



THE

HARVARD

SYLLABUS

**A GUIDE TO THE
AFFIRMATIVE ACTION
DEBATE AT HARVARD**

**created by the students of
Sociology of Asian America/ns, Fall 2019**

**under the instruction of
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OUR GOALS

Through this syllabus, we aim to look at affirmative action and its interaction with Harvard, as brought to light by the SFFA vs. Harvard court case. While Asian Americans are oftentimes used as racial mascots in the context of affirmative action, this syllabus aims to demonstrate the different perspectives and approaches to Asian Americans' positioning in this process. We bring in amicus briefs from AAPI organizations, previous court cases, and various peer-reviewed sources to show that this topic is multifaceted and necessary to bring up in academic settings. By introducing each theme and providing further readings, we aim to provide a comprehensive look at the various dimensions of affirmative action. Furthermore, through the list of news articles and court cases, we provide background knowledge that is integral in introducing this topic. Regardless of your previous experience with affirmative action and its intersection with Harvard and Asian Americans, we hope that this syllabus is a resource for you to engage with the material in a constructive, layered, and productive way.

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HISTORY OF AFFIRMATIVE ACTION

“Affirmative action” is a set of policies taken by institutions to increase representation of minorities in certain areas, particularly in education and employment, in order to correct for historical exclusionary practices. Approximately a decade after the Civil Rights movements of the 1960s, the Department of Labor issued “Revised Order No. 4” which implemented Executive Order No. 11246, mandating the implementation of affirmative action in institutions with 50 or more employees and \$50,000 or more of government funding. There were almost immediate improvements in the gender gap in higher education; in current times, while there is still much effort to decrease the gender gaps in STEM and doctoral programs, women are no longer the primary focus group of affirmative action. Rather, the focus has shifted to race and privilege. Generally, affirmative action benefits people of color, or people that are not white or of European descent, such as Asians, Black, Latinx, and Native American peoples. However, the treatment of Asian Americans in the admissions process in higher education has gradually shifted from positive to negative action—many claim admission discrimination towards Asian Americans. Indeed, studies find that Asian Americans on average have higher test scores and GPAs than their minority counterparts. As such, opponents of affirmative action criticize the policy for destroying meritocracy, citing instances where high-academically-achieving Asian Americans were rejected for admission to elite institutions in favor of other students of color with less stellar marks. Such arguments were particularly prominent in the recent SFFA trial, spearheaded by Edward Blum, in an effort to dismantle the policy in higher education. Supporters of affirmative action, however, argue that using the cases of high-achieving Asian Americans is exploitative and also detrimental in treating all Asians as a monolithic “model minority.” Ultimately, the Court ruled in favor of Harvard in the SFFA trial (a ruling which SFFA immediately appealed), but has unfortunately left in its wake growing rifts both within the Asian American community, as well as between Asian Americans and other people of color.

Lyndon B. Johnson, who would later sign Executive Order No. 11246, talks with Martin Luther King Jr. about civil rights issues.

Source: CNS/Yoichi Okamoto, courtesy LBJ Library



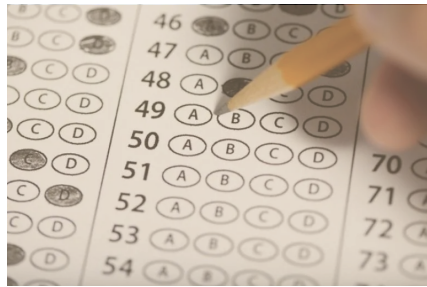
AFFIRMATIVE ACTION IN UNIVERSITY OF CALIFORNIA SCHOOLS

The role of the University of California in upholding and dismantling affirmative action is intriguing given that California is home to the largest proportion of Asian Americans. The landmark court case that set a precedent for the use of affirmative action in college admissions, *University of California v. Bakke* arose when a white man sued the university on the grounds that the sixteen spots that UC explicitly set aside for four minority groups was unconstitutionally discriminatory. However, the court upheld affirmative action with a few caveats: explicit numerical quotas were not allowed, and the diversity of an individual must be given weight over singular factors such as racial diversity. As of the 1960s, Asian Americans were still considered minorities in affirmative action policies for UC schools. However, as the effects of the liberalization of 1960s immigration laws played out in the 70s and 80s, the percentage of Asian American students at elite universities increased drastically. This statistical increase led to an ultimate conflation in statistical and ideological representation of Asian Americans, further compounded by an obfuscation of inter-group diversity by the model minority myth. In 1984, Asian Americans were officially excluded from becoming beneficiaries of affirmative action policies at UC schools. As instrumental as the University of California was in confirming the legal validity of affirmative action in *Bakke*, it dismantled its affirmative action program starting with the class of 2002, a decision imposed by the overseeing Board of Regents. Californians passed Proposition 209 in 1996, which prevented the consideration of race in employment and other spheres. Immediately, there was a drop in the proportion of Black and Latinx students in the incoming classes, with relatively no change in the percentage of Asian Americans. While some scholars argue that the dismantling of affirmative action in UC schools was a positive phenomenon because it lessened the racial performance gap, others point out the worrying effects of the decline of the proportion of underrepresented minorities in each matriculating class and the ideological and sociological implications of getting rid of affirmative action policy.

FURTHER READING

- Bracha, A., Cohen, A., Conell-Price, L. (2018). "The heterogeneous effect of affirmative action on performance." *Journal of Economic Behavior and Organization*, 158(1), 173-218.
- Chin, M. (2016). "Asian Americans, Bamboo Ceilings, and Affirmative Action." *Contexts*, 15(1), 73-75.
- Hallett, R., Crutchfield, R. (1972). "Revised order no. 4 - Issues raised". *ASHE-ERIC Higher Education Report*, 1(7).
- Heriot, G. (2001). "University of California Admissions Under Proposition 209: Unheralded Gains Face an Uncertain Future." *NEXUS: A Journal of Opinion*, 6(1), 163-188.
- Lee, S. (2008). "The De-Minoritization of Asian Americans: A Historical Examination of the Representations of Asian Americans in Affirmative Action Admissions Policies at the University of California". *Asian American Law Journal*, 15(1), 129-146.
- Park, J., Liu, A. (2014). "Interest Convergence or Divergence?: A Critical Race Analysis of Asian Americans, Meritocracy, and Critical Mass in the Affirmative Action Debate." *The Journal of Higher Education*, 85(1), 36-64.
- Takagi, D. (1990). "From Discrimination to Affirmative Action: Facts in the Asian American Admissions Controversy." *Social Problems*, 37(4), 578-592.

STANDARDIZED TESTING

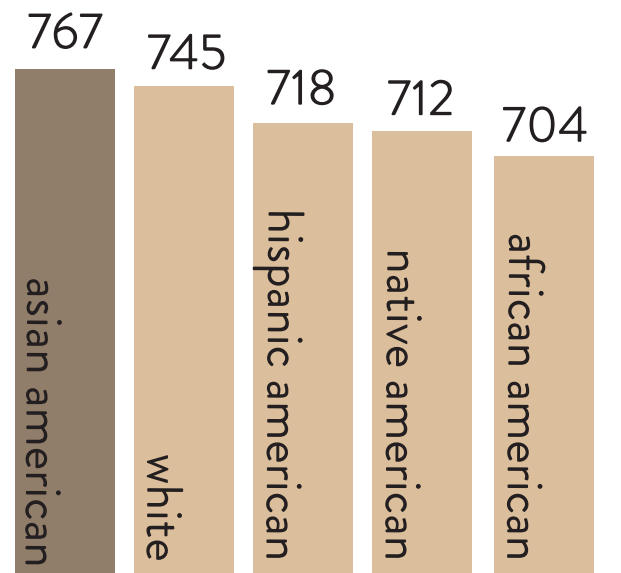


A hotly-contested topic in the SFFA trial has been an apparent statistical disparity between Asian Americans' test scores and their likelihood of being admitted to selective institutions. Although aggregate data do suggest Asian Americans score higher than other racial groups on standardized tests such as the SAT, these statistics can often be misleading. While SFFA has argued that this discrepancy is evidence of anti-Asian discrimination, Harvard has argued that other factors in the holistic admissions process contribute to this difference. Indeed, a closer inspection of the data reveals this pattern does not hold for specific ethnic groups among Asian Americans such as Hmong or Cambodian people. In addition, some scholars have questioned the fairness of the test itself, arguing that certain test questions or even entire sections are racially biased (Freedle 2003, Kidder and Rosner 2002, Santelices and Wilson 2010). Given these findings, the focus on raw test scores in the current debate over the legitimacy of affirmative action may fail to account for the ways in which certain groups are structurally disadvantaged by using standardized testing as a metric with which to evaluate students.

Based on admissions data beginning with the Class of 2000 and ending with the Class of 2017

Source: *President and Fellows of Harvard College*

HARVARD STUDENTS' AVERAGE SAT SCORES



FURTHER READING

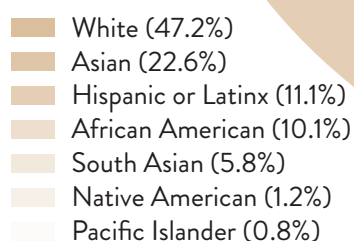
- Freedle, R. O. (2003). "Correcting the SAT's ethnic and social-class bias: A Method for Reestimating SAT scores." *Harvard Educational Review*, 73(1), 1-43.
- Kidder, W. C., & Rosner, J. (2002). "How the SAT Creates Built-in-Headwinds: An Educational and Legal Analysis of Disparate Impact." *Santa Clara Law Review*, 43(1), 131-212.
- Santelices, M., & Wilson, M. (2010). "Unfair Treatment? The Case of Freedle, the SAT, and the Standardization Approach to Differential Item Functioning." *Harvard Educational Review*, 80(1), 106-133.

THE NEED FOR RACIALLY DIVERSE COLLEGE CAMPUSES

While this syllabus is focused on the intersection between affirmative action and Harvard in the aftermath of the SFFA vs. Harvard court case, we thought it important to clarify the need for affirmative action itself on college campuses. Colleges are meant to be places for students to learn how to engage with the broader society — a society that is becoming increasingly diverse over time. Through race-conscious admissions processes, colleges are able to ensure that they have diverse student bodies that promote the representation of a vast array of life experiences. By being exposed to their racially diverse peers, students are able to challenge previous misconceptions and critically engage with each other.

In the discussion about race-based affirmative action, critics often argue that a socioeconomic-based affirmative action plan would be a better way to promote diversity on campus and give economically disadvantaged groups in society a leg up. However, there are still negative effects that a socioeconomic-based affirmative action plan would have on African American students applying to college. By analyzing unpublished results from the College Board, Slater (1995) shows that under a strictly socioeconomic-based affirmative action plan, almost all college admissions at America's highest-ranked universities would be nonblack. This is because white students from low-income families still score higher than Blacks from low-income families. Through examples like these, we can see the need for colleges to specifically encourage racial diversity.

Based on interviews of university admissions officials at three selective flagship campuses concerning their perspectives on racial diversity discourse in the climate of their respective admissions offices, the rise of diversity consensus in universities (traditionally most research has been focused on private corporations) has been confirmed. The rise of organizations largely embracing race-based affirmative action and other diversity policies are central to the “diversity consensus.” In light of skepticism towards the depth of such a consensus, Lipson (2007) assesses the role of affirmative action as a managerial tool for admissions departments.



**ETHNICITIES OF
HARVARD'S CLASS OF 2023**

Source: *The Harvard Crimson*

FURTHER READING

- Lipson, D. (2007). “Embracing Diversity: The Institutionalization of Affirmative Action as Diversity Management at UC-Berkeley, UT-Austin, and UW-Madison.” *Law & Social Inquiry*, 32(4), 985-1026.
- Pike, G. R., Kuh, G. D., & Gonyea, R. M. (2007). “Evaluating the Rationale for Affirmative Action in College Admissions: Direct and Indirect Relationships between Campus Diversity and Gains in Understanding Diverse Groups.” *Journal of College Student Development*, 48(2), 166-182.
- Slater, R. (1995). “Why Socioeconomic Affirmative-Action in College Admissions Works Against African-Americans.” *Journal Of Blacks In Higher Education*, (8), 57-59.

IMPLICIT BIAS

Harvard was on trial for intentional discrimination against Asian Americans, and Judge Burroughs found none. This finding, however, does not preclude the possibility that Harvard (or other actors in the admissions process) discriminated against Asian Americans because of implicit bias, also known as unconscious bias. In fact, Judge Burroughs's ruling acknowledged that admissions officers' unintentional biases might have affected their personal evaluations of Asian Americans, and she recommended implicit bias trainings as a solution that would help to secure fair evaluations of Asian Americans. During the trial, the possibility of implicit bias was both a strategic defense that Harvard's lawyers levied against the accusations and a lens through which unequal treatment in education could be examined and critiqued.



Allison D. Burroughs,
United States District
Judge who ruled on the
SFFA v. Harvard case.

Source: CNS/Yoichi Okamoto,
courtesy LBJ Library

The sources we have chosen reveal how implicit racial bias affecting students' college prospects does not start in the admissions office, but instead permeates every stage of life. For instance, preschool teachers primed to look for unruly behavior watch Black students more closely than students of other races, and decisions about tracking students are distorted by implicit bias and lead to differential learning outcomes. In another consequential example, Gilliam et al. (2015) describe a school discipline system that unintentionally surveils Black and Latinx students disproportionately. Racialized assumptions of high capability can also harm students: for under-resourced Hmong American high school students, implicit bias in the form of the model minority myth has led to inadequate educational support. Implicit bias may affect student outcomes at educational stages from preschool to college admissions. Understanding this phenomenon illuminates the difficulties and possibilities inherent in any attempt to use college admissions as an equalizing force.

FURTHER READING

- Chiang, A., Fisher, J., Collins, W., & Ting, M. (2015). "(Mis)Labeled: The Challenge of Academic Capital Formation for Hmong American High School Students in an Urban Setting." *Journal of Southeast Asian American Education and Advancement*. 10 (1), 4.
- Gilliam, W., Maupin, A., Reyes, C., Accavitti, M. & Shic, F. (2016). "Do Early Educators' Implicit Biases Regarding Sex and Race Relate to Behavior Expectations and Recommendations of Preschool Expulsions and Suspensions?" *Yale Univ. Child Study Ctr.*

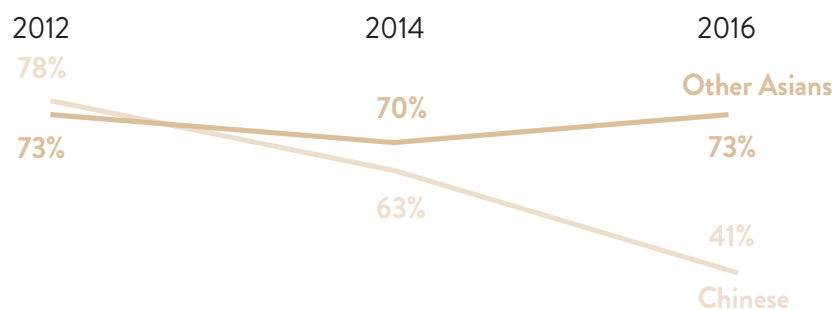
ESSENTIALIZING ASIAN AMERICA: ETHNIC HETEROGENEITY, DATA DISAGGREGATION, AND DIFFERING VIEWS ON AFFIRMATIVE ACTION

Mainstream media often essentializes Asian Americans into a single, monolithic group. Discussions of Asian America tend to focus on East Asians, pushing other Asian American ethnic groups such as Southeast Asians and Pacific Islanders to the margin. This centering of East Asian experiences papers over the diverse lived realities of Asian Americans across different ethnicities, masking the significant disparities in socioeconomic status, health outcomes, and educational experiences that Asian Americans face as well as their different histories and interactions with American imperialism and militarism.

Essentialism abounds in *SFFA v. Harvard* as well, with the plaintiffs taking the experiences of a select few upper-middle class Chinese Americans as representative of all of Asian America. This view ignores the ways in which affirmative action directly benefits applicants from many Asian American ethnic groups, especially ones that are not thought of as much when referring to Asian Americans. It also brushes aside the variety of opinions that Asian Americans have on affirmative action: as of 2016, 73% of non-Chinese Asians and 41% of Chinese support affirmative action. Recognizing the diversity of lived experiences and opinions of Asian Americans on affirmative action is an important first step in returning agency to Asian Americans and preventing their voices from being co-opted by white supremacist political agendas.

ASIAN AMERICAN SUPPORT FOR AFFIRMATIVE ACTION

Source: *National Asian American Survey*



FURTHER READING

- Bui, L. (2019). "A better life? Asian Americans and the necropolitics of higher education." Retrieved from <https://escholarship.org/content/qt7rg5b3h3/qt7rg5b3h3.pdf>
- Pang, V. O., Han, P. P., & Pang, J. M. (2011). "Asian American and Pacific Islander students: Equity and the achievement gap." *Educational Researcher*, 40(8), 378-389.
- Poon, O.A., Segoshi, M.S., Tang, L., Surla, K.L., Nguyen, C., & Squire, D.D. (2019). "Asian Americans, affirmative action, and the political economy of racism: A multidimensional model of raceclass frames." *Harvard Educational Review*, 89(2), 201-226.

UNDERSTANDING THE ROLE OF THE MODEL MINORITY MYTH AND EDWARD BLUM IN SFFA v. HARVARD

SFFA, despite purportedly suing Harvard in order to force the University to adopt race-neutral admissions, is an organization deeply intertwined with racial power structures. Indeed, Edward Blum, who is leading SFFA's lawsuit, is on the record saying he "needed Asian plaintiffs" to defeat race-conscious admissions in court after failing to do so with a white plaintiff in *Fisher v. Texas*. SFFA's strategy of weaponizing high-achieving Asian American plaintiffs can be understood through Claire Jean Kim's "racial triangulation theory," first put forward in her 1999 article. Racial triangulation theory refers to how Asian Americans are paradoxically framed as forever foreign, but also as hard-working, "model" minorities vis-a-vis Black Americans, who are framed as "problem" minorities. In the context of affirmative action debates, this means framing Black applicants as "undeserving" and Asian Americans as "victims" of race-conscious admissions. SFFA's lawsuit reframes the debate over affirmative action from white and Black applicants to "competition" between Black and Asian American applicants. Yet as Jonathan Feingold illuminates in his 2019 legal analysis, SFFA's deployment of the model minority myth in order to pit Black and Asian Harvard applicants against each other obscures how, as per SFFA's own legal brief, discrimination against Asian applicants in Harvard admissions is relative to white applicants — the "Asian penalty" benefits whites. Several scholars, including Feingold (2019) and Kim (2018), suggest that Blum's lawsuit combines the questions of affirmative action and the "Asian penalty" in favor of white applicants. Through this conflation, SFFA weaponizes the image of Asian Americans as hard-working, deserving model minorities to channel anger over the Asian penalty away from pro-white bias and toward affirmative action, as well as claiming Asian Americans' designation as a "minority" to shield SFFA's lawsuit from claims of furthering white power structures, as Kim (1999) argues in a more recent article.

Indeed, Blum's larger project is one of striking down all race-conscious civil rights legislation, and he was instrumental in striking down key parts of the Voting Rights Act of 1965 in the *Shelby County v. Holder* decision in 2013. This purported move toward race-neutrality, however, bolsters white supremacy, as Eduardo Bonilla-Silva (2015) argues in several articles, because "color-blindness" renders racism invisible and hampers race-conscious remedies to historical and structural discrimination. Kim, in her 2018 paper, shows how using Asian Americans in affirmative action lawsuits, dating back to *California v. Bakke*, obscures the economic and racial structures underlying anti-Black racism and the model minority myth. The myth's history, dating back to the 1960s, is rooted in selective immigration policies allowing only skilled immigrants from Asia to enter the U.S. (thus attracting the demographics necessary to create a "model" and highly-successful minority"), and using those highly-skilled immigrants to attack the civil rights movement. This weaponization of Asian Americans, dating back decades, is playing itself out again in SFFA's lawsuit.



Edward Blum, conservative legal strategist at the head of the Students For Fair Admissions organizational effort.

Source: YouTube

FURTHER READING

THEORETICAL BACKGROUND

Bonilla-Silva, E., Hughey, M., Embrick, D., & Doane, A. (2015). "The Structure of Racism in Color-Blind, "Post-Racial" America." *American Behavioral Scientist*, 59(11), 1358-1376.

Kim, C. (1999). "The Racial Triangulation of Asian Americans." *Politics & Society*, 27(1), 105-138.

APPLYING THE MODEL MINORITY MITH AND RACIAL TRIANGULATION

Feingold, J. (2019). "SFFA v. Harvard: How Affirmative Action Myths Mask White Bonus." *California Law Review*, 107(2), 707-735.

Kim, C. (2018). "Are Asians the New Blacks?" *Du Bois Review*, 15(2), 217-244.

Moses, M., Maeda, D., & Paguyo, C. (2019). "Racial Politics, Resentment, and Affirmative Action: Asian Americans as "Model" College Applicants." *The Journal of Higher Education*, 90(1), 1-26.

CRITICAL RACE THEORY

Poon, O., Segoshi, M., Tang, L., Surla, K., Nguyen, C., & Squire, D. (2019). "Asian Americans, Affirmative Action, and the Political Economy of Racism: A Multidimensional Model of Raceclass Frames." *Harvard Educational Review*, 89(2), 201-226, 330-331.

BACKGROUND ON EDWARD BLUM

Abumrad, J. (2016, June 28). "More Perfect: The Imperfect Plaintiffs." WNYC. Podcast retrieved from: <https://www.wnycstudios.org/podcasts/radiolabmoreperfect/episodes/imperfect-plaintiff>

Abumrad, J. (2017, December 7). "More Perfect: The Architect." WNYC. Podcast retrieved from: <https://www.wnycstudios.org/podcasts/radiolabmoreperfect/episodes/architect-edward-blum>

Hartocollis, A. (2017, November 19). "He Took On the Voting Rights Act and Won. Now He's Taking on Harvard." *The New York Times*. Retrieved from: <https://www.nytimes.com/>

Smith, M. (2012, February 23). "One Man Standing Against Race-Based Laws." *The New York Times*. Retrieved from: <https://www.nytimes.com/>

AMICUS BRIEFS AND THEIR IMPACT

This syllabus is being introduced in the wake of the SFFA vs. Harvard court case decision in which the judge ruled that the race-conscious admissions system for undergraduate students was constitutional. By dedicating a section of the syllabus to the role of amicus briefs, we aim to gain a deeper understanding of their influence and how they include the voices of non-litigants.

Amicus briefs are legal documents written and signed by non-litigants who still have a stake in the court case. These parties use the amicus brief to provide relevant and additional information or perspectives that would be useful for the court to consider. There have been studies showing that amicus briefs do indeed have an impact on the court's decision, although the degree to which it matters varies by case.

In SFFA v. Harvard, a case where the perspectives of students, especially pertinent student groups on Harvard's campus, matter. As such, we wanted our syllabus to reflect the primary source of an amicus brief signed and presented by Harvard cultural organizations. In addition, we have included sources that provide examples of amicus briefs in other situations.

HARVARD STUDENT GROUPS THAT FILED AMICUS BRIEFS

21 Colorful Crimson	Harvard Minority Association of Pre-Medical Students
Harvard Black Alumni Society	Harvard Phillips Brooks House Association
Association of Black Harvard Women	Harvard South Asian Association
Coalition for a Diverse Harvard	Harvard University Muslim Alumni
First Generation Harvard Alumni	Harvard Vietnamese Association
Fuerza Latina of Harvard	Harvard-Radcliffe Asian American Association
Harvard Asian American Alumni Alliance	Harvard-Radcliffe Asian American Women's Association
Harvard Asian American Brotherhood	Harvard-Radcliffe Black Students Association
Harvard Islamic Society	Harvard-Radcliffe Chinese Students Association
Harvard Japan Society	Kuumba Singers of Harvard College
Harvard Korean Association	Native American Alumni of Harvard University
Harvard Latino Alumni Alliance	Native Americans at Harvard College
	Task Force on Asian and Pacific American Studies at Harvard

FURTHER READING

Brief for 21 Colorful Crimson, Harvard Black Alumni Society, Association of Black Harvard Women, et al. as Amici Curiae Supporting Respondents, SFFA vs. President and Fellows of Harvard College (Harvard Corporation), Case 1:14-cv-14176-ADB Document 504 (2018). Retrieved from <https://admissionscase.harvard.edu/supporting-documents>.

Kim, C.J. (2018) "Are Asians The New Blacks?" *Du Bois Review: Social Science Research on Race*, 15(2), 217-244.

Poon, O.A., and Segoshi, M.S. (2019) "The Racial Mascot Speaks: A Critical Race Discourse Analysis of Asian Americans and Fisher vs. University of Texas." *The Review of Higher Education*, 42(1), 235-267.

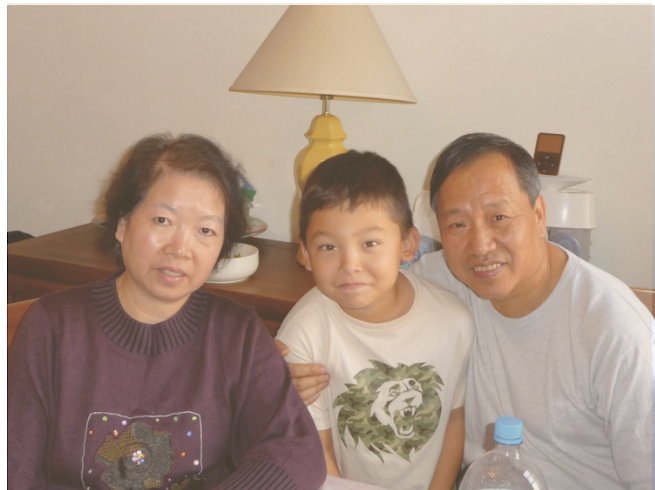
WHAT'S NEXT? WHY AFFIRMATIVE ACTION IS NOT ENOUGH

When President John F. Kennedy signed Executive Order 10925 in 1961, there was an implicit recognition of the structural oppression that led to contemporary forms of inequality. Affirmative action as a policy was supposed to increase equality by addressing these historical imbalances. Since the 2000s, affirmative action has been closely linked to educational opportunities and greater admissions into higher education for students of color. However, even the biggest proponents of affirmative action know that it is not enough on its own, that it is at best a stopgap measure for underlying structural issues that require deeper solutions. Despite the increased enrollment from non-white students caused by affirmative action programs, students of color who are admitted to historically white institutions often lack sufficient institutional support on campus.

Colleges still have a long way to go in combating racial inequality. As Park and Liu (2014) argue, critical mass is not enough – without institutional support, minority students, including Asian Americans, will continue to feel less happy and less like they belong than their white peers. Historically white institutions cannot use affirmative action as an excuse to stop fighting racial inequities. Whether it be through creating cultural spaces, funding ethnic studies departments, or providing culturally sensitive mental health services, colleges must take active steps toward breaking down structures that privilege white people and that prevent students of color from expressing themselves.

The future of affirmative action will have long-term impacts on immigrant families for generations to come.

Source: *The Harvard Crimson*/Matteo Wong



FURTHER READING

- Coates, R. D. (2004). "If a tree falls in the wilderness: Reparations, academic silences, and social justice." *Social Forces*, 83(2), 841-864.
- Gusa, D. L. (2010). "White institutional presence: The impact of Whiteness on campus climate." *Harvard Educational Review*, 80(4), 464-490.
- Park, J. J., & Liu, A. (2014). "Interest convergence or divergence? A critical race analysis of Asian Americans, meritocracy, and critical mass in the affirmative action debate." *The Journal of Higher Education*, 85(1), 36-64.

GOVERNMENT ACTION

Executive Order 10925 (1961)

Oftentimes thought of as the origins of affirmative action, this executive order requires government contractors to “take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, or national origin.” This was meant to give equal opportunity to all those in the workforce.

The Philadelphia Order (1969)

The revised plan required that “bidders on any federal or federally assisted construction contracts for projects in a five-county area around Philadelphia ... submit an acceptable affirmative action program which includes specific goals for the utilization of minority manpower in six skilled crafts.”



The Construction Site Conflict, Chicago, 1969, an integral part of the Philadelphia Order in that same year.

Source: *BlackPast*

Regents of the University of California v Bakke (1978)

Bakke, a white man, was rejected from the University of California Medical School at Davis twice. He claimed that the school’s practice of reserving 16% of the seats for minority students was a form of discrimination against white students. The Supreme Court (SCOTUS) decided that the use of rigid racial quotas was unconstitutional as it violated the Equal Protection Clause of the 14th Amendment, but they also declared that using race as one of many factors as part of the admissions decisions was constitutional, not because of ideas of social reparations, but because diversity in the schooling environment is beneficial to all parties and aligns with governmental interests of improving education.

Many protests occurred in response to the Bakke decision.

Source: *TimeToast*





Jennifer Gratz applied to the University of Michigan's undergraduate College of Literature, Arts, and Sciences in 1994.

Source: The Center for Individual Rights

Gratz v. Bollinger (2003)

Gratz was a white student who was denied admission to the University of Michigan, and claimed that she was not admitted because of the supposedly discriminatory practice of assigning points as a metric of admissions. In 1998, applicants had to accrue 100 points to be admitted to the school, and each underrepresented minority group immediately received 20 points. The SCOTUS decided that the point system did not meet standards of strict scrutiny, and that it was unconstitutional to simply prescribe certain ideas to an entire group without considering personal situations and lived experiences. In short, this built off the Bakke case in that neither quotas or point systems could be seen as constitutional due to the Equal Protection Clause.

Grutter v. Bollinger (2003)

Decided on the same day as the Gratz v. Bollinger case, this was a case of a white woman who applied to University of Michigan Law School, and the question at hand was if the school's admissions committee was allowed to use or consider race at all in their admissions process. The law school did not rely on quotas and race was used as just one of many factors in admissions. Moreover, the law school did not essentialize in the same way that was considered unconstitutional in the Gratz case. The SCOTUS upheld the notion that race can constitutionally be used as one of many factors in admissions because diversifying educational experiences is a compelling state interest.

Fisher v. University of Texas (2013)

Fisher, a white woman, was not in the top 10% of her high school class (the university automatically accepts students in the top 10% of each high school's graduating class), so she had to apply to be admitted and in doing so, the admissions officers could consider her race as one of many factors in their decision. Once again, they upheld Bakke and said that the policy met strict scrutiny, and that it was a compelling state interest to be able to have diverse student bodies.

Abigail Fisher, the plaintiff in an affirmative action case against the University of Texas, outside the Supreme Court in 2012.

Source: Susan Walsh/Associated Press



NEWS ARTICLES

- Avi-Yonah, S. S., & Franklin, D. R. (2019, October 23). "In Wake of Admissions Lawsuit Decision, Khurana Agrees Harvard Must Become Aware of Biases." *The Crimson*. Retrieved from: <https://www.thecrimson.com/>
- Fuchs, C. (2019, October 30). "After Harvard affirmative action decision, Asian American students rethink college applications." *NBC News*. Retrieved from: <https://www.nbcnews.com/>
- Hartocollis, A. (2018, April 4). "Asian-Americans Suing Harvard Say Admissions Files Show Discrimination." *The New York Times*. Retrieved from: <https://www.nytimes.com/>
- "Harvard University 'discriminates against Asian-Americans.'" (2018, June 16) *BBC*. Retrieved from: <https://www.bbc.com/news/>
- Kang, J. C., & Chen, R. (2019, August 28). "Where Does Affirmative Action Leave Asian-Americans?" *The New York Times*. Retrieved from: <https://www.nytimes.com/>
- Kim, N. (2019). Asian Americans Are Not Affirmative Action's Victims. *The Chronicle of Higher Education*, p. The Chronicle of Higher Education, Oct 2, 2019.
- Quilantan, B., & Stratford, M. (2019, October 1). "Judge sides with Harvard in case challenging use of race in admissions." *Politico*. Retrieved from: <https://www.politico.com/>
- Reilly, K. (2019, March 12). "As the Harvard Admissions Case Nears a Decision, Hear From 2 Asian-American Students on Opposite Sides." *Time*. Retrieved from: <https://time.com/>
- Shriver, L. (2019, October 12). "Asian are doing too well - they must be stopped." *The Spectator*. Retrieved from: <https://www.spectator.co.uk/>

CONCLUDING REMARKS

The Harvard Affirmative Action Syllabus is meant to provide an example structure for a course on affirmative action. In light of the recent SFFA vs. Harvard court case, this syllabus is a way for us to explore the intersection of affirmative action and its place at Harvard. By studying the background of affirmative action, its role in college admissions generally, and the specific SFFA vs. Harvard court case, this syllabus is meant to provide the beginnings of an in-depth critique of affirmative action, its purpose, and its objectives on college campuses. Students in Harvard's new Sociology of Asian America/ns course taught by Dr. Vivian Shaw split into four different groups to focus on specific themes, for which they collected various sources. Through this process, we were able to address several different aspects of affirmative action and Harvard. By making this syllabus a public resource, we encourage educators and students to teach about affirmative action and Harvard in future academic settings.

Best,

The students of
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