

2014

Racial Upside: Deconstructing the "Merits" of Jeremy Lin's NBA Contract

Stewart Chang

University of Nevada, Las Vegas -- William S. Boyd School of Law

Follow this and additional works at: <http://scholars.law.unlv.edu/facpub>

 Part of the [Entertainment, Arts, and Sports Law Commons](#), and the [Law and Race Commons](#)

Recommended Citation

14 Va. Sports & Ent. L.J. 1 (2014).

This Article is brought to you by the Scholarly Commons @ UNLV Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact david.mcclure@unlv.edu.

Article

Racial Upside: Deconstructing the ‘Merits’ of Jeremy Lin’s NBA Contract

Stewart Chang*

This Article disputes the common misperception that sports are a colorblind meritocracy that should serve as a model for the rest of society. The capacity of players to break into and succeed in professional sports is believed to be based purely on merit, with no consideration of race. Controversies that surfaced around the rise of professional basketball player Jeremy Lin, an Asian American not expected to succeed in a sport dominated by blacks and whites, challenged this popularly-held notion. This Article argues, not in a derisive way, that Lin’s ability to secure a lucrative \$28.8 million contract, originally with the Houston Rockets and recently traded to the Los Angeles Lakers, was not purely based on merit, but was based on race. Expanding upon Nancy Leong’s theory of racial capitalism and Justice O’Connor’s business diversity rationale in *Grutter v. Bollinger*, this Article suggests that the primary reason for Lin’s continued place in the National Basketball Association represents the monetization of race by corporate interests, which contradicts the idealization of the sports as a colorblind meritocracy.

The winter of 2012 witnessed the phenomenon in American sports known as “Linsanity.” Jeremy Lin, an undrafted third-string point guard who had drifted from team to team in the National Basketball Association (NBA) seemingly on his way to obscurity, suddenly and unexpectedly sparked a winning streak for his then-team, the New York Knicks, capturing the attention, adoration, and imagination of sports fans across the country. What distinguished Lin from the typical sports underdog success story, however, was his race—as an Asian American, Lin was not expected to possess the talent to succeed in a sport traditionally dominated by black and white athletes. Boxer Floyd Mayweather infamously reacted to Lin’s success by tweeting “Jeremy Lin is a good player but all the hype is because he’s Asian. Black players do what he does every night and don’t get the same praise,”¹ implying

* Assistant Professor of Law, Whittier Law School and Assistant Professor of English (by courtesy), Whittier College. I am grateful to Sheldon Lyke, Manoj Mate, Karthick Ramakhrisnan, Oliver Wang, and Seval Yildirim for their helpful comments, feedback, and conversation.

¹ Ian Begley, *Floyd Mayweather Questions Jeremy Lin*, ESPN (Feb. 14, 2012, 12:11 PM), http://espn.go.com/new-york/nba/story/_/id/7572690/floyd-mayweather-says-new-york-knicks-jeremy-lin-spotlight-race-not-play; see also David C. Wilson, *Mayweather’s Racial Resentment Reflects America’s Thinking About Race*, Huffington Post (Feb. 15, 2012, 9:53 AM), http://www.huffingtonpost.com/david-c-wilson/mayweather-jeremy-lin_b_1278796.html (“Mayweather thought it was unfair that Lin has received celebratory attention, but not because of Lin’s basketball “merits” rather it was because of Lin’s race.”).

that Lin was an undeserving recipient of affirmative action. Mayweather's criticism spurred a public debate concerning race and merit in sports,² which Carmelo Anthony, Lin's then-teammate on the Knicks, continued later that summer. When Lin obtained a \$28.8 million contract offer from the Houston Rockets during free agency, Anthony called the contract "ridiculous," suggesting that Lin was objectively not worth that much talent-wise and that the Knicks should not match that offer.³ Anthony's sentiments, shared by some of his teammates,⁴ implied that there is an objective correlation between ability and earning capacity in NBA player contracts, which is perhaps premised on the assumption, as many African American athletes have wrongly been led to believe,⁵ that sports is a colorblind meritocracy.⁶ The circumstances surrounding Jeremy Lin's initial breakthrough and continued presence in the NBA problematize this belief in the race-neutrality of sports, and instead uncover the way race interplays with primarily fiduciary and commercial incentives behind NBA player personnel decisions.

In the midst of Linsanity, the term now popularly used to memorialize Jeremy Lin's unlikely surge through the NBA in early 2012, Oliver Wang observed the racial polemics that were surfacing:

For some, Lin is the ultimate underdog: overlooked, undervalued yet now, overachieving. For them, his rise is a confirmation of American exceptionalism and the promise of meritocracy... For others, Lin is the

² See Peter S. Goodman, *Jeremy Lin: The Backlash*, Huffington Post (Feb. 14, 2012, 2:32 PM), http://www.huffingtonpost.com/peter-s-goodman/jeremy-lin_b_1277250.html ("Put aside for a moment that this statement is demonstrably ridiculous. Very few players in the history of the game have done what Lin has been doing since he took over starting point guard duties for the New York Knicks earlier this month. The last newcomer to post numbers comparable to Lin's was a guy named LeBron James."); Ian Begley, *Spike to Floyd: 'Recognize' Lin's Talent*, ESPN (Feb. 15, 2012, 10:07 AM), http://espn.go.com/blog/new-york/knicks/post/_id/11777/spike-to-mayweather-recognize-lin-talent (describing Spike Lee's response, "Floyd Mayweather I Hope You Watched Jeremy Hit The Gamewinning [sic] 3 Pointer With .005 Seconds Left.Our [sic] Guy Can BALL PLAIN AND SIMPLE.RECOGNIZE [sic].").

³ Chuck Schilken, *Carmelo Anthony calls Jeremy Lin contract offer 'ridiculous'*, L.A. Times (July 16, 2012), <http://articles.latimes.com/2012/jul/16/sports/la-sp-sn-jeremy-lin-carmelo-anthony-20120716>.

⁴ *Id.* ("New York shooting guard J.R. Smith told Sports Illustrated on Sunday that it might not go over so well in the locker room if Lin returns to the Knicks making the kind of money he's been offered.")

⁵ See John Hoberman, *Darwin's Athlete's: How Sport Has Damaged Black America and Preserved The Myth of Race* 29–30 (1997) ("the presence of large numbers of black athletes in the major sports appears to have persuaded almost everyone that the process of integration has been a success."); see also Gilberto Conchas, *The Color of Success: Race and High-Achieving Urban Youth* 56 (2006) (noting the ways in which black urban youth regard professional basketball as a medium for achieving success in America).

⁶ See Douglas Hartman, *Race, Culture, and the Revolt of the Black Athlete: The 1968 Olympic Protests and Their Aftermath* 76 (2003) (discussing the "remarkable affinities between the sacralization of sport and dominant American conceptions of liberal democracy, racial progress, and color-blind, meritocratic social justice."); see also John Bloom and Michael Nevin Willard, *Sports Matters: Race, Recreation, and Culture* 2 (2002) (describing how media has a vested interest in portraying "sports institutions as benign agents that promote a 'color-blind' social vision."); see also Jacquelyn Bridgeman, *The Thrill of Victory and the Agony of Defeat: What Sports Tell Us About Achieving Equality in America*, 7 Va. Sports & Ent. L.J. 248 (2008).

beneficiary of token sympathies, overly lauded for being an Asian curiosity in a sport dominated by black and white bodies.⁷

The question whether Lin emerged in the NBA spotlight in spite of his race or because of his race, engaged archetypal issues of discrimination and affirmative action in America and brought them into popular discourse. Lin's contract offer from Houston reignited the debate as to whether he truly "merited" the price or whether the contract represented some type of "unmerited" affirmative action for an underrepresented minority. As Wang concludes, rather than support the notion of sport as a realm of colorblindness, "what Linsanity has also revealed, in stark and sometimes uncomfortable ways, is how much we still want to talk about race."⁸ This Article argues, not in a derisive way, that Lin's contract is indeed racially based. Yet his continued place in the NBA is not a matter of simple affirmative action, but instead addresses the exploitative financial complexities behind many other race-based decisions by institutions in America. Lin's \$28.8 million contract, which was recently traded to the Los Angeles Lakers, challenges the idealization of sports as a colorblind meritocracy, and demonstrates the conscious monetization of race in American culture.

The Houston Rockets, Los Angeles Lakers, and the NBA have institutionally been enabled to capitalize on Jeremy Lin's race, which demonstrates Nancy Leong's theory of "racial capitalism," a term she coins to describe "the process of deriving social or economic value from the racial identity of another person."⁹ Leong examines the ways in which institutions derive market benefits from partial racial inclusion of minority members, and thus commodifies them.¹⁰ She contextualizes her argument within the affirmative action debate in higher education. According to Leong, by having minority members, schools can utilize diversity as a marketability mechanism to attract other consumers, most of who may come from the white majority, but who in turn are able to claim that diversity as their own social capital once they buy into that system.¹¹ However, whereas Leong's example primarily focuses on the commodification of diversity, this Article suggests that Lin's race itself becomes the marketed commodity for consumption in the NBA, not by the general consumer population, but a specific sector of racial minorities. Whereas recent scholarship has applied interest convergence theory¹² to suggest that racial integration in baseball was partly motivated by capturing an African American audience base,¹³ there has traditionally been little correlation

⁷ Oliver Wang, *Living with Linsanity*, L.A. Rev. Books (Mar. 6, 2012), <http://lareviewofbooks.org/essay/living-with-linsanity#>.

⁸ *Id.*

⁹ Nancy Leong, *Racial Capitalism*, 126 *Harv. L. Rev.* 2151, 2153 (2013).

¹⁰ *Id.* at 2183.

¹¹ See *id.* at 2175–82.

¹² Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 *Harv. L. Rev.* 518, 523 (1980) ("this principle of 'interest convergence' provides: The interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites.").

¹³ Joshua DeLorme and John N. Singer, *The Interest Convergence Principle and the Integration of Major League Baseball*, 41 *J. Black Stud.* 367, 381 (2010) ("the commodity of Black baseball...proved to be a financially and socially viable component of the Black community, which

between racial make-up of the team and the demographics of NBA attendees across racial lines.¹⁴ Jeremy Lin, however, illustrates a present anomaly to this trend in the NBA. The original contract offer from Houston and the recent trade to Los Angeles illustrate how race is Lin's chief selling point to a specifically-targeted, racialized audience for not only economic gain, but also social capital.

The Houston Rockets, having previously participated in the global expansion of the NBA into Asia through its star player, Yao Ming,¹⁵ likely recruited Lin with the international market in mind.¹⁶ Yao Ming had allowed the Rockets and the NBA to realize a huge market sector in China which was previously untapped.¹⁷ Houston had hoped that Lin, who is of Taiwanese and Chinese descent,¹⁸ would similarly fill an economic ambassadorial role to the China market. Lin indeed proved popular and lucrative in China—for example, his Rockets jersey was fourth in sales in the Chinese market for 2012-2013, his first season with Houston;¹⁹ at the height of his popularity, Yao Ming generated similar sales results and was never first in NBA jersey sales in China.²⁰ However, there was yet another facet of Jeremy Lin that could be exploited economically—his identity as an Asian

signified to owners such as Branch Rickey that Black players were talented enough to participate in MLB and that Black fans patronized baseball contests.”); see also Amy Christian McCormick & Robert A. McCormick, *Race and Interest Convergence in NCAA Sports*, 2 Wake Forest J.L. & Pol'y 17 (2012).

¹⁴ See Paul T. Schollaert & Donald Hugh Smith, *Team Racial Composition and Sports Attendance*, 28 Soc. Q. 71 (1987); see also Eleanor Brown, Richard Spiro & Diane Keenan, *Wage and Nonwage Discrimination in Professional Basketball: Do Fans Affect It?*, 50 Am. J. Econ. & Soc. 333 (1991). But see Lawrence M. Kahn & Peter D. Sherer, *Racial Differences in Professional Basketball Players' Compensation*, 6 J. Lab. Econ. 40 (1988); but cf. Mark T. Kanazawa & Jonas P. Funk, *Racial Discrimination in Professional Basketball: Evidence from Nielsen Ratings*, 39 Econ. Inquiry 599 (2001).

¹⁵ See David Leonard, *Yo, Yao! What does the "Ming Dynasty" tell us about race and transnational diplomacy in the NBA?*, *Colorlines*, Jun. 22, 2003, at 34 (2003) (“The star power of Yao Ming is not the result of his extraordinary stats for the Houston Rockets. He averages a respectable 13 points and 8.2 rebounds per game. The flurry of magazine covers, billboards, and television commercials featuring Yao reflect the desires of American and Chinese companies to cash in on Yao's popularity.”).

¹⁶ Nate Taylor, *Lin Follows Yao's Steps in N.B.A. and China*, N.Y. Times (July 24, 2012), http://www.nytimes.com/2012/07/25/sports/basketball/jeremy-lin-follows-yao-ming-in-more-ways-than-one.html?_r=0 (“The Rockets hope that Lin, who is of both Chinese and Taiwanese descent, can continue the franchise's popularity in China, for which Yao was responsible.”).

¹⁷ See Thomas Oates and Judy Polumbaum, *Agile Big Man: The Flexible Marketing of Yao Ming*, 77 Pac. Aff. 187 (2004); see also Dustin Lane, *From Mao To Yao: A New Game Plan For China in the Era of Basketball Globalization*, 13 Pac. Rim L. & Pol'y J. 127 (2014).

¹⁸ Keith Bradsher, *Grandmother and Taiwan Watch from Afar*, N.Y. Times, Feb. 16, 2012, at B11 (citing Lin's uncle on the issue of Jeremy Lin's specific ethnic identification, “Lin Chi Chung said he and Jeremy Lin's father were eighth-generation descendants of immigrants from Fujian province in southeastern China who moved to Taiwan in 1707. They were part of a large wave of Fujian migration from which most of Taiwan's current residents are descended, and these descendants tend to identify themselves as Taiwanese.”).

¹⁹ Jeff Zillgitt, *LeBron James, Derrick Rose top Kobe Bryant's jersey sales*, USA Today, (Oct. 3, 2103, 1017 AM), <http://www.usatoday.com/story/sports/nba/2013/10/02/lebron-james-derrick-rose-kobe-bryant-best-selling-jerseys/2911467/>.

²⁰ Kobe Bryant has Top-Selling Jersey in China, NBA (Mar. 20, 2007, 9:54 AM), <http://www.nba.com/news/chinajerseys.html> (showing that Yao Ming's jersey as 3rd and 6th top-selling in China for the 2005-2006 and 2006-2007 seasons, respectively).

American. The Asian American market comprised a significant market share of ticket sales for the Rockets,²¹ and with a much denser Asian American population in Los Angeles, the market effect of the Lin trade on ticket sales for the Lakers might prove substantial. Immediately following Lin's trade to the Lakers, Karthick Ramakrishnan produced an infographic showing that the Asian American market share in Los Angeles was quintuple that of Houston, and concluded that the trade made good business sense.²²

On the business side of sports, there is generally a relationship between player compensation and team revenue, which is largely determined by fan attendance and viewership, which in turn affect commercial sponsorship. Under traditional basketball personnel economics, player salary should be related to performance on the court,²³ which perpetuates the belief that the sports world is a meritocracy. In this light, the Lakers' willingness to accept the financial brunt of Lin's back-ended contract does not seem to make good economic sense.²⁴ Lin's \$28.8 million contract with Houston in 2012 was structured so that Lin would make \$5 million in year one, \$5.2 million in year two, and \$9.3 million in each of years three and four, with a team option in the fourth year.²⁵ This back-ended compensation scheme was intended to create a "poison pill" disincentive for Lin's then-team, the New York Knicks, from matching Houston's offer due to the punitive luxury tax provisions that the NBA had just enacted.²⁶ Although Lin's "upside potential"²⁷ may have also played a role in Houston's initial willingness to offer him an inflated salary, by 2014 his "stock" as a player had not risen and their risk seemed to have not paid off. In terms of his production, Lin's output as a starter in his first season in Houston was nearly identical to his overall statistics in

²¹ Leonard, *supra* note 15, at 34 ("Beyond the efforts to sell basketball to more than 2 billion Chinese nationals, the NBA hopes to capitalize on the sudden explosion in ticket sales to the Asian American market. Asian Americans buying group packages for Rockets games represent 11 percent of the buying public, 10 percent more than last year.")

²² Karthick Ramakrishnan, *Why the Jeremy Lin Trade Makes Business Sense*, AAPI Voices (July 11, 2014), <http://aapivoices.com/lin-lakers-numbers/>.

²³ See Brown, Spiro & Keenan, *supra* note 14, at 335 (describing the "standard hypothesis that a player's salary reflects his expected performance."); see also David J. Berri, *Who Is 'Most Valuable'? Measuring the Player's Production of Wins in the National Basketball Association*, 20 *Managerial & Decision Econs.* 411 (1999).

²⁴ Empirical data analysis is often considered an objective method of evaluating player talent and value to a team. See e.g., Jeffrey S. Moorad, Billy Beane, Omar Minaya, and Phil Griffin, "Moneyball's" Impact on Business and Sports, 19 *Vill. Sports & Ent. L.J.* 425 (2012); see also Richard H. Thaler & Cass R. Sunstein, *Market Efficiency and Rationality: The Peculiar Case of Baseball*, 102 *Mich. L. Rev.* 1390 (2004).

²⁵ 'Lin-come Tax': State and Local Income Tax Considerations for Athletes, 22 *J. Multistate Tax'n and Incentives* 38, 39 (Jan. 2013).

²⁶ *Id.* ("The back-loaded offer was potentially designed by Houston as a 'poison pill' to create a high salary threshold for Lin's previous team, the New York Knicks, to consider when deciding whether to match or exceed Houston's contract offer. Further, the Houston contract would have caused a luxury tax liability for the Knicks that some analysts have estimated at \$15 million. These factors seemingly were among the primary reasons the Knicks did not agree to match Houston's contract terms as offered to Lin.")

²⁷ See generally Christopher R. Bollinger & Julie L. Hotchkiss, *The Upside Potential of Hiring Risky Workers: Evidence from the Baseball Industry*, 21 *J. Lab. Econs.* 923 (2003).

New York,²⁸ but fell far short from his performance during the Linsanity period, which was perhaps the expectation Houston had when it made Lin the offer in 2012. The Lakers agreed to assume the expanded financial obligations for Lin beginning the third year of his contract, despite the fact that Lin's production had significantly decreased and he had been relegated to the bench in Houston in favor of Patrick Beverly. Ramakrishnan's assessment of the trade as a good business decision, which is probably not based on an unrealistic hope that Lin will consistently reproduce his levels of performance in Los Angeles as he did at the height of Linsanity, suggests that there is another force at work.

By linking the business aspect of the trade to the Asian American market sector, Ramakrishnan seems to suggest a correlation between racial identification and increased consumerism among minority groups. Attendance and viewership, however, have generally been found to be less affected by racial identification with minority players,²⁹ than with positive team performance and the presence of "superstar" players like Michael Jordan or Shaquille O'Neal in the game.³⁰ In this respect, Jeremy Lin may not perform at comparable superstar levels,³¹ but nevertheless has a superstar effect because he has become a celebrity of sorts. In analyzing the inflated salaries of certain professional athletes, Marc Edelman proposes a comparison to entertainers who draw similar earnings.³² Although part of their salary reflects hard work and performance, Edelman suggests that professional athletes like LeBron James and Jeremy Lin are primarily being compensated for their entertainment value.³³

It is useful, in this regard, to remember that the business of sports is entertainment, a consumer product. Sports franchises often negotiate terms with players not so much based on their projected contribution to the success of the team, more than their effect on the franchise's ability to sell tickets and, more importantly,

²⁸ Player Stats: Jeremy Lin, ESPN, http://espn.go.com/nba/player/stats/_id/4299/jeremy-lin (last visited July 21, 2014).

²⁹ See Brown, Spiro & Keenan, *supra* note 14.

³⁰ See Jerry A. Hausman & Gregory K. Leonard, Superstars in the National Basketball Association: Economic Value and Policy, 15 *J. Lab. Econ.* 586 (1997).

³¹ ESPN, *supra* note 28 (showing Lin averaged 12.5 points and 4.1 assists, and had a 14.31 player efficiency rating for the 2013-14 season).

³² Marc Edelman, Economic Realities & Legal Issues of Professional Athletes, 8 *DePaul J. Sports L. & Contemp. Probs.* 133, 135 (2012) ("it is odd that Americans overall seem to recognize that elite actors and entertainers deserve super-high pay for their accomplishments, but then look at the equation very differently when it comes to athletes.").

³³ *Id.* at 135 ("Part of the reason why Jeremy Lin's recent success has gotten such huge national attention is because he is on the crux of two worlds-stardom, and that of the more traditional professional athlete. As you probably know, before Jeremy Lin's miraculous past few weeks, he was living on his brother's couch on the Upper East Side in New York, hoping every day for a chance to prove his worth to the Knicks in order to avoid a return to the NBA Developmental League salary of nearly \$30,000 per year. It now looks as if Jeremy Lin's hard work and persistence has paid off, as the Knicks have indicated plans to keep him for the season and Jeremy has been offered some meaningful sponsorship opportunities."); see also Dan Messeloff, The NBA's Deal with the Devil: The Antitrust Implications of the 1999 NBA-NBPA Collective Bargaining Agreement, 10 *Fordham Intell. Prop. Media & Ent. L.J.* 521, 554 (2000) (Like Hollywood, professional sports is an entertainment business: "Big stars get millions, while most get union scale.").

to negotiate lucrative deals for television and other broadcasting rights.³⁴ This is especially true for teams in major media markets like Los Angeles. For example, in November 2013, the Lakers signed Kobe Bryant to a two-year \$48.5 million extension even though he was aging, injured, and unlikely to play for the majority of the season; the deal was likely made so that the Lakers could retain star power despite their performance on the court, just as they had done previously with an aging Magic Johnson who was retiring for health reasons.³⁵ On the other side of the spectrum, the stock price in Madison Square Garden, the oldest Regional Sports Network which holds venue and television rights to the Knicks, drastically dropped immediately following Jeremy Lin's departure for Houston, which suggests economic ramifications not linked solely to the success of the Knicks on the court.³⁶ In losing Lin, the Knicks were losing not just a player, but also a celebrity who could draw crowds and viewership, which affects revenue.

Jeremy Lin's drawing power, however, is largely a function of his race. The assumption of Lin's contract by the Lakers as a business decision is a result of an intersection of racial identification and superstar status. Ramakrishnan's assessment that Jeremy Lin's value to the Lakers is correlated to his connection with the Asian American market share, therefore, may be correct. Although news of his trade to Los Angeles was met with mixed reactions from Lakers fans generally,³⁷ the Lin trade garnered overwhelming support among the Asian American community.³⁸ The Lakers appear to be capitalizing on Lin's star power not among their overall fan base, but within a particular racialized segment of their fan base. As such, Jeremy Lin's race has been converted into potential economic and social capital for the Lakers. Asian Americans, however, support Lin not because he consistently delivers superstar-level performance or due to simple racial identification, but because Lin has achieved nonconventional superstar status in the

³⁴ See Diana Moss, *Regional Sports Networks, Competition, and the Consumer*, 21 *Loy. Consumer L. Rev.* 56 (2008); see also Martin Cave and Robert W. Crandall, *Sports Rights and the Broadcast Industry*, 111 *The Econ. J.* 469 (2001).

³⁵ Bill Plaschke, *Lakers' extension of Kobe Bryant's contract really hurts now*, *L.A. Times* (July 3, 2014, 8:35 PM), <http://www.latimes.com/sports/lakers/la-sp-lakers-kobe-plaschke-20140704-column.html>.

³⁶ Zachary A. Greenberg, *Note: Tossing the Red Flag: Official (Judicial) Review and Shareholder-Fan Activism in the Context of Publicly Traded Sports Teams*, 90 *Wash. U. L. Rev.* 1255, 1289 n.200 (2013) ("Even more recently, the Knicks' decision not to re-sign Lin, a restricted free agent, proved to have a negative impact on The Garden's stock price. After reaching \$38.80 per share on July 5th (up from \$29.49 on the day of Jeremy Lin's first start), the stock has fallen almost 9 percent, down to \$35.50, since the Knicks decided not to match the Houston Rockets' offer sheet for Lin."); Stephen Smith, *As Jeremy Lin Heads South, So Does MSG Stock*, *CBS News* (Jul. 23, 2012, 2:05 PM), <http://www.cbsnews.com/news/as-jeremy-lin-heads-south-so-does-msg-stock/>.

³⁷ Christina Gullickson, *Fan Reactions to Los Angeles Lakers Moving to Acquire Jeremy Lin (in photos)*, *L.A. Daily News* (July 11, 2014), <http://www.dailynews.com/sports/20140711/fan-reactions-to-los-angeles-lakers-moving-to-acquire-jeremy-lin-in-photos/>; see also Ryan Ward, *Laker News: Jeremy Lin Hopes for 'More Important' Role in L.A.*, *LakerNation* (July 21, 2014), <http://www.lakersnation.com/lakers-news-jeremy-lin-hopes-for-more-important-role-in-la/2014/07/21/>.

³⁸ Frances Kai-Hwa Wang, *The Jeremy Lin Trade to the Lakers Makes Clear Business Sense*, *NBC News* (July 14, 2014), <http://www.nbcnews.com/news/asian-america/jeremy-lin-trade-lakers-makes-clear-business-sense-n155151>.

Asian American community. Jeremy Lin holds market power in the Asian American community because of the ways in which his identity confronts issues of race and racialization.

Lin is distinctive in the NBA for his Asian American rather than Asian identity. Although Yao Ming, Wang ZhiZhi, and Yi JianLian were all identifiably Asian bodies who preceded Jeremy Lin in the NBA, they were also all identifiably international. Yao Ming's foreignness was often made a distinguishing characteristic in media accounts,³⁹ which further contributed to the stereotype of Asian Americans as perpetual foreigners.⁴⁰ In fact, criticism that tried to apply this foreigner stereotype to Lin compelled prominent Knicks-fan, director Spike Lee, to ardently defend Lin's American-ness.⁴¹ Asian Americans, in this respect, likely hold deeper personal identification with Lin, who has also unfairly contended with the same racialized struggles as they have, as opposed to international players from Asia. Jeremy Lin's initial rise to prominence during Linsanity brought issues of race to the forefront of American cultural discourse, by engaging and challenging prevailing stereotypes of Asian Americans.

Lin specifically had to contend with negative stereotypes of Asian American men. Lisa Lowe explains, "Chinese male immigrants could be said to occupy, before 1940, a 'feminized' position in relation to white male citizens and, after 1940, a 'masculinity' whose racialization is the material trace of the history of this 'gendering.'"⁴² Professional sports, in particular, has remained a site where racialized stereotypes of athleticism and masculinity have led to de facto segregation for Asian Americans, despite integration for many other races. John Kang notes, "While African American men tend to be 'embraced' for their super masculinity, Asian American men tend to be rejected for lacking the masculinity associated with bodily aesthetics."⁴³ These stereotypes arguably hindered Lin's entry into professional basketball. Despite playing well in high school and college, Lin went undrafted in the NBA and was cut multiple times before finally being given his opportunity by coming off the bench for a desperate and injury-depleted New York Knicks team with no other point guard to play. In an interview with Charlie Rose on 60 Minutes, Lin and former NBA Commissioner David Stern both acknowledged that race and stereotypes played factors in his initial inability to break into the league despite his talents.⁴⁴

³⁹ Leonard, *supra* note 15, at 35 ("The discourse surrounding Yao Ming frequently centers on his foreign status. Announcers and sports writers continually focus on his difficulties behind the wheel of a car, his strange eating habits, and the difficulties he has with the English language. Undoubtedly, many international players have had problems adjusting to English and "American" culture, but Yao's difficulties are placed in the foreground.")

⁴⁰ See Natsu Taylor Saito, *Alien and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy in American Law*, 76 *Or. L. Rev.* 261 (1997).

⁴¹ Wang, *supra* note 7 ("In one February 14th tweet, Lee insisted "Jeremy Lin [sic] Was Born Here In The US Which Makes Him An American. WAKE UP."")

⁴² Lisa Lowe, *Immigrant Acts: On Asian American Cultural Politics* 11-12 (1996).

⁴³ John M. Kang, *Deconstructing the Ideology of White Aesthetics*, 2 *Mich. J. Race & L.* 283, 345 (1997)

⁴⁴ *Houston Rockets' Jeremy Lin on Asian Stereotype*, CBS News (Apr. 5, 2013),

<http://www.cbsnews.com/news/houston-rockets-jeremy-lin-on-asian-stereotype/> ("Acknowledging that

Timothy Yu comments that Lin needed to overcome the popular conception that “Asian-Americans don't really belong on the basketball court...Lin was overlooked because when people looked at him, they saw a stereotype, not a basketball star.”⁴⁵ Indeed, racist reactions to Jeremy Lin in the media during Linsanity demonstrate the ways in which historical stereotypes, specifically of emasculated Asian American men, persist even today.⁴⁶ For some scholars and activists, Jeremy Lin represents the hope for Asian Americans, as a community, to overcome those damaging stereotypes. As Yu further observes regarding ESPN's quick apology after using the derogatory slur “Chink” in its headline following New York's first loss during Linsanity,⁴⁷ “[s]lurs and stereotypes that would previously have been used with impunity were getting a good, hard look, and a major media outlet responded to Asian-American critics with a swiftness that would have been unimaginable a few weeks ago.”⁴⁸ By upending stereotypes of Asian Americans and bringing consciousness of these stereotypes to national attention, Lin generates symbolic capital for the entire Asian American community, though especially Asian American men. As Oliver Wang suggests, “for those Asian American men who feel like masculinity is a club that everyone else has membership to, someone like Lin is a godsend...because he's performed well in the NBA—one of the grand stages of contemporary American masculinity.”⁴⁹ Lin has become a figure for the Asian American community to rally behind who, as Linda España-Maram has described in respect to other stereotype-shattering Asian American athletes, “offer[s] the possibility of dignity and self-definition.”⁵⁰

Though Lin has been able to break through many unfair stereotypes of Asian Americans, his story should not be used to perpetuate the myth that sports is a

his ethnicity had nothing to do with his athletic ability, Lin says it was more of a perception of Asian Americans. “I mean...it's just a stereotype,” he tells Rose...the six-foot-four-inch guard wasn't drafted by any of the NBA's 32 teams in 2011. Was race involved there, too? “I think in the true sense the answer to that is yes,” says the NBA's Stern. “In terms of looking at somebody...I don't know whether he was discriminated against because he was at Harvard,” he says with a laugh, “Or because he was Asian.” The bottom line, says Stern, he didn't have the usual background common to a vast majority of professional players.”

⁴⁵ Timothy Yu, Will Jeremy Lin's success end stereotypes?, CNN (Feb. 21, 2013, 4:01 PM), <http://www.cnn.com/2012/02/20/opinion/you-jeremy-lin/>.

⁴⁶ See Michael Park, Asian American Masculinity Eclipsed: A Legal and Historical Perspective of Emasculation Through U.S. Immigration Practices, 8 Mod. Am. 5, 5 (2013) (“Fox sports columnist Jason Whitlock aimed directly at Lin's “lack” of masculinity”); Peter H. Huang, Tiger Cub Strikes Back: Memoirs of an Ex-Child Prodigy about Legal Education and Parenting, 1 Brit. J. Am. Legal Stud. 297, 316 (2012) (“Even the mostly positive media coverage of the unexpected success of then New York Knicks basketball player Jeremy Lin included actions reflecting ignorance about Asian Americans, a few racial slurs, and some racist Asian stereotypes.”).

⁴⁷ Gregory S. McNeal, ESPN Uses “Chink in the Armor” Line Twice Update-ESPN Fires One Employee Suspends Another, Forbes (Feb. 18, 2012, 11:14 AM), <http://www.forbes.com/sites/gregorymcneal/2012/02/18/espn-uses-chink-in-the-armor-line-twice-did-linsanity-just-go-racist/>.

⁴⁸ Yu, *supra* note 45.

⁴⁹ Wang, *supra* note 7.

⁵⁰ Linda España-Maram, Creating Masculinity in Los Angeles's Little Manila: Working-Class Filipinos and Popular Culture, 1920s-1950s 103 (2006) (describing how for Filipino men experiencing emasculating racism in the early 20th century, the success of Filipino boxers became a site for recovering a community sense of masculinity and empowerment).

race-neutral meritocracy. As Scott Kurashige has already warned, Jeremy Lin should not be used to justify “neo-conservative theories of bootstrap success,”⁵¹ which is at the heart of colorblind arguments against affirmative action.⁵² Such critiques of affirmative action often focus on the recipients and turn attention to evaluating their merits and whether they have earned their place. The intersecting factors leading to Lin’s contract in the NBA, however, demonstrate the ways in which institutional decisions based on race are not made purely for the benefit of the recipient, but are calculated business decisions intended to benefit the institution, which relates to Nancy Leong’s theory of racial capitalism. Leong sets up her argument by discussing Justice O’Connor’s business diversity rationale in the landmark affirmative action case *Grutter v. Bollinger*,⁵³ which proposes that racial diversity can be a valid interest because it develops good business skills “needed in today’s increasingly global marketplace [that] can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.”⁵⁴ Leong expands on O’Connor’s business diversity principle to argue that diversity is itself a capitalized interest for corporate institutions.⁵⁵

The economically calculated use of Jeremy Lin’s race in the NBA creates a space for potentially taking O’Connor’s business diversity model even further. His presence on the team does not so much provide exposure to a diverse person, which may be abstractly useful for doing business with diverse people per *Grutter*, as much as it provides direct, fungible access to diverse people and their market share. In other words, by racially composing a team that reflects the diversity of the surrounding community, a local team is better able to commercially access those racial communities in order to drive ticket sales and viewership, which in turn attracts advertising revenue. In baseball, New York Mets General Manager Omar Minaya employed a similar race-based strategy for rebuilding the team in 2005.⁵⁶

⁵¹ Scott Kurashige, *Dear America: Please Don't Ruin Jeremy Lin's Story*, Huffington Post (Feb. 21, 2012, 6:41 PM), http://www.huffingtonpost.com/scott-kurashige/jeremy-lin_b_1286428.html.

⁵² *Id.* (“it's not a compliment to insinuate that that Asian Americans exhibit a dedication to education that you presume is lacking in other ethnic groups you wrongly believe are just skating by through affirmative action.”); see also Nancy Chung Allred, *Asian Americans and Affirmative Action: From Yellow Peril to Model Minority and Back Again*, 14 *Asian Am. L.J.* 57, 58 (2007) (“For years, Asian Americans have struggled with the image of being a “model minority”—a seemingly complimentary designation, but one that has come to be a double-edged sword. While this appellation recognizes the significant achievements some Asian Americans have made, particularly in higher education, it places Asian Americans in an undesirable position...Asian Americans, the argument goes, are the “natural enemies” of affirmative action”).

⁵³ *Grutter v. Bollinger*, 539 U.S. 306, 330 (2003).

⁵⁴ *Id.* at 330; see also David B. Wilkins, *From “Separate Is Inherently Unequal” to “Diversity Is Good for Business”: The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 *Harv. L. Rev.* 1548, 1553 (2004).

⁵⁵ Leong, *supra* note 9, at 2166.

⁵⁶ N. Jeremi Duru, *Fielding a Team for the Fans: The Societal Consequences and Title VII Implications of Race-Considered Roster Construction in Professional Sport*, 84 *Wash. U. L. Rev.* 375, 409 (2006) (“In addition, the team focused heavily on increasing its appeal to the community and, in particular, the Latin community. The initiatives were several...These strategies are non-violative of Title VII and, indeed, are impressive and commendable attempts to provide access to Mets baseball for Latinos and Latinas in New York who might otherwise be without. In addition to the aforementioned

Such racialized targeting of player personnel might hold up under an extremely neoliberal interpretation of diversity rationale,⁵⁷ where diversity is arguably a pure business decision vested in financial interest. Disallowing race-conscious affirmative action in team composition would prevent strategic access to a racially diverse market share. The 2005 Mets team and Jeremy Lin's contract, therefore, hold the potential for a perversely neoliberal expansion of *Grutter*.

Jeremy Lin's \$28.8 million contract can be read, in this way, as a type of business diversity affirmative action, worth every penny in terms of the revenue he is expected to bring. Jeremy Lin's athletic ability and work ethic comprise only one piece of the puzzle that led to his retention in the NBA. Although Lin needed to display enough talent to merit entry the NBA, his \$28.8 contract does not necessarily reflect an objective system of compensation based purely on merit, but a hybridized calculation by owners primarily interested in promoting a marketable product of sports entertainment. Jeremy Lin's status as a barrier-breaking and stereotype-defying icon for the Asian American community makes him a good sports entertainment product that creates access to a consumer demographic that has not been fully realized. In this respect, Lin's race becomes part of his "stock" as a player, which has equivalent, if not more, value than his actual performance on the court. The Lakers are perhaps hoping to capitalize on this "upside potential" of Jeremy Lin to bring in additional revenue.

Under the bleakest of readings of his \$28.8 million contract, Lin's race is reduced into a commodity to be possessed and exchanged by NBA executives who represent greater structures of white power in American society.⁵⁸ Kenneth Shropshire critiques the ways predominantly white owners of sports franchises have historically reaped huge financial benefits from players who are predominantly from minority backgrounds.⁵⁹ However, Lin's race can also be considered as a commons,⁶⁰ conferring benefits to multiple parties, which potentially spares his contract from being interpreted as unavoidably exploitative. Jeremy Lin's race may have value for his NBA employers, but it also provides value to his racial community and the community at large. For NBA executives his race can be converted into a product for profit, but the communities that buy into the product still derive a benefit apart from pure sports entertainment. They buy into a larger message for society that race not only still matters, but also can rise quickly to the

strategies, however, the Mets may have engaged in race-considered roster construction in creating the 2005 team.").

⁵⁷ See *id.* at 426 n.322.

⁵⁸ See also Mitchell F. Crusto, *Blackness as Property: Sex, Race, Status, and Wealth*, 1 *Stan. J. C.R. & C.L.* 51, 53 (2005) (arguing that "Grutter and its nineteenth-century roots regulate the sexual-racial economies of property, treat blackness as white property, reflect Professor Bell's "interest-convergence" principle, and serve to reinforce a greater social and economic order: the continued domination, supremacy, and privilege of wealthy white men."); see generally Cheryl I. Harris, *Whiteness as Property*, 106 *Harv. L. Rev.* 1709 (1993).

⁵⁹ See Kenneth L. Shropshire, *In Black and White: Race and Sports in America* (1996) (identifying hidden purveyors of structural racism as reasons why approximately 95% of sports team owners are white while the vast majority of players are black); see also Kenneth L. Shropshire, *Minority Issues in Contemporary Sports*, 15 *Stan. L. & Pol'y Rev.* 189 (2004).

⁶⁰ See generally, Sheldon Bernard Lyke, *Diversity as Commons*, 88 *Tul. L. Rev.* 317 (2013).

forefront of our national consciousness in positive ways. Jeremy Lin defies and will continue to defy stereotypes, and he is getting paid for it. The intersecting market forces at work in Jeremy Lin's \$28.8 million contract ultimately reveal that sports is not post-racial. Yet the manner in which Jeremy Lin forces us to engage with issues of race, despite attempts to believe that we are a race-neutral society, demonstrates that market powers and the business side of consumer culture can also drive society towards positive social consciousness and change.