

# The Invention of Asian Americans

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## INTRODUCTION

In *Fisher v. University of Texas*,<sup>1</sup> the U.S. Supreme Court will revisit the legal status of affirmative action in higher education. Of the many amicus curiae (friend of the court) briefs filed, four might be described as “Asian American” briefs.<sup>2</sup>

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I draw my title from THEODORE W. ALLEN, *THE INVENTION OF THE WHITE RACE*, VOL. 1: RACIAL OPPRESSION AND SOCIAL CONTROL (1994), and THEODORE W. ALLEN, *THE INVENTION OF THE WHITE RACE*, VOL. 2: THE ORIGIN OF RACIAL OPPRESSION IN ANGLO AMERICA (1997). I also note the similarity of my title to Neil Gotanda’s tribute to the late Professor Keith Aoki. See Neil Gotanda, *Inventing Asian American*, 45 U.C. DAVIS L. REV. 1885, 1886–87 (2012) (reflecting on how Keith “was of a generation before Asian Americans” and how he had to become Asian American).

My Article draws from and extends my previous work on Asian American jurisprudence. See ROBERT S. CHANG, *DISORIENTED: ASIAN AMERICANS, LAW, AND THE NATION-STATE* (1999); Robert S. Chang & Neil Gotanda, *The Race Question in LatCrit Theory and Asian American Jurisprudence*, 7 NEV. L.J. 1012 (2007); Robert S. Chang, *Teaching Asian Americans and the Law: Struggling with History, Identity, and Politics*, 10 ASIAN L.J. 59 (2003); Robert S. Chang, *Closing Essay: Developing a Collective Memory to Imagine a Better Future*, 49 UCLA L. REV. 1601 (2002); Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241 (1993), reprinted in 1 ASIAN L.J. 1 (1994).

An early version of this Article was presented at a symposium, “Reigniting Community: Strengthening the Asian Pacific American Identity,” University of California, Irvine School of Law, March 15–16, 2012. My thanks to Professor Stephen Lee, the UC Irvine School of Law Asian Pacific American Law Student Association, and the *UC Irvine Law Review* for inviting me to participate.

1. *Fisher v. Univ. of Tex.*, 631 F.3d 213 (5th Cir. 2011), cert. granted, 132 S. Ct. 1536 (Feb. 21, 2012) (No. 11-345).

2. I generally use “Asian American,” rather than “Asian Pacific American” (APA), as an umbrella term that includes Asian Americans and Pacific Islanders. Though it may seem odd to

Two support affirmative action;<sup>3</sup> two oppose it.<sup>4</sup> Of the Asian American briefs

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characterize briefs in racialized terms, each of the four briefs makes claims about and for Asian Americans. *See infra* text accompanying notes 3–8.

3. One brief was submitted by the Asian American Legal Defense and Education Fund and was joined by the following organizations: Asian Americans United; Asian Desi Pacific Islander American Collective of the University of Texas at Austin; Asian Pacific American Network of the American College Personnel Association; Asian Pacific Americans in Higher Education; Asian/Asian American Faculty and Staff Association of the University of Texas at Austin; Asian/Pacific Islander Caucus-National Conference on Race and Ethnicity in Higher Education; Asian Youth and Parents for Advocacy and Leadership; Association for Asian American Studies; Boat People SOS-Delaware Valley; Center for Pan Asian Community Services, Inc.; Chinese for Affirmative Action; Coalition for Asian American Children and Families; Khmer Girls in Action; Lowell Community Health Center Teen Block; MinKwon Center for Community Action; Providence Youth Student Movement; Southeast Asia Resource Action Center; Vietnamese American Young Leaders Association of New Orleans; along with numerous Asian American educators, including myself. Brief for the Asian American Legal Defense and Education Fund et al. as Amici Curiae Supporting Respondents, *Fisher v. Univ. of Tex.*, 132 S. Ct. 1536 (2012) (No. 11-345), 2012 WL 3308203 [hereinafter AALDEF Brief].

The other brief was submitted by the Asian American Center for Advancing Justice and was joined by over seventy Asian American organizations: Asian American Bar Association of the Greater Bay Area; Asian American Business Roundtable; Asian-American Resource Center; Asian Law Alliance; Asian Pacific American Bar Association of Los Angeles County; Asian Pacific American Labor Alliance, AFL-CIO; Asian Pacific American Labor Alliance - Los Angeles Chapter; Asian Pacific American Legal Resource Center; Asian Pacific American Women Lawyers Alliance; Asian Pacific Americans for Progress; Asian & Pacific Islander American Health Forum; Asian Pacific Islander Equality - Los Angeles; Asian Pacific Islander Legal Outreach; Asian Pacific Policy & Planning Council; Asian Services in Action, Inc.; Association of Asian Pacific Community Health Organizations; Austin Asian American Bar Association; The Cambodian Family; Council of Korean Americans; East Coast Asian American Student Union; Empowering Pacific Islander Communities; Filipino Advocates for Justice; Filipino American Service Group, Inc.; Filipino Bar Association of Northern California; Japanese American Bar Association; Kizuna; Korean American Bar Association of Southern California; Korean American Coalition - Los Angeles; Korean Resource Center; Koreatown Immigrant Workers Alliance; Koreatown Youth and Community Center; K.W. Lee Center for Leadership; Laotian American National Alliance, Inc.; Leadership Education for Asian Pacifics, Inc.; National Asian Pacific American Law Student Association; National Asian Pacific American Women's Forum; National Coalition for Asian Pacific American Community Development; National Council of Asian Pacific Islander Physicians; National Federation of Filipino American Associations; National Queer Asian Pacific Islander Alliance; Nikkei for Civil Rights & Redress; Organization of Chinese Americans; Orange County Asian and Pacific Islander Community Alliance, Inc.; Philippine American Bar Association; Pilipino Workers' Center; Search to Involve Pilipino Americans; Self-Help for the Elderly; South Asian Americans Leading Together; South Asian Bar Association of Northern California; South Asian Bar Association of Southern California; South Asian Network; Southeast Asian Community Alliance; Taiwanese American Citizens League; Thai Community Development Center; To'utupu'o e 'Otu Felenite Association; UC Berkeley Asian American Studies Program of the Ethnic Studies Department; UC Berkeley School of Law, Asian American Law Journal; UC Berkeley School of Law, Asian Pacific American Law Student Association; UC Berkeley School of Law, Pilipino Association of Law Students; UC Hastings College of the Law, Asian/Pacific American Law Students Association; UC Irvine, Asian Pacific Student Association; UCLA, Asian American Studies Center; UCLA, Samahang Pilipino; UCLA, Vietnamese Student Union; UCLA School of Law, Asian Pacific Islander Law Students Association; UCLA School of Law, South Asian Law Students Association; UC San Diego, Kaibigang Pilipino; United Cambodian Community; University of Illinois at Chicago, Asian American Studies Program; University of Southern California, Asian Pacific American Law Students Association; University of

supporting affirmative action, the Advancing Justice Brief claims “a long history of representing the interests of a wide swath of the Asian American community on a variety of issues”;<sup>5</sup> the AALDEF Brief claims expertise from “working on issues affecting Asian Americans and Pacific Islanders in kindergarten through twelfth grade and higher education.”<sup>6</sup> The LDB & 80-20 Brief opposing affirmative action claims that it “speaks for the Asian American community with authority by virtue of its open and neutral national surveys of the community.”<sup>7</sup> The Asian American Legal Foundation, another amicus group opposing affirmative action, stakes out its position as a protector and promoter of Asian American civil rights.<sup>8</sup>

What does it mean when groups that purportedly protect, advance, and represent the interests of Asian Americans invoke the historical treatment of Asian Americans and present facts about Asian Americans but end up advocating for opposite outcomes? This Article starts with the competing Asian American perspectives and assertions of authority expressed in these briefs to explore the theme of this symposium, provocatively entitled “Reigniting Community: Strengthening the Asian Pacific American Identity.” The symposium theme makes two assumptions: first, there is a community to be reignited; and second, there is an Asian Pacific American (APA) identity that exists to be strengthened. These assumptions in turn beg two questions: Why do we want to reignite community? To what end do we want to strengthen APA identity? To posit these as goals indicates that these are political projects. Describing them as political projects does not undermine or discredit them—it merely acknowledges the aspirational dimension of the symposium theme that necessarily invokes identity politics,

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Southern California, Asian Pacific American Student Services; Yale University, Asian American Cultural Center; Yale University, Asian American Students Alliance. Brief for Members of Asian American Center for Advancing Justice et al. as Amici Curiae Supporting Respondents, *Fisher v. Univ. of Tex.*, 132 S. Ct. 1536 (2012) (No. 11-345), 2012 WL 3418826 [hereinafter Advancing Justice Brief].

4. Brief for the Asian American Legal Foundation and the Judicial Education Project as Amicus Curiae Supporting Petitioner, *Fisher v. Univ. of Tex.*, 132 S. Ct. 1536 (2012) (No. 11-345), 2012 WL 1961250 [hereinafter AALF Brief]; Brief for the Louis D. Brandeis Center for Human Rights Under Law, the 80-20 National Asian-American Educational Foundation et al. as Amici Curiae Supporting Petitioner, *Fisher v. Univ. of Tex.*, 132 S. Ct. 1536 (2012) (No. 11-345), 2012 WL 1961252 [hereinafter LDB & 80-20 Brief]. The LDB & 80-20 Brief was joined by the National Federation of Indian American Associations, the Indian American Forum for Political Education, and the Global Organization of People of Indian Origin. LDB & 80-20 Brief, 2012 WL 1961252, at \*2. The coalition between the Louis D. Brandeis Center for Human Rights Under Law—which describes itself as “a nonprofit organization dedicated to advancing the civil and human rights of the Jewish people, and promoting justice for all,” *id.* at \*1—with Asian American amici provides the foundation for proclaiming that “Asian Americans are the new Jews.” *Id.* at \*3 (quoting DANIEL GOLDEN, *THE PRICE OF ADMISSION* 199–200 (2007)).

5. Advancing Justice Brief, *supra* note 3, at \*35.

6. AALDEF Brief, *supra* note 3, at \*1.

7. LDB & 80-20 Brief, *supra* note 4, at \*2–3.

8. AALF Brief, *supra* note 4, at \*1.

which can be described as “forms of organizing and forms of political discourse that stress how important it is for subordinated groups of people to mobilize themselves around their own group identity.”<sup>9</sup> But group identity presumes a group.<sup>10</sup> Part I of this Article provides context for the discussion of the Asian racial category. Part II discusses the construction of the Asian racial category that serves as the basis for Asian American communities and Asian American identity. Part III examines the relationship between individuals to the group in order to understand better what leads individuals to identify as members of a racial group and racialized community. Part IV returns to the politics of affirmative action and the role that Asian Americans play in this debate. Included in this discussion is the dynamic of racial triangulation and the role it plays in helping to consolidate identity as well as coalitions.

### I. RACE IS WHAT RACE DOES

Race continues to confound us.<sup>11</sup> We are told that race does not have a biological or genetic basis, yet we find that biomedical researchers, following federal guidelines, “use racial categories in their studies in ways that make race appear biological or genetic.”<sup>12</sup> It has become standard in legal and sociological literature to refer to race as a social construct,<sup>13</sup> yet like the biomedical researchers,

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9. Frances Lee Ansley, *A Civil Rights Agenda for the Year 2000: Confessions of an Identity Politician*, 59 TENN. L. REV. 593, 598–99 (1992). Ansley also discusses some of the problems and limitations of identity politics. *Id.* at 600–06.

10. Though this Article focuses on Asian Americans, this point applies to all racial groups. *Cf.* Angela P. Harris, *Foreword: The Jurisprudence of Reconstruction*, 82 CALIF. L. REV. 741, 783–84 (1994) (discussing Regina Austin, “*The Black Community, Its Lawbreakers, and a Politics of Identification*,” 65 S. CAL. L. REV. 1769 (1992)).

11. *Cf.* Ian F. Haney López, *The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice*, 29 HARV. C.R.-C.L. L. REV. 1, 5–6 (1994) (“Race may be America’s single most confounding problem, but the confounding problem of race is that few people seem to know what race is.”).

12. Kimani Paul-Emile, *The Regulation of Race in Science*, 80 GEO. WASH. L. REV. 1115, 1117 (2012). The federal guidelines requiring the use of racial classifications were well-intentioned. Following public outrage over incidents such as the Tuskegee Syphilis Study, guidelines were promulgated initially to ensure that vulnerable groups were not exploited. *Id.* at 1126–27. Over the next two decades, the concern shifted from “the over-enrollment of racial minorities in clinical research and the inequitable distribution of research risks, to fears regarding the under-enrollment of minority populations and the resulting inequitable distribution of research benefits,” *id.* at 1128, which led to new guidelines “designed to ensure the ‘broadest possible representation of minority groups’ in federally funded medical research.” *Id.* at 1129 (quoting *ADAMHA/NIH Policy Concerning Inclusion of Minorities in Study Populations*, 19 NIH GUIDE FOR GRANTS & CONTS. 1, 1 (1990)).

13. See Laura E. Gómez, *Looking for Race in All the Wrong Places*, 46 LAW & SOC’Y REV. 221, 225 (2012) (“[A]mong social scientists and many scholars in other scientific areas, there has been a coalescence of the powerful idea that race is socially constructed, yet there is little sense of how that insight should affect research design.”); John A. Powell, *The “Racing” of American Society: Race Functioning as a Verb Before Signifying as a Noun*, 15 LAW & INEQ. 99, 103 (1997) (“Realizing that race is not simply an objective scientific truth, we must define race in a manner that accounts for its socially constructed, mutable nature.”).

we seem unable to free ourselves from the biological substrata that lies underneath our current theoretical conception of race. Michael Omi notes that most of the racial and ethnic categories specified in the Office of Management and Budget Statistical Directive No. 15 “rely on a concept of ‘original peoples.’”<sup>14</sup> Like W.E.B. Du Bois, who argued for a sociohistorical conception of race,<sup>15</sup> we seem tied to a notion of race that is located in ancestry, a conception that seems inescapably rooted in biology.

John A. Powell suggests that rather than beginning with what race is, we should start with what race does, that “race operates as a verb before it assumes significance as a noun.”<sup>16</sup> We must also be cognizant that race, functioning as a verb, operates differently today than it did during the earlier period of scientific racialism when race referred not just to physical traits but also to intelligence and moral capacity.<sup>17</sup> During this earlier period, persons of African ancestry were “raced” as unintelligent, ineducable, lazy, sexually licentious, and immoral in order to justify both private and state discrimination.<sup>18</sup> The debunking of scientific racialism and the advent of the civil rights movement brought a shift to the way Blacks were “raced.”<sup>19</sup> With the previous justification for unequal treatment—biological inferiority—no longer tenable, justifications for unequal treatment and outcomes shifted to the terrain of culture. Sociologist, and later U.S. senator, Daniel Patrick Moynihan authored a report<sup>20</sup> for the Department of Labor that identified a crisis in the Negro family located in what he described as a pathology—a matriarchal family structure—that “seriously retards the progress of

14. Michael Omi, *Racial Identity and the State: The Dilemmas of Classification*, 15 LAW & INEQ. 7, 11 (1997) (citing OFFICE OF MANAGEMENT AND BUDGET, STATISTICAL DIRECTIVE NO. 15 (1977)).

15. See Anthony Appiah, *The Uncompleted Argument: Du Bois and the Illusion of Race*, 12 CRITICAL INQUIRY 21, 36 (1985), reprinted in “RACE,” WRITING AND DIFFERENCE 21, 36 (Henry Louis Gates Jr. & Kwame Anthony Appiah eds., 1992) (arguing that Du Bois “was unable to escape the notion of race he had explicitly rejected”).

16. Powell, *supra* note 13, at 104; see also Charles R. Lawrence III, *If He Hollers Let Him Go: Regulating Racist Speech on Campus*, 1990 DUKE L.J. 431, 443 n.52 (1990) (discussing the use by Kendall Thomas of the phrase “we are raced” to describe the way that race is socially constructed and is not some natural feature of the world that exists and merely awaits observation).

17. STEPHEN JAY GOULD, *THE MISMEASURE OF MAN* (rev. & expanded ed. 1996) (discussing and critiquing scientific racialism, or “scientific racism”). But see RICHARD J. HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* xxi (1994) (discussing “differences in intellectual capacity among people and groups” in America).

18. Robert S. Chang, *Critiquing “Race” and Its Uses: Critical Race Theory’s Uncompleted Argument*, in CROSSROADS, DIRECTIONS, AND A NEW CRITICAL RACE THEORY 87, 88 (Francisco Valdes et al. eds., 2002).

19. See Powell, *supra* note 13, at 109 (“Under this rubric, individual minorities congregate at the bottom of the social ladder not because of group-based discrimination or structural racism, but because they have each internalized cultural tenets which conflict with the societal norms of hard work and lawfulness that enable individuals to succeed in our society.”).

20. DANIEL PATRICK MOYNIHAN, DEPT. OF LABOR, *THE NEGRO FAMILY: THE CASE FOR NATIONAL ACTION* (1965), available at <http://www.blackpast.org/?q=primary/moynihan-report-1965#chapter3>.

the group as a whole, and imposes a crushing burden on the Negro male and, in consequence, on a great many Negro women as well.”<sup>21</sup>

The notions of a culture of poverty and cultural deficit theory emerged from this account and eventually became the explanation (or rationalization) for observed differences in outcomes. This was especially so as we got further, temporally, not only from slavery but also from the acquisition of formal equality through the 1960s civil rights acts. Once Black culture became a primary cause of differences in outcome, other private actors and the state were largely off the hook, no longer responsible for causing unequal outcomes and therefore not responsible for remedying them.<sup>22</sup>

To sum up, scientific racialism relied on biology to justify the discriminatory treatment of Blacks in the social and legal order. It “raced” persons of African ancestry to produce a subordinated racial group—Blacks. Once scientific racialism was discredited, what might be termed “sociological racialism” emerged, not to justify the discriminatory treatment of Blacks, but to account for differences in outcomes as resulting from cultural differences. Sociological racialism “raced” persons of African ancestry in order to justify state inaction, leaving intact accumulated inequality.

Understanding that race is what race does is vital to understanding the construction of the Asian racial category within the United States.

## II. THE INVENTION OF THE ASIAN RACE

In 1854, shortly after Chinese began immigrating to California in large numbers,<sup>23</sup> the California Supreme Court in *People v. Hall*<sup>24</sup> struggled with where to place persons of Chinese ancestry within America’s racial topography. Following the conviction of George Hall, a White man, for the murder of Ling Sing, a Chinese man, the California Supreme Court had to decide if the lower

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21. *Id.* at 29.

22. Though this section discusses the “racing” of Blacks, other groups are also “raced.” *See, e.g.*, Devon W. Carbado, *Yellow by Law*, 97 CALIF. L. REV. 633, 633–38 (2009) (discussing the racing of people of Japanese descent); Richard Delgado, *Locating Latinos in the Field of Civil Rights: Assessing the Neoliberal Case for Radical Exclusion*, 83 TEX. L. REV. 489 (2004) (reviewing GEORGE YANCEY, WHO IS WHITE?: LATINOS, ASIANS, AND THE NEW BLACK/NONBLACK DIVIDE (2003)); Ian F. Haney López, *Race, Ethnicity, Erasure: The Salience of Race to LatCrit Theory*, 85 CALIF. L. REV. 1143 (1997), reprinted in 10 LA RAZA J. 57 (1998). With regard to sociological racialism and the role that culture plays, University of Texas law professor Lino Graglia stated, “Blacks, Mexican-Americans spend much less time in school. They have a culture that seems not to encourage achievement, in which failure is not looked upon with disgrace.” *See* Richard Rodriguez, *Race and Class*, PBS ONLINE NEWSHOUR (Oct. 31, 1997), [www.pbs.org/newshour/essays/october97/rodriguez\\_10-31.html](http://www.pbs.org/newshour/essays/october97/rodriguez_10-31.html).

23. *See* RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 79 (1989) (discussing the dramatic increase in immigration from China following the discovery of gold in California: from 325 Chinese immigrants arriving in 1849, increasing to 20,026 in 1852).

24. *People v. Hall*, 4 Cal. 399, 400 (1854).

court committed error when it admitted testimony from Chinese witnesses. The court reversed the conviction, holding that the Chinese testimony was improperly admitted because of a state statute preventing “Blacks,” “Mulattos,” and “Indians” from testifying against “Whites.”<sup>25</sup> Referring to the ethnographic theory that American Indians had originated in Asia and had crossed over the land bridge between Russia and Alaska and then spread throughout the Americas, the court decided that the reference to “Indians” in the statute included the Chinese.<sup>26</sup> As an alternative rationale, the court concluded that “Blacks” included other non-Whites such as the Chinese because the legislature could not have intended to exclude testimony by Blacks, Mulattos, and Indians, only to permit testimony by Chinese persons against Whites.<sup>27</sup> The court knew that the Chinese were different but, without a racial box to put them in, shoehorned the Chinese into the existing subordinate racial categories.

Following this early period of uncertain racial taxonomic classification, legislatures and courts came to place the Chinese in their own category in order to subject them to different treatment. In 1863, the California legislature amended its statutes so that Chinese persons were explicitly forbidden from testifying against Whites in civil and criminal matters.<sup>28</sup> Following attempts by the California legislature to limit immigration from China that were largely foiled by federal courts,<sup>29</sup> the federal government enacted the first of a series of Chinese Exclusion laws in 1882.<sup>30</sup>

An examination of the federal and Supreme Court cases in the era of Chinese Exclusion reveals that the federal courts modified their understanding of the Chinese category. After initially considering Chinese as a term of national origin or national citizenship, Congress definitively adopted a racial understanding—“Chinese” refers to any person of Chinese ancestry—a form of

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25. *Id.* at 405.

26. *Id.* at 401–02.

27. *Id.* at 402–04.

28. SUCHENG CHAN, *ASIAN AMERICANS: AN INTERPRETIVE HISTORY* 48 (1991).

29. *See, e.g.*, *Chy Lung v. Freeman*, 92 U.S. 275, 276–77 (1875). In this case, twenty-two Chinese women were held as “lewd and debauched women” pending payment of bond of \$500 per person along with two sureties, or alternative payment by shipmaster to the California Commissioner of Immigration. *Id.* The Supreme Court invalidated this taxing scheme for interfering with the federal government’s plenary power regarding the admission of citizens and subjects of foreign nations. *Id.* at 276; *see also* CHARLES J. MCCLAIN, *IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH-CENTURY AMERICA* 54–63 (1994) (discussing “The Case of the Twenty-two Chinese Women”).

30. Chinese Exclusion Act of 1882, ch. 126, 22 Stat. 58 (1882) (repealed 1943). For an excellent account of the series of acts that make up the Chinese exclusion laws, *see generally* LUCY E. SALYER, *LAW HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW* (1995). Leti Volpp locates the beginning of federal Chinese exclusion earlier with the Page Act of 1875, which was directed toward “coolie” laborers and against Chinese female prostitutes. Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 UCLA L. REV. 405, 409 (2005).

bloodline categorization.<sup>31</sup> The courts, following the lead of Congress, held that persons of Chinese ancestry from Hong Kong, formally British subjects, were nevertheless “Chinese” for purposes of exclusion and barred from naturalization.<sup>32</sup>

Foreignness and the associated traits of mendacity, inscrutability, disloyalty, and unassimilability permanently marked the Chinese body. Foreignness, ascribed onto the racialized Chinese body, rendered legal all manner of different treatment.

Because the broader Asiatic racial category<sup>33</sup> had yet to come fully into existence, the attribution of foreignness on the racialized Chinese body was extended piecemeal to other Asian groups.<sup>34</sup> Immigration restriction was extended to Japan through the Gentlemen’s Agreement of 1907, whereby the Japanese government agreed to restrict emigration of Japanese laborers to the United States,<sup>35</sup> India, and other parts of Asia through the 1917 Asiatic Barred Zone Act.<sup>36</sup> In order to close loopholes, including one that had permitted Japanese women to immigrate as “picture brides,” the racial bar to the immigration of

31. Neil Gotanda develops this point about the shift from conceiving persons of Chinese ancestry in national origin terms to racialized terms more fully. See Neil Gotanda, *Asian American Rights and the “Miss Saigon Syndrome,”* in *ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY* 1087 (Hyung-chan Kim ed., 1992); Neil Gotanda, *Towards Repeal of Asian Exclusion: The Magnuson Act of 1943, the Act of July 2, 1946, the Presidential Proclamation of July 4, 1946, the Act of August 9, 1946, and the Act of August 1, 1950,* in *ASIAN AMERICANS AND CONGRESS: A DOCUMENTARY HISTORY* 309 (Hyung-Chan Kim ed., 1996) (hereinafter Gotanda, *Towards Repeal of Asian Exclusion*).

32. In re Ah Lung, 18 F. 28, 32 (C.C.D. Ca. 1883) (holding “laborers of the Chinese race” excluded regardless of country of origin); United States v. Foong King, 132 F. 107, 108-09 (S.D. Ga. 1904). *But see* United States v. Douglas, 17 F. 634, 638 (C.C.D. Ma. 1883) (holding the Chinese Exclusion Act inapplicable to “persons of the Chinese race who are not and never were subjects of or residents within the Chinese empire”).

33. I recognize that “Asiatic” can be regarded as a pejorative term and is dated in its usage. Cf. *Asian Pacific Islander Resource Kit*, GAY & LESBIAN ALLIANCE AGAINST DEFAMATION (Jan. 2009), [www.glaad.org/publications/apikit](http://www.glaad.org/publications/apikit) (“Avoid Eurocentric terms such as ‘The Orient’ and ‘Far East’ to describe Asia. Also, avoid the term ‘Asiatic’ as an adjective to describe Asians or Asian Americans. This can imply an enemy race.”) (emphasis omitted). However, this pejorative and dated usage is precisely what is intended when describing the racialization of persons of Asian ancestry during the first 100 years or so following their entry in increasing numbers starting in the 1850s.

34. An obvious example is the World War II incarceration of persons of Japanese ancestry without regard to nationality. I use “incarceration” rather than the euphemism “internment,” following MICHIE WEGLYN, *YEARS OF INFAMY: THE UNTOLD STORY OF AMERICA’S CONCENTRATION CAMPS* (1976); Roger Daniels, *Words Do Matter: A Note on Inappropriate Terminology and the Incarceration of the Japanese Americans*, in *NIKKEI IN THE PACIFIC NORTHWEST: JAPANESE AMERICANS & JAPANESE CANADIANS IN THE TWENTIETH CENTURY* 190 (Louis Fiset & Gail M. Nomura eds., 2005); Japanese American Citizens League, *A Resolution of the National Council of the Japanese American Citizens League to Support the “Power of Words” Proposal Which Relates to Euphemisms and Misnomers in Reference to the World War II Experience of Japanese Americans* (July 2010); Aiko Herzig-Yoshinaga, *Words Can Lie or Clarify: Terminology of the World War II Incarceration of Japanese Americans*, *DISCOVER NIKKEI* (Feb. 10, 2010), [www.discovernikkei.org/en/journal/article/3246](http://www.discovernikkei.org/en/journal/article/3246).

35. CHAN, *supra* note 28, at 55.

36. 1917 Asiatic Barred Zone Act, Pub. L. No. 301, 39 Stat. 874.



persons of Asian ancestry was completed in the 1924 Immigration Act, which prohibited the immigration of “aliens ineligible for citizenship,” a euphemism for Asians.<sup>37</sup>

This racialized conception permitted states to impose alien land laws that prohibited ownership of certain real property by aliens ineligible for citizenship.<sup>38</sup> It also permitted states to impose, on a racialized basis (and not limited to immigrants based on nationality), segregation in education<sup>39</sup> and restrictions on interracial marriage,<sup>40</sup> as well as other race-based restrictions. As discussed above, this racialized conception permitted the federal government to impose restrictions on immigration and naturalization. Together, these official acts joined with private violence to consolidate the Asiatic racial category.

Though there was a period during the 1940s where there was a partial disaggregation of the Asian racial category,<sup>41</sup> lump sum treatment persisted through the restrictive immigration quotas in place for Asian countries, which hovered around 100 persons each year and remained in place until the passage of the 1965 Immigration and Nationality Act.<sup>42</sup>

Throughout that period, the Census Bureau counted persons of Asian ancestry separately according to racial categories based on ancestral national origin.<sup>43</sup> By 1980, the Census Bureau began tabulating for the first time Asian and Pacific Islander groups together under an umbrella racial category.<sup>44</sup> This

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37. Cf. *United States v. Thind*, 261 U.S. 204 (1923) (holding that a “high caste Hindu of full Indian blood,” though “classified by certain scientific authorities as of the Caucasian or Aryan race,” was not a “white person” and was thus ineligible for citizenship); *Ozawa v. United States*, 260 U.S. 178 (1922) (holding Japanese nationals ineligible for naturalization because they were not Caucasian and thus not “free white persons”).

38. See, e.g., *Porterfield v. Webb*, 263 U.S. 225 (1923) (upholding California’s Alien Land Law); *Terrace v. Thompson*, 263 U.S. 197 (1923) (upholding Washington’s Alien Land Law).

39. See *Wong Him v. Callahan*, 119 F. 381 (C.C.D. Cal. 1902) (finding that a U.S.-born citizen of Chinese ancestry was not denied equal protection when excluded from public school that accepted all children except those of Chinese descent when San Francisco had established separate schools for children of “Mongolian or Chinese descent”).

40. Fifteen states forbade marriage between Asians and Whites. See Leti Volpp, *American Mestizo: Filipino and Antimiscegenation Laws in California*, 33 U.C. DAVIS L. REV. 795, 798 n.12 (2000) (listing “Arizona, California, Georgia, Idaho, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, Oregon, South Dakota, Utah, Virginia, and Wyoming”); see also Hrishu Karthikeyan & Gabriel J. Chin, *Preserving Racial Identity: Population Patterns and the Application of Anti-Miscegenation Statutes to Asian Americans, 1910–1950*, 9 ASIAN L.J. 1 (2002).

41. See Gotanda, *Towards Repeal of Asian Exclusion*, *supra* note 31, at 316–18 (discussing the piecemeal lifting of ban on immigration and naturalization for the Chinese in 1943 and for Filipinos and Indians in 1946).

42. See Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. REV. 273, 303–06 (1996).

43. JENNIFER LEE & FRANK D. BEAN, *THE DIVERSITY PARADOX: IMMIGRATION AND THE COLOR LINE IN TWENTY-FIRST CENTURY AMERICA* 42 (2012).

44. Campbell Gibson & Kay Jung, *Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for Large Cities and Other Urban Places in the United States* (U.S.

continued in 1990, but changed in 2000 when Asian and Pacific Islander became separate racial categories:

“Asian” refers to people having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent. It includes people who indicated their race or races as “Asian Indian,” “Chinese,” “Filipino,” “Korean,” “Japanese,” “Vietnamese,” or “Other Asian,” or wrote in entries such as Burmese, Hmong, Pakistani, or Thai.

“Native Hawaiian and Other Pacific Islander” refers to people having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands. It includes people who indicated their race or races as “Native Hawaiian,” “Guamanian or Chamorro,” “Samoan,” or “Other Pacific Islander,” or wrote in entries such as Tahitian, Mariana Islander, or Chuukese.<sup>45</sup>

The emergence of an Asian racial category is related to but distinct from the persons we might describe as Asian Americans who populate or inhabit the Asian racial category. Asian Americans remain to be invented.

### III. THE INVENTION OF ASIAN AMERICANS

*[W]hat, after all, am I? Am I an American or am I a Negro? Can I be both? Or is it my duty to cease to be a Negro as soon as possible and be an American? If I strive as a Negro, am I not perpetuating the very cleft that threatens and separates black and white America?*

—W.E.B. Du Bois<sup>46</sup>

Born in Korea, I was not born Asian American. Nor did I magically transform when I entered the United States in 1970. Instead, Asian American is something that I became and continue to become.<sup>47</sup> I took Justice Thurgood Marshall’s comment in *Regents of the University of California v. Bakke*<sup>48</sup> that “[t]he dream of America as the great melting pot has not been realized for the Negro; because of his skin color he never even made it into the pot,” to mean that “my

Census Bureau, Working Paper No. 76, 2005), available at [www.census.gov/www/documentation/twps0076/twps0076.html](http://www.census.gov/www/documentation/twps0076/twps0076.html).

45. ELIZABETH M. GRIECO & RACHEL C. CASSIDY, OVERVIEW OF RACE AND HISPANIC ORIGIN: CENSUS 2000 BRIEF 2 (2001), available at [www.census.gov/prod/2001pubs/c2kbr01-1.pdf](http://www.census.gov/prod/2001pubs/c2kbr01-1.pdf).

46. W.E.B. Du Bois, *The Conservation of Races*, in AMERICAN NEGRO ACADEMY, OCCASIONAL PAPERS, NO. 2, at 1, 11 (1897), reprinted in W.E.B. DU BOIS SPEAKS: SPEECHES AND ADDRESSES 1890-1919, at 77, 79–80 (Philip S. Foner ed., 1970).

47. ROBERT S. CHANG, DISORIENTED: ASIAN AMERICANS, LAW, AND THE NATION-STATE 1 (1999) (“To bastardize Simone de Beauvoir’s famous phrase, one is not born an Asian American, one becomes one.”); FRANK H. WU, YELLOW: RACE IN AMERICA BEYOND BLACK AND WHITE 306 (2002) (“Asian Americans are made, not born.”).

48. *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 400–01 (1978) (Marshall, J., concurring in the judgment).

future children, and their children, will never be Americans. They will always be Asian Americans.”<sup>49</sup>

This notion of perpetual, intergenerational Asian Americanness is consistent with a racial understanding of Asian Americanness rather than an ethnic notion. Ethnicity can be understood as being animated by primordialism or instrumentalism. Yen Le Espiritu describes primordialism as focusing “on culture and tradition to explain the emergence and retention of ethnicity.”<sup>50</sup> In contrast, instrumentalism understands “ethnicity as a strategic tool or resource . . . [whereby] populations remain ethnic when their ethnicity yields greater returns than other statuses available to them.”<sup>51</sup> Espiritu argues that both of these notions understand ethnic groups as voluntary collectives, emerging from shared geographic origins but persisting largely through the choice of their members.<sup>52</sup>

However, as Espiritu and many other commentators have argued, this notion of choice ignores the coercive way that certain identities are imposed or ascribed, limiting or circumscribing the role that choice plays.<sup>53</sup> Yet, as coercive as racial categories and racial identities can be, there remains room for individual agency.<sup>54</sup> You can occupy the racial category imposed upon you and claim it as your own, thereby naming yourself. One key moment in what came to be known as the “Asian American Movement” took place at a conference organized by student activists at UCLA who held an “Are You Yellow?” conference.<sup>55</sup> After protests by Filipinos who did not consider themselves “Yellow,” and after a brief flirtation with “oriental,” activists settled on “Asian American.”<sup>56</sup> Contained in these moments is a form of identity politics, described earlier as “forms of organizing and forms of political discourse that stress how important it is for subordinated groups of people to mobilize themselves around their own group identity.”<sup>57</sup>

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49. Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 CALIF. L. REV. 1241, 1318 n.403 (1993), reprinted in 1 ASIAN L.J. 1, 78 n.403 (1994).

50. YEN LE ESPIRITU, ASIAN AMERICAN PANETHNICITY: BRIDGING INSTITUTIONS AND IDENTITIES 4 (1992).

51. *Id.* at 4–5.

52. *Id.* at 5.

53. *Id.* at 5; see also AMY GUTMANN, IDENTITY IN DEMOCRACY (2003); Margaret Chon, *Chon on Chen on Chang*, 81 IOWA L. REV. 1535 (1996); Neil Gotanda, *A Critique of “Our Constitution is Color-Blind,”* 44 STAN. L. REV. 1 (1991); Chris K. Iijima, *The Era of We-Construction: Reclaiming the Politics of Asian Pacific American Identity and Reflections on the Critique of the Black/White Paradigm*, 29 COLUM. HUM. RTS. L. REV. 47 (1997); Hancy López, *supra* note 11.

54. See Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259 (2000).

55. ESPIRITU, *supra* note 50, at 32.

56. *Id.* at 32–33.

57. Ansley, *supra* note 9, at 598–99. Ansley also discusses some of the problems and limitations of identity politics. *Id.* at 600–06.

Around this same time, Amy Uyematsu wrote:

Asian Americans can no longer afford to watch the black-and-white struggle from the sidelines. They have their own cause to fight, since they are also victims—with less visible scars—of the white institutionalized racism. A yellow movement has been set into motion by the black power movement. Addressing itself to the unique problems of Asian Americans, this “yellow power” movement is relevant to the black power movement in that both are part of the Third World struggle to liberate all colored people.

The yellow power movement has been motivated largely by the problem of self-identity in Asian Americans.

....

... Mentally, they have adjusted to the white man’s culture by giving up their own languages, customs, histories, and cultural values.<sup>58</sup>

Critical to this project of inventing Asian Americans is the way that discrimination against those occupying the Asian racial category is understood and felt by those persons. Identity is intensified by direct experience with discrimination, by the narratives constructed about experiences of discrimination, by community organizing around incidents of discrimination, and through the creation and participation in a collective memory.

A recent documentary, *Vincent Who?*, takes up the impact that the killing of Vincent Chin had on inventing Asian Americans.<sup>59</sup> Vincent Chin was a twenty-seven year-old Chinese American killed in 1982 by two White Detroit autoworkers, Ronald Ebens and Michael Nitz. According to one witness, one of the killers, Ronald Ebens, said “that it was because of people like Chin—Ebens apparently mistook him for a Japanese—that he and his fellow employees were losing their jobs.”<sup>60</sup> The men were indiscriminate in their use of epithets, also calling him a “Chink.”<sup>61</sup> Though they were initially charged with second-degree murder, through a plea bargain where they pleaded no contest to manslaughter, they received no prison time, receiving instead probation for three years and fines of \$3,780.<sup>62</sup>

58. Amy Uyematsu, *The Emergence of Yellow Power in America*, GIDRA, Oct. 1969, reprinted in *ROOTS: AN ASIAN AMERICAN READER* 9, 9–10 (Amy Tachiki et al. eds., 1971), quoted in Keith Aoki, *A Tale of Three Cities: Thoughts on Asian American Electoral and Political Power After 2000*, 8 *ASIAN PAC. AM. L.J.* 1, 9–10 (2002) (heading omitted).

59. *VINCENT WHO?* (Asian Pacific Americans for Progress 2009). This film was screened at the symposium.

60. CHANG, *supra* note 47, at 22 (quoting CHAN, *supra* note 28, at 177).

61. Confidential Report on the Vincent Chin Case from American Citizens for Justice to the U.S. Dep’t of Justice, Civil Rights Div. 3 (June 28, 1983) (on file with author).

62. CHANG, *supra* note 47, at 22 (quoting CHAN, *supra* note 28, at 177); see also U.S. COMM’N ON CIVIL RIGHTS, *CIVIL RIGHTS ISSUES FACING ASIAN AMERICANS IN THE 1990S*, at 25 (1992). For an excellent, richer account of this case and of the film, see generally Paula C. Johnson, *The Social*

The light sentences outraged Asian Americans in the Detroit area and around the nation. The film *Vincent Who?* makes the case that Asian Americans came into being through the narrative that was constructed around his killing and the law's response to it. The hate crime against Vincent was experienced by others as a crime against themselves because people of Asian ancestry were able to see themselves, their brothers and sisters, their parents and their children as Vincent.<sup>63</sup>

These events, and how they are narrated, become part of the cultural memory of Asian Americans. These examples highlight the way that discrimination is one of the most powerful identity-producers. Discrimination against persons occupying the Asian racial category, coupled with the narration of this historical and contemporary treatment, worked together to invent Asian Americans.

#### IV. RACIAL TRIANGULATION, AFFIRMATIVE ACTION, AND THE POLITICAL PROJECT OF CONSTRUCTING ASIAN AMERICAN COMMUNITIES

Before 1965, discrimination against Asian Americans was, for lack of a better word, pretty straightforward. The state treated Asian Americans differently based on their membership in the Asian racial category. Discrimination, though, in the post-civil rights era, has gained new valences. In this Part, I discuss the way that racial remediation efforts operate with the development of Asian American identities. In particular, I pay attention to construction of Asian American identity around the politics of affirmative action.

The theory of Asiatic racialization set forth above in Part II provides a common language of racialization that permits a comparative analysis around White supremacy. Because the Chinese category is racialized and the primary attribute of foreignness is assigned to the Chinese-Asiatic body, this racialization is similar to historical Black-White racialization. The structurally similar bases for racialization offer a theoretical grounding for building racial coalitions. As an immediate political platform, such an analysis does not provide immediate common interests as a basis for coalition. But understanding foreignness as a racial profile inscribed on Asiatic bodies provides the beginning of a common language of racialization that is then available for anti-racist politics, something that panethnicity does not do. On the contrary, panethnicity has the danger, like

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*Construction of Identity in Criminal Cases: Cinema Verité and the Pedagogy of Vincent Chin*, 1 MICH. J. RACE & L. 347 (1996).

63. *Vincent Who?* also demonstrated that the experiences of one group do not always translate into a shared sense of broader collectivity. In this film, Angela Oh described a feeling of aloneness that some Korean Americans felt following Sa-I-Gu, the 1992 riots/rebellion/unrest. See also Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed "Los Angeles,"* 66 S. CALIF. L. REV. 1581, 1594–95 (1993) (discussing the concept of ethnic distancing).

other ethnicity theories, of being organized around a common language of assimilation.<sup>64</sup>

Assimilation is the great promise offered by proponents of the model minority designation for Asian Americans.<sup>65</sup> Here, the idea of racial triangulation provides a way to understand the political dynamics at work. Racial triangulation has been put forward most cogently by Claire Jean Kim, a political scientist.<sup>66</sup> Her work on Black-Korean conflict developed a mapping of Blacks, Asian Americans, and Whites against two axes—Superior-Inferior and Foreigner-Insider.<sup>67</sup> Central to Kim's project is the attention paid to the relationship between Blacks and Asian Americans in relation to the White position.

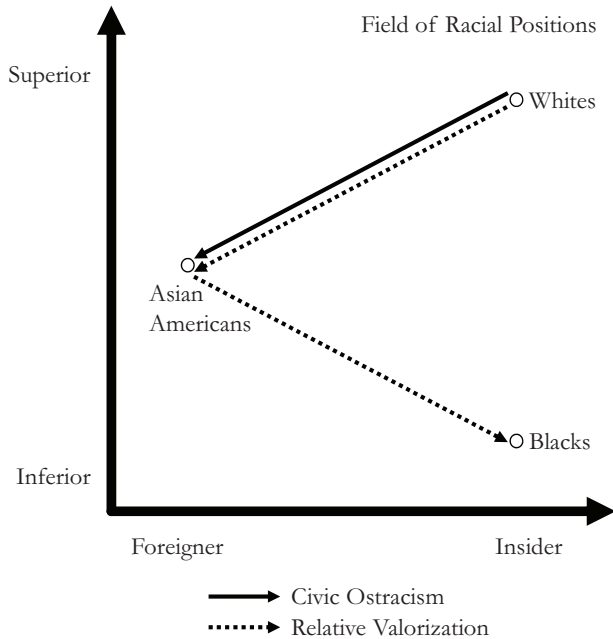
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64. See WERNER SOLLORS, *BEYOND ETHNICITY: CONSENT AND DESCENT IN AMERICAN CULTURE* (1986); Stanford M. Lyman, *The Race Relations Cycle of Robert E. Park*, 11 PAC. SOC. REV. 16, 21 (1968).

65. See *supra* text accompanying notes 49–52. As indicated in the discussion above, the designation as a model minority is an attempt at the theoretical level of ascribing the social position of Asian Americans and an attempt at the political level of fostering coalition between privileged Whites and Asian Americans and dividing Asian Americans from Blacks, Latinas/os, and poor Whites. The critique of the model minority designation is extensive. See, e.g., ERIC K. YAMAMOTO ET AL., *RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT* 267–69 (2001) (discussing and criticizing the model minority myth); Pat K. Chew, *Asian Americans: The “Reluctant” Minority and Their Paradoxes*, 36 WM. & MARY L. REV. 1, 24–46 (1994); Gabriel J. Chin et al., *Beyond Self-Interest: Asian Pacific Americans Toward a Community of Justice, A Policy Analysis of Affirmative Action*, 4 ASIAN PAC. AM. L.J. 129, 148–51 (1996); Natsu Taylor Saito, *Model Minority, Yellow Peril: Functions of “Foreignness” in the Construction of Asian American Legal Identity*, 4 ASIAN L.J. 71 (1997); Frank H. Wu, *Neither Black nor White: Asian Americans and Affirmative Action*, 15 B.C. THIRD WORLD L.J. 225 (1995).

66. Claire Jean Kim, *The Racial Triangulation of Asian Americans*, in *ASIAN AMERICANS AND POLITICS: PERSPECTIVES, EXPERIENCES, PROSPECTS* 29, 42 (Gordon H. Chang ed., 2001).

67. *Id.*

**Figure 1: Racial Triangulation**<sup>68</sup>

Racial triangulation in the form of inverted triangles can help us understand the following three examples of third-order multigroup analysis. Depending on the issue, a different group is placed on a horizontal plane of formal equivalence with Whites and is invited explicitly or implicitly to act in coalition with Whites. The triangle is a useful device to emphasize the issues at stake in the coalition and helps avoid collapsing the politics into a false binary. The triangulation diagram demonstrates the issue-specific way that the invitation to Whiteness (actual, honorary, or formal) or Americanness is issued, and it highlights the inconsistencies and the hypocrisies.

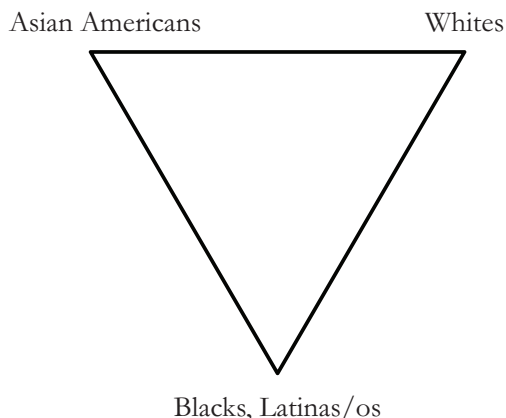
William Petersen, the Berkeley demographer who is credited with coining the phrase “model minority,” offered the success of Japanese Americans, who overcame the hurdles of racism through their hard work and culture, as a model for “non-achieving” Blacks and Chicanos.<sup>69</sup> Petersen’s efforts were directed against Lyndon Johnson’s Great Society Programs. More recently, Asian Americans were inserted into the debate over affirmative action as a model

68. *Id.*

69. Daniels, *supra* note 34, at 317–18 (citing William Petersen, *Success Story, Japanese American Style*, N.Y. TIMES MAGAZINE, Jan. 6, 1966, at 20).

minority in coalition with Whites, and therefore in opposition to Blacks and Latinas/os.<sup>70</sup>

**Figure 2:** Asian Americans as a Model Minority



As discussed earlier, Asian Americans are invited to join Whites along a common horizontal plain, in opposition to Blacks and Latinas/os at the bottom point of the inverted triangle. The Asian American groups that submitted amicus briefs in opposition to affirmative action in *Fisher* invoke historical discrimination against Asian Americans to support their prescription that colorblindness is the solution to racism. For example, the AALF Brief states:

Americans of Asian origin have a particular interest in use of race in public university admissions. They have historically been, and continue to be, denied access to public schools due to overt racial and ethnic prejudice as well as ostensibly well-intentioned “diversity” programs such as the program at issue here. In case after case, only strict application of the Fourteenth Amendment’s guarantee of equal protection has allowed Asian Americans to live free of racial persecution.<sup>71</sup>

The LDB & 80-20 Brief asserts, “Asian Americans are the new Jews, inheriting the mantle of the most disenfranchised group in college admissions. The nonacademic admission criteria established to exclude Jews, from alumni child status to

70. See, e.g., Wu, *supra* note 65, at 270 (“U.S. Representative Dana Rohrbacher [sic] revealed that sensitivity to discrimination against Asian Americans meant attacking affirmative action: ‘So in a way, we want to help Asian Americans, but at the same time we’re using it as a vehicle to correct what we consider to be a societal mistake on the part of the United States.’”) (quoting Robert W. Stewart, “Merit-Only” College Entry Proposal Failing: Opposition by Japanese Americans to Admission Policy Change Frustrates GOP Sponsor, L.A. TIMES, Dec. 9, 1989, at B12). Sumi Cho calls this phenomenon “racial mascotting.” See Sumi Cho, A Theory of Racial Mascotting, Remarks at the First Annual Asian Pacific American Law Professors Conference (Oct. 14, 1994).

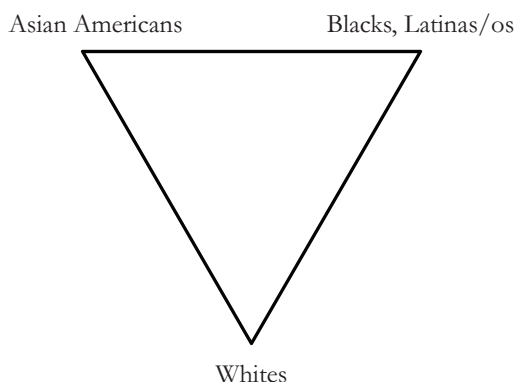
71. AALF Brief, *supra* note 4, at \*1.



leadership qualities, are now used to deny Asians.”<sup>72</sup> In addition, it asserts that Asian American applicants share a common victimhood, not just with Jews, but also with other White applicants who they claim are harmed by affirmative action policies. Asian American applicants are—like White applicants—meritorious and are victims of discrimination because of affirmative action policies.

In contrast, Dana Takagi and others have pointed out that neoconservative politicians and thinkers advocate for the rights of Asian Americans as victims of affirmative action policies, thus insulating themselves from charges of racism for their opposition to affirmative action.<sup>73</sup> Sumi Cho argues that Asian Americans become “racial mascots” for Whites in this political maneuver.<sup>74</sup> Supporters of affirmative action characterize the Asian American groups opposing affirmative action as having accepted this invitation, of having forgotten the long history of discrimination against Asian Americans. Supporters of affirmative action attempt to use racial triangulation to place Asian Americans on the same horizontal plain as Blacks and Latinas/os with regard to discrimination against racial minorities in the United States.

**Figure 3:** Asian Americans Share a Common History of Racial Oppression



The Asian American groups for and against affirmative action are each trying to ignite community and to strengthen an Asian American identity based on differing political commitments and based on a different analysis of what is best for Asian Americans and what is morally right. Each is engaged in a political project based on differing notions of Asian American identity to construct

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72. LDB & 80-20 Brief, *supra* note 4, at \*3 (quoting DANIEL GOLDEN, *THE PRICE OF ADMISSION* 199–200 (2007)).

73. DANA Y. TAKAGI, *THE RETREAT FROM RACE: ASIAN-AMERICAN ADMISSIONS AND RACIAL POLITICS* 114–18 (1993).

74. Cho, *supra* note 70 (discussing how APAs have been relegated to the role of a “racial mascot” for conservatives in contemporary political battles).

communities of interest to advance a position. Each is trying to invent its conception of Asian America.

#### CONCLUSION

Benedict Anderson describes a nation as an “imagined community”:

It is *imagined* because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.

....

... [I]t is imagined as a *community*, because, regardless of the actual inequality and exploitation that may prevail in each, the nation is always conceived as a deep, horizontal comradeship.<sup>75</sup>

In a similar fashion, Asian America is an imagined community. Its contours remain in flux, and it is in a constant state of being reinvented. It is a site of contestation such that identity is not determinative. One’s race, as well as other identity markers such as class and gender, certainly informs but does not determine one’s perspectives or one’s commitments. Identity does not prefigure the coalitions one participates in. However, as discussed above, identity—personal and group—can play a critical role in shaping the development of communities and coalitions.

With regard to the possibility of non-White racial coalitions, we cannot presume that a shared history of racial oppression will produce solidarity. Angela Harris reminds us:

There are no “people of color” waiting to be found; we must give up our romance with racial community. . . . If any lesson of the politics of difference can yet be identified, it is that solidarity is the product of struggle, not wishful thinking; and struggle means not only political struggle, but moral and ethical struggle as well.<sup>76</sup>

Each side in the affirmative action debate seeks to speak for Asian America and Asian Americans. What we find, though, is that there is no monolithic Asian American community. Through this contestation and others, Asian Americans are invented.

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75. BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* 6–7 (rev. ed. 1991).

76. Harris, *supra* note 10, at 784.