

One Step Closer: Understanding the Past and Potential Work and Influence of Asian American Interest Groups in Claiming a Space for Asian Americans in America's Democracy

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INTRODUCTION

In a country such as the United States, whose most celebrated characteristic is its democracy, the most powerful statement of the attainment of legitimacy is the ability to be a role player in the exclusive realm of American politics. Significantly, the ultimate manifestation of a group's success in politics occurs when the group gains the ability to enact legislative change: the group ceases to fight against the system at the fringes, unsure of the effect of its actions, but finally works within the system as a valid, relevant participant. This validation is important because it enables the group to represent its interests in all conversations and it creates leverage for the group when specific issues arise.

For a variety of reasons, Asian Americans lack such political power.¹ Recent trends suggest that the time has come for Asian Americans to claim that power. According to the 2000 United States Census, the Asian American population comprises about 4.2% of the national population,² Asian American enrollment in "top-ten" law schools has quadrupled in the past two decades, and some would say that Asian Americans are even overrepresented in some of the most prestigious legal jobs in the country.³ The influence that Asian Americans hold today clearly surpasses that of past generations.

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1. See Section III.

2. U.S. CENSUS BUREAU, 2000 BRIEF: THE ASIAN POPULATION 3 (2002), available at <http://www.census.gov/prod/2002pubs/c2kbr01-16.pdf>.

3. Frank H. Wu, *The Arrival of Asian Americans: An Agenda for Legal Scholarship*, 10 ASIAN L.J. 1, 2 (2003) (as Supreme Court law clerks, arguably the most prestigious job for recent law school graduates).

The Asian American community is at a crossroads. Despite the aforementioned trends, the newfound power of the Asian American community has its limits, and the Asian American community experiences continuing marginalization. The community “occup[ies] an uneasy place: it is neither within the mainstream nor at the margins.”⁴ However, the Asian American community has moved past the days of “agitating” from the “outside,” and with its recent growth, it has the potential to work from the “inside.”⁵ The community must now make a decision. It can choose to unite along racial lines in the battle against hate violence, disproportionately burdensome immigration legislation, and other issues, and deal with the potential backlash, or it can allow for the group complacency that occurs when such issues are left to subside.⁶ The leaders of the community, as represented in Asian American interest groups, continue to make successful inroads in this uphill battle for legitimacy and influence—but as this paper will discuss, Asian Americans must take a unified stance on the issues facing their community to have a significant role in American politics.

The community has been called to meet the challenge:

Asian American[s] together must develop a principled agenda if we are to give the concept of “Asian American”⁷ as a group any substantive content. Such principles must be genuine, which is to say universal; they cannot appeal to Asian Americans exclusively or be indefensible if expressed openly in a diverse democracy. They must be dynamic and deliberative. The demand for inclusion should be supplemented by proposals for action.⁸

Asian Americans can demonstrate their understanding of the political structure in which they exist and utilize their knowledge in a constructive manner by organizing around a pan-ethnic identity group. The struggle to coalition-build represents a serious issue for the Asian American community, but one that *must* be tackled in order to form a potent Asian American interest group that can accomplish change for the community.

Part I of this paper offers an overview of the ability of interest groups to effect genuine legislative progress. This part begins by presenting an overview of interest groups as representatives of these outside groups, and

4. *Id.* at 10; see also Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 1 ASIAN L.J. 1, 6 (1994) (viewing this time as the Asian American Moment in which more Asian Americans are joining the legal academy and “rais[ing] their voices to ‘speak new words and remake old legal doctrines.’ This Moment brings new responsibilities for Asian American legal scholars. This Moment brings new challenges. This Moment also brings us hope.”).

5. Wu, *supra* note 3, at 5.

6. *See id.*

7. The idea of an “Asian American” and what the term means is in itself one of the challenges facing the Asian American community that will be discussed in Section III.

8. Wu, *supra* note 3, at 6.

the ways in which they influence American politics. After examining the legislative process in relation to interest groups, Part I analyzes two strategies that interest groups employ to influence the legislative process: public choice theory and agenda-setting. Part II examines the utilization of public choice theory and agenda-setting by both Asian American and non-Asian American minority groups. Part III explores scholars' concerns regarding the marginalization and misrepresentation of subgroups within the community and the effectiveness and applicability of interest group politics to Asian Americans in creating one umbrella Asian American interest group. Part IV analyzes America's current demographics to demonstrate the real potential for change that the successful utilization of public choice theory or agenda-setting offers to Asian Americans who are able to overcome the challenges of coalition-building. The 80-20 Initiative is presented as an example of a successful attempt by Asian Americans to make use of interest group politics and as an illustration of the challenges Asian Americans will face in future attempts to employ interest group politics strategies. Lastly, Part V postulates that if the Asian American community can come together and formulate an Asian American legislative agenda that can be presented as representing the sentiments of the "entire" community, serious progress can be achieved. Instead of dealing with issues on an ad hoc basis in the judicial system or trying to influence administrative agencies' interpretations of statutes, interest groups are most capable of effecting change in this country by utilizing America's representative system. In order to demonstrate the potential of interest group politics to achieve legislative change, Part V also presents two issues that the Asian American community has struggled with for centuries: hate violence and discriminatory immigration policies. Part V concludes by examining the traditional interest group response to the issues and strategizing on possible next steps that can be taken with public choice and agenda-setting theory.

The notion that a united community will experience improved chances of political success is not a novel idea.⁹ Indeed, the idea is intuitive. What this paper attempts to accomplish is to understand how the political science theories of public choice and agenda-setting coexist with the specific needs of the Asian American community.

"[I]f Asian Americans are to come together as an entity greater than an individual but lesser than the nation . . . we are compelled toward coalitions."¹⁰ This idea of "pan-ethnicity" is a "social concept that entails a collective vision bridging diverse identities and interests" and "connotes

9. Minority groups have been employing this strategy to gain admission into the American democracy for the past two centuries. The Irish, as a discriminated immigrant group practice such tactics as did the Polish, Italians, and most recently the Jewish. See S.B. Woo, *Political Clout and Equal Opportunity*, 10 *ASIAN AM. POL'Y REV.* 48, 48 (2002).

10. Wu, *supra* note 3, at 6.

the ability of diverse ethnic groups to view their interests and identities as a collective racial group.”¹¹ This idea of “pan-ethnicity” was a hallmark of the Asian American Movement of the 1960s¹² and advocates of a pan-ethnic coalition theorize that this coalition will

symboliz[e] the movement away from an ethnic-based paradigm to a racial formation paradigm, in which the latter represented a means to make policy demands on the racial state. The purpose of this strategy is simple: there is power in numbers. A collective group identity could transform (under certain circumstances) the separate elements of the Asian Pacific American community, into a more cohesive unit, which, in turn, could increase their effectiveness in influencing policy outcomes or political elections.¹³

This proposal to build coalitions is fundamental to the realization of Asian American political legitimacy. Asian Americans cannot rely on other groups to advocate for legislation that addresses the specific needs of the Asian American community; therefore Asian Americans must form their own groups in order to be properly addressed.¹⁴ Such groups have serious potential to successfully enact dramatic change, even in spite of the desires of majority factions. Through their understanding of procedural and institutional structures, as well as their use of organizational advantage, minority groups can realize their potential and dominate discussions of policy alternatives and implementation.¹⁵ Moreover, considering the demographics of this country, if Asian Americans can come together and employ interest group strategies, the community’s influence will be powerful. This goal of coalition building will be difficult to reach, especially considering the historical and sociological background of the community.¹⁶ However, rather than dismissing this proposed strategy to claim political power for Asian Americans, sincere analysis should be undertaken, which is what this paper attempts to accomplish.

I. UNDERSTANDING INTEREST GROUPS AND INFLUENCE IN AMERICAN POLITICS

The ability to successfully participate in the legislative process arguably represents the most powerful method by which to enact change in America. Establishing a presence as an influential player in the legislative

11. James S. Lai, *Asian Pacific-Americans and the Pan-Ethnic Question*, in *ASIAN AMERICAN POLITICS: LAW, PARTICIPATION, AND EQUALITY* 247 (Don T. Nakanishi & James S. Lai eds., 2003).

12. Kim Geron, *Serve the People: An Exploration of the Asian American Movement*, in *ASIAN AMERICAN POLITICS*, *supra* note 11, at 171. Further comment on the history of the Asian American Movement can be found in Section II.A.

13. *Id.*

14. *Cf.* Wu, *supra* note 3, at 7.

15. Wu, *supra* note 3, at 8.

16. *Cf.* Chang, *supra* note 4, at 49 (vast socioeconomic, cultural, and historical differences exist among Asian American groups). *See* Section III for further discussion on this issue.

process, and thus American politics, signifies that a group and its agenda have become mainstream and heralds the claiming of a space in American politics. Understanding that no theory can exist in isolation from others, political scientists posit a variety of descriptive and normative theories regarding the legislative process.¹⁷ The two theories, public choice theory and agenda-setting, that this part explores analyze the role of interest groups as powerful, direct impetuses in enabling groups to claim a voice and space in American politics. The premise behind public choice theory and agenda-setting is an intuitive idea that minority groups have been using for centuries in order to obtain political power in America—that a united community acting together can obtain political clout. Applying this idea against the background of recent demographic trends shows that the time has come for Asian Americans to utilize these theories as impetuses to form a pan-ethnic movement, heavy with political clout, and that without such a movement Asian Americans cannot find a political voice.¹⁸

A. Interest Group Significance and Function

Before exploring the two specific theories of public choice and agenda-setting, the general notion of interest groups must itself be analyzed. Most interest group theories, regardless of the valuation the theorist places on interest groups, relate back to James Madison's *The Federalist Papers*.¹⁹ His discussion of the development of relationships among different government institutions relies on the idea of "factions" of citizens "who are united and actuated by some common impulse or passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community."²⁰ These "factions" must be an accepted part of American politics since "the latent causes of faction are thus sown in the nature of man," and thus, they cannot be avoided.²¹

In modern political science, most pluralist theorists have a more positive perspective on interest groups. Theorists now characterize interest groups as "any group that, on the basis of one or more shared attitudes, makes certain claims upon other groups in the society for the establishment, maintenance, or enhancement of forms of behavior that are implied by the shared attitudes."²² Pluralism further asserts the following:

- (1) Citizens organize into groups for political action. The citizenry has different opinions and different economic interests, which leads to the formation of "interest groups."
- (2) Interest group politics results in

17. WILLIAM N. ESKRIDGE, JR. ET AL., *CASES AND MATERIALS ON LEGISLATION, STATUTES, AND THE CREATION OF PUBLIC POLICY* 48 (3d ed. 2001).

18. Woo, *supra* note 9, at 48.

19. ESKRIDGE, JR. ET AL., *supra* note 17.

20. *Id.*

21. *Id.*

22. *Id.*

“pluralism”—the spreading of political power across many political actors. . . . Strong interest groups, many of which are private or voluntary organizations, protect individuals against oppressive and tyrannical government. (3) Politics can be conceptualized as the process by which conflicting interest-group desires are resolved.²³

Ideally, this pluralist system represents a marketplace where the “best ideas succeed.”²⁴ In reality, the success of an idea does not necessarily correlate to the merits of the idea, but relates instead to the characteristics of its sponsoring interest group.²⁵ Elmer Schnattschneider poignantly asserts that “the flaw in the pluralist heaven is that the heavenly chorus sings with a strong upper-class accent.”²⁶ His research found that probably only ten percent of the population get access to this political system of pressure politics, and that it is not designed to represent broad public interests or groups representing the less advantaged.²⁷ Yet, even though pluralism does not offer the ideal solution for attainment of political power, it represents one of the only feasible ways to enter the realm of American politics.

From a practical standpoint, understanding the motivation behind interest group formation is as important as understanding the very nature of interest groups. Because legislation is a public good, one might believe that no incentive exists for players who have the option of forgoing the administrative and financial inconveniences of creating interest groups; they can merely choose to free-ride.²⁸ But this theory of free-riding functions only for issues that provide general benefits for the entire public (i.e., clean water). Parties cannot rely on other groups to advocate for legislation that addresses the specific needs of their party; therefore they must form groups in order to be properly addressed.²⁹ Groups most often form when only a “few” interested members exist (“few” meaning not the general public) because the smaller size of the group gives each member a large enough stake in the outcome to incentivize his or her participation.³⁰ Thus, the very fact that Asian Americans represent a demographic minority

23. *Id.* at 49.

24. *Id.*

25. *See id.* at 49-50 (Larger and more general interest will prevail over smaller, special interest; power proportionate to the intensity of the interest).

26. *Id.* at 50.

27. In Kay Lehman Scholozman and John Tierney’s research, business interests were well represented at the expense of consumers. Seventy percent of organizations having a presence in Washington, D.C. and fifty-two percent of those having their own offices represented some form of business interest. *Id.*

28. *Id.* at 51.

29. *Id.*

30. Other ways in which minority interest groups form are the following: (1) One member will receive such a large portion of the benefit that he or she is willing to pay the costs of creating and maintaining the group as a form of political strategy. Having the support of a group offers the impression of having a broad base appeal, consequently creating political leverage. (2) Members can be coerced to participate (i.e., labor unions). *Id.*

in this country makes the creation of a unified Asian American interest group more feasible.³¹

Interest groups become particularly important during election seasons. Although the role of an interest group (the attentive public) is to call the legislature's attention to a particular issue, even without an interest group, legislators will pay attention to the issues (i.e., taxes) of the diffuse public (the inattentive public) because of the "electoral connection" between the legislature and the public.³² This electoral connection receives heightened attention by the legislator when it seems like the issue will influence voting.³³ As viewed by elected representatives, three factors play a role in the determination of whether an issue will affect voting: (1) the magnitude and timing of the cost or benefit; (2) the proximity of the voter to those similarly affected; and (3) the forcefulness of the instigator or policy entrepreneur when bringing the issue to the public's attention.³⁴ Interest groups have the power to play a key role in this relationship, as they can emphasize the electoral connection between their members and particular legislative representatives, especially by being "instigators" or "policy entrepreneurs" as discussed below in Section C.

Understanding the role of interest groups in American politics, the process by which such groups are created, and the potential influence of interest groups on legislators is critically important to appreciating the significance of creating a cohesive Asian American interest group.

B. Public Choice Theory

Public choice theory explains the way in which legislators ultimately make their decisions and also explores one way in which interest groups, such as the proposed pan-ethnic coalition of Asian Americans, can directly impact legislative action. Public choice theorists argue that "actual political choices are determined by the efforts of individuals and groups to further their own interests."³⁵ This theory is based on an effort to view political decision-making from an economic perspective. "Politicians and voters are considered rational utility-maximizers operating in a competitive electoral

31. *Id.* at 52-53. Even though in theory it seems that these people's needs are being addressed by the formation of interest groups, one must remember that an interest group cannot adequately provide the same representation voting and direct influence can. Moreover, groups, especially those representing the powerless, also form because of the selective political benefits they can offer their membership. Specifically, purposive and solidary benefits justify "any costs" group membership might incur. Purposive benefits entail the meaningful benefit a member receives when pursuing ideological or issue-orientated goals as a collective. Solidary benefits include social rewards for members, such as satisfying the desire to be politically motivated. These types of benefits speak largely to the ordinarily disenfranchised because those people generally do not vote or have the economic means to possess political power.

32. *Id.* at 53.

33. *Id.*

34. *Id.*

35. *Id.* at 54.

market.”³⁶ Interest groups and the public, to some degree, are the demanders of legislation and offer benefits to their suppliers in order to meet their desired goals.³⁷

Legislators’ distribution of benefits to their constituents depends on two main factors. First of all, the legislator must assess the level of conflict between interest groups. When a consensual demand pattern exists, all attentive parties can benefit, whereas a conflictual demand pattern (such as the post-9/11 debate on immigration laws) requires the legislator to take a side.³⁸ In these contentious situations, the second factor—the organization of the particular interest groups—plays a large role, as organized groups can provide information to the legislator and articulate and frame the issue in a favorable manner.³⁹ As a testament to the importance of organized political groups, coalitions of smaller groups with shared interests have now become prevalent.⁴⁰

A coalition is more effective than a singular interest group because it can show legislators that “a policy’s advocates span numerous congressional districts” and because “coalitions are often nonpartisan, giving them the advantage of bipartisan support.” They also possess greater resources than those that simply exist on a personal level and have more contacts with lawmakers.⁴¹ Strategic ambitions and symbolic benefits are further incentives to build coalitions.⁴² Strategically, the workload created by a decentralized government, an expanded subcommittee system, and increased multiple bill referrals is unsustainable without a coalition’s resources.⁴³ Moreover, the growing number of interest groups and demands on legislators in Washington, D.C. forces organizations to build coalitions and to compromise before even proposing policies to legislators.⁴⁴ Lastly, coalitions have the perception of increased efficacy.⁴⁵

36. *Id.*; ANTHONY DOWNS, *ECONOMIC THEORY OF DEMOCRACY* 4 (defining rational as “reasonably directed toward the achievement of conscious goals”).

37. ESKRIDGE, JR. ET AL., *supra* note 17, at 54.

38. *Id.* at 55.

39. *Id.*

40. *Id.*

41. *Id.* at 56.

42. KEVIN W. HULA, *LOBBYING TOGETHER: INTEREST GROUP COALITIONS IN LEGISLATIVE POLITICS* 123 (1999).

43. *Id.*

44. *Id.*

45. *Id.*

Symbolically, coalitions benefit interest groups because they are “low-cost activity trophies” that groups can present to their “superiors to bolster evaluations or to their members for group maintenance purposes.”⁴⁶ Being a member of a coalition presents the image of hard work and activity, regardless of the coalition’s issues and the actual work invested.⁴⁷ Unfortunately, it is difficult for policy advocates to maintain coalitions as they are more susceptible to ideological divisions and high administrative costs.⁴⁸ Even so, because of the benefits, groups tend to join coalitions regarding issues that are the most important to them.⁴⁹

Interest groups also base decisions to take up issues and join coalitions, if at all, on the “perceived incidence of costs and benefits from a specified policy.”⁵⁰ Congress will pass legislation for a policy with distributed benefits and distributed costs because it is uncomplicated, even though group activity is difficult to generate.⁵¹ Conversely, a policy with concentrated benefits and concentrated costs creates continuous organized conflict.⁵² Interest group resistance to ideas opposing their interests is prevalent where there are distributed benefits and concentrated costs.⁵³ Lastly, concentrated benefits with distributed costs receive strong support and marginal opposition, as the benefit of changing the policy for one individual is too extraneous.⁵⁴

In the same manner that one can predict interest group behavior based on the distribution of costs and benefits, one can forecast a legislator’s behavior based on public choice theory, assuming that the legislator seeks re-election.⁵⁵ In deciding controversial issues, legislators aspire to make both sides feel like winners.⁵⁶ They often encourage compromise or pass ambiguous bills, placing responsibility for the final distribution of costs and benefits on administrative agencies.⁵⁷

46. *Id.* at 124.

47. *See id.* Moreover, improvements in technology have significantly facilitated communication between interest groups, simplifying coalition building. For example, personal computers permit mass information flow management in a fraction of the time required previously. Electronic mail lets parties quickly and cheaply transmit work containing graphical interface. Most significantly, the Internet allows grassroots coalition builders to recruit members and post position papers and advertisements. *Id.* at 126.

48. ESKRIDGE, JR. ET AL., *supra* note 17, at 56.

49. HULA, *supra* note 42, at 126-127.

50. ESKRIDGE, JR. ET AL., *supra* note 17, at 56.

51. *Id.* at 56-57 (this is called “majoritarian politics”).

52. *Id.* (this is called “interest group politics”).

53. *Id.* (this is called “entrepreneurial politics”).

54. *Id.* (this is called “client politics”).

55. *Id.* at 57.

56. *Id.*

57. *Id.* at 58.

*Supply Pattern of Legislation*⁵⁸

<i>Distributed Benefits / Distributed Costs:</i> Legislators favor either no bill or symbolic action.	<i>Distributed Benefits / Concentrated Costs:</i> Legislators favor ambiguous legislation and delegation to agencies.
<i>Concentrated Benefits / Distributed Costs:</i> Legislators favor policies that distribute subsidies and power to organized supporters.	<i>Concentrated Benefits / Concentrated Costs:</i> Legislators favor either no bill or agency regulation.

This “pressure” system helps explain interest group actions and offers guidance for groups to maximize their influence.⁵⁹ Under public choice theory, analyzing past and potential successes and failures of the Asian American hate violence legislation movement and the fight against the deportation of thousands of Indochinese refugees becomes a productive study that can inform future legislative advocacy strategies (i.e., coalition building).⁶⁰

C. Agenda-Setting

An interest group, recognized as legitimate and representing a significant segment of the electorate, can also obtain political voice by affecting voter behavior, thereby increasing its influence on representatives, by being a “policy entrepreneur” or “instigator.” A policy entrepreneur is an entity that “works to bring a particular issue to the forefront of the policy agenda and to mobilize public support for action.”⁶¹ Policy initiators, such as legitimate interest groups, the media, or an issue’s political opponent, can be policy entrepreneurs or instigators by influencing the media.⁶²

The media’s power in American politics is indubitable. The media can set the public’s agenda and, thus, determine which issues the public views as important. In framing and covering an issue or campaign, the media force voters to focus on certain aspects and interpretations. When the media prime their audiences, they determine which candidate’s characteristics or issues are important. Through these techniques, the media create and disseminate powerful influence. In pursuing political legitimacy, Asian

58. *Id.* at 59.

59. DOWNS, *supra* note 36, at 4 (“If a theorist knows the ends of some decision-maker, he can predict what actions will be taken to achieve them as follows: (1) he calculates the most reasonable way for the decision-maker to reach his goals, and (2) he assumes this way will actually be chosen because the decision-maker is rational.”).

60. One important criticism of public choice theory is that there is an assumption that the legislator always acts rationally. In weighing costs and benefits, there is no guarantee that the legislator actually uses the assumed value system. *Id.* at 6.

61. ESKRIDGE, JR. ET AL., *supra* note 17, at 53-54.

62. *Id.*

Americans should create the proposed pan-ethnic Asian American organization so that, with its broad constituency, they can influence the media's portrayal of key issues.

Kim Kahn's exploration of the media's importance in politics finds that because the "news media influence both the amount and type of information that voters acquire during [electoral and issue] campaigns . . . the news media can produce changes in public opinion."⁶³ One of the news media's most potent influences on public opinion is the way they set the public agenda. By setting the public agenda, the media can "focus public attention on a set of issues."⁶⁴ In doing so, the "news media do not tell us what to think as much as they tell us what to think about."⁶⁵ Agenda-setting theory insinuates that personal experience as well as media coverage affects voters' sense of which issues are important.⁶⁶ This influence has important implications. If an issue is placed on the public's agenda by the media, it is there because the public thinks it is important—or at least the perception is that the public thinks it is important, as well-organized interest groups can create a façade of public interest in an issue.⁶⁷ Voters deem topics that receive media attention to be the significant issues, thereby affecting legislators' valuation of the issues.

Considering the media's importance, interest groups must be able to obtain media attention and favor. Interest groups can achieve such goals by generating newsworthy stories, because issues that dominate the agenda are those the press deems newsworthy. Newsworthy issues or events are defined as "hard news" and are covered frequently. Hard news is "personalized and individualized," "dramatic, conflict-filled, and violent," an "action, an event, an identifiable occurrence," "novel, deviant, out of the ordinary," and "reports events linked to issues prevalent in the news at the time."⁶⁸ The public's limited attention-span and restricted space on the agenda causes one "issue . . . [to] mov[e] up the agenda at the expense of other issues," implying that only mainstream issues receive coverage and that there is no opportunity for immigrants or non-whites to publicize their concerns.⁶⁹

The media's influence has powerful implications for interest groups. The media marginalizes Asian American issues in the way it marginalizes female political candidates.⁷⁰ This marginalization is significant because of

63. KIM KAHN, *THE POLITICAL CONSEQUENCES OF BEING A WOMAN* 12 (1996).

64. DORIS GRABER, *MEDIA POWER IN POLITICS* 66 (2000).

65. KATHLEEN HALL JAMIESON & KARLYN KOHRS CAMPBELL, *THE INTERPLAY OF INFLUENCE* 319 (2001).

66. *Id.*

67. KAHN, *supra* note 63, at 12-13. The 80-20 Initiative employed this tactic in the 2000 elections, this event and the 80-20 Initiative itself is discussed in Section IVA of this paper.

68. JAMIESON & CAMPBELL, *supra* note 65, at 41, 45, 47, 51.

69. *Id.* at 319.

70. See Susan J. Carroll & Ronnee Schreiber, *Media Coverage of Women in the 103rd Congress*,

its effect on voters' perception and valuation of issues, which directly influence legislators' cost-benefit analysis of issues and voting decisions. A pan-ethnic interest group that represents a larger segment of the population and carries the psychological weight of representing *all* Asian Americans can better influence the media than singular subgroups.

II. MINORITY INTEREST GROUPS TODAY

Before proposing the formation of an umbrella Asian American interest group, one must consider if it already exists through examining the history of the Asian American movement. Moreover, beyond theory, one must examine whether, practically, an umbrella group can even be formed and whether it can actually achieve success in American politics. Examining the successes and challenges of other minority interest groups will answer the two latter questions.

A. Asian American Interest Groups

History does not support the widely held stereotype that Asian Americans are politically disengaged. Asian Americans participated in politics before the 1960s Asian American Movement.⁷¹ Second-generation Japanese and Chinese Americans exercised roles in electoral politics since the early twentieth century. The Japanese American Citizens League (JACL) practiced electoral organizing strategies before World War II and represented the Japanese American community during internment.⁷² Moreover, a generation of young Asian American students played an instrumental role in creating the aforementioned "Asian American Movement."

The Asian American Movement developed in the 1960s when the country was challenging racism, poverty, war, and exploitation.⁷³ The San Francisco State University student strike, the longest student strike in United States history, marked the beginning of the Movement. For the first

in WOMEN, MEDIA, AND POLITICS 131, 132 (Pippa Norris ed., 1997). Carroll and Schreiber believe that the media's agenda-setting role negatively affects female candidates because the media does not place women's issues on the agenda and gives women less campaign coverage than their male counterparts. In their gender-biased coverage of electoral campaigns, the news media does not emphasize issues highlighted by female candidates and therefore de-legitimizes their campaign efforts. *Id.* The media's lack of coverage of stereotypical women's issues makes the electorate believe that women's issues are unimportant, and therefore women candidates' perceived areas of strength are inconsequential. *See also* KAHN, *supra* note 63, at 13. Kahn argues that the limited coverage of female candidates explains why it is harder for women to win statewide elections compared to local elections because statewide elections depend more on statewide news. When the media reduces coverage of a candidate's campaign, it lessens the campaign's visibility and decreases chances of electoral victory.

71. Don T. Nakanishi, *Asian American Politics: An Agenda for Research*, in ASIAN AMERICAN POLITICS, *supra* note 11, at 93, 93.

72. *Id.* at 94.

73. Glenn Omatsu, *The 'Four Prisons' and the Movements of Liberation: Asian American Activism from the 1960s and 1990s*, in ASIAN AMERICAN POLITICS, *supra* note 11, at 135, 135.

time, Asian American students formed a collective force.⁷⁴ This Asian American student collaboration with other students of color to fight for ethnic studies programs informs how the Asian American community operates today.⁷⁵ The Movement centered on forming a pan-Asian identity⁷⁶ as Asian American students fought for courses that acknowledged their history, struggled with loyalty issues with respect to the Vietnam War, and realized that they had more in common with fellow Asian American students than other students.⁷⁷ These students represent the first of three types of Asian American activists.

Urban centers that suffered from a variety of social problems produced a second group of activists.⁷⁸ Participation in social service centers, churches, and informal familial networks, as alternatives to the pressures of poor urban living, created forums for these activists. Churches, such as the Methodist Church (a primarily Japanese American parish) and Cameron House (a primarily Chinese American parish), provided recreational programs that created a youth group invested in Asian American issues.⁷⁹ Similarly, community service programs serving Asian American youth developed a generation of activists interested in the Movement.⁸⁰ Veteran activists were the third group of activists.⁸¹ For example, organizations such as the JACL, one of the oldest Asian American civil rights organizations, used their experience and skills to form a progressive foundation to the Movement.⁸²

The development of these activists was instrumental in creating and developing modern Asian American groups. College students, active players in the Movement's formation, started organizations such as the Asian Law Caucus (ALC).⁸³ Other groups that formed, regardless of their commitment to ethnic-specific issues, also maintained ties to Asian American issues. For example, the Organization of Chinese Americans served as a national advocacy organization for Chinese *and* Asian Americans⁸⁴ as cultural or political distinctions among groups did "not overshadow the important step forward represented by the emergence of

74. *Id.* at 138.

75. Geron, *supra* note 12, at 163.

76. *Id.* at 164.

77. *Id.* at 169.

78. *Id.*

79. *Id.* at 170.

80. *Id.*

81. *Id.*

82. *Id.*

83. The ALC, started by a group of progressive attorneys, continues to play a large role in the Movement by emphasizing "political" cases, "attacking racism in institutions, highlighting society's neglect of Asian American concerns, and supporting the work of progressive community organizations." *Id.* at 171.

84. *Id.*

the [Asian American Movement].”⁸⁵

Beyond an examination of their missions, an examination of the structure of early Asian American groups explains how modern Asian American groups developed, creating a new understanding of their next necessary developmental step. Groups formed before and after the 1960s depend on “communal resources and . . . substantial personal commitments for a specific conflict . . . [as] [c]hallenges [i.e. marginalized groups] need a different type of resource—highly committed activists,” which the Asian American community fortunately has.⁸⁶ Often, funded by local constituencies, groups were “built on community-based movements that organized networks of supporters and built connections within their communities and the broader pan-Asian movement.”⁸⁷ Therefore, groups tended to be regionally-based and more issue-specific than the broader, umbrella group that could fully take advantage of interest group politics’ pluralist theories. Many hope that the formation of such a national coalition will maintain the “bright spirit of intercultural experience, of resistance, and of proud survival” of groups that began and maintained the Asian American Movement.⁸⁸

This same spirit currently informs the vast network of Asian American interest groups. On regional and national levels, a plethora of legal and civil rights groups serve the Asian American population—some with ethnic-specific and others with pan-ethnic missions. Notably, the National Asian Pacific American Legal Consortium (NAPALC), based in Washington, D.C., is a focus for national legislative advocacy issues facing the Asian American community.⁸⁹ NAPALC, founded in 1991, is “one of the nation’s leading experts on issues of importance to the Asian American community” as it works to “promote civic engagement,” “forge strong and safe communities,” and “create an inclusive society” on the local, regional, and national level.⁹⁰ Demonstrating its national prominence, NAPALC is a source of comment representing the Asian American community for the mainstream and ethnic media.⁹¹ Through its Community Partners Network Programs, NAPALC maintains relationships with local community-based organizations to assist in dealing with anti-Asian violence, immigration, and welfare. Furthermore, NAPALC’s influence stretches from coast-to-coast with affiliates in the San Francisco Bay Area (Asian Law Caucus) and Los Angeles (Asian Pacific American Legal Center of Southern

85. *Id.*

86. *Id.*

87. *Id.* at 171-72.

88. *Id.* at 177.

89. See National Asian Pacific American Legal Consortium, <http://www.advancingequality.org/> [hereinafter NAPALC]. NAPALC has recently changed its name to Asian American Justice Center.

90. *Id.*

91. See *id.*

California) that work on both policy and direct service issues.⁹² Lastly, as indicative of its national presence, volunteers from across the country form NAPALC's Board of Directors.⁹³

Looking at its work and successes, it seems that NAPALC is the ideal pan-ethnic Asian American interest group set on taking advantage of the pluralist system of changing the legislature. However, developing NAPALC and maximizing its effectiveness at the legislative level requires more work. Significantly, the public's, and therefore the typical legislator's, impression of NAPALC as actually representing its purported constituency does not compare to the reputations of the National Association for the Advancement of Colored People (NAACP) and the National Organization for Women (NOW). NAPALC does not carry the same weight.⁹⁴ Perhaps NAPALC does not have the same import because it is a relatively young organization.⁹⁵ NAPALC may have difficulty claiming support from the entire Asian American community because the community has not shown its ability to coalesce around certain issues.⁹⁶ Community members may be unaware of NAPALC's influence, or even existence, and rely on other local organizations because NAPALC is located in one city and lacks branch offices. Perhaps, tied to symbolic community representation, individuals not in need of direct services do not have the opportunity to forge even a symbolic relationship with NAPALC because it does not offer general membership opportunities to the public. With these concerns addressed, NAPALC, an Asian American policy advocacy group, could be the ideal foundation for a cohesive, national Asian American interest group, supported by the Asian American community, to take advantage of public choice theory and agenda-setting for legislative solutions to the Asian American community's otherwise unfixable problems.

B. Non-Asian American Minority Interest Groups

A comparison of the work of other minority groups is an important evaluative tool in analyzing the current status and potential growth of an

92. See Asian Law Caucus, www.altrue.net/site/alc/section.php?id=2914. See NAPALC, *supra* note 89.

93. NAPALC, *supra* note 89.

94. Discussion re: NAACP and NOW in Section IIB.

95. Comparison being made to the NAACP and NOW.

96. Moreover, consider affirmative action, where nationally recognized Asian American groups (both purportedly speaking on behalf of the Asian American community) submitted amicus curiae briefs regarding the Supreme Court case of *Grutter v. Bollinger* on behalf of each side of the litigation. 539 U.S. 306 (2003). Compare Brief of the Asian American Legal Foundation as Amicus Curiae in Support of Petitioners, 2003 WL 152363, with Brief of Amici Curiae National Asian Pacific American Legal Consortium, Asian Law Caucus, Asian Pacific American Legal Center, et. al. in support of Respondents, 2003 WL 400140.

Asian American interest group.⁹⁷ Most importantly, the success of both NOW and NAACP demonstrates how a single organization can bring together and represent a large group of people with differing socioeconomic and geographic backgrounds.

NOW is the largest organization representing American women. NOW was formed in 1966 and boasts “550 chapters in all fifty states and the District of Columbia.”⁹⁸ It is still governed by the organization’s founding purpose “to take action to bring women into full participation in the mainstream of American society now, exercising all privileges and responsibilities thereof in truly equal partnership with men.”⁹⁹ NOW is run by its membership that meets at a yearly conference and its national Board of Directors, of which four members are elected. As aforementioned, the local chapters of NOW play a large role in the influence of NOW along with the state organizations that support the chapters and nine regional organizations.¹⁰⁰

There are four ways in which NOW attempts to enact change: (1) direct mass actions, (2) “intensive” lobbying, (3) grassroots political organizing, and (4) litigation.¹⁰¹ As an interest group ideally should be, NOW is consistently at the forefront of legislative issues affecting their constituency. NOW exemplifies how pluralist theories of the United States representative democracy can inform lobbying and political organization. For example, in trying to pass the Pay Check Fairness Act, which addresses the problem of wage discrimination, NOW used rallies to garner media attention and thereby complement their lobbying of Congressional leaders.¹⁰² Although it is too soon to tell if the legislation will pass, the fact is, NOW, and therefore women, have forced Congressional leaders to listen. Moreover, the obtainment of funding for the Violence Against Women (VAWA) programs in late 1999 exemplifies the successful employment of pluralist theories by NOW. The VAWA programs, integral to the realization of various pieces of legislation enacted to protect women who suffer from violence, would have crumbled without the funding.¹⁰³

97. The study of the specific challenges that NOW and the NAACP faced during their formative years merits significant examination that is beyond the current scope of this paper. For now, NOW and the NAACP are discussed merely to demonstrate the existence of legislatively successful identity interest groups. For more information regarding NOW see MARYANN BARAKSO, *GOVERNING NOW: GRASSROOTS ACTIVISM IN THE NATIONAL ORGANIZATION FOR WOMEN* (2004) and for more information regarding NAACP see *A GUIDE TO PAPERS OF THE NAACP—PART I, 1909-1950* (Randolph Boehm ed., 1982).

98. National Organization for Women, <http://www.now.org/organization/info.html> [hereinafter NOW].

99. NOW, Nuts'n'Bolts, <http://www.now.org/organization/nutbolts.html>.

100. *Id.*

101. NOW, Frequently Asked Questions, <http://www.now.org/organization/faq.html#do>.

102. *NOW Calls for Congressional Solution to End Wage Discrimination*, April 19, 2005, <http://www.now.org/press/04-05/04-19.html>.

103. NOW Legislative Update, <http://www.now.org/issues/legislat/12-03-99.html#vawa>.

One difference between NOW and the ideal Asian American interest group is that NOW does not represent, or even attempt to represent, every member of its perceived constituency. NOW is specifically geared toward representing politically progressive women and their politics for what NOW believes to be the benefit of all women.¹⁰⁴ Thus, the perception that NOW represents all women in a political sense is not true. One must wonder if it would be possible to form a similarly powerful and effective advocacy group for Asian Americans that would not necessarily represent the politics, at some level, of the entire group. Most scholars and activists would properly reject that route. Asian Americans as a community already struggle with the inter-ethnic tensions of exclusion and fall on a very broad political spectrum, whereas no women are excluded from the effects of NOW's political actions. Thus, moving toward a reputedly "Asian American" interest group that does not at some level represent all Asian Americans would be highly problematic. Moreover, which group on which political spectrum would get to decide that it was *the* representative group? Subgroups should form to create such organizations if the need exists, but they should not do it to create an umbrella Asian American organization.¹⁰⁵ Although it seems like NOW is not the ideal example of an umbrella group representing an identifiable population because of its political leanings, NOW's successes can be emulated: (1) NOW's substantial national reach as exemplified by its chapter system and (2) NOW's utilization of public choice and agenda-setting theory for the advantage of its constituents.

Since 1909, the NAACP has used various strategies to obtain justice and equality for people of color and especially African Americans.¹⁰⁶ The NAACP operates in 104 branches covering the entire nation and is led by a CEO, COO and national Board of Directors.¹⁰⁷ As early as 1922, the NAACP employed agenda-setting tactics when it placed large ads in major newspapers discussing lynching. And the NAACP used public choice theory in its actions to obtain funding for the Federal Fair Roosevelt Employment Practices Commission in 1945 and the passage of the Voting Rights Act in 1965.¹⁰⁸ One current example of its success in utilizing the legislative system is the passage of the Martin Luther King, Jr. Equal Protection of Voting Rights Act in the Senate. The bill was "strongly supported" by the NAACP and is viewed as the "most comprehensive election reform legislation since the 1965 Voting Rights Act."¹⁰⁹

104. See NOW, *supra* note 98.

105. Further discussion on this issue and other challenges preventing the formation of a coalition group discussed in Section III.

106. National Association for the Advancement of Colored People, <http://www.naacp.org/index.html> [hereinafter NAACP]. "The primary focus of the NAACP continues to be the protection and enhancement of the civil rights of African Americans and other minorities." *Id.*

107. NAACP Leadership, <http://www.naacp.org/about/leadership/>.

108. NAACP Timeline, <http://www.naacp.org/about/history/timeline/>.

109. NAACP Election Reform, <http://www.naacp.org/news2002/2002-04-11.html>.

NOW and NAACP are commonly viewed as the legitimate voice of their respective communities, which affords each organization political clout that enables them to utilize public choice and agenda setting theories—something that the Asian American community aspires to obtain. Every group has different needs that require different leadership and organizational styles. Although the challenges facing the Asian American community are different from those that continue to be faced by women and African Americans, organizations such as NAPALC and other potential Asian American umbrella groups can learn through the strategies employed by NOW and NAACP.

III. CONCERNS REGARDING THE APPLICABILITY AND EFFECTIVENESS OF INTEREST GROUP POLITICS FOR ASIAN AMERICANS

The desire for pan-ethnic unity dates back to the aforementioned Asian American Movement that began in the late 1960s.¹¹⁰ Since the emergence of this ambition, many scholars have raised legitimate concerns regarding the applicability and effectiveness of a pan-ethnic interest group for the Asian American community. Critics cite concerns such as: (1) the extremely broad spectrum of economic, political, and cultural beliefs and the worry that a pan-ethnic group will stifle small subgroups, (2) the idea that Asian Americans are not politically invested enough to even entertain the notion of a pan-ethnic coalition, and (3) the dearth of cross-ethnicity issues that can justify the allocation of scarce resources to a pan-ethnic interest group. This section will address each criticism in turn, and then propose that a pan-Asian coalition can, and in fact has, formed with some success in the past.

First of all, some experts posit that “Asian American” is a misappropriation of a term, as the popular conception of the term does not wholly encompass all the peoples and communities that should be included.¹¹¹ Demographically, the Asian American population faces many challenges in coalition building, given its fast-paced growth and diversity.¹¹² There are thirty major ethnic groups under the umbrella of “Asian American”—each with its own distinct culture¹¹³ stemming from different histories, languages, religions, physical characteristics, cultural beliefs, and time of arrival in the United States.¹¹⁴

Other factors such as varying educational histories and foreign politics also play a role in limiting the duration and success of pan-ethnic

110. Don T. Nakanishi and James S. Lai, *Introduction: Understanding Asian American Politics*, in *ASIAN AMERICAN POLITICS*, *supra* note 11, at 9.

111. See Wu, *supra* note 3, at 8.

112. Nakanishi & Lai, *supra* note 110, at 9.

113. Omatsu, *supra* note 73, at 152; see also *id.* at 5-9.

114. Kevin Coleman, *The Asian American Population in the U.S.*, in *ASIAN-AMERICAN ELECTORAL PARTICIPATION 5* (John W. Lee ed., 2002) [hereinafter Coleman, *Population*].

coalitions.¹¹⁵ Asian Americans, if they consider themselves Asian Americans at all, are already building bridges by embracing such a title, as their ancestors “would have hated one another with an intensity equaling any domestic bigotry toward any of them.”¹¹⁶ But even though such prejudice is usually diluted among the newer generations of Asian Americans, ethnocentric transnationalism (racial and ethnic ties that transcend citizenship and national boundaries) has not dissolved completely and still serves an impediment to the development of a cohesive, powerful Asian American coalition.¹¹⁷ Chinese Americans, Korean Americans, Filipino Americans, South Asian Americans, Southeast Asian Americans, and all other Asian American ethnic subgroups, except Japanese Americans, exhibit a longing for ethnocentric transnationalism as they view themselves as foreigners rather than minorities.¹¹⁸ Not only do such preferences often supersede desires to work with other Asian American groups, but they also often prevent recognition of the need to work together.

Significantly, this “ethnic salience” maintains an incredibly important role in Asian American politics. In California, a state with a very large population of Asians, ethnic groups practice the “go it alone” strategy.¹¹⁹ Moreover, as the newly immigrated population of the community continues to grow, and any ties to the 1960s Movement dwindle, the formerly integral pan-ethnic consciousness has subsided.¹²⁰ Further polarizing the community is the fact that in comparison to other segments of the American population, there is a large gap between the wealthy and the poor within the community.¹²¹

These gaps in the community are demonstrated by the fact that Japanese Americans and Chinese Americans dominate local and national organizations that claim to be “Asian American,” to the detriment and exclusion of other member groups.¹²² Consequently, some groups, such as Korean Americans, have begun to form their own groups. Further, South Asians, Filipinos, Southeast Asians, Asian adoptees raised by non-Asian families, and children of mixed racial backgrounds that include Asian heritage are also excluded, raising concerns of potential marginalization if a

115. Nakanishi & Lai, *supra* note 110, at 10; *see also* Lai, *supra* note 10, at 148.

116. Wu, *supra* note 3, at 7.

117. *Id.*

118. *Id.* at 7-9. Asian Americans should, and have the right to, promote and desire ties with Asian countries. But considering the unfortunate stereotype of Asian American immigrants as an “invading force,” Asian Americans, as a group should be cautious when promoting a solely Asian, not Asian American, agenda.

119. Nakanishi & Lai, *supra* note 110, at 9.

120. *Id.*

121. Omatsu, *supra* note 73, at 152.

122. Wu, *supra* note 3, at 8.

pan-ethnic group meant to represent all Asian Americans were formed.¹²³

Although each Asian ethnicity is informed by different cultural norms and experiences, the creation of a pan-Asian ethnicity is possible—as exemplified by the students who initiated the Asian American movements in the 1960s and the development of NAPALC. Moreover, scholars argue that race is “socially constructed and can be transformed into different racial meanings based on government actions and social consciousness.”¹²⁴ Thus, although there are legitimate fears that the voices of subgroups within the Asian American community will be stifled, joining a pan-Asian group does not necessarily require forgoing involvement in another group.

The experiences of Asian American groups, as explored in Section II.A and IV.A, demonstrate that Asian Americans are capable and willing to unite when the occasion arises but tend to revert to “go it alone” strategies when the crisis dissipates. But with an understanding of the potential for sustained political legitimacy and power that can be achieved by a non-reactive, policy advocacy pan-ethnic interest group, it seems plausible that ethnic groups would move toward forming a pan-ethnic coalition without forgoing their ethnic affiliations.

The second concern regarding the feasibility of creating an influential pan-ethnic coalition is that “Asian Americans have failed to be people of color” and are politically disengaged.¹²⁵ First of all, some scholars argue that although today’s “Asian Americans” are “active” in that they are interested in the notion of being Asian American, they remain uninformed, consequently undercutting the potential for substance in the term “Asian American.” The interest in the notion of “Asian Americanness” has not brought with it an investment in learning what the Asian American experience actually entails on a broad level.¹²⁶ “Unlike African Americans, most Asian Americans today have yet to articulate the ‘particularities’ of issues affecting our community, whether these be the debate over affirmative action, the controversy regarding multiculturalism, or the very definition of empowerment.”¹²⁷ Therefore, there are legitimate concerns as to the level of substance an Asian American activist group can hope to achieve.

Moreover, as a byproduct of the feelings of being perpetually excluded as foreigners, Asian Americans struggle to identify as Americans (i.e., immigrants view themselves as a diaspora rather than a domestic group).¹²⁸ Thus, Asian Americans are not particularly interested in the historical and current struggle for civil rights and generally tend to be

123. *Id.*

124. Geron, *supra* note 12, at 164.

125. Wu, *supra* note 3, at 9.

126. Omatsu, *supra* note 73, at 152.

127. *Id.*

128. *See* Wu, *supra* note 3, at 9.

politically disengaged.¹²⁹ This perception, combined with the confidence that they can achieve success in America independently of societal change, causes Asian Americans to separate themselves from African Americans and Latinos, and even from most forms of political participation.¹³⁰ Ironically, one would think that Asian Americans isolating themselves from other groups of color would encourage stronger ties within the community, but the failure to identify as Americans and the sentiment of self-sufficiency has weakened connections within the community, making coalition building even more difficult. If the community continues to grow without developing leadership and a substantive relationship with the idea of being “Asian American,” it might lose its ability to utilize public choice and agenda-setting theories successfully because Asian Americans would be politically active as individuals but without a group mentality. Consequently, they would lose their ability to encourage legislators to pay attention to the particular needs of Asian Americans.¹³¹

Similarly, connected to the idea of the uninformed nature of many Asian Americans and the need for an active Asian American interest group, another major hurdle in preventing Asian Americans from taking advantage of the political process is the historical systematic disenfranchisement of Asian Americans.¹³² Asian Americans, regardless of the existence of a legitimate pan-ethnic organization, will not be taken seriously because Asian Americans do not vote at a high rate in relation to their population.¹³³ Although there are a variety of myths¹³⁴ to explain the low Asian American voter registration, the actual causes are quite different.¹³⁵

129. *Id.* See also Omatsu, *supra* note 73, at 162 (quoting Korean immigrant journalist K.W. Lee as stating, “We are not seen as a compassionate people . . . Others see us as smart, hard-working, and good at making money—but not as sharing with others. We are not seen as a people who march at the forefront of the struggle for civil rights or the campaign to end poverty.”).

130. See Omatsu, *supra* note 73, at 159.

131. See Kevin Coleman, *Asian Americans and Electoral Politics*, in *ASIAN-AMERICAN ELECTORAL PARTICIPATION*, *supra* note 114, at 19, 30 [hereinafter Coleman, *Electoral Politics*].

132. This problem of disenfranchisement can be addressed by a non-coalition interest group and is actually being addressed by many existing organizations. Evidence of disenfranchisement includes low voter turnout rate. Lai, *supra* note 10, at 247. Currently, the voter registration rate is 39%, which equals only 4% of California’s voters even though “Asian alone or in combination” comprise 12.3% of the population. CENSUS BRIEF, *supra* note 2, at 5.

133. See Chang, *supra* note 4, at 60.

134. Some myths include, “cultural differences, the difficulty of combining Asian Pacific American subgroups into a cohesive ‘minority’ group because of their diverse nationalities and generations, and their lack of interest in politics.” *Id.*

135. The greatest barrier to participation is the fact that Asian Americans were not allowed to be naturalized and, thus, could not vote until 1952 with the passage of the McCarran-Walters Act. This barrier was an isolated incident of disenfranchisement frozen in time, but continues to hamper the development of political interest and participation in the Asian American community. The Civil Rights Report cites other formal barriers that continue to exist such as:

(1) Apportionment policies that dilute the voting strength of Asian American voting blocks; (2) the unavailability of Asian-language ballots and other election materials; (3) problems with the implementation of the Census of Population; and (4) anti-Asian sentiment among

To combat this entrenched disenfranchisement, interested Asian Americans must work even harder to mobilize the community to vote and engage in efforts to enact change. A combined effort of mobilizing the large Asian American population and channeling those votes in one direction will cause a profound change in American politics. Regardless of the message this new voting bloc will carry, legislators interested in political survival will not be able to ignore it.

The 1993 Los Angeles mayoral race and the creation of the Justice for Wards Cove Workers movement serve as two examples of the plausibility of the Asian American community uniting in the interest of political gain. The campaign of Michael Woo, the first Chinese American elected to the Los Angeles City Council, in the 1993 Los Angeles mayoral election, demonstrated the ability of Asian Americans to form a pan-ethnic coalition.¹³⁶ Woo's campaign illustrates a successful effort to bring together a pan-ethnic Asian American community regarding a political issue. Exit polls showed that 69% of Asian Americans supported Woo and 31% supported his opponent, the multimillionaire businessman Richard Riordan. On the other hand, 54% of the general population voted for Riordan and 46% supported Woo.¹³⁷ Woo's campaign was notable also for the pan-ethnic nature of its contributors—while Chinese Americans contributed the most, their funds were supplemented by contributions from Japanese Americans, Asian Indians, and other Asian subgroups.

Another example of the ability and importance of Asian Americans coming together to enact political change occurred in the early 1990s in the *Wards Cove Packing Co. v. Antonio* case. When the Civil Rights Act of 1991, which addressed employment discrimination *inter alia*, was passed, two senators included a provision exempting the respondents in the Supreme Court case of *Wards Cove* from accountability to the statute's employment standards.¹³⁸ The petitioners in the class action lawsuit were Alaskan Natives and 2,000 Asian American laborers (including Filipino Americans, Japanese Americans, and Chinese Americans).¹³⁹ Upon realizing the implications of this provision, the Asian American community worked with key legislators to initiate an amendment to the Civil Rights Act called the Justice for Wards Cove Workers Act repealing the provision excluding the Wards Cove workers.¹⁴⁰ It was the Asian American community that was able to come together, without regard for specific

non-Asian voters and the media and the consequent dearth of Asian American political candidates.

Id. at 62.

136. Lai, *supra* note 11, at 253-54.

137. *Id.*

138. Dennis Hayashi & Daphne Kwok, *Equal Justice Denied: Wards Cove Packing Co. v. Antonio*, in 3 ASIAN AM. POL'Y REV. 5, 5-15 (1993).

139. *Id.* at 6.

140. *Id.* at 8-12.

ethnicity, to call and visit their legislators' offices to force the repeal of the provision.¹⁴¹

Although the amendment has not yet passed, the mobilization of a pan-ethnic coalition is significant. The Justice for Wards Cove movement, led by Asian Americans, was able to "plac[e] a thorn in the side of Congress" and clearly demonstrated the community's "political adeptness, power, and grassroots organization."¹⁴² The existence of such coalitions suggest that it is feasible and likely that Asian Americans, when called to do so, can work together despite the challenges facing such coalitions.

Although this paper advocates the attainment of a goal that seems marred by numerous roadblocks, scholars argue that "the extent of Asian Pacific American political influence in the next millennium will be determined, in part, by their ability to unite their diverse interests in pan-ethnic coalitions."¹⁴³ Pluralist theories do not suggest that coalitions form only around completely homogenous ideas and backgrounds. The premise behind interest group formation is not that one must forgo all other relationships and beliefs to join a group, but merely that "on the basis of *one* or more shared attitudes"—such as the need to combat discrimination—groups can emerge for the purpose of political action.¹⁴⁴ Therefore, Asian Americans who are invested in their specific sub-group community can maintain their commitments, while also joining a pan-ethnic coalition. This proposition is feasible assuming that shared issues and opinions on these issues exist and that the resources are available to sustain a pan-ethnic coalition as well as specific ethnic groups. Part V of this paper addresses the first assumption.

Issues that affect the broad spectrum of Asian Americans do exist. Discrimination against Asian Americans is an issue that *all* Asian Americans deal with, as exemplified by discriminatory immigration policies, the prevalence of hate crimes, and the dearth of hate crime prevention legislation. True, specific incidents of hate violence or the deportation of specific individuals touch a narrow segment of the Asian American population most directly,¹⁴⁵ but the message behind those incidents—that of discrimination and inequality—encompasses all Asian Americans. And, as previously noted, no group will fight for justice for Asian Americans other than one comprised of Asian Americans, and no organization can obtain equality for Asian Americans better than a pan-ethnic united organization.¹⁴⁶

141. *See id.*

142. *Id.* at 12.

143. Lai, *supra* note 11, at 248.

144. ESKRIDGE, JR. ET AL., *supra* note 17, at 48.

145. *See generally* YEN LE ESPIRITU, ASIAN AMERICAN PANETHNICITY: BRIDGING INSTITUTIONS AND IDENTITIES 134 (1992).

146. *See* ESKRIDGE, JR. ET AL., *supra* note 17, at 50.

The second assumption, regarding the availability of resources to sustain both subgroups and a pan-ethnic group, can be grounded in the premise that existing subgroups are already allocating resources to the very issues the coalition would tackle. Therefore, those resources can be shifted to the coalition, thereby providing for the pan-ethnic group while maintaining subgroups' abilities and remaining resources to concentrate on their specific interests.

As coalitions do not occur without sustained, proactive efforts, political organizing needs to occur in order to form a politically engaged and thus engaging (to legislators) coalition of voting Asian Americans.¹⁴⁷ Employing interest group political strategies such as agenda-setting and public choice theory—that is, forming an umbrella, coalition group—can have profound positive effects on the Asian American community, the feasibility of which are discussed in this next section.

IV. A REAL POTENTIAL FOR CHANGE: UNDERSTANDING AMERICA'S DEMOGRAPHICS

An analysis of the benefits of a pan-Asian coalition and its feasibility requires a discussion of current national demographics. The possibility of a successful pan-ethnic coalition takes shape when examining national demographics.

Even though there has been a sizable increase in the Asian American population in the past twenty years, a proportionate increase in the community's role and influence in national politics has not followed.¹⁴⁸ Not only has there been no dramatic increase in political power, Asian Americans have yet to obtain even the leverage required to take advantage of the favorable demographic conditions that might facilitate their pursuit of political power. One way in which Asian Americans can proactively utilize these conditions is to form a pan-ethnic organization that uses public choice and agenda setting theory. Considering the lack of Asian American majority districts and the increasing ethnic diversity among Asian Americans, the need (and potential for unprecedented success) of a pan-ethnic coalition is heightened.¹⁴⁹

Even though Asian Americans are not a large portion of the national electorate, Asian Americans have the potential to significantly affect national politics.¹⁵⁰ But in order to do so, they cannot continue the "go it alone" approach. To obtain political power and, at the very least, legislative change, coalition building must occur. Without group work, sub-Asian American groups will never be able to form a sizable voting bloc that can

147. Coleman, *Electoral Politics*, *supra* note 114, at 29.

148. *See id.* at 19-20.

149. *See* Nakanishi & Lai, *supra* note 110, at 9.

150. *See* Coleman, *Electoral Politics*, *supra* note 114, at 19-42.

command the deference of the legislature.¹⁵¹ Even though the entire Asian American population voting in one bloc will not form a majority-voting bloc, in today's divisive national politics, a bloc representing four percent of the population is extremely significant if it is strategically organized.¹⁵² A unified voting bloc of a small population is actually more powerful and can deliver more votes than an unorganized group that splits its votes, no matter how large its size.¹⁵³ Moreover, with the current demographic trends of immigration, the Asian American population is only going to continue to grow. For example, it is projected that California's Asian American population is going to increase by more than 100% by 2010,¹⁵⁴ and by the year 2050, Asian Americans are projected to make up 8.74% of the population.¹⁵⁵ Thus, Asian Americans will represent a more significant bloc of interest to both politicians and the media.¹⁵⁶

Most significantly, national politicians will have to focus on the needs of Asian Americans if the community coalesces because Asian Americans comprise 6.5% of the voters in California—the state with the largest Electoral College votes as well as an early presidential primary—and 5.3% of the voters in New York, another state with a significant number of electoral votes.¹⁵⁷ With Asian Americans possessing such a potentially significant role in the turnout of elections in California, Asian Americans can have an important influence on national politics, thereby obtaining political clout not simply for conversations regarding the presidency but in all cross-sections of American politics.¹⁵⁸

Consequently, even though Asian Americans do not control a majority of the electorate, they can have a profound effect on American politics if they unite. This influence will bring positive benefits to every subgroup, as it will provide access to the national political conversation. The 80-20 Initiative, as discussed below, demonstrates the practical application of public choice theory and agenda-setting in obtaining political power for

151. *See id.* at 20.

152. *See Lai, supra* note 10, at 247.

153. 80-20 Initiative, FAQ 1, <http://www.80-20initiative.net/faq/long.asp> (last visited May 1, 2007) [hereinafter 80-20 FAQ].

154. Coleman, *Electoral Politics, supra* note 114, at 22. By the year 2050, Asian Americans are projected to make up 8.74% of the population. 80-20 Initiative, Explained, <http://www.80-20initiative.net/explain.htm> (last visited Apr. 19, 2007) [hereinafter 80-20 Explained].

155. 80-20 Explained, *supra* note 154.

156. Coleman, *Electoral Politics, supra* note 114, at 22.

157. 80-20 Explained, *supra* note 154. The Asian American community is geographically concentrated. Outside of Hawaii and California, the two states with the highest percentage of Asian Americans, sixty-two percent and nine-point-six percent respectively, the next eight states with a "sizable" Asian American population actually only have Asian Americans making up from one to four percent of their total population. Coleman, *Population, supra* note 114, at 11.

158. 80-20 Explained, *supra* note 154. The ability to affect the outcome of a presidential election garners a substantial amount of political clout for a group. Although not directly related to obtaining legislative change, in theory and in practice, the ability to affect a presidential election implicitly conveys a type of political power to a group that can affect every aspect of American politics.

Asian Americans by affecting presidential elections.

80-20 Initiative

The 80-20 Initiative (“80-20”) demonstrates that it is possible in a political arena to bring Asian Americans together to act as one group and that it is plausible to utilize the demographics of this country to broaden the influence of Asian Americans. 80-20 is national, non-partisan, self-proclaimed “Pan-Asian American” political organization.¹⁵⁹ The purpose of 80-20 is to take advantage of Asian American communities’ demographics to garner political legitimacy for the community by forming a swing bloc vote (comprising eighty percent of Asian American voters) in a presidential election (the strategy was employed in both the 2000 and 2004 elections).¹⁶⁰ By accomplishing this goal the Asian American community can “induce both major political parties to take [its] interests seriously and help [it] achieve equal opportunity.”¹⁶¹ As public choice theory would confirm and past experience of the Asian American community proves, as long as there is no demonstration of a political leaning (and therefore electoral support for a candidate), politicians will not acknowledge the needs of the Asian American community.¹⁶² This goal, as the work of 80-20 demonstrates, is feasible, although it means that 80-20 must overcome the barriers limiting the Asian American community’s ability to actually form a voting bloc. As evidence of the viability of overcoming the challenges to coalition building, statistics show that in a random sample of Asian Americans, more than ninety percent became strong to moderate supporters for the formation of a voting bloc upon receiving five recruiting emails.¹⁶³

The removal of a political television advertisement that “fanned fears of ‘yellow peril’” in order to generate support of President Bush’s first election, serves as an example of 80-20’s capability to mobilize Asian Americans and thereby influence electoral politics.¹⁶⁴ Upon learning of the airing of the television advertisement in the Midwest, 80-20 leader S.B. Woo mobilized 80-20’s network of over 230,000 supporters to urge the Republican National Committee (RNC) and the Bush campaign to remove the ad. Woo also contacted the head of the RNC, demanding that the advertisement be taken off the air immediately unless the RNC wanted to “face 80-20’s wrath.”¹⁶⁵ Moreover, utilizing the agenda-setting tactic of

159. 80-20 Explained, *supra* note 154.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. 80-20 Initiative, Unity is Power—Section 2, <http://www.80-20initiative.net/unity2.html> (last visited Apr. 22, 2007).

165. *Id.*

generating media attention, 80-20 contacted over 350 media outlets regarding the issue.¹⁶⁶ The next day, the RNC communicated that the Republican group that was responsible for the ad was convinced to remove it because of a desire “to not hurt Bush’s campaign.” The reasoning behind the removal of the ad is significant in that it was not pulled because the RNC thought the ad was “wrong” but because of the potential negative impact the ad would have on Bush’s campaign.¹⁶⁷ In this case, 80-20’s actions represent the ideal execution of public choice and agenda-setting theory in enacting substantive political change.

Moreover, an examination of the election results of the 2000 and 2004 elections demonstrates the extent to which 80-20 has been able to influence elections and its success in building a powerful foundation for the development of future pan-Asian American movements. In the 2000 elections, the first time the 80-20 strategy was employed by the Asian American community, 80-20 was able to deliver 62% of the Asian American vote for the candidate that 80-20 was endorsing, Al Gore.¹⁶⁸ Although this voting rate did not meet the goal of 80-20, it served as a key foundation to future efforts by 80-20.¹⁶⁹ Evidence of the foundational nature of the 2000 elections is demonstrated by the results in the 2004 elections. Exit polls from the 2004 elections show that 74% of Asian Americans voted for presidential candidate John Kerry (the 80-20 endorsed candidate), 24% for George W. Bush, and 2% voted for another candidate, proving that a voting bloc of Asian Americans is feasible.¹⁷⁰ Perhaps there are other causes for the increased strength of the Asian American voting bloc, but the role of 80-20 and its network of over 430,000 members cannot be ignored in the creation of an Asian American voting bloc.¹⁷¹

The work of 80-20, although it is centered around presidential electoral politics (occurring once every four years) rather than sustained, proactive legislative advocacy in which an ideal pan-Asian American interest group would invest, provides insight in the ways in which Asian Americans are capable of uniting and obtaining political power when taking into account the demographics of this country. Using the confidence that 80-20 generates in the idea that a coalition can be built, the coalition can be expanded to not only consider electoral politics—which does indeed

166. *Id.*

167. *Id.*

168. Paul Y. Watanabe, *The 80-20 Initiative and the 2000 Election: An Assessment*, 10 *ASIAN AM POL’Y REV.* 51 (2002). Although only 55% of Asian Americans voted for Al Gore on a national level, the 62% statistic is the most relevant in that that specific statistic comes from a state that 80-20 was actually targeting. In its first electoral season 80-20 did not have the resources to create a national campaign and chose to target states such as California, Oregon, etc.

169. *See id.* at 52.

170. *See* 80-20 Initiative, Evidence of the Second Consecutive APA Bloc Vote, <http://www.80-20initiative.net/APAvote2004.html> (last visited Apr. 22, 2007).

171. Woo, *supra* note 9, at 50.

play a fundamental role in everything political—but also legislative advocacy work in areas such as hate crime and immigration legislation.

V. THE POSSIBILITY OF INTERSECTION BETWEEN PLURALIST THEORIES
AND THE CURRENT NEED FOR CHANGE IN THE ASIAN AMERICAN
COMMUNITY: USING INTEREST GROUP POLITICS TO ENACT A SUCCESSFUL
ASIAN AMERICAN LEGISLATIVE AGENDA

According to public choice theory, the lack of an Asian American policy advocacy group that is viewed as representing the entire community has hampered the ability to enact change at a legislative level. Influence at the legislative level is important because legislation is the most potent way to improve the lives of an entire constituency, more so than attempts to influence agency interpretations of a statute or litigate application of laws. Moreover, although the ability to protest and have “a day in court,” and to exercise other methods of political expression are fundamental elements of American democracy, as earlier discussed, in a representative government the purest form of political legitimacy is obtained by utilizing the representative, and thus legislative, process.

As an example of how the Asian American community has used the legislative process to enact significant change, consider § 16 of the Civil Rights Act of 1870. Section 16 created the foundation for 42 U.S.C. § 1981, “a major tool in civil rights litigation” that extended civil rights to all persons, including non-citizens.¹⁷² This monumental piece of legislation was achieved by a “coalition” of Chinese merchants, associations, and community leaders who met with Congress members to address the injustice facing the Chinese American community—which at the time was the entire Asian American community.¹⁷³ Even though the Asian American community has not been able to achieve legislative success at such a significant level consistently, this example serves to demonstrate the importance of legislative progress, the influence of coalitions in that progress, and that policy advocacy is a feasible solution to the problems facing the Asian American community.

The Asian American legislative agenda—issues that can reach resolution at the legislative level—continues to evolve.¹⁷⁴ Issues from decades ago such as the model minority myth and perpetual foreigner stereotype still plague the community today, and their byproducts—such as anti-Asian sentiment and alienating immigration laws—still cause much frustration within the community. And there are a plethora of other issues on the agenda: legal issues arising from African American and Asian

172. Chang, *supra* note 4, at 55 (a popular misconception of the history of § 1981 is that it evolved from Section 1 of the Civil Rights Act of 1866).

173. *Id.* at 83.

174. Wu, *supra* note 3, at 5.

American tensions, transnational adoptions, and the treatment of Amerasian children fathered by United States military personnel overseas.¹⁷⁵

I place two issues at the forefront of the Asian American legislative agenda: anti-Asian sentiment manifesting itself in crimes of violence against Asian Americans and alienating immigration laws that are forcing thousands of Asian Americans to be deported.¹⁷⁶ I do this because these are two issues that, framed in a manner that discusses the broader implications of America's continued discrimination against Asian Americans, can generate effective pan-ethnic support, are in need of urgent solutions, and are resolvable at a legislative level. In this section, I lay out the background of these two issues and then analyze the past and future roles of interest groups in the resolution of the issues.

*A. Protecting Ourselves: Pursuit of Effective Hate "Violence" Legislation*¹⁷⁷

As carriers of a "figurative border," Asian Americans are marked as non-"real" Americans.¹⁷⁸ This mark "renders [Asian Americans] suspect" and threatening as it serves as a reminder that Asian Americans have physically "penetrated" the interior.¹⁷⁹ More significantly, because "violence operates to regulate boundaries," these "figurative borders" have grave implications as they mark Asian immigrants as targets.¹⁸⁰

Hate violence against Asian Americans is increasing at a faster rate than any other ethnic group.¹⁸¹ Although Asian Americans comprise only about four percent of the United States population,¹⁸² they are the fourth

175. *Id.* at 10.

176. See generally, Teresa A. Miller, *Blurring the Boundaries Between Immigration and Crime Control After September 11th*, 25 B.C. THIRD WORLD L.J. 81, 82-84 (2005).

177. Terri Yuh-lin Chen, *Hate Violence as Border Patrol: An Asian American Theory of Hate Violence*, 7 ASIAN L.J. 69, 74-75 (2000) (discussing the fact that "hate violence" encompasses a broader range of offenses than does traditionally discussed "hate crimes").

178. *Id.* at 84.

179. Chen states:

[S]tereotypes of Asian Americans as foreigners and the enemy are reinforced through the media, educational, and political institutions of dominant society. An almost infinite number of examples exist which perpetuate Asian Americans as negative foreigners. In June of 1993, a freighter (the Golden Venture) carrying 300 Chinese indentured servants ran aground in Queens, New York. The resulting media coverage perpetuated negative stereotypes of Asians as foreign illegal smugglers . . . and fueled anti-immigrant sentiment across the nation. In reality, Italians were the largest group of undocumented immigrants in the state of New York in 1993 . . . illegal Chinese did not even make the top ten list of groups of undocumented immigrants in the state of New York. *Id.*

180. *Id.* at 84.

181. *Id.* at 75. Moreover, there is no precise understanding behind the motivation of these hate crimes. Scholars speculate that attackers resent the international competition from Asia, are jealous of the perceived socioeconomic success of Asian Americans, and remain bitter regarding the bombing of Pearl Harbor. See Coleman, "Electoral Politics," *supra* note 150, at 29.

182. U.S. CENSUS BUREAU, *supra* note 2, at 3.

most likely to be attacked.¹⁸³ Reflecting on the resurgence of hate crimes against Asian Americans, Robert Chang was reminded of philosopher George Santayana's statement: "[P]rogress, far from consisting in change, depends on retentiveness. . . . Those who cannot remember the past are condemned to repeat it."¹⁸⁴ Unless there are proactive efforts to ameliorate the current "unbridled" nature of hate crimes against all minority groups, especially against Asian Americans, the situation will not improve.

i. Narratives: Two Examples of Violence Against Asian Americans

Although numerous incidents of hate violence have occurred against Asian Americans, the two incidents described below seem to remain especially poignant in the conscious of the Asian American community.¹⁸⁵ Without a doubt, the physical atrocities that occurred in both incidents have contributed to branding these incidents onto the Asian American psyche. But more significantly, what makes these incidents distinctively haunting is the state's visibly passive response to them.

The first incident concerned an Asian Indian man named Navroze Mody who was beaten to death in New Jersey in 1987. In the incident, eleven youths attacked Mody but chose not to harm his white companion. At the time, Asian Indians had been the fastest-growing immigrant group in New Jersey, which caused an increase in hostilities by native Jersey residents against Indians.¹⁸⁶ One month before Mody's killing, the Dotbusters, a Jersey City gang, published a letter in the *Jersey Journal* which stated that the group "would 'go to any extreme' to drive Asian Indians from Jersey City," instigating eruptions of violence against Asian Indians for several weeks thereafter.¹⁸⁷ In response to Mody's killing, however, the state did not even bring murder or bias charges against the perpetrators. In the end, only three of the attackers were convicted of assault while one was convicted of aggravated assault.¹⁸⁸

The victim in the second incident was a Chinese American man named Vincent Chin who was killed in 1982 by two laid off autoworkers in Detroit named Ronald Ebens and Michael Nitz. The perpetrators,

183. Chen, *supra* note 177, at 75.

184. Chang, *supra* note 4, at 11.

185. *Id.* at 14-15; *see also* Chen, *supra* note 177, at 95.

186. *Id.* at 14.

187. *Id.* The history of anti-Asian violence is not new in this country; the history is merely repeating itself. In 1877, white arsonists murdered four Chinese men in Chico, California while trying to burn down Chico's Chinatown. They killed these men by tying them up, dousing them with kerosene, and setting them on fire. The killers were members of an organization called the Order of Caucasians which blamed the Chinese for the economic hardships its members were facing. Another early, infamous incident of hate violence is the massacre of twenty-eight Chinese laborers by a mob of white miners in Rock Springs, Wyoming in 1885. What is more, the jury did not indict a single person in this case. Chen, *supra* note 177, at 69.

188. Chang, *supra* note 4, at 15.

mistakenly believing that Chin was Japanese American, beat him with a baseball bat while shouting, “You Japs are taking all our jobs.”¹⁸⁹ The two men pleaded guilty of manslaughter and were each given three years’ probation and fines of \$3,780.¹⁹⁰ The presiding judge justified the visibly lenient sentence by stating that, in Michigan, punishments are tailored to fit the criminal and not the crime. Thus, the rationale was that because the two murderers were not likely to kill again, a heavy punishment was not merited.¹⁹¹ This event occurred at a time when anti-Asian sentiment was rampant, especially in Detroit, as tensions simmered due to the United States-Japan competition in the auto industry.¹⁹²

These events are not isolated incidents of violence. For instance, Mody’s and Chin’s stories are connected in that they occurred in a climate of anti-Asian sentiment fueled by nativism and a sluggish economy, and both are explicitly connected to the idea that Asian Americans are perpetual foreigners who do not belong in America.¹⁹³ Often this type of nativism reveals itself in anti-immigration sentiments and legislation, while also having an effect on the amount of violence and the state’s response to the violence against Asian Americans. In the cases of Mody and Chin, for instance, both the violence and the state’s passive response clearly reflected feelings toward Asians as being the threatening outside group.¹⁹⁴

For centuries, violence has been a successful tool for marginalizing and stifling the perceived “outside” groups in America.¹⁹⁵ Iris Young elaborates on this idea:

What makes violence a face of oppression is less the particular acts themselves, though these are often utterly horrible, than the social context surrounding them, which makes them possible and even acceptable. What makes violence a phenomenon of social injustice, and not merely an individual moral wrong, is its systemic character, its existence as a social practice.¹⁹⁶

Violence becomes a “systematic act of domination with all institutions of society in complicit support of the violence” as it targets “members of a group simply because they are members of that group.”¹⁹⁷ The state becomes complicit in two ways: (1) “violence by the state [that] is approved and supported by the private citizenry” or (2) “violence by private actors [that]

189. Chen, *supra* note 177, at 69, 93.

190. Chang, *supra* note 4, at 12.

191. *Id.*

192. Chen, *supra* note 177, at 93 (describing bumper stickers reading “Unemployment—Made in Japan” and “Toyota-Datsun-Honda-and Pearl Harbor”).

193. Chang, *supra* note 4, at 15; Chen, *supra* note 177, at 71.

194. *See* Chen, *supra* note 177, at 94.

195. Chen, *supra* note 177, at 73.

196. *Id.*

197. *Id.* at 74.

is tolerated and encouraged by the state.”¹⁹⁸ Hate violence against Asian Americans is a manifestation of this “state” violence in that hate crimes are committed as a form of “private border patrol” employed to protect America’s “cultural security” from perpetual foreigners like Asian Americans.¹⁹⁹ The state’s role in hate violence, although abhorrent, also gives hope to those who are willing to fully engage in the political process, because through the obtainment of political power, citizens can change the state by passing legislation specifically combating this problem.

ii. The Asian American Response

In response to the light sentence for the murderers of Vincent Chin, several California congressmen and a Detroit-based community organization convinced the United States Department of Justice to bring federal civil rights charges against the two men.²⁰⁰ Without the involvement of the Asian American community, such charges would not have been brought.²⁰¹ Although Ebens was initially convicted, upon appeal and a change of venue to Cincinnati, where the population was not well versed with the level of anti-Asian sentiment rampant in Detroit and which generally lacked exposure to Asian Americans, Ebens was acquitted.²⁰² The very fact that a civil rights case was pursued is an achievement in itself, but clearly it was not enough. The fact that the greater part of the battle for Chin’s advocates was to simply obtain judicial standing to bring the perpetrators to court suggests that systemic flaws exist in hate crime legislation. And such flaws must be corrected before any more resources are wasted in pursuing case-by-case resolution for victims of hate violence. Thus, legislation must be sought to remedy this problem.

The inadequacy of current hate crime legislation and a potential remedy to the issue can be presented by analyzing the definition of “hate violence.” NAPALC defines hate violence as

any verbal or physical act that intimidates, threatens, or injures a person or person’s property because of membership in a target group. That membership can be based on actual or perceived race, ethnicity, national origin, immigration status, religion, gender, sexual orientation, or age. Such acts may include verbal or written threats, harassment, graffiti, property damage, and physical assaults, some of which result in serious injury or death.²⁰³

This definition of hate violence “recognizes the role of racist language

198. *Id.*

199. *Id.* at 93.

200. Chang, *supra* note 4, at 13.

201. WHO KILLED VINCENT CHIN? (Filmmakers Library 1988).

202. *Id.*; see also *United States v. Ebens*, 800 F.2d 1422 (6th Cir. 1986), *remanded to* 654 F. Supp. 144 (E.D. Mich. 1987).

203. Chen, *supra* note 177, at 74.

in dehumanizing, humiliating, and ultimately creating an atmosphere that both fosters and condones violence against racial minorities.”²⁰⁴ Contrast NAPALC’s definition to the Federal Bureau of Investigation (FBI) legal definition of a hate-motivated crime. According to the FBI, hate crimes only include “criminal offenses motivated by a person’s race, religion, ethnicity, or sexual orientation.”²⁰⁵ Moreover, in terms of evidence of motivation, the FBI requires “more than a mere utterance of racial epithets as evidence of bias motivation in order to consider an incident as a hate crime”—hence not recognizing the reality that racial slurs often devolve into episodes of physical violence.²⁰⁶ Consequently, by adopting NAPALC’s definition of prosecutable “hate crimes” would remedy a glaring deficiency in current legislation.

Further demonstrating the flaws in the current system is the government’s general attitude towards hate crimes. In 1996, only 38 of the almost 9,000 hate crimes reported to the FBI (with reporting by law enforcement agencies covering only 84% of the United States population) resulted in prosecution by the Justice Department, demonstrating the government’s dismissive attitude.²⁰⁷ Moreover, the government and the public’s lack of commitment to ending hate crimes is evidenced by the failure to pass the federal Hate Crimes Prevention Act (HCPA) in 1999.²⁰⁸

The HCPA would have offered three new hate crime prevention and prosecution tools. First, the HCPA would have served as a “strong, uniform statute” that “closed the gaps” in existing federal hate crime laws. Second, the scope of prosecutable hate crimes would have been broadened to include crimes based on sexual orientation, gender, and disability. Third, the HCPA would have allowed the Department of Justice to prosecute hate crimes whenever bodily injury or death occurred, regardless of whether the victim was exercising a federally protected right, which is a requirement under the existing legislation.²⁰⁹ HCPA was never even put to a vote in Congress.²¹⁰

To prevent further incidents of hate violence and to stop state acquiescence to hate violence, legislation, such as the adoption of NAPALC’s definition of “hate violence,” must be sought. This is precisely the type of issue upon which a pan-ethnic Asian American interest group can make a profound impact. Hate crimes impact all members of the community and a solution will equally benefit all members of the

204. *Id.* at 74-75.

205. *Id.* at 74.

206. *Id.* at 74-75.

207. *Id.* at 98.

208. *Id.* at 98-99.

209. *Id.* at 99.

210. Hate Crimes Prevention Act, S. 622, 106th Cong. (1999). Bill summary and status, *available* at <http://thomas.loc.gov/cgi-bin/bdquery/z?d106:SN00622:@@X>.

community. Moreover, the Asian American community should be convinced of the idea that in situations such as hate crimes, efforts toward proactive solutions are more effective than reactive case-by-case conflicts. Existing Asian American groups and subgroups are fighting for this legislation but have yet to succeed. A legitimate pan-ethnic interest group would be able to utilize public choice and agenda setting theory to enact change. The failure of the HCPA demonstrates the challenge Asian American interest groups face, but with the effective employment of pluralist strategies, legislation can be passed.

Public choice theory supports the conclusion that a legitimate interest group can enact change in this arena. Arguing from a realistic perspective, legislators are going to believe that the benefits of having strong hate crime legislation are only going to benefit a small portion of the community. Yet, they are also going to believe that the cost of stricter legislation will be distributed across society,²¹¹ creating a situation of client politics in which there will be strong interest group support and marginal opposition. Thus such legislation is straightforward and relatively easy to pass.²¹² Moreover, this issue is the ideal issue for an interest group that chooses to employ agenda-setting tactics. There is nothing more newsworthy, from the vantage point of today's media, than violence and tense racial situations. The challenge for the coalition would be to maintain the high level of media attention that would immediately follow the incident in order to demonstrate the importance of the issue to Congress.

B. Eliminating the Barrier: Immigration Law as a Perpetual Form of Asian American Discrimination

Scholars note that “how a nation treats [its] immigrant[s] speaks volumes about the nation”²¹³—if this is true, what is said of America should not be pleasant. Nativistic racism is something that has always marked America's history. Americans have repeatedly embraced the message of “America first” to the detriment of those, such as Asian Americans who are viewed as “perpetual foreigners,” whom they did not perceive as “American.”²¹⁴ “In the same way that the cell wall or membrane serves as a screening function, the border operates to exclude that which is dangerous, unwanted, undesirable.”²¹⁵ Asian Americans have and continue to suffer because of racist anti-immigration legislation. But a

211. Although I would argue that this type of legislation would impart distributed benefits because a society that does not condone hate violence is an improved society.

212. ESKRIDGE, JR. ET AL., *supra* note 17, at 56 (this is called “client politics”).

213. Robert S. Chang & Keith Aoki, *Centering the Immigrant In the International Imagination*, 85 CAL. L. REV. 1395 (1997).

214. *Id.* at 1397.

215. Chen, *supra* note 177, at 71-72.

proactive pan-ethnic coalition can and must combat this.²¹⁶ The issue is of specific relevance to the pan-ethnic coalition in that, the same way hate crimes are a manifestation of perpetual discrimination against Asian Americans, immigration laws often epitomize the same entrenched sentiment that has existed for centuries.

i. Historical Background

An example of this racism is displayed in the passage of California's passage of Alien Land Laws. A few years before the first set of Alien Land Laws were passed (prohibiting aliens ineligible for citizenship from owning real property), Japanese Americans only owned 2.1% of the farms in California, but natives felt so threatened by the perceived magnitude of the Japanese American influence that the California legislature passed legislation "to discourage further immigration of Japanese aliens to California and to call to the attention of Congress and the rest of the country the desire of California that the 'Japanese menace' be crushed."²¹⁷

State public officials further explained that "since Japanese individuals would probably not immigrate and remain in the United States if they could not acquire land and settle here," such legislation would promote their desire to keep Japanese people from immigrating.²¹⁸ These laws were challenged in court but in 1923 the United States Supreme Court "eliminated any rights the Japanese farmers previously exercised."²¹⁹

This anti-Asian immigration sentiment has historical roots dating to 1882 when Congress first passed anti-Asian (specifically anti-Chinese) measures culminating with the passage of the Geary Act—or, collectively, the Chinese Exclusion Acts—in 1892, which severely restricted Chinese immigration.²²⁰ The "most draconian immigration law ever passed,"²²¹ these laws were the first set of immigration laws that victims challenged in court.²²² In *Chae Chan Ping v. United States*,²²³ also known as the Chinese Exclusion case, the Supreme Court created the plenary power doctrine (and also stated their fear of an "Oriental invasion" of inassimilable Chinese people)²²⁴ which delegated the authority to regulate immigration to Congress while also recognizing that the power was not created in the

216. See generally Chang, *supra* note 4, at 17-18.

217. *Id.*

218. Chen, *supra* note 177, at 78.

219. *Id.* at 79. See *Webb v. O'Brien*, 263 U.S. 313 (1923); *Frick v. Webb*, 263 U.S. 326 (1923); *Terrace v. Thompson*, 263 U.S. 197 (1923); *Porterfield v. Webb*, 264 U.S. 225 (1923).

220. *Id.* at 76 (legislation was passed again in 1884, 1888, and 1892, collectively called the Chinese Exclusion Acts).

221. Chang, *supra* note 4, at 56.

222. Chen, *supra* note 177, at 76.

223. 130 U.S. 581 (1889).

224. *Id.* at 77.

Constitution.²²⁵ Consequently, immigration issues are controlled by Congress and remain “unchecked by the Constitution.”²²⁶

Because of this, courts hesitate to become involved and tend to defer to the legislature on immigration issues, creating severe burdens on immigrant victims. Although the challenged legislation was eventually overturned, the implications of *Chae Chan Ping* continue even now as courts consistently fail to overturn unconstitutional legislation, such as the Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigration Responsibility Act (IIRIRA),²²⁷ as *Chae Chan Ping* has not been modified or reversed.²²⁸

Moreover, soon after the passage of the Chinese Exclusion Laws, Congress passed more immigration laws, not merely limiting the number of immigrants, but directly attacking the development of existing communities. For example, as more women were immigrating to the United States, the legislature passed a law “prohibit[ing] the entry of aliens ineligible for citizenship.”²²⁹ Legislators even admitted that the purpose behind the provision was to prohibit the growth of “Oriental” families in the United States.²³⁰ Unfortunately, these laws targeting Asian American communities were extremely successful; indeed, they stunted the development of the Chinese American community.²³¹ Change occurred in 1952 with the passage of the McCarran-Walter Act, which provided for “the naturalization of Asian immigrants and set token immigrant quotas.”²³² In 1965, an amendment to the McCarran-Walter Act eliminated the national origins system and Asiatic barred zone, allowing families to be made “whole” and communities to fully develop.²³³ At that point it seemed that Asians had finally escaped the harassment of American immigration laws, although the amendment was not intended to encourage the immigration of Asians.²³⁴

225. *Id.*

226. *Id.*

227. See Miller, *supra* note 176, at 84 (AEDPA and IIRIA arguably subjecting noncitizen to deportation hearings that deny them their due process rights).

228. Chen, *supra* note 177, at 77.

229. Chang, *supra* note 4, at 57.

230. *Id.*

231. *Id.*

232. *Id.* at 58.

233. *Id.* at 58-59.

234. Chen, *supra* note 177, at 83-84 (amendment proponents, reflecting their nativistic concerns, believed that Asian immigration could “only increase slightly” considering the low number of Asian citizens, thereby limiting the ability of Asian immigrants to take advantage of the amendment); see Nakanishi & Lai, *supra* note 110, at 7, (the Asian American community grew eightfold after the passage of the 1965 amendments to the Immigration and Naturalization Act—from 1.5 million in 1970 to nearly 12 million in 2000).

ii. Status of Immigration Laws Today and the Role of a Pan-Ethnic Coalition

Unfortunately, with the increasing number of Asian and Latino immigrants, there has been a rise in legislation that has had devastating effects on the Asian American community.²³⁵ The passage of the AEDPA and IIRIRA in 1996 epitomizes the usage of immigration laws as a tool to alienate minority immigrants and “defend” America’s cultural security. The passage of both pieces of legislation reflects the anti-immigration “hysteria” that marked the 1990s.²³⁶

Substantively, the AEDPA and IIRIRA bring four major changes to immigration law. First, they significantly broaden the scope of deportable criminal offenses. For example, a crime as minor as shoplifting is just cause to deport an individual.²³⁷ Second, they allow for the *retroactive* deportation of noncitizen criminal offenders. Thus, an individual who committed a crime before 1996, when the crime was not a deportable offense, can now be deported, creating questions of proper notice and due process.²³⁸ Third, they eliminated discretion judges formerly possessed in deportation hearings.²³⁹ Lastly, these changes affect all noncitizens—including permanent residents.²⁴⁰ In combination with the “zero-tolerance” attitude regarding immigration issues of the government post-September 11th, the AEDPA and IIRIRA have inflicted great harm on immigrant communities.²⁴¹ Before 2001 the government was already enacting a “severity revolution,” and now it uses the September 11th attacks as a post-hoc justification for those policies.²⁴²

The American government can deport such a sizable group of Americans without scrutiny because the Americans being deported are Asian Americans, who are viewed as perpetual foreigners. Asian Americans, Latinos, and Arab Americans are “racially categorized as foreign-born outsiders, regardless of actual citizenship status.”²⁴³ While some immigrants can come to the United States and, because of their “white appearance,” immediately find recognition as “American,” Asian

235. *Id.* at 95 (in the 1990s it was projected that by 2001 California’s majority was going to be non-white. In response to this statistic the 1990s saw various anti-non-white legislation and ballot initiatives passed—such as anti-immigration, affirmative action, and bilingual election by the majority of white voters in California).

236. *Id.* at 90.

237. Miller, *supra* note 176, at 85 (previously only specific serious felony convictions—i.e. murder, drugs and firearm trafficking—were classified as deportable offenses).

238. *Id.*

239. The issue of the constitutionality of the AEDPA and IIRIRA deserve further exploration that is beyond the scope of this paper.

240. Miller, *supra* note 176, at 106.

241. *Id.*

242. *See id.* at 87.

243. *Id.* at 82-86.

244. Chen, *supra* note 177, at 72.

Americans cannot.²⁴⁴ Immigration in the United States is highly racialized—society views immigration as centered on the “Other.”²⁴⁵ Elaborating on Edward Said’s “Orientalism,” Keith Aoki developed a theory of American Orientalism that specifically relates to the issue of immigration:

the national identity of the United States has been constructed in opposition to racialized ‘Others’ like Asian immigrants and Asian Americans . . . the idea of ‘foreignness,’ which refers to the construction of the American nation-state that involves categorization of persons as ‘citizens’ or ‘foreigners.’ . . . In a complex fashion, the American ‘Orientalist’ gaze deeply inscribes ‘otherness’ on Asian Americans and Asian immigrants as simultaneously ‘racialized’ as ‘non-white’ and ‘foreign and unassimilable.’²⁴⁶

Thus, even though many of the individuals who face deportation because of this legislation have participated in American society for years, the “foreignness” ascribed to their skin color permitted the legislation’s smooth passage. The AEDPA and IIRIRA might not have contained the same content had a pan-ethnic coalition utilized public choice and agenda setting theory to compel Congress to understand them as Americans engaged in the political process.

One obstacle preventing the successful employment of pluralist theories, as previously discussed in Section III, is the disenfranchisement of Asian Americans. Although Congress’s dismissiveness of Asian Americans stems in part from the view that the needs of the Asian immigrant community are not its own, the fact that the Asian immigrant community cannot vote also contributes to this attitude. A substantial portion of the Asian American community are non-citizens or permanent residents and thus cannot vote.²⁴⁷ Those who are eligible to vote do not vote.²⁴⁸ Although “immigrant rights [groups] and some ethnic groups lobby aggressively for immigrants, their pull with politicians naturally is restricted by the electoral powerlessness of their constituency.”²⁴⁹ Moreover, because of the plenary power doctrine, influence over other branches of government cannot compensate for political powerlessness in the legislative branch. The doctrine ironically gives the legislature an unprecedented amount of power in legislating over an issue that affects individuals that the legislators are wholly unconcerned about.²⁵⁰

There are many factors that will dictate future Congressional action on this issue. One centuries-old argument in support of AEDPA and IIRIRA

244. *Id.*

245. *Id.* at 80-81 (the “Other” being “non-white, bad, treacherous, and invasive”).

246. *Id.* at 82.

247. *Id.* at 91

248. Lai, *supra* note 11, at 247.

249. Chen, *supra* note 177, at 91.

250. *Id.*

lies in national security.²⁵¹ Although it is easy in this post-September 11th culture to subscribe to any legislation that will bolster “national security,” legislators, scholars, and the voting public must examine the “national security” that proposed legislation is intended to protect. One must also consider that perhaps “cultural security” underlies the notion of “national security,” “manifesting in the desire to protect white national identity” from an “Oriental Invasion.”²⁵² The presence of Asians and Asian Americans with their different cultural and language backgrounds, even in small numbers, is perceived as a threat to this notion of a white culture.²⁵³

With such notions to combat, a pan-ethnic coalition has serious challenges to confront. But the enactment of fair immigration laws is an agenda item, like hate crime legislation, that is compatible with the capabilities of an Asian American interest group advocating for legislative change. The crux of this issue is discrimination against Asian Americans that affects all members of the community. Consequently, it is more efficient and productive to deal with this issue on a legislative level than on a case-by-case level because solutions to the issue will not be detrimental to any member of the community.²⁵⁴ Also, analogous to the proposal to pursue new hate crime legislation, the pursuit of new immigration laws would be an example of a conflict of client politics that an influential and potent interest group can win. The strategy of agenda-setting would be more difficult to employ in this situation. The principle that the potential deportee deserves justice and fairness must combat the tenet that Asian Americans, and other noncitizens who have committed crimes, regardless of the actual crime and date of occurrence, simply do not belong in America. Therefore, it is difficult to gauge how the mainstream media will frame this newsworthy issue. Nonetheless, *without* a pan-ethnic interest group advocating on behalf of a sympathetic portrayal of this issue, the media definitely will not present this issue in a favorable light.

CONCLUSION

In an ideal republican system, the people should be able to achieve their goals, whether they deal with specific programs or broad ideas, by convincing their representatives that this ambition is something that they, the people, want. Unfortunately, the current American system does not function in this manner. Because of the conflicting desires of the public, legislators are often torn as to which legislation should be passed. Consequently, interest groups must form in order for the subsets of people

251. *See id.* at 83.

252. *Id.*

253. *Id.*

254. *I.e.*, to return discretion back to immigration judges when considering deportation would not harm other Asian Americans.

to advance their goals. Without an interest group representing a group's goals, those ends will not be expressed.

More significantly, a specific type of interest group must exist in order to seriously partake in the legislative conversation. This interest group must be able to demonstrate its legitimacy to the legislator by proving that it actually represents a certain subsection of the population. It should also convey to the legislator that if he or she does not acknowledge the needs of the group, political consequences will follow. Meanwhile, the interest group must be able to convey to the people it is representing that it genuinely understands the sentiments of the people.

Pluralist theories, especially public choice and agenda-setting theories, demonstrate that in this country, the most productive avenue Asian Americans can pursue in order to obtain legitimacy, and therefore equality, is to create a pan-ethnic coalition that fits the description of the interest group just described. The group must utilize the demographics of Asian Americans in the United States. As a testament to the importance of organized political groups, coalitions of smaller groups with shared interests have now become prevalent in American politics.²⁵⁵ As previously discussed, a coalition is viewed as a more effective version of a singular interest group because it can show the legislator that "a policy's advocates span numerous congressional districts."²⁵⁶ Coalitions also possess more resources and a greater number of contacts with lawmakers.²⁵⁷

While evaluating the benefits of a pan-ethnic group, considering the historical and sociological background of the Asian American community, coalition building will be extremely difficult. Unfortunately, I cannot offer any concrete strategies to make the process any easier. Considering the reality of American politics, any potential for respect and progress for any group within the Asian American community can only be achieved if the entire community comes together and forms a true coalition.

One major hurdle to the success of this strategy that was discussed earlier but needs to be emphasized is that without engaging the community to become politically active, or, at the very least, to vote, a pan-ethnic coalition will not be able to obtain influence in the legislature.²⁵⁸ Even with the emergence of a pan-ethnic coalition, the organization would be ineffective if there are no votes to back it up. Thus, regardless of whether the pan-ethnic coalition takes ownership over the issue of engaging the

255. ESKRIDGE ET AL., *supra* note 17, at 54.

256. *Id.*

257. *Id.*

258. There are a plethora of reasons explaining the disenfranchisement of Asian Americans, some have been discussed in this paper, but others, that deserve further exploration, also play a significant role in the current state of Asian American politics. See Harold Brackman and Steven P. Erie, *Beyond 'Politics by Other Means'? Empowerment Strategies for Los Angeles' Asian Pacific Community*, in ASIAN AMERICAN POLITICS, *supra* note 11, at 231.

community or whether the existing Asian American interest groups further their efforts to invest Asian Americans in the political system, somehow the community must be mobilized to utilize its ability to vote.

A mobilized and unified community will bring the Asian American community one step closer to full political participation.²⁵⁹ Voting Asian Americans will help elect legislators who will address Asian American communities' needs and appoint officials with the best interests of Asian Americans in mind. The "[t]ime has come for Asian Americans to practice 'real politic'—the kind practiced by other immigrant groups in their paths to equality. We must reward the political leaders and parties that fight for our equal opportunity. We must censure those who don't"²⁶⁰

Evidence shows that Asian Americans can and do unite if so challenged. To bring all of the elements of the community together, Asian Americans need leadership, in the form of a pan-ethnic coalition that is willing to organize this movement. The coalition must work, not merely around presidential elections or in reactive crisis situations, but toward sustained mobilization and reliable leadership. While being ever cognizant of the potential to stifle and marginalize segments of the community, constructive steps toward this coalition should be taken. In the same vein as Dr. Martin Luther King, Jr.'s sentiments regarding the decision to march in Birmingham, there are some actions that some will believe are not rational or productive, but at a certain point in time, when no other strategies are working, community leaders cannot wait to find the "perfect" situation.²⁶¹ What events—how many more victims of hate violence must die and how many more people have to suffer through the injustice of the United States immigration system—what outbreak of "yellow peril" will compel Asian Americans to take the risk and unite? Understanding the cycles of immigrant history and the theories of America's representative government, Asian Americans should preempt the inevitable crises that will confront their community by uniting and obtaining political power before they are actually *forced* to.

259. See Chang, *supra* note 4, at 55.

260. 80-20 FAQ, *supra* note 153.

261. Martin Luther King, Jr. *Letter from a Birmingham Jail*, available at <http://www.stanford.edu/group/king/frequentdocs/birmingham.html>.

