (1987): 485.
99. T. Aleinikoff, "Citizens, Aliens, Membership and the Constitution," 7 *Constitutional Commentary* 9 1(1990): 23-24.
100. Rosberg, "Aliens and Equal Protection: Why Not the Right to Vote?" 75 *Michigan Law Review* (1977): 1092.
101. Aleinikoff, 32.
102. One of the arguments used to support the exclusion of Chinese immigrants during the nineteenth century was that the power to exclude aliens was fundamental to a nation's independence. In the *Chinese Exclusion Cases*, Justice Field noted, "That the government of the United States, through the action of the legislative department, can exclude from its territory is a proposition which we do not think open to controversy. Jurisdiction over its own territory to that extent is an incident of every independent nation. It is a part of its independence.", *Chae Chan Ping v. United States*, 130 US 581.
103. This paper mainly focuses on the voluntary migration of people. Although the difference between voluntary and involuntary migration are not absolute, citizenship and the expectation for inclusion is most relevant for those who choose to migrate to another nation.
104. See e.g. Saskia Sassen, *The Mobility of Labor and Capital: A Study in International Investment and Labor Flows* (New York: Cambridge University Press, 1988); L. Basch, N. Schiller, and C. Blanc, *Nations Unbound*.
105. Basch, Schiller, and Blanc identify this process as a product of world capitalism. As industrialized nations restructure their economies, exporting manufacturing industries and related jobs abroad, well-paying, unionized jobs are lost in urban centers of these countries. At the same time, capital influx into the Third World countries create economic shifts as traditional industries are replaced by large export processing industries, agro-businesses, and tourism. Both of these trends increase migration of people who experience economic dislocation. Schiller, Basch, Blanc-Szanton, *Towards A Transnational Perspective on Migration* (New York: New York Academy of Sciences, 1992) 9.
106. Portes and Rumbaut note: Policy recommendations are often made as if governments were capable of easily reversing historical trends, which is seldom the case. In the instance of migration, new laws do have an effect, but it is often not the one explicitly intended. For example, the end of the contract labor agreement or Bracero Program with Mexico in 1964 was prompted by the desire to curtail low-wage foreign labor; instead, this Mexican labor inflow went underground and then expanded rapidly. A. Portes and R. Rumbaut, 234-235.
107. Sassen, for example, has noted that the countries that send the highest number of immigrants to the US, such as the Dominican Republic, Haiti, El Salvador, Philippines,
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and Korea, have had significant political and economic US involvement. She further notes that, The central role played by the United States in the emergence of a global economy over the past 30 years lies at the core of why people migrate here in ever-increasing numbers. US efforts to open its own and other countries' economies to the flow of capital, goods, services and information created conditions that mobilized people for migration and formed linkages between the United States and other countries which subsequently serviced as bridges for migration. S. Sassen, "Why Migration?", *Race, Poverty & the Environment* Summer (1993): 15.

108. L. Basch, N. Schiller, and C. Blanc, 7.
109. R. Rouse, "Making Sense of Settlement: Class Transformation, Cultural Struggle, and Transnationalism among Mexican Migrants in the United States", in *Towards a Transnational Perspective on Migration*, 25-52.
110. For example, immigrants from India have played an increasingly important role in opening investment opportunities in India. In another case, Haitian immigrants played an important role in opposing the Duvalier regime while at the same time becoming active participants in the local politics of New York. For these and other examples see, N. Schiller, L. Basch, and C. Blanc-Szanton, *Towards Transnational Perspective on Migration*.
111. See e.g., *Graham v. Richardson*, 403 US 365 (1971) (welfare benefits); *Nyquist v. Mauclet*, 432 US 1 (1977) (educational assistance funds); *Sugarman v. Dougall*, 412 US 634 (1973) (state civil service employment).
112. The current anti-immigrant atmosphere make these suggestions unlikely to be taken seriously. Nevertheless, I offer my observations here in the hope that imagining an alternative will help us to move away from blaming immigrants for the ills of our country.
113. See supra fn. 94.
114. See S. Legomsky, ch 11, d 3.
115. There is some evidence that this is already taking place in the refugee/asylum structure. For example, the Schengen agreement between European nations promote freedom of movement for individuals already within the community of agreeing parties. However, the agreement seeks to limit entry into the community. Moreover, Germany is already negotiating side agreements with less prosperous nations to accept those asylum applicants that Germany rejects. In exchange, Germany will provide assistance and economic aid to these nations. See Neuman, "Buffer Zones Against Refugees: Dublin, Schengen, and the German Asylum Amendment," 33 *Virginia Journal of International Law* 503, at 504-505.

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