

Legal and Civil Rights Issues in 2020: Civil Rights Policy

William R. Tamayo

MANAGING ATTORNEY
ASIAN LAW CAUCUS
SAN FRANCISCO, CALIFORNIA

An examination or projection as to the legal and civil rights issues that will likely exist as a result of the increase in the Asian Pacific American population requires, at the outset, a premise for the assertion that the social category will be relevant in the year 2020.

Furthermore, this analysis rests on an assumption that our collective goal as defenders of civil rights is to ensure that the experiment of democracy known as the United States can live up to the ideals it professes to uphold: equality, full opportunity, inclusion, democratic rights, and respect for civil rights.

This analysis as presented rests on the following premises and assumptions about life in 2020:

1. Racism against nonwhites will still be an integral component of the United States economy and cultural life both institutionally and socially;
2. While legal forms of blatant racism will likely remain unlawful, a national consensus for a coherent or uniform remedy for the social impact of centuries of systemic racism will still be lacking;
3. "Asian Pacific American," as a category created by and asserted in response to racism, will still be relevant both as

a political vehicle and as a category to measure the impact of inequality; and

4. Immigration from Asia will likely be from the “developing” Asian countries, e.g., Philippines, India, China, Korea, many of which still are undergoing massive upheavals around issues of civil liberties, democracy, labor rights, and freedom of movement.

Initial demographic projections assert that the Asian Pacific American population in the year 2020 will be 18–20 million, representing a near tripling of the 1990 population. Immigration from Asia will be a major source of this growth. Thus, the majority of the community will likely be foreign born, and a significant portion non-citizens. This “foreign-born” characteristic combined with a relatively small voting bloc will still leave Asian Pacific Americans in a weak political position to make civil rights gains or to implement civil rights agendas on a national scale, but may be able to impact or sway local elections and activities.

The State of the World in 2020

Without a doubt, a projection of legal and civil rights issues must consider the state of the world in 2020—its economic health, its environmental health, whether peace or wars dominate the political landscape, and whether massive migration of labor (especially from Asia) to countries of real and perceived opportunities will continue.¹ Should political and economic instability and upheavals continue in the sending countries and other Asian nations, it can be expected that immigration—legally and illegally—from Asia will continue. As of January 1992, over 1.5 million persons from Asian countries (representing 53.2 percent of the worldwide list) were on visa waiting lists, with the Philippines (472,714) leading all countries worldwide.² (The top seven sending countries are all Asian nations except for Mexico, which ranks second in the numbers of its citizens registered for visas.)³ This number does not even begin to include the numbers of relatives who will migrate as “immediate relatives”⁴ of United States residents, a number which could, at least for some countries, represent twice as much as those on the preference waiting list.⁵

Some countries worth close observation for students of demography and migration include Burma, Thailand, Pakistan and Indonesia. As more and more movements for democracy demand changes but are met with resistance (in the form of violence and repression) from existing governments, and as economies in Asia fail to meet the basic needs of the vast majority of the population, there will be steady streams of migration from these countries.

At the same time, attempts to develop East Asia into a major "economic union," similar to the European Economic Community, could and are alleged to lead to greater prosperity throughout the region. Consequently, this could conceivably reduce the need for workers to migrate from Asia to the United States, and affect immigration projections.⁶

On the other hand, the state of the U.S. economy and its ability to "absorb" newer immigrants will pose issues. That is, other "Western" or capitalist countries could be the recipient of the new migrations of Asian labor. As evidenced by migrations in the late 1980s and early 1990s, Asian workers are also migrating to England, Western Europe, Middle East, Australia, and Canada.

Not surprisingly, however, this massive migration of Asians and others has precipitated a resurgence and growth of anti-immigrant and racist movements represented in spontaneous outbursts and uprisings of white youths to organized and well-financed electoral movements, e.g., "Le Pen" in France and anti-immigrant movements in Germany in 1992. Reminiscent of anti-immigrant movements that dotted the history of the United States⁷ and that were forerunners to fascist and neo-fascist movements in Western Europe in the 20th century, these movements have, unfortunately, gained wider acceptance among white Americans and Europeans. Institutional support through government and private parties has similarly created a more fearful climate and pressed civil rights advocates.

Nevertheless, it is likely that given the projections for the Asian Pacific American population in 2020, any analysis on the civil and legal rights issue of that year will be impacted by perceptions both in fact and fiction, that there will be even more persons of Asian descent migrating to the United States. The fear of more "yellow and brown hordes" being absorbed into an unstable and declining economy will have great social implications.

The State of the U.S. Economy and Social Relations

The national state of social relations, particularly around such a fundamental issue as racism, will greatly determine the civil rights agenda of Asian Pacific Americans. The social issues, however, are inextricably intertwined with the health of the U.S. economy and with the willingness of leaders to put forth and to finance a progressive social rights agenda. Unfortunately, the experiences of 1992 and the 12 previous years when national leadership “planned” social policy based on “racial polarization” rather than “racial inclusiveness and unity” do not give ground for optimism. This catering to a “white, native-born consensus” based on some notion of preserving a perceived birthright has been at the cornerstone of social policies negatively affecting civil rights, immigration policy, and labor policy. The disturbing rise of explicitly racist and pro-violence organizations, the rise of similarly inclined politicians (and the frightening followers), and the failure of national leadership to quell this growth lays fundamental problems for all racial minorities including Asian Pacific Americans. Aside from catering to traditions of racism, these proponents have also taken on the bashing of immigrants (read: nonwhite immigrants) as part of their crusade. Proposed measures from militarizing the U.S.-Mexico border, to increased immigration raids in Asian and Latino communities, to outright denials of labor protections to immigrants have been part of these proponents’ arsenal.

If the United States economy is relatively healthy in 2020, then racial relations should be improved.⁸ However, increased economic instability combined with racist and nativist appeals by national figures will lead to continued divisiveness and set the stage for increasing legal and civil rights issues for Asian Pacific Americans and other nonwhite communities.

Simultaneously, the relationships of our community to its allies in the broader civil rights community will determine the agenda. Given the near tripling of our population by 2020, the concerns of the community will have to be part of a broader national civil rights agenda. *That agenda will have to take on an internationalist perspective based on full civil and democratic rights for all regardless of race, national origin, and immigration status if it is to adequately address the civil rights concerns of largely immigrant, nonwhite communities.* In addition, it will be incumbent on civil rights

leadership to build viable and operational multiracial and multicultural coalitions with matching agendas.

Inherent to forging the relations of the civil rights coalition is a grappling with a lingering issue of whether Asian Pacific Americans will “be used” by Whites against other minority groups, and whether other minority groups, i.e., Blacks and Latinos, will view Asian Pacific Americans (or some ethnic groups) as indistinguishable from a political and economic view from Whites (who will presumably still direct most major corporations and be the majority of elected officials in 2020). Professor Mari Matsuda warned that Asian Pacific Americans had better understand the fundamental characteristics that tie people of color within the social dynamics of U.S. society lest they be used as buffers between Whites and other communities of color.⁹ Inherent in that relation, however, is an incumbent duty for Asian Pacific Americans to stand with their brothers and sisters of color in addressing all issues of racism together in both time and place.

Legal Issues for Asian Pacific Americans

Asian Pacific Americans as workers, women, gays and lesbians, consumers, immigrants, non-citizens, and general members of U.S. society will be loaded with a myriad of legal problems. Following, however, are particular legal issues which will likely emanate from the discrimination based on race, national origin, class, sex, and immigration status—categories of discrimination that are impacted by the existence of an Asian Pacific American category.

LABOR RIGHTS

Overwhelmingly, Asian Pacific Americans are working class, non-professional people (despite perceptions by the public and representations by the media). Recent immigrants and even those with residency over ten years overwhelmingly dominate the light manufacturing and service sectors and lower-paying positions in the medical and clerical industries.¹⁰ The vast majority, similar to most Americans, are not represented by unions, and are not aware of their rights as workers. Thus, abuse of these workers from harassment, non-payment of overtime salaries, undercutting wages, and harsh working conditions in violation of labor laws, will likely continue. The attempts of certain industries to

curb labor-law protections in the 1980s (often with Administration backing) serve as a harbinger of the types of labor battles that Asian workers will face in 2020. As international and domestic competition among industries heightens, it can be expected that various “cost-saving” measures will be utilized. The prospects for organized labor to rebound from its losses in the 1980s and 1990s and to be more inclusive of Asian Pacific American workers and their needs will also impact the landscape within which labor rights will be asserted.

Special attention will need to be given to the fact that the majority of Asian immigrants will be *women*. Aside from issues arising in other arenas, e.g., domestic violence, the fact that many of the immigrant workers will be women will also give rise to increasing attention to issues of sexual harassment, sex discrimination in employment, and employment of women in traditionally low-paid jobs, e.g., garment and service. The necessary components to setting the agenda for combatting this discrimination will, in part, have to be the empowerment of women of color within national women’s organizations and unions and the effort of those organizations to be as aggressively inclusive as the times demand.

Furthermore, with its poverty rate being twice that of Whites, and with 50 percent of Southeast Asians living in poverty,¹¹ the community will have to grapple with the consequences of having a generation or two of our community virtually locked out of mainstream life. Poor educational performances, limited employment opportunities, and an increasing trend for youth to turn toward anti-social behavior as an economic necessity, will likely mark the life of refugees and their children.

THE GLASS CEILING AND APPROACHES TO AFFIRMATIVE ACTION

While the issue of the “glass ceiling,” i.e., lack of promotion of racial minorities to management positions, and related issues of affirmative action have been on the agenda for the last few years, there is a strong likelihood that they will remain as issues three decades from now. The nearly three decades since the passage of Title VII of the Civil Rights Act of 1964 have clearly shown a glaring disparity between Congress’ professed intent to eradicate discrimination and the harsh and stark reality created by decades of inequality. For while some minorities have been promoted to positions in management, management in corporations does not even begin to mirror the demographic profile of the

working community. Hopefully, the Civil Rights Act of 1991 will have created a more favorable legal climate within which programs for aggressive affirmative action will find their way to general acceptance. However, if there is a continued polarization, and in view of the fact that the existing Supreme Court has conservative members who will likely be serving on the court for two or three more decades, the prospects for favorable anti-discrimination legal precedents appears dim. Thus, the Asian Pacific American legal and civil rights community will need to develop more creative approaches—both legally and legislatively.

On another front, Asian Pacific Americans will have to articulate a clearer approach to affirmative action and will have to answer some hard questions regarding the collective applicability of affirmative action to a community which has distinct ethnic communities with varied histories in the United States. Some of the questions include: Will recent immigrants be able to claim that they inherit the impact of decades of discrimination against other Asian groups and thus are entitled to affirmative action remedies? When there is underrepresentation of some Asian Pacific Americans, e.g., Filipino Americans, in certain jobs or college admission slots, but not of other groups, e.g., Japanese Americans, is this a cause for complaint? Will the relatively more affluent position of Asian Americans relative to other minority groups, i.e., Blacks and Latinos, render the claims for affirmative action less meaningful, particularly since the bulk of Asians migrated in more recent years when laws against discrimination have already been passed?

IMMIGRANT RIGHTS

Given the overwhelming immigrant character of our community and the expected increase past the year 2020, expanding and protecting the rights of immigrants—documented and undocumented—to be free from discriminatory treatment will fill the civil rights agenda. The onslaught upon the rights of immigrants will likely come in these forms, as our history shows:

- attempts to curb Asian and other immigration through legislation aimed at decreasing family unity;¹²
- further restrictions on the due process rights of immigrants in court and administrative proceedings so as to expedite deportation;

- legal and quasi-legal restrictions on the rights of immigrants (both documented and undocumented) to public benefits and social services (assuming both will still exist in 2020);
- increased use of force in restricting immigration and enforcing immigration laws;
- the building of more immigration detention centers in order to incarcerate immigrants and deprive them of access to legal representation and social services;
- the growth of xenophobic movements expressed through violence, legislation, media, etc.;
- curbs on the numbers of refugees admitted from war-torn, politically unstable, or economically devastated countries.

Defenders of immigrants rights in our community will be forced to strengthen with even greater fervor the internationalist, humanitarian, and pro-civil rights moorings upon which to analyze and critique the above expressions of anti-immigrant sentiments.¹³ Furthermore, the issues will require an astute and thorough understanding of the political economy of the sending nations that prompts this massive migration. The political instability of the sending nations will have to be addressed as we attempt to seek refugee protections or “safe haven” status for those fleeing persecution from those countries.

Inherent to this responsibility will be the task of working more closely with other immigrant communities that will similarly be impacted by U.S. foreign policy considerations, political upheaval in sending countries, and the response of the U.S. government. The commonalities for seeking a more unified agenda to address these civil rights concerns will be more vivid.

One major issue that appears likely for addressing will be the increasing demands of certain U.S. industries for already-trained skilled workers from abroad rather than investing in the existing workforce through job training and better education. While some in our community will view this avenue for migration as a positive opening to increase immigration, it raises substantial public policy questions, and asks the Asian Pacific American community where it stands on the issue of protecting and

improving the domestic workforce through corporate and governmental investment. Asian Pacific American leaders will have to demand, as will other communities, especially those communities of color hardest hit by the callous indifference to improving the education and job skills of U.S. workers, that government and business look first to retraining the domestic labor force before seeking skilled labor from abroad. Simultaneously, however, knowing well that much of that skilled immigrant labor will enter into the social dynamics of U.S. racism and xenophobia, and employment discrimination or abuse, we will have to defend their rights as immigrants and workers.

LANGUAGE RIGHTS

Short of English becoming the universal language of the world (God forbid!), our community will be filled with “language minorities,” i.e., non- or limited-English-speaking communities. The issue becomes more complex since our community shares no common language, but instead is a polyglot of languages and dialects, each with a distinct historical development. Nevertheless, lack of access to services, lack of access to the ballot, and discrimination in employment because of being a language minority will likely be issues in 2020. The successful effort to have the bilingual voting materials provisions of the Voting Rights Act reauthorized in 1992 (to be valid until 2007) will hopefully create more favorable conditions for their maintenance and expansion in 2020.

“English-Only” rules in the workplace,¹⁴ or terminations from or denials of employment based on accent discrimination will likely continue in view of the increasing and constant immigration from Asian countries. It could be expected that there will be legislative, referendum, or initiative measures that will be introduced to make English the “official language” of the United States or of various states in order to present some alleged “uniformity” in communication which will supposedly improve relations. Asian Pacific American civil rights advocates will have to respond to these thinly guised racist and exclusionary attempts to further disempower and disenfranchise language minority communities. Again, it will be incumbent for Asian Pacific Americans to be active players in insuring that the broader civil rights community places the defense of language minorities on its agenda of action.

HATE VIOLENCE

Disturbingly and unfortunately, hate violence will likely be an issue in 2020 unless there is a major turnaround in the approach to social problems. The increasing polarization of the country around race, compounded by the fierce international competition in business and by decreasing economic and employment opportunities, have laid the seeds for increasing hate crimes and violence. Asian Pacific American advocates will continue to press states to enact laws allowing the prosecution of acts of violence as “hate crimes” (which enhance the sentences), and to press local prosecutors and state attorneys general to bring cases against the perpetrators.

On a national scale, these advocates will have to pierce and thoroughly discredit the “racialized patriotism” which serves as the cornerstone or rationale for a perceived duty to bash persons of Asian descent whether they be foreign-born or eighth-generation Americans. This daunting task will also require demands for quick and responsive action from federal officials and from United States and Asian corporate officials to denounce acts of anti-Asian violence.

VOTING RIGHTS

Asian Pacific Americans on a national scale actively participated in the redistricting process for the first time in 1991-92. While not all proposed plans were adopted, Asian Pacific Americans served notice on legislatures and city councils that we were stepping forward to defend our rights under the Voting Rights Act, and placed into the public record the historical discrimination suffered by Asian Pacific Americans in voting. While Asians in 1992 were 10 percent of the California population, there had been no Asians in the state legislature for 11 years. Asians were 3 percent of the national population, but less than 1 percent of the House of Representatives. In 2020, with an expected Asian Pacific American national population of 5-6 percent, and a California population of 15-20 percent, ensuring adequate representation at all electoral levels will be a major civil rights concern. Challenges to at-large election schemes which have historically served to exclude minorities from city councils, boards of supervisors, and school boards, will be needed.

Is There Power in Numbers?

Although Asians will number 20 million in 2020, we will likely still represent only 5-6 percent of the national population. In some states, e.g., California, we could likely be 15-20 percent of the population. Adding to this factor are projections that there will be no racial group that constitutes a majority. Perhaps Washington, D.C., will finally give some favorable attention to this population. However, articulating a civil rights agenda for Asian Pacific Americans will necessitate a conscious summation of the collective experiences garnered as a distinctly created racial group. Our community of 2020 will have a qualitatively different proportionate ethnic make-up than that in 1992 as the waves of immigrants from various Asian nations make their way to these shores. Our collective American experience in the number of years may be limited, but factors such as racial violence and anti-immigrant hostilities will intensify that experience. Civil rights advocates will have to harness the lessons of the past, and present the commonalities that mandate working under a common civil rights agenda.

Like other communities of color, and like the rest of the general U.S. population, our community hopes that 2020 will not be a year when the issues of racial polarization, xenophobia, and discrimination dominate the social relations of our country. The ideal that we call "United States democracy" has yet to be fully realized for the vast majority, but especially for those communities legally and socially marginalized because of their immigration status, race or national origin. Unfortunately, the years of professed belief from the federal government and from the national social agenda of the late 1960s in "full equality" and "full remedies" to address centuries of societal discrimination are still, when placed against the backdrop of United States history, an aberration and an exception to the rule. The escalation of racism throughout the 1980s and 1990s serves as a painful reminder that our work to build a nation committed to full rights and opportunity remains.

At the same time, years of common experience have provided valuable insights and produced new coalitions in the civil rights arena. It will be incumbent upon advocates for civil rights to extrapolate the lessons from history in order to articulate a more relevant and more effective agenda.

Notes

1. "Figures are far from precise—partly because of poor monitoring, partly because of illegal immigration—but 4 million to 5 million workers from South and east Asia probably work abroad." "Asia Supplies the World with Workers," *The Economist*, reprinted in *San Francisco Chronicle* (September 21, 1988).
2. U.S. Department of State, *Visa Bulletin* 7:9A (1992).
3. *Ibid.* As of January 1992, following the Philippines, the next six countries have the following registered: Mexico (466,684), India (254,049), China, mainland-born (181,143), China, Taiwan-born (122,284), Korea (118,949), and Vietnam (109,276).
4. "Immediate relatives" are defined as parents, spouses, and unmarried minor children under 21, and are exempt from the preference waiting lists.
5. For example, approximately 40,000 Filipinos (twice the number allowed under the preference system) entered as immediate relatives of U.S. citizens annually for the past three years.
6. Workers from the Philippines, Korea, Pakistan, India, Bangladesh, and Thailand already migrate all over the world. In 1985 approximately 460,000 Filipinos, 200,000 Koreans, 230,000 Pakistanis, 160,000 Indians, 80,000 Bangladeshis, and 70,000 Thais worked abroad. The United States is but one of dozens of countries to which they migrate for employment. See "Asia Supplies the World with Workers."
7. For a review of anti-Asian immigration laws and policies, see William R. Tamayo, "Asian Americans and Present U.S. Immigration Policies: A Legacy of Asian Exclusion," in *Asian Americans and the Supreme Court*, edited by Hyung-Chan Kim (Westport, Connecticut: Greenwood Press, 1992), 1105–1130.
8. It's no accident that the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Immigration Act of 1965 were enacted during a period when the U.S. economy was generally healthy, and the unemployment rate was relatively low. Many believe that the Immigration Act of 1965 was designed to increase immigration from Asian and Latin American countries. However, its proponents perceived it as a measure to increase European immigration, and assumed that Asian immigration under the act would be minimal. See Tamayo, "Asian Americans and Present U.S. Immigration Policies."
9. Mari Matusda, "We Will Not Be Used," *Asian Law Caucus Reporter* (Spring 1990).
10. The impact of the proposed North American Free Trade Agreement (Canada, United States, and Mexico) and other measures on the export of light manufacturing jobs, e.g., electronics and garment, will also have to be taken into consideration.
11. W. O'Hare and J. Felt, "Asian Americans: Fastest Growing Minority Group," Population Reference Bureau, February 1991.

12. Section 141 of the Immigration Act of 1990 provides for the establishment of a nine-member Commission on Legal Immigration Reform to review and evaluate the impact of the 1990 Act. Its first report is due on September 30, 1994, and its final annual report, including findings and recommendations with respect to legal immigration, is due September 30, 1997. Particular issues that the Commission will address include:
 - a. Family reunification-based immigration;
 - b. The impact of immigration and the implementation of the employment-based and diversity programs on labor needs, employment, and other economic and domestic conditions in the United States;
 - c. The social, demographic, and natural resources impact of immigration;
 - d. The impact of immigration on the foreign policy and national security interests of the United States;
 - e. The impact of per-country immigration levels on family-sponsored immigration;
 - f. The impact of the numerical limitation on the adjustment of status of aliens granted asylum;
 - g. The impact of the numerical limitations on the admission of non-immigrants under Section 214 (g) of the Immigration and Nationality Act (H categories);
 - h. The impact of the diversity program including the characteristics of the individuals admitted and how such characteristics compare to the characteristics of family-sponsored immigrants and employment-based immigrants.

The nine members appointed are:

Lawrence Fuchs, Ph.D., former Executive Director of the Select Commission on Immigration & Refugee Policy (which eventually led to the passage of IRCA 1986); Professor, Brandeis University

Cardinal Bernard Law, Boston, Massachusetts

Harold Ezell, former INS Western Regional Commissioner (1981–89), former executive for Der Wienerschnitzel

Nelson Merced, member, Massachusetts legislature

Richard Estrada, the Federation for American Immigration Reform (FAIR)

Robert Hill, lawyer, Graham & James

Bruce Morrison, former member of Congress from Connecticut, former chair of House Subcommittee on Immigration, Refugees and International Law, co-author of 1990 Act

Warren Leiden, Executive Director, American Immigration Lawyers Association

Legislation is pending in the 1992 Congress to expand the Commission to 13 members (S. 3090). Thus far, no Asian Pacific Americans have been appointed.

13. For an elaboration of various immigrant rights concerns for the Asian American community, see William R. Tamayo, "Broadening the Asian Interests in United States Immigration Policy," *Asian American Policy Review*, Harvard University (Spring 1991).
14. "English-Only" rules have been implemented in the medical industry which is overwhelmingly dependent on nurses and nursing assistants from the Philippines.