



2023

Asian American Allyship

Victor C. Romero

Follow this and additional works at: https://elibrary.law.psu.edu/fac_works



Part of the [Law Commons](#)

Asian American Allyship

Victor C. Romero*

George Floyd's tragic death not only sparked numerous nationwide protests decrying the continued violence against Black people, but also resurrected conversations around the complicity of Asian Americans¹ in Black oppression.² Just as officer Tou Thao, a Hmong American, stood idly by³ while a white officer stepped on Floyd's neck, many Asian Americans have taken positions that run contrary to

* Maureen B. Cavanaugh Distinguished Faculty Scholar & Professor of Law, Penn State Law – University Park. I thank my dean, Jim Houck, for his continued support of my work and my family—Corie, Ryan, Julia, and Matthew—for their steadfast love. All errors that remain are mine.

¹ Like Vinay Harpalani, I acknowledge that there are other appropriate designations like “Asian Americans and Pacific Islanders,” though I will be using the more familiar “Asian Americans” here, with full recognition of the limits of language in describing a culturally and ethnically diverse American group. See Jay Caspian Kang, *The Myth of Asian American Identity*, N.Y. TIMES MAG. (Oct. 6, 2021), <https://www.nytimes.com/2021/10/05/magazine/asian-american-identity.html> (“The confusion and the vagaries of ‘Asian American’ result, in part, from necessity: What else could you possibly do with a group that includes everyone from well-educated Brahmin doctors from India to impoverished Hmong refugees?”); Vinay Harpalani, *Can “Asians” Truly Be Americans?*, 27 WASH. & LEE J. C. R. & SOC. JUST. 559, 560 n.1 (2021). As a shorthand, I will occasionally drop the word “American,” not because I think it unimportant, but because the point of this piece is to focus on the Asian and Black communities within the U.S. milieu, hence the reference to the George Floyd killing, among other domestic incidents. In solidarity with minoritized folks, I have also chosen to capitalize “Black” and “Brown,” although I appreciate this view has its detractors. See, e.g., Angry Grammarian, Opinion, *A Year After Decision to Capitalize ‘Black,’ Shades of Gray Remain for Readers*, PHILA. INQUIRER, (July 21, 2021), <https://www.inquirer.com/opinion/capital-b-black-ap-style-language-20210721.html>.

² See Ashley Westerman & Noel King, *For One Immigrant Community, George Floyd's Death Isn't Just About Black and White*, NPR, (June 4, 2020) <https://www.npr.org/2020/06/04/868978380/for-one-immigrant-community-george-floyds-death-isn-t-just-about-Black-and-white> (“The debate over Thao's real or perceived complicity as another man of color is killed has arrived in a community that has always had underlying tensions with its Black neighbors.”). Thao and his bystander colleagues were then charged with complicity in Floyd's death. See, e.g., Eric Levenson, *What's Next for the 3 Other Officers Charged in George Floyd's Death*, CNN, (Apr. 26, 2021), <https://www.cnn.com/2021/04/26/us/tou-thao-thomas-lane-alexander-kueng/index.html> (“With Derek Chauvin's convictions secured, the three other former Minneapolis Police officers on scene during George Floyd's death last May are set to stand trial in August. J. Alexander Kueng, 27, Thomas Lane, 38, and Tou Thao, 35, are charged with aiding and abetting second-degree murder and aiding and abetting second-degree manslaughter connected to Floyd's death. They have pleaded not guilty.”). Thao was ultimately convicted and sentenced to 42 months in federal prison for depriving Floyd of his constitutional rights. See Dept. of Justice Office of Public Affairs, *Former Minneapolis Police Officers Tou Thao and J. Alexander Kueng Sentenced to Prison for Depriving George Floyd of His Constitutional Rights*, U.S. Dept. of Justice (Jul. 27, 2022), <https://www.justice.gov/opa/pr/former-minneapolis-police-officers-tou-thao-and-j-alexander-kueng-sentenced-prison-depriving>.

³ Seth W. Stoughton, Jeffrey J. Noble & Geoffrey Alpert, *Minneapolis Police Did Exactly What Cops are Trained Not to Do*, WINSTON-SALEM JOURNAL, (May 31, 2020) https://www.journalnow.com/opinion/columnists/seth-w-stoughton-jeffrey-j-noble-and-geoffrey-alpert-minneapolis-police-did-exactly-what-cops/article_f1d6e041-2e03-5b05-b252-0421ef4c59f5.html (“Fourth (and especially egregious), one officer—identified by local media outlets as Tou Thao—stood there and interacted with bystanders without ever attempting to ensure Floyd's well-being or put him in a safer position. The failure to intervene is a deep-rooted cultural problem in policing, but it was simply unconscionable in this case.”). At least one Minneapolis city councilperson has called for the dismantling of the police force. See Steve Fletcher, *I'm a Minneapolis City Council Member. We Must Disband the Police—Here's What Could Come Next*, TIME (June 5, 2020) https://time.com/5848705/disband-and-replace-minneapolis-police/?utm_source=newsletter&utm_medium=email&utm_campaign=the-brief&utm_content=20200606&xid=newsletter-brief.

*policies that foster inclusion, or what may be termed “integrative egalitarianism”—the idea that “governmental programs . . . designed to overcome arbitrary inequalities stemming from accidents of birth are a worthwhile investment in society’s future.”*⁴

*Using the Floyd-Thao narrative as a backdrop, this Essay takes a look at the tensions that underlie economic and social relationships between Asian and Black communities in America and how, in the realm of higher education, longtime conservative activist Edward Blum’s recent affirmative action lawsuits are examples of how Asians’ mythical “model minority” status has been weaponized to maintain the status quo, pitting one minority group against another and quashing even modest attempts to provide opportunities for underrepresented groups.*⁵

*This Essay suggests that the way forward can only be achieved by understanding that both Asian and Black Americans have an incentive to seek a more just and equitable society and that both should resist calls to demonize the other. Instead, serious attempts at long-time coalition building between these groups should be facilitated and maintained.*⁶

⁴ Victor C. Romero, *Immigrant Education and the Promise of Integrative Egalitarianism*, 2011 MICH. ST. L. REV. 275, 276–77 (coining the term “integrative egalitarianism”).

⁵ See Kat Chow, *'Model Minority' Myth Again Used as a Racial Wedge Between Asians and Blacks*, NPR (Apr. 19, 2017, 8:32 AM) <https://www.npr.org/sections/codeswitch/2017/04/19/524571669/model-minority-myth-again-used-as-a-racial-wedge-between-asians-and-blacks> (“Since the end of World War II, many white people have used Asian-Americans and their perceived collective success as a racial wedge. The effect? Minimizing the role racism plays in the persistent struggles of other racial/ethnic minority groups—especially Black Americans.”).

⁶ This is not to say that Asian-Black coalitions are the only mechanism for working toward social justice and equity. It is to say that such sustained efforts can be effective if focused on the goal of antiracism.

INTRODUCTION: THE MASTER NARRATIVE AND ASIAN-BLACK RELATIONS	165
I. A (SELECTIVE) PORTRAIT OF ASIAN AND BLACK RELATIONS IN AMERICA—STORIES OF CULTURAL AND ECONOMIC CONFLICT AND COOPERATION.....	168
A. <i>Asians and Blacks in Seattle, 1890-1940</i>	168
B. <i>Asians and Blacks in 1990s Los Angeles</i>	171
C. <i>Asians and Blacks in Chicago, 1990s-2020s</i>	175
II. MASTER NARRATIVE REDUX: AFFIRMATIVE ACTION, ASIANS, AND BLACKS.....	177
III. THE WAY FORWARD: ALLYSHIP MEANS INCLUSION AND PARTNERSHIP.....	181
CONCLUSION	186

INTRODUCTION: THE MASTER NARRATIVE AND ASIAN-BLACK RELATIONS

The video depicting the killing of George Floyd over his use of an allegedly counterfeit twenty dollar bill is chilling.⁷ For close to nine minutes, white officer Derek Chauvin had his knee on Floyd, a Black man, despite the latter's pleas that he could not breathe.⁸ As Floyd slowly choked to death, Officer Tou Thao, a Hmong man, stood by, ignoring exhortations by the gathering crowd to relieve Floyd's distress.⁹ It is this failure to act by Thao that prompts this Essay. Whether Thao's actions are properly described as grossly negligent, recklessly indifferent, or obviously complicit,¹⁰ this Essay explores the complicated connection between Asian Americans and Black Americans through the tragic lens of Floyd's death and Thao's failure to act. Was Thao complicit in Floyd's death, or was he properly deferential to Chauvin's lead? When viewed from an even wider aperture, Thao's story is a reminder of the fraught relationship Asian Americans have with Black Americans in the United States, one with a long and complex history.

Like Thao's actions, the Asian-Black story can be described from different points of view.¹¹ One prominent perspective is that Asians have assimilated the

⁷ See Evan Hill, Ainara Tiefenthäler, Christiann Triebert, Drew Jordan, Haley Willis & Robin Stein, *8 Minutes and 46 Seconds: How George Floyd Was Killed in Police Custody*, N.Y. TIMES (May 31, 2020), <https://www.nytimes.com/video/us/100000007159353/george-floyd-arrest-death-video.html> (showing video of Floyd's arrest and death). Interestingly, police departments that have become more diverse have seen rises in Asian or Latinx officers and a decline among Blacks. See Lauren Leatherby & Richard A. Oppel Jr., *Which Police Departments Are as Diverse as Their Communities?*, N.Y. TIMES (Sept. 23, 2020) <https://www.nytimes.com/interactive/2020/09/23/us/bureau-justice-statistics-race.html?action=click&module=Top%20Stories&pgtype=Homepage> ("While many police departments became more diverse, Black officers often continued to be less represented. Diversity gains were instead fueled by growing numbers of Hispanic and Asian-American officers, a decline in the number of white officers, or a combination of both.").

⁸ See Hill et al., *supra* note 7.

⁹ See *id.*; see also Rachel Ramirez, *Asian Americans Need to Talk About Anti-Blackness in Our Communities*, VOX (June 3, 2020), <https://www.vox.com/first-person/2020/6/3/21279156/george-floyd-protests-police-brutality-tou-thao-asian-americans> (urging Asian Americans to discuss anti-Blackness in their community following Thao's role in Floyd's death).

¹⁰ Thao, along with his co-defendants, initially pled "not guilty" to federal civil rights charges. Amy Forliti, *Ex-Cops Accused of Violating Floyd's Rights Plead Not Guilty*, AP NEWS (Sept. 14, 2021), <https://apnews.com/article/health-death-of-george-floyd-courts-george-floyd-minneapolis-de1fc8f41aa5bf647c7f8f8c4757ffa3>. All three ex-officers, including Thao, were convicted of violating Floyd's civil rights. Patrick J. Lyons, *Ex-Officers Guilty in Federal Trial over George Floyd's Death*, N.Y. TIMES, (Feb. 24, 2022), <https://www.nytimes.com/live/2022/02/24/us/george-floyd-trial-verdict>. Thao was sentenced to 42 months in federal prison. See Dept. of Justice Office of Public Affairs, *Former Minneapolis Police Officers Tou Thao and J. Alexander Kueng Sentenced to Prison for Depriving George Floyd of His Constitutional Rights*, U.S. Dept. of Justice (Jul. 27, 2022), <https://www.justice.gov/opa/pr/former-minneapolis-police-officers-tou-thao-and-j-alexander-kueng-sentenced-prison-depriving>.

¹¹ It goes without saying that both the Black and Asian communities are themselves diverse, with the former encompassing peoples of both Africa and the Caribbean, and the latter comprising ethnicities as distinct as Koreans, Sri Lankans, and Filipinx. See, e.g., Frank Wu, *Howard University Changed My Life*, HUFFPOST (Mar. 23, 2015), https://www.huffpost.com/entry/howard-university-changed_b_6737918 (describing his experience as an Asian professor at a historically Black university); Abby Budiman and Neil G. Ruiz, *Key Facts About Asian Americans, A Diverse and Growing Population*, PEW RESEARCH CENTER (Apr. 29, 2021), <https://www.pewresearch.org/fact-tank/2021/04/29/key-facts-about-asian-americans/>. Indeed, the diversity

master narrative of white supremacy, viewing Blacks as lazy and criminal, while Asians, like white immigrants to America, are hardworking and successful.¹² Blacks have also embraced the master narrative, viewing Asians as foreign interlopers who have jumped the queue, having exploited Black communities while giving nothing back. These tropes—Black people as indolent welfare recipients, Asians as inscrutable foreigners—all stem from and help to maintain white supremacy. In this account, the only true Americans are white ones, for white Americans are both industrious and entrepreneurial (like Asians) and true native citizens (like Blacks), without possessing the negative traits of either.

In three Parts, this Article demonstrates the insidious resilience of the master narrative and suggests allyship and mutual cooperation between Asian and Black outsiders¹³ as the way forward. Part I demonstrates the master narrative at work, describing stories of Asian-Black conflict and cooperation within cultural and economic contexts from three U.S. cities over three time periods: Seattle, 1890–1940; Los Angeles, 1992–1996; and Chicago, 1980–2020. For better or worse, stereotypes about the otherness of Asian and Black people are reinforced as the two groups struggle to thrive in America. Regardless of city or time, Blacks and Asians

of Asian Americans manifests in the recent COVID-19 based targeting of certain East and Southeast Asians but not South Asians, though the latter were frequently marked as post-9/11 terrorism suspects along with Middle Easterners. Harpalani, *supra* note 1, at 568–70. Finally, there’s much diversity even within a single ethnic group, too. My lived experience as a Filipino immigrant has taught me that, nationality aside, it is difficult to lump together the denizens of an archipelago of over 7,000 islands and over a hundred linguistic groups. See, e.g., Victor C. Romero, *Are Filipinas Asians or Latinas?*, 7 U. PENN. J. CONST. L. 765, 777–79 (2005) (noting diversity among Filipinx people).

¹² See Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed “Los Angeles,”* 66 S. CAL. L. REV. 1581, 1582–83 (1992) (“[A] Black/African American racial identity is located in opposition to an Asian/Korean American identity, a strategy that merges ethnicity, culture, gender, and class into race. With respect to African Americans, the master narrative tells us that Asians are Koreans who are merchants and crime victims. The assumption that Asians are foreign intruders underlies this description. With respect to Asian Americans, the narrative tells us that African Americans are Blacks who are criminals who are poor. All of these identities replicate the dominant society’s understandings of blackness and Asianness.”). Relatedly, Attorney General Merrick Garland identified white supremacists as a paramount domestic security threat. Mark Hosenball, *White Supremacist Groups Pose Rising U.S. Threat, Garland Says*, REUTERS, (May 12, 2021, 1:52 PM), <https://www.reuters.com/world/us/white-supremacist-groups-pose-rising-us-threat-garland-says-2021-05-12/>. Even beyond extremist threats, a new study has found that, despite their minority status in numbers, white male rule dominates the United States. Anagha Srikanth, *New Study Finds White Male Minority Rule Dominates U.S.*, THE HILL (May 26, 2021), <https://thehill.com/changing-america/respect/diversity-inclusion/555503-new-study-finds-white-male-minority-rule> (“White men hold 62 percent of all elected offices despite being just 30 percent of the population, exercising minority rule over 42 state legislatures, the House, the Senate and statewide offices from coast to coast, according to the analysis by Reflective Democracy. Part of this, researchers said, is due to the incumbency advantage: ‘sitting elected officials almost always win their elections. . . . As a result, women hold just 31 percent of offices despite making up 51 percent of the population, and people of color hold just 13 percent of offices despite making up 40 percent of the population. The partisan demographic divide is also very real, according to the report, which said that while Democratic candidates tend to be representative of the U.S. population, Republican candidates do not. In short: White men don’t win elections more often than other candidates—there’s just more of them already in office and running.”).

¹³ I use the term “outsiders” here to describe the status of Asians and Blacks in the American experience relative to white “insiders,” acknowledging that many today embrace racial and ethnic categories beyond single statuses. See generally KEVIN R. JOHNSON, *MIXED RACE AMERICA AND THE LAW* (2003) (examining the sociolegal implications of self-identifying as mixed-race in the United States).

have imbibed the poison of white supremacy to reify outmoded stereotypes about the other group, leading to more conflict than cooperation.

Part II switches focus from economic struggles to educational ones. Recently, conservative activist Edward Blum has pivoted away from white grievances over affirmative action to proffer a new victim: Asian Americans, who, despite having often higher¹⁴ standardized test scores and grades, are uniformly denied admission to elite colleges like Harvard in favor of allegedly less qualified favored minorities, including Blacks.¹⁵ Like the stereotype-enhancing Asian-Black conflicts over economic turf outlined in the prior section, this strategic shift in the affirmative action narrative is designed to pit struggling groups against each other, ultimately to the benefit of the privileged class. Instead of properly viewing affirmative action as a necessary remedy to level the playing field amongst differently situated groups, Blum's current assault enlists Asian Americans, deploying the "model minority myth" to perpetuate the false narrative of the undeserving, underqualified Black student taking seats from the industrious (though inscrutable) Asian over-achiever. Following the master narrative, just as some Blacks decry the presence of clannish Asian businesses who exploit their poor communities economically, Asians similarly lament losing their hard-earned places at elite colleges to intellectually inferior, habitually lazy Black and Brown¹⁶ people.

Part III calls upon Asians and Blacks to resist the master narrative in both its economic and educational incarnations by seeking true interracial reconciliation and cooperation. Invoking the seminal work of Eric Yamamoto, this Part maps out how his four-part prescription for racial cooperation via the conceptual, the performative, the material, and the reflexive can help address the economic and educational tensions identified in Parts I and II. Admittedly, such conciliatory work is not easy, especially in the face of a master narrative carefully constructed over five hundred years of American slavery and racial conflict. In acknowledgement, Part III will also invoke Derrick Bell's interest convergence theory—the idea that the powers that be cede ground only when doing so also benefits them—thereafter anticipating objections and arguing for optimism and resilience. To be a true ally means seeing others beyond what the master narrative has taught us and then acting upon that vision to support the upliftment of all, even if accomplished in fits and starts.

¹⁴ By "higher," I don't mean to imply "more qualified." I simply mean to describe the actual average differences between Asian and Black students' test scores and grades. See Richard V. Reeves & Dimitrios Halikias, *Race Gaps in SAT Scores Highlight Inequality and Hinder Upward Mobility*, BROOKINGS (Feb. 1, 2017), <https://www.brookings.edu/research/race-gaps-in-sat-scores-highlight-inequality-and-hinder-upward-mobility/>.

¹⁵ Anemona Hartocollis, *He Took on the Voting Rights Act and Won. Now He's Taking on Harvard.*, N.Y. Times (Nov. 19, 2017) <https://www.nytimes.com/2017/11/19/us/affirmative-action-lawsuits.html>.

¹⁶ I acknowledge the imperfection of this descriptor. Although most readers may associate "Brown" with Latinx people, the broad geographical swath of Asia means that there are many Asians who are also "Brown," like yours truly from the Philippines. See generally Romero, *supra* note 11 (outlining the case for considering Filipinx persons Asians versus Latinx).

I. A (SELECTIVE) PORTRAIT OF ASIAN AND BLACK RELATIONS IN AMERICA— STORIES OF CULTURAL AND ECONOMIC CONFLICT AND COOPERATION

As is true with any two groups, relationships between Blacks and Asian Americans in the United States are complex.¹⁷ Examples drawn from different times and places demonstrate a paradox: how the relationship between Black and Asian communities fluctuates from one of peaceful coexistence and mutual support to one of conflict and competition for scarce economic resources in a race to the bottom.

This Part will take up the experiences of Japanese settlers at the turn of nineteenth-century Seattle,¹⁸ those of Korean immigrants in 1990s Los Angeles,¹⁹ and those of Asian residents in contemporary Chicago, as examples of the complex interaction Asian communities have had with their Black neighbors. Within each narrative, “what if” questions are raised, prompting us to think about alternatives that focus on cooperation and de-escalation among Asian and Black neighbors rather than succumbing to the master narrative that preserves the stereotypical status quo.

A. *Asians and Blacks in Seattle, 1890-1940*

In his seminal historical study, *Blacks and Asians in a White City*,²⁰ Quintard Taylor paints a complicated picture of the relationship between Japanese

¹⁷ The challenge here is that the studies and reports focusing on this relationship lump Blacks into one category, but subdivide Asians into specific subgroups (i.e., Japanese, Korean, etc.). Of course, both the larger category of Blacks and the smaller subcategories of Asians are themselves diverse, but it may be that the unifying bond of immigration ties the Asian subgroups in ways closer than the native Blacks. Cf. JASON DEPARLE, *A GOOD PROVIDER IS ONE WHO LEAVES* (2019) (placing the story of one Filipino family’s immigration to the United States in the larger context of international migration, noting especially the ties that bind new immigrants to their kinfolk). While foreign immigration has generally been a boon to both immigrants and the United States, “[i]f there are losers, they tend to be native-born Blacks, whom employers view less positively and who lack the same dense connections and loyalties [as immigrants].” *Id.* at 213.

¹⁸ See Quintard Taylor, *Blacks and Asians in a White City: Japanese Americans and African Americans in Seattle, 1890-1940*, 22 W. HIST. Q., 401, 425–26 (1991) (“Thomas Bodine, a Society of Friends interpreter who assisted the Japanese in their relocation, described an unnamed man who drove a Japanese family to the train scheduled to relocation center. The man helped the family unload and then stood with them on the sidewalk, waiting for the boarding order for their designated car. He said to the Japanese woman, ‘You know that if there’s ever anything I can do for you whether it be something big or something small, I’m here to do it.’ He then turned to the husband and said, ‘Goodbye now good luck.’ Finally, he got on his knees and embraced the three children. We know far less of what the Japanese thought of African Americans, but some information is suggestive. While intent on establishing their colonial empire in Asia, Japanese nationalists portrayed themselves as defenders of ‘colored’ peoples. In that context, local Seattle Japanese expressed sympathy for the plight of Seattle’s Blacks. In a 1921 U.S. Naval Intelligence report of Japanese links with West Coast branches of the Universal Negro Improvement Association, the Black nationalist organization founded by Marcus Garvey, one government informant described unsuccessful attempt by Japanese nationalists and UNIA members Seattle to create a ‘Colored Peoples’ Union’ inclusive of all ‘except the whites or Teutonic races.’ There is little evidence, however, of any organizational links between African American and Asian American groups after the decline of Seattle’s UNIA branches in the late 1920s.”).

¹⁹ See generally Ikemoto, *supra* note 12.

²⁰ See Taylor, *supra* note 18, at 425–26.

and Black residents of Seattle from 1890 through 1940. At the turn of the nineteenth century, most Japanese in Seattle were immigrant laborers; the *nihonmachi*, or Japanese settlements,²¹ received a boost in population growth during the late 1880s when Chinese laborers were prohibited from immigrating under the federal Chinese Exclusion Act.²² Albeit in much smaller numbers, Blacks also began moving to Seattle beginning in the 1860s, some fleeing the Jim Crow South, all motivated by economic opportunity.²³ Shunned by white society and unable to get the structural and financial support to move into the Black middle class, poor Seattle Blacks resided in ghettos bordering the city's shoreline, the beginnings of a permanent racial and socioeconomic underclass.²⁴

Over time, pockets of entrepreneurship developed in both the Japanese and Black communities, leading to the establishment of middle-class enclaves in both. The Japanese middle class was larger than the Black middle class, owing to the former's earlier and more substantial immigrant influx, as well as their willingness to support other Japanese through ethnic business alliances;²⁵ in contrast, the greater Seattle community was reluctant to support Black entrepreneurship.²⁶

Reviewing each community's history, Taylor points to three factors that strengthened the Japanese community's position relative to the Black community's: entrepreneurial activity, civil rights activism, and educational attainment.²⁷ Although both the Japanese and Black communities were subject to discrimination

²¹ *Id.* at 408 (defining *nihonmachi* as "Japanese settlements").

²² *Id.* at 407–08 ("The Japanese population grew slowly until the 1880s, when anti-Chinese agitation culminated in Seattle's only nineteenth century riot (1886) and the forcible removal of the Chinese population in the city. The following year, approximately two hundred Japanese men, viewed for the moment as an acceptable alternative to Chinese labor, arrived from San Francisco to work in the canneries and logging camps in western Washington Territory."). With the Immigration Act of 1924, however, Asian immigration stopped altogether, including immigration from Japan into Seattle. *Id.* at 411 ("The Immigration Act of 1924 ended Japanese emigration to the United States. With no new immigrant members, Seattle's Nihonmachi [i.e., settler] population stabilized by the end of the 1920s and began to decline in the 1930s").

²³ *Id.* at 403–04 ("Seattle's nineteenth century Black population grew from a single Black resident in 1860, Manuel Lopez, to 406 African Americans by 1900. . . . Some African American newcomers from the South fled the growing racial violence of that region.").

²⁴ *Id.* at 404–05 (describing the Yesler-Jackson neighborhood where many poorer Blacks lived).

²⁵ *Id.* at 410 ("Japanese entrepreneurial success could be traced to two sources, the *tanomoshi*, a collective fund supported by individual merchants that provided venture capital for additional Japanese businesses, as well as a sizable regional population."). There was also a strong urban-rural alliance between Japanese grocers in Seattle and Japanese farmers in western Washington, a relationship unparalleled among the area's Black communities. *Id.* at 410–11 ("The symbiotic relationship between the rural and urban populations is best seen in Seattle's Japanese green grocers' links with nearby Japanese truck farmers, who controlled 16,000 acres in western Washington, and in the hiring preferences of Japanese firms in the United States for Japanese immigrants. This rural-urban bond allowed the Japanese economic independence and prosperity far greater than any found in Seattle's Black community.").

²⁶ *See id.* at 414 ("Both groups were impoverished, but Black Seattleites, more than their Japanese counterparts, were relegated to the periphery of the city's economy.").

²⁷ *Id.* at 409 ("Three features—entrepreneurial activity, the campaign for civil rights, and community attitudes toward education should prove insightful for analysis of the then existing populations and as an indication of future trends.").

by white Seattleites,²⁸ the Japanese took advantage of their extensive immigrant and kinship networks to create economic opportunities for each other, building self-sustaining business relationships that helped their children—first generation U.S. citizens of Japanese descent (*nisei*)²⁹—become educated and upwardly mobile.³⁰ With a smaller entrepreneurial middle class, a large uneducated underclass, and a systemic lack of opportunities to advance, Black communities were left behind socioeconomically;³¹ their growing frustration took shape in civil rights activism, especially during and after World War II, spurred in part by a sizeable influx of Blacks during that period.³²

Unfortunately, actions aimed at racial solidarity between Japanese and Black Seattleites were short-lived. This is perhaps unsurprising given the numerosity of the Japanese pre–World War II and the competition between the two groups for both employment and housing in predominantly white Seattle.³³ Indeed, sometimes *nihonmachi* businesses like restaurants and groceries were silently complicit in other ways, as they ingratiated themselves with their white patrons rather than voicing their support for Black activists.³⁴

Still, there were notable attempts at uniting the communities. For instance, in 1921, Japanese nationalists and members of the Black organization Universal Negro Improvement Association sought to form a “Colored Peoples’ Union” that would include all people of color.³⁵ Despite those good intentions, little evidence of organizational links between Japanese and Black communities exists after the 1920s.³⁶ Perhaps the different trajectories leading to the growth of the Japanese

²⁸ See *id.* at 402 (“White residents subjected Seattle’s African Americans and Japanese to discrimination. Early twentieth century Japanese were singled out because they allegedly acted as clannish foreigners who resisted assimilation while competing successfully with white produce merchants and farmers. Blacks, considered unmotivated, uneducated workers, given to sexually promiscuity and pretensions to social equality with whites, faced their own set of slurs.”).

²⁹ *Id.* at 418 (defining *nisei* as “the second generation (those born in the United States)”).

³⁰ See *id.* at 423 (“[E]mployment prospects in an increasingly middle class, business-oriented Japanese community, with a growing demand for the services of doctors, lawyers, and accountants, provided Japanese graduates with a significant advantage over the impoverished Black population of working-class people.”).

³¹ See *id.* at 412–16 (describing the paucity of Black entrepreneurship and economic advancement).

³² See *id.* at 428 (“[F]rom 1945 to the 1970s, the African American migration to Seattle generated an extensive ghetto that shared many characteristics with the rest of urban Black America and that intensified white opposition to African American aspirations, at least through the 1960s.”).

³³ *Id.* at 401 (“In Seattle, the Japanese constituted the city’s largest racial minority until World War II and competed with African Americans for employment and housing.”).

³⁴ See *id.* at 420 (“Japanese restaurants and green grocers, dependent upon white patronage, were unwilling to be involved in public challenges that might alienate their clientele. Black workers, by necessity, sought such acts to expand their employment opportunities.”).

³⁵ *Id.* at 426 (noting that the proposed union would be “inclusive of all ‘except the whites or Teutonic races.”). This coalition finds resonance in contemporary debates over what to name alliances among racial minorities. See, e.g., Mistinguette Smith, *After Asian American Hate, I’m Reclaiming Racial Solidarity and the Term “People of Color,”* USA TODAY (May 11, 2021, 4:00 AM), <https://www.usatoday.com/story/opinion/voices/2021/05/11/people-of-color-better-than-bipoc-shows-racial-solidarity-column/4938922001/> (describing the debate between coalition monikers “BIPOC” and “POC”).

³⁶ Taylor, *supra* note xx, at 426 (“There is little evidence, however, of any organizational links between African American and Asian American groups after the decline of Seattle’s UNIA branches in the late 1920s.”).

American middle class and the solidification of the Black underclass exacerbated existing fault lines created by economic competition in a white society.³⁷

What about discrimination by the Japanese against Blacks in Seattle? Taylor describes the evidence as “mixed.”³⁸ While there would be occasional intermarriages between Black men and Japanese women, there was also competition for Seattle housing and employment between Blacks and Asians, as noted earlier.³⁹ Taylor observes, “Those Japanese Americans and Blacks who attempted to bridge the wide cultural chasm between their respective groups [were] often met with skepticism, indifference, or occasionally, open opposition from their ethnic and racial kinspeople.”⁴⁰ The Seattle tale of these two communities is one of complexity, and indeed, has echoes in the powder keg that was 1990s Los Angeles in the stories that follow.

B. *Asians and Blacks in 1990s Los Angeles*

On March 3, 1991, Black motorist Rodney King was brutally beaten by four white Los Angeles police officers, all of which was captured on video camera and publicly disseminated.⁴¹ All four officers tried in the predominantly white suburb of Simi Valley were acquitted.⁴² While this particular incident received nationwide press, a subsequent lesser-known conflict between a Black teenager and a Korean American shop owner galvanized the Los Angeles community, further heightening tensions in the city.⁴³ Korean store owner Soon Ja Du was tried for the killing of

³⁷ See *id.* at 429 (“African American Seattle was to have a different history. Seattle Blacks found it exceedingly difficult to generate entrepreneurial opportunities comparable to that of the Japanese in the 1920s and 1930s. And, growing racial tensions, sparked by the influx of Black southerners during and immediately after World War II, propelled the African American community in a separate direction. This population growth culminated in a protracted civil disobedience campaign in the early 1960s and bloody racial confrontations in the city, as elsewhere in urban America, by the end of the decade. Truly, the two paths were different.”).

³⁸ *Id.* at 426–27. For instance, there was some evidence that Blacks who had been to Japan were not barred from service, only to be excluded by Japanese-run establishments upon their return to Seattle, U.S.A. (“Perhaps the Japanese, mindful of their dependence on white patronage, chose, like nineteenth century Black Seattle barbers, to exclude African Americans, because they feared unsettling white sensibilities on race.”).

³⁹ *Id.* at 427–28.

⁴⁰ *Id.* at 428. In Seattle’s particular case, there appeared to be two different responses to the Japanese versus African Americans following World War II. Japanese Americans found a welcoming Seattle, perhaps as a response to their unfortunate internment; Blacks, in the meantime, were bereft of entrepreneurial opportunities by a white community resistant to change and defiant of the burgeoning Civil Rights Movement of the 1960s. See *id.* at 429.

⁴¹ *Id.*

⁴² See, e.g., Cydney Adams, *March 3, 1991: Rodney King Beating Caught on Video*, CBS NEWS (Mar. 3, 2016, 6:00 AM), <https://www.cbsnews.com/news/march-3rd-1991-rodney-king-lapd-beating-caught-on-video/>; see also *LAPD Officers Beat Rodney King On Camera*, HISTORY.COM, <https://www.history.com/this-day-in-history/police-brutality-caught-on-video> (Mar. 2, 2021) (“All the arresting officers were white . . .”).

⁴³ See Jesse Singal, *The LA Riots: 15 Years After Rodney King*, TIME, http://content.time.com/time/specials/2007/la_riot/article/0,28804,1614117_1614084_1614514,00.html (last visited Sept. 11, 2022). On Rodney King and the Los Angeles Riots, see Anjali Sastry Krbechek & Karen Grigsby Bates, *When LA Erupted in Anger: A Look Back at The Rodney King Riots*, NPR (Apr. 26, 2017,

fifteen-year-old Latasha Harlins, a Black teen who Du mistakenly believed stole from her, prompting Du to shoot and kill Harlins as she left the store.⁴⁴

One Los Angeles reporter described the tragic encounter thusly:

Du accused [Latasha] of trying to steal a \$1.79 bottle of orange juice. Witnesses said that Latasha, who put the orange juice in her backpack, intended to pay Du and that she had \$2 in her hand. After Du grabbed her sweater, the teen punched her in the face and broke free, knocking the store owner to the ground. Latasha tossed the orange juice on the counter and walked toward the door. Du picked up a .38-caliber handgun and fired a shot into the back of the girl's head, killing her instantly. Police later concluded that there was "no attempt at shoplifting."⁴⁵

While later convicted for Latasha's killing, Du served no time, sentenced instead to probation.⁴⁶ Following the frustration over the officers' acquittal in the King beating, Du's light sentence helped spark mass rioting in south central Los Angeles in 1992,⁴⁷ the site of intense civil rights protests during the infamous Watts riots of 1965.⁴⁸

Underlying this racially charged climate was an equally racially charged white supremacist theme that the media exploited, exacerbating tensions between Blacks and Asians. In her insightful commentary on the Los Angeles riots, Lisa Ikemoto shows how America's master narrative creates a racial hierarchy dominated by whites, with Blacks at the bottom and Asians somewhere in the middle.⁴⁹ This racial master narrative conveys negative stereotypes of one racial minority to the other, reflecting and perpetuating white supremacist views; as Ikemoto explains,

With respect to African Americans, the master narrative tells us that Asians are Koreans who are merchants and crime victims. The assumption that Asians are foreign intruders underlies this description. With respect to Asian Americans, the narrative tells us that African Americans are Blacks who are criminals who are poor.

1:21 PM), <https://www.npr.org/2017/04/26/524744989/when-la-erupted-in-anger-a-look-back-at-the-rodney-king-riots>.

⁴⁴ See Singal, *supra* note 43.

⁴⁵ Angel Jennings, *How the Killing of Latasha Harlins Changed South L.A., Long Before Black Lives Matter*, L.A. TIMES (Mar. 18, 2016, 5:35 PM), <https://www.latimes.com/local/california/la-me-0318-latasha-harlins-20160318-story.html>.

⁴⁶ Tracy Wilkinson & Frank Clifford, *Korean Grocer Who Killed Black Teen Gets Probation*, L.A. TIMES (Nov. 16, 1991, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1991-11-16-mn-1402-story.html>.

⁴⁷ See Krbecek & Bates, *supra* note 43.

⁴⁸ See, e.g., *Watts Riots*, C.R. DIGIT. LIBR., http://crdl.usg.edu/events/watts_riots/?Welcome (last visited Sept. 11, 2022).

⁴⁹ See generally Ikemoto, *supra* note 12, at 1589.

All of these identities replicate the dominant society's understandings of [B]lackness and Asianness.⁵⁰

Similarly, Claire Jean Kim observes that "Asian Americans have been racialized relative to and through interaction with [w]hites and Blacks."⁵¹

Thus, during the 1992 Los Angeles riots, tensions between Asians and Blacks were heightened by the media's attention to the Korean businesses present in many of the poor Black communities that were looted. As Ikemoto suggests, the media reported master narrative comments raised by both minority groups: Blacks claimed their Americanness (and the Asians' foreignness) as justifications for their entitlement, while Asians described themselves as hard-working immigrants pursuing the American dream (implying that those who did not succeed deserved their lesser fate).⁵² The Du-Harlins episode became more than just an avoidable tragedy; it morphed into a racial prism through which society's stereotypes pitting hard-working (but foreign) Asians against criminal (but American) Blacks were magnified by the media.⁵³

Unfortunately, any efforts at Asian-Black détente appeared short-lived. In 1996, another incident between a Korean shop owner and her Black clientele escalated into conflict.⁵⁴ Dressed in a suit and tie following his presiding over a funeral, Black pastor Reverend Lee May entered Korean American storeowner In-Suk Lee's hat and wig shop, seeking assistance. Lee thought that May's conduct of picking up multiple hats without trying them on made a female Black patron nervous; that customer had begun to open her purse to initiate a purchase but then declined. A visiting friend of Lee's husband, Mr. Kim, immediately confronted May, stating that he was sorry, but this store serviced women only, which was untrue. May assumed that Kim was an owner of the shop who was racially profiling him, and the confrontation escalated. Kim threatened to call the police, and May left, promising that his mistreatment would have consequences.⁵⁵

Under the threat of a business boycott, Lee drafted a written apology, privately delivered to May, sincerely regretting that she did not immediately apologize to him at the time of the incident for fear that Mr. Kim, her husband's

⁵⁰ *Id.* at 1583 ("Although the conflict as constructed does not directly speak of dominant white society, it arranges the various racial identities so as to preserve the authority of whiteness and devalue difference. The differences between Blacks and Asians emerge as a tale of relative nonwhiteness.").

⁵¹ Claire Jean Kim, *The Racial Triangulation of Asian Americans*, 27 *POL. & SOC'Y* 105, 106 (1999).

⁵² Ikemoto, *supra* note 12, at 1588–89 ("When African Americans made nativist charges, they positioned themselves as whites relative to Asians. When Korean Americans responded by placing themselves within the American Dream—a dream produced and distributed by the dominant society—they positioned themselves as white. Their belief in an American Dream and their hope to be independent business operators positioned them as white relative to Blacks. The rule underlying this racial positioning is white supremacy.").

⁵³ See also Sheila A. Bedi, *The Constructed Identities of Asian and African Americans: A Story of Two Races and the Criminal Justice System*, 19 *HARV. BLACKLETTER L.J.* 181, 185–90 (2003) (discussing the different stereotypes attending Asian and Black Americans in the criminal law context).

⁵⁴ Described as "The Hat Shop Controversy," this incident is analyzed in depth by Eric Yamamoto in his important work on interracial conflicts. See ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT & RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* 236–53 (1999).

⁵⁵ *Id.* at 236–37.

friend, might lose face.⁵⁶ May rejected the private proffer, requiring instead that Lee issue a public statement, as his public humiliation was an affront to the larger Black community; he also requested that Lee meet with him so that he might sensitize her to the harms she caused.⁵⁷ Local civil rights, Korean, and Black church leaders intervened to seek a peaceful resolution to the conflict; the media covered the incident and aftermath.⁵⁸ Having already lost another business during the 1992 riots, Lee was overwhelmed by the public scrutiny and had hoped that her formal apology letter would resolve things.⁵⁹ Further, Lee's cultural background made her reluctant to meet with May, a man not her husband, as May required.⁶⁰ Given this impasse, Lee decided to close her hat shop.⁶¹

More than a year following the initial incident and months after her store closed, Lee met with May in a private, two-hour meeting at Lee's church.⁶² Apparently, the meeting was a success—Lee and May reconciled, and closer ties were established between May's and Lee's churches.⁶³ The public press conference that ensued, however, was less sanguine. With the year-long media and public scrutiny having taken a toll on her health, Lee was a reluctant participant at best, breaking down in tears and hiding her face at times.⁶⁴ Because Lee and May failed to fully acknowledge each other's personal hurts or address the Korean American and Black American communities' larger concerns,⁶⁵ the public press conference missed an opportunity for true healing. In retelling this story, Eric Yamamoto concluded, “[n]o one at the public ceremony fully addressed what appeared to be central to the escalation of the dispute—the stock stories and historical roots of clashes between inner-city Korean store owners and African American customers across the country.”⁶⁶

While a full-scale riot had been averted in 1996, the tension that arose in the 1992 Du-Harlins incident reared its ugly head once more in the Lee-May confrontation a scant four years later. What if Du had not accused Harlins of stealing nor shot her in the back over the price of a juice? What if Lee had decided to apologize immediately to May rather than risk Kim losing face? What if Du and Lee had been better Asian allies to their Black neighbors? We see similar questions arise in stories from the Midwest, via tales that explore the relationship between Black and Asian communities in contemporary Chicago.

⁵⁶ *Id.*, at 237–38.

⁵⁷ *Id.* at 238.

⁵⁸ *Id.* at 238–39.

⁵⁹ *Id.* at 238.

⁶⁰ *Id.*

⁶¹ *Id.* at 237–38.

⁶² *Id.* at 239.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

C. *Asians and Blacks in Chicago, 1990s-2020s*

In his autobiographical work, *Dreams from My Father*, former President Barack Obama details his time as a community organizer in working-class Chicago, describing two opposing views that poor Blacks held of Korean merchants in their neighborhoods,⁶⁷ providing further context to the stories from Seattle and Los Angeles described above.

The first perspective is one of disdain and resentment, represented by the views of Rafiq al Shabazz, then President of the Roseland Unity Coalition:

That's the deal, right here . . . [p]eople from outside our community making money off us and showing our brothers and sisters disrespect. Basically what you got here is Koreans and Arabs running the stores, the Jews still owning most of the buildings. Now, in the short term, we're here to make sure that the interests of [B]lack people are looked after, you understand. When we hear one of them Koreans is mistreating a customer, we gonna be on the case. We gonna insist that they respect us and make a contribution back to the community—fund our programs, what have you.⁶⁸

From this perspective, we see common cause with Reverend May, whose rejection of shop owner Lee's private written apology was grounded in a deep-seated concern for the Black community's long-standing grievances against racial oppression and the desire to remedy the same.

In contrast, the second view bespeaks a grudging respect for the Koreans' unity, as heard in the words of a former president of the local Chamber of Commerce, Mr. Foster:

You won't hear me complaining about the Koreans They're the only ones that pay their dues into the Chamber. They understand business, what it means to cooperate. They pool their money. Make each other loans. We [Black community members] don't do that, see. The [B]lack merchants around here, we're all like crabs in a bucket. . . . Maybe you can't blame us for being the way we are. All those years without opportunity, you have to figure it took something out of us.⁶⁹

From this view, we hear echoes of the Seattle *nihonmachi*'s abilities to support each other, culturally and economically, something that Black Seattleites of the time had less success accomplishing.⁷⁰

More broadly, however, we see Ikemoto's master narrative underlying these two perspectives as well: The first depicts the Asian entrepreneurs as outsiders, interlopers who take advantage of poor communities of color by establishing businesses and not giving back. This narrative feeds into the stereotype of Asians as

⁶⁷ BARACK OBAMA, *DREAMS FROM MY FATHER* 180–82 (paperback ed., 2004).

⁶⁸ *Id.* at 180.

⁶⁹ *Id.* at 182.

⁷⁰ See *supra* text accompanying notes 20–26.

foreigners: that no matter how long they've been in America, Asians will always be hyphenated Americans. As Natsu Taylor Saito observes, "Much of the related negative imagery is not really about foreignness, but reflects an *imagined* foreignness that says more about anti-Asian racism in the United States than it says about Asian cultures."⁷¹ And in the second, while the nod to Asian self-help appears complimentary, hints of clannish insularity also reinforce outsider status, rendering positive "model minority" values into negative stereotypes. Again, from Saito, "[h]ardworking and industrious becomes unfairly competitive; family-oriented becomes clannish; mysterious becomes dangerously inscrutable. Nonetheless, both the positive and negative forms of foreignness are portrayals of outsiders, of the 'other.'"⁷²

Fast-forward some thirty years to modern-day Chicago, and the tension between Blacks and Asians is still palpable, especially after George Floyd's death. Just as Asian officer Tou Thao did not protect Floyd from death at the hands of his white partner, Asian businesses in Black communities continue to be seen as co-conspirators, exploiting poor minorities to prop up a racist capitalist system. Crystal Holmes, a Black woman who works for a Korean beauty shop owner in inner city Chicago, appreciates the source of this pent-up anger: "I understand where the rage is coming from We don't have any businesses in the community and we are getting killed by the police and killing each other, and we are just getting tired."⁷³ In an effort to protect owner Yong Sup Na's beauty shop following several antiracism protests, Holmes opened the doors to the store so that looters could take items without destroying the shop itself—an apparent price of doing business during these fraught times. While this may seem but a rough approximation of economic justice, the underlying realities of the stark Korean-Black business gap is chilling: An examination of the national beauty shop industry reveals that fewer than ten percent of stores are owned by Black women, while many are owned by Korean immigrants.⁷⁴ Historian Tiffany Gill observes, "These are two historically marginalized groups fighting over the same small slice of pie when there is so much more of the pie that neither has access to."⁷⁵

Once again, we see the master narrative at work. While corporations in our predominantly white, capitalist society control the largest share of the cosmetics market,⁷⁶ Asians and Blacks in poorer working-class neighborhoods struggle over a tiny fraction of what's left in retail. For example, *The New York Times* reported

⁷¹ Natsu Taylor Saito, *Aliens and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy in American Law*, 76 OR. L. REV. 261, 296 (1997) (emphasis added).

⁷² *Id.* at 297.

⁷³ Michael Corkery, *A Korean Store Owner. A Black Employee. A Tense Neighborhood*. N.Y. TIMES (Oct. 15, 2020), <https://www.nytimes.com/2020/10/15/business/beauty-store-race-protests.html>.

⁷⁴ *Id.* ("Yet fewer than 10 percent are owned by Black women," said Tiffany Gill, a history professor at Rutgers University. "Instead, many of them are owned by Korean immigrants.").

⁷⁵ *Id.* (Dr. Gill is a history professor at Rutgers and author of the book *Beauty Shop Politics: African-American Women's Activism in the Beauty Industry*).

⁷⁶ As of 2022, all of the top ten international cosmetic companies were American or Western European. See *Ranking the Top 50 Cosmetics Companies*, Beauty Packaging (Jul. 8, 2022), https://www.beautypackaging.com/contents/view_breaking-news/2020-05-11/ranking-the-top-50-cosmetic-companies/.

recently that Black women beauty shop owners in Dallas, Buffalo, and Sacramento have consistently been denied accounts with Korean-owned suppliers.⁷⁷ What if more Korean business owners partnered with Black women, just as Young Sup Na hired Crystal Holmes to manage his Chicago store? Better still, what if Korean store owners were to train Black managers in entrepreneurship, opening channels to Korean suppliers, leading to an increase in Black shop owners over time? What if the law facilitated such relationships instead of leaving them to grow haphazardly?

* * *

Part II shifts our focus from the business world to the world of higher education. Just as the tensions between Asian and Black communities in Seattle, Los Angeles, and Chicago have been most acutely felt in the struggle for these outsiders to thrive in a white, capitalist economy, a parallel tension has arisen of late in the realm of affirmative action policies at American colleges and universities.

II. MASTER NARRATIVE REDUX: AFFIRMATIVE ACTION, ASIANS, AND BLACKS

My wife's cousin, only six years old, . . . reported to his parents that some of his first grade classmates had refused to play with him because of his dark, unblemished skin. Obviously his parents, born and raised in Chicago and Gary, lost their own innocence long ago, and although they aren't bitter—the two of them being as strong and proud and resourceful as any parents I know—one hears the pain in their voices as they begin to have second thoughts about having moved out of the city into a mostly white suburb, a move they made to protect their son from the possibility of being caught in a gang shooting and the certainty of attending an underfunded school.⁷⁸

While this account might apply to any number of middle-class Black families hoping for a better life for their children, these words were written by former President Obama about his wife Michelle's young cousin. Aside from the violence that plagues America's inner cities, underfunded schools consign those unable to escape to a subpar education. With desegregation efforts in retrenchment since the mid-1970s,⁷⁹ the economic and racial divide between suburban and urban schools has increased, with no end in sight.⁸⁰

As such, affirmative action has emerged as both a second-best solution and a necessary remedy. Finessing its way around its own colorblind conservative

⁷⁷ Corkery, *supra* note 73 (“One of the [Black women owners] said that as soon as she had sent over a copy of her driver’s license, the supplier stopped returning her calls. These rejections, the women said, prevent them from stocking the most popular hairpieces, forcing their customers to shop elsewhere.”).

⁷⁸ OBAMA, *supra* note 67, at xiv–xv.

⁷⁹ The Supreme Court’s efforts to desegregate schools began to end with its 1974 decision in *Milliken v. Bradley*, outlawing Detroit’s efforts to fashion a multi-district busing plan with suburban schools to help integrate the minority inner-city ones. See *Milliken v. Bradley*, 418 U.S. 717 (1974).

⁸⁰ See generally, Jill Barshay, *A Decade of Research on the Rich-Poor Divide in Education: Many Studies Show Large and Growing Inequities*, THE HECHINGER REPORT (June 29, 2020), <https://hechingerreport.org/a-decade-of-research-on-the-rich-poor-divide-in-education/>.

jurisprudence limiting government efforts to facilitate integration, the U.S. Supreme Court has created a carve out via affirmative action policies, holding that universities faced with the reality of recruiting from segregated school districts may consider race as one factor among many in a holistic review of individual applicants.⁸¹ While simultaneously hoping for its obsolescence in twenty-five years, Justice O'Connor constitutionalized affirmative action plans that treated applicants as individuals, which could include considering race along with other non-academic measures, even if, on average, certain minorities scored less well on standardized entrance exams.⁸²

While assaults against affirmative action since the 1970s have prompted universities to sharpen their admissions tools around the approved concept of “race-as-a-factor” holistic review, the latest challenges to this policy have implicitly sought to divide America’s minority groups.⁸³ Although prior challenges had typically been brought by unsuccessful white university applicants, the latest round of lawsuits by the group Students For Fair Admissions (SFFA) has claimed that Asian American applicants, whose average grades and test scores exceed those of other groups, were discriminated against at Harvard based on negative stereotypes about them, including their relative reticence when compared with other applicants.⁸⁴ Implicitly invoking the “model minority” myth, plaintiffs argued that Asian applicants would not receive as high marks for their personal traits when compared with others.⁸⁵ In the Harvard lawsuit, the district judge upheld the university’s admissions policy, finding that, while there may have been implicit bias by specific admissions officers, there was no evidence that this unduly burdened

⁸¹ See, e.g., *Grutter v. Bollinger*, 539 U.S. 306, 338, 343–44 (2003) (upholding Michigan Law School’s admissions policy where race is but a factor in its individualized holistic review); *accord Fisher v. Univ. of Tex.*, 579 U.S. 365, 375 (2016) (describing race as a “factor of a factor” as it is used in the university’s admissions plan).

⁸² *Grutter*, 539 U.S. at 343 (“We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.”).

⁸³ See, e.g., Harmeet Kaur, *How Asian Americans fit into the affirmative action debate*, CNN (Nov. 3, 2022, 11:01 AM), <https://www.cnn.com/2022/11/03/us/affirmative-action-asian-americans-qa-cec> (noting that minority college applicants seem to be in a zero sum admissions game, pitting Asian Americans against Black, Latino, and Native students). Indeed, one might envision “a post-affirmative action race to the bottom of a very shallow well: minorities may well end up fighting over shrinking pieces of the proverbial admissions pie until the pie itself disappears.” Romero, *supra* note 11, at 768.

⁸⁴ See Complaint at 56, *Students for Fair Admissions v. Harvard Univ.*, (Paragraphs 246 and 247 include allegations that Asian applicants were characterized by admissions officers as “quiet.”), <https://studentsforfairadmissions.org/our-cases/>. Interestingly, the Trump Justice Department sued Yale University, concluding that its admissions process discriminated against whites and Asians; that suit was then dropped by the Biden Administration soon after the latter’s inauguration. See Anemona Hartocollis, *Justice Department Drops Suit Claiming Yale Discriminated in Admissions*, N.Y. TIMES (Feb. 3, 2021), <https://www.nytimes.com/2021/02/03/us/yale-admissions-affirmative-action.html>.

⁸⁵ See Anemona Hartocollis, *Harvard Rated Asian-American Applicants Lower on Personality Traits, Suit Says*, N.Y. TIMES (June 15, 2018), <https://www.nytimes.com/2018/06/15/us/harvard-asian-enrollment-applicants.html>.

Asian American applicants or detracted from Harvard's evaluation of each student as an individual.⁸⁶

Of what relevance might these new affirmative action cases have to the Black-Asian tension described earlier? For one, by conjuring the model minority myth in its lawsuit, the Asian American plaintiffs implied that minorities with lower scores—including Blacks—were less worthy of admission and that, but for these colleges' discriminatory admissions plans, more Asians would be admitted. This point is important not because all Asians (or all Blacks) agree on the constitutionality of affirmative action; indeed, Justice Thomas⁸⁷ is not a fan, nor is the Asian American Coalition for Education, which had lauded the Trump Administration's Title VI lawsuit against Yale (since dropped by President Biden's Department of Justice).⁸⁸ Rather, regardless of whether Asians believe the model

⁸⁶ *Students for Fair Admissions v. Harvard*, 397 F. Supp. 3d 127, 202–03 (D. Mass. 2018) (“Harvard’s admissions program is conceptually narrowly tailored to meet its interest in diversity. In practice, as more fully discussed above, it does not seem to unduly burden Asian Americans despite the fact that some percentage of Asian American applicants have received lower personal ratings than white applicants who seem similarly situated. The reason for these lower scores is unclear, but they are not the result of intentional discrimination. They might be the result of qualitative factors that are harder to quantify, such as teacher and guidance counselor recommendations, or they may reflect some implicit biases. Race conscious admissions will always penalize to some extent the groups that are not being advantaged by the process, but this is justified by the compelling interest in diversity and all the benefits that flow from a diverse college population. Here, any relative burden on Asian Americans (and it is not clear that there is a disproportionate burden) is not enough to warrant a finding that Harvard’s admissions process fails to survive strict scrutiny or to require it to move to an admissions model that foregoes diversity in favor of parity based solely on quantifiable metrics.”). Jeannie Suk Gersen has noted that the district court’s findings did evidence a preference for whites from so-called “sparse countries”—places that did not send a lot of students to Harvard—over Asians. See Jeannie Suk Gersen, *At Trial, Harvard’s Asian Problem and a Preference for White Students from ‘Sparse Country,’* NEW YORKER (Oct. 23, 2018), <https://www.newyorker.com/news/our-columnists/at-trial-harvards-asian-problem-and-a-preference-for-white-students-from-sparse-country>. Now that the Supreme Court has granted certiorari in the Harvard and North Carolina affirmative action cases, see *Students for Fair Admissions, Inc. v. Univ. of N.C.*, SCOTUSBLOG <https://www.scotusblog.com/case-files/cases/students-for-fair-admissions-inc-v-university-of-north-carolina/> (Sept. 15, 2022), it will be interesting to see whether the Court’s current conservative majority either (1) finds the district courts’ factual conclusions erroneous or (2) decides as matter of law that any use of race is verboten, thereby effectively overruling *Bakke* and its progeny, including *Grutter* and *Fisher*. This is a distinct possibility, as the last case to come before the Court, *Fisher*, was decided by a 5-to-4 majority wherein Justice Kennedy finally voted to uphold an affirmative action plan, having previously sided against the University of Michigan in both *Grutter* and *Gratz*. Furthermore, Kennedy is no longer on the Court, having been replaced by the conservative—yet enigmatic—Brett Kavanaugh. See, e.g., McKay Coppins, *Is Brett Kavanaugh Out for Revenge?*, THE ATLANTIC (June 2021) <https://www.theatlantic.com/magazine/archive/2021/06/brett-kavanaugh-supreme-court/618717/> (“Kavanaugh’s confirmation cemented a conservative majority on the Court that got even stronger last year when he was joined by Amy Coney Barrett. Kavanaugh now sits at the Court’s ideological center—illustrating how far to the right the center has shifted. Any judicial victory that liberals hope to achieve in the coming years will likely require winning over the justice whose nomination they fought most ferociously to defeat.”).

⁸⁷ For a recent, interesting take on Thomas’s jurisprudence, see generally COREY ROBIN, *THE ENIGMA OF CLARENCE THOMAS* 14–15 (2019) (arguing that a “Black nationalist” narrative undergirds Thomas’s thinking, leading to opinions disfavoring governmental interference with the hope of spurring greater economic self-help among African Americans).

⁸⁸ See *Grutter*, 539 U.S. at 347 (Thomas, J., dissenting) (“I respectfully dissent from the remainder of the Court’s opinion and the judgment, however, because I believe that the Law School’s current use of race violates the Equal Protection Clause and that the Constitution means the same thing today as it will in 300

minority myth⁸⁹ (or cynically view its perpetuation as in their self-interest), the effect of attacking affirmative action, even if unsuccessful, drives a wedge between the Asian and Black communities writ large. In fact, as Julie Park argues, Asians should support Black voices on this issue as low-income Asian students benefit from affirmative action.⁹⁰

Whether one is persuaded by Park's study or one believes, as Justice Thomas does, that affirmative action is nothing more than a paean to a certain colorful classroom aesthetic,⁹¹ Asians should not allow themselves to be used as pawns to defeat a practice that clearly benefits minority recipients, including some ingroup members themselves, providing them access to elite institutions previously closed to them.⁹² Just as the Hippocratic oath commands doctors, Asians should seek first to do no harm.⁹³ To the extent that serving as plaintiffs perpetuates the model

months."); see also Press Release, Asian American Coalition for Education, *AACE Condemns Justice Department's Dismissal of the Lawsuit Against Yale's Anti-Asian Discrimination in Admissions*, AACE (Feb. 3, 2021), https://asianamericanforeducation.org/en/pr_20210203/.

⁸⁹ See, e.g., Connie Hanzhang Jin, *6 Charts That Dismantle the Trope of Asian Americans as A Model Minority*, NPR (May 25, 2021, 10:16 AM), <https://www.npr.org/2021/05/25/999874296/6-charts-that-dismantle-the-trope-of-asian-americans-as-a-model-minority>.

⁹⁰ See JULIE J. PARK, RACE ON CAMPUS: DEBUNKING MYTHS WITH DATA 71–98 (2018) (arguing that research suggests affirmative action helps poor Asians); see also Julie J. Park & Amy Liu, *Interest Convergence or Divergence? A Critical Race Analysis of Asian Americans, Meritocracy, and Critical Mass in the Affirmative Action Debate*, 85 J. HIGHER EDUC. 36, 37 (2014) ("Supporters of affirmative action have asserted that such arguments exploit Asian American interests by telling an overly simplistic and incomplete story of how Asian Americans are affected by such policies."). Although its website no longer lists this among its active lawsuits, see *Our Cases*, Student for Fair Admissions, <https://studentsforfairadmissions.org/our-cases/> (last visited Sept. 21, 2022), the SFFA had previously sued Yale University, alleging similar claims as in the Harvard suit. In perhaps a signal of its desire to be more nuanced in its approach, the SFFA's Complaint against Yale distinguished between "racially-favored" Asians and "dis-favored" ones, alleging in paragraph 56: "Racially-favored applicants also include applicants who identify, at least in part, as belonging to a favored Asian-American subgroup, such as applicants who identify as Cambodian, Hmong, Laotian, or Vietnamese." See *Students for Fair Admissions, Inc. v. Yale U.*, Compl., Feb. 25, 2021, at 9 (D. Conn.) (This former Complaint is available as a PDF, linked within this story: Amelia Davidson, *Students for Fair Admissions Sues Yale, Petitions to Escalate Case to Supreme Court*, YALE DAILY NEWS (Feb. 25, 2021, 11:58 PM), <https://yaledailynews.com/blog/2021/02/25/students-for-fair-admissions-sues-yale-petitions-to-escalate-harvard-case-to-supreme-court/>). In case paragraph 56 was unclear, the plaintiffs dropped the following footnote 1: "Hereinafter, references to Asian applicants will exclude racially-favored Asian applicants who identify, at least in part, as from a favored Asian-American subgroup, such as applicants who identify as Cambodian, Hmong, Laotian, or Vietnamese." Compl., *supra*, at 9 n.1. I also acknowledge that low-income status, while distinct from race, also plays a role here. While a full discussion of the impact of class is beyond the scope of this piece, solidarity among economically depressed groups creates opportunities for coalition-building that could include Appalachian whites, for instance, in the discussion.

⁹¹ "The Law School's argument, as facile as it is, can only be understood in one way: Classroom aesthetics yields educational benefits, racially discriminatory admissions policies are required to achieve the right racial mix, and therefore the policies are required to achieve the educational benefits." *Grutter*, 539 U.S. at 355 (Thomas, J., dissenting).

⁹² See Chow, *supra* note 5 (arguing how model minority myth is used as a wedge between Black and Asian communities). A critic might respond that low-income students, regardless of color, would benefit more from an overhaul of our nation's primary and secondary public school system. Nothing in this discussion precludes such an overhaul from taking place; indeed, I would welcome it because, if school funding, teaching, and administration could be more equitable, perhaps that might finally make Justice O'Connor's dream of sunseting affirmative action policies a reality.

⁹³ My defense of affirmative action here is not to say that admissions policies at most schools, including Harvard and Yale, cannot be improved. For instance, the continued practice of favoring legacies and donors'

minority myth, Asians become guardians of the status quo and servants of the master narrative.⁹⁴ Finally, as Vinay Harpalani observes, both Asians and Blacks experience a form of W.E.B. Du Bois's "double consciousness"⁹⁵ owing to their otherness in culturally white America, especially in recent history.⁹⁶ As economic scarcity in impoverished neighborhoods has driven a wedge between Asian and Black neighbors, their shared experience as people of color in a Eurocentric capitalist culture should move each toward, rather than away from, the other. In Harpalani's analogy, both Asians and Blacks are "others" in contemporary U.S. society.⁹⁷

III. THE WAY FORWARD: ALLYSHIP MEANS INCLUSION AND PARTNERSHIP

Given this (perhaps unsurprisingly fraught) relationship between Asians and Blacks around policy issues like economic justice and affirmative action where both stand to gain if unified, what is the way forward? Eric Yamamoto suggests a four-part approach to facilitating interracial justice. After discussing Yamamoto's approach, this Part explores whether Derrick Bell's interest convergence theory may place a limit on any progress Yamamoto's model might achieve. Bell's approach is not a criticism of Yamamoto's model, but it may limit an Asian-Black coalition's success based on the reality that majorities are unlikely to freely give up power unless they see change as in their collective best interest.

children, while sound in economic policy, generally perpetuates the access of white elites to our most prestigious institutions. See, e.g., Aaron Mak, *Harvard Isn't Off the Hook*, SLATE (Oct. 3, 2019, 2:18 PM), <https://slate.com/news-and-politics/2019/10/harvard-affirmative-action-case-legacies-athletes-aldc.html> ("[T]he most alarming revelations from the trial disclosures had to do with 'personal ratings' and the preference for athletes, legacies, applicants placed on a dean's list (often because of their parents' donations), and the children of faculty—taken together, a group that the university refers to as ALDC. These facets of the admissions process have little to do with affirmative action but nonetheless put Asian Americans at a disadvantage."); see also Frank H. Wu, *Neither Black nor White: Asian Americans and Affirmative Action*, 15 B.C. THIRD WORLD L.J. 225, 226 (1995) ("If they are hurt at all by affirmative action, Asian Americans are harmed no differently from whites. The real risk to Asian Americans is that they will be squeezed out to provide proportionate representation to whites, not due to the marginal impact of setting aside a few spaces for African Americans.").

⁹⁴ See *supra* text accompanying notes 49–50 (describing Ikemoto's master narrative thesis).

⁹⁵ In his pathbreaking biography, historian David Levering Lewis quotes DuBois's vivid description of this double consciousness: "It is a peculiar sensation, this sense of always looking at one's self through the eyes of others. . . . One ever feels his two-ness,—an American, a Negro; two souls, two thoughts, two unreconciled strivings, two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder." DAVID LEVERING LEWIS, *W.E.B. DUBOIS: BIOGRAPHY OF A RACE, 1868-1919*, at 199 (paperback ed., 1993).

⁹⁶ Vinay Harpalani, *Racial Triangulation, Interest Convergence, and the Double-Consciousness of Asian Americans*, GA. ST. U. L. REV. (forthcoming) ("arguing that to build coalitions and work towards racial justice, Asian Americans, Black Americans, and other people of color need to recognize our own double-consciousness and also see how it relates to the double-consciousness experienced by others") (manuscript at 2) (manuscript available at https://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=1836224). In his plea that Mookie and his mates spare his store from the riots following Radio Raheem's death, Korean grocer Sonny appealed to their shared otherness, shouting, "I no white. I Black. You. Me. Same!" See *DO THE RIGHT THING* (Universal Pictures 1989).

⁹⁷ See *id.*

In his book, *Interracial Justice*, Yamamoto identifies four aspects of what he terms “race praxis inquiry” as a means for promoting interracial conflict resolution: “the conceptual, the performative, the material, and the reflexive.”⁹⁸ The conceptual aspect of the framework reminds us to examine the particular interracial relationship not just in terms of the specific conflict, but in a broader sociolegal context.⁹⁹ As such, both the details of the conflict as well as the history between the parties are relevant in determining what approach to take in conflict resolution.¹⁰⁰ The performative element focuses on what concrete action steps might be taken, placing specific emphasis on the promotion of antisubordination.¹⁰¹ Put differently, any action taken to resolve a conflict must not perpetuate existing inequalities.¹⁰² The material aspect emphasizes that any action plan must effect actual change in the lives of the subordinated.¹⁰³ The concern here is that action steps that are merely symbolic will not lead to long-lasting change.¹⁰⁴ And finally, the reflexive element requires participants to carefully contemplate the consequences of the action taking, viewing the process as reiterative and not just a one-time fix.¹⁰⁵ Vigilance and persistence are the hallmarks of the struggle against antisubordination.¹⁰⁶

Apart from supporting affirmative action efforts and encouraging Black entrepreneurship in communities in which they own businesses, Asian Americans can also resist calls to so-called “law and order” initiatives¹⁰⁷ as long as U.S. policing continues to impose a disproportionate burden upon Black and Brown bodies.¹⁰⁸

⁹⁸ ERIC K. YAMAMOTO, *INTERRACIAL JUSTICE: CONFLICT & RECONCILIATION IN POST-CIVIL RIGHTS AMERICA* 130 (1999) (setting forth the four aspects of race praxis inquiry).

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 131.

¹⁰² *Id.*

¹⁰³ *Id.* at 132.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 129.

¹⁰⁶ On the individual level, projects that promote restorative justice are worth pursuing in the criminal justice context, perhaps most importantly in cases that involve interracial conflict. *See, e.g., Partnering with Communities to Address Harm Through Dialogue*, IMPACT JUSTICE, <https://impactjustice.org/impact/restorative-justice/> (last visited Sept. 21, 2022) (“The Restorative Justice Project at Impact Justice is the only national technical assistance and training project that partners with communities across the nation to address harm using pre-charge restorative justice diversion programs.”); *see also Meet the Staff*, ZEHR INST., <https://zehr-institute.org/> (last visited Sept. 22, 2022) (“The Zehr Institute advocates for restorative justice as a social movement, and is also a convener of spaces where knowledge about restorative justice practices and programs can be shared among practitioners and learners, by facilitating conversations and cultivating connections through activities such as conferences, webinars and both in-person and online courses.”); Susan Abraham, *Through the Lens of Restorative Justice: A Re-Humanizing*, 64 N.Y.L. SCH. L. REV. 12 (2020) (advocating law reform through restorative justice practices).

¹⁰⁷ Elsewhere, I examine the effect of such “law and order” approaches within the context of the “jogging while black phenomenon.” *See* Victor C. Romero, *Racism, Inc.: Ramos v. Louisiana and Jogging While Black*, 30 S. CAL. INTERDISC. L.J. 101, 101 (2020).

¹⁰⁸ Admittedly, alliances are particularly difficult when interracial violence, as in the Harlins-Du case, rears its ugly head. In a thoughtful article about recent anti-Asian violence, Jaeah Lee unpacks some of this complexity: “To fully appreciate the challenges that [Black-Asian northern California community members] face requires understanding the forces that have shaped that neighborhood, and many others, over

And while over thirty states have initiated reforms like the elimination of chokeholds and increased body cam deployment, local communities—including private, neighborhood ones—can play a role today in promoting peace.¹⁰⁹ Take, for instance, the recently enacted “Security Policy” of Washington, D.C.-based All Souls Church Unitarian.¹¹⁰ Following its congregation’s review of all its policies to ensure these do not perpetuate white supremacy, the church proposed “moving from a fear and police-based [security] model that centers the comfort of white people to a justice-based model that centers the needs of those most at risk and prioritizes non-police alternatives.”¹¹¹ Specifically, the new policy requires that the church first assess the threat level of a disturbance before acting: low-level threats would call for de-escalation tactics and notification of government service agencies such as the local Department of Behavioral Services, whereas high-risk threats involving the brandishing of weapons and threats of violence to individuals would warrant police intervention.¹¹² Such a nuanced, thoughtful policy stands in stark contrast to the commonplace reaction to label all potential threats “emergencies” requiring law enforcement intervention.¹¹³ Like other forms of practical solidarity, changing policies to promote antiracism fulfills Yamamoto’s goals of furthering interracial justice via an iterative, reflexive process that eschews symbolic gestures in favor of solid policy correctives.

If achieving interracial justice between Asians and Blacks in the United States was simply a matter of promoting Black entrepreneurship, affirming affirmative action, and deescalating cultural conflict by keeping law enforcement at bay, why have embedded conflicts between these two communities continued to persist?

decades—redlining and employment discrimination, the long shadow of multiple tech booms, the burden of street violence, inadequate mental-health care, surging homelessness, the police response to all of it. These shifts weren’t always visible, but they were there beneath the influx or exodus, beneath the mistrust and grievances, beneath what each person, Black or Asian, took away from the images of attacks flooding the news.” Jaeah Lee, *Why Was Vicha Ratanapakdee Killed?*, N.Y. TIMES MAG., (Aug. 18, 2021), <https://www.nytimes.com/2021/08/17/magazine/vicha-ratanapakdee.html?action=click&module=RelatedLinks&pgtype=Article>.

¹⁰⁹ “With little federal action, more than 30 states—and many local governments—have passed a series of reforms over the last year. At least 16 states have limited or banned officers’ use of neck restraints, and 10 have required or increased funding for body cameras. Washington also joined several states that have required police officers to intervene, if possible, when they see a fellow officer using excessive force.” Nicholas Bogel-Burroughs, *Washington State Enacts Police Reform a Year After George Floyd’s Death*, N.Y. TIMES (May 19, 2021), <https://www.nytimes.com/2021/05/19/us/washington-inslee-police-reform.html>.

¹¹⁰ *All Souls Church Unitarian Security Policy*, ALL SOULS CHURCH UNITARIAN 1 (unpublished report) (Apr. 2021) (PDF on file with author); for more on the church’s racial justice initiatives, see also *Racial Justice at All Souls*, ALL SOULS CHURCH UNITARIAN, <https://all-souls.org/social-justice/racial-justice/> (last visited Sept. 22, 2022).

¹¹¹ ALL SOULS CHURCH UNITARIAN, *supra* note 110, at 1.

¹¹² *Id.* at 3.

¹¹³ More broadly, the Center for Policing Equity has done pioneering work in this important field, including theorizing a roadmap for a new kind of evidence-based, nonviolent policing. See *A Policy Plan for Policing in America*, CNTR. FOR POLICING EQUITY, <https://policingequity.org/what-we-do/a-policy-plan-for-policing-in-america> (last visited Sept. 11, 2022) [<https://web.archive.org/web/20220824052204/https://policingequity.org/what-we-do/a-policy-plan-for-policing-in-america>].

There are at least three critiques that suggest limits to broad acceptance of any wide-ranging antiracist agenda. First, Derrick Bell's interest convergence theory posits that those in the majority will tolerate a minority group's advancement only up until the point when it begins to encroach upon majoritarian interests.¹¹⁴ Framed in light of post-*Brown v. Board of Education* desegregation efforts, Bell noted that powerful whites would permit Blacks to advance so long as such progress simultaneously benefited whites.¹¹⁵ Thus, Bell's reading of *Brown* focused less on the standard morality tale of promoting equal rights and more upon the desire of the United States to curry favor among its international partners by appearing to be racially progressive.¹¹⁶ Over time, American society's commitment to integration waned, with the Supreme Court giving in to de facto urban segregation facilitated by white flight to the suburbs, compounded by overt and covert attempts to discriminate through redlining and sometimes violent opposition to forced busing.¹¹⁷

Given this backlash to integration, Bell wondered whether emphasizing better schools, even if segregated, would have been more palatable to white leaders and a greater benefit to poorly educated Black children.¹¹⁸ Indeed, recent developments in light of the 2020 presidential election suggest that the opposition to educational integration via affirmative action policies may be increasingly multiracial.¹¹⁹ Two data points stand out: the large number of people of color (especially Latinx) who supported former President Trump,¹²⁰ and the large number

¹¹⁴ Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518, 524 (1980) ("I contend that the decision in *Brown* to break with the Court's long-held position on [segregation] cannot be understood without some consideration of the decision's value to whites . . .").

¹¹⁵ *Id.*

¹¹⁶ *Id.* ("[T]he [Brown] decision helped to provide immediate credibility to America's struggle with Communist countries to win the hearts and minds of emerging third world peoples.").

¹¹⁷ *See id.* at 527 ("As a result of its change in attitudes, the Court has increasingly erected barriers to achieving the forms of racial balance relief it earlier had approved.").

¹¹⁸ *Id.* at 528 ("The question still remains as to the surest way to reach the goal of educational effectiveness for both blacks and whites. I believe that the most widely used programs mandated by the courts – 'antidistance, racial balance' plans – may in some cases be inferior to plans focusing on 'educational components,' including the creation and development of 'model' all-black schools."). For a thoughtful article on the historical dispossession of American Blacks through the use of various strategies, see Sherally Munshi, *Dispossession: An American Property Law Tradition*, 110 GEO. L.J. 1021, 1070 (2022) (describing how certain New Deal policies "redlined" certain neighborhoods as dangerous, leading to white flight).

¹¹⁹ This is not to say that the so-called "conservative-liberal/progressive divide" falls neatly along the white/Black color line. As the Booker T. Washington and W.E.B. Du Bois rift made clear, strategic disagreements among prominent Black leaders have been part and parcel of our nation's history for generations. *See, e.g.*, LEVERING LEWIS, *supra* note 95, at 297–342 (paperback ed. 1993) (outlining the growing rift between Washington and Du Bois regarding how best to advance the interests of Blacks). More recently, the writer Ta-Nehisi Coates noted his confusion when, while perusing the works of leading Black leaders, he came across a cacophony of voices around the plight of Black America, none seemingly in agreement. *See* TA-NEHISI COATES, *BETWEEN THE WORLD AND ME* 47 (2015) ("The trouble came almost immediately. I did not find a [Black intellectual] tradition marching lockstep but instead factions, and factions within factions. Hurston battled Hughes, Du Bois warred with Garvey, Harold Cruise fought everyone.").

¹²⁰ *See, e.g.*, Geraldo Cadava, *The Deep Origins of Latino Support for Trump*, NEW YORKER (Dec. 29, 2020), <https://www.newyorker.com/news/the-political-scene/the-deep-origins-of-latino-support-for-trump>. And yet, a strong majority of people of color still supported Joe Biden, many of whom demanded a seat at the table of

of people of color who voted against the pro-affirmative action ballot measure in California.¹²¹

Perhaps one silver lining is that the large and diverse flagship University of California system recently decided to make standardized tests optional.¹²² This is a testament to these exams' limited function in predicting college preparedness, as well as their disparate impact upon poorer, first-generation, and minoritized applicants.¹²³ Of course, even that positive development might be viewed as consistent with Bell's theory: it was the majority's concern over COVID-19's ill effects on all communities—not just minority ones—that led to the abandonment of standardized testing.¹²⁴ Still, recognizing that progress may come in fits and starts due to resistance by the powers that be should engender patience and resilience without giving in to hopelessness and despair.

Moreover, the reality of coalition building among disparate groups is that sometimes, tensions boil over, frustrating good-faith efforts at progress. Barack Obama writes of the views of some in the poorer, working-class Chicago neighborhoods he helped organize, many of whom were frustrated by their own lack of power: “Blacks had no real power to act on the occasional slips into anti-Semitism

power, namely, Cabinet appointments. See Megan Cassella, Laura Barrón-López & Alice Miranda Ollstein, *Lawmakers to Biden: 'Step it up' on Cabinet Diversity*, POLITICO (Dec. 1, 2020, 7:51 PM), <https://www.politico.com/news/2020/12/01/biden-cabinet-diversity-lawmakers-442003?cid=apn> (“The next administration will feature a number of ‘historic firsts,’ but lawmakers and advocates of color are pushing for more.”). Political and educational initiatives, rather than constitutional law ones, may achieve more diversity and inclusion over time; for example, Nasdaq's move to require greater board diversity. See *Nasdaq to Advance Diversity Through New Proposed Listing Requirements*, NASDAQ (Dec. 1, 2020, 7:15 AM), <https://www.nasdaq.com/press-release/nasdaq-to-advance-diversity-through-new-proposed-listing-requirements-2020-12-01>. As an example on the educational side, Harvard University Professor George Serafeim aims to quantify costs of discrimination or non-inclusion by, for instance, not having enough women on corporate board. See generally Saijel Kishan, *How Wrong Was Milton Friedman? Harvard Team Quantifies the Ways*, BLOOMBERG (Dec. 1, 2020, 5:00 AM), <https://www.bloomberg.com/news/articles/2020-12-01/how-wrong-was-milton-friedman-harvard-team-quantifies-the-ways>. Legal solutions seem to be rife with built-in limits and conservative principles. See, e.g., Mark Joseph Stern, *Prominent Anti-Trump Attorney Asks the Supreme Court to Let Companies off the Hook for Child Slavery*, SLATE (Dec. 1, 2020, 5:52 PM), <https://slate.com/news-and-politics/2020/12/neal-katyal-supreme-court-nestle-cargill-child-slavery.html> (“Neal Katyal's legal theory on behalf of Nestle and Cargill might be too extreme even for this ultraconservative court.”).

¹²¹ See, e.g., David Lauter, *Failure to Bridge Divides of Age, Race Doomed Affirmative Action Proposition*, L.A. TIMES (Nov. 24, 2020, 5:00 AM), <https://www.latimes.com/politics/story/2020-11-24/age-race-divides-doomed-affirmative-action-proposition>. More recently, a Chinese American-led coalition ousted several members of the liberal San Francisco school board, partly over concerns that a lottery system installed at prestigious Lowell High School adversely affected the admissions chances of Asian children. See Thomas Fuller, *In Landslide, San Francisco Forces Out 3 Board of Education Members*, N.Y. TIMES (Feb. 16, 2022), https://www.nytimes.com/2022/02/16/us/san-francisco-school-board-recall.html?campaign_id=37&emc=edit_rr_20220219&instance_id=53687&nl=race%2Frelated®i_id=94728433&segment_id=83312&te=1&user_id=4e1f4b70bbf3097dfc752b3abde66d92.

¹²² Indeed, while California failed to pass affirmative action reinstatement, its flagship system, the University of California, has decided to no longer require SATs or ACTs. See Scott Jaschik, *No More SAT or ACT at U of California*, INSIDE HIGHER ED (May 17, 2020), <https://www.insidehighered.com/quicktakes/2021/05/17/no-more-sat-or-act-u-california>.

¹²³ See *id.*

¹²⁴ See Darrell Lovell & Daniel Mallinson, *How Test-Optional College Admissions Expanded during the COVID-19 Pandemic*, URBAN INSTITUTE (Dec. 16, 2021), <https://www.urban.org/research/publication/how-test-optional-college-admissions-expanded-during-covid-19-pandemic>.

or Asian-bashing, people would tell me; and anyway, [B]lack folks needed a chance to let off a little steam once in a while”¹²⁵ Still, this frustration need not be a serious obstacle to cooperation between outsiders, assuming a commitment by all sides to effective communication and trust. Indeed, viewing such occasional slipups as blowing off steam—a product of momentary frustration, an unfailingly human response—properly contextualizes what could otherwise unfairly be magnified into a racial division between well-meaning, but ultimately fallible, partners. As Obama recognized, the proper concern should not be about the occasional tiff, but “the distance between our talk and our action,”¹²⁶ echoing Yamamoto’s warning that merely symbolic solidarity rhetoric will ultimately fall short without true changes toward meaningful cooperation that require hard work, humility, resilience, and trust on both sides.

Finally, in the current racially and politically charged climate, issues regarding race seem to trigger particularly strong reactions among both politicians and the public. Opining on the recent schism over the teaching of critical race theory, sociologist Monita Mungo writes, “Americans have been conditioned to take sides (and offense) immediately when it comes to issues of race. The mere mention of the word ‘race’ creates a framework of [B]lack-versus-white, and, like polarized magnets, people jump to their respective sides without critically thinking about how race is being used in our society.”¹²⁷ Given Bell’s theoretical and Obama’s experiential insights, Mungo’s observations are unsurprising. Resistance to change is difficult, and racial issues are polarizing. Instead of giving in to colorblindness, solidarity’s soldiers might choose to calmly face the opposition head on, by calling out the critics where they are wrong, conceding weaknesses in one’s own arguments, and anticipating and refuting counterresponses as they arise. The work of coalition-building is a long game; giving in to short-sighted divisiveness, while tempting, must be resisted.

CONCLUSION

Like all things, the relationship between the Asian American and Black communities in the United States is complex.¹²⁸

¹²⁵ OBAMA, *supra* note 67, at 307.

¹²⁶ *Id.*

¹²⁷ Monita Mungo, *The Real Problem with Critical Race Theory*, THE HILL (May 26, 2021), <https://thehill.com/opinion/civil-rights/555351-the-real-problem-with-critical-race-theory>. This polarization extends beyond race to include LGBT issues, freedom of speech, and the debate around “wokeness” and the current “cancel culture.” See, e.g., Thomas B. Edsall, *Is Wokeness Kryptonite for Democrats?*, N.Y. TIMES (May 26, 2021), <https://www.nytimes.com/2021/05/26/opinion/democrats-republicans-wokeness-cancel-culture.html?action=click&module=Opinion&pgtype=Homepage>.

¹²⁸ Indeed, this statement itself is an oversimplification for in truth, like Americans in general, minoritized communities are themselves diverse communities, each with their own internal conflicts and challenges, exacerbated by differences in class and education. See, e.g., Derek S. Hyra, *Racial Uplift? Intra-Racial Class Conflict and the Economic Revitalization of Harlem and Bronzeville*, 5 CITY & CMTY. 71 (Mar. 1, 2006), <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1540-6040.2006.00156.x>; see also Nate Cohn, *How Educational Differences Are Widening America’s Political Rift*, N.Y. TIMES (Oct. 8, 2021),

In their encounter with George Floyd, the Minneapolis officers—including veteran Thao—would have benefited from the kind of training Jennifer Eberhardt has done to not only make the police aware of their implicit biases, but to encourage them to use objective criteria to determine how to engage with a suspect.

As Eberhardt explains,

“In Oakland, I and a number of my colleagues were able to help the police department to reduce the number of stops they were making of people who weren’t committing any serious crimes. That was the goal. And we did this by pushing officers to ask themselves a simple question before each stop they made: Is this stop intelligence-led? Yes or no. What they meant by intelligence-led was, did I have prior information to tie this specific person to a particular crime? Just adding that question to the form that officers complete during a stop slows them down. They’re thinking, ‘*Why am I considering pulling this person over?*’ We’re trying to push them to use the objective standards that they have and tie people to specific crimes rather than ‘*Do I have an intuition about this person?*’ It was kind of a change in mindset at the moment of action.”¹²⁹

As America continues to buckle under both a sea of hate crime attacks—most recently against Asian Americans (notwithstanding a dearth of hate crime charges)¹³⁰—and the death of Blacks at the hands of police (RIP, George Floyd) and

<https://www.nytimes.com/2021/09/08/us/politics/how-college-graduates-vote.html> (“As they’ve grown in numbers, college graduates have instilled increasingly liberal cultural norms while gaining the power to nudge the Democratic Party to the left. Partly as a result, large portions of the party’s traditional working-class base have defected to the Republicans. . . . College graduates attribute racial inequality, crime and poverty to complex structural and systemic problems, while voters without a degree tend to focus on individualist and parochial explanations. It is easier for college graduates, with their higher levels of affluence, to vote on their values, not simply on economic self-interest. They are likelier to have high levels of social trust and to be open to new experiences. They are less likely to believe in God.”).

¹²⁹ Belinda Luscombe, *She Wrote a Book About Bias. Here’s Why She’s Not Convinced Defunding the Police is the Answer*, TIME (June 8, 2020, 11:48 AM), https://time.com/5849172/police-racial-bias/?utm_source=newsletter&utm_medium=email&utm_campaign=the-brief&utm_content=20200609&xid=newsletter-brief (interview explaining Eberhardt’s work with police). As featured on the CBS program, “60 Minutes,” the Austin, Texas, police department has begun modifying their approach to emergency response services by sending mental health experts instead of traditional police when the situation calls for it. *See also* Scott Pelley, *Reimagining Police Departments with Safety and Justice in Mind*, CBS NEWS (Nov. 21, 2021, 6:56 PM), <https://www.cbsnews.com/news/police-reform-austin-texas-60-minutes-2021-11-21/>.

¹³⁰ Nicole Hong & Jonah E. Bromwich, *Asian-Americans Are Being Attacked. Why Are Hate Crime Charges So Rare?*, N.Y. TIMES (Mar. 18, 2021), <https://www.nytimes.com/2021/03/18/nyregion/asian-hate-crimes.html>; Chris Boyette, Jamiel Lynch, Michelle Krupa & Jennifer Henderson, *Arrest Made in a Shooting at Korean-Owned Hair Salon that Police Said May Have Been Motivated by Hate*, CNN (May 17, 2022, 5:23 PM), <https://www.cnn.com/2022/05/17/us/dallas-hair-salon-shooting-arrest/index.html> (“The arrest comes amid a steady surge of reported hate crimes against Asian Americans and as more details emerge about a deadly weekend attack at a New York supermarket that authorities say is the latest in a series of hate-motivated mass shootings in the United States.”). Sadly, sometimes intra-racial conflict leads to Asian-on-Asian violence. *See, e.g.*, Amy Taxin, Ken Ritter & Deepa Bharath, *Authorities: Hate Against Taiwanese Led to Church Attack*, ASSOCIATED PRESS (May 17, 2022), <https://apnews.com/article/religion-shootings-californiaw-1be9931f502664693afbdaa3f1cf6c57> (“A [Taiwanese-American] gunman motivated by political hatred

vigilantes (RIP, Ahmaud Arbery)¹³¹—now is the time for solidarity, not separation.¹³² Instead of attacking affirmative action, escalating misunderstandings between shop owners and patrons, and standing idly by while fellow officers brutalize others, Asian Americans must put aside their ancient prejudices, modern misconceptions, and personal hurts by embracing and empowering our Black neighbors.¹³³ Working for another’s flourishing dismantles the master narrative and lifts all boats in the process. Eric Yamamoto’s ambitious call to interracial justice—tempered with a dose of interest convergence realism from Derrick Bell—make coalition building a worthwhile project, even if initial steps toward solidarity may be both tentative and tenuous.¹³⁴

* * *

In December 1982, Black Congressman Mervyn M. Dymally introduced two bills supporting reparations for Japanese Americans interned during World War II.¹³⁵ It’s time for Asian Americans to return the favor, and some have begun that advocacy.¹³⁶ In February 2021, Kathy Masaoka of the Japanese American-led

against Taiwan chained shut the doors of a California church and hid firebombs inside before shooting at a gathering of mostly elderly Taiwanese parishioners, killing a man who tackled him and possibly saved dozens of lives, authorities said Monday.”).

¹³¹ See generally Romero, *supra* note 107 (analyzing Arbery’s killing).

¹³² See, e.g., Jennifer Lee & Tiffany Huang, *Why the Trope of Black-Asian Conflict in the Face of Anti-Asian Violence Dismisses Solidarity*, BROOKINGS (Mar. 11, 2021), <https://www.brookings.edu/blog/how-we-rise/2021/03/11/why-the-trope-of-black-asian-conflict-in-the-face-of-anti-asian-violence-dismisses-solidarity/> (“These senseless acts of anti-Asian violence have finally garnered the national attention they deserve, but they have also invoked anti-Black sentiment and reignited the trope of Black-Asian conflict. Because some of the video-taped perpetrators appear to have been Black, some observers immediately reduced anti-Asian violence to Black-Asian conflict. This is not the first time that the trope has been weaponized. Black-Asian conflict—and Black-Korean conflict more specifically—became the popular frame of the LA riots in 1992.”).

¹³³ Interestingly, the Associated Press recently reported that, of all racial groups, Blacks and Asian Americans are the biggest contributors to civil rights causes. Halleluya Hadero, *Asian, Black Americans More Likely to Give to Racial Justice*, ASSOCIATED PRESS (Aug. 25, 2021), <https://apnews.com/article/business-race-and-ethnicity-racial-injustice-philanthropy-b5e6e871d7e3419c43ef7aef46b7eb97>.

¹³⁴ As of this writing, it appears much good work is being done to raise awareness of concrete ways Asian communities can support anti-Black racism through the internet and social media. See *Asian Americans for Black Lives*, ASIAN AM. ADVOC. FUND, <https://www.asianamericanadvocacyfund.org/asians-for-black-lives> (including numerous links to readings, resources, and action steps). As with all solidarity projects, this work requires humility, resilience, patience, and indefatigability. See Scot Nakagawa, *On Solidarity*, “Centering Anti-Blackness,” and *Asian Americans*, RACE FILES (Aug. 21, 2015), <https://www.racefiles.com/2015/08/21/on-solidarity-centering-anti-blackness-and-asian-americans/> (“Harmony is our goal. Not amalgamation or appropriation or imitation. We need to use the political space and cultural opportunity that the Movement for Black Lives has created for us and use it for this purpose, picking up the diverse threads of our lives and weaving them into a powerful, prophetic cry for justice. This after all, is the true self-interest we all share in the cause of Black liberation. Black liberation has always has [sic] been the teacher, the prophet, the true hope for the liberation of us all.”).

¹³⁵ Greg Robinson, *The Great Unknown and the Unknown Great: Mervyn M. Dymally, Former Congressional Black Caucus Chair, a Vital Redress Advocate*, NICHIBEI (June 14, 2012), <https://www.nichibeio.org/2012/06/the-great-unknown-and-the-unknown-great-mervyn-m-dymally-former-congressional-black-caucus-chair-a-vital-redress-advocate/>.

¹³⁶ See Mari Hayman, *Japanese American Activists Support Black Reparations to Heal Wounds Past and Present*, HUFFINGTON POST, https://www.huffpost.com/entry/japanese-american-activists-support-black-reparations_n_607f2d09e4b03c18bc2a6ac9 (last visited Sept. 21, 2022); see also Josie Huang, *Japanese*

organizations Nikkei for Civil Rights & Redress and Nikkei Progressives, penned a letter supporting House Bill HR 40, which creates a Congressional committee to study and develop reparations proposals for Blacks because of America's long history of slavery.¹³⁷ Apart from extolling the merits of the bill, Masaoka and her colleagues gratefully acknowledged the support of Black leaders—from Dymally to Ron Dellums, from Maxine Waters to the Reverend Jesse Jackson—all of whom believed in the cause of reparations for the unjustly incarcerated Japanese Americans.¹³⁸ It is only with a multiracial coalition of progressive activists that interracial healing is possible. It is only through this concerted, pluralistic, and resilient effort that America moves toward fulfilling its promise of a more egalitarian society for all.

American Activists Demand Reparations for Black Americans, LAIST (July 23, 2021, 10:21 AM), <https://laist.com/news/japanese-american-activists-call-for-reparations-for-black-americans-hr-40>. As with many progressive initiatives, the idea of reparations for Black Americans is not without its detractors. *See, e.g.*, David Frum, *The Elusive Specificity of Reparations*, THE ATLANTIC (June 6, 2014), <https://www.theatlantic.com/business/archive/2014/06/the-elusive-specificity-of-reparations/372255/>.

¹³⁷ Letter from Kathy Masaoka, Co-Chair, Nikkei for C.R. & Redress Comm., to Chairman, Ranking Member, and Members of Comm. (Feb. 17, 2021), <https://www.congress.gov/117/meeting/house/111198/witnesses/HHRG-117-JU10-Wstate-MasaokaK-20210217.pdf>.

¹³⁸ “We have to acknowledge the generous support of many Black groups and individuals who supported us in our campaign for redress and reparations - like Congressman Mervyn Dymally who authored a Japanese American redress bill in 1982; Rep. Ron Dellums who spoke in support of the bill; and the Black Congressional Caucus, which included people like Augustus Hawkins, Yvonne Braithwaite Burke, and consistently endorsed legislation for Japanese American redress and reparations. We also owe our thanks to then Assemblywoman Maxine Waters and the Rev. Jesse Jackson, who educated farmers and factory workers in the middle of America about the history of the incarceration of Japanese Americans during his presidential campaign in 1984 and 1988.” *Id.*