Lost in the Shuffle: The Failure of the Pan-Asian Coalition to Advance the Interests of Southeast Asian Americans

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In the summer of 2003, members of the academic community breathed a collective sigh of relief when the Supreme Court announced in the landmark decision, Grutter v. Bollinger,¹ that educational diversity was indeed a compelling state interest. The Court upheld the University of Michigan Law School’s (hereinafter Law School) race-conscious admission policy, which professed the Law School’s commitment to enrolling a diverse student body. The Law School’s admission policy considered factors that contribute to a diverse student body such as having lived or traveled abroad, an extensive record of community service, or an unusual intellectual accomplishment. However, it gave special consideration to race in the case of African American, Latino American, and Native American students. The Grutter decision affirmed the Law School’s commitment to racial diversity as constitutionally permissible and held that the Law School could give special consideration to certain racial groups.²

The Law School’s commitment to enrolling students from racial minority groups is peculiar because of the absence of Asian Americans.³ The Law School acknowledged that it omitted Asians from the admission policy because a significant number of Asian students were already being admitted to the Law School.⁴

Parties on both sides of Grutter hotly debated whether Asian Americans were hurt by the Law School’s admission policy. The Petitioner’s brief to the Court argued that the Law School’s race-conscious admission policy subjected Asian Americans to reverse discrimination.⁵ In contrast, the National Asian Pacific American Legal Consortium (NAPALC)⁶ argued in its amicus curiae brief that

* J.D., Georgetown University Law Center, 2005. I am grateful for having had an opportunity to learn so much about my family’s experience. My parents are ethnic Chinese refugees from Cambodia. After living through the Khmer Rouge regime, my family fled to Mairut, a refugee camp in Thailand where I was born. My family lived in the camp for over a year before immigrating to the United States.

2. See id. at 341.
3. See id. This omission is particularly startling because the United States Census Bureau only officially recognizes four racial minority groups—the three listed in the Law School’s admission policy and Asian Americans. (The Census counts Native Alaskans as part of the Native American population). See U.S. CENSUS BUREAU, RACE AND ETHNICITY, http://factfinder.census.gov/jsp/saff/SAFFInfo.jsp?_pageld=tp9_race_ethnicity (last modified Oct. 13, 2004).
5. Brief for Petitioner at 10, Grutter, 539 U.S. 306 (2003) (No. 02-241) (arguing that “the odds favoring students from African American, Mexican American, Native American and Puerto Rican groups are always ‘enormously’ large relative to Caucasian Americans, and other groups such as Asian Americans”).
6. NAPALC “is a national, nonprofit, nonpartisan organization whose mission is to advance the legal and civil rights of Asian Pacific Americans.” Brief of Amici Curiae National Asian Pacific

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Asian Pacific American (APA) applicants are not harmed by affirmative action. NAPALC advanced three arguments: First, like all other students, Asian Americans benefit from a more racially diverse learning environment. Second, the Law School’s policy does not only consider racial diversity but other types of diversity, e.g., types based on education, experience, etc., which APA applicants can highlight. Third, empirical evidence demonstrates that the prohibition of affirmative action programs in California did not correlate with higher enrollments of Asian Pacific Americans in state law schools.

The error committed by the Law School, the petitioner, NAPALC, and the other APA groups that joined NAPALC as *amici curiae* is all too common. Asian Pacific Americans, as a political identity group, are comprised of various member-groups that descend from countries in East Asia, South Asia, and Southeast Asia as well Hawaii and other Pacific Islands. The Law School blatantly omitted Asian Pacific Americans from the dialogue. All parties and *amici curiae* tacitly agreed that Asian Pacific Americans are already adequately represented in the Law School and that they do not need the Law School to make a special commitment to them in order to be enrolled in significant numbers. Underlying this belief is the stereotype of Asian Americans as the model minority and the related erroneous assumption that Asian Pacific Americans are a uniform group. In reality, several Asian American groups are struggling to improve their socioeconomic status. These groups are usually not enrolled in higher education in significant numbers. Yet, despite the minimal representation of these groups, colleges and graduate schools nevertheless frequently categorically exclude APAs from race-conscious programs such as the one employed by the Law School.

This Comment will focus on one such group, Cambodian Americans. I will illustrate the shortfalls of the Asian American pan-ethnic identity, and suggest that marginalized groups such as Cambodian Americans must assert their own identity in order to assure that issues pertinent to their own group are heard and addressed. My goal in writing is twofold. First, I encourage marginalized groups to assert their own interests. Secondarily, I hope to voice the message to universities that there are significant Asian American populations that would benefit greatly from inclusion in affirmative action programs.

Part I discusses the Supreme Court’s decision in *Grutter*, analyzing the opinion’s implication for universities’ admissions policies. Part II discusses the American Legal Consortium, et al. at 1 *Grutter*, 539 U.S. 306 (2003) (No. 02-241) [hereinafter NAPALC Amicus Brief].


10. I will use “Cambodian American” and “Khmer,” or “Khmer American” interchangeably throughout this note.

11. I will not argue about the merits or the goals of affirmative action programs in this Comment. Rather, I use the *Grutter* decision to highlight the failure of institutions to recognize the diversity within the Asian Pacific American pan-ethnic coalition and to demonstrate that the reasons given
pan-ethnic movement that began in the 1960s with the goal of uniting Asian
descended minority groups under an umbrella coalition—Asian American. The pan-
ethnic coalition was meant to unify Asian Americans and to create a mass base so
that people identifying with this ethnic group could mobilize to combat
discrimination and violence against Asians. This Part also briefly critiques the
Model Minority Myth. Part III discusses Cambodian Americans’ history, traditional
culture, socioeconomic status, and the familial factors that led to this group’s
marginalized socioeconomic status. Part IV briefly discusses the shortcomings of
the pan-Asian coalition, its failure to advance the interests of its more marginalized
constituents, and the reasons for this failure. Finally Part V asks, “Why not
identity?” and proposes that Cambodian Americans build their own distinctive
political consciousness in order to form a coalition that is not based solely on ethnic
ties, but also upon socio-economic and political issues.

I. PERMISSIBLE RACE-CONSCIOUS ADMISSIONS PROGRAMS

A. Constitutional Requirements

When a government entity employs race-based classification, such action is
presumptively unconstitutional. The government has the burden of satisfying the
test of strict scrutiny, which requires a showing that the racial classification is:
narrowly tailored and serves a compelling state interest. In Grutter, a white
woman who was denied admission to the Law School brought a class action suit
against the Law School. The plaintiff alleged that the Law School’s admission
policy discriminated against certain groups of applicants on the basis of race, in
violation of the Fourteenth Amendment and Title VI of the Civil Rights Act of
1964.

for inclusion of certain groups in affirmative actions can be applied to Cambodian Americans, and other
marginalized social groups.

12. As a supporter of coalitions, I do not suggest that the pan-Asian coalition is wholly
ineffective. I only mean to say that Cambodian Americans and other marginalized groups within the pan-
Asian coalition may benefit from forming their own smaller and more concentrated coalition to advance
their interests.

13. This Comment does not suggest that only Cambodian Americans require inclusion in a
consistent affirmative action policy. Rather my intention is to demonstrate that the efforts of large
umbrella groups can have a detrimental impact of exclusion on the marginalized groups within a coalition
Though I focus on Cambodian Americans, other groups exist that are similarly situated and in need of
similar help, such as other Southeast Asian Americans. I focus on Cambodian Americans in order to
provide specific, historically grounded information about one group rather than general historical
information about all of the Southeast Asian refugee groups, such as Vietnamese, Laotian, and Hmong.


15. Suit was brought against the University of Michigan Law School, the Regents of the
University of Michigan, Lee Bollinger (then-President of the University), Jeffrey Lehman (Dean of the
Law School), and Dennis Shields (Director of the Law School). Id. at 316.

16. Id. at 317.
B. University of Michigan Law School’s Admission Policy

The Law School’s admission policy is based on the belief that the achievement of diversity enriches everyone’s education and collectively strengthens a law school class.17 The policy does not delineate the specific types of diversity that adds “substantial weight” in the admissions process, “but instead recognizes “many possible bases for diversity admissions.””18 The policy did, however, adhere to the Law School’s commitment to “racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African Americans, Latino Americans, and Native Americans, who without this commitment might not be represented in our student body in meaningful numbers.”19 As part of its goal to assemble a class that is both “academically qualified and broadly diverse,”20 the Law School sought to enroll a “critical mass”21 of these underrepresented minorities.22

Professor Lempert, chair of the faculty committee that drafted the policy, testified that the admission policy did not aim to remedy past discrimination, but to include students who would bring a different perspective than members of groups who had not been subject to such discrimination.23 The professor acknowledged that Asians and Jews were not included in the admission policy because “members of [these] groups were already being admitted to the Law School in significant numbers.”24 Further, the Law School introduced expert testimony concluding that membership in a certain minority group was not dispositive of admission, but rather an extremely strong factor in the admission decision. Additional expert testimony illustrated that had race not been considered, underrepresented minority students would have only comprised four percent of the incoming class in 2000 instead of the actual figure of fourteen and a half percent.25

C. Holding and Analysis of Grutter

Writing for the majority, Justice O’Connor upheld the admission policy, holding that attaining a diverse student body is a compelling state interest, and that the Law School’s criteria, which used race as one of the factors in considering diversity, was narrowly tailored. The Court deferred to the Law School’s judgment that diversity is essential to its educational mission,26 recognizing that “given the important purpose of public education and the expansive freedoms of speech associated with the university environment, universities occupy a special niche in

17. See id. at 315.
18. Id. at 316.
19. Id.
21. The Dean of the Law School testified that “critical mass,” meant numbers such that underrepresented minority students did not feel isolated or felt like spokespersons for their race. Id. at 326.
22. Id. at 330.
23. Id. at 319.
24. Id.
25. Id. at 320.
26. Id. at 328.
our constitutional tradition."

The Court continued on to say that the First Amendment protects a university’s freedom to select a student body it believes will contribute to a robust exchange of ideas.\(^{28}\) The Court noted that good faith is presumed on the part of the Law School in its interest in attaining a diverse student body in order to further its educational mission absent a contrary showing.\(^{29}\)

In the first part of its analysis, the Court agreed with the Law School and its amici that real educational benefits flow from a diverse student body, including preparing students to be professionals in an increasingly diverse work and social environment.\(^{30}\) The Court emphasized the “overriding importance” of preparing a student for citizenship, and recognized that “education . . . is the very foundation of a good citizenship.”\(^{31}\) The *Grutter* Court went on to state that in order to promote citizenship “the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity.”\(^{32}\) This objective is so central to society and to the concept of citizenship that ensuring that public institutions are available to all races and ethnicities is an essential government goal, and nowhere is this openness more essential than in higher education.\(^{33}\) The Court stated that in addition to cultivating a first class citizenry, universities, and law schools in particular, are the training ground for national leaders.\(^{34}\) Cultivating a set of leaders “with legitimacy in the eyes of the citizenry” requires that the means of obtaining that leadership role be “visibly open to” and inclusive of “talented and qualified individuals of every race and ethnicity.”\(^{35}\) For the above reasons, the Court held that diversity is a compelling state interest.

After a finding that diversity is indeed a compelling state interest, the Law School still had to satisfy the second prong of strict scrutiny. To do so, it needed to demonstrate that “the means chosen to accomplish the [government’s] asserted purpose [were] specifically and narrowly framed to accomplish that purpose.”\(^{36}\) The purpose of this requirement is “to ensure that ‘the means chosen ‘fit’ . . . th[e] compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype.”\(^{37}\) The Court announced that to be narrowly tailored, a race-conscious admission program cannot use a quota system that insulates a category of students from competition with other applicants.\(^{38}\) Instead, the university may consider race as a “plus” in an applicant’s file without insulating the applicant from competition with other candidates.\(^{39}\)

\(27\). *Id.* at 330.
\(28\). *Id.*
\(29\). *Id.*
\(30\). *Id.* at 330.
\(31\). *Id.* at 331.
\(32\). *Id.*
\(33\). *Id.* *Grutter,* at 332 (citing Brief for the United States as Amicus Curiae, at *13, *Grutter,* 539 U.S. 306 (2003) (No. 02-241)).
\(34\). *Id.*
\(35\). *Id.*
\(36\). *Id.* (citing *Shaw v. Hunt,* 517 U.S. 899, 908 (1996)).
\(37\). *Id.* at 333.
\(38\). *Id.* at 335.
\(39\). *Id.* at 334.
A permissible program requires that the Law School make a “good faith effort... to come within a range” of the goal, and achieve the kind of diversity the Law School seeks without using quotas with fixed percentages and numbers. The Court referred to the Law School’s mission statement, stating that diminishing the force of stereotypes that purport that minority students possess a minority view on all issues is a crucial part of the Law School’s objective. The Court affirmed that the mission is “one that [the Law School] cannot accomplish with only a token number of minority students.”

The Court concluded that the Law School’s admission policy of recruiting a “critical mass” of underrepresented students did not act as a quota. Instead, the plan permissibly considered race as a “plus” factor while still ensuring that each candidate compete with other qualified applicants in the pool. The plan ensures that all factors that contribute to a diverse student body are “meaningfully considered” alongside race in admissions decisions. The factors that are considered are not limited. Examples of qualities and experiences that may be considered valuable to furthering diversity include students “who have lived or traveled abroad, are fluent in several languages, have overcome personal adversity and family hardship, have exceptional records of extensive community service, and have had successful careers in other fields.” Further, “all applicants have the opportunity to underscore their own potential” contribution to a diverse student body through personal statements, letters of recommendations and an essay specifically describing how “the applicant will contribute to the life and diversity of the Law School.” The admissions program also does not burden members of non-favored groups because, through the program, the school can and does select non-minority applicants who have greater potential to enhance the student body diversity over underrepresented minority applicants.

D. The Effects of Asian Omission

The Supreme Court’s decision in Grutter is comforting to universities that have an affirmative action program. The decision’s deference to university mission statements is also comforting to universities that may want to increase diversity in their own institutions. However, because universities have so much flexibility in defining their mission, it is important to point out the danger and fallacy in the institutional belief that Asian Americans are represented in “significant numbers” and should be excluded from affirmative action programs.

The fallacy of this belief is driven by the model minority myth, explained later in this note, and the idea that Asian Americans are a singular, uniform group. This belief is dangerous because marginalized Asian American subgroups can go largely ignored. If society does not recognize the needs of these subgroups, they may become and remain part of America’s underclass. As Justice O’Connor

40. Id. at 335 (quoting Sheet Metal Workers v EEOC, 478 U.S. 421, 495 (1986)).
41. Id. at 339.
42. Id. at 335.
43. See id. at 334.
44. Id. at 337.
45. Id. at 338.
46. Id. at 338.
47. Id. at 341.
described, these subgroups would not have access to institutions of higher learning that would prepare them to be better citizens. To prevent creating such a barrier to access, institutions need to realize that there is no singular Asian American culture or experience.

As evidenced by the Law School’s admission policy and confirmed by the Court, Asian Americans cannot rely on these institutions to recognize their pluralism because too often these institutions do not distinguish between the various groups within the Asian American identity. However, as discussed below, it is not only institutes, but also the panethnic movement that has racially lumped Asian Americans together. The panethnic movement indeed served a purpose, but at present, it may not be effective in advancing the interests of marginalized subgroups.

II.
THE PANETHNIC MOVEMENT

A. History

The sixties marked a period of transition in the type of political action in which Asian America participated. Prior to the civil rights era of the 1960s, due to their small numbers and historical differences, the political participation of Asians consisted of attempting to negotiate a “repressive system for their best possible space in American society and polity.” This attempt included ethnic “disidentification,” the act of distancing one’s own ethnic group from another group so as not to suffer the blame of the other group. The act of disidentification illustrates the pervasiveness of “racial lumping.” Americans so commonly confused Asian Americans with one another that Chinese, Koreans, Japanese and Filipino Americans often wore ethnic clothing and identification buttons in order to differentiate themselves to white Americans.

Due to social and demographic changes in the 1960s, Asian Americans were able to come together to build a collective identity known as “Asian American.” By this time, the Asian population in America had become a more native-born community; as a result, linguistic and cultural differences blurred.

50. Espiritu, supra note 48, at 20. Ethnic disidentification among Asians occurred during both the Chinese exclusion era and the Japanese internment during World War II. As Yen Le Espiritu explains, Japanese immigrants perceived their Chinese counterparts in a negative light, and often chimed in with nativist and racist criticisms of Chinese immigrants. This scorn of the Chinese can be attributed, in part, to a distinction in social classes between the two immigrant groups; Japanese immigrants were often selected representatives, whereas the Chinese immigrants were of the laboring class. However, this disidentification was also a result of social conditions. Aware of Chinese exclusion and fearful of being similarly targeted, the Japanese took many steps to distinguish themselves from the Chinese. In the same vain, during the Japanese internment, the Chinese took steps to distinguish themselves from Japanese Americans, even wearing buttons announcing that they were Chinese. See id. at 20-23.
51. Espiritu, supra note 48, at 23.
52. See id. at 21, 23.
53. Id. at 27. Prior to 1940, the Asian population in America was primarily an immigrant population. Id. at 26.
Students at various college campuses spearheaded the Asian American movement.\textsuperscript{54} These young, native born, middle-class activists, mostly of Chinese and Japanese descent, but also of Filipino and Korean descent, had grown up during the Civil Rights era and were deeply influenced by it.\textsuperscript{55} They forged a political identity based on a shared history of racial exclusion and oppression.\textsuperscript{56} Due to the influence of the Civil Rights era, they were "sensitized to issues of race, inequality, and the colonial exploitation and subordination of people in Asia and other parts of the Third World."\textsuperscript{57}

These students believed in the efficacy of grassroots organizing and social change.\textsuperscript{58} They protested the racist killings in the Vietnam War\textsuperscript{59} and the U.S.' "mistreatment of the Third World people," and demanded racial justice.\textsuperscript{60} Based on a sense of a common destiny and a shared past, the movement "helped transform previously isolated instances of political activism into a nationwide, panethnic political movement for racial equality, social justice, and political empowerment."\textsuperscript{61} The legacy of the initial part of the movement was this new redefinition of the Asian American experience as one of commonality, and the creation of the new panethnic term "Asian American," which was coined as an "unoffensive and composite label to encompass peoples of all Asian origin."\textsuperscript{62}

Panethnicity is the idea that people of different ethnic origins can identify with each other based on certain common characteristics or shared experiences and interests.\textsuperscript{63} The development of a panethnic identity and consciousness was not a completely voluntary process, but also determined by the specific political and social contexts within the state.\textsuperscript{64} The phenomenon points out the "coercively imposed and situationally defined nature of racial identity formation through such processes as categorization, or lumping together diverse peoples under a new or reconstituted racial framework."\textsuperscript{65} For historically oppressed and internally diverse groups, panethnic, group-based, collective action addresses political concerns of inequality, exploitation and oppression.\textsuperscript{66}

The main driving force behind Asian American panethnicity was an understanding that the diverse groups shared a common history of racial
discrimination, and that whites did not view them as distinct ethnic groups. College students and their professors created this term in order to forge a political identity based on a shared history of racial exclusion and oppression. Although the spirit of panethnicity and the newly forged panethnic group began in the 1960s, it was the 1982 brutal murder of Vincent Chin that solidified this identity. In the summer of that year, Chin, a Chinese-American, was bludgeoned with a baseball bat because of his race and later died in a coma. His attackers were two out-of-work autoworkers who blamed their unemployment, and layoffs in the automobile industry, on the man with an Asian face. A further slap to the face of Asian Americans was that the two men never served prison time for their hate crime. The murder of Vincent Chin brought Asian Americans together as never before. New organizations were formed and coalitions were built between existing Asian American organizations to fight anti-Asian American violence and bias, as Asian Americans realized that they could not depend solely on the judicial system for protection. In addition to struggling against anti-Asian violence, these pan-Asian organizations helped build pan-Asian unity, as Asian Americans understood that Vincent Chin was targeted because of his race and that any of them could be similarly targeted.

In addition to Asian Americans’ internal awareness and acceptance of the pan-Asian identity, there was also an external establishment of this identity through official government action. The U.S. Government lumped together a number of individual Asian American groups for the purpose of working with them in electoral politics, distributing funds, and counting them in the census. Such action further institutionalized the panethnic term.

A consequence of lumping together individual Asian American groups is that society extended the “model minority” idea to all groups within the pan-Asian collective. The myth of the model minority is the celebration of Asian American achievement. According to the myth, Asian immigrants left their countries to seek the American dream, and because of their hard work and selfless dedication to their

67. See ESPIRITU, supra note 48, at 36.
68. ONG, supra note 9, at 254.
71. The attack occurred during the 1982 recession in Detroit. Detroit’s automotive industry was hard-hit by the rise in demand for Japanese automobiles. The attackers presumed that Chin was Japanese. TAKAKI, supra note 69, at 482.
72. The trial judge sentenced the two men to three years in prison and a fine of $3,780. Outraged with the lenient sentences, the community brought federal charges against the two men for violating Chin’s civil rights. Only one of the men was found guilty, the other acquitted the other. However, after an appeal, both men were acquitted. HELEN ZIA, ASIAN AMERICAN DREAMS, 70-80 (2000).
73. WILLIAM WEI, THE ASIAN AMERICAN MOVEMENT 194 (1993); ESPIRITU, supra note 48, at 153.
74. WEI, supra note 73, at 194; see also ESPIRITU, supra note 48, at 145; HELEN ZIA, supra note 72, 69-71 (2000).
75. ESPIRITU, supra note 48, at 18; see also WU, supra note 69, at 310-11 (explaining that “the federal Office of Management and Budget issued its Directive No. 15, requiring that government agencies maintain statistics on racial groups, including an ‘Asian or Pacific Islander’ category”).
76. WU, supra note 69, at 474.
"small business or advanced degrees in electrical engineering – or both," they are achieving that dream.\textsuperscript{77} The model minority thesis first appeared in the 1966 \textit{New York Times Magazine} article. It praised Japanese Americans for successfully integrating into American society.\textsuperscript{78} In that same year, the \textit{U.S. News and World Report} also published an article praising Chinese Americans for their achievements.\textsuperscript{79} Both articles praised Japanese Americans and Chinese Americans for their ability to overcome racial discrimination.\textsuperscript{80} This new image of success for both groups\textsuperscript{81} was supported with evidence of statistics on the groups’ educational achievement and movement into high-status occupations, rising incomes, and low rates of mental illness and crime.\textsuperscript{82} Then in 1971, \textit{Newsweek} claimed that Asian Americans were “outwhiting the whites.”\textsuperscript{83} Different media outlets, such as \textit{Time}, \textit{Sixty Minutes}, \textit{Newsweek}, and \textit{New Republic}, dubbed Asian Americans the “model minority,” and the “superminority.”\textsuperscript{84} The group’s economic and educational success has been attributed to such factors as family upbringing, hard work, and obedience.\textsuperscript{85}

The model minority myth emerged during the Civil Rights era, a time of “racial upheaval” in American history.\textsuperscript{86} In this context, Asian Americans were used as pawns, positioned as the model minority in contrast to America’s “problem minorities.”\textsuperscript{87} The model minority thesis was used to challenge claims made by African Americans that American society was fundamentally racist and structured to keep minorities in a subordinate position.\textsuperscript{88} Asian Americans, who were praised for having succeeded without aid,\textsuperscript{89} were used to rebuff arguments criticizing societal
factors and to place the blame for racial inequality on the efforts of minorities themselves. This image of Asian Americans confirmed the belief that the U.S. was the land of opportunity where success can be achieved on the basis of merit and not on the basis of color.

The myth is problematic because it pits ethnic groups against each other in a paternalistic fashion and fosters anti-Asian American sentiments. Additionally, society has come to believe the myth and accept it as fact. The model minority stereotype is further troubling because the panethnic identity now includes marginalized immigrant communities such as South Asians, Southeast Asians, Tongans and Pacific Islanders under a newly constituted identity called "Asian Pacific Islander American" (for short, "APA").

The inclusion of APAs within the Asian American identity allows the latter to construct a larger voting bloc, capable of gaining political representation and battling racism and discrimination. However, APAs do not share a similar history with the pioneers who coined the term in the 1960s. As a result, the focus of the panethnic identity has shifted away from the idea that Asian Americans have a common history of discrimination. Instead, advocates argue that Asian Americans and APAs "must be constituted as a community of shared racial oppression in order to gain the moral capital to be considered equal citizens." Unfortunately, such rhetoric does not recognize the unique needs of APAs.

This is the dangerous result reached in the Grutter decision and the Law School's admission program. The Law School testified that although Asian Americans were a racial minority, they were omitted from the admission policy because they were already represented in significant numbers. However, as part III explains, there are Asian Americans who ought to be included in universities' mission statements, at least for consistency, because they, like the three groups specified in Grutter, would not be represented in significant numbers without consideration of the unique disadvantages they face.

90. Osajima, supra note 78, at 451; see also Wu, supra note 69, at 62-67.
91. Osajima, supra note 78, at 451; Zia, supra note 72, at 46 (One U.S. News & World Report article stated, "At a time when Americans are awash in worry over the plight of racial minorities, one such minority, the nation's 300,000 Chinese Americans, is winning wealth and respect by dint of its own hard work .... Still being taught in Chinatown is the old idea that people should depend on their own efforts - not a welfare check - in order to reach America's 'Promised Land.").
92. Such as the racially motivated murder of Vincent Chin. See infra pp. 3-4. This sentiment was also manifested on college campuses and universities across the country, where graffiti proclaimed, "Stop the Yellow Fords," and "Stop the Chinese before they flunk you out". TAKAKI, supra note 69, at 479. Students joked that M.I.T. stood for "Made in Taiwan," rather than Massachusetts Institute of Technology, and that U.C.L.A., pronounced "U.C.R.A." to mock the Asian inability to pronounce the letter "R," for "United Caucasians Living Among Asians." Wu, supra note 69, at 48.
94. Id.
95. Id.
III. CAMBODIAN AMERICANS: A UNIQUE SUBGROUP

One group that suffers from the expansion of the pan-Asian identity and the consequential extension of the model minority paradigm are Cambodian Americans. According to the 1990 census, forty-seven percent of Cambodian Americans are living in poverty, compared to fourteen percent of all APAs and ten percent of the total American population. Additionally, the educational success of Cambodians is not in line with the model minority myth. The latest census data show that only 9.2% of Cambodian Americans age twenty-five and over hold bachelor's degrees or higher, as compared to forty-seven percent of all APA's age twenty-five and over who hold bachelor's degrees or higher. More shocking, the majority of Cambodian Americans have less than a high school education. As a group, Cambodian Americans' lack of educational and economic achievement is a testament to the fallacy of APA uniformity and to the model minority paradigm. It also illustrates the tension inherent in the creation of the pan-Asian identity.

Cambodian Americans cannot easily fit into the overarching APA identity due to their different social class and needs. For instance, their educational achievement is very different from that of the majority. The idea that APAs can be constituted as a singular community of the racially oppressed becomes untenable in the areas of education and affirmative action. Although they make up only 3.6% of the total population, Asian Americans constitute ten to twenty-eight percent of the incoming students at the top ten universities in the country, and almost a third of the students in all of the University of California campuses combined. Figures such as these fuel the model minority argument: Asian Americans have been too successful, and because they are overrepresented in education, they do not need affirmative action. However, these figures are misleading because they mask the absence of the newly incorporated, less successful groups. For example, at the University of California at Berkeley, where Asian Americans and Asians constitute over forty-one percent of the undergraduate population, the Cambodian American

98. The 1990 Census found that 64.3% of Cambodian Americans had less than a high school education. See also KHATHARYA UM, A DREAM DENIED: EDUCATIONAL EXPERIENCES OF SOUTHEAST ASIAN AMERICAN YOUTH, ISSUES AND RECOMMENDATIONS i-ii (2003).
99. ONG, supra note 9, at 257.
100. See id.
102. Based on the U.S. News & World Report rankings, http://www.usnews.com/usnews/edu/college/rankings/brief/natudoc/tier1/t1natudoc_brief.php (2005). Consisting of the following schools and percentages: Harvard University (17%), Princeton University (13%), Yale University (14%), Massachusetts Institute of Technology (28%), California Institute of Technology (27%), Duke University (12%), Stanford (23%), University of Pennsylvania (17%), Dartmouth College (13%), Washington University at Saint Louis (10%).
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population is so negligible that they are lumped into the category of "Other Asians," and are estimated at fewer than fifty students. The Law School's admission policy and the Supreme Court, by way of deference to the school's policy, adopted these misleading figures and institutionally ignored the Asian American sub-groups who may require the most help.

A. Brief History

Cambodian Americans have a very different immigration history than the pioneers of the pan-Asian identity who were mainly Chinese and Japanese. Unlike Chinese and Japanese Americans, Cambodians Americans do not have several generations of ancestors in America, nor are the reasons behind their immigration similar. Chinese and Japanese arrived in the U.S. as early as the 1800s, coming over mainly as immigrant laborers. However, Cambodians immigrated to the U.S. as refugees of the Indochina War, along with refugees from Vietnam and Laos. The conditions surrounding their arrival, their resettlement, and their status as refugees distinguish their experience from other Asian Americans of East Asian descent, and provide insight into the barriers they face in education and economic achievement.

In April 1975, after six months of bombing by the U.S. and a battle with the American-backed Lon Nol government, the Khmer Rouge communist party emerged as victors in Cambodia. Residents of Phnom Penh were celebrating the end of warfare when tanks rolled into the city and forced residents into the countryside. The Khmer Rouge attempted to "divest Cambodia of any Western or urban influence and return it to an agrarian communal society." Families were separated and children were put into different work camps according to age with little or no contact with their parents. Schools were abruptly closed and education discontinued. For the next four years, the Cambodian people endured horrific brutality, torture, and starvation in communal labor camps. The Khmer Rouge instituted a reign of terror that included the systematic murdering of the elite, the educated, and anyone affiliated with the prior regime. The regime forced the population into collectivized farming and labor camps where they worked excruciatingly long days with very little food, causing widespread starvation. Out of a population of eight million, two million people died; the regime was so brutal that the country became known as the "Killing Fields."

105. Estimates are based on membership in student associations and enrollment in topic-relevant classes and campus and community networks. Um, supra note 98, at ii.
107. See generally TAKAKI, supra note 69, at 21-75.
110. Id. at 371.
112. Airriess & Clawson, supra note 111, at 316.
113. The Khmer Rouge gained notoriety for their brutality, as they killed anyone affiliated with the prior regime and with traditional Cambodian culture, including teachers, monks, and artists. They also killed anyone who spoke or read French, the language taught in schools and affiliated with education,
When the Vietnamese overthrew the Khmer Rouge in January 1979, many Cambodians took advantage of the confusion to escape on foot to refugee camps in bordering Thailand. The road was long, perilous, and filled with land mines. Many Cambodians were robbed, raped, and killed along the way by soldiers or by those hired to guide them; some, already weak, died of starvation or malnutrition. Some reached Thailand only to be carted off in trucks, or forced at gunpoint, back over the border into the minefields. The years in the refugee camps were yet another ordeal. Many died upon arrival because of their already deteriorating health; others were raped, robbed or mistreated by the guards. After this extremely long test of endurance, many were able to leave the camps and immigrate to the U.S. under the Refugee Act of 1980.

It is estimated that by 1993, 152,000 Cambodians had resettled in the U.S. In 1975, when the capital of Cambodia, Phnom Penh, fell to the Khmer Rouge communists, only an estimated 4,600 Cambodians came to the U.S.; 10,000 more resettled in 1978. The passage of the Refugee Act of 1980 made possible the largest influx of Cambodians into the U.S. Its goal was to effectuate resettlement of refugees, and to help them achieve economic self-sufficiency in the shortest time possible. Between 1980 and 1982, more than 60,000 Cambodians entered the U.S., and a significant number continued to gain entrance over the following several years.

The U.S. resettlement policy in the early years of refugee migration was to disperse the refugees as widely as possible to prevent a concentration of refugees in any one region, and to prevent the overburdening of states in which the refugees settled. After the Immigration and Naturalization Services conducted interviews and granted admission into the U.S., a number of civic organizations and agencies obtained sponsors across the country for the refugees. The sponsors varied and by some accounts, even those who wore glasses. No one was spared; children were swung by the feet and smashed against trees. Children over the age of six were separated from their families and sent to work in camps separated by age. Many died from the hard work and starvation. People were forbidden to grow their own food, while being provided with meager rations. Some were forced by the Khmer Rouge and by starvation to commit horrendous, traumatizing acts, such as sleeping with dead bodies, abandoning their own children and parents and even committing murder. MARYCAROL HOPKINS, BRAVING A NEW WORLD: CAMBODIAN (KHMER) REFUGEES IN AN AMERICAN CITY 12 (1996); Sucheng Chan, Politics and the Indochinese Refugee Exodus, in REMAPPING ASIAN AMERICAN HISTORY 181 (Sucheng Chan ed. 2003).

114. HOPKINS, supra note 113, at 12.
115. Id.
116. Id.
117. Id. This occurred because Thailand’s refugee camps were already overflowing and it feared being left with a permanent refugee population. Rumbaut, supra note 106, at 179. Thailand, and other Southeast Asian states of “first asylum” were reassured by the United Nations that other nations would share the burden of resettlement and that it would not be left alone to cope with a residual population. REPORT OF THE INDOCHINESE REFUGEE PANEL 1-2 (1986).
118. HOPKINS, supra note 113, at 12.
120. SMITH-HEIFNER, supra note 108, at 8.
121. Id.
122. Id.
124. Id.
126. The Immigration and Naturalization Services is now under the Department of Homeland Security.
from individual families, churches and civic organizations. However, the dispersion policy was undermined when large numbers of refugees moved to communities of their choice, settling in states where they had friends or families. Recognizing that living in concentrated ethnic communities would help refugees adapt sociologically and psychologically, the Office of Refugee Resettlement designated twelve clustered communities for the large influx of Cambodian refugees in the 1980s. After these twelve clusters were established, there was a wave of secondary migration, with the largest populations ultimately settling in Long Beach, California, and Lowell, Massachusetts.

B. Education

Due to their status as refugees, Khmer students have a very different educational experience than their East Asian counterparts. Khmers generally tend to be less educated and lower on the socioeconomic ladder. According to the 2000 Census, 53.3% of Cambodians have less than a high school education. The latest census shows that less than 6% have completed college. These statistics translate into “insignificant” numbers in universities, numbers that are unlikely to increase if the population is not specifically targeted.

1. Psychological Effects of the Khmer Rouge

One major factor affecting Khmer educational achievement is the lasting psychological effects of surviving the Khmer Rouge. Panic, inadequate time, little planning, problems in transit, life in temporary centers, and then entrance into a modern, industrial society has strained the adaptive capabilities of the group. A study conducted in the 1980s found that half of Cambodian children in secondary school suffered emotional distress, such as depression and posttraumatic stress disorder, as a result of having experienced the holocaust of the Khmer Rouge. The students who were too young to remember or were born after that period may have suffered indirectly through their parents, who may have been incapable of providing adequate supervision due to the trauma and disruption in their family life.

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127. Airriess & Clawson, supra note 111, at 319.
129. Id.
130. Id.
131. Id.
136. Id.
Cambodian refugees suffered what is called, "Concentration Camp Syndrome," which affects the families of prisoners, as well as the prisoners themselves. The symptoms of the syndrome, similar to posttraumatic stress disorder, are long lasting and often unresponsive to traditional psychotherapy treatment. The symptoms include headaches, nightmares, recurring dreams, shame for being alive, pessimistic outlook, feelings of inadequacy and resentment, and trouble concentrating. These symptoms were discovered after a study was conducted in the mid-1980s on forty-six refugees in an Oregon high school. The average experience of these students included living in age-related segregated camps for four years, separation from family, forced labor (15 hours a day, 7 days a week), beatings, starvation, and edema in their legs. The students were also likely to have witnessed the beating and murder of strangers and family members, and to have lost group members and family members on their way to Thailand.

2. Role of Formal Education in Cambodia

Formal education in Cambodia was very different from what the refugees encountered in America. In Cambodia, only the capital of Phnom Penh was Westernized, and most of the people lived in the countryside. Traditionally, boys were sent to temples, which also functioned as schools, and most girls did not attend school at all. Literacy was not considered essential to the farming population and was not encouraged by parents who had uninterested children.

In contrast, life in the capital where children attended French-styled schools was very different. The result was a sharply divided society: a small, urban, educated elite in the midst of a much larger uneducated peasantry. Schooling was respected in the countryside because of its affiliation with Buddhist temples, but Western style education was "tainted by its association" with the elite members of society.

Since the Khmer Rouge regime aimed at eradicating this elite class, it was rural farmers who survived the genocide and settled in the U.S. These survivors arrived in the U.S. with low literacy levels in their own language, and almost none in English. Most adults had no school experience at all. Similarly, children lacked formal, continual education because their schooling was disrupted by prolonged war

138. Kinzie, supra note 109, at 370. This is assuming that this population actually seeks mental health aid.
139. See Kinzie, supra note 109, at 373, table 3.
140. See id.
141. See id. at 372.
142. HOPKINS, supra note 113, at 128.
143. Id.
144. Id.
145. Id.
146. Id.
147. Id. Those who received education emigrated to France because they were schooled in French. "[T]hose who came to the United States were often those with less education or less choice." Id. at 132.
148. Id.
and the Khmer Rouge's school closures. Khmer parents do understand the importance of education for their children in the U.S. They want their children to be educated so that their children can have more job opportunities. In practice, however, Khmer parents may not foster an environment that encourages their children to excel in school.

Because of parents' low literacy levels and limited English proficiency, the roles of children and parent are commonly reversed, thereby adding a further strain on (in many cases) an already tenuous relationship between traditional parents and their Americanized children. Khmer parents often depend on their children to read letters, street signs, and to take them places. Children were given the responsibility of communicating with people outside of the family and dealing with official matters — "it is not surprising that some teenagers felt that they were raising their parents, not vice versa." When children were "lucky enough to have working parents," they often stayed at home unsupervised, while their parents worked long hours in low-wage jobs.

3. Cultural Attitudes Affecting Education

Khmer culture is quite different from not only East Asian cultures, but also from other Southeast Asian groups. The cultures of Southeast Asian groups have been influenced by Indian and Chinese cultures. Chinese culture, which has largely influenced other East Asian cultures (Korean and Japanese), is based on a hierarchical, highly disciplined extended family system that deeply instills filial piety. This web of deference is part of a system of mutually reciprocated obligations, including the "expectation of extraordinary parental self-sacrifice to ensure, in the U.S. context, that children will go as far as possible in pursuit of their education in order to ultimately honor and support the parents financially, thus making good on the parents' investment." This form of familial organization creates a structure of pressures, resulting in disciplined and motivated efforts on the

149. See id.
150. SMITH-HEIFNER, supra note 108, at 124.
151. Id. In addition to the restricted role that parents play in encouraging their children to study, Khmer parents do not participate in the child's education — they generally do not attend school meetings or assist children with homework. Id. Literacy levels were an obstacle as many parents could not read notes, school announcements or teachers' reports. Some children felt that their parents' input was so irrelevant that they forged their parents' signatures on their report cards. ONG, supra note 9, at 170.
152. ONG, supra note 9, at 169.
153. Id. at 169-70.
154. Id. at 170.
155. Id. Socioeconomic factors will be further explored below.
156. I recognize that "[c]ulture is not some monolithic, fixed, and static essence." Letti Volpp, Talking "Culture": Gender, Race, Nation, And The Politics Of Multiculturalism, 96 COLUMBIA L. REV. 1573, 1589 (1996), and I do not intend to essentialize Khmer culture. Khmer descent, or culture is not dispositive of behavior, but culture is among one of many very useful tools with which to discuss attitudes and perspectives.
158. Id.
159. Id.
part of students, greater responsiveness to rule-bound instruction, and a higher level of academic achievement.\(^\text{160}\)

By contrast, Cambodian culture, particularly notions of family structure and personhood,\(^\text{161}\) is influenced by Theravada Buddhism.\(^\text{162}\) Two of the core beliefs of Theravada Buddhism are karma and reincarnation. Karma dictates that actions in previous lives and the resulting store of merit that one has accumulated in each life determine one’s current life situation. Reincarnation is the notion that every individual is caught in a cycle of birth and rebirth.\(^\text{163}\) In the educational context, this translates into a very different role for Khmer parents than for other East Asian parents. The Khmer belief is that it is not possible for one to “push” one’s children; rather, one must “look at the child to determine his future.”\(^\text{164}\) Khmer parents believe that the child’s qualities are internal and emerge from the child himself.\(^\text{165}\) Parents pay attention to a child’s behavior so as to assess the child’s character and likely path, and lend advice and guidance to encourage him towards that path.\(^\text{166}\)

This idea of personhood contrasts with the Chinese model, which is deeply influenced by Confucian principles of filial piety that create pressure for children to succeed for the benefit and prestige of the family.\(^\text{167}\) Instead, Khmer parents see their children as individuals with predetermined and fixed personal abilities, and see their own roles as simply observing and cultivating those abilities.\(^\text{168}\)

Another cultural belief that translates into a limited role for Khmer parents in their children’s education is the importance of moderation in Khmer culture. “Taking the middle road” means not aiming too high or too low, but maintaining the present balance and doing average.\(^\text{169}\) For parents, this principle means not demanding too much of the child, and not expecting more than the child can or has delivered.\(^\text{170}\)

4. Role and Structure of the Family

Besides parents’ restricted role in their children’s education, the role of family also restricts children’s educational achievement. For Khmers, the nuclear family is the foundation of life. Besides Buddhism, the family is the other institution that permeates the lives of Cambodians.\(^\text{171}\) These two institutions serve as vehicles to help children achieve the Cambodian ideal of good personal qualities — selflessness, cooperation, and respect.\(^\text{172}\) Because parents sacrifice everything for

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160. Id.
161. Id. at 35.
162. See SMITH-HEIFNER, supra note 108, at 21 (discussing Khmer culture’s strong relationship with Buddhism in the chapter: To be Khmer is to be Buddhist).
164. Id.
165. Id. at 206.
166. Id. at 208.
167. Id. at 209.
168. Id.
169. Id. at 208.
170. Id. I do not claim that the Khmer culture is dispositive of Khmer parental attitudes; however, this is a recurring theme in the Khmer culture.
171. HOPKINS, supra note 113, at 128.
172. Id.
their children by giving life and nurturing them, children owe parents a filial debt that can never be repaid. Children are expected to recognize this obligation by helping out in the home, assisting in household tasks and when old enough to work, they are expected to give their wages to the family.

The pillar of respect to one’s family is expressed by unchallenging obedience. Children are expected to put family first, and devote all their time and energy to the family. Children who want to spend time with friends are considered deviant and selfish. School strains this familial dedication because it encourages children to spend more time alone studying or with classmates in school-related activities. Choosing one’s own activities is disobedient and means that the child is not a good family member. Furthermore, because the family’s reputation is of the utmost importance and the virginity of daughters is essential to upholding the family’s honor, girls are kept under close supervision. If a daughter is suspected of having a boyfriend, she may be swiftly married before she has a chance to finish her schooling.

Although Khmer parents are supportive of their children’s educational paths in theory, due to factors discussed above, they fail to provide a sufficiently supportive environment in practice. For instance, because Khmer parents expect children to stay home and under family control when not in school, they often prohibit children from joining extracurricular after-school activities, including special remedial programs. When the parents are working, older siblings are obligated to watch younger children, detracting from their own study time.

5. Socioeconomic Factors

Due to their limited English ability and limited education, Cambodian immigrants often do not have skills that are desired by the American job market. According to the 1990 Census, almost half of the Cambodian population is living in poverty. Cambodian refugees often take low skilled and low paid work. Upon taking these menial jobs, “they learn[] that their very survival, especially that of their children, depend[s] on remaining part of the welfare structure of information and access.” A recent study found that as many as seventy-seven percent of Cambodian Americans in California are welfare dependent. Because welfare ceases when a child reaches the age of eighteen, a student graduating from high school feels pressured to find a job and contribute to the family income or to be

173. SMITH-HEIFNER, supra note 108, at 95.
174. Id. at 95-96.
175. HOPKINS, supra note 113, at 129.
176. Id. at 128.
177. Id. at 128-9 (Parents expect children to only play with family members: “He has his brother, why does he need to play with his friend?”).
178. Id. at 128.
179. Id. at 129.
180. Id. at 129; see also ONG, supra note 9, at 178.
181. SMITH-HEIFNER, supra note 108, at 194.
182. See id. at 194.
184. ONG, supra note 9, at 123.
185. See id. at 229.
financially self-sufficient so as not to further financially strain the family.\textsuperscript{186} Even if Cambodian children are doing well in school, economic restrictions and the deep sense of family duty may hinder them from pursuing higher education. On the other hand, when a student is not doing well in school, due to the factors discussed above, parents feel that it is more realistic for him or her to get a job than to pursue higher education, since the student has demonstrated that studying is not his innate talent.\textsuperscript{187}

Needless to say, the lack of money and resources create stress during acculturation.\textsuperscript{188} It fosters dissonance, lack of educational success, and in many instances, deviant behavior.\textsuperscript{189} Parents under pressure to support their families have little time to encourage their children to study.\textsuperscript{190} Children may internalize family stress, lowering their self-esteem and lessening their concentration on studies.\textsuperscript{191} A college education is unaffordable for families who are struggling to meet immediate needs for food, shelter and clothing.\textsuperscript{192} Students are hampered by their parents’ diminished aspirations for them, a result of the parents’ own lack of higher education, and a need for additional family income from a child working right after high school.\textsuperscript{193}

6. The Allure of Gangs

Another factor contributing to the lack of educational success among youth goes hand in hand with socioeconomic constraints—the allure of gangs. Cambodian youth growing up between two cultures can feel very lost. They suffer familial pressures to contribute and conform at home while American culture teaches them to assert their individuality in society. They are constantly stuck in a push-pull dynamic: as children become more immersed in American culture, parents who fear losing control over their children insist that their children adhere to Khmer cultural practices, a culture with which they no longer completely identify.\textsuperscript{194} In addition, the parents' limited English proficiency, also causes the relationship dynamic to shift. Parents rely on their children to navigate through society; the children have to translate for them, read street signs and take them to run errands, pay utilities, speak with employers and mediate with people outside of the family.\textsuperscript{195} Parents also rely on their children as a source of income. Initially, parents rely on minor children for

\textsuperscript{186} See SMITH-HEIFNER, supra note 108, at 195.
\textsuperscript{187} Id.
\textsuperscript{188} Rosalind Y. Mau, Barriers to Higher Education for Asian-Pacific American Females, in ASIAN AMERICAN EDUCATIONAL EXPERIENCE, supra note 135, at 239.
\textsuperscript{189} Id.
\textsuperscript{190} See SMITH-HEIFNER, supra note 108, at 194 (stating that, “when school personnel suggest spending more time with their children, parents respond, ‘If we don’t each work two jobs and overtime, then who will support the family?’”).
\textsuperscript{191} Mau, supra note 188, at 239.
\textsuperscript{192} Id.
\textsuperscript{193} Id. SMITH-HEIFNER, supra note 108, at 195 (Because of Khmer ideas of personhood and innate ability, when parents see their children begin to fail school work, they believe that “it is more realistic for them to get a job than pursue higher education.”).
\textsuperscript{194} See ONG, supra note 9, at 171; see also SMITH-HEIFNER, supra note 108, at 196 (parents expect their children to listen unquestioningly, for children to challenge a parental decision is considered disrespectful).
\textsuperscript{195} ONG, supra note 9, at 169-70.
welfare checks. Once the child turns eighteen and welfare benefits cease, parents must then rely on their child to earn wages.\textsuperscript{196}

This shift in traditional roles causes parents to feel mildly humiliated, while children feel as though they are raising their parents. Children may believe that their parents know nothing about the U.S. and that they often have to make decisions on their behalf.\textsuperscript{197} Besides this change in power, children's emotional expectations are frustrated when Cambodian parents do not verbally express their love as American parents do.\textsuperscript{198} Children feel alienated because what they learn and see about American culture is not reflected in their own homes.\textsuperscript{199}

Parents who rely on their children still demand unquestioning obedience, which can frustrate their children who have to deal with adult responsibility but are expected to be obedient children when the parents assert their roles. That frustration leads to dissonance and rebellious behavior.\textsuperscript{200} In addition, many poor single females head these homes,\textsuperscript{201} and these women often desperately cling onto their only possession—their children.\textsuperscript{202} Hence, as children rebel, parents hold on even tighter, putting even more pressure on the children and their parent-child relationship.\textsuperscript{203}

Children living under such stressful conditions, with parents who are further stressed by financial limitations, are susceptible to gangs because of the sense of community and escape that they offer.\textsuperscript{204} These children are most susceptible to "dissonant acculturation," a syndrome by which second-generation immigrant youth are less likely to assimilate and integrate into mainstream society, and are trapped as members of a permanent underclass.\textsuperscript{205} As Portes and Rumbaut explain, when immigrants move into poor urban areas, their children attend impoverished schools where they learn values and behaviors from a segment of the population that has a history of blocked mobility and discrimination.\textsuperscript{206} They adopt these behaviors and values, which are in direct contradiction to their parents. Instead of wanting to integrate, these children align their loyalties with the urban youth and take a common stance against mainstream culture.\textsuperscript{207}

In the context of school, children learn to "not learn" because striving for academic success is acting "white."\textsuperscript{208} In addition, parents are further disempowered and removed from their children's academic performance because they have few

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196. See infra Part III.B.5.
197. ONG, supra note 9, at 170.
198. Id.; SMITH-HEIFNER, supra note 108, at 196.
199. ONG, supra note 9, at 170.
201. Terrance J. Reeves & Claudette E. Bennett, We the People: Asians in the United States, CENSUS 2000 SPECIAL REPORTS, 8 (Dec. 2004) (finding that twenty-one and a half percent of Cambodian households are headed by single women, as compared to 8.8% for all Asian households), at http://www.census.gov/prod/2004pubs/censr-17.pdf.
202. ONG, supra note 9, at 168. This is because many men were killed under the Khmer Rouge regime.
203. See SMITH-HEIFNER, supra note 108, at 197.
204. Id.
205. See PORTES & RUMBAUT, supra note 200, at 248-52.
206. Id. at 249.
207. See id.
208. Id.
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similar experiences themselves. One Cambodian mother's story is representative of a crisis faced by many Khmer parents, "There is nothing I can do. I am afraid my son has bad friends . . . [and skips school] but I can't do anything." Probably to the chagrin of his parents, one Khmer youth explains the pressures of foregoing school for a source of income: "Having money, a car - that's really important for Cambodian guys. And when you have a car, you have to pay for that. My friends, like the guys I know, skip a lot. School is boring for them, not fun."

Youth feel lost in school, as there is little with which they can identify. They are unable to keep up, and too embarrassed to ask for help. Faced with the lack of discipline in school and uncertainty about the future, these youth turn to street gangs, which provide a sense of community, access to easy money and protection from rival gangs. These gangs are either actual structured gangs or friends just "hanging out," as the youth above explained. Cambodian youth join these gangs as a source of escape from familial and social pressures, or are externally pushed into these gangs by anti-Asian violence that stems from the type of racial lumping discussed above. One interview found that Southeast Asian youth in Oakland complained of frequently being misidentified as a member of an ethnic gang and attacked. As one youth explains:

I was a good student at Roosevelt Junior High. I was just carrying my books, getting all A's. The [Mexican gang] thought I was another Cambodian, but we all the same to them. Later, we learned we need to get together, get a name. Now they don't look down on us. They know we got guns. They're scared; we're scared. We're not really a gang. . . . It's mostly for protection, to hang out.

209. See Ong, supra note 9, at 170.
210. Smith-Heifner, supra note 108, at 195 (Although parents want children to earn an income to help the family, these youth "hang out and play billiards and bowl, drive around, eat at Burger King, spend money.").
211. Id.
212. As Porter and Rumbaut explain, the labor market has changed and caused the disappearance of the middle-class jobs that facilitated intergenerational mobility. In the past, the economy resembled a pyramid whereby immigrants could transition from blue-collar to white-collar jobs over generations. However, with the rapid shift from an industrial market to a service market, the economy now resembles an hourglass with menial jobs forming a pool at the bottom and professional jobs at the top, and very few jobs for transitioning in the middle. With the thinning of these transitional jobs, second-generation youth must "race to acquire the educational credentials required for better-paid employment in a few years' time." These youth have to try to attain a college education in one generation, when it was previously achieved by immigrant families after three to four generations, or risk being trapped in the same low-wage occupation as their parents. Portes & Rumbaut, supra note 200, at 249-50.
213. Ong, supra note 9, at 234 (Additionally, the streets were an escape from their homes, it is a space for young men to assert their manhood, in contrast to their homes where they are dependent on women and welfare checks).
215. Id. at 70.
216. Id. at 71. These youth recognize their "marginalized minority status in a violent urban youth culture, the young people band together for protection." Id. at 68.
Immigrant youth already face many obstacles as they negotiate the conflicting views of two societies: living between cultures, trying to acculturate and assimilate, learning new languages and learning new ideas of personhood. Khmer refugee youth live in a high-pressure environment. Some are suffering from trauma after having witnessed atrocities and living under the extreme conditions of the Khmer Rouge, resulting in detachment, depression and lack of motivation, causing low levels of achievement in school.

For those fortunate enough to have been born in refugee camps or in America, they still live with siblings or parents who, due to a lack of understanding, trauma and financial stress, cannot provide an environment conducive to attaining educational success. These children feel pressured and obligated to contribute to the family income because they feel responsible for the welfare check that is lost when they become adults and because of traditional Khmer expectations that children contribute to the nuclear family.

In addition, Khmer youth struggle to find and assert their identity as they are forced to assume adult responsibility while having to maintain child-like obedience. Girls are closely guarded in order to protect their virginity and uphold the reputation of the family. Education comes second to reputation, as any hint of misbehavior is corrected by a quick marriage, thereby interfering with school. Boys, feeling helpless and dependent on women and welfare in the home, learn to assert their manhood in the streets, preferring to hang out with their friends over going to school. Without educational motivation, these children are at risk of joining a permanent underclass. Without intervention, they are at further risk of remaining there. Sadly, the coalition that purports to represent their interests has failed to recognize this much-needed educational intervention.

C. The Omission of Asian Americans is Inconsistent

The above discussion demonstrates that Cambodian Americans are not the picture of Asian American success that institutions paint. Due to having experienced great trauma and the psychological impairments that flow from such a harrowing experience, coupled with cultural attitudes and socioeconomic factors, Cambodian Americans face many disadvantages in attaining educational and economic achievement. Currently, Cambodian Americans are not even significantly represented in the University of California, Berkeley, where the presence of Asian Americans is substantial. It is likely that without a special commitment to them as a group, they will continue to be underrepresented in universities.

In Grutter, the Law School argued that its admission policy included a special commitment to enrolling a "critical mass" of African-Americans, Native-Americans and Latino-Americans because these groups would not be represented in significant numbers without such a program. In the case of Cambodian Americans, this is also true. Currently, Cambodian Americans are not represented in significant numbers, and this will likely continue unless universities become aware of this

217. This also leads to a lot of girls running away, a topic I did not explore. See ONG, supra note 9, at 181-91.
218. See PORTES & RUMBAUT, supra note 200, at 249-50 (discussing the shape of the new American economy. Without educational motivation, and with the evaporation of transitional jobs, these children are at risk of being stuck in the bottom pool of the new service-oriented market).
population and the disadvantages it suffers, and make a special commitment to increasing the presence of Cambodian Americans and other marginalized APA subgroups.

The Law School's failure to recognize that APAs are neither a singular group, nor represented in significant numbers, is attributable to the model minority myth. If the Law School recognized that there are APA groups that are not significantly represented, it would not have created a blanket omission of APAs from its admission policy. Because institutions are slow to change on their own, marginalized groups must begin affirmatively asserting their own identity, interests, and issues in order to have their concerns addressed.

IV.
LOST IN THE SHUFFLE – A SHORTCOMING OF THE PAN-ASIAN COALITION

Coalitions are a valuable tool for social justice reform. However, because the Asian Pacific American coalition is built along racial lines, as are other panethnic coalitions, it splinters along lines of class and ethnicity. It is prone to a hierarchical dynamic wherein an elite group, disconnected from the concerns of the mass base, heads the leadership. As a consequence, the panethnic identity is not the most effective tool for marginalized subgroups to voice their own concerns.

One scholar describes the polarizing tension of APA identity as:

Simultaneously open to "Asian values" conservatism and celebrating the model-minority idea and critical of the racial victimization of Asians in general. On the other hand, when Asian American proponents criticize the model-minority ideal, stressing its regulatory function of keeping the natives' head down, they point to the way it excludes Southeast Asian refugees as welfare recipients living in poverty, unable to measure up.

As previously explained, Japanese and Chinese Americans dominate Asian American politics because of their prominence, population, and history. These two groups, who are generally middle-class professionals, also earned Asian Americans as a whole the reputation of being the model minority. They commonly


221. Ong, supra note 9, at 272-73; Peter Kwong, Asian American Studies Needs Class Analysis, in PRIVILEGING POSITIONS, supra note 66, at 78 ("By ignoring the class issue, Asian American studies is depriving an important segment of Asian community of its voice.").

222. Ong, supra note 9, at 256.

223. Espiritu, supra note 48, at 50-51.
assume positions of leadership and frame the arguments of the coalition. Yet, due to the more elite status of Japanese and Chinese Americans, they do not face the same hardships that plague constituent members. Thus, the unifying front of the APA community often alienates the less educated, poor, or non-English-speaking members, such as Cambodian Americans, who feel "shortchanged and excluded." The case of Wen Ho Lee, the government scientist who was detained without evidence for allegedly giving classified secrets to China, is just one example of the shift from "the plight of an entire imagined Asian American community to a focus that is increasingly elite-based." The problem with panethnic coalitions is that they " presume[] structures of accountability and allegiance between [those] who are elevated into powerful positions of authority in the capitalist state with millions of [those] clinging to the margins of economic and social existence."

Cambodian Americans and Southeast Asians are rendered invisible because of the leadership structure inherent in the pan-Asian coalition. Although they suffer discrimination because of an identity shared with the other Asians, the suffering of Cambodian Americans is more structural. They do not have the same tools for upward mobility as members of the more educationally successful APAs. They do not suffer the kind of discrimination that Wen Ho Lee did, nor can they be enlisted in concerted efforts to effectuate change on behalf of these individuals. Therefore, when the APA leadership called on all members to boycott government positions, they further rendered disadvantaged APAs invisible by disingenuously addressing the entire population while knowing that this segment did not have the tools to join the campaign.

This shift to high profile discrimination in more elite circumstances was also visible in the amicus brief that began this note. NAPALC, along with 27 other public interest legal and civil rights organizations dedicated to advancing the interests of APAs, submitted an amicus brief supporting the Law School's admission policy. The three-part rebuttal to the petitioners did not analyze the suitability of including APAs in an affirmative action program, nor the potential resulting benefits. Instead, amici tacitly endorsed the notion that all APAs have equal access to educational benefits and concluded that APAs should only expect to benefit from the increased classroom diversity produced by the affirmative action program.

224. Chinese and Japanese Americans are more likely to think of themselves as Asian Americans due to their longer history in America. In contrast groups such as Korean Americans and Vietnamese Americans are more likely to affiliate with either their own sub hyphenated American group, or simply "Korean," or "Vietnamese," due to their later immigration. See Brest & Oshige, supra note 134, at 897; see also ESPIRITU, supra note 48, at 50-51.
225. Delgado, supra note 220, at 873.
226. Ong, supra note 9, at 258.
227. Id. APA groups called for APA scientists to boycott federal laboratories by not applying for jobs with them. This was a powerful move because each year, Asians and APAs account for more than one-quarter of all doctorates awarded by American universities. Id. Logically, because such a small percentage of Cambodian Americans (and Southeast Asian Americans) even graduate college, this campaign was targeted towards the more elite APAs of East Asian descent.
228. Marable, supra note 66, at 319.
This omission is understandable in the context of coalition politics. Coalitions have to decide which unifying frame to use, and leaders often align the coalition with less radical frames more likely to gain the support of the more proactive, elite members. Arguing that APAs collectively would not be enrolled in significant numbers without an affirmative action program would have contradicted the Law School’s testimony and position, which is the very position amici were trying to support. Further, such a proposition would have seemed disingenuous in light of the fact that the Law School’s APALSA is one of the largest student organizations on campus. However, it is this very desire to articulate a single, mobilizing frame that underscores the shortcoming of the pan-Asian coalition. In considering the diversity of interests in the APA community, the coalition leadership had to choose the frame that would garner the most support from those most powerful.

On the other side of the debate was an amicus brief submitted by the Asian American Legal Foundation (“AALF”) on behalf of the petitioners. In it, the AALF made the claim that affirmative action programs such as the University of Michigan’s admission policy “place[s] racial barriers before Chinese Americans and other ‘non-preferred’ individuals that are unjustified by any remedial purpose.” AALF’s brief is representative of the class divide in the panethnic coalition – a truism stated in Professor Frank Wu’s book, that people naturally want to do what is best for themselves and their children. As such, some APAs oppose affirmative action in college admissions because they expect that their ethnic groups will pay the cost.


231. See Delgado, supra note 220, at 872-73 (using as an example how the elite leadership of the African American community, in the campaign for black reparations, suggested that the community should receive reparations in the form of college scholarships. Delgado argues that because there are as many young black men in jail as there are in college, a proposal that the reparations be in the form of a jail bail fund, would be as beneficial as college scholarships for those who are "probably already on the path to a successful life." Delgado underscores the probability that such a remedy would not occur to the elite membership of the African American community because of the structural reasons inherent in coalitions); see also Ann Mische, Juggling Multiple Futures: Personal and Collective Project-Formation Among Brazilian Youth Leaders, in LEADERSHIP AND SOCIAL MOVEMENTS 138-39 (Colin Barker et al., eds. 2001).

232. See Grutter, 539 U.S. 306, 326 (2003) (a professor who helped draft the program testified that Asians and Jews were not included in the admission policy because members of these groups were already enrolled in significant numbers).


234. Brief of the Asian American Legal Foundation as Amicus Curiae in Support of Petitioners at *1, Grutter, 539 U.S. 306 (2003) WL 152363. The AALF is an organization founded to protect and promote the civil rights of APAs. Id.

235. Id. at *2.

236. On the other side of the divide would be the less educated groups such as Cambodian Americans.

237. Wu, supra note 69, at 163.

238. Id.
The two amicus briefs submitted on behalf of APAs illustrate the effects of the polarization within the panethnic identity. Although NAPALC is a proponent of affirmative action, it frames the argument within the existing paradigm of the majority—that diversity is beneficial for all students. This position is determined both by NAPALC's desire to align itself with the Law School and the disconnect between the leadership and its mass base. Ultimately, this prevents NAPALC from recognizing that its subgroups, like the three targeted groups, may have special needs that can be served by an affirmative action admission policy. NAPALC's position is understandable because had it argued that APAs actually needed affirmative action, such a response would have been narrowly responsive to petitioner's brief, but would have done nothing to advance the position of the Law School. The AALF was more overt, arguing that APAs, but highlighting specifically Chinese Americans (and more generally, the more educated East Asian Americans), would be hurt by such a policy.

Although these two groups advocate for conflicting outcomes, there is a commonality in their arguments. Both groups systematically neglect the perspectives of the less economically advanced APAs of Southeast Asian descent whose interests align more fully with the three identified groups included in the Law School's admission policy.

V.
BREAKING THROUGH THE RANKS – WHY NOT IDENTITY?

As the pan-Asian coalition is susceptible to alienating its lower-income constituents, Cambodian-Americans must find another way to assert their own interests outside of the panethnic paradigm. One such paradigm that provides a useful tool of analysis is the idea of "political race." Political race is the societal structure of race wherein groups without power in society are raced "black." Being raced black means that a person or group has been left out of the political discourse; the term is not connected to a person's biological race. The goal of political race is to unite minorities and enlist the help of non-racial minorities who are also raced black by demonstrating that the structure of society is designed to keep them both powerless. By banning together, these groups can demonstrate that the solution is not simply race based, but requires society to make structural changes.

For Cambodian Americans to implement political race, they must reflect on their experience of marginalization and understand that their experience (and the

239. Guinier & Torres, supra note 219, at 12.
240. See id. at 76. An example used by the authors is a white ex-convict who is relegated to working on a meat-packing warehouse floor (the lowest level) with Mexican-Americans. Although he is biologically white, the warehouse and by extension society, has raced him black due to his status as an ex-convict.
241. By this, the authors mean lower class and impoverished whites.
242. Guinier & Torres, supra note 219, at 76.
243. The example used by the authors is a metaphor for social justice. Miners previously used canaries to determine whether there was poisonous gas in a cave. If the canary died, the miner would know that there was poisonous gas in the cave. One such solution to killing the canaries would be to give it a mask. However, the solution of political race, of getting to the source of the problem would suggest getting rid of the poisonous gas. Id. at 11-13.
experiences of the other Southeast Asian refugees) of resettlement distinguishes them from the older, more established APA groups. Due to their poverty, they have been raced black by the pan-Asian coalition and are left out of the pan-Asian political discourse and the greater societal discourse.244

Political race as a tool may be limited to helping Khmer Americans understand the structural barriers they face within society and their exclusion from the pan-Asian coalition that is supposed to represent their interests. Political race can help Khmers achieve the social consciousness required to assert an identity distinct from the pan-Asian coalition. But political race may not lead to the ultimate goal, as described by Guinier and Torres, of enlisting the help of other minorities and non-minorities to argue for affirmative action. Having realized the failure of one coalition, Southeast Asians may be reticent to join another coalition. Though Khmer Americans share similar barriers with African Americans, Latinos and Native Americans, they may hesitate to form another coalition with these groups because of the inherent difficulties of finding a unifying frame with groups that have very different histories and experiences.

Richard Delgado recommends a different approach—Cambodian Americans can advocate individually, or collectively with other Southeast Asian refugees, for affirmative action.245 While a collective action, this campaign would not necessarily entail a permanent coalition organized around a single identity. Instead, the coalition could be organized around specific issues. This arrangement might prove a more effective and sustainable coalition.246

Although many scholars such as Eric Yamamoto and Lani Guinier believe that coalitions are the best path to social justice, one scholar, Elbert Lin stops to ask, "What's wrong with identity?"247 Lin criticizes the pervasiveness of coalition building within APA scholarship and argues that identity, rather than coalitions, can help APAs attain the two types of recognition they desire: acknowledgement that APAs exist, and that APAs are subject to discrimination. For example, he argues that to claim solidarity with African Americans, APAs should not have to claim blackness, but should instead engage in the dialogue on race as themselves. The formation of a movement focused on the existence of and discrimination against APAs would contribute to a sense of equality by placing APAs on equal footing with other racial groups.248 Thus, APAs should organize around an APA identity instead of a multiracial coalition because the latter would not address the sense of invisibility that agitates APAs.249

244. See id. at 12.
245. Delgado, supra note 220, at 884. Delgado concludes with this thought, "today's outsider groups need to ponder what tasks are best accomplished in concert with others, and which are better undertaken individually."
246. See John Anner, Having the Tools at Hand: Building Successful Multicultural Justice Organizations, in BEYOND IDENTITY POLITICS, 158-59 (1996) ("Although it is certainly true that there is a good deal of mutual dislike and often active hostility among the large variety of immigrant communities that have found themselves living side by side in urban America, it does seem to be the case that these differences can be set aside in the heat of the struggle."). Further, after understanding that they have been raced black, Southeast Asians can then more easily join in a collective action when the issues concern those who are raced black, and can also join collective action with APAs on issues concerning APA-identity (race based violence).
248. Id. at 221.
249. Id.
In *Grutter*, Cambodian Americans and Southeast Asians were not only rendered invisible by the Law School, they were also rendered invisible by the pan-Asian coalition groups purporting to represent their interests. Therefore, when it comes to Southeast Asians asserting their own interests, why do they have to join a coalition—why not identity?

An example of a step in the right direction is the creation of the group Southeast Asia Resource Action Center ("SEARAC"), whose mission is to advance the interest of "Cambodian, Laotian, and Vietnamese Americans through leadership development, capacity building, and community empowerment." SEARAC forms alliances between Southeast Asian groups and organizes along issues concerning refugee experiences. Though SEARAC builds coalitions within Southeast Asian and other groups, it also represents individual communities. Another example of a group asserting its identity is the North Virginia based organization known as Boat People S.O.S., whose mission includes empowering Vietnamese-Americans towards self-sufficiency and integration, and providing assistance towards freedom and a dignified life. This is an indication that the first step of collective consciousness has started to take hold, and Southeast Asians are recognizing that they have special interests distinct from groups dominating the APA movement.

Now that there are groups such as SEARAC to assert their identity, it is time for the pan-Asian coalition, universities and the courts to recognize that Southeast Asians are differently situated. Once institutions recognize the plurality of experiences within APA groups, socially conscious schools such as the University of Michigan will not commit the error of excluding an entire group from an affirmative action program, when inclusion would be more consistent with the program’s goals.

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251. Id.
253 Another example of asserting identity is this law journal. Though the *Berkeley La Raza Law Journal* focuses on issues pertinent to Latino-Americans, it also provides a forum to discuss issues pertinent to individual identity groups.
254 This may also be a step in making America understand that not all Asians are alike, which would indirectly dispel the model minority myth as well.