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Linda Cheng Lye

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The Wrong Debate

Linda Cheng Yee Lye†

The last time I picked up my Sunday newspaper, I stumbled across an article by retired Judge Leon Higginbotham, Jr. The first sentence mentioned Boalt and the fact that only one student in our first-year class is an African American. Judge Higginbotham succinctly and eloquently captured my sentiments on the point: “Embedded in these cold facts is a personal story, of how 47 years ago I witnessed the birth of racial justice in the Supreme Court and how now, after 45 years as a lawyer, judge and law professor, I sometimes feel as if I am watching justice die.” The development of my entire political consciousness has occurred in a period during which, with the exception of South Africa, I have watched justice die. Of course, I lack not only Judge Higginbotham’s professional accomplishments, but also his perspective as a first-hand witness. Because I am a product of the Reagan era, the justice I watched die was not one that I ever personally watched grow and blossom, but one about which I have merely read and dreamed.

So I should not have been so surprised, or outraged, or saddened, by Boalt Hall’s enrollment figures for the class of 2000 and by the overnight transformation of my school from the nation’s leading public law school into the vanguard of the re-segregation of public education in America.

The fact that I am a first-generation Chinese-American woman is at once informative and irrelevant to anyone who reads these words. Informative because Asian Pacific Americans benefit, or so the line goes, from the dismantling of affirmative action. The foes of affirmative action claim to have waged their campaign to benefit meritorious model minorities like me, unjustly displaced by chronically underperforming Blacks, Latinos, and Native Americans.

So what does it mean for a poster child to repudiate the campaign for which she has become emblematic? It means that the debate has been painfully impoverished and the underlying interests unexposed. The “dismantlers” have convinced us all that affirmative action is entirely and

† J.D. cand., Boalt Hall School of Law, University of California at Berkeley.
exclusively about the allocation of scarce resources. Under this scenario, different communities, scrambling for a finite number of spots at universities, become natural enemies. Under this scenario, different communities, hypnotized by the distraction of competing with each other, fail to focus on larger questions. Why are those resources so scarce? Why do Blacks, Latinos, and Native Americans continue to underperform? California, the eighth largest economy in the world, with an annual budget of approximately $70 billion, spends roughly four times as much incarcerating each inmate in state prison than it does educating each child from kindergarten through twelfth grade. Of course affirmative action implicates questions of resource allocation—but not the question of how scarce educational resources are allocated, rather the structural questions of why those educational resources are so scarce and of how social priorities are realized (or ignored) through budget appropriations.

In addition to distracting from real issues of resource allocation, the skewed debate has produced the outrageous and intolerable myth that Asian Pacific Americans are the “natural enemies” of affirmative action and, in turn, underrepresented people of color. The Left, unfortunately, has an incurable predilection for struggling to dismantle hierarchies, only to erect new ones in their place; in the battle against racial oppression, only those most racially oppressed may legitimately speak. Asian Pacific Americans, the ill-informed illogic continues, benefit from the destruction of affirmative action and therefore have no legitimate voice in this debate. Asian Pacific Americans who support affirmative action do so, presumably, out of yellow (or brown, as the case may be) guilt.

In the same way that the debate has dwelled unproductively on the scarce allocation of educational resources, it also has focused divisively and inaccurately on the idea that Asian Pacific Americans stand to gain from the dismantling of affirmative action. First, the effects of affirmative action and its demise are by no means uniform across the heterogeneous group lumped into the category of “Asian Pacific American.” The battles faced by recent Lao refugees are hardly equivalent to those of suburban second-generation Taiwanese Americans. But more significantly, my commitment to affirmative action stems from my commitment to undoing the structural inequities that continue to plague our society, not from any munificent sense of racial noblesse oblige. When I say that my race is irrelevant to my views on affirmative action, I mean that everyone on the oppression hierarchy has an equal stake in the leveling of structural inequities. Of course affirmative action has its beneficiaries, but

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they are not limited to individuals admitted under its programs. Rather, every member of society—who, as a consequence, comes that much closer to living in a just world—benefits from affirmative action.

The end of affirmative action at the University of California, at least for the foreseeable future, places us all that much further from a just world. Disinclined to cynicism in my twenties, I generally try to amuse myself with the ironies that surround me. But these days, I find myself not amused but inconsolably saddened by the irony that my principal exposure to justice during law school has been to its deathbed.