
ASIAN AMERICANS, DOG WHISTLES, AND THE PSYCHOLOGICAL WAGES OF “HONORARY” WHITENESS[†]

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During the affirmative action wars of the 1990s, white conservatives seeking to kill affirmative action adopted Asian Americans as “racial mascots.”¹ These conservatives were not interested in advancing the interests of Asian Americans or Asian American communities but instead cynically deployed the argument that affirmative action hurts Asian Americans to shield themselves from charges of racism.²

Today’s affirmative action wars, led by conservative activist Edward Blum, feature a similar dynamic. After his earlier efforts to kill affirmative action, with a young white woman as plaintiff, failed,³ he shifted tactics and adopted Asian Americans as “racial mascots”⁴ and made them the (anonymous) faces of his new round of lawsuits, two of which are before the Supreme Court in its 2022 term.⁵

The notion that race-conscious affirmative action constitutes discrimination against Asian Americans is made possible in part by the conflation or twinning

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¹ See Sumi Cho, A Theory of Racial Mascotting, Remarks at the First Annual Asian Pacific American Law Professors Conference (Oct. 14, 1994) (discussing how conservatives relegate Asian Americans to “racial mascot” role in contemporary political battles).

² See DANA Y. TAKAGI, THE RETREAT FROM RACE: ASIAN-AMERICAN ADMISSIONS AND RACIAL POLITICS 114-18 (1993).

³ See *Fisher v. Univ. of Tex. (Fisher I)*, 570 U.S. 297 (2013); *Fisher v. Univ. of Tex. (Fisher II)*, 579 U.S. 365 (2016).

⁴ Nothing in his previous history of activism shows that Blum has ever cared about seeking justice or fair treatment for Asian Americans.

⁵ See *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll. (SFFA I)*, 142 S. Ct. 895 (2022) (granting certiorari); *Students for Fair Admissions v. Univ. of N.C. (SFFA II)*, 142 S. Ct. 896 (2022) (granting certiorari).

of “negative action against Asian Americans”⁶ and race-conscious affirmative action.⁷ Vinay Harpalani’s account of how this occurs and how it has been utilized by Students for Fair Admissions (“SFFA”) is correct and powerful, and though he, with Jonathan Feingold, have presented these points in amicus briefs filed in both SFFA cases,⁸ these points are likely to fall on the deaf ears of the most dangerous branch’s ascendant conservative supermajority.

Many Court-watchers, including Harpalani, believe that the Court will use these cases to end affirmative action, at least as to the consideration of race for admission.⁹ However, it will not end other kinds of affirmative action that pervade the admissions process. It will leave intact affirmative action for legacies, athletes, and children of donors; it will leave intact affirmative action based on many other aspects of diversity, including geographic diversity. But after the Court acts as it likely will to kill affirmative action as to race, universities will be able to consider any aspect of an applicant other than the applicant’s race, advancing a certain version of what Chief Justice John Roberts expressed simplistically in *Parents Involved in Community Schools v. Seattle School District No. 1*,¹⁰ that “[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”¹¹

Yet, despite the inevitability of this outcome, Harpalani calls on Asian Americans to “emphatically support affirmative action.”¹² By certain measures, it might be said that Asian Americans already emphatically support affirmative action: seventy percent of Asian Americans support it and Asian American support for affirmative action has only been increasing since 2016.¹³ But despite the overwhelming support for affirmative action in the Asian American community, one might wonder whether such support matters at this juncture, given what may be a foregone conclusion before the Court.

⁶ See Jerry Kang, *Negative Action Against Asian Americans: The Internal Instability of Dworkin’s Defense of Affirmative Action*, 31 HARV. C.R.-C.L. L. REV. 1, 39 (1996) (discussing negative action directed against Asian Americans stemming from their being regarded as “unfair competitors” and representing the “model minority”).

⁷ See Vinay Harpalani, *Asian Americans, Racial Stereotypes, and Elite University Admissions*, 102 B.U. L. REV. 233, 260-66, 284-85 (2022).

⁸ See generally Brief for Legal Scholars Defending Race-Conscious Admissions as Amici Curiae in Support of Respondents, *SFFA I*, 142 S. Ct. 895 (Aug. 2022) (No. 20-1199), *SFFA II*, 142 S. Ct. 896 (Aug. 2022) (No. 21-707).

⁹ See Harpalani, *supra* note 7, at 238 (citing Meera E. Deo, *The End of Affirmative Action*, 100 N.C. L. REV. 237, 239 (2021)).

¹⁰ 551 U.S. 701 (2007).

¹¹ *Id.* at 748.

¹² Harpalani, *supra* note 7, at 240.

¹³ *Id.* at 324 & n.513 (citing Jennifer Lee, Janelle Wong & Karthick Ramakrishnan, *Asian Americans Support for Affirmative Action Increased Since 2016*, AAPI DATA: DATA BITS (Feb. 4, 2021), <http://aapidata.com/blog/affirmative-action-increase/> [https://perma.cc/4MHZ-YNKL]).

Harpalani appreciates the difference between the practical impact as it relates to these cases and the practical and symbolic impacts as they relate to why emphatic expressed support for affirmative action by Asian Americans continues to matter. He understands that rather than thinking just about the outcome in these cases, “Asian Americans must take initiative to raise their own race-consciousness and understand their position in the racial structure and ideology of America.”¹⁴ He is right, of course. If we fail to do so, Asian Americans will have accepted the psychological wages of (honorary) whiteness instead of disrupting the racial status quo to work toward racial equality for Asian Americans and for other racial minorities. But it’s not just about race. America’s racial project is part and parcel of an economic class system that relies upon fostering racial division.

W.E.B. Du Bois offered an explanation for why poor white laborers, whose class position should have led them to align with Black laborers, instead supported an economic system that subordinated all workers, regardless of race and including themselves:

It must be remembered that the white group of laborers, while they received a low wage, were compensated in part by a sort of public and psychological wage. . . . On the other hand, in the same way, the Negro was subject to public insult; . . . and was compelled almost continuously to submit to various badges of inferiority. The result of this was that the wages of both classes could be kept low, the whites fearing to be supplanted by Negro labor, and the Negroes always being threatened by the substitution of white labor. . . . White labor saw in every advance of Negroes a threat to their racial prerogatives¹⁵

History shows that white laborers, when faced with a choice, accepted the psychological wages of whiteness, and in doing so participated in their own class subordination.¹⁶

Transposed to Asian Americans, will history show that we accepted what the dominant society offered us—differential privilege above Black, Latinx, and Indigenous people—despite our continued treatment as perpetual foreigners with limited potential for advancement despite our so-called objective indicia of excellence?¹⁷ Or will we be remembered as recognizing the American racial project for what it is—something that subordinates us alongside others marked by difference—and then working in coalition with others to dismantle the racist superstructure?

¹⁴ *Id.* at 308.

¹⁵ W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA, 1860-1880*, at 700-03 (Free Press 1998) (1935).

¹⁶ Robert S. Chang, *The Great White Hope: Social Control and the Psychological Wages of Whiteness*, 16 *LAW CULTURE & HUMANS* 379, 385 (2020).

¹⁷ See Harpalani, *supra* note 7, at 314-15 (discussing employment discrimination against Asian Americans and resulting underemployment).

From Du Bois, we know that white laborers accepted the psychological wages of whiteness.¹⁸ From Noel Ignatiev and Theodore Allen, we know that Irish laborers, who were at first excluded from whiteness, participated in anti-Black racism and gained whiteness.¹⁹ If Asian Americans are to take another course, we must reject the psychological wages that come with “honorary” whiteness. Instead of pawns that are used, we must effectuate our agency.

Stated differently, Asian Americans can choose to accept “honorary” whiteness, self-defeating as it may be, or we can choose to learn how we fit in America’s racial topography through our history as well as the history of other racial minorities. We must not succumb to the “dog whistles” that animate our current politics of race.

Dog whistles are facially race-neutral tropes or code words that speak to and may activate a listener’s explicit and/or implicit biases.²⁰ Though the critique of dog whistle politics often focuses on white people, we must also think about how these same dog whistles may be activating anti-Black racism among other racial groups. In addition, “fair admissions” may be a dog whistle that is intended to reach Asian Americans and to pull this group into the conservative fold.

Harpalani reminds us that we have a choice as to how we participate in America’s racial project.²¹ He would have Asian Americans chart a different path in order to not be complicit in our own subordination and the subordination of others.²² This different path recognizes the agency that Asian Americans have. In pushing this path, Harpalani follows on the words and work of Mari Matsuda, who proclaimed boldly at the 1990 Asian Law Caucus dinner that “[w]e will not be used.”²³

But what will it take for us not to be used?

Harpalani provides a roadmap that includes introspection, education, and action.²⁴ We must learn our own histories as well as the histories of others. And we must show up for each other. Harpalani reminds us that SFFA’s lawsuits “afford the opportunity to raise race-consciousness among Asian Americans and to educate all groups about American racial ideology and hierarchy” and that engaging in “[t]his process can help build robust coalitions among people of color . . . [to] turn SFFA’s racial project on its head.”²⁵

¹⁸ See DU BOIS, *supra* note 15, at 700-03.

¹⁹ See generally NOEL IGNATIEV, *HOW THE IRISH BECAME WHITE* (1995); THEODORE W. ALLEN, *THE INVENTION OF THE WHITE RACE: RACIAL OPPRESSION AND SOCIAL CONTROL* (1994).

²⁰ See generally IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* (2014).

²¹ See Harpalani, *supra* note 7, at 326.

²² See *id.*

²³ Mari Matsuda, *We Will Not Be Used*, 1 UCLA ASIAN AM. PAC. IS. L.J. 79 (1993) (speech delivered at the April 1990 Asian Law Caucus annual dinner).

²⁴ See Harpalani, *supra* note 7, at 320-23.

²⁵ *Id.* at 326.