Recent Developments

Hitting the Ceiling:

An Examination of Barriers to Success for Asian American Women

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I. INTRODUCTION

Some say that we live in a "post-racial society," where race and gender are not barriers to success. These individuals often use the election of President Barack Obama, the first African American president, as a sign of our post-racial era. The "success" of Asian Americans is also touted as an example of our race-neutral society. But this model minority myth that Asian Americans have assimilated and found success in the United States has been shown to be in error.[1] The term "model minority" ignores the past and present discrimination experienced by Asian Americans and legitimizes the oppression of other communities of color.[2] The model minority myth also ignores the existence of a bamboo ceiling that prevents Asian Americans from advancing to high-ranking, leadership positions.[3]

Asian American women face additional barriers as a result of being both Asian American and female. While research is available on the experiences of women, Asian Americans, and people of color, very little research has been done on the unique experiences of Asian American women. For example, the literature on the glass ceiling focuses solely on gender, while the literature on the bamboo ceiling focuses on race and national origin.[4] This necessarily excludes the experiences of Asian American women since the discrimination faced by Asian American women is wholly different from and more than the sum of the

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1. *See generally* Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space,* 81 CALIF. L. REV. 1241, 1258-65 (1993).
2. *See id.* at 1258-60.
3. *See generally id.* at 1262-63; Kelsey Nara Bigelow, The Role of Stereotypes and Intergroup Bias in Promotion Evaluations of Asian Pacific American Associates in U.S. Law Firms 3-4, 9-10, 25-27 (May 2012) (unpublished M.A. thesis, Humboldt State University), *available at* http://humboldt-dspace.calstate.edu/bitstream/handle/2148/944/The%20Role%20of%20Stereotypes%20and%20Intergroup%20Bias%20in%20Promotion%20Evaluations%20of%20Asian%20Pacific%20American%20Associates%20in%20U.S.%20Law%20Firms.pdf?sequence=1.
4. *See, e.g.*, Debra E. Meyerson & Joyce K. Fletcher, *A Modest Manifesto for Shattering the Glass Ceiling*, HARV. BUS. REV. 127, 127 (2000), *available at* http://www.zurichna.com/internet/zna/SiteCollectionDocuments/en/media/FINAL%20HBR%20A%20Modest%20Manifesto%20for%20Shattering%20the%20Glass%20Ceiling.pdf; Bigelow, *supra* note 3.

discrimination faced by white women and Asian American men.[5] The experiences of people of color generally or other women of color specifically, while helpful in recognizing common themes of oppression, are unable to fully explain the experiences of Asian American women. Intersectionality, the study of individuals who occupy multiple socially constructed categories, such as race, gender, and sexual orientation, has the potential to shed light on the experiences of Asian American women. Research on intersectionality should be expanded to analyze the experiences of Asian American women. As such, a discussion of Asian American women must take into account their unique history in the United States.

This paper aims to fill the void in legal research on the experiences of Asian American women. This paper is limited in scope and focuses specifically on the experiences of middle-class, educated, Asian American women. It also focuses on societal forces that create barriers to success for Asian American women, such as stereotyping. Asian Americans are not a monolithic group. They are from different countries with distinct histories, and differing languages, cultures, cuisines, and religions. Nevertheless, our dominant society often mistakes all Asian Americans as being members of a monolithic group. For that reason, this paper focuses specifically on external forces creating barriers to success. It will not discuss internal cultural forces that may also create barriers to success for Asian Americans. Part II discusses the exclusion of Asian American women from the theories of the "glass ceiling" and the "bamboo ceiling." Part III describes the study of intersectionality, its limitations, and potential for understanding and eradicating the barriers to success for Asian American women. To fully understand the barriers to success for Asian American women, Part IV will examine the history of exclusion and stereotypes of Asian American women; this Part will also discuss the model minority myth and how Asian American women fit into this narrative. Part V will examine how these stereotypes contribute to discrimination against Asian American women in the workplace. This paper concludes with a discussion on ways to acknowledge the experiences of Asian American women and remove these barriers to success.

II. THE GLASS CEILING, THE BAMBOO CEILING, AND THEIR EXCLUSION OF ASIAN AMERICAN WOMEN

Researchers have documented professional "ceilings" that prevent women and people of color from attaining higher levels of professional success. While the demographics of previously white male dominated professions show a

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5. *See generally* Beverly Encarguez Perez, *Woman Warrior Meets Mail-Order Bride: Finding An Asian American Voice in the Women's Movement*, 18 BERKELEY WOMEN'S L.J. 211 (2003); Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 149-50 (1989) [hereinafter Crenshaw, *Demarginalizing the Intersection of Race and Sex*].

significant increase in the number of women and minorities employed, the demographics of higher-level management present a different picture—one that reflects a cap on how high women and minorities can advance in their careers.[6] This "ceiling" effect has been well documented for women and Asian Americans, but research has severely overlooked the experiences of Asian American women. By focusing only on the experiences of women and Asian Americans, Asian American women, who are subjected to different stereotypes that lie at the intersection of race, national origin, and sex, are left out.[7]

A. The Glass Ceiling

Women have made great strides in the last fifty years. Nevertheless, it is still rare to see women in the highest ranks of employment.[8] In 2010, women made up 47 percent of the total U.S. labor force,[9] yet comprised only 10 percent of senior managers in Fortune 500 companies, less than 4 percent of the upper ranks of CEOs, presidents, and executive vice presidents, and less than 3 percent of the top corporate earners.[10] This lack of progress can be attributed to the glass ceiling.

The glass ceiling is a metaphor that refers to the "artificial barriers to the advancement of women and minorities."[11] It is an invisible barrier based on attitudinal or organizational bias and discrimination that prevents minorities and women from rising up the corporate ladder and into high-level management positions, despite their qualifications.[12] A glass ceiling inequality represents a gender or racial difference that cannot be explained through other job-relevant characteristics of the employee; this inequality is more pronounced at higher levels of earning and authority.[13] It also represents a gender or racial inequality in the chances for advancement into higher levels of employment.[14] This

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6. *Women in the Labor Force in 2010*, U.S. DEP'T OF LABOR, http://www.dol.gov/wb/factsheets/Qf-laborforce-10.htm#.UMg91XeLi6Q (last visited Jan. 2, 2014). *See generally,* Meyerson & Fletcher, *supra* note 4, at 127; Bigelow, *supra* note 3, at 2-3.
7. *See generally* Sumi K. Cho, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong*, 1 J. GENDER RACE & JUST. 177, 209-11 (1997). *See also* Crenshaw, *Demarginalizing the Intersection of Race and Sex, supra* note 5, at 149-50.
8. Meyerson & Fletcher, *supra* note 4, at 127.
9. *Women in the Labor Force in 2010*, *supra* note 6.
10. Meyerson & Fletcher, *supra* note 4, at 127.
11. David A. Cotter et al., *The Glass Ceiling Effect*, 80 SOC. FORCES 655, 656 (2001).
12. *Id.;* Gary N. Powell & D. Anthony Butterfield, *Investigating the "Glass Ceiling" Phenomenon: An Empirical Study of Actual Promotions to Top Management*, 137 ACAD. OF MGMT. J. 68, 69 (1994); Belle Rose Ragins et al., *Gender Gap in the Executive Suite: CEOs and Female Executives Report on Breaking the Glass Ceiling*, 12 ACAD. OF MGMT. EXEC. 28, 28 (1998).
13. Cotter et al., *supra* note 11, at 657-58.
14. *Id.* at 659.

inequality increases over the course of a career.[15] While the glass ceiling has been used to describe the experiences of both women and minorities, at least one study states that the glass ceiling, as described above, is a "phenomenon of gender stratification" and not race.[16] Furthermore, much of the literature on the glass ceiling uses examples involving women with no mention of race. There is little discussion on the experiences of people of color and almost no discussion of women of color.

The glass ceiling is difficult to identify since bias and discrimination are so deeply embedded in the organizational structure of a business.[17] Indeed, "[e]ven the women who feel [the glass ceiling's] impact are often hard-pressed to know what hit them."[18] These barriers appear in common or mundane work practices and in cultural norms that seem unbiased, but put women at a disadvantage in moving up the corporate ladder.[19] The glass ceiling is manifested in multiple ways: informal recruitment practices that fail to recruit women, lack of opportunities for training and mentorship, exclusion from informal networks, menial assignments rather than challenging assignments that would progress women's careers, wage gaps between men and women despite comparable work, and placement in jobs with very few advancement opportunities.[20] For example, a company's norm of routinely cancelling or setting up last-minute meetings and expecting their employees to be available at all times, a seemingly innocuous practice, disproportionately affects women since women oftentimes bear more responsibility for the home and childrearing, and therefore have more demands on their non-working time.[21] As a result, women who work set hours are excluded from informal networks and miss out on important conversations; they are also perceived as less committed to their job than their male counterparts.[22]

In addition, most organizations have been created by men and are based on male experiences.[23] Because of this predominantly male culture and environment, women are judged on traits stereotypically associated with men, such as toughness and aggressiveness.[24] This results in women being viewed as ineffective leaders when using more feminine managerial styles, or criticized for not being feminine enough when displaying more masculine management styles.[25] Women are placed in a double bind: if they do not speak up, they lose opportunities or are unable to defend themselves; if they do speak up, they are

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15. *Id.* at 661.
16. *Id.* at 671.
17. Meyerson & Fletcher, *supra* note 4, at 127-28.
18. *Id.* at 127.
19. *Id.* at 128.
20. *See* Ragins et al., *supra* note 12, at 29-33, 35. *See also* Cotter et al., *supra* note 11, at 673.
21. Meyerson & Fletcher, *supra* note 4, at 129.
22. *Id.*
23. *Id.*
24. *Id.*
25. Ragins et al., *supra* note 12, at 30.

seen as "control freaks."[26] In contrast, men who speak up are seen as passionate.[27] Stereotypes based on gender are so deeply embedded into workplace norms that they appear innocuous, yet these stereotypes create a barrier, or a "ceiling," on advancement for women.

B. The Bamboo Ceiling

The "bamboo ceiling" is a term that has been recently used to describe a similar barrier to advancement for Asian Americans. Despite increased visibility on college campuses and in elite professions, Asian Americans are rarely seen in high-ranking positions.[28] As of 2010, Asian Americans made up 4.8 percent of the total population,[29] but held only 2.1 percent of corporate board of director seats in Fortune 500 companies.[30] Whites, on the other hand, made up 72 percent of the total population,[31] and held over 90 percent of corporate board of director seats.[32] Similarly, despite being well represented in the workforce, Asian Americans lack proportional representation in higher-level management positions.[33] While Asian Americans make up more than 11 percent of professionals, they comprise only about 5 percent of first/mid-level officials and managers,[34] and 4 percent of executive/senior level officials and managers.[35] In contrast, whites make up nearly 75 percent of professionals, almost 80 percent of first/mid-level officials and managers, and about 88 percent of executive/senior level officials and managers.[36] Unlike Asian Americans, whites are over-represented in higher-level management positions in proportion to their representation in the workforce.

This data suggests that Asian Americans are not being promoted at the same rate as other minority groups.[37] For example, in 2012, 20 percent of U.S. law firm associates were minorities, yet minorities made up only 6 percent of partners.[38] Asian Americans make up nearly half of all minority associates, yet

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26. *See* Meyerson & Fletcher, *supra* note 4, at 129.
27. *Id.*
28. *See generally* Bigelow, *supra* note 3, at 2-3, 10.
29. ALLIANCE FOR BD. DIVERSITY, MISSING PIECES: WOMEN AND MINORITIES ON FORTUNE 500 BOARDS-2010 ALLIANCE FOR BOARD DIVERSITY CENSUS 2 fig.2 (2010), *available at* http://theabd.org/Missing_Pieces_Women_and_Minorities_on_Fortune_500_Boards.pdf.
30. *Id.* at 9 app.2.
31. *Id.* at 2 fig.2.
32. *Id.* at 9 app.2.
33. *See* U.S. EQUAL EMP'T OPPORTUNITY COMM'N (EEOC), 2011 JOB PATTERNS FOR MINORITIES AND WOMEN IN PRIVATE INDUSTRY (2011), http://www1.eeoc.gov/eeoc/statistics/employment/jobpat-eeo1/2011/index.cfm [hereinafter EEOC 2011] (select "National Aggregate, All Industries" from dropdown menu). *See also* Bigelow, *supra* note 3, at 1-2.
34. EEOC 2011, *supra* note 33.
35. *Id.*
36. *Id.*
37. Bigelow, *supra* note 3, at 3.
38. *Id.* at 4.

have the "lowest conversion rate from associate to partner of any minority group."[39] Asian Americans receive "the lowest return on education (i.e. worst salaries) of all ethnic groups."[40]

Yet, Asian Americans are perceived to be model minorities: overly competent, hardworking, educated, intelligent, and ambitious.[41] They are viewed as a large middle-class group that has achieved "economic success without using government programs or welfare."[42] Despite this perception, Asian Americans do suffer from discrimination—a discrimination that is different from that suffered by other disempowered groups.[43] They are perceived to be competent, yet lacking warmth and social skills.[44] Asian Americans are also not historically seen as leaders.[45] These positive and negative stereotypes contribute to why Asian Americans are not adequately represented in executive-level positions.[46]

Like women, Asian Americans also hit a "ceiling" when seeking promotions to leadership or executive positions. For example, in U.S. law firms, the bamboo ceiling prevents Asian American associates from advancing to partner.[47] White partners favor the promotion of white associates.[48] Because whites make up the majority of partners in U.S. law firms, they continue to favor and promote members of their ingroup (whites) over competing outgroups (non-whites), thereby maintaining their high status and privilege.[49] Corporate recruitment practices, which include informal referrals, a lack of Asian Americans engaging in these referrals, and a lack of record-keeping, also reinforce exclusionary outcomes for Asian Americans.[50]

C. The Exclusion of Asian American Women

The "glass ceiling" and "bamboo ceiling" are insufficient proxies for understanding the experiences of Asian American women. The concept of the glass ceiling focuses on the experiences of women irrespective of race. The glass ceiling is a concept that is commonly discussed in regards to or as an area of

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39. *Id.* at 5.
40. *Id.* at 10. *See also* Virginia W. Wei, *Asian Women and Employment Discrimination: Using Intersectionality Theory to Address Title VII Claims Based on Combined Factors of Race, Gender and National Origin*, 37 B.C. L. REV. 771, 798 (1996); Lydia Lum, *Stepping Forward*, DIVERSE EDUC., August 25, 2005, http://diverseeducation.com/article/4560/ [hereinafter Lum, *Stepping Forward*] (reporting that Asian Pacific Americans make up about 50 percent of undergraduate students at the University of California, Irvine).
41. Bigelow, *supra* note 3, at 9.
42. *Id.* at 10.
43. Chang, *supra* note 1, at 1247.
44. Bigelow, *supra* note 3, at 12.
45. Lum, *Stepping Forward, supra* note 40.
46. *See, e.g., id. See generally* Daina C. Chiu, *The Cultural Defense: Beyond Exclusion, Assimilation, and Guilty Liberalism,* 82 CALIF. L. REV. 1053, 1090-91 (1994).
47. *See* Bigelow, *supra* note 3, at 4-5.
48. *Id.* at 26.
49. *Id.*
50. Chiu, *supra* note 46, at 1090.

concern for the feminist movement.[51] The feminist movement presents a monolithic woman's experience that is explained independent of race, class, sexual orientation, and national origin.[52] The agenda of the women's rights movement has been shaped largely by white, middle-class women.[53] Similarly, the bamboo ceiling addresses barriers to success for Asian Americans as a monolithic group, regardless of gender. In fighting for the rights of Asian Americans, women's issues are seen as secondary.[54] For example, domestic violence and trafficking of Asian American women take a back seat to "more pressing" issues facing the Asian American community, as determined by male community leaders.[55] By using a single-axis analysis where race and gender are mutually exclusive, the "glass ceiling" and "bamboo ceiling" exclude and delegitimize the experiences of Asian American women. The experiences of Asian American women must be analyzed in a way that allows for the interaction of multiple axes of oppression. The barriers Asian American women face are not only distinct, but also more than the sum of the discrimination faced by women and Asian Americans.

Just as the Women's Rights Movement encouraged African American women to set aside the color of their skin to fight for women's rights, and the Civil Rights Movement encouraged African American women to set aside their gender to fight for the rights of African Americans, the glass ceiling and bamboo ceiling encourage Asian American women to set aside their intersectional identities for the advancement of the rights of women and Asian Americans.[56] Dominant members of progressive social organizations tend to "monopolize the political apparatuses of these movements and create hegemonic agendas that reflect their own self-interests and that fail to respond to the needs of less visible and less powerful populations within these 'communities.'"[57] Under this analysis, the Women's Rights Movement and the Asian American Movement favor the interests of the dominant members of these movements: white women

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51. *See generally* Amelia Gentleman, *Inequality in the Pursuit of Feminism,* N.Y. TIMES, Apr. 9, 2013, http://www.nytimes.com/2013/04/10/world/europe/10iht-letter10.html?pagewanted=all ("A new British study argues that feminism here has failed working-class women by focusing obsessively on equality in the boardroom and the faltering race to break the glass ceiling."); Sarah Jaffe, *Trickle Down Feminism,* DISSENT MAGAZINE, Winter 2013, http://www.dissentmagazine.org/article/trickle-down-feminism ("If you read what is popularly known as the feminist press, you'll notice a focus on the "glass ceiling" that excludes much else."); Robert O. Keel, *Contemporary Feminist Theories,* Lecture at University of Missouri-St. Louis (Apr. 17, 2013), http://www.umsl.edu/~keelr/3210/3210_lectures/feminism.html.
52. Perez, *supra* note 5, at 236.
53. *Id.* at 212.
54. *Id.*
55. *Id.*
56. *See* Crenshaw, *Demarginalizing the Intersection of Race and Sex, supra* note 5, at 153-54. *See also* Darren Lenard Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Anti-Racist Politics,* 47 BUFF. L. REV. 1, 2-5 (1999).
57. Hutchinson, *supra* note 56, at 5.

and Asian American men, respectively.[58] This mirrors larger social inequalities, whereby men are given more power than women and whites are given more power than non-whites.[59] As a result, the experiences of Asian American women are excluded from the fight for equality and opportunity. We therefore cannot rely on the glass ceiling and the bamboo ceiling to acknowledge and reflect the experiences of Asian American women—we must use a more holistic and inclusive analysis.

III. USING INTERSECTIONALITY TO ACKNOWLEDGE THE EXPERIENCES OF ASIAN AMERICAN WOMEN

To comprehend the experiences of Asian American women and create appropriate strategies for counteracting their oppression, we must look at how race, gender, and national origin interact to create unique obstacles, stereotypes, and stigmas for Asian American women. Intersectionality provides a framework to analyze the experiences of Asian American women. Intersectionality looks at the intersection between multiple categories of socially constructed identities, such as race, color, gender, sexual orientation, and class, and considers their effects on the everyday lives of people who sit at the crossroads of these multiple intersections.[60] It rejects the notion that these socially constructed identities are mutually exclusive, since these identities often work together to "limit access to social goods such as employment, fair immigration, healthcare, child care, or education."[61] For example, "women of color are frequently the product of intersecting patterns of racism and sexism . . . . Because of their intersectional identity as both women *and* of color within discourses that are shaped to respond to one *or* the other, women of color are marginalized within both."[62] Women of color identify with both women and people of color, yet are constantly asked to "choose sides," to put aside their "woman-ness" to fight for the rights of people of color, or to put aside the color of their skin to fight for the rights of women.[63] An example of this can be seen in the criticism Alice Walker received for her portrayal of domestic violence in African American families in *The Color*

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58. *Id.*
59. *See generally* Peggy McIntosh, *White Privilege: Unpacking the Invisible Knapsack*, *in* RACE, CLASS, AND GENDER IN THE UNITED STATES (7th ed. 2007).
60. *See Intersectionality*, AFRICAN AM. POLICY FORUM, http://aapf.org/our-work/intersectionality/ (last visited Dec. 12, 2012) [hereinafter *Intersectionality*]. *See generally* Crenshaw, *Demarginalizing the Intersection of Race and Sex*, *supra* note 5; Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1993) [hereinafter Crenshaw, *Mapping the Margins*].
61. *Intersectionality*, *supra* note 60.
62. Crenshaw, *Mapping the Margins*, *supra* note 60, at 1243-44 (emphasis in original).
63. *See, e.g.*, *id.* at 1252-53, 1258 (noting that in regards to violence against women, while "race-based priorities function to obscure the problem of violence suffered by women of color; feminist concerns often suppress minority experiences as well.").

Purple.[64] Many in the African American community were angered by Walker's narrative because it reinforced negative stereotypes of African American families as unstable, and African American men as aggressive and violent.[65] By choosing to portray this scene, Walker refused to give up her woman-ness for the sake of her blackness and vice versa.

"Asian American women continue to be largely unseen and unheard" in the study of intersectionality.[66] Current research on intersectionality emphasizes the experience of African American women or women of color generally.[67] While Asian American women likely benefit from the work that has been done on intersectionality, since many of the struggles affecting African American women parallel those of Asian American women, "the different social histories of Asian and black women in America have created distinctions in their experiences."[68]

Asian American women and other women of color all experience marginalization generally; in addition, Asian American women also experience discrimination specific to Asian Americans based on their unique history in the United States.[69] Therefore the discrimination faced by African American women cannot alone explain the experiences of Asian American women.[70] To best utilize intersectionality, research must be conducted to fully incorporate the experiences of Asian American women, taking into account their history, the stereotypes they face, and how they fit within the model minority myth. This research must also examine the ways discrimination against Asian American women manifests in our courts. Only by fully acknowledging these experiences will we gain a more holistic understanding of the barriers to success for Asian American women.

IV. UNDERSTANDING THE ORIGINS AND PERPETUATION OF DISCRIMINATION AGAINST ASIAN AMERICAN WOMEN

While there are similarities between the oppression of Asian American women and other women of color, Asian American women face a distinct set of barriers as a result of their history in the United States. This history shaped the perception of Asian American women as outsiders, ultra-feminine lotus blossoms, dragon ladies, and model minorities. These stereotypes, both positive and negative, have contributed to discrimination against Asian American women. The following section provides factors that must be considered in order

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64. *Id.* at 1256.
65. *Id.*
66. Perez, *supra* note 5, at 213.
67. *See* Wei, *supra* note 40, at 772 ("[I]ntersectionality theory[] began largely with black women's experiences.").
68. *Id.*
69. *Id.* at 773.
70. *See* Chang, *supra* note 1, at 1265, 1266-67. *See also* Derald Wing Sue et al., *Racial Microaggressions and the Asian American Experience*, S. ASIAN AM. J. PSYCHOL. 88, 89 (2009).

to have a holistic understanding of the barriers to success for Asian American women.

A. The History of Exclusion of Asian American Women

The first settlers and leaders of this country envisioned America as a country for "pious, God-fearing, white Christians."[71] It was not envisioned to be a place for a multiracial or multicultural society.[72] In order to maintain America's racial purity and homogeneity, outsiders, such as Asian Americans, were discriminated against and subject to strict exclusionary policies.[73]

From the outset, Asian Americans were seen as members of an inferior race,[74] and were denied citizenship and the rights typically associated with citizenship.[75] The Naturalization Act of 1790 permitted only "free white persons" to naturalize in the United States.[76] Nevertheless, Asian men were allowed to immigrate to the United States for the limited purpose of serving as cheap labor.[77] In the early 1800s, Asian immigrants began arriving in America: Chinese immigrants worked on the sugar plantations in Hawaii and in the mines and on the railroad in California during the Gold Rush.[78] Asian immigrants also worked as factory operatives, cannery workers, and farm laborers.[79] Asians were seen as replacements for black workers and were used by whites to discipline black laborers; for example, a railway company displaced black workers by hiring Filipinos to work as attendants, cooks, and busboys, thereby relegating blacks to porter positions and denying them the mobility to obtain easier and better-paying jobs.[80]

During this time (and until the 1920s), very few Asian women came to the United States.[81] American employers preferred a "bachelor society" of single Asian men and thus only recruited single male workers.[82] In addition, Asian laborers found it more economical to have their families stay in Asia.[83] Many also considered the United States unsafe for women and children.[84] As a result, there was a gross gender imbalance among Asians in the United States,[85] which

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71. Chiu, *supra* note 46, at 1058.
72. *Id.*
73. *Id.* at 1058-59.
74. Wei, *supra* note 40, at 787.
75. Chiu, *supra* note 46, at 1060-61.
76. Hutchinson, *supra* note 56, at 90.
77. *Id.*
78. Chiu, *supra* note 46, at 1059.
79. Wei, *supra* note 40, at 787.
80. *Id.* at 788 n.187.
81. *Id.* at 792.
82. Cho, *supra* note 7, at 183.
83. Wei, *supra* note 40, at 793.
84. *Id.*
85. *Id. See also* Cho, *supra* note 7, at 183.

led to the importation of Asian women as prostitutes.[86]

Asian women were allowed to enter the United States, to meet the demand for sex from both white men, who saw them as mysterious and exotic, and Asian men.[87] As a result, during the nineteenth century, sexual stereotypes about Asian women emerged. Asian women were seen as both "lotus blossoms"—passive, domesticated, and feminine—and "dragon ladies"—demonically aggressive, conniving, and predatory.[88] Many Chinese prostitutes in California were indentured servants; their degradation was used as a justification for restricting and excluding Chinese immigrants.[89] In 1875, the U.S. further stifled the growth of Asian communities through the Page Law, which was aimed at restricting the entrance of prostitutes from China and Japan.[90] The Page Law nearly ended all Chinese female immigration to the United States.[91]

The 1790 Naturalization Act restricted naturalization to "free white" aliens.[92] After the Civil War, Congress debated eliminating racial restrictions to naturalization, but decided against it because of concerns about granting citizenship to Chinese immigrants.[93] Chinese immigrants were "thought to lack the capacity to engage in republican forms of government, and thus, allowing them to naturalize would threaten the survival of American democracy."[94] The 1790 Naturalization Act was therefore amended to allow the naturalization of only persons of African descent.[95] In 1882, the Chinese Exclusion Act suspended immigration of Chinese laborers for ten years and barred any court from allowing Chinese immigrants to naturalize.[96]

Asians were not only denied citizenship, they were also denied the rights, privileges, and protections typically associated with it.[97] For example, Asians were prohibited from testifying against white men in court,[98] unable to obtain gainful employment,[99] excluded from white public classrooms,[100] excluded from owning property,[101] and segregated into ethnic ghettoes.[102]

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86. Cho, *supra* note 7, at 184.
87. Hutchinson, *supra* note 56, at 93-94; Perez, *supra* note 5, at 217.
88. Cho, *supra* note 7, at 184-85; Hutchinson, *supra* note 56, at 94.
89. Cho, *supra* note 7, at 184.
90. Leti Volpp, *Divesting Citizenship: On Asian American History And the Loss of Citizenship Through Marriage*, 53 UCLA L. REV. 405, 409 (2005).
91. *Id.* at 410-11.
92. *Id.* at 412-13. "White persons" was later defined as the common white man. *US v. Thind*, 261 U.S. 204 (1923); Chiu, *supra* note 46, at 1061.
93. Volpp, *supra* note 90, at 412.
94. *Id.*
95. *Id.* at 413.
96. *Id.* at 465, 413.
97. Chiu, *supra* note 46, at 1060-61.
98. People v. Hall, 4 Cal. 399, 405 (1854).
99. Chiu, *supra* note 46, at 1063.
100. *Id.* at 1064.
101. *Id.* ("[L]egislation . . . made it unlawful for 'aliens ineligible to citizenship' to own real property and prohibited such aliens from leasing agricultural land for a term of more than

Anti-Asian animus can be seen in Justice Harlan's dissent to *Plessy v. Ferguson.*[103] In *Plessy,* Justice Harlan argued that separation on the basis of race was inconsistent with the Constitution; he then compared African Americans with Asians, "a race so different from our own that we do not permit those belonging to it to become citizens of the United States. Persons belonging to [the Chinese race] are, with few exceptions, absolutely excluded from our country."[104]

This pattern of exclusion continued well into the modern era. Racial biases towards Asians can also be seen with the internment of Japanese Americans during World War II.[105] After the bombing of Pearl Harbor, Executive Order 9066 allowed the Secretary of War to intern both U.S. citizens of Japanese descent and Japanese aliens for the sake of "security."[106] Despite attempts to challenge its constitutionality, the Supreme Court stated that the hardship of internment is a circumstance of war, and that concerns for the presence of disloyal members in society allowed for the exclusion of Japanese Americans.[107]

Just like their male counterparts, Asian American women suffered as a result of exclusionary immigration policies and a lack of citizenship. Asian American women arguably faced more discrimination because they were brought into the U.S. as indentured prostitutes, perceived as sexual objects, excluded from entering the U.S. years before the Chinese Exclusion Act, and later faced additional difficulties entering the United States.[108] For example, while most Chinese women were admitted to the U.S. as dependents of men, when Chinese women did enter the U.S. on their own, they were unable to bring their husbands as dependents.[109] Thus, the status and admissibility of Chinese women often depended on men.[110] In addition, Asian American women in the U.S. had to be strong, both physically and emotionally.[111] In Hawaii, Asian American women earned money by working in the fields and cooking and cleaning for others; they also raised their own families and tended to household chores in the evenings while the men relaxed.[112] This history shapes contemporary perceptions and stereotypes of Asian American women.

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three years.").

102. *Id.* at 1065.
103. Plessy v. Ferguson, 163 U.S. 537, 561 (1896) (Harlan, J., dissenting).
104. *Id.*
105. Wei, *supra* note 40, at 791.
106. *Id.*
107. *Id.* at 792. *See also* Korematsu v. United States, 323 U.S. 214, 219, 223-24 (1944).
108. *See* Wei, *supra* note 40, at 793, 796.
109. Volpp, *supra* note 90, at 456-57.
110. *Id.*
111. Wei, *supra* note 40, at 794.
112. *Id.*

B. Perceptions and Stereotypes of Asian American Women

The perception of Asian women in the nineteenth century as sexual objects, and the perception of Asian Americans in the twentieth century as model minorities permeate our conception of Asian American women today. Generally, Asian Americans are perceived to be overly competent, yet not warm, sociable, aggressive, or assertive.[113] Because of their distinct physical features, Asian Americans are unable to blend into the melting pot; their physical features are markers of their foreignness.[114] This explains why Asian Americans often get asked, "where are you from?" followed by, "where are you *really* from?"[115] They are also often the recipients of comments such as, "you speak English so well," or are complimented for not having an accent.[116] Asians are thus seen as perpetual foreigners and distinctively "not American."[117]

While Asian America women share some of the same stereotypes as Asian American men, Asian American women face additional discrimination as a result of their sexualization.[118] Stereotypes of Asian American women are rooted in the nineteenth-century images of Chinese prostitutes and "slave girls."[119] These women were seen as "'meek, shy, passive, childlike, innocent and naïve,' yet surprising in [their] sexual prowess and desire to please [their] male master."[120] Recent images of Asian women paint them as sexual servants to soldiers overseas in Asia.[121] Asian women are seen as embodying feminine ideals and "set[ting] the bar [for] . . . femininity."[122] Myths about their subservience and sexual prowess have ignited Western fetishes for Asian women.[123] Asian women are "fetishized as the embodiment of perfect womanhood and genuine exotic femininity."[124] This western male fantasy is elaborated in Tony Rivers' article in *Gentleman's Quarterly* entitled "Oriental Girls":

> When you get home from another hard day on the planet, she comes into existence, removes your clothes, bathes you and walks naked on your back to

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113. *Id.* at 799; Bigelow, *supra* note 3, at 9.
114. *See* Wei, *supra* note 40, at 800-01.
115. *See id.*; Chiu, *supra* note 46, at 1070.
116. *Id. See also* Chiu, *supra* note 46, at 1070.
117. *See* Chiu, *supra* note 46, at 1070.
118. Wei, *supra* note 40, at 801.
119. *Id.*
120. Perez, *supra* note 5, at 218.
121. Wei, *supra* note 40, at 801.
122. Robert S. Chang & Adrienne D. Davis, *An Epistolary Exchange Making Up Is Hard to Do: Race/Gender/Sexual Orientation in the Law School Classroom*, 33 HARV. J.L. & GENDER 1, 10, 25-26 (2010) (describing how American culture characterizes Asian American women as "geishas" and "Suzie Wongs" who are "'fetishized as the embodiment of perfect womanhood and genuine exotic femininity").
123. Perez, *supra* note 5, at 217.
124. Chang & Davis, *supra* note 122, at 25-26.

> relax you . . . . She's fun you see, and so uncomplicated. She doesn't go to assertiveness-training classes, insist on being treated like a person, fret about career moves, wield her orgasm as a non-negotiable demand . . . . She's there when you need shore leave from those angry feminist seas. She's a handy victim of love or a symbol of the rape of third world nations, a real trouper.[125]

In addition, white men have touted Asian American women's femininity and passivity as a response to the non-femininity of American women who have left their place in the home to pursue a career and independence.[126] White women's gains in career, income, and personal autonomy have ignited a backlash against them in American society; they are perceived as abandoning their roles as mothers and wives.[127] In contrast, Asian American women are seen as docile, devoted, traditional, and as deriving joy from serving their men, thereby replacing white career women as "true" women.[128]

These stereotypes are also reflected in mass media. Popular culture and mass media reinforce stereotypical images of Asian American women through one-dimensional, simplistic, and inaccurate portrayals.[129] Often, these characters reinforce two stereotypical images of Asian American women: the "Lotus Blossom Baby" and the "Dragon Lady."[130] The "Lotus Blossom Baby" is shy and diminutive, while the "Dragon Lady" is devious and wicked.[131] For example, Anna May Wong, the first Chinese-American actress to gain prominence in cinema, was type-cast into roles that sexualized Asian American women, such as "Mongolian Slave Girl" in *The Thief of Bagdad* (1924).[132] There were very few roles available to Asian Americans at that time, and the roles Wong acquired were stereotypical and demeaning.[133] This led Wong to flee to Europe in 1928.[134] During her time away from Hollywood, images of Asian women in Hollywood did not experience much change. In 1932, Wong returned to Hollywood as an archetypal China Doll/Dragon Lady in *Shanghai Express* (1932).[135]

Today, despite Asian American women's significant progress in film and television, there are few Asian American actresses and few roles that truly reflect

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125. Tony Rivers, *Oriental Girls*, GENTLEMAN'S Q., Oct. 1990, at 158, 161, 163. This appeared in the British edition of *Gentleman's Quarterly*.
126. Cho, *supra* note 7, at 192; Chiu, *supra* note 46, at 1086-87.
127. Chiu, *supra* note 46, at 1086.
128. *Id.* at 1086-87.
129. Wei, *supra* note 40, at 801. *See also* Perez, *supra* note 5, at 218-19 (discussing portrayals of Asian American women in film).
130. Wei, *supra* note 40, at 801-02.
131. *Id.* at 802.
132. Joseph Worrell, *Anna May Wong*, SILENT ERA, http://www.silentera.com/people/actresses/Wong-AnnaMay.html (last visited Jan. 2, 2014).
133. *See id.*
134. *Id.*
135. *Id.*

the experiences of Asian American women.[136] While Asians make up about 5 percent of the U.S. population, they occupy only 3 percent of total characters, and only 1 percent of regular or opening credits in the media.[137] Like Anna May Wong, most Asian American women have played stereotypical Asian American characters, such as the sexualized female.[138] This creates a limitation on the number and quality of roles available for Asian American women, which allows for the perpetuation of negative stereotypes.[139] For example, in *Charlie's Angels* (2000), Lucy Liu, dressed in tight, revealing clothing, plays a strong, beautiful agent.[140] Similarly, Li Gong plays a beautiful, exotic, and dangerous wife of an arms and drug trafficker in *Miami Vice* (2006).[141] Also, in *The Scorpion King* (2002), Kelly Hu plays a scantily clad, beautiful sorceress.[142] While all of these characters are strong and intelligent, they are nevertheless sexualized and exoticized.[143] Since mainstream media offers few Asian American female characters outside of these stereotypes, these negative stereotypes are reinforced, making it difficult for Asian American women to be accepted as ordinary, as opposed to exotic.[144]

The few Asian female characters that were produced by Asian American women are fascinating and provide a more realistic portrait of the experiences of Asian American women.[145] These characters can be found in works such as Amy Tan's *The Joy Luck Club* (1989), and Maxine Hong Kingston's *The Woman Warrior: Memoirs of a Childhood Among Ghosts* (1976).[146] Nevertheless, these realistic, complex female characters are few and far between, and thus remain virtually unknown in mainstream American consciousness, while negative stereotypes continue to persist.[147]

C. The Model Minority Myth and How Asian American Women Fit Into This Myth

In addition to the ultra-feminine sexualized stereotype of Asian American women, Asian American women are also perceived through the model minority

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136. *See generally* Rick Beach, *Module 5: Racial and Ethnic Groups*, UNIV. OF MINN., http://www.tc.umn.edu/~rbeach/teachingmedia/module5/8_e.htm (last visited Jan. 2, 2014); Tiffany Bakker, *True Colors*, NET-A-PORTER, May 9, 2013, at 9-12, http://www.net-a-porter.com/magazine/194/9.
137. *Sexploitation of the Asian American Female Body,* MEDIA REPRESENTATIONS OF ASIANS, http://sitemaker.umich.edu/psy457_tizzle/asian_american_women (last visited Jan. 2, 2014).
138. *Id.*
139. *Id.*
140. *Id.*
141. *Id.*
142. *The Scorpion King*, IMDB, http://www.imdb.com/title/tt0277296/ (last visited Jan. 2, 2014).
143. *Sexploitation of the Asian American Female Body*, *supra* note 137.
144. Wei, *supra* note 40, at 802.
145. *See id.*
146. *Id.* at 802-03.
147. *Id.* at 803; Chiu, *supra* note 46, at 1072.

myth. The model minority myth focuses on Asian Americans' educational achievement, economic success, and assimilation into American culture, and characterizes Asian Americans as hardworking, intelligent, and successful.[148] More accurately, this myth refers to the way Asian Americans have "assimilated and adhered to American society's 'prescribed mode of behavior for minority assimilation; through hard work, education, quietly remaining in the background, inaction in the face of injustice, and blind faith to the American dream of equality and opportunity for all.'"[149] This misleading portrait furthers the oppression of Asian Americans by denying the existence of present-day discrimination and ignoring the effects of past discrimination.[150] It ignores income disparities within the Asian American community and the absence of Asian Americans in high-ranking executive positions, which is especially striking given the high representation of Asian Americans in universities and professional positions.[151] This perception of Asian American success allows the public, our government, and our judiciary to ignore or marginalize the needs of Asian Americans, for example, by denying funding to social services for Asian Americans.[152] As a result, much-needed funding and attention to issues affecting many Southeast Asian communities, which have poverty rates at least three times the national average, are denied.[153] When Asian Americans do discuss the oppression they face, these complaints are seen as unwarranted given their "success" as a model minority.[154] Asian Americans are not seen as victims of racism.[155]

Within these "positive stereotypes," the model minority myth also evokes negative stereotypes about Asian Americans. For example, Asian Americans are perceived as passive, lacking social skills, apolitical, submissive, and lacking the aggressiveness required for high-ranking managerial positions.[156] These perceptions of Asian Americans as hardworking, intelligent, ambitious, and achievement-oriented work alongside negative stereotypes of Asian Americans as shy, quiet, polite, and cold to prevent them from breaking the bamboo ceiling and advancing into executive positions.[157]

The model minority myth, created during the Civil Rights Movement to provide a counter example to politically active African Americans,[158] is used to

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148. Carolyn Jin-Myung Oh, *Questioning the Cultural and Gender-Based Assumptions of The Adversary System: Voices of Asian-American Law Students,* 7 BERKELEY WOMEN'S L.J. 125, 140 (1992); Chang, *supra* note 1, at 1258.
149. Oh, *supra* note 148, at 140.
150. Chang, *supra* note 1, at 1258-60.
151. *Id.* at 1261-63.
152. *Id.* at 1258-59, 1261.
153. *Id.* at 1261.
154. *Id.* at 1260.
155. Hutchinson, *supra* note 56, at 27.
156. Oh, *supra* note 148, at 140; Cho, *supra* note 7, at 185-86; Bigelow, *supra* note 3, at 9, 12.
157. *See* Bigelow, *supra* note 3, at 9-10.
158. Cho, *supra* note 7, at 185.

legitimize the oppression of other minority groups and to blame them for "not being successful like Asian Americans."[159] This myth reinforces and furthers the belief in America's system of meritocracy in which "any group can be successful if they work hard enough or possess the right values."[160] A color-blind meritocratic system minimizes the effects of oppression and discrimination on minority groups.[161] The model minority myth implies that other minorities have not adopted the "American cultural characteristics of self-sufficiency, individuality, and hard work," which have been adopted by Asian Americans and are the reason for their success.[162] It is used not only to blame minorities for their oppression, but also to campaign for the government to stop providing social services for "undeserving," "lazy" minorities.[163] The model minority myth is also used to campaign against affirmative action.[164] This creates resentment and tension between minority groups, which may lead to violence and anger, and prevent minority groups from working together.[165]

Asian American women are caught between two restrictive stereotypes, the sexualized ultra-feminine and the model minority. The model minority traits of passivity and submissiveness are reinforced, intensified, and gendered by the stereotype of Asian American women as obedient, servile, passive, feminine, reserved, humble, and demure.[166] An example of a sexualized, racialized stereotype of Asian American women can be seen in *Year of the Dragon* (1985).[167] In this film, Tracy Tzu, a Connie Chung inspired character, is a professional newscaster.[168] She represents the "upwardly-mobile professional female variant of the model minority."[169] The "plot . . . undermines the image of gender and racial liberation" through the incorporation of a submissive, passive Asian woman.[170] Despite her public success, Tracy Tzu is "privately dominated" by a "white, ethnic, working-class police detective" who "domesticates" her by taking control of her career.[171] Despite initially resisting, Tzu eventually gives in,

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159. Chang, *supra* note 1, at 1264.
160. Sue et al., *supra* note 70, at 98-99. *See also* Wei, *supra* note 40, at 798.
161. Sue et al., *supra* note 70, at 98. *See also* Chiu, *supra* note 46, at 1085 n.210; Chang, *supra* note 1, at 1261-65.
162. Chiu, *supra* note 46, at 1080.
163. Chang, *supra* note 1, at 1264. *See also* Sue et al., *supra* note 70, at 98.
164. Chang, *supra* note 1, at 1264.
165. *See id.* at 1264-65.
166. Oh, *supra* note 148, at 140; Cho, *supra* note 7, at 186. *See also* Hutchinson, *supra* note 56, at 94 ("The 'model minority myth' solidified white supremacist notions of Asian American passivity and economic success and, together with historically sexualized notions of Asian American female status, led to the saturation of popular culture with images of Asian American women as docile, servile and heterosexually submissive.").
167. Cho, *supra* note 7, at 188.
168. *Id.*
169. *Id.*
170. *Id.*
171. *Id.* at 188-89.

not only to the detective's verbal and physical abuse, but also to rape.[172] This film demonstrates how the stereotype of a model minority woman and a sexualized, submissive lotus blossom interact to subjugate and legitimize the domination of Asian American women.[173] The perception of Asian American women as privately compliant, catering, and predisposed to submit to the "assertion of white male desire," while displaying a hyper-competent, professional exterior puts women at an increased risk of sexual harassment.[174] This stereotype reinforces a belief that Asian American women will be receptive to a harasser's aggressive sexual advances regardless of how competent, professional, or independent they may seem.[175]

V. STEREOTYPES ABOUT ASIAN AMERICAN WOMEN HAVE CONTRIBUTED TO DISCRIMINATION AND SEXUAL HARASSMENT AGAINST ASIAN AMERICAN WOMEN IN THE WORKPLACE

Stereotypes about Asian American women manifest themselves in discriminatory conduct and sexual harassment against Asian American women in the workplace. The objectification of Asian American women and stereotypes that they are submissive, politically passive, exotic, and compliant makes them susceptible to racialized sexual harassment.[176] This perception makes many believe that it is "okay" to sexually harass and discriminate against Asian American women.[177] In Sumi K. Cho's article, *Converging Stereotypes in Racialized Sexual Harassment: Where the Model Minority Meets Suzie Wong*, Cho discusses two cases of racialized sexual harassment involving Asian American women: a hostile work environment case and a *quid pro quo* case.[178] In both cases, the injuries suffered by the women are a result of the "synergy of race and gender," rather than race and gender independently.[179]

Asian American women also suffer from unconscious racism in the workplace.[180] For example, minority female attorneys are often mistaken for secretaries or paralegals.[181] They are often excluded from networking opportunities, denied desirable assignments, and denied promotions.[182] Asian American female attorneys, while perceived as being "hard-working, obedient, and compliant," are also seen as sexually available and too passive for

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172. *Id.*
173. *Id.* at 189.
174. *Id.* at 190.
175. *Id.*
176. *Id.* at 194, 208-09.
177. *Id.* at 206.
178. *Id.* at 201-10.
179. *Id.* at 210.
180. *See* LeeAnn O'Neill, *Hitting the Legal Diversity Market Home: Minority Women Strike Out*, 3 MOD. AM. 7, 8 (2007).
181. *Id.*
182. *Id.* at 8-9.

litigation.[183] These stereotypes create barriers to advancement for Asian American women. For example, minority male partners at law firms outnumber minority female partners more than two to one, despite there being more minority female associates than minority male associates.[184]

A. Proving Unlawful Discrimination

Title VII makes it unlawful for an employer

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.[185]

To prove unlawful discrimination, an employee plaintiff must generally show that the employer intended to discriminate; the employer took actions that adversely affected the employee's employment; and the adverse actions were causally linked to the employer's intent to discriminate.[186] Under the *McDonnell Douglas* burden-shifting test for employment discrimination, an employee must first establish a prima facie case of discrimination, which creates a rebuttable presumption that the employer unlawfully discriminated.[187] The employer must then rebut this presumption by establishing a legitimate, non-discriminatory reason for the adverse employment decision.[188] If the employer is able to show a legitimate, non-discriminatory reason, the burden shifts back to the employee to show that the employer's reason was pretext, and that the real reason for the adverse employment decision was discrimination.[189]

Asian American women experience discrimination not as Asian Americans or as women, but as Asian American women. Therefore, laws addressing employment discrimination must take into account the unique intersecting identities of Asian American women. Courts have been inconsistent with their analysis of cases involving individuals who fit in multiple socially constructed

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183. *Id.* at 9.
184. *Id.* at 11.
185. 42 U.S.C.A. § 2000e-2 (West 2013).
186. MICHAEL J. ZIMMER ET AL., CASES AND MATERIALS ON EMPLOYMENT DISCRIMINATION 2 (7th ed. 2008).
187. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973).
188. *Id.*
189. *Id.* at 804-05.

categories.[190] While some courts separate an individual's claim into discrete unrelated categories, such as "race" and "gender," others examine discrimination in a more holistic matter by looking at both "race and gender."[191]

Asian American women face an intersection of at least three forms of illegal discrimination: race, gender, and national origin.[192] When employment discrimination is discussed through a single-axis analysis that compartmentalizes discrimination into discrete categories, the experiences of Asian American women and other individuals who fit in more than one protected category are overlooked.[193] This "marginalizes those who are multiply-burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination."[194] Without a more holistic approach, the manner in which Asian American women are subordinated cannot be addressed.[195]

B. Examining the Discrimination Claims Brought By African American Women Is Helpful for Understanding the Claims Brought By Asian American Women Since Both Are Discriminated Against for Their Race and Gender

In discussing employment discrimination against Asian American women, it is helpful to look at similar claims brought by African American women since both groups of women face similar difficulties in bringing claims based on the intersection of their race and gender.[196] In *DeGraffenreid v. General Motors*, African American women alleged that their employer's "last-hired-first-fired" policy discriminated against them and perpetuated past acts of discrimination against African American women.[197] After deciding that African American women are not a special protected class under Title VII, the court broke down the Plaintiffs' claims and analyzed the race and sex discrimination claims separately.[198] With regard to the sex-based discrimination claim, the court granted summary judgment to General Motors,[199] noting that General Motors had hired female employees before the Civil Rights Act of 1964, thereby indicating that their layoff policies did not perpetuate past discrimination against women.[200] The court failed to address the fact that General Motors had employed

190. *See* Wei, *supra* note 40, at 780-85.
191. *Id.*
192. *Id.* at 773.
193. *See id.* at 775, 780-85.
194. Crenshaw, *Demarginalizing the Intersection of Race and Sex*, *supra* note 5, at 140.
195. *See id.*
196. Wei, *supra* note 40, at 780.
197. DeGraffenreid v. Gen. Motors Assembly Div., 413 F. Supp. 142, 143 (E.D. Mo. 1976), *aff'd*, 558 F.2d 480 (8th Cir. 1977).
198. *DeGraffenreid*, 413 F. Supp. at 143.
199. *Id.* at 145.
200. *Id.* at 144.

only one black female prior to 1970.[201] The court then dismissed Plaintiffs' race discrimination claim so that it could be consolidated with another race discrimination claim.[202] In this case, the court refused to recognize the distinct discrimination faced by African American women. Rather, it defined the discrimination faced by African American women in terms of the experience of white women and African American men. As a result, African American women can succeed on a discrimination claim only if they can fit their experiences into discrete protected categories.

In contrast, the court in *Jeffries v. Harris County Community Action Association* agreed with Plaintiff that, "discrimination against black females can exist even in the absence of discrimination against black men or white women."[203] There, an African American woman alleged that her employer discriminated against her on the basis of race and sex by failing to promote her and terminating her employment.[204] Unlike the court in *DeGraffenreid*, the court in *Jeffries* looked at whether the employer discriminated against Plaintiff on the basis of race, sex, and race *and* sex.[205] The court found that Plaintiff failed to prove race discrimination since the individual who actually received the promotion was also African American.[206] The court remanded Plaintiff's sex discrimination claim, ordering the district court to make further findings of fact and conclusions of law.[207]

With regard to the sex *and* race claim, the court agreed with Plaintiff that "discrimination against black females can exist even in the absence of discrimination against black men or white women."[208] The court stated that the "or" in Title VII prohibits discrimination based on any or all of the protected classifications.[209] In doing so, the court recognized that if black men and white women were considered to be in the same protected class as black females, no remedy would exist for discrimination directed only at black women.[210] The court therefore held that in Title VII cases alleging discrimination against black females, "the fact that black males and white females are not subject to discrimination is irrelevant and must not form any part of the basis for a finding that the employer did not discriminate against the black female plaintiff."[211] It further concluded that the recognition of African American women as a distinct protected subgroup is the only way to remedy discrimination against African

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201. *DeGraffenreid*, 558 F.2d at 482.
202. *DeGraffenreid*, 413 F. Supp. at 145.
203. Jeffries v. Harris Cnty. Cmty. Action Ass'n, 615 F.2d 1025, 1032 (5th Cir. 1980).
204. *Id.* at 1028.
205. *Id.* at 1030-34.
206. *Id.* at 1030.
207. *Id.* at 1031-32.
208. *Id.* at 1032.
209. *Jeffries*, 615 F.2d at 1032.
210. *Id.* at 1032-33.
211. *Id.* at 1034.

American women.[212]

The cases above demonstrate the inconsistent approach taken by courts in response to employment discrimination claims made by African American women. In these cases, African American women claimed that they were discriminated against as a result of both their race and sex. As such, these cases provide guidance for Asian American women who are discriminated against for their race, sex, and national origin.[213]

C. Asian American Women Have Had Difficulty Bringing Forth Discrimination Claims Based on Their Intersectional Identities

Like African American women, Asian American women have experienced difficulties bringing forth employment discrimination claims based on the intersection of more than one protected category. For example, in *Lim v. Citizens Savings & Loan Association*, Plaintiff brought a claim alleging that her employer discriminated against her on the basis of race and sex by failing to promote her and discharging her.[214] Plaintiff also attempted to file a class action suit on behalf of female and Asian employees charging discriminatory practices.[215] The court refused to certify the class,[216] citing statistics that indicated that the percentage of women and Asians employed by Defendant was comparable to relevant labor pools.[217] The court also granted Defendant's motion for summary judgment on Plaintiff's individual claim, stating that Plaintiff either failed to prove a prima facie case for discrimination, or that Defendant rebutted her showing with several legitimate reasons for its decisions so that "'no genuine issue of material fact' as to discrimination remains."[218]

In *Chaddah v. Harris Bank Glencoe-Northbrook, N.A.*, Plaintiff, an Asian American woman, claimed that she was harassed, denied a transfer, and discharged because of her age, race, and color.[219] In addition to being denied a transfer, Plaintiff claimed that she was harassed by bank employees who ridiculed her English pronunciations, told her that foreigners should not work at the bank if they could not use proper English, and told her that she would "fit right in" with the women in China who worked in the fields barefoot.[220] Plaintiff ultimately resigned from the bank.[221] The court dismissed Plaintiff's constructive discharge claim and held that Plaintiff failed to show that a reasonable person

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212. *Id.*
213. *See* Wei, *supra* note 40, at 780.
214. Lim v. Citizens Sav. & Loan Ass'n, 430 F. Supp. 802, 804 (N.D. Cal. 1976).
215. *Id.*
216. *Id.* at 813.
217. *Id.* at 806.
218. *Id.* at 813-14 (quoting FED. R. CIV. P. 56).
219. Chaddah v. Harris Bank Glencoe-Northbrook, No. 93 C 0397, 1994 WL 75515, at *1 (N.D. Ill. Mar. 8, 1994).
220. *Id.* at *2-3.
221. *Id.* at *2.

under her circumstances would have resigned.[222] Further, the court held that Plaintiff failed to show that younger, white women promoted before her were less qualified than she or that there were few or no Asian bank officers.[223] The court highlighted the fact that "Plaintiff offer[ed] no statistical evidence that other persons in her age category or of her racial background suffered similar discrimination."[224] The court's analysis separated Plaintiff's claims and looked at each individually rather than in combination, which resulted in the dismissal of Plaintiff's cause of action.[225]

In contrast, the court in *Lam v. University of Hawai'i* looked at whether discrimination occurred on the basis of a combination of race and sex.[226] Plaintiff, a Vietnamese woman, twice applied to be the Director of the University of Hawai'i's Richardson School of Law's Pacific Asian Legal Studies (PALS) Program and was rejected both times.[227] During the school's first hiring search, Plaintiff was one of ten finalists recommended by an appointments committee for full-faculty review.[228] The chairman of the appointments committee had previously had a "run-in" with Plaintiff, and Plaintiff was concerned about how this would affect her candidacy.[229] During a debate regarding Plaintiff's application, the chairman stated that Plaintiff was "not collegial, was a poor scholar, . . . had poor administrative ability," and "was unfit to teach anywhere on the University of Hawai'i campus."[230] The faculty failed to reach a consensus about who should be appointed, and the search was cancelled.[231]

In response, Plaintiff filed a discrimination complaint with the University, which resulted in a report "detailing confidentiality breaches and procedural violations" in the committee's search for a new director.[232] University EEO officers spoke with law school faculty and recommended the use of rating sheets and of a clear definition for the PALS program and the director position.[233] When the university reopened its search for a PALS director, Plaintiff reapplied.[234] The new committee disregarded the EEO's recommendations for screening out potential bias.[235] The final list of candidates consisted entirely, or almost entirely, of persons of U.S. origin, which was in stark contrast to the

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222. *Id.* at *3.
223. *Id.* at *5-6.
224. *Id.* at *5-6.
225. *Chaddah*, 1994 WL 75515, at *6. *See* Wei, *supra* note 40, at 782.
226. Lam v. Univ. of Haw., 40 F.3d 1551, 1562 (9th Cir. 1994).
227. *Id.* at 1554.
228. *Id.* at 1555-56.
229. *Id.* at 1556.
230. *Id.* at 1556.
231. *Id.* at 1557.
232. *Lam*, 40 F.3d at 1557.
233. *Id.*
234. *Id.*
235. *Id.* at 1558.

substantial number of non-white and foreign-born finalists in the first search.[236] The committee offered the position to a white candidate who declined the offer; as a result, the faculty once again cancelled the search.[237]

At trial, the Ninth Circuit rejected the district court's justification for granting summary judgment to Defendants, stating that Defendants' favorable consideration of an Asian man and a white woman did not demonstrate a lack of discrimination against an Asian woman.[238] The Ninth Circuit further noted that the district court

> seemed to view racism and sexism as separate and distinct elements amenable to almost mathematical treatment, so that evaluating discrimination against an Asian woman became a simple matter of performing two separate tasks: looking for racism "alone" and looking for sexism "alone," with Asian men and white women as the corresponding model victims.[239]

The court found this perception of employment discrimination to be misconceived, since the attempt to bisect an individual's identity into discrete categories often distorts or ignores the particular nature of their experience.[240] "When a plaintiff is claiming race and sex bias, it is necessary to determine whether the employer discriminates on the basis of that combination of factors, not just whether it discriminates against people of the same race or of the same sex."[241]

Currently, some courts have embraced an intersectional approach,[242] while others have dissected a claimant's claims into discrete protected categories.[243] Because Asian American women are subjected to stereotypes not shared by Asian men or white women,[244] courts must examine employment discrimination claims holistically, taking into account the history of oppression, stereotypes, and prejudices pertaining to Asian American women specifically.[245] Frameworks, like intersectionality, which integrate multiple factors, such as race and gender, should be utilized to "account for the multi-dimensional character of harassment that occurs and is challenged across races, social classes, and borders."[246] Such a holistic approach not only acknowledges the experiences of Asian American women, but also provides justice for litigants.

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236. *Id.*
237. *Id.* at 1558.
238. *Lam*, 40 F.3d at 1561.
239. *Id.*
240. *Id.* at 1561-62.
241. *Id.* at 1562.
242. *See id.*; *Jeffries*, 615 F.2d at 1025.
243. *See DeGraffenreid*, 413 F. Supp. 142; *Lim*, 430 F. Supp. 802; *Chaddah*, 1994 WL 75515.
244. *Lam*, 40 F.3d at 1562.
245. *See* Cho, *supra* note 7, at 208-09. *See generally* Judith A. Winston, *Mirror, Mirror on the Wall: Title VII, Section 1981, and the Intersection of Race and Gender in the Civil Rights Act of 1990*, 79 CALIF. L. REV. 775, 797 (1991).
246. Cho, *supra* note 7, at 209.

VI. PATHWAYS TO REMOVING BARRIERS TO SUCCESS

Asian American women face barriers to success that are similar to those faced by Asian American men, white women, and other women of color, but these barriers are wholly different because of Asian American women's unique history in the United States and their perceived characteristics.[247] Because Asian American women are subjected to a different set of assumptions and stereotypes, theories such as the glass ceiling and bamboo ceiling are insufficient to describe the barriers they face. To address barriers to success for Asian American women, a holistic approach must be used. Intersectionality is a well-suited theory to provide this holistic approach since it focuses on the experiences of individuals who fit in more than one protected category.[248] Intersectionality will demonstrate that the discrimination faced by Asian American women is not the same as the discrimination faced by women or Asian American men, and thus is deserving of its own analysis. Asian American women are discriminated against because of their race, sex, and national origin, therefore an understanding of their experiences that ignores how these axes of oppression intersect is incomplete and fails to provide the justice Title VII requires. By examining the history, stereotypes, and experiences of Asian American women, intersectionality can acknowledge the specific experiences of Asian American women and create opportunities for their professional advancement.

Expanding the theory of intersectionality to incorporate the experiences of Asian American women may remove some of the barriers to success for Asian American women by increasing their access to the courts. It will allow courts to analyze discrimination cases based on a combination of factors, rather than mutually exclusive factors. Increasing Asian American women's ability to find justice in employment discrimination cases will not only send a message to employers that discrimination against Asian American women as a discrete category will not be tolerated, but will also lead to a heightened awareness of the ways implicit biases affect employment decisions.

The knowledge gained from intersectional analysis should be provided to businesses so they can structure their employment policies in ways that do not disparately impact Asian American women. Many businesses are devoted to diversity, but are unaware of how stereotyping and implicit bias affect everyday employment decisions to the detriment of Asian American women. An awareness of the stereotypes of Asian American women will help businesses acknowledge their implicit biases, and will make them more attuned to business practices, conduct, and behavior that may prohibit Asian American women from entering the workforce or obtaining high-ranking positions. This knowledge can

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247. *See generally* Perez, *supra* note 5, at 211-13; *Lam*, 40 F.3d at 1561-62; Wei, *supra* note 40, at 771.

248. *See Intersectionality*, *supra* note 60, at 3. *See generally* Crenshaw, *Demarginalizing the Intersection of Race and Sex*, *supra* note 5; Crenshaw, *Mapping the Margins*, *supra* note 60.

be shared with businesses through trainings on implicit bias[249] and intersectionality;[250] by requiring management to explore the Project Implicit website[251] and take the Implicit Association Test, which demonstrates the divergence between the conscious and unconscious mind;[252] or by seeking a private consultation to understand how implicit biases against Asian American women occur in the employer's specific workplace.[253] An understanding of implicit bias and intersectionality can assist businesses in recruiting a representative class of Asian American women and avoiding future liability.

Also, in studying the barriers to success for Asian American women, the theory of intersectionality can help shed light on harmful stereotypes surrounding Asian American women, and how these stereotypes are perpetuated through the media to reinforce the oppression of Asian American women. When images of Asian American women are available in the media, they tend to portray negative, unrealistic stereotypes. To remove these denigrating stereotypes, and acknowledge the true experiences of Asian American women, we need more positive, realistic images of Asian American women in the media. This involves having more Asian Americans in mass media, playing multi-dimensional, realistic, humanized roles. This increased visibility will change the public perception of Asian American women and hopefully ensure that negative stereotypes do not prevent these women from reaching the upper echelons of management. Increasing the visibility of Asian American women also requires having more Asian American women in executive positions. By increasing the visibility of Asian American women, we can begin to chip away at the stereotypes that prevent Asian American women from moving forward in society.

VII. CONCLUSION

This paper discusses the failure of the bamboo and glass ceiling theories to adequately represent the experiences of Asian American women in the workplace. It argues that intersectionality has great potential to explain and

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249. *See, e.g., Uncovering Implicit Bias*, WORKPLACE ANSWERS, http://www.workplaceanswers.com/ uncovering-implicit-bias/ (last visited Sept. 4, 2013); *Lectures and Training*, PROJECT IMPLICIT, http://www.projectimplicit.net/lectures.html (last visited Sept. 4, 2013).

250. *See* Alison Symington, *Intersectionality: A Tool for Gender and Economic Justice*, WOMEN'S RIGHTS & ECON. CHANGE (Ass'n for Women's Rights in Dev., Ont., Can.), Aug. 2004, at 5, *available at* http://lgbtq.unc.edu/sites/lgbtq.unc.edu /files/documents/intersectionality_en.pdf. *See generally A Primer on Intersectionality*, AFRICAN AM. POLICY FORUM, http://www.racialequitytools.org/resourcefiles/african.pdf (last visited Sept. 4, 2013).

251. PROJECT IMPLICIT, http://www.projectimplicit.net/index.html (last visited Sept. 4, 2013).

252. *IAT Home*, PROJECT IMPLICIT, https://implicit.harvard.edu/implicit/demo/ (last visited Sept. 4, 2013).

253. *See, e.g., Consulting*, PROJECT IMPLICIT, http://www.projectimplicit.net/consulting.html (last visited Sept. 4, 2013).

acknowledge the experiences of Asian American women, and should thus be expanded to examine the unique position of Asian American women who face discrimination on the basis of multiple categories of identity. To accomplish this, intersectionality must look at the history of Asian American women in the United States, the stereotypes that emerged from this dark history and how these stereotypes permeate our current perceptions of Asian American women, and the effects of the model minority myth. Intersectionality must also look at how these stereotypes manifest in the workplace and prevent Asian American women from advancing to the highest ranks of employment. Intersectionality is a persuasive theory that has the ability to help remove barriers to economic, social, financial, and political success, and to create opportunities for Asian American women.

This paper is limited in its scope in that it focuses on the experiences of educated, middle-class Asian American women. Future research should examine the experiences of Asian Americans with varying levels of education and wealth. This paper is also limited in that it focuses on the external societal forces, rather than the internal cultural forces, that create barriers to success. In the future, research should examine how cultural forces interact with societal forces to produce barriers to success for Asian American women. This research will require examining the cultural forces unique to each discrete Asian American community.

This paper provides an introduction to and overview of the individual factors contributing to the barriers to success for Asian American women. It is clear that there is much more research that needs to be done to better understand the experiences of Asian American women. This research will not only chip away at the ceiling that prevents Asian American women from achieving success, but will also create opportunities for Asian American women to rise above and beyond this ceiling.