

The Inscrutable SHSAT

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INTRODUCTION

New York City mayoral candidate Bill de Blasio, during his 2013 campaign, ran on a platform to eliminate the Specialized High School Admissions Test (SHSAT), which the 1971 New York state law, colloquially called Hecht-Calandra, requires.¹ This law mandated that an entrance exam be the sole criteria for admission to the then existing science and math-focused high schools: Stuyvesant, Bronx Science, and Brooklyn Tech.² The debate over the SHSAT has raged hot and cold for decades.³ In the latest

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1. Eliza Shapiro, *De Blasio Has Means, If Not Will, to Reform Specialized School Admissions*, POLITICO (Mar. 15, 2018), <https://www.politico.com/states/new-york/albany/story/2018/03/15/de-blasio-has-means-if-not-will-to-reform-specialized-school-admissions-317675> [<https://perma.cc/G2MM-5ZJ5>].

2. These “big three” schools are the original exam schools, along with LaGuardia High School, which admitted on the basis of portfolio or audition. In 2005, five additional high schools were added as schools admitted on the basis of the SHSAT. Alina Adams, *Adams: Michael Bloomberg Made Sweeping Changes in NYC Schools as Mayor. What Might He Do as President?*, THE 74 (Dec. 9, 2010), <https://www.the74million.org/article/adams-michael-bloomberg-made-sweeping-changes-in-nyc-schools-as-mayor-what-might-he-do-as-president> [<https://perma.cc/UB3G-BPNX>].

3. See, e.g., Heather Mac Donald, *How Gotham’s Elite High Schools Escaped the Leveller’s Ax*,

round, NAACP Legal Defense Fund raised the issue in 2012 by filing a US Department of Education complaint, alleging that the SHSAT disparately impacted African American and Latinx students and violated Title VI of the Civil Rights Act of 1964.⁴ Filed during Mayor Michael Bloomberg's last term, Bloomberg dismissed the complaint and stated that there was nothing fairer than an objective exam. Indeed, during his mayoralty, he added five additional SHSAT schools.⁵

In 2018, the overall New York City (NYC) school population was 40.5 percent Latinx, 26 percent African American, 16.1 percent Asian, and 15 percent white.⁶ For the 2018–19 school year, Stuyvesant's population was 2.8 percent Latinx, 0.7 percent African American, 73.9 percent Asian Pacific Islander, 18.5 percent white, and 3.6 percent multiracial.⁷

Only 4.9 percent of all NYC high school students attend a high school that uses the SHSAT to determine entrance.⁸ However, these schools receive a disproportionate amount of press attention. They have long been celebrated as the best the system has to offer, with nine Nobel laureates and science-competition dominations as their claims to fame.⁹ Stuyvesant High School is one of the top feeder high schools to Harvard University, competing toe-to-toe with wealthier private schools. In recent decades, the startlingly low number of African American and Latinx students at these schools have engendered a clarion call for reform. These schools loom large in the public imagination and figure prominently in the debate about education and equity in NYC and beyond. In his first term, Mayor de Blasio did nothing to eliminate the SHSAT. Once reelected, he faced intense criticism from his political base for his inaction on the SHSAT, which spurred him to act.¹⁰

CITY J. (1999),

<https://www.city-journal.org/html/how-gotham's-elite-high-schools-escaped-leveller's-ax-12276.html> [<https://perma.cc/4E7W-WGGE>].

4. *Case: New York City Specialized High School Complaint*, NAACP LEGAL DEF. FUND, <https://www.naacpldf.org/case-issue/new-york-city-specialized-high-school-complaint> [<https://perma.cc/H586-GAP6>].

5. Garth Johnston, *Bloomberg to Minorities Rejected by Elite High Schools: Life's Not Fair*, GOTHAMIST, (Sept. 28, 2012), <https://gothamist.com/news/bloomberg-to-minorities-rejected-by-elite-high-schools-lifes-not-fair> [<https://perma.cc/4Y6E-JDHZ>].

6. *DOE Data at a Glance*, N.Y.C. DEP'T OF EDUC., <https://www.schools.nyc.gov/about-us/reports/doe-data-at-a-glance> [<https://perma.cc/T9MV-SSAY>].

7. Racial composition at Bronx Science: 65.6% Asian, 23.4% White, 6.2% Latinx, and 2.5% African American. Best of all in terms of racial balance was Brooklyn Tech, at 61.3% Asian, 23.4% White, 7.2% Latino, and 6.4% African American. *Brooklyn Technical High School at a Glance*, N.Y. ST. DEP'T OF EDUC., <https://data.nysed.gov/profile.php?instid=800000043516> [<https://perma.cc/C45M-BZYM>]; *Bronx High School of Science at a Glance*, N.Y. ST. DEP'T OF EDUC., <https://data.nysed.gov/profile.php?instid=800000045625> [<https://perma.cc/3WNP-QSE3>]; *Stuyvesant High School at a Glance*, N.Y. ST. DEP'T OF EDUC., <https://data.nysed.gov/profile.php?instid=800000046741> [<https://perma.cc/8YDC-ZJST>].

8. KRISTEN LEWIS & SARAH BURD-SHARPS, WHO GRADUATES? NEW FINDINGS ON NYC HIGH SCHOOL ADMISSIONS AND GRADUATION RATES I (2017), https://ssrc-static.s3.amazonaws.com/moa/NYCHSAadmissions_2017_Final.pdf [<https://perma.cc/8TCB-Y65B>].

9. Mac Donald, *supra* note 3.

10. Shapiro, *supra* note 1.

Section I of this Article will address how Mayor de Blasio excluded the Asian American community in his proposal to eliminate the SHSAT and the backlash that emerged. This backlash ultimately derailed the proposed plan but left the invisibility issue fully in force. Section II considers explanations other than racial discrimination for the racial composition of the specialized high schools. Finally, Section III concludes with an analysis of Asian American placement within the American racial framework.

I. MAYOR DE BLASIO AND THE INVISIBILITY OF THE ASIAN AMERICAN COMMUNITY

A. *Mayor de Blasio did not seek Asian American community buy-in and the backlash to proposed reforms*

On Saturday, June 2, 2018, Mayor de Blasio announced his plan to eliminate the SHSAT via an op-ed piece entitled, “Our Specialized schools have a diversity problem. Let’s fix it.”¹¹ A Sunday rally in a Brooklyn school followed this op-ed, and a vote by the New York State Assembly education sub-committee a mere three days later.¹² During the kickoff rally, Mayor de Blasio cast the specialized high schools as “not looking like New York City.”¹³ His Sunday rollout took place on a stage with nary a single Asian American on the podium.¹⁴ He used civil rights language to frame his endeavor as a crusade against the evils of segregation. Quoting UCLA’s Civil Rights report calling NYC public schools among “the most segregated” in the country,¹⁵ he cast those who would oppose his plan as opponents of “justice and progress.”¹⁶

The large percentage of Asian American students in the schools, and their decrease as a result of the proposed changes, suggested to the Asian American community that they should be included in any refashioning of the

11. Bill de Blasio, *Our Specialized Schools Have a Diversity Problem. Let’s Fix It.*, CHALKBEAT (June 2, 2018), <https://www.chalkbeat.org/posts/ny/2018/06/02/mayor-bill-de-blasio-new-york-city-will-push-for-admissions-changes-at-elite-and-segregated-specialized-high-schools> [https://perma.cc/6K8T-NYFN].

12. Zack Fink, *Bill to Scrap Admissions Test for NYC Specialized High Schools Passes Education Committee*, SPECTRUM NEWS (N.Y.) (June 6, 2018), <http://www.ny1.com/nyc/all-boroughs/politics/2018/06/06/bill-to-scrap-shsat-passes-new-york-state-assembly-education-committee> [https://perma.cc/2FKA-YFJK].

13. NYC Mayor’s Office, *Mayor de Blasio Announces Plan to Improve Diversity at Specialized High Schools* at 4:22, YOUTUBE (June 4, 2018), <https://www.youtube.com/watch?v=ZiBP-ZW5Uk4> [https://perma.cc/83JR-QLZV].

14. See David W. Chen, ‘A Huge Blind Spot’: Why New York Asians Feel Overlooked, N.Y. TIMES (July 4, 2018), <https://www.nytimes.com/2018/07/04/nyregion/asians-overlooked-specialized-schools.html> [https://perma.cc/N7ZW-W9WW]; Alvin Chang, *The Fraught Racial Politics of Entrance Exams for Elite High Schools*, VOX (June 14, 2018), <https://www.vox.com/2018/6/14/17458710/new-york-shsat-test-asian-protest> [https://perma.cc/8XLZ-N6YM].

15. John Kucsera, *New York State’s Extreme School Segregation: Inequality, Inaction and a Damaged Future*, THE C.R. PROJECT (Mar. 26, 2014), <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/ny-norflot-report-placeholder> [https://perma.cc/SE9T-7LX6].

16. See NYC Mayor’s Office, *supra* note 13.

admissions process. Worse yet was being made the “problem” that stood in the way of progress. But the Mayor sought no input from the Asian American community. A progressive Mayor assumed to be a political ally left out the Asian American community.¹⁷ The Mayor’s office hastily convened two meetings with Asian American community organizations and activists.¹⁸ Organizations attending the meeting included the Coalition for Asian American Children and Families (CACF), Asian Americans for Equality (AAFE), the Asian American Federation (AAF), Chinese-American Planning Council (CPC), and APEX for Youth.

Though CACF shared the policy goal of eliminating the SHSAT, it was also critical of the Mayor’s political process that excluded Asian American voices.¹⁹ CACF was not the only Asian American progressive voice that expressed a sense of betrayal by being left out of the planning process.²⁰ The Asian American community, believing that the proposed plan to limit the number of students from each middle school was specifically engineered to decrease Asian American enrollment, erupted in multiple protests in opposition to the proposed bill.²¹

Mayor de Blasio miscalculated politically and engendered a wave of protest. He never publicly addressed why he did not include the Asian American community and faced accusations that he deliberately excluded them.²² In the op-ed that announced the SHSAT reform kickoff, he made an appeal to “look the parent of a Latino or black child in the eye and tell them their precious daughter or son has an equal chance to get into one of their city’s best high schools.”²³ De Blasio went on to boast about the anticipated progress: “the percentage of black and Latino students receiving offers will

17. See Lindsey Christ, *Parents, Alumni Slam Proposal to Change Admissions for NYC Specialized High Schools*, SPECTRUM NEWS (N.Y.) (June 4, 2018), <http://www.ny1.com/nyc/all-boroughs/news/2018/06/05/nyc-parents-alumni-asian-american-groups-slam-bill-de-blasio-push-to-scrap-shsat> [<https://perma.cc/KG9Q-TGBG>].

18. I was invited to and attended those two meetings, which were held on June 8 and 29, 2019, at City Hall.

19. *Overemphasizing a Test, Oversimplifying Our Children: An APA Perspective on Specialized High School Reform towards Educational Equity*, COALITION FOR ASIAN AM. CHILD. & FAMS. (Nov. 2018), <http://cacf.org/dev/wp-content/uploads/2018/11/CACF-SHSAT-layout-4.pdf> [<https://perma.cc/CAX8-RHY2>].

20. Shino Tanikawa, *I Fight for Integrated Schools in New York City. I’m Also Asian-American. Mayor de Blasio, Let’s Talk*, CHALKBEAT (June 19, 2018), <https://www.chalkbeat.org/posts/ny/2018/06/19/ive-spent-years-fighting-for-integrated-schools-in-new-york-city-im-also-asian-american-mayor-de-blasio-lets-talk> [<https://perma.cc/RB45-RVDY>].

21. See Chen, *supra* note 14; Alex Zimmerman & Monica Disare, *De Blasio’s Specialized School Proposal Spurs Outrage in Asian Communities*, CHALKBEAT (June 5, 2018), <https://chalkbeat.org/posts/ny/2018/06/05/de-blasios-specialized-school-proposal-spurs-outrage-in-asian-communities> [<https://perma.cc/Q2CP-AF86>]; Christina Veiga, *Majority of New York City Voters Say Scrap the SHSAT, Boost Diversity at Specialized High Schools, New Poll Finds*, BROOK. DAILY EAGLE (April 4, 2019), <https://brooklyneagle.com/articles/2019/04/04/majority-of-new-york-city-voters-say-scrap-the-shsat-boost-diversity-at-specialized-high-schools-new-poll-finds> [<https://perma.cc/ATM7-U6GB>].

22. Chen, *supra* note 14.

23. De Blasio, *supra* note 11.

almost double, to around 16 percent from around 9 percent.”²⁴ These efforts were to “correct historic injustices,” which presumably did not include any historic injustices affecting Asian Americans.²⁵ During his press conference, de Blasio spoke about Asian Americans only in response to reporter questions.²⁶ In his silence, de Blasio showed that his racial justice lens exclusively focused on African Americans and Latinxs. Asian Americans, if they were to occupy any space, were to function as stand-ins for whites.

Education Chancellor Richard Carranza further magnified de Blasio’s mistakes with his intemperate remarks. In response to a question about complaints from Asian Americans about being excluded from the planning process, Carranza responded: “I don’t buy into the narrative that any one ethnic group owns admissions to these schools.”²⁷ This statement was wildly off base, equating the Asian American demand for inclusion with an assertion of ownership of the admissions process. Given a chance to walk back these remarks, Carranza doubled down: “‘If you choose to be offended as an Asian resident of New York City, that’s a choice you make,’ he said, ‘If you choose to not be offended, that’s a choice you make.’”²⁸ Just three months earlier, Carranza retweeted a story with the headline: “Wealthy white Manhattan parents angrily rant against plan to bring more black kids to their schools.”²⁹ After just three days of angry reactions from white parents, Carranza offered an apology.³⁰ In contrast, Carranza has never apologized for his remarks regarding complaints by Asian Americans in the same context. As such, Carranza’s racially divisive rhetoric can be considered as tacitly approved by his boss, Mayor de Blasio.

Mayor de Blasio’s political rollout was an unmitigated disaster, exacerbated by Chancellor Carranza’s public statements. It took de Blasio months to publicly express his regrets on his exclusion of the Asian American community.³¹ Though progressive Asian American community

24. *Id.*

25. Selim Algar, *De Blasio Admits He Failed Outreach to Asians Before Plan to Diversify Schools*, N.Y. POST (Mar. 28, 2019), <https://nypost.com/2019/03/28/de-blasio-admits-he-failed-outreach-to-asians-before-plan-to-diversify-schools> [https://perma.cc/N5W8-8DR5].

26. NYC Mayor’s Office, *supra* note 13.

27. Jim Dwyer, *Decades Ago, New York Dug a Moat Around Its Specialized Schools*, N.Y. TIMES (June 8, 2018), <https://www.nytimes.com/2018/06/08/nyregion/about-shsat-specialized-high-schools-test.html> [https://perma.cc/6YC2-FHVP].

28. Chen, *supra* note 14.

29. Ben Chapman, *Chancellor Carranza Apologizes for Retweeting Story About ‘Wealthy White Manhattan Parents’ Opposed to Schools Integration*, N.Y. DAILY NEWS (May 1, 2018), <https://www.nydailynews.com/new-york/education/chancellor-wealthy-white-manhattan-parents-retweet-article-1.3963926> [https://perma.cc/XS2F-VV24].

30. Selim Algar, *Schools Chief Partially Apologizes for Tweeting ‘Racism’ Story*, N.Y. POST (Apr. 30, 2018), <https://nypost.com/2018/04/30/schools-chief-partially-apologizes-for-retweeting-racism-story> [https://perma.cc/4YAX-FV6H].

31. Zipporah Osei & Reema Amin, *SHSAT debate heats up with close-door meeting at Gracie Mansion – and an endorsement in Albany*, CHALKBEAT (Jun 13, 2019), <https://ny.chalkbeat.org/2019/6/13/21108335/shsat-debate-heats-up-with-close-door-meeting-at-gracie-mansion-and-an-endorsement-in-albany> [https://perma.cc/WY55-K2T3].

groups agreed with the Mayor's goals of SHSAT elimination, the exclusionary and racially divisive political messaging dampened their enthusiasm and delayed their full-throated support for the Mayor's plan.³²

B. Mayor de Blasio's Use of Asians Americans as a Wedge and Misappropriation of the Civil Rights Movement

Mayor de Blasio has suggested the school populations as “not looking like New York City.”³³ Without explicitly saying so, de Blasio was problematically slotting Asian Americans as “honorary whites” and therefore dividing Asian Americans from a “people of color” coalition with African Americans and Latinxs. De Blasio mentions “Latino and African American students” five times in the article,³⁴ but never mentions Asian Americans, even when he is ostensibly talking about them.³⁵ With their rhetoric, both de Blasio and Carranza ignored statistics clearly showing that many of the current students at these schools were economically disadvantaged and poor enough to qualify for free or reduced lunch: 43 percent at Stuyvesant,³⁶ 45 percent at Bronx Science,³⁷ and 61 percent at Brooklyn Tech.³⁸ These schools also had a large immigrant student population: 36 percent of Stuyvesant speaks a language other than English at home.³⁹ Yet Chancellor Carranza cast the specialized high schools as an “epicenter of privilege.”⁴⁰ Mayor de Blasio criticized the resources necessary for a test prep system as a “‘rich-get-richer’ system.”⁴¹ But de Blasio and Carranza willfully averted their eyes to the facts and constructed policy based on their veiled vision of the world.

An avowed progressive, Mayor de Blasio demonstrated that the

32. See COALITION FOR ASIAN AM. CHILD. & FAMS., *supra* note 19.

33. NYC Mayor's Office, *supra* note 13.

34. De Blasio, *supra* note 11.

35. *Id.*

36. *Stuyvesant High School Student Body*, U.S. NEWS & WORLD REP., <https://www.usnews.com/education/best-high-schools/new-york/districts/new-york-city-public-schools/stuyvesant-high-school-13092/student-body> [https://perma.cc/J6DS-7QNH].

37. *Bronx High School of Science Student Body*, U.S. NEWS & WORLD REP., <https://www.usnews.com/education/best-high-schools/new-york/districts/new-york-city-public-schools/bronx-high-school-of-science-13207/student-body> [https://perma.cc/X3C9-373N].

38. *Brooklyn Technical High School Student Body*, U.S. NEWS & WORLD REP., <https://www.usnews.com/education/best-high-schools/new-york/districts/new-york-city-public-schools/brooklyn-technical-high-school-13269/student-body> [https://perma.cc/SU3M-H5W8].

39. Boaz Weinstein, *No Ethnic Group Owns Stuyvesant. All New Yorkers Do.*, N.Y. TIMES (June 13, 2018), <https://www.nytimes.com/2018/06/13/opinion/de-blasio-stuyvesant-school.html?action=click&module=RelatedLinks&pgtype=Article> [https://perma.cc/7SX9-SPP7].

40. Brendan Lowe, *12 Surprising Quotes from New York City Schools Chief Richard Carranza, From Gifted & Talented to His Union Boss Best Buddy*, THE 74 (Oct. 16, 2018), <https://www.the74million.org/article/12-surprising-quotes-from-new-york-city-schools-chief-richard-carranza-from-gifted-talented-to-his-union-boss-best-buddy> [https://perma.cc/UL27-CMWM].

41. Ranjani Chakraborty, *Elite NYC Schools Wrestle with Drop in Black, Hispanic Students*, AL JAZEERA AM. (Nov. 24, 2014), <http://america.aljazeera.com/watch/shows/americanight/articles/2014/11/24/nyc-schools-blackhispanicasian.html> [https://perma.cc/J6ML-W9ER]; Shapiro, *supra* note 1.

political left can utilize wedge politics, perhaps unwittingly, in an attempt to achieve political goals. In Asian American studies, it is axiomatic that divide and conquer wedge politics like the model minority formulation are a weapon of conservative interests.⁴² However, the model minority not only works as a wedge when it operates from the right, but also here, where it functions from the left in a subtle manner. Instead of dividing Asian Americans from African Americans, it included Asian Americans with, or as, whites. Operatively, different sides of the same coin. When the wedge operates from both ends of the political spectrum, this insures the political invisibility of Asian Americans. Asian American progressives, because they are on board with progressive anti-racist efforts generally, are willing to give a pass to wedge politics from the left. The subtlety of the left wedge operates as a quiet veil. Blinded by this veil, Mayor de Blasio could not and did not see Asian Americans as part of the “people of color” coalition. Presented with their large numbers at the specialized high schools, he saw their “overrepresentation” in the specialized high schools as a problem to be solved.⁴³ An example of the veil: Mayor de Blasio decried that the Bronx Science student body only had 14 percent of its students from the Bronx.⁴⁴ Left unsaid was that over 50 percent of Bronx Science students come from Queens, often enduring a two hour or more total commute to and from school.⁴⁵ These are different sides of the same coin: Asian American enclaves in Northern Queens face some of the most crowded high schools in NYC and have self-solved the problem for decades by attending specialized

42. Kat Chow, “Model Minority” Myth Again Used as a Racial Wedge Between Asians and Blacks, NPR (Apr. 19, 2017), <https://www.npr.org/sections/codeswitch/2017/04/19/524571669/model-minority-myth-again-used-as-a-racial-wedge-between-asians-and-blacks> [https://perma.cc/M6XD-VJRT].

43. For example, northern Queens is an enclave of Asian immigrants. It experienced tremendous population growth in the last two decades, resulting in the most overcrowded high schools in NYC. See Arthur Goldstein, *My Crowded School, Like Many Others, Needs a Plan*, GOTHAM GAZETTE (Oct. 2, 2017), <http://www.gothamgazette.com/opinion/7228-my-crowded-school-like-many-others-needs-a-plan> [https://perma.cc/E28X-RJJC]; Samantha Handler, *Struggling with Overcrowded Schools and Large Class Sizes, City Advances \$8.8 Billion Plan*, GOTHAM GAZETTE (July 16, 2019), <https://www.gothamgazette.com/city/8673-struggling-with-school-overcrowding-and-large-class-sizes-city-advances-8-8-billion-plan> [https://perma.cc/A552-T79K]; Jacqueline Neber, *Advocates Say NYC’s \$8.8 Billion Plan to Address School Overcrowding Isn’t Focused on the Right Fix*, N.Y. METRO PARENTS (July 26, 2019), <https://www.nymetroparents.com/article/advocates-say-nyc-plan-to-address-school-overcrowding-is-not-enough> [https://perma.cc/P3WG-QTL7]; Maya Kaufman, *Francis Lewis High School, Long Overcrowded, To Get 555 New Seats*, PATCH (May 30, 2019), <https://patch.com/new-york/flushing-murray-hill/francis-lewis-high-school-long-overcrowded-get-555-new-seats> [https://perma.cc/YXC9-DT7Q]; Carlotta Mohamed, *Queens Public Schools Continue to Battle Overcrowding as City Expands Campuses Boroughwide*, QNS (June 18, 2019), <https://qns.com/story/2019/06/18/queens-public-schools-continue-to-battle-overcrowding-as-city-expands-campuses-borough-wide> [https://perma.cc/6GGM-S27R].

44. NYC Mayor’s Office, *supra* note 13.

45. Amanda M. Fairbanks, *The Trip to Bronx Science: A Long Ride to a Choice School*, N.Y. TIMES (Feb. 12, 2008), <https://www.nytimes.com/2008/02/12/nyregion/12bus.html> [https://perma.cc/S4YE-K3Z3].

high schools in the Bronx and Manhattan.⁴⁶ In doing so, students who lived in the Bronx were pushed out from Bronx Science. In his distorted view of the Asian American community, Mayor de Blasio believes that the rise of test prep privileges well-resourced families.⁴⁷

Mayor de Blasio's exclusion of the Asian American community undercut potential progressive Asian American allies, who found it difficult initially to defend his racially divisive political rhetoric. This delayed their entry into the public debate and cleared room for a vigorous Asian American opposition to Mayor de Blasio's plans. Moreover, he crafted and messaged the plan as if Asian Americans were invisible and their interests did not count. Though the statistics factually show these schools are full of poor immigrants, Mayor de Blasio nonetheless believes these schools to be centers of privilege. He lectured Asian Americans—without ever directly addressing the community by name.

II. AN ALTERNATIVE EXPLANATION FOR RACIAL DEMOGRAPHICS AT THE SPECIALIZED HIGH SCHOOLS

The low numbers of African American and Latinx students at the specialized high schools are taken as conclusive evidence of discrimination.⁴⁸ There is no doubt that the legacy of slavery, Jim Crow, and institutional racism are still alive and well in the NYC school system (and beyond) and that this legacy plays a role in the low numbers of African Americans. I support the principle embedded in Mayor de Blasio's desire to correct historical injustices. How we go about doing so—and who we include as we fashion these remedies—is where my view separates from those of Mayor de Blasio. I submit that the maturation of previously unavailable educational options for African American and Latinx students have created new pathways leading to private high schools and away from specialized high schools. Many have also chosen charter school options. In other words, there actually might be some silver lining in the bad news.

A. The Rise of Prep for Prep, Charter Schools, and School Choice Contribute to the Decline of African American and Latinx Students in Specialized High Schools

The Hecht-Calandra Act of 1971⁴⁹ has been criticized as an attempt to

46. Handler, *supra* note 43.

47. See SHSBADI, *The Stuyvesant High School Black Alumni Diversity Initiative: Alumni Working for a Diverse Stuy*, MEDIUM (June 28, 2018), <https://medium.com/@shsbadi/the-stuyvesant-high-school-black-alumni-diversity-initiative-alumni-working-for-a-diverse-stuy-96481663ebb3> [<https://perma.cc/UL9Z-H5TP>]; NYC Mayor's Office, *supra* note 13, at 45:00.

48. Liliana Zaragoza, *NYC City Council Hearing on Proposed Specialized High School Diversity Measures*, NAACP LEGAL DEF. & EDUC. FUND (May 1, 2019), https://www.naacpldf.org/wp-content/uploads/2019-05-01_NYC-City-Council-Hearing-Testimony-on-Alternative-Plan-to-SHSAT-and-Proposed-Resolutions-re-Segregation-in-Specialized-Schools.pdf [<https://perma.cc/BM5X-6P87>].

49. Mac Donald, *supra* note 3.

preempt efforts to impose affirmative action-type programs at schools.⁵⁰ But Hecht-Calandra codified an entrance exam that had been in place since the 1930s. It also codified the Discovery program, an affirmative action-type program based on socioeconomic status that had been operating since the 1960s.⁵¹ But if the legislative goal was to keep African American and Latinx students out, it was not particularly effective for at least two decades. There was a time when African American and Latinx populations were more numerous at the specialized high schools. The apex of the African American student population at Stuyvesant High School was in 1975, when they made up 12 percent of the school's enrollment, or 303 of the school's 2,536 students.⁵² In 1980, there were 212 African American students; in 1990, 147; in 2000, 109; and in 2005, sixty-six.⁵³ At Brooklyn Tech, African American student enrollment actually rose from 38 percent in 1976 to 51 percent in 1982.⁵⁴ Starting in the early 1990s, however, African American and Latinx enrollment at specialized high schools began a precipitous decline, and in 2016 the combined numbers stood at 4 percent at Stuyvesant,⁵⁵ 9 percent at Bronx Science,⁵⁶ and 13 percent at Brooklyn Tech.⁵⁷ What happened to the African American and Latinx students?

I submit the possibility that the rise of Prep for Prep contributed to the decline of African American and Latinx student populations at the specialized high schools.⁵⁸ Prep for Prep, established in 1978, identifies students of color and prepares them for enrollment in private "preparatory" schools or Northeast boarding schools, taking them out of the NYC public

50. See Clio Chang, *Whose Side are Asian-Americans On*, THE NEW REPUBLIC (Sept. 24, 2018), <https://newrepublic.com/article/151328/whose-side-asian-americans-on> [https://perma.cc/5VW4-SPGK].

51. Dwyer, *supra* note 27. *Lawyers Argue the Discovery Program on Injunction Appeal*, SHSATSUNSET.ORG, <https://shsatsunset.org/lawyers-argue-the-discovery-program-on-injunction-appeal> [https://perma.cc/4NZ5-YMXB]; Katrina Shakarian, *The History of NYC's Special High Schools*, GOTHAM GAZETTE, <https://www.gothamgazette.com/government/5392-the-history-of-new-york-city-special-high-schools-timeline> [https://perma.cc/F7AM-DN9M].

52. Fernanda Santos, *A System Divided: To Be Black at Stuyvesant High*, N.Y. TIMES (Feb. 25, 2012), <https://archive.nytimes.com/www.nytimes.com/2012/02/26/education/black-at-stuyvesant-high-one-girls-experience.html> [https://perma.cc/CY4X-2YX6].

53. Eliza Shapiro & K.K. Rebecca Lai, *How New York's Elite Public Schools Lost Their Black and Hispanic Students*, N.Y. TIMES (Jun. 3, 2019), <https://www.nytimes.com/interactive/2019/06/03/nyregion/nyc-public-schools-black-hispanic-students.html> [https://perma.cc/9WLN-J5Z6].

54. *Id.*

55. N.Y. ST. DEP'T OF EDUC., *supra* note 6.

56. *Bronx High School of Science Enrollment (2015–16)*, N.Y. ST. DEP'T OF EDUC., <https://data.nysed.gov/enrollment.php?year=2016&instid=800000045625> [https://perma.cc/FS8H-GEM7].

57. *Brooklyn Technical High School Enrollment (2016–17)*, N.Y. ST. DEP'T OF EDUC., <https://data.nysed.gov/enrollment.php?year=2017&instid=800000043516> [https://perma.cc/4AA2-D6SZ].

58. See Sarah Dorn & Susan Edelman, *How Nonprofits Are Boosting NYC's Brightest Minority Students*, N.Y. POST (June 9, 2018), <https://nypost.com/2018/06/09/how-nonprofits-are-boosting-nycs-brightest-minority-students> [https://perma.cc/X2VH-84KY].

school system.⁵⁹ Parents apply for Prep for Prep. Once admitted to the program, students enter into a fourteen-month prep program that includes two summer sessions and classes on Wednesdays and Saturdays during the school year.⁶⁰ Of the Prep for Prep alumni, 50 percent are African American, 34 percent are Latinx, and 9 percent are Asian American.⁶¹ With a student cohort of 100 in 1981, 500 in 1988, and 830 in 2001,⁶² Prep for Prep has become a viable pathway to attend private schools.⁶³ With recruiting in the 5th, 6th, and 7th grades, this aggressive recruitment detours large numbers of high-achieving African American and Latino students from the New York public school system and into private schools.⁶⁴

Commentators have been dismissive of this explanation, but I believe the facts do not support their numbers and conclusion. For example, the New York Times states that Prep for Prep recruits about 200 students per year, but the Prep for Prep website clearly states that it currently enrolls 700 students per year.⁶⁵ In 1991, the total African American student population at Stuyvesant was 147, or an average of thirty-six students per class year. In 2005, the African American student population was sixty-six total, or approximately seventeen students per class year.⁶⁶ In 1992, Prep for Prep enrolled 100 students and by 2001, it enrolled 830 students.⁶⁷

Furthermore, Prep for Prep is but one of several similar programs that select students into private, or so-called independent schools.⁶⁸ While Prep for Prep is specific to the NYC metropolitan area, other programs also recruit in NYC: A Better Chance (ABC), Oliver Scholars, and TEAK Fellowship.⁶⁹ Though these programs are open to all minority students, the focus is on African American and Latinx students: ABC is 67 percent African American, 16 percent Latinx and 7 percent Asian American.⁷⁰ Most of these

59. Prep for Prep has always recruited African Americans, Latino and Asians. However, Asian Americans constitute approximately 9% of Prep for Prep students.

60. *Preparation*, PREP FOR PREP, <https://www.prepforprep.org/page/program/preparation> [<https://perma.cc/MFH8-VDFY>].

61. *Prep for Prep*, C. GREENLIGHT, <https://www.collegegreenlight.com/cboProfile/rep-for-prep> [<https://perma.cc/GTC3-2XSV>].

62. *About Prep*, PREP FOR PREP, <https://www.prepforprep.org/page/about/about-prep> [<https://perma.cc/FWE9-HCLQ>].

63. See Judith Ohikuare, *When Minority Students Attend Elite Private Schools*, ATLANTIC (Dec. 17, 2013), <https://www.theatlantic.com/education/archive/2013/12/when-minority-students-attend-elite-private-schools/282416> [<https://perma.cc/5FJW-SJXZ>]; Shapiro & Lai, *supra* note 53; Dorn & Edelman, *supra* note 58.

64. See *About Prep*, *supra* note 62.

65. *Id.*

66. Shapiro & Lai, *supra* note 53.

67. See *About Prep*, *supra* note 62 (referring to the stats in rolling history timeline).

68. See *History*, EARLY STEPS, <https://www.earlysteps.org/history> [<https://perma.cc/F7DD-YQV6>]; *Mission and History*, A BETTER CHANCE, <https://abetterchance.org/abetterchance.aspx?pgID=967> [<https://perma.cc/29VF-BQRY>].

69. Dorn & Edelman, *supra* note 58.

70. Blythe Grossberg, *Profile of 'A Better Chance'*, THOUGHTCO. (June 12, 2019), <https://thoughtco.com/students-of-color-best-private-schools-2774294> [<https://perma.cc/3QCG-ZT3H>].

programs began in the modern Civil Rights era and took several decades to refine programming and ramp up recruitment. Suffice to say, academically talented African American and Latinx students have been the focus of intense recruitment to private schools, and away from the specialized high schools.⁷¹ Top scoring African American students choose other options for high school, which include screened and charter high schools.⁷²

The expansion of educational options continued in 1999, when the first NYC charter school opened.⁷³ Charter schools are public schools that are privately run and funded by both public and private money. Ostensibly open to all students, they are run outside the traditional school district. By the 2019–20 school year, charter schools enrolled 126,400 students, or 11 percent of the entire NYC K-12 student population.⁷⁴ In 2019–20, the NYC charter school population was 52 percent African American, 39 percent Latinx, 5 percent white, and 4 percent other, taking approximately 115,000 African American and Latinx out of the traditional NYC public school system.⁷⁵ One in every five African American public school students in NYC attends a charter school.⁷⁶ Why have charter schools been so sought after? Indicators of success for charter schools are their state English and math standardized test results.⁷⁷ African American and Latinx charter school students continued to outscore their NYC Department of Education (DOE) district peers in the 2017–18 school year.⁷⁸ Most notably, in the 2018 math state test results, only 8.65 percent of African American students, combining grades 3 through 8, in the NYC district scored at Level 4, the advanced proficiency level, as compared to 32.32 percent of African American students in charter schools.⁷⁹

71. Vinson Cunningham, *Prep for Prep and the Fault Lines in New York's Schools*, THE NEW YORKER (Mar. 2, 2020), <https://www.newyorker.com/magazine/2020/03/09/prep-for-prep-and-the-fault-lines-in-new-yorks-schools> [https://perma.cc/83UX-SWBX].

72. Reema Amin & Sam Park, *Where do NYC's top-scoring middle schoolers go to high school? Hint – it's not just the specialized high schools.*, CHALKBEAT (June 4, 2019), <https://chalkbeat.org/posts/ny/2019/06/04/where-do-nycs-top-scoring-middle-schoolers-go-to-high-school-hint-its-not-just-the-specialized-high-schools> [https://perma.cc/C8MC-WCM9].

73. CHARLES SAHM, MANHATTAN INSTITUTE, FINDING ROOM FOR NEW YORK CITY CHARTER SCHOOLS 5 (2018), <https://www.manhattan-institute.org/sites/default/files/R-CS-0518.pdf> [https://perma.cc/A3W5-AHED].

74. N.Y. CITY CHARTER SCH. CTR., NYC CHARTER SCHOOL FACTS 2019–2020, 1 (2019), <https://www.nyccharterschools.org/sites/default/files/resources/NYC-Charter-Facts.pdf> [https://perma.cc/DG8X-6RAY].

75. *Id.*

76. N.Y. CITY CHARTER SCH. CTR., NEW YORK CITY CHARTER SCHOOLS ARE IN DEMAND 2018–2019, <http://www.nyccharterschools.org/sites/default/files/resources/factsheet-Charter-Demand.pdf> [https://perma.cc/8ATK-Q367].

77. N.Y. CITY CHARTER SCH. CTR., *supra* note 74, at 1.

78. *Id.* Black student achievement for grades three to eight is 58.6% in charters compared to 25.4% in district for math and 57.0% in charters compared to 34.0% in district for English. Hispanic student achievement for grades three to eight is 56.9% in charters compared to 30.3% in district for math and 54.5% in charters compared to 36.0% in district for English. *Id.*

79. N.Y. CITY CHARTER SCH. CTR., CHARTERS CLOSE THE ACHIEVEMENT GAP: NYC CHARTERS CONTINUE TO LEAD (2018), <http://www.nyccharterschools.org/blog/charters-close-achievement-gap->

NYC charter schools admit on the basis of a lottery system, with sibling and geographic preferences.⁸⁰ Charter schools are located in neighborhoods where there is a great demand for them.⁸¹ For the 2019 school year, Charter schools received 81,300 applications for 33,000 charter school seats.⁸² With these figures, it is clear that a significant segment of the African American and Latinx community has left the traditional public school system.⁸³ Students in low-performing schools do not have access to advanced coursework and have to deal with less-prepared teachers, lower expectations, and more behavioral issues.⁸⁴ Charter schools offer longer class days, curriculum flexibility, and extra enrichment such as test prep.⁸⁵ To keep students within their specific charter school network, some charter high schools have begun granting automatic admission to students who attended an affiliated middle-school.⁸⁶

From 2002 to 2013, Mayor Michael Bloomberg governed with the philosophy of school choice.⁸⁷ In an effort to combat geographically-determined “zoned” schools that would lock poor children into their neighborhood schools, he abandoned the practice of “zoned” high schools by virtue of residence.⁸⁸ Instead, students would apply to any twelve high schools and attend one of them.⁸⁹ During Mayor Bloomberg’s school choice policy era, screened schools saw a dramatic expansion—in 2002, only 15.8 percent of school programs screened students for academics, but by 2009, that share had increased to 28.4 percent.⁹⁰ In 2003, Mayor Bloomberg began the policy of closing failing high schools and opening smaller high schools;

nyc-charters-continue-lead [https://perma.cc/3PSZ-CFC8] (showing combined data for students in grades 3 to 8).

80. Mary Kay Linge, *These Are NYC’s Charter High Schools*, N.Y. POST (Sept. 17, 2016), <https://nypost.com/2016/09/17/these-are-nycs-top-charter-schools> [https://perma.cc/Y76Z-9FTC].

81. Alex Zimmerman, *Nearly 100 Percent of KIPP’s Students in New York City Are Black or Hispanic. Now it Wants to Open an Integrated School*, CHALKBEAT (Dec. 12, 2018), <https://chalkbeat.org/posts/ny/2018/12/12/nearly-100-percent-of-kipps-students-in-new-york-city-are-black-or-hispanic-now-it-wants-to-open-an-integrated-school> [https://perma.cc/SB8J-MKDB].

82. N.Y. CITY CHARTER SCH. CTR., *supra* note 74, at 1.

83. Raymond Domanico, *A Better Plan for Black and Hispanic NYC High School Students*, CITY & STATE N.Y. (May 9, 2019), <https://www.cityandstateny.com/articles/opinion/commentary/better-plan-black-and-hispanic-nyc-high-school-students.html> [https://perma.cc/JMH8-WW2K].

84. Monica Disare, *Great Divide: How Extreme Academic Segregation Isolates Students In New York City’s High Schools*, CHALKBEAT (Dec. 19, 2016), <https://www.chalkbeat.org/posts/ny/2016/12/19/great-divide-how-extreme-academic-segregation-isolates-students-in-new-york-citys-high-schools> [https://perma.cc/AK3H-D6TN].

85. Linge, *supra* note 80.

86. Mary Kay Linge, *These are NYC’s charter high schools*, N.Y. POST (Sept. 17, 2016), <https://nypost.com/2016/09/17/these-are-nycs-top-charter-schools/> [https://perma.cc/E7M6-QF7N].

87. Disare, *supra* note 84.

88. Monica Disare, *How One Manhattan District Has Preserved Its Own Set of Elite High Schools*, CHALKBEAT (June 7, 2018), <https://www.chalkbeat.org/posts/ny/2018/06/07/how-one-manhattan-district-has-preserved-its-own-set-of-elite-high-schools> [https://perma.cc/6X3V-UT4C].

89. *Id.*

90. Disare, *supra* note 84.

thus, screened high schools began to multiply.⁹¹ So-called regular high schools continued to exist, and one could apply to them and attend.

Screened schools like Beacon High School were reshaped by the school choice boom and served as a new elite high school for those in the know.⁹² At Beacon High School, admission was based on a student portfolio, an interview, and grades.⁹³ With an emphasis away from standardized tests and towards project-based work, the school was highly sought after, and its students skewed towards a white, wealthy, and politically-savvy population.⁹⁴ In 2015–16, Beacon demographics were 53 percent white, 22 percent Latinx, 14 percent African American, and 8 percent Asian.⁹⁵ At Beacon, only 20 percent of the students qualified for free lunch, far lower than the 32 percent at Stuyvesant and 35 percent at Bronx Science.⁹⁶ Then-City Councilman de Blasio’s daughter and then-Governor David Paterson’s children all graduated from Beacon High School.⁹⁷

In their *Atlantic* piece, Professors Margaret Chin and Syed Ali made the point that the screened schools that used multiple criteria for admission like grades, standardized test scores, and interviews were also problematic in their racial compositions.⁹⁸ Although these schools had greater African American and Latinx students, they were still primarily white and Asian.⁹⁹ By any measure, whites were “overrepresented” in the screened high schools in the same way Asian Americans were “overrepresented” at the specialized high schools.¹⁰⁰ Approximately 17.9 percent of the total high school population in NYC were admitted into high school through a screened process.¹⁰¹ Screened schools represented a far larger percentage of total high

91. Christina Veiga & Philissa Cramer, *Michael Bloomberg is Running for President. What You Should Know About the Billionaire’s Education Record in New York City*, CHALKBEAT (Mar. 1, 2019), <https://chalkbeat.org/posts/ny/2019/03/01/michael-bloomberg-may-run-for-president-what-you-should-know-about-the-billionaires-education-record-in-new-york-city> [https://perma.cc/P24R-X7Q4].

92. Elizabeth A. Harris & Ford Fessenden, *The Broken Promises of Choice in New York City Schools*, N.Y. TIMES (May 5, 2017), <https://www.nytimes.com/2017/05/05/nyregion/school-choice-new-york-city-high-school-admissions.html> [https://perma.cc/Q2BC-DR49]; Eliza Shapiro, *Why White Parents Were at the Front of the Line for the School Tour*, N.Y. TIMES (Nov. 20, 2019), <https://www.nytimes.com/2019/11/15/nyregion/beacon-high-school-admissions-nyc.html> [https://perma.cc/PX6B-RJ5B].

93. Juan Gonzalez, *Manhattan Beacon School’s Racial Hope Dims*, N.Y. DAILY NEWS (May 15, 2009), <https://www.nydailynews.com/new-york/education/manhattan-beacon-school-racial-hope-dims-article-1.378593> [https://perma.cc/CH28-ZPK2].

94. *Id.*

95. *Beacon High School Student Body*, U.S. NEWS & WORLD REP., <https://www.usnews.com/education/best-high-schools/new-york/districts/new-york-city-public-schools/beacon-high-school-13120/student-body> [https://perma.cc/8S35-EECE].

96. *Id.*

97. Gonzalez, *supra* note 93.

98. Syed Ali & Margaret M. Chin, *What’s Going On With New York’s Elite Public High Schools?*, ATLANTIC (June 14, 2018), <https://www.theatlantic.com/education/archive/2018/06/new-york-high-schools-stuyvesant-brooklyn-bronx/562772> [https://perma.cc/8FTX-U9HP].

99. *Id.*

100. *See id.*

101. LEWIS & BURD-SHARPS, *supra* note 8, at 1.

school students than the 4.9 percent based on SHSAT scores, and no state law prevented immediate change to admissions in these schools.¹⁰² However, it matters that Asian American “overrepresentation” drew policymakers’ attention and presented itself as a problem that needed fixing. Mayor de Blasio saw whites and Asian Americans as occupying the same racial space, but he chose to first go after what he perceived as Asian American privilege.¹⁰³ This is problematic because Asian Americans are not white, nor do they have the same political or social power as whites do in NYC.

Together, these education trends offer an alternative explanation, apart from racial discrimination, for the decline of African American and Latinx students in the specialized high schools. Prep for Prep enrollment gained significant momentum in the late 1990s, and other similar programs recruited African Americans and Latinx out of public schools.¹⁰⁴ African American enrollment in private schools fulfilled one of the civil rights goals of integration of previously white private schools. Charter schools took off in the early aughts, with geographic location primarily in African American and Latinx neighborhoods.¹⁰⁵ High-needs neighborhoods, such as Harlem, Bedford-Stuyvesant, and the South Bronx, have up to nearly half of students attending charter schools.¹⁰⁶ Charter schools’ academic success, with their almost exclusively African American and Latinx population, fulfilled one of the goals of the Black Power movement. It uniquely demonstrated that Black students did not need to be around white students in order to be academically successful. These two trends in particular attracted large numbers of African Americans and Latinx out of the system and might explain why only 25 percent of African Americans and Latinx who are offered a SHSAT seat accept the offer.¹⁰⁷ Almost 55 percent of Asian seventh-graders who scored Level 4 on either math or English standardized tests attend specialized high schools, while only about 16 percent of such African American or Latinx

102. Screened High Schools admission in NYC each use different factors to screen kids for admissions, including but not limited to geographical considerations, interviews, portfolio, grades, and standardized test scores. Ali & Chin, *supra* note 98; Disare, *supra* note 84.

103. Ali & Chin, *supra* note 98.

104. See Blythe Grossberg, *Profile of “A Better Chance”*, THOUGHTCO. (Jan. 30, 2019), <https://www.thoughtco.com/students-of-color-best-private-schools-2774294> [https://perma.cc/3BHS-YSKD] (profiling A Better Chance program that selects talented students of color for private schools).

105. N.Y. CITY CHARTER SCH. CTR., NEIGHBORHOODS PRIMED FOR CHARTER SCHOOL GROWTH: FOUR COMMUNITIES IN THE BRONX AND QUEENS ARE IN NEED OF HIGH QUALITY SCHOOL OPTIONS (2017), <https://www.nyccharterschools.org/sites/default/files/resources/Neighborhoods-Primed-for-Growth.pdf> [https://perma.cc/EA2R-JF3F].

106. N.Y. CITY CHARTER SCH. CTR., CHARTER SCHOOL ENROLLMENT & TRENDS: CHARTER SCHOOL ENROLLMENT DOUBLES IN LAST 4 YEARS; 1 IN 3 STUDENTS IN KEY NEIGHBORHOODS ATTENDS A CHARTER (2017), <https://www.nyccharterschools.org/sites/default/files/resources/Charter-Enrollment-Trends.pdf> [https://perma.cc/265E-23LZ].

107. Clara Hemphill, *The Flawed Specialized High School System—And Ways To Fix It*, CTR. FOR N.Y. CITY AFF. (June 6, 2018), <http://www.centernyc.org/the-flawed-specialized-high-school-system/?rq=SHSAT> [https://perma.cc/6PUJ-25HL].

seventh-graders attend a specialized school.¹⁰⁸

School choice produced an explosion of screened high schools, which admitted students based on different criteria.¹⁰⁹ Screened schools like Beacon High School attracted disproportionately white and upper-middle-class parents who might have otherwise considered attending a specialized high school.¹¹⁰ African American, Latinx, and white students who previously focused on specialized high schools now moved towards other educational options. Academically gifted African American and Latinx students who did not take advantage of these trends were poorly served by the system, as Gifted & Talented programs were being dismantled.¹¹¹ At the same time, Asian American students deepened their focus on attending the specialized high schools.

B. Immigration Trends and Asian Cultural Practices Contributed to an Increase of Asian Americans in Specialized High Schools

Civil Rights era reforms to US immigration laws in 1965 eliminated racist immigration quotas, dramatically increasing immigration from East and South Asia.¹¹² In the SHSAT, these immigrant parents encountered a culturally resonant practice: the entrance exam.¹¹³ The exam led to schools that were “prestigious” and had brand name value, especially for an immigrant family that had just landed in New York City.¹¹⁴

The influx of Asian immigration brought over the culture of test preparation from Asia, where it originated in China from the development of the civil service imperial examination system.¹¹⁵ The system of an objective exam leading to a specific job result created a social system leading to

108. Bruce Cory & Nicole Mader, *Tough Test Ahead: Bringing Racial Diversity to New York's Specialized High Schools*, CTR. FOR N.Y. CITY AFF. (June 15, 2016), [http://www.centernyc.org/high-school-diversity/?rq=specialized high schools](http://www.centernyc.org/high-school-diversity/?rq=specialized%20high%20schools) [https://perma.cc/T8QG-U6H3].

109. See Disare, *supra* note 84; Ali & Chin, *supra* note 98.

110. See Gonzalez, *supra* note 93; see also Jeff Coplon, *NEST+m: An Allegory*, N.Y. MAG. (Apr. 24, 2007), <http://nymag.com/news/features/31272> [https://perma.cc/P584-MUWJ] (profiling a screened high school that became a gated community for middle-class, mostly white, elite).

111. Jonathan Wai & Frank C. Worrell, *We are Gifted Education Scholars. Here's Why We Don't Think NYC Should Follow the School Diversity Group's Recommendations*, CHALKBEAT (Sept. 12, 2019), <https://ny.chalkbeat.org/2019/9/12/21121778/we-are-gifted-education-scholars-here-s-why-we-don-t-think-nyc-should-follow-the-school-diversity-gr> [https://perma.cc/XZC5-P94S].

112. Jerry Kammer, *The Hart-Celler Immigration Act of 1965*, CTR. FOR IMMIGR. STUD. (Sept. 30, 2015), <https://cis.org/Report/HartCeller-Immigration-Act-1965> [https://perma.cc/7E28-VRXN].

113. See generally BENJAMIN A. ELMAN, *CIVIL EXAMINATIONS AND MERITOCRACY IN LATE IMPERIAL CHINA* (2013).

114. Alice Yin, *Asian Test-Prep Centers Offer Parents Exactly What They Want: 'Results'*, N.Y. TIMES (Oct. 25, 2017), <https://www.nytimes.com/2017/10/25/magazine/asian-test-prep-centers-offer-parents-exactly-what-they-want-results.html> [https://perma.cc/U8SP-GGCG]; Reihan Salam, *Close Stuyvesant High School*, SLATE (July 10, 2014), <https://slate.com/news-and-politics/2014/07/the-case-for-shutting-down-stuyvesant-high-school-the-best-public-school-in-new-york.html> [https://perma.cc/66TZ-H57J].

115. *The Confucian Classics & the Civil Service Examinations*, ASIA FOR EDUCATORS, <http://afe.easia.columbia.edu/cosmos/irc/classics.htm> [https://perma.cc/95PF-L777].

specific cultural patterns and practices.¹¹⁶ To varying degrees, Korea, Vietnam,¹¹⁷ and Japan also adopted this model.¹¹⁸ Families would prepare their children for the exam by sending them to government run schools.¹¹⁹ Independent academies, which we would call test prep centers today, also emerged to educate and prepare students for the exam.¹²⁰ Test takers who failed to pass could take the examination until they did pass, and thus could spend significant portions of their lives preparing for the exam.¹²¹ This cultural practice is still present in the Asian American student population at Stuyvesant—in fact, data shows Asian American students start studying earlier than almost all other groups.¹²²

In the middle of the nineteenth century, the British East India Company adopted the exam model from China and created the civil service examination system in India and England.¹²³ From England, this idea of objective exams leading to civil service jobs spread to the NYC government, where it was adopted in the early twentieth century to combat the corrupt patronage system.¹²⁴ Unlike in Asia, the testing regime in the West became deeply intertwined with ideas of hereditary intelligence and racism, which held that intelligence was innate and fell along racial lines.¹²⁵ If being white made you naturally intelligent, there was no need to prepare for an exam. Thus, an intensive test preparation culture did not develop around the exam in the West.

When Asian immigrants moved to NYC, the concept of an objective exam leading to entrance to the most prestigious high schools made perfect sense to them because they were encountering aspects of their own cultural legacy. Test prep centers sprung up in Asian immigrant neighborhoods. The rise of test preparation for the SHSAT is a direct result of the post-1965 immigration wave.¹²⁶ Very few of the exam takers test prepped before the 1980s, but after the 1990s, test prep became a significant part of the SHSAT

116. JOHN W. CHAFFEE, *THE THORNY GATES OF LEARNING IN SUNG CHINA: SOCIAL HISTORY OF EXAMINATIONS* 166 (1995).

117. *See generally* JOHN KLEINEN, *FACING THE FUTURE, REVIVING THE PAST: A STUDY OF SPECIAL CHANGE IN A NORTHERN VIETNAMESE VILLAGE* (1999).

118. *See* ELMAN, *supra* note 113, at 23.

119. RUI WANG, *THE CHINESE IMPERIAL EXAMINATION SYSTEM: AN ANNOTATED BIBLIOGRAPHY* 17 (2013).

120. *See, e.g.*, CHAFFEE, *supra* note 116, at 89; Yin, *supra* note 114.

121. *See generally* THOMAS H.C. LEE, *GOVERNMENT EDUCATION AND EXAMINATIONS IN SUNG CHINA* (1985).

122. *Spectator Surveys* 2016, *THE SPECTATOR*, <https://cdn.rawgit.com/darthbeep/SpecSurvey/master/Survey.html> [<https://perma.cc/D7CY-RDV7>].

123. C. J. Dewey, *The Education of a Ruling Caste: The Indian Civil Service in the Era of Competitive Examination*, 88 *ENG. HIST. REV.* 262, 262 (1973).

124. John R. MacArthur, *The Sadist who Wrecked New York, and the Last of the Great Biographers*, *THE SPECTATOR* (July 4, 2015), <https://www.spectator.co.uk/2015/07/the-sadist-who-wrecked-new-york-and-the-last-of-the-great-biographers> [<https://perma.cc/7JRN-BBQK>].

125. *See, e.g.*, LEWIS M. TERMAN, *THE MEASURE OF INTELLIGENCE* 91–92 (Ellwood P. Cubberley ed., 1916).

126. Yin, *supra* note 114.

system.¹²⁷ Thus, a prep culture around the SHSAT exam began to coalesce for the first time, starting in the 1980s and gathering force in the 1990s. This was a dramatic shift, and one with important consequences. For generations, NYC students never prepped extensively for the SHSAT because that was not the dominant American approach to exams.

Because of the historical legacy of the imperial examination system, Asian cultural views of the test did not frame it as a measure of natural intelligence but rather as a measure of how much academic effort an individual was willing to commit.¹²⁸ Asian immigrants were less tainted by the Western history of innate intelligence. Make no mistake, test prep courses are not the exclusive province of the well-resourced privileged class. The federal guidelines would classify 47 percent of Stuyvesant students as poor, which would qualify them for free or reduced lunches.¹²⁹

Critics of the SHSAT sought a target to attack and focused on critiquing test prep.¹³⁰ They see test prepping as behavior that confers an unfair advantage. The prevailing belief was that if the students were truly intelligent, they would not need to prep at all. What they miss is that test prep is a signal that one does not believe in racist theories of innate intelligence. Instead, one believes that preparation, hard work, and practice are keys to success.

The demographic increase in Asian Americans and the rise of test prep culture in the 1980s began to crowd out other racial groups at the specialized high schools. Asian American students are also more likely to seek and accept an offer to attend a specialized high school. Almost 55 percent of Asian seventh-graders who scored Level 4 on either math or ELA tests in the 2012–13 school year attended a SHSAT school.¹³¹ Comparatively, only about 16 percent of the same African American or Latinx seventh-graders attend a specialized school.¹³² Only 25 percent of African American and Latinx students who are offered a SHSAT seat accept the offer.¹³³ Immigrant parents make the choice to direct their limited resources towards educational enrichment, which includes test prep.¹³⁴ It is beyond the pale that parents are attacked for choosing to direct their scarce resources in a manner they think is most productive for their children. One should ask why the SHSAT critics

127. Ali & Chin, *supra* note 98.

128. Amy Hsin & Yu Xie, *Explaining Asian Americans' Academic Advantage Over Whites*, 111 PROC. NAT'L ACAD. SCI., 8416, 8419 (2014).

129. Dennis Saffran, *To Make Elite Schools 'Fair,' City Will Punish Poor Asians*, N.Y. POST (July 19, 2014), <https://nypost.com/2014/07/19/why-nycs-push-to-change-school-admissions-will-punish-poor-asians> [<https://perma.cc/FC3E-DVRU>].

130. Kyle Spencer, *For Asians, School Tests Are Vital Stepping Stones*, N.Y. TIMES (Oct. 26, 2012), <https://www.nytimes.com/2012/10/27/education/a-grueling-admissions-test-highlights-a-racial-divide.html> [<https://perma.cc/Y27K-WT7D>].

131. Cory & Mader, *supra* note 108.

132. *Id.*

133. Hemphill, *supra* note 107.

134. Yin, *supra* note 114.

have never attacked Prep for Prep students and the intensive prep they go through.

Like Coca Cola and Harvard, Stuyvesant had history, value, and deep meaning for immigrants who were not in the loop about the latest education trends for high schools in NYC. The Asian immigrant populations in Northern Queens and South Brooklyn had few charter school options.¹³⁵ For example, Queens has the second fewest charter schools, and the thirty-one charter schools in Queens exist primarily in African American and Latinx neighborhoods.¹³⁶ New immigrants could not quickly assess the quality of “new” screened schools like Beacon. Screened school options require significant social capital in order to traverse their complicated admissions process. Immigrant parents are unlikely to possess the social capital necessary to assist their kids to do well on admissions criteria like the in-person interview, which was part of the Beacon High School admissions process until 2018. Instead, immigrant parents relied on name recognition and a familiar admissions process: studying for an exam to get into Stuyvesant.

III. ASIAN AMERICANS AND THEIR PLACE IN THE AMERICAN RACIAL MATRIX

The Asian American political identity was born in the wake of the Civil Rights and Black Power movement and opposition to the Vietnam War.¹³⁷ The Third World Liberation Front (TWLF) student strikes, which closed San Francisco State University in 1968 and UC Berkeley in 1969, established coalition building with other minority groups as a key factor for social change. They established the first wave of Asian American community organizations; their politics embodied the history they came from and the era in which they were created. All Americans benefited as racist barriers fell to the sweeping changes in the law. The defense of affirmative action and close allyship with the African American freedom struggle became the defining Asian American cultural and political norm.¹³⁸

Today, however, progressive Asian Americans are on hair-trigger alert, quick to point out perceived “anti-Blackness” within their own communities. Of course, anti-Blackness should indeed be called out. But Asian American progressives should be equally vigilant of anti-Asian policies that emerge from their own nominal allies. Asian American activists should not blithely dismiss the concerns of the new immigrant communities. While they should engage in coalition building to achieve social justice, they should not be silent or refrain from opposing anti-Asian bias, whether it comes from the

135. See N.Y. CITY CHARTER SCH. CTR., *supra* note 105.

136. *Id.*

137. KAREN L. ISHIZUKA, *SERVE THE PEOPLE: MAKING ASIAN AMERICA IN THE LONG SIXTIES* 1–6 (2016).

138. Chang, *supra* note 50.

left or right.

We are fighting the original civil rights battles with an analytical lens that is sorely in need of an update. Allyship is being defined as always walking in lockstep with African American and Latinx political needs, even if it means ignoring Asian American interests.¹³⁹ The Asian American movement gave us analytical tools like the model minority and allyship, and these terms are used frequently, without cognizance of the new world in which they are being used. Our analytical tools have become dogma.

Part of the reason for this failure is that universities do not widely teach or disseminate Asian American studies and its ideas beyond the West Coast. With the difficulty that Asian American studies is having making its way into the academy, the level of political dialogue among Asian Americans is low. Every generation must learn basic ideas from one another, the Internet, and self-directed study. Without a perspective that takes into account the enormous demographic and social change that has occurred over the last fifty years, we risk advocating for poor policy choices that do not increase social justice. Instead, what we get are op-eds that retread the same old ideas over and over again.

As this article went to press in August 2020, opponents of SHSAT restarted legislative and political efforts to eliminate the SHSAT.¹⁴⁰ Hoping to ride the political momentum of the Black Lives Matter protests, they have stressed two points: that standardized testing has racist origins and that Hecht Calandra is rooted in racist opposition to Civil Rights era desegregation efforts. If they were correct on these two counts, the SHSAT should indeed rightly be removed. But the reader of this article knows that the true “origin” of standardized exams begins in China, long before western alignment of standardized exams with racial discrimination. The attachment and importance that Asian Americans have to exams begin in a completely different political and social space. But was Hecht Calandra legislated in opposition to desegregation efforts? This is a more nuanced and difficult question to answer, but it is instructive that Samuel Wright, New York State Assemblyman and Chair of the African American and Puerto Rican caucus at the time, supported Hecht Calandra.¹⁴¹ The 2020 effort to repeal Hecht Calandra in a pandemic-shortened legislative session was ultimately unsuccessful, but no doubt sets up another battle for 2021.¹⁴²

139. *See id.*

140. Christina Veiga, *New bill seeks to repeal state law governing admissions to NYC's specialized high schools*, CHALKBEAT (July 9, 2020), <https://ny.chalkbeat.org/2020/7/9/21319383/new-bill-repeal-admissions-nyc-specialized-high-schools> [https://perma.cc/4HZQ-92S4].

141. Larry Cary, *The SHSAT isn't racist: A careful look at the Hecht-Calandra law shows it was not motivated by bigotry, nor did it initially harm blacks and Hispanics*, N.Y. DAILY NEWS (Sept. 3, 2019), <https://www.nydailynews.com/opinion/ny-oped-the-shsat-isnt-racist-20190903-ihtstrmbhd7lveugv2xr6shy-story.html> [https://perma.cc/87QJ-J56V].

142. Ariama C. Long, *SHSAT Bill Remains Unresolved As Legislative Session Ends This Week*, KINGS COUNTY POL. (July 22, 2020), <https://www.kingscountypolitics.com/shsat-bill-remains-unresolved-as-legislative-session-ends-this-week> [https://perma.cc/2WTT-FQNU].

It is easy to oppose Mayor de Blasio's plan simply because of the ham-fisted political process, which he used to dismiss the concerns of the Asian American community. Playing zero-sum race politics without the desire, ability, and capacity to understand the diverse groups of people in the city he serves, the Mayor has espoused deeply and unmistakably racially divisive policies. But one should also oppose his specific policy choice because the civil rights lens through which he views the problem is antiquated. The Asian population in NYC increased from 105,000 to 843,000 from 1970 to 2011.¹⁴³ Test prep took hold and the level of competitiveness dramatically increased. Charter schools and Prep for Prep-type programs became options for African Americans and Latinx students. Parents have a dizzying array of educational options. Some pathways lead to the specialized high schools and other pathways lead away from specialized high schools. We should resist easy explanations and feel-good programs that offer cosmetic solutions for complex problems.

When progressive politicians like Mayor de Blasio fall into the trap of using the model minority myth against Asian Americans, progressives think it is acceptable because of coalition building requirements.¹⁴⁴ Carranza engages in racist rhetoric, and progressives lay off because of coalition preservation. This cannot be right. Our social justice allies could not want this for the Asian American community. As I argue above, what if the decrease was due to an increase in opportunities for African American and Latinx students? What then of allyship requirements? The allyship requirement runs both ways, and Asian American community activists should speak from a real place of connectedness to their community. Knee-jerk allyship reactions eliminate carefully considered approaches to complex social problems that take into account the interests, histories, and social changes in contemporary America.

CONCLUSION

Our interconnected future is complex and fraught. Mayor de Blasio's proposed remedy for the specialized high schools was a step in the wrong direction—a feel and look good plan. It rendered Asian Americans politically and socially invisible. It died a worthy death when Mayor de Blasio gave up on the plan in September 2019.¹⁴⁵ Using brute political force

143. Shapiro & Lai, *supra* note 53; Jie Zong & Jeanne Batalova, *Asian Immigrants in the United States*, MIGRATION INFO. SOURCE (Jan. 6, 2016), <https://www.migrationpolicy.org/article/asian-immigrants-united-states> [<https://perma.cc/AU6L-887W>].

144. See Roseann Liu, *Opinion: Asian, Black and Latino Solidarity Should Come First*, THE HECHINGER REP. (Sept. 5, 2018), <https://hechingerreport.org/opinion-asian-black-and-latino-solidarity-should-come-first-not-a-test> [<https://perma.cc/P5XF-4YVG>].

145. Paula Katinas & Meaghan McGoldrick, *As Mayor Pulls Back from SHSAT Plan, Brooklyn Pols Call for Gifted Program Expansion*, BROOK. DAILY EAGLE (Sept. 26, 2019), <https://brooklyneagle.com/articles/2019/09/26/as-mayor-pulls-back-from-shsat-plan-brooklyn-pols-call-for-gifted-program-expansion> [<https://perma.cc/C3YR-K2LU>].

based on ignorance to clear Asian Americans out the way, Mayor de Blasio should not be able to claim to be the moral authority of the civil rights movement. Asian Americans are part of the fabric of New York City. Their perceived newness to existing systems have historically marked them for social exclusion and political invisibility. Nevertheless, our interests, as Asian Americans, should count. Asian Americans should take as allies anyone who wants to engage in an intellectually rigorous and socially conscious process that takes social justice as its first priority.