Globalization and the Transnational Asian
"Knowledge Class"

David C. Yang†

I. INTRODUCTION

The last few decades have seen the development of a global informational economy. Liberalization of regulations and advancements in information technology have enabled relentless capitalist expansion to overcome constraints of time and space, organize much of the world’s economic activity, resources, and labor on a planetary scale, and operate upon them in real-time.1 The components of the world’s economy, however, have globalized at unequal rates. Although capital is now acted upon in an almost completely globalized way, the world labor force remains imperfectly global as it does not have the unrestricted freedom to move from one place to another.2

The logic of a global economy pushes the world in the direction of a global labor market, in which a job opening anywhere in the world can be filled by a worker anywhere in the world.3 Although such a “pure” global labor supply is unlikely to be achieved in the near future, in the context of knowledge-based endeavors (i.e., endeavors which operate on or produce information), which can be performed independent of locale, a labor force does not need to be fully physically mobile in order to take on global characteristics.

This Comment examines the emergence of a transnational Asian knowledge class of information workers. In Part II, I identify and briefly lay out the key developments within the global economy over the last several decades that set the stage for the Asian knowledge class emerge as

† J.D. Candidate, University of California, Berkeley School of Law (Boalt Hall), 2006; B.S. Electrical Engineering & Computer Science, University of California, Berkeley, 1999. I would like to thank Junichi Semitsu for his insightful comments, the people of California for their continued financial support of the University, and the Silicon Valley for all of the memories.


2. CASTELLS, supra note 1, at 232.

3. Id.
the first large-scale example of a global mobile labor force in the information economy. In Part III, I describe how U.S. immigration policies of the last few decades have contributed to the creation of an Asian American knowledge class tied to a U.S.-educated knowledge elite in Asia. In this context, I then discuss some implications for Asian American and Asian racial and national identity.

In particular, Part IV will examine some tensions between racial and national interests within the Asian American identity against the backdrop of the H-1B nonimmigrant visa for skilled foreign workers. Then, I will apply this tension to articulate one possibility for a unique Asian American perspective on the issue of outsourcing of knowledge occupations that differs from that of the white majority in the United States. Finally, Part V will describe how outsourcing is part of the larger trend toward truly global sourcing of labor which, along with the emergence of "virtual" spaces as the site of knowledge production, may erode traditional notions of identities in favor of a possible global labor identity that spans race, ethnicity, nationality, and class.

II. THE INFORMATION REVOLUTION: THE RISE OF A GLOBAL ECONOMY AND LABOR FORCE

Advances in information technology in the last few decades have enabled the development of a global economy in which economic activities and their components (e.g., capital, labor, information, management, and technology) are organized on a global scale. Unlike a world economy, which has existed since at least the 16th century and is characterized by worldwide capital accumulation (as a result of colonialism), a global economy is one that has the capacity to act as a unit in real time on a planetary scale.

Although the world’s labor market and supply are not completely global, and thus unable to move with the freedom and speed of capital, they nevertheless exhibit certain global characteristics:

4. For the purposes of this Comment, I will use the term “Asian American” to refer to those for whom being an American comprises some portion of their identity, either as constructed by themselves or others. For instance, an individual who was born and raised in Asia before attending graduate school in the U.S. and working in the Silicon Valley may conceive of himself as “purely” Asian, while observers may conceive of him as Asian American. Of course, the conceptions may also occur in the reverse.

5. CASTELLS, supra note 1, at 67.

6. Id. at 92. The Asian financial crisis of 1997-98, which some economists claim was exacerbated by the ease and speed with which capital could be pulled out of markets, demonstrated the harsh effects of the global nature of capital. Deregulation and advances in information technology allowed large institutional investors to pull instantly out of any market that showed signs of trouble. See, e.g., Peter A. Coclanis & Tilak Doshi, Globalization in Southeast Asia, 570 ANNALS. AM. ACAD. POL. & SOC. SCI. 49, 59-61 (2000).
firms may choose to locate in a variety of places worldwide to find the labor supply they need, be it in terms of skills, costs, or social control;

2. firms everywhere may also solicit highly skilled labor from everywhere, and they will obtain it provided they offer the right remuneration and working conditions; and

3. labor will enter any market on its own initiative, coming from anywhere, when human beings are pushed from their homes by poverty and war or pulled toward a new life by hope for their children.7

These factors focus on overcoming constraints of physical space; however, the activities of knowledge or information production allow for even greater flexibility, such that a labor supply that is not physically mobile can nevertheless participate in productive activities anywhere in the world. Within a roughly similar timeframe of the world economy's transition from an industrial focus to an informational and global one, I argue that a transnational Asian knowledge class has emerged to become the "most global" of labor forces.

Locked in competition with the Soviet Union for global political hegemony during the post-World War II period, the United States began to make strategic investments in Asia to maintain its political and economic advantage in the region.8 U.S. investment in the westernization of Asia played a major role in the emergence of a sizable and ideologically capitalistic middle class that expanded the international labor pool: "Common technical knowledge, shared professional values and attitudes, and participation in international personal networks enabled well-educated persons to use their training beyond the confines of any single national economy."9 This well-educated middle class, with an affinity toward western capitalism and whose training outstripped the unsatisfactory opportunities then available in its home countries, was poised to enter the United States in large numbers upon the liberalization of immigration restrictions.10

III. U.S. IMMIGRATION POLICY AND THE MAKING OF THE TRANSNATIONAL ASIAN KNOWLEDGE CLASS

Changes in U.S. immigration policy since World War II have led to the development of an Asian American population comprising heavily of a well-educated professional knowledge class.11 At the same time, the dual attractive and exclusionary nature of the nonimmigrant visa programs for

7. CASTELLS, supra note 1, at 93.
9. Id. at 80.
10. Id. at 81-90.
11. More accurately, it has resulted in Asian immigration of a dual character, between highly educated professionals and unskilled laborers. See id. at 74.
skilled laborers, along with normal circulation (i.e., traveling back and forth) and voluntary reverse migration, has contributed to the rise of a U.S.-educated elite in Asia capable of engaging with a global economy that has been largely dominated by American influences.

A. Permanent Immigration

The legal exclusion of Asians from immigration into the United States prior to World War II is well-documented12 and therefore will not be discussed in detail here. Suffice it to say that a significant new wave of Asian immigration occurred as a result of the passage of the Immigration Act of 1965, which gave preferences to family reunification and professionals and abolished the earlier system that favored immigrants of Western European origins.13

This new wave of Asian immigration included a significant number of professionals, constituting the "most highly skilled of any immigrant group our country has ever had."14

By 1977, more than 25 percent of immigrants from mainland China and Taiwan self-identified as professionals or managers, up from 12 percent prior to 1965.15 Indian immigration was even more heavily professional; by the end of the 1980s, almost half of the Indian American population self-identified as professionals.16 In absolute numbers, 1989 alone saw the arrival of 3,842 occupational immigrants from Taiwan, 1,599 from China, and 6,681 from India.17 By the end of the 1980s, tens of thousands of Asian professionals had immigrated to the United States.

The new wave of immigration has had an appreciable impact on the constitution of the high-tech labor force in the United States. While Asian Americans accounted for less than two percent of all scientists and engineers in the U.S. in 1970, that figure jumped to nearly seven percent by 1990 (in absolute numbers: from 21,000 to 150,000).18 Notably, of those 150,000 Asian American scientists and engineers in 1990, approximately 83 percent were foreign born.19

The immigration of Asian high-tech professionals has been most concentrated in Silicon Valley. By the end of 2000, persons of Asian

13. Id. at 79; RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 420 (1998).
14. TAKAKI, supra note 13, at 420 (quoting Rand Corporation demographer Kevin McCarthy).
See also HING, supra note 12, at 86.
15. HING, supra note 12, at 85.
16. Id. at 104.
17. Id. at 86, 104.
19. Id. at 167.
descent constituted 25.9 percent of the population of the Silicon Valley area, and 21 percent of the workforce at its ten highest-grossing technology companies. Asians do not constitute a significant portion of the populations of other U.S. technology centers. Although most of these immigrants stay in the U.S., many have invested in their home countries, and significant numbers have returned to develop knowledge industries in Asia while maintaining ties with the U.S. and the global economy.

B. Temporary Workers

In addition to the policy changes for permanent immigration in 1965, the subsequent changes in the law for the admission of nonimmigrant temporary workers to the high-tech industry have accelerated the development of a transnational Asian knowledge class. The increased use of such temporary worker policies during the high-tech boom of the 1990s, along with their dual attractive and exclusionary nature, has intermixed Asian and American expertise and social values in the United States and abroad.

Temporary workers are admitted to the U.S. on the basis of various categories of work listed in the Immigration and Nationality Act. The H-1 visa category for skilled workers, or "Aliens of Distinguished Merit and Ability" was established in the early 1950s. The H-1 visa required both that the job filled by a foreign worker was temporary (abolished in 1970) and that the worker established an intent to return home. The visa contained no limitations on the number of foreign workers that could be admitted. Thousands of Asian professionals entered the U.S. high-tech industry on the H-1 visa and, when their stays ended, brought expertise and social ties back to their home countries.


21. Austin, Texas; Boston/Route 128, Massachusetts; Research Triangle, North Carolina. See BUREAU, supra note 20.

22. See, e.g., David Stipp, China's Biotech is Starting to Bloom; Made-in-China Clones, Plants, and Drugs? The People's Republic Has Made Big Steps on the Long Road to Global Power in Commercial Life Sciences, FORTUNE, Sept. 2, 2002, at 126 ("[M]any of the [Asian-born] emigres are giving back, if not going back, to their homeland by advising and investing in its technology ventures ... Some 43% [of Asian-born professionals in Silicon Valley] said it was at least somewhat likely that they would consider returning to live in China.").


25. Martin, supra note 24, at 628.

26. Id. at 629.
The Immigration Act of 1990 both liberalized and restricted the entry of skilled workers. In response to predictions by the National Science Foundation of a shortage of technical professionals, Congress increased the annual cap on employer-based green cards from 40,000 to 140,000. At the same time, the new H-1B visa, which replaced the H-1 visa, placed a cap of 65,000 on temporary skilled workers, but lowered the skill profile required for entry; where the H-1 was designed to bring in only workers of exceptional talents, the H-1B "merely required a Bachelor's degree or equivalent." The H-1B abolished the requirement that a foreign worker evince the intention to return home; rather it became permissible for an H-1B holder to intend to stay in the U.S. permanently by obtaining, for example, an employment-based green card.

Demand for the H-1B has exploded since its establishment, reflecting the rapid expansion of the domestic technology industry and the increase in foreign-born U.S. college graduates. Those who prefer permanent status favor the H-1B which is also easier to obtain. In response to backlogs in processing visa applications and the high-tech industry's warnings of a dire shortage of qualified professionals in the domestic workforce, Congress enacted two temporary increases to the cap on temporary skilled workers: to 115,000 in 1998, then to 195,000 in 2000. Congress allowed the cap to revert to 65,000 in 2003 as the high-tech industry subsided, although demand for the H-1B remains high.

The dual attractive and exclusionary nature of the temporary visa programs has resulted in large numbers of Asian high-tech professionals who study and work in the U.S., but, unable to stay permanently, return to their home countries. Although H-1B holders may petition for green cards, the permanent immigration system falls far short of accommodating all of the applicants. Between one-half and two-thirds of the 500,000 H-1B workers estimated to be in the U.S. as of 2001 intend to remain in the country permanently. Unfortunately, the immigration system will leave most of the visa holder's American dreams unrealized. However, returning workers take a piece of the U.S. home with them, retaining much of the economic and social ties, as well as cultural affinities, that they developed during their stay.

27. Matloff, supra note 24, at 818.
29. Martin, supra note 24, at 628.
30. Id. at 629.
31. Id. at 629-30.
32. See discussion infra Part IV.
33. Id. at 633.
34. Id. at 634.
The constant waves of Asian immigration suggest that the Asian American population may retain a certain immigrant characteristic for some time to come. The significantly professional nature of these newcomers further suggests that the Asian American knowledge class as a whole may continue to have affinities toward Asia for the foreseeable future. At the same time, the constant reverse migration, voluntary or otherwise, of the knowledge class back to Asia has contributed to the readiness of its labor forces to engage in work and commerce on global terms. For instance, first-generation immigrant engineers, who have "the language, cultural, and technical skills to thrive in both the United States and foreign markets," have been instrumental in establishing social and economic links between Silicon Valley and high-tech centers in their home countries. Those immigrants who do not return home nevertheless retain identities and affinities to their homelands. Even those in the high-tech industry who identify as Asian American, such as the offspring of the first-generation immigrants, may retain complex pluralistic identities informed in part by their ancestral origins and the "intergenerational transmission of ethnic identity." The emergence of the transnational knowledge class does not seem to be paralleled in other racial groups and appears to be uniquely significant in the Asian diaspora. Asians have experienced the push and pull factors described by Castells as characteristic of a global labor supply to a greater extent than any other racial group in the context of knowledge-based endeavors. African Americans, of course, were first brought into the American colonies as slave labor for agricultural production; however, Sub-Saharan Africa has so far been left out of the informational revolution and has not had the opportunity to develop significant informational economies. Likewise, Latino migration has been largely characterized by entry into agricultural and industrial labor, rather than the information industry. The white knowledge class, by contrast, is not marked by

---

35. Id. at 628.
37. Frank H. Wu, The Arrival of Asian Americans: An Agenda for Legal Scholarship, 10 ASIAN L.J. 1, 7 (2003) ("There is . . . a particular type of self-interest that is prevalent among Asian Americans: ethnocentric transnationalism. Typically for financial gain though possibly also for political power, ethnocentric transnationalism consists of the use of racial and ethnic ties to transcend citizenship and national boundaries.") (citation omitted).
39. See discussion supra Part III.
40. MANUEL CASTELLS, END OF MILLENNIUM 82-83 (1998) ("The rise of informational/global capitalism in the last quarter of the twentieth century has coincided with the collapse of Africa's economies, the disintegration of many of its states, and the breakdown of most of its societies.").
41. See, e.g., Alejandro I. Canales, Mexican Labour Migration to the United States in the Age of Globalization, J. ETHNIC & MIGRATION STUD., Jul. 1, 2003, at 741 ("Mexican workers are usually
patterns of migration and cross-continental circulation on the massive scale of Asians. As a result, the transnational Asian knowledge class encounters tensions as to its traditional notions of identity on a greater scale than other groups, and may anticipate some of the issues that other groups may face as they become more global and informational themselves.

IV. GLOBALIZATION AT HOME: THE FIGHT OVER H-1B

A. The Real and Perceived Impact on Domestic Labor

Established by the Immigration Act of 1990, the H-1B visa program allows employers to sponsor skilled foreign workers for up to six years of employment in the United States. Although the H-1B visa allows for professionals such as doctors and nurses, social scientists, architects, accountants, and even entertainers and fashion models, the high-tech industry has embraced the H-1B the most, and computer-related occupations have become by far the largest category under the program.

Although established with an annual cap of 65,000, supposedly to limit adverse effects to the domestic labor force, the technology industry lobbied Congress to increase this cap, claiming severe shortages in the domestic software labor market. In 1998, Congress enacted a temporary increase of the cap to 115,000, bumping it up to 195,000 in 2000. Against the backdrop of the economic downturn, the industry was unable to justify the perpetuation of the heightened cap, and it reverted to 65,000 in 2003.

Beyond the cap on visas, the H-1B program contains a number of provisions supposedly intended to protect the domestic workforce. For instance, “H-1B dependent” employers (whose workforces comprise at least 15 percent H-1B holders) are required to show that each H-1B petition is made only in response to a good-faith inability to find an American (citizen or permanent resident of the United States) to fill the position. Such employers must also not have conducted layoffs of American workers for a certain period before filing an H-1B petition, and must not do so for

...
another time period after the filing.\textsuperscript{49} To mitigate any wage-depressive effects of the program, employers are required to pay the visa holders the “prevailing wage” for the position.\textsuperscript{50}

The H-1B program has been controversial with domestic labor advocates, who allege that, as implemented, the program exacerbates unemployment of domestic high-tech workers and depresses wages in the industry.\textsuperscript{51} Critics of the program claim that the program has been abused by high-tech employers in search of cheap, compliant labor, and that the program does not do enough to protect the domestic workforce.\textsuperscript{52} The H-1B program first came under serious scrutiny during the boom years in Silicon Valley, when critics noticed that many employers were laying off domestic workers at the same time they were lobbying to increase the caps on the programs. After having procured an increase in the caps, the industry experienced an economic downturn starting in 2000.\textsuperscript{53} However, even during this time, 28 percent of all new information technology hires requiring a bachelor’s or above were H-1B holders.\textsuperscript{54} Essentially, some domestic workers were displaced both during the boom times and during the downturn.

Professor Norman Matloff,\textsuperscript{55} a prominent academic critic of the H-1B, suggests that the industry has applied in bad faith the provisions of the H-1B program intended to protect the domestic workforce. In particular, Matloff alleges that the industry has either lied about the existence or exaggerated the extent of a software labor shortage, and that employers depress wages by improperly calculating the “prevailing wage” for an H-1B position.\textsuperscript{56} According to Matloff, high-tech employers prefer to hire H-1B workers for their compliant natures and low wages, and have obscured their own disinclination to hire from the ample high-tech labor pool by claiming that the pool is shallow. For instance, employers may improperly disfavor older workers for having obsolescent skills even though they may be able to pick up new skills quickly on the job. Employers may also be improperly and unrealistically selective as to who they would hire, categorically eliminating perfectly competent new IT graduates for mediocre grades or not having attended a sufficiently prestigious

\textsuperscript{50} Matloff, \textit{supra} note 24, at 902.
\textsuperscript{51} \textit{Id.}, at 818.
\textsuperscript{52} \textit{Id.}
\textsuperscript{53} \textit{Id.} at 830.
\textsuperscript{54} \textit{Id.}
\textsuperscript{55} Department of Computer Science, University of California, Davis
\textsuperscript{56} Employers are given wide latitude in how the “prevailing wage” is determined. For instance, an employer might determine the prevailing wage for all software engineers without taking into account certain specialized skills that carry a premium. The employer could then hire an H-1B visa holder with specialized skills, such as “kernel programming,” at a depressed wage by calling him a “software engineer” instead of a “kernel software engineer.” Matloff, \textit{supra} note 24, at 902.
institution. Matloff's own research shows that the hiring rate in the high-tech industry has been two percent, a figure that the industry does not dispute but may belie the industry's claims of a shortage. The presence of H-1B holders, which is estimated to be a half-million, may explain why wages in the high-tech industry have not risen as quickly as might be expected in a tight labor market.

Regardless of the true extent of the H-1B's impact, the domestic high-tech labor force has, at the very least, come to perceive the H-1B program as a threat. As this comment will address, this perception has encompassed a racial component.

B. Racial and Other Implications for H-1B Visa Holders

Other than its effects on the domestic labor force, the H-1B program as implemented has a number of significant implications for the development of the Asian and Asian American high-tech labor forces. First, it creates a racial underclass of high-tech laborers who do the same work as their domestic colleagues but under de facto indentured servitude. Second, because most H-1B holders do not succeed in procuring permanent residency in the United States, they must return to their home countries after the six year period, taking with them knowledge and ties from the United States.

Asia provides the bulk of H-1B visa holders. In 2002, India received 33% of all H-1B visas issued, with the People's Republic of China coming in at 9.6%. Adding in the Philippines, Korea, Japan, Taiwan, Pakistan, and Malaysia—each constituting a low single digit percentage of H-1Bs issued in 2002—yields over 50% of the total.

H-1B holders have the opportunity to apply for permanent residency, which many choose to do, but they must be sponsored by their employers. However, because the process takes several years and is employer-specific, an H-1B holder who changes employers must start the green card process over again. In this way, visa holders essentially toil in a legal limbo akin to a latter-day indentured servitude until their green cards are issued. The effects of this situation are obvious: the H-1B labor force is made compliant and vulnerable to exploitation. Studies shows that H-1B holders are improperly underpaid relative to their permanent counterparts due to widespread abuse of the way "prevailing wages" are calculated.

57. Id. at 887-97.
58. Id. at 843-47.
59. Id. at 631.
60. OFFICE OF IMMIGRATION STATISTICS, supra note 41.
61. Id.
63. Id. at 869.
ultimate result is the creation of a kind of racialized Asian underclass in the high-tech labor structure.

Moreover, even though the H-1B cap is 65,000 at its lowest, and has been as high as 195,000 in recent years, the availability of green cards is much lower. Backlogs in the process have resulted in "wasted green cards": although the overall quota for employment-based green cards is 140,000, in recent years the INS did not come close to using them all, resulting in a "pathetically small percentage of future H-1B holders obtaining green card status." The way the system is set up now, most of the estimated half-million H-1B holders today will not get permanent residency. Consequently, they end up taking home with them knowledge capital, professional relations, and cultural attitudes shaped by their educations and experiences in the United States.

C. Who is an American, Anyway? Racial Rhetoric and Organization

The H-1B issue has understandably generated heated emotions on the part of U.S. high-tech workers who have been displaced or are in fear for their jobs. Unfortunately, there is a disturbing undertone of racial scapegoating against Asians and Asian Americans to much of the rhetoric that has arisen in the grassroots over this issue. This racial undertone underscores the tension surrounding the racial and national identities of Asian Americans. Additionally, proposed reforms of the H-1B program may not take into account the unique affinities and interests of Asian Americans.

Much of the rhetoric in opposition to the H-1B program is racially framed and evokes the notion of the "yellow peril" (albeit perhaps with the addition of a South Asian "brown scourge" element). The racialized edge of the debate poses problems for Asian Americans who may perceive themselves as adversely impacted by the H-1B program just as much as white workers. Consequently, they may experience difficulties in joining with white workers to assert a common national "American" interest regarding the H-1B issue. However, other opposition discourse that does include Asian American experiences seems to relegate them to playing the role of the "white" without considering any unique interests Asian Americans high-tech workers may have in this debate. These external and internal conflicts may partly explain why white/mainstream high-tech

65. Martin, supra note 24, at 634.
66. A famous, though probably exceptional, case involved Tsien Hsue-shen, a gifted Chinese-born rocket scientist. After attending the Massachusetts Institute of Technology, he went to graduate school at the California Institute of Technology, eventually becoming a professor and co-founding the Jet Propulsion Laboratory. Although he participated in the U.S. missile program and served in the U.S. military during World War II, he was later accused of being a communist and denied naturalization. Consequently, he left to return to China, where he helped develop its rocket program and came to be known as the "Father of Chinese Rocketry." IRIS CHANG, THREAD OF THE SILKWORM (1995).
workers and nonimmigrant visa holders have been able to organize around their respective interests with respect to the H-1B program, while no comparably significant organization has occurred along Asian American lines.

Started by a disgruntled unemployed white computer programmer, the Information Technology Professionals Association of America (ITPAA),67 is an advocacy group for the interests of U.S. high-tech labor.68 Its website collects pertinent news stories and organizes them under broad topics; stories about the H-1B are illustrated with a graphic of the Indian national flag.69 Perhaps in the interest of equal opportunity, stories about outsourcing70 are helpfully denoted by the flag of the People’s Republic of China.71

Another high-profile group is the National Association for the Employment of Americans (NAEA),72 whose name one might construe as a take-off of the National Association for the Advancement of Colored People (NAACP). The unfortunate (or accurate, depending on one’s perspective) choice of name underscores the racialized nature of this debate. NAEA’s website proclaims “American Jobs for the American People” and stokes fears of “foreign domination” by “third world countries.”73

A cursory Internet search quickly reveals more inflammatory rhetoric. One website, entitled “Stop the Invasion!” focuses primarily on the issue of undocumented workers. It features a graphic of “Alamo Heroes” and asks “What part of the word ‘illegal’ don’t you understand?”74 Additionally, the website includes an H-1B section, that is listed along with topics such as “Disease,” “Borders,” and “Mexico,” and proclaims that jobs are “our number one export to China.”75

The darker recesses of the Internet—message boards—contain some of the most disturbing psychological debris of white frustration. On the popular discussion board FuckedCompany.com—which started out cataloging the malaise of “dot-bombs” (failed dot-coms) in the post-irrational exuberance era of the late 1990s but since has evolved to cover the misfortunes of high-tech companies and workers generally—one finds this post, here gloriously reproduced, in response to the resignation of

70. See infra Part IV.
71. Id.
73. Id.
Sanjay Kumar, an Asian American, as CEO of software company Computer Associates:

Ladies and Gentlemen of the United States Of Americano Technology Workforce, by now you should have realized that U.S Of Americano Technology fields is becoming a Curry, Wonton Soup, H-1B, L1 havens. . . . Curry is living in the U.S.A land illegally, paying no taxes, using up U.S citizen provided services, sending U.S dollars back to the land of flea infested brownie arse ghee-greasing Kali, sending their little Sanjay kids to our school systems free, watching U.S citizens going to war protecting the U.S economy without lifting a finger, polluting the U.S.A air with the obnoxious foul smelling Curry cooking, and robbing away U.S citizen jobs in the tech industry.76

The poster ignores, or perhaps is unaware, that Kumar immigrated to the United States in 1976 and is a U.S. citizen.77 Moreover, Kumar was born in Sri Lanka, not India.78 Clearly, such nationality and ethnic differentiations are of no concern to the poster; apparently all that matters is that Kumar is not white. Unfortunately, such postings are common on the web and may reveal more of the psyche of some of the white majority than anyone would want to admit or imagine—especially when taken in conjunction with the rhetoric of more mainstream public groups, where this sort of sentiment often seems to percolate just below the surface.

Although significant percentages of H-1B holders are non-Asian, the rhetoric does not focus on them; I was not able to find any examples of agitation against Canadians, Britons, or Colombians—the three most heavily represented non-Asian nationalities among H-1B holders.79 The rhetoric of exclusion is explicit and Asians are cast as the “other” or “invader.” There is evidence that this tension has affected the high-tech workplace. Even before 9/11, which resulted in increased racial incidents against South Asians,80 the Asian American Public Policy Institute in Silicon Valley had received increased reports of workplace discrimination. More reports were filed in 2001 than in the previous five years.81

These disgruntled commentators do not seem to consider (or care about) the fact that the U.S. high-tech workforce, without considering H-1B visa holders, consists disproportionately American citizens of Asian descent who are also impacted by the entry of temporary workers into the competitive labor pool.82 In fact, the high percentage of Asian Americans

78. Id.
79. OFFICE OF IMMIGRATION STATISTICS, supra note 42.
82. Of course, most of these commentators are surely aware of that fact, since they are
in the high-tech workforce means that the Asian American community actually bears a disproportionate share of the burden presented by temporary workers. However, such critics may view Asian Americans—who by definition descend from immigrants, if not being immigrants themselves—and H-1B holders as part of the same problem. The lumping by racial identity results in significant tensions in the high-tech workforce; while Asian Americans may be just as adversely impacted by the phenomenon, they may not identify with the vocal “American” interest due to the racialized nature of the debate.

Other commentators do seem to make it a point to depict Asian Americans as victims of the H-1B program. Matloff discusses various examples of Asian American college graduates who could not find jobs in the high-tech industry. However, this approach seems to relegate Asian Americans to the role of “white” in a way reminiscent of some of the debates over affirmative action in higher education, which is problematic because it conflates white and Asian American interests in spite of their unequal power dynamics. Asian Americans may not necessarily define themselves with the white majority since they continue to deal with the pernicious effects of racism, such as the presence of a “glass ceiling” on their higher advancement. The white majority may in fact view Asian Americans as just an earlier manifestation of the temporary worker problem, given the persistent stereotype of those of Asian descent as “perpetual foreigners.”

Additionally, Asian Americans may resist being characterized as victims (at least in the same way as whites), because unlike the affirmative action debate in which Asian Americans are painted white to signify their shared victimhood against other minorities, this discussion concerns beneficiaries of common racial and cultural origins as Asian Americans. It may prove to be much more difficult to use Asian Americans as a wedge against Asians based on divisions of national origins than those based on race. The end result is that the rhetoric paints a conflicted picture of and for Asian Americans: on the one hand, the yellow peril or brown scourge.

experienced in the high-tech industry.

83. Matloff, supra note 28, at § 6(2)(8). Samuel Lin, who was unable to find a job despite having received engineering degrees from Princeton and Cornell Universities, wrote to Congress: “It is NOT correct to simply dismiss concerns about this issue as being xenophobic and anti-immigrant.” Longden Loo, laid off after 20 years of experience, received only two interviews from “over a hundred resumes submitted, 4 job fairs, [and] 17 recruiters.” Id. at § 5(11). Another Asian American offers: “I am an India born US citizen and am opposed to this program allowing 95000 work visas for foreign hi-tech workers. I believe that the shortage, if any, has been created by laying off older hi-tech people such as myself.” Id.


85. See Fortt, supra note 20.

because of their willingness to work as indentured servants for substandard wages, threatens the way of life of Americans; on the other hand, they are used by the more astute of white interests as a tool to take the racist edge off of the discussion.

Beyond the racialized rhetoric, to an Asian American population that may have affinities and interests as to their Asian identities that contravene American interests as defined by the white majority, the framing of the issue that conflates Asian American interests with that of whites may also be problematic on several levels. First, Asian American high-tech workers, being of a larger Asian American community that has developed as a result of relatively recent immigration and continues to be replenished by such immigration, may feel greater affinity to the visa holders as a result of shared experiences, common origins, and racial affinity. Thus, as a community that is relatively new to this country and thus is still aware of their racialized positions, Asian Americans are less likely to view Asian workers as the "other." Second, many Asian Americans may be interested in keeping the avenues of immigration open to Asians, mainly for the benefit of family members and friends, but perhaps also for the political and social benefit of the growing Asian American community. Third, because the Asian American community remains closer to its immigrant roots than the white majority, Asian Americans may simply be more likely to believe in the national benefits of immigration. Asian Americans are thus unlikely to view the entry of Asian workers purely as a threat, and may appreciate that a heightened pace of immigration could be in their own long-term interests.

The tension between their identities (national versus racial) and interests (personal versus community, short-term versus long-term) may partly explain why there has not been significant organization, in support or opposition, around the H-1B issue along Asian American lines.\(^\text{87}\) Asian Americans may feel unwelcome or disturbed by the racialized rhetoric of the opposition and may be uncomfortable in identifying with the white majority. On the other hand, there is probably enough ambiguity as to the effects of the H-1B program on them to dampen any enthusiasm on their part to roll out the red carpet for the visa holders.

In stark contrast to the lack of organization among Asian Americans, H-1B holders have organized to protect their interests, perhaps because

---

87. For example, one finds no mention of the H-1B program on the website for the United States Pan Asian American Chamber of Commerce (http://www.uspaacc.com). A search for "United States Pan Asian American Chamber of Commerce" and "H-1B" on Lexis yields exactly one article in which the two terms appear together, an 1998 editorial written by the then-president of the USPAACC. Though supportive of an effort to expand the H-1B program in the context of a then-claimed 0.4% unemployment rate among electrical engineers, the editorial mainly decries the demonizing of foreign-born workers in the H-1B debate. Susan Au Allen, *Indentured Engineers*, WASH. TIMES, Mar. 30, 1998, at A19. Searches for other Asian American professional groups yield similar results. The Asian American social justice community has likewise not addressed the arguably middle-class concerns of H-1B and offshoring.
they do not have any identity conflicts to resolve and their group interests are clear. The Immigrant Support Network (ISN), initially formed to represent the interests of temporary visa holders having problems obtaining permanent residency, has expanded its services to include: providing support to visa holding and immigrant high-tech workers who encounter workplace discrimination, lobbying Congress regarding the green card process, and fighting to counter negative perceptions of immigrant workers. The ISN is in the interesting position of advocating for more H-1Bs even though increasing numbers of temporary workers could have adverse marketplace impacts on those temporary workers already in the U.S. Unlike Asian Americans, whose national and racial interests may be directly at odds, the Asian temporary workers already in the U.S. do not have a conflict between their national and racial interests, and in the context of collective action, whatever conflicts they may have between their personal and community interests are more easily resolved in the direction of the community.

The inaction on the part of the Asian American high-tech community probably is not due to a general apathy on its part. Where its racial interests outweigh those of nationality, it has been able to organize around issues along racial lines. For example, Asian American groups have consistently opposed any further restrictions on permanent employment-based immigration. Also, even the politically apathetic are likely to arise from their condition of unconcern when directly threatened with the loss of their jobs.

The internal conflict between their national and racial identity seems to have discouraged Asian Americans from taking an organized stand on the H-1B issue. What is one to do when the interests of one’s race and one’s nationality are framed as to be in direct contradiction?

V. GLOBALIZATION ABROAD: “OFFSHORING” AND VIRTUAL SPACES

A. “Offshoring” of “American” Jobs

While the last few decades have seen the importation of skilled Asian knowledge workers into the United States on a massive scale, conditions in Asian countries are now sufficiently advanced to enable the flow of information-based jobs in the other direction. U.S. immigration policy has, along with the information revolution and a general rise in prosperity in Asia, contributed to the development of a critical mass of Asian workers

89. Robert Bellinger, Immigration Bill Passes First Hurdle, ELEC. ENG’G TIMES, Dec. 4, 1995 ("[T]he Organization of Chinese Americans predicted in a statement that the bill’s ‘proposed eliminations of categories and reductions in family visas . . . will have a devastating effect on the Asian Pacific American community.’.")
capable of engaging in the global informational economy. Thus, the new scourge to the U.S. domestic high-tech workforce is the practice of “offshoring,” in which U.S. companies outsource jobs to lower-cost locales, primarily in Asian countries.90

Although the industrial economy had already seen the large scale outsourcing of manufacturing,91 the relatively new phenomenon of outsourcing knowledge-based endeavors differs in significant ways. While the outsourcing of industrial production is characterized by massive investments in physical infrastructure and challenging coordination of physical resources and labor on a global scale (i.e., the inherent difficulties in building factories and shipping physical parts globally), knowledge-based endeavors require relatively little overhead costs beyond a basic telecommunications infrastructure.92 Moreover, information-based productive activities involve far less complex issues of coordination by virtue of the ability of its work products to move unencumbered by the limits of time and space as bits and pixels in global communication networks.

The first information-based jobs to be offshored are those that involve relatively simple discrete tasks, do not require face-to-face interaction, and can be easily broken off from the core activities of an organization. These activities include telephone call centers for customer support, data entry, accounting, and insurance claim processing.93 However, the offshoring of more complex activities has occurred with advancements in information technology and the sophistication of foreign workforces. For example, the first engineering jobs to be outsourced tended to be quality assurance (i.e., software testing) or the programming of small and well-defined components, but has come to include complex design and development tasks.94 By no means is this phenomenon limited to the software industry; high-level activities susceptible to outsourcing include financial analysis, legal research, and even industrial engineering and pharmaceutical research and development.95

91. See, e.g., Sameer Kumar et al., Moving U.S. Manufacturing Offshore: Is Mexico a Viable Choice?, 6 NAFTA L & BUS. REV. AM. 537, 539 (2000) (“For many U.S. companies, manufacturing offshore has been part of their strategic plans for years.”).
93. Thottam et al., supra note 90, at 26.
U.S. immigration policy has contributed to making the Asian nations attractive locales for offshoring. The dual attractive and exclusionary nature of immigration policies that allow Asians to seek education and employment in the U.S. with relative ease, but bar their conversion to permanent status in massive numbers, has resulted in a highly educated class of knowledge workers in Asian countries that is acculturated to U.S. business practices and prepared to conduct business on global terms. Instead of maximally retaining foreign talent in the U.S., where new immigrants would constantly compete against the existing domestic labor force, U.S. immigration policies have expelled such individuals back to their home countries, where they have contributed to local workforces' ability to compete on a national basis with the U.S. The combination of capability and lower costs makes offshoring attractive for U.S. corporations.

The Silicon Valley is said to have already lost 18 percent of its jobs to outsourcing. Forrester Research estimates that 290,000 service jobs had been offshored by the end of 2003 and that another 3.3 million jobs could be offshored by 2015. Another estimate puts the figure of offshoring losses at 14 million jobs, if every white collar job that could be easily outsourced is transferred to countries such as India, China, Russia, the Philippines, and Ireland. It is unclear what the future holds for U.S. workers in high-tech and other knowledge industries. Corporate interests argue that the cost savings from outsourcing will allow companies to focus more on innovation, resulting in the creation of new and better jobs in the U.S. The history of U.S. economic transformation suggests that new innovations could allow the U.S. to maintain its competitive edge vis-à-vis the rest of the world, in much the same way it successfully transitioned from an agricultural

100. See, e.g., Press Release, Global Insight & ITAA, ITAA/Global Insight Study Finds IT Outsourcing Results in Net U.S. Job Growth; U.S. Offshore Outsourcing of Computer Software and Services to Grow 26% Annually (Mar. 30, 2004); Art Pine et al., Delta Air, General Electric Say Creating Jobs Abroad Helps U.S., BLOOMBERG NEWS, Feb. 23, 2004; Nelson D. Schwartz, Down and Out in White-Collar America, FORTUNE, Jun. 23, 2003, at 78 ("As companies increase profits and become more competitive, they are likely to reinvest in other areas—and that could mean new jobs back in the States.").
economy to industry and, most recently, to an economy focused on services and informational competitiveness. However, many commentators warn that in a global informational economy, there is little reason to believe that the next big thing will necessarily arise first in the U.S. and that its high-tech regions, including the Silicon Valley, are headed down a Detroit-style inexorable decline. Even when innovations occur in the U.S., there is the possibility that the actual resultant productive activities (i.e., jobs) will happen elsewhere in the world. Thus far into the phenomenon, domestic jobs created as a result of offshoring pay less and are more menial. The ultimate fear is the overall decline of U.S. prosperity and power.

B. Rhetoric, Identity, and the Asian American Viewpoint

The debate over offshoring resembles the H-1B controversy: regardless of its actual impact on the domestic workforce, offshoring is perceived as a threat. By virtue of its focus in Asia, this new threat also happens to be similarly racialized. While the white majority tends to cast this situation as a battle of the nations (and by proxy, races), Asian Americans have been largely silent on this issue other than to fight xenophobic reactions. The white majority has framed the debate in a characteristically problematic fashion colored by xenophobic and racist overtones. Now, instead of an “invasion” of foreign workers, the rhetoric is one of loss of “American” jobs to foreign nations and people. An article on the ITPAA website warns that the U.S. is turning into a “3rd world country” due to outsourcing and that the “billion plus” people in Indian “can easily swallow all jobs at all levels from all western and developed countries.”

Notably, the United States has been experiencing a decline in its production of scientific innovation vis-à-vis Europe and especially Asia, at least as seen in the number of awards and patents, and publications in scientific journals. Apparently a significant factor in the decline of the U.S. and the rise of Asia has been the growing tendency since the mid-1990s for Asian doctoral students in the U.S. to return home. William J. Broad, U.S. Is Losing Its Dominance In the Sciences, N.Y. TIMES, May 3, 2004, at A1. See also, e.g., David Stipp, supra note 22, at 126. In fact, there is evidence that post-9/11 restrictions on student visas may have the side effect of enhancing innovation in foreign countries (by keeping highly talented students at home), indicating another way in which the U.S.’s exclusionary immigration policies may be contrary to the interests of its native industries. See Stephen Phillips, Chilly Climate Freezes Talent, TIMES HIGHER EDUC. SUPPLEMENT, Apr. 23, 2004, at 22.

Alarmed commentators have compared the Silicon Valley today to Detroit of the 1980s. See, e.g., Jim Kerstetter et al., Still the Center of this World: But Silicon Valley Remains a Ferociously Expensive Place to Do Business, and Something’s Got to Give, BUS. WEEK, Aug. 25, 2003, at 76 (“From December, 2000, to April, 2003, greater San Jose lost 17.4% of its jobs ... It was the biggest drop from peak employment for one region since the Great Depression – bigger even than the four years of losses, starting in 1978, that cut Detroit’s workforce by 16.5.”).
the same organization states its support for a proposed free trade agreement with Australia, saying that "Australia is a steadfast and reliable ally for the U.S." and that it is time for Americans to show their appreciation for the longstanding "uncompromising friendship" of the Australians.107

Such rhetoric is not limited to some sort of lunatic fringe. The popular newspaper comic strip "Dilbert," which channels the anxieties of the American high-tech worker, weighed in on the offshoring phenomenon in a 2004 strip. The strip first depicts Dilbert’s boss, ever the villain, announcing that the company has outsourced its call centers to “Elbonia,” but that he didn’t think their customers would notice. In the second frame, a hapless “Elbonian” (with a dark, full beard and wearing a turban) answers a customer call with “Hello, how may I help you? My name is Kruphnedanphewundikaniswalyniaporganopop,” before quickly correcting himself, “I mean . . . Carl.”108 “Elbonians” are obviously some sort of Asian and the strip further underscores the inexorable foreignness of Asians with the ridiculous name. “Carl,” familiar and white, presumably then represents the “American” worker who lost his job to the foreigner. The boss’s role, in contrast, is understated. Though he does have devil horn-like hair, the strip does not focus on the boss’s decision to move the jobs, only the Elbonian worker’s foreignness and his acceptance of an American’s job.

This rhetoric is reminiscent of past examples in U.S. history of racial scapegoating during times of heated economic competition. Though initially welcomed as a source of cheap labor for the construction of the transcontinental railroad in the 1850s and 1860s, the Chinese wore out their welcome by the time of the national economic depression of the 1870s.109 The belief that the Chinese were inexorably foreign and could not be assimilated into American society, along with the labor conflicts of that time of economic contraction, soon culminated in the passage of the Chinese Exclusion Act in 1882.110 Professor Ronald Takaki points out that there was actually little objective basis to be concerned about the threat of Chinese immigrants to white labor, for the Chinese constituted only 0.002 percent of the U.S. population at that time, and Congress was really reacting to a new national economic difficulty that Americans were ill-equipped to accept as a psychological matter.111 During the “Japan-bashing” 1980s, when the U.S. automobile industry found itself threatened

110. Id.; TAKAKI, supra note 13, at 110-11.
111. TAKAKI, supra note 13, at 110.
by Japanese imports, the Japanese were understood to be some sort of superhuman: "Brilliant strategists, patient beyond enduring, armed with a cunning that transcends the simple candor of the virtuous West, the Japanese target industries and technologies with a secret master plan."

The implication of being "superhuman," however, is that it is not human. Human, apparently, is normatively white American.

In contrast to the automobile trade wars of the 1980s, where anxiety over the automotive industry arose from the relative decline in the competitiveness of U.S. corporations on the world market and the attendant loss of U.S. jobs, the outsourcing of knowledge-based occupations actually enhances the international competitiveness of U.S. companies by allowing them to cut costs. As a result, there is an even greater element of resentment in the U.S. workers' perception that one's property rights to a job have been usurped by a foreign worker. Even when a U.S. corporation creates in another country new jobs that never existed in the U.S. before, this phenomenon is nevertheless often framed in the rhetoric of active deprivation by the foreign countries; loss of jobs to other states within the U.S. seems to inspire no similar rhetoric among workers. This notion that Asian nations and peoples—and not the white capitalists or multinational corporations who drive and benefit from globalization—are depriving "Americans" of their property is orientalist in nature. At work in today's high-tech labor discourse, then, are both "Orientalism," or the construction of a discourse of a distinct East and West (as described by Edward Said), and "American Orientalism," whereby people of Asian descent are seen as perpetually foreign because the race "Asian" is constructed in opposition to the nationality "American" (while "Caucasian" obviously is not, allowing white immigrants from Europe to be seen as "American"). The term "offshoring" itself connotes a loss to distant lands. The Information Technology Association of America (ITAA), representing the industry in support of international outsourcing, refers to the practice by the racially neutral term, "global sourcing."

---

The phenomenon and debate over offshoring casts into even starker contrast the national and racial interests of Asian American high-tech workers. While the offshoring of knowledge occupations theoretically harms Asian Americans just as much as it does white workers (perhaps even more so, since Asian Americans are employed in high-tech occupations in disproportionate numbers), Asian Americans may find it difficult to positively engage in a dialogue that is informed with a xenophobic and racist perspective. Moreover, Asian Americans may feel racial and cultural pride in the economic development of their homelands beyond that of serving only as low-cost manufacturing centers. The development of Asian homelands can also represent the possibilities of racial liberation for Asian Americans, for they may no longer feel obligated to seek economic opportunities in a racist western world.116

C. Identity in the Face of Global Labor Management and the Emergence of “Virtual Spaces”

The racialized rhetoric over “offshoring” obscures the true nature of the phenomenon of instantaneous shifts of capital investment and rapid capitalistic exploitation possible in an informational global economy. In fact, although the media has so far tended to depict India as the big winner of offshoring, India may itself soon be a victim of capital movement as its living conditions and costs rise.117 The next grand offshore expansion is expected to occur in China.118 The rapid change in fortunes of whole ethnicities and nations may erode traditional notions of identity along such lines, in favor of a heightened self-identification as labor.119 The emergence of “virtual spaces” as sites of production may also challenge traditional notions of identity formed around one’s temporal and spatial situation.120

116 See, e.g., Indian Pros Head Homewards, ECON. TIMES, May 6, 2004 (“[T]he talented Indian workforce across the world ... today they are going back because they feel that things can be done at home now and that there is equal opportunity at home now.”). Apparently, there has been a growing tendency for Asian doctoral students to return to Asia after receiving their degrees. Broad, supra note 102, at A1 (“Analysts say comparative American declines are an inevitable result of rising standards of living around the globe. ‘It’s all in the ebb and flow of globalization.’”).

117 Roger Benjamin, The Environment of American Higher Education: A Constellation of Changes, 585 ANNALS AM. ACAD. POL. & SOC. SCI. 8, 12-13 (2003) (“Globalization [is] a major challenge for all states because of the destabilizing nature of capital flows and loss of comparative advantage in whole economic sectors. Multinational corporations are not held captive to individual states; they invest where it is most profitable for them to do so.”).

118 See, e.g., Maria Trombly, China Starting to Look Good for Outsourcing, SEC. INDUS. NEWS, May 10, 2004 (“Boston technology research firm Gartner Group predicts that China will almost catch up to India in total outsourcing revenues by 2007. $27 billion for China vs. $30 billion for India.”).

119 See Sarah Anderson et al., Toward a Progressive View on Outsourcing, THE NATION, Mar. 22, 2004, at 22 (stating that “the new approach should include supports for internationally recognized labor rights as well as punishments for corporations that violate them”).

120 MANUEL CASTELLS, THE POWER OF IDENTITY 7 (1997) (explaining that identity is constructed from materials whose meanings are determined by social structure and in a space/time
works in an office that resembles workspaces in Santa Clara much more than the conditions under which most of his countrymen toil.\textsuperscript{121} Although most of India’s population remains startlingly poor, its knowledge elites live and work by western standards. Furthermore, when they turn on their computers, they see exactly the same things on their screens as their counterparts around the world.\textsuperscript{122} When one’s nation no longer determines the mode of life and work for whole swaths of its people, and those people work in virtual spaces that obscures the formerly immutable characteristics of race,\textsuperscript{123} is room created for new forms of identity?

VI. CONCLUSION

The rise of a global labor force that can operate unconfined by the bounds of time and space is unprecedented in human history, and presents unique challenges to traditional notions of identity informed by one’s particular temporal and spatial situation. As the most globalized component of the world’s labor force, the transnational Asian knowledge class faces tensions in its group identities and interests that may portend issues facing all of humankind in an increasingly globalized world. In the United States in particular, the transnational Asian knowledge class currently faces scapegoating on the basis of race and national origin for complications arising from globalization it has little control over. Additionally, the white majority seems to view such transnationalism through an orientalist lens, such that the global nature of this Asian knowledge class ends up looking like inexorable foreignness. Then again, the Asian knowledge class, freed from the confines of time and space, may come to develop a primary self-identity on a basis other than or beyond that of race or national origin.

The external and internal tensions facing Asian Americans and Asian knowledge workers may be the first manifestations of the new complexities of identity in an increasingly global society. Perhaps the tensions between identities will be resolved by the development of a new global labor consciousness that spans race, ethnicities, and nationality. The accelerated pace of capitalist expansion enabled by advancements in information technology and liberalization of international trade regulations means that no group of people narrowly defined by race, ethnicity, or nationality could ever be secure in its role in the global economy. To take an example from industrial outsourcing, auto manufacturer BMW used its ability to set up...
factories in the lower-cost U.S. to negotiate labor protection standards downwards in Germany.\textsuperscript{124} Clearly, the standards of what is considered accepted conditions for labor is relative, and the fortunes of entire workforces are fluid. The greater speed with which production can be shifted in knowledge-based industries versus manufacturing, then, may affect such conditions faster and to a greater extent. Global class insecurity may eventually lead to the development of a heightened global class consciousness.

As the cold hand of globalization moves over ever greater swaths of the world, people the world over may one day come to establish a common labor identity, and recognize that the most powerful response to global capitalism's relentless logic is global unity. This, perhaps, could be globalization's best possible gift to the world.