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When the “Coloreds” Are Neither Black nor Citizens: The United States Civil Rights Movement and Global Migration

William R. Tamayo†

In this time of great national concern over the control of American borders and the legal and social status of immigrants, the traditional Civil Rights Movement is at a crucial stage. In this Article, the author finds that the Civil Rights Movement, which operates in a primarily “Black v. white” paradigm, is ill-equipped to deal with an increasingly multiracial and multicultural America. In particular, the influx of great numbers of new immigrants from Asia and Latin America—who are neither Black nor white—calls for the Civil Rights Movement to re-evaluate its current framework. The author describes the phenomena of anti-immigrant legislation and political scapegoating which has resulted from the changing demographic landscape, and explores the mutual misunderstandings which have arisen between Blacks and the newer “coloreds.” The Article argues that these prejudices have prevented the formation of a multiracial civil rights coalition. The author suggests that racism is the common threat which links together Blacks, Asians, and Latinos, as nativism and anti-immigrant sentiment are rooted in racism. The author advocates for a renewed Civil Rights Movement, one which replaces the more restrictive biracial vision with a new vision which encompasses the new immigrants.

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It’s no accident that the Statue of Liberty faces Europe and has her back to Asia and Latin America.

-Professor Bill Ong Hing, Stanford University School of Law.

INTRODUCTION

In the midst of global economic and migratory upheavals, the United States is experiencing a major resurgence in racism, xenophobia, and hate crimes. In response to these new and complex phenomena, policy makers and politicians are resorting to old, though not politically time-worn, approaches. Nativism, racially-driven images, and finger-pointing have dominated many proposed or recently adopted policies. Not surprisingly, leaders in the civil rights community are confused and overwhelmed by these recent phenomena and sometimes seem immobilized, lost, or divided on cutting-edge issues affecting poor, non-white people who are neither Black nor citizens. Lacking strong pressure from a unified Civil Rights Movement but strongly pressured by those who want the “good old American (that is, white) days,” a bipartisan coalition has decided that it is politically profitable to once again blame non-white immigrants for America’s economic misery. Such scapegoating of immigrants culminated on November 8, 1994, when California voters—with the strong support of Governor Pete Wilson—passed Proposition 187, the so-called “Save Our State” initiative. Proposition 187 requires public school officials, public health care providers (including any private health care facility that receives public funds), public social service providers, and law enforcement officials to report suspected undocumented aliens to the Immigration and Naturalization Service (INS) and the California Attorney General. It mandates the denial of public education, health services, and social services to the undocumented.


2. For purposes of this article, I use “Black” and “African American” interchangeably. It should be noted, however, that some immigrant communities—e.g. Haitians and Dominicans, which are “Black” within the context of U.S. social categories—view “African American” as an improper descriptive category for them. Author’s discussion with Robert Allen, former editor of THE BLACK SCHOLAR, in San Francisco, Cal. (June 1994).

3. I use the term “immigrants” in this article to refer to those who are foreign-born and not citizens, including the undocumented. I use the term “undocumented” to refer to those who entered the United States without inspection in violation of the immigration laws, or who otherwise violated the conditions of their stay—e.g. by overstaying or working without authorization—and have not been able to convert to legal status.


While there has been legal representation and advocacy for the immigrant community by some sectors of the Civil Rights Movement, those quarters remain relatively small and are not in positions of leadership. Unfortunately, some in leadership positions, including the National Association for the Advancement of Colored People (NAACP) and the Leadership Conference on Civil Rights (LCCR), have at times equivocated upon or failed to take up the cause of immigrants. Furthermore, they have on occasion viewed non-white immigrants as the cause of problems for the African American community.

In light of the current political climate and the new era of global migration, however, the Civil Rights Movement must reexamine its present framework, which is inadequate to address the unprecedented global migration and globalized racism of today. The lack of a united stand by the Civil Rights Movement in addressing issues affecting immigrants indicates that the movement’s vision is limited by nativist and racial blinders rooted in the movement’s past. In determining its mission for this and following decades, the movement must look not to the differences but to the commonalities between the traditional civil rights community (in particular, the African American community) and the new, non-white immigrants. Racism, whether it is in the form of Proposition 187 or attacks on affirmative action, is the common threat that binds together all non-whites and the Civil Rights Movement.

I. BACKGROUND

A. The History of the United States Civil Rights Movement

1. The Early Development of the Civil Rights Movement

The U.S. Civil Rights Movement is rooted in a centuries-long struggle against the racism aimed not only at African Americans, but also at


9. Hearings on S. 1200, supra note 8, at 383.

10. One notable exception, which this article addresses, was the civil rights community’s criticism of Proposition 187. Organizations like the Legal Defense and Education Fund of the National Association for the Advancement of Colored People, the Mexican American Legal Defense and Education Fund, and the Southern Christian Leadership Conference voiced their opposition to the initiative and brought to light the proposition’s racist underpinnings.

11. For purposes of this article, I define the “Civil Rights Movement” as that movement which originated in the struggle for Black equality during the 1920s. This movement eventually grew to encompass a broad array of organizations from the Jewish, Asian, Latino, women’s and labor sectors in
Latinos, Asian Americans, Arab Americans, and Native Americans. This fight has shaped the development of civil rights law and serves as a measuring stick for the Civil Rights Movement's progress.

The NAACP has been a perennial leader in the Civil Rights Movement. Its legal arm, the NAACP Legal Defense and Educational Fund (NAACP LDF), was formed principally to attack Jim Crow policies. Its efforts were critical in historical victories against legal segregation and helped set the tone and standard of advocacy for the Civil Rights Movement.

Non-Black civil rights organizations that formed in response to racial discrimination against other non-whites include the Mexican American Political Association, Mexican American Legal Defense and Education Fund (MALDEF), National Council of La Raza, Japanese American Citizens League (JACL), Chinese American Citizens' Alliance, and National Lawyers Guild. However, although Latino, Asian, and other non-Black civil rights organizations formed, Black organizations have historically taken the lead in the Civil Rights Movement. This may be partially explained by the fact that the struggle against racism, which has been and remains the fulcrum of the Civil Rights Movement, has most acutely affected the African American community.

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12. The NAACP LDF eventually became an independent entity from the NAACP. Although the two are now distinct organizations, they share the common goal of eradicating racism.
13. See Juan Williams, Eyes on the Prize 10-16 (1987) (explaining that the NAACP LDF's original purpose was to fight Jim Crow policies as applied to schools).
14. Id. at 16-35.
15. I have chosen to use the term "Latino" over "Hispanic" because it more accurately describes the experience in the United States (principally with racism and national origin discrimination) of persons of Latin American descent. This would include, but is not limited to, Mexicans, Salvadorans, Guatemalans, and Puerto Ricans (although Puerto Ricans are citizens by birth as a result of Puerto Rico's commonwealth status).
16. I use the term "Asian" interchangeably with the term "Asian American" to refer to people whose ethnic origins lie in the continent of Asia, including the Indian subcontinent. However, those originating from Asia Minor, commonly called the "Middle East," are not included within the scope of "Asian" or "Asian American."
17. See Kirschten, supra note 8, at 499 (Kirschten mentions that the LCCR has always been headed by a top official of the NAACP).
Key civil rights laws such as the Civil Rights Act of 1964, the Voting Rights Act of 1965, and Executive Order 11,246, which mandated affirmative action in federal contracts, are products of the movement’s efforts. Such legislation comprises a crucial portion of American civil rights laws.

The fight against racism is also the cornerstone of the battle for immigrant rights in the United States. As discussed below, the involvement of the African American community in the pro-immigrant portion of the struggle against racism is critical. In fact, it may be determinative of the success of non-white, immigrant communities in battling the racism underlying immigration policy.

2. The Failure of the Civil Rights Movement to Address the Needs of the Non-Black, Non-white Population

While the Civil Rights Movement has a proud tradition of advocating for the disenfranchised, there have been periods when the movement has failed to do so, allowing non-white, non-Black populations to fall through the cracks. One such incident was the incarceration without due process of 110,000 Japanese Americans, many of whom were U.S. citizens, under Executive Order 9066, signed by President Franklin Roosevelt in 1942. Traditional civil liberties organizations failed to lobby effectively on behalf of the Japanese Americans and their non-citizen parents. In fact, even the Japanese American Citizens League failed to challenge the internment.

The failure of other civil rights organizations to challenge the internment may have been influenced by the JACL’s inaction. The American Civil Liberties Union (ACLU) initially attacked the constitutionality of Executive Order 9066, but the ACLU’s national board, as a result of personal and partisan loyalty to President Roosevelt, refused to challenge the constitutionality of Executive Order 9066 on appeal. This policy decision triggered a fierce internal battle within the ACLU, and effectively crippled the ACLU’s arguments to the Supreme Court on behalf of Japanese Americans. Similarly, the National Lawyers Guild, an organization of progressive attorneys, failed to challenge the discriminatory Executive Order and

23. Id. at ix.
24. Id.
allowed decades to pass before it publicly recognized its error.\textsuperscript{25} Only a handful of organizations, including the ACLU affiliates in Seattle and San Francisco and the American Friends Service Committee (the social service branch of the Quakers), challenged the internment.\textsuperscript{26}

Immigrant Mexican farmworkers have also been left largely unprotected by the traditional Civil Rights Movement. They have been welcomed into our country in times of need—such as by the Emergency Farm Labor Program (known as the “bracero” program) from the World War II era through 1964—and then subjected to massive deportation when such demand subsided.\textsuperscript{27} In one such campaign, the U.S. government launched “Operation Wetback,” an endeavor to arrest and summarily deport from this country over one million workers of Mexican descent.\textsuperscript{28} “Assisted by federal, state, and county officials, along with the FBI, [A]rmy, [N]avy and, supported by aircraft, special units, and public sentiment, the Border Patrol launched its most extensive campaign against a highly vulnerable Mexican labor force.”\textsuperscript{29} Many of those deported through this program were U.S. citizens by birth.\textsuperscript{30} Few challenges were mounted against this massive civil rights violation.

In recent years, as the opposition to Proposition 187 attests, the plight of immigrants and the discrimination they face have gained some recognition within the traditional Civil Rights Movement.\textsuperscript{31} In fact, civil rights groups like the ACLU and MALDEF have argued for the legal protection

\begin{flushright}
\textsuperscript{25} Forty-five years after Executive Order 9066 was issued, the National Lawyers Guild formally acknowledged its failure to challenge the order. \textit{Nat’l Lawyers Guild Foundation, A History of the National Lawyers Guild (1937–1987)} 18 (1987) (50th Anniversary Convention Booklet). See also id. at 180-81.
\textsuperscript{26} \textit{Irons, supra} note 22, at 90, 131-32, 187.
\textsuperscript{28} \textit{U.S. Comm’n on Civil Rights, The Tarnished Golden Door: Civil Rights Issues in Immigration} 11 (1980) [hereinafter \textit{Tarnished Golden Door}].
\textsuperscript{29} Gomez-Quinones, \textit{supra} note 27, at 26.
\textsuperscript{30} \textit{Tarnished Golden Door, supra} note 28, at 11
\textsuperscript{31} B. Drummond Ayres, Jr., \textit{Minorities Join California Fight}, \textit{N.Y. Times}, Nov. 1, 1994, at A1, A21 (quoting Joe Hicks of the Southern Christian Leadership Conference and John Mack of the Urban League); Joe R. Hicks & Constance L. Rice, \textit{Perspectives on Proposition 187}, \textit{L.A. Times}, Nov. 4, 1994, at B7 (editorial by the NAACP LDF Regional Counsel and the Exec. Director of the SCLC). Fifty-four percent of Asian Americans and 56% of African Americans voted against the measure; 78% of Latinos voted against the measure. \textit{Democratic Wipeout, Voter Anger and California’s Challenge}, \textit{L.A. Times}, Nov. 10, 1994, at B6. As these figures attest, a significant proportion of the minority population opposed the initiative.
\end{flushright}
of immigrants with respect to voting rights,\textsuperscript{32} employment,\textsuperscript{33} and INS abuses.\textsuperscript{34} However, that advocacy has thus far been limited to a few legal organizations and does not necessarily reflect general support from the civil rights community regarding those issues.

3. The Contemporary Civil Rights Movement

Despite its failure at times to protect non-Black, non-white populations, the U.S. Civil Rights Movement has a rich history of legal and political victories upon which it can build an advocacy on behalf of the new, non-white immigrants. Indeed, many immigrants, especially non-white immigrants, owe much of their current success and opportunities to the Civil Rights Movement. For example, the Civil Rights Movement’s attacks on \textit{de jure} and \textit{de facto} discrimination through litigation produced landmark victories in constitutional law.\textsuperscript{35} The equal protection clause of the 14th Amendment\textsuperscript{36} has frequently been employed as a major weapon against discriminatory government practices and legislation.\textsuperscript{37} In fact, some early 14th Amendment challenges targeted \textit{de facto} discriminatory policies aimed at the Chinese in California.\textsuperscript{38} Over the last 50 years, courts have recog-

\begin{itemize}
  \item \textsuperscript{32} See, e.g., Garza v. County of Los Angeles, 918 F.2d 763 (9th Cir. 1990) (holding that redrawing of county supervisor districts was discriminatory) (ACLU and MALDEF served as plaintiff’s co-counsel), \textit{cert. denied}, 498 U.S. 1028 (1991); Gomez v. City of Watsonville, 863 F.2d 1407 (9th Cir. 1988) (holding that at-large elections violated the voting rights of Latino voters), \textit{cert. denied}, 489 U.S. 1080 (1989).
  \item \textsuperscript{33} See, e.g., Patel v. Quality Inn South, 846 F.2d 700 (11th Cir. 1988) (holding that law barring the hiring of undocumented workers did not deny those workers minimum wage protections in the Fair Labor Standards Act) (amicus brief filed by ACLU), \textit{cert. denied}, 489 U.S. 1011 (1989); EEOC v. Tortilleria La Mejor, 758 F. Supp. 585 (E.D. Cal. 1991) (holding that immigration status of an undocumented worker is irrelevant in sex-discrimination case under Title VII of the Civil Rights Act of 1964) (Equal Rights Advocates and Asian Law Caucus were counsel to plaintiff-intervenor Alicia Castrejon; ACLU, Service Employees International Union, and International Ladies Garment Workers Union filed amicus briefs in support of plaintiff-intervenor).
  \item \textsuperscript{34} See, e.g., \textit{Int’l Molders’ and Allied Workers’ Union Local No. 164 v. Nelson}, 799 F.2d 547 (9th Cir. 1986) (granting injunction against unconstitutional raids by the INS in Northern California) (ACLU served as counsel for plaintiffs-appellees the International Molders’ and Allied Workers’ Union).
  \item \textsuperscript{35} See, e.g., Palmore v. Sidoti, 466 U.S. 429 (1984) (barring consideration of a parent’s interracial relationship in custody decision); Katzenbach v. McClung, 379 U.S. 294 (1964) (upholding Congress’ power to prohibit segregated public facilities under the commerce clause); Brown v. Board of Education, 347 U.S. 483 (1954) (ruling that segregated educational facilities were inherently unequal).
  \item \textsuperscript{36} The 14th Amendment states: “No state shall make or enforce any law which abridges the privileges or immunities of United States citizens; nor shall any State deprive any person of life, liberty, or property without due process of law; \textit{further, no State shall deny any person within its jurisdiction of equal protection of the law.” U.S. Const. amend. XIV, \textsection 1 (emphasis added).
  \item \textsuperscript{37} See, e.g., Plyler v. Doe, 457 U.S. 202 (1982) (striking down Texas law that would have prohibited the use of public funds to educate undocumented children); Graham v. Richardson, 403 U.S. 365 (1971) (striking down two state statutes that denied welfare benefits to resident aliens); Loving v. Virginia, 388 U.S. 1 (1967) (striking down Virginia statute that prohibited marriages between whites and non-whites).
  \item \textsuperscript{38} See, e.g., \textit{Yick Wo v. Hopkins}, 118 U.S. 356 (1886) (finding a violation of equal protection in the discriminatory administration of a laundry licensing regulation).
\end{itemize}
nized that race is a “suspect” classification, and have required the existence of a “pressing public necessity” before denying access or benefits on the basis of race.39

The Civil Rights Movement of today can succeed where it has failed in the past to protect the rights of non-Black, non-white Americans. Unfortunately, for a variety of reasons, the Civil Rights Movement presently lacks direction and strategic vision. At the national level, tensions have developed within the NAACP over the organization’s focus. The recent election by a narrow 30-29 margin of Myrle Evers-Williams as the organization’s chairwoman underscores the divisions between an old guard and a newer generation with broader concerns and outlooks.40 The continued relevance of the NAACP may depend upon incorporating the energies and concerns of younger people into the organization’s agenda.41 In addition to questioning the NAACP’s ability to formulate a unified goal for the contemporary Civil Rights Movement, many have also publicly questioned whether the National Urban League is really a civil rights player or merely a corporate creation that plays no real advocacy role.42

However, the weakened state of the Civil Rights Movement today, in comparison to the period when Martin Luther King, Jr. and Thurgood Marshall were its leaders, is not exclusively the fault of its current leadership. Rather, it is the result of a number of factors. The assassinations of visionary Black civil rights leaders, such as Medgar Evers, Malcolm X, and Martin Luther King, Jr., retarded the development of the Civil Rights Movement and its ability to adapt to the changing needs of the community. Also, the Civil Rights Movement has suffered from conflicts between the sometimes radically different political agendas of each of the movement’s constituent groups and from the resulting inability of the movement to articulate a more comprehensive vision.43

Regardless of the cause of its problems, this fractured and sometimes rudderless contemporary Civil Rights Movement must deal with divisive modern-day issues—such as the debate over immigration—which could potentially destroy this carefully built civil rights coalition. The broad character of its constituency is a potential strength of the Civil Rights Movement, but this very broadness calls for the articulation of a clearer common ground.


41. See id. at 6.


43. See, e.g., discussion of conflict within Civil Rights Movement over employer sanctions for hiring undocumented workers infra Part II.C.1.
B. Global Migration and Its Effect on the United States

Of course, the U.S. Civil Rights Movement does not exist within a static environment. Throughout its history, the U.S. Civil Rights Movement has had to adapt to a continuously changing social, economic, and political landscape in America. Recently, American society has been significantly affected by changing patterns of global migration.

1. Global Migration

Global migration is a significant modern phenomenon. In early 1993, the World Bank announced that 100 million people were living in countries other than their places of birth and international migration had reached epic proportions. Soon after, the United Nations High Commissioner for Refugees reported that there were over 44 million refugees in the world. Not surprisingly, global migration at these unprecedented levels has transformed the populations of many countries throughout the world. The United States is no exception.

Global migration to the United States has also reached significant levels. It is estimated that approximately 800,000 to 850,000 immigrants enter the United States legally each year; in 1992, approximately 200,000 to 300,000 undocumented immigrants also entered this country. In recent years, Latin America and Asia have contributed the largest inflow of immigrants to the United States. Economic factors such as poverty and hope of finding employment often supply the motive for migration to the United States.

<table>
<thead>
<tr>
<th>COUNTRY</th>
<th>1994 TOTAL</th>
<th>1993 TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mexico (27.2%)</td>
<td>983,966</td>
<td>856,228</td>
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<tr>
<td>Philippines (15.7%)</td>
<td>568,552</td>
<td>494,580</td>
</tr>
<tr>
<td>India (7.2%)</td>
<td>260,188</td>
<td>258,646</td>
</tr>
<tr>
<td>China–mainland</td>
<td>192,291</td>
<td>188,533</td>
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<td>China-Taiwan</td>
<td>113,388</td>
<td>117,838</td>
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<tr>
<td>Korea</td>
<td>108,869</td>
<td>124,355</td>
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<tr>
<td>Vietnam</td>
<td>158,493</td>
<td>101,085</td>
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<tr>
<td>Dominican Republic</td>
<td>103,139</td>
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<td>El Salvador</td>
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<td>Jamaica</td>
<td>64,352</td>
<td>67,992</td>
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<tr>
<td>Haiti</td>
<td>68,563</td>
<td>64,816</td>
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<tr>
<td>Hong Kong</td>
<td>62,638</td>
<td>65,342</td>
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<tr>
<td>Pakistan</td>
<td>56,946</td>
<td>63,332</td>
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<tr>
<td>Guyana</td>
<td>46,640</td>
<td>45,504</td>
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<tr>
<td>Poland</td>
<td>43,023</td>
<td>42,661</td>
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<tr>
<td>Guatemala</td>
<td>42,430</td>
<td>47,319</td>
</tr>
<tr>
<td>All others</td>
<td>646,824</td>
<td>661,173</td>
</tr>
<tr>
<td>Worldwide Total</td>
<td>3,612,121</td>
<td>3,393,193</td>
</tr>
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</table>
States. For example, in Mexico, economic turmoil and deteriorating standards of living in the mid-1980s may have prompted undocumented immigration. A significant number of migrants are also fleeing political and social strife at home. In the Philippines, political repression and economic devastation under Ferdinand Marcos created a large migration of both legal and illegal immigrants to the United States.

2. **The Impact of Global Migration on the United States**

Thirty years ago, the Immigration Act of 1965 struck racially restrictive national origins quotas from our immigration laws. This led to an increase in the legal immigration of non-whites into this country. Two and a half decades after the 1965 Act, the highly debated Immigration Act of 1990 reaffirmed family reunification as the cornerstone of U.S. immigration policy and encouraged the immigration of aliens with specialized job skills. Not surprisingly, the demographic makeup of the American population has changed significantly, due in part to the relaxation of immigration restrictions during this era of global migration. Between 1980 and 1990, the Latino population grew from 6.4% to 9% of the total population and the Asian population grew from 1.5% to 2.9% of the total population; during this same period, the Black population only expanded from 11.7% to 12.1% of the United States population. Currently in California, Latinos and Asians are 25.8% and 9.1% of the population, respectively, while African Americans comprise only 7% of the population.

The United States economy remains dependent upon the pool of skilled workers and professionals provided by this influx of immigrants to the United States—a pool of laborers that the American education system has failed to produce but that is needed for U.S. corporations to remain competitive in the world economy. Reflecting this need, the Immigration Act of 1990 increased the total number of available employment-based

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49. The Seekers, supra note 44, at 124. The U.S. agricultural industry is dependent on immigrant labor, both documented and undocumented, for production. This is one “pull factor” for immigration. Harry Bernstein, Growers Still Addicted to Foreign Workers, L.A. TIMES, Oct. 2, 1985, pt. IV, at 1, 5.


52. Tarnished Golden Door, supra note 28, at 11.


visas from 54,000 to 140,000. Thus, despite all the clamor and rhetoric in Congress for "jobs for Americans," Congress passed legislation that would bring about the importation of skilled workers and increase the pool of foreign students seeking education in the United States. Arguably, however, the existence of well-educated research scientists in America, regardless of their immigration status, will further technological developments in the American scientific community. This will in turn allow American industries that employ and depend on these U.S.-educated foreigners to also maintain the jobs of U.S. workers whose employment is contingent on these research funds. At the same time, the training of skilled professionals who eventually return to their homelands provides U.S.-based corporations abroad with individuals to manage their foreign research and production shops.

Despite these facts, immigrants are still perceived by African Americans as taking jobs away from American citizens. In reality, immigration has little measurable impact on the citizen workforce taken as a whole. The effect upon African Americans varies, with immigration appearing to increase labor market opportunities in economically strong regions, but reducing them in weak labor markets. The only workers clearly disadvantaged by immigration are other new immigrants.

Nothing suggests that the current pattern of global migration will halt in the immediate future. Many have waited for years to be reunited with relatives in the United States. Approximately 1.7 million persons of Asian descent alone are registered for entry visas to this country. Furthermore, the U.S. economy continues to be dependent on immigrant labor. Thus, it is likely that American corporations will continue to support the import and use of immigrant labor.

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59. See generally Endelman & Loughran, supra note 57, at 5.
60. Id. at 5, 7.
61. See id. at 3, 11.
62. See id. at 18-19.
64. Fix & Passel, supra note 46, at 49.
65. Id. at 50.
66. Id. at 51.
68. Id. at A4.
69. See Endelman & Loughran, supra note 57, at 5, 6; Bernstein, supra note 49, at 5.
II.
The Division in the Civil Rights Movement Over Immigration Issues

A. Hostilities Between New Immigrants and the African American Community

At a time when urban poverty and violence have reached epic proportions, hostilities towards newcomers, who are largely people of color, have been forthcoming from various segments of the American population. Ironically, it is newcomers who have established the businesses which are revitalizing abandoned urban areas. Nevertheless, immigrants have become the targets of hostility from the African American community; citizens, both naturalized and native-born, of Latino and Asian heritage; the U.S. government; law enforcement agencies; and politicians.

Hostility between the African American community and new immigrants is acute. Some leaders in the African American community have asserted that African Americans are competing with immigrants for jobs. This sentiment is described by writer Wanda Coleman:

Blacks squeezed out of the local economy in L.A. were likewise being squeezed out nationally. Economic statistics repeatedly illuminated the concurrence of events that have conspired to marginalize struggling blacks. The increasing influx of immigrants exacerbated our crisis. While blacks were being pushed out of the marketplace by recession and widespread apathy, that same American marketplace was accommodating a ground swell of immigrants, privileged and underprivileged, from as far away as the former Soviet Union, the Middle East, Vietnam and Korea. Their presence pushed blacks out of the marketplace altogether.

The "Black v. immigrant" conflict was reflected in the riots following the acquittal of the police officers tried for beating Rodney King. During
those riots, Korean merchants in South Central Los Angeles suffered nearly one-half of the $750 million in total riot-related damages.\textsuperscript{79} The Koreans—those mostly immigrant storeowners without strong English skills, experience with cross-cultural dynamics, or knowledge of the African American community—were unable to connect with local African Americans.\textsuperscript{80} Thus, some in the African American community perceived the Korean immigrants as the “enemy” because the Koreans operated many of the small businesses in South Central Los Angeles and did not always have good relations with African American customers.\textsuperscript{81} As one Asian American leader in Los Angeles said about the riots, “to some extent, Asian businesses took the place of white businesses targeted during the Watts riots. There was anger at the whole justice system, but it also was aimed at Asian owned businesses. There was scapegoating.”\textsuperscript{82}

In response, many Korean immigrants reacted with hostility toward the African American community. Many Korean merchants armed themselves with weapons to quell their fears of African Americans.\textsuperscript{83} Even before the riots, the shooting death of Latasha Harlins\textsuperscript{84} caused strife between the African American and Korean immigrant communities.\textsuperscript{85} Soon Ja Du, the Korean shopkeeper who shot Harlins, was convicted of voluntary man-

\textsuperscript{79} Gannett News Service, May 10, 1992, \textit{available in Lexis, News Library, WIRES File.}

\textsuperscript{80} Earl Ofari Hutchinson, \textit{Fighting the Wrong Enemy; Relations Between African Americans and Korean Americans}, 253 THE NATION 554, 554-55 (1991). In offering advice to resolve the tensions, Hutchinson notes:

\begin{quote}
In a larger sense, the Korean-[B]lack conflict reflects the profound leadership crisis that both groups face in an era of liberal retreat and increasing scarcity. Acutely aware of their continued exclusion from America’s economic mainstream, many Korean merchants see African Americans as a threat to their economic turf. In press conferences, they have repeatedly depicted [B]lack neighborhoods as crime-ridden and dangerous. Their aim seems to be to deflect criticism and win press sympathy. . . . But it is not just their visibility or business practices that have made the Korean merchants easy targets for [B]lack anger. A decade of Reagan and Bush Administration assaults on civil rights and job and social programs has left the [B]lack poor even more marginalized and powerless. . . . Korean merchants can insure good will and continued patronage by treating [B]lacks as honest customers, not as thieves or potential thieves. . . . Korean business associations can work directly with [B]lack community organizations on economic development and neighborhood improvement programs. . . . For [B]lack leaders, the task of peacemaking is even more urgent. Picketing or boycotting Korean merchants will not solve the massive problems of crime, drugs, unemployment, inadequate health care and educational collapse, nor will it halt the erosion of civil rights gains. The Korean merchants could be a vital part of the [B]lack struggle for empowerment. . . . These are elementary codes of conduct that both sides can adhere to if there is to be an end to the bloodletting. African Americans and Koreans both carry the twin burdens of economic and racial oppression. Id. at 555.
\end{quote}

\textsuperscript{81} Id. at 554.

\textsuperscript{82} Aurora Mackey, \textit{Rebuilding the City, Rebuilding the Faith}, CALIFORNIA LAWYER, May 1994, at 50-51 (statement of Stewart Kwoh, Executive Director of the Asian Pacific American Legal Center).


\textsuperscript{84} See supra note 78 and accompanying text.

\textsuperscript{85} Coleman, supra note 76, at 187. See also Katz & Lee, supra note 83, at 1.
slaughter, but only sentenced to 400 hours of community service, a $500
down, the reimbursement of funeral costs to the Harlins family, and probation
for five years.86

The African American community and the new immigrant community
continue to be suspicious of each other, and are only beginning to explore
possible ways to fight their common source of marginalization within
American society. The creation of a strategic alliance between the African
American community and the new immigrant community will be an uphill
struggle. As observed by Wanda Coleman, "[a]lliances between [B]lacks
and immigrants are troubled because the two groups profoundly misunder-
stand each other: While the immigrant populations . . . expect rational
behavior from [B]lacks driven mad by poverty and racism, [B]lacks expect
immigrants to empathize with our plight the minute they set foot on our turf
. . . ."87 Despite these odds, that alliance is a necessary one.

Even if the African American community is willing and able to sup-
port the new immigrant community, it has battles to fight which are closer
to home. Affirmative action programs have recently come under attack,88
threatening important past achievements of the Civil Rights Movement.
The 1980s and 1990s have also seen the continued demonization of the
African American community. African American males have been stere-
typically portrayed either as criminals89 or as unfair competition against
white males for employment and educational opportunities.90 African
American women on public assistance have been cast as "welfare queens"
who are unwilling to work.91 New congressional proposals have targeted
welfare-dependent young women, who have been erroneously portrayed as
predominantly African American.92 Consistent with these developments
has been a growing sense of futility among poor African Americans. In the
words of Professor Cornel West, it has become a "nihilism that increasingly
pervades black communities."

86. Coleman, supra note 76, at 190.
87. Id. at 189.
88. See, e.g., B. Drummond Ayres, Jr., Cutting-Edge Californians Take Up Affirmative Action,
N.Y. Times, Mar. 26, 1995, at 13; Susan Yoachum, Affirmative Action Facing Hard Times; Whites Take
89. See, e.g., David Shaw, Negative News and Little Else: By Focusing on Crime, Poverty and
Aberrant Behavior, Newspapers Fail to Give a Complete Portrait of Ethnic Minorities, L.A. Times,
91. See Wade Henderson, Contract on Black America, EMERGE, Mar. 1995, at 48, 50; Barbara
Mathias, The Sisterhood: Black Women Learning to Value Their Self-Esteem, WASH. POST, Jan. 31,
1994, at D5.
92. See Henderson, supra note 91, at 50. Central to the efforts to gain support for these "welfare
proposals," is the attempt to paint welfare recipients as predominantly Black when in fact whites
numerically outnumber Blacks as public benefits recipients. John Nichols, The Progressive Interview:
93. CORNEL WEST, RACE MATTERS 22 (1994).
that of whites,\textsuperscript{94} poverty rates over three times that of whites,\textsuperscript{95} and with African Americans making up over 45 percent of the inmates in state and federal prison,\textsuperscript{96} the dire situation of the African American community is plainly evident.\textsuperscript{97} Given these conditions and an accompanying sense of desperation, it is not surprising that some segments of the African American community have called for the further marginalization of the non-white, non-citizen sector, in the belief that it may improve their own lot in society.

\section*{B. Political Scapegoating of Immigrants}

Even as the United States continues to be dependent on immigrant labor,\textsuperscript{98} the recent economic downturn has heightened animosity toward the new "coloreds"—immigrants from Asia, Latin America, the Middle East, and the Caribbean.\textsuperscript{99} These groups, historically excluded from entry into the United States on the basis of race, have become targets of a racially driven fury within this country. This is not unusual, as immigrants in the United States have been blamed for economic and social problems throughout U.S. history, from Chinese immigrant laborers in the 1870s\textsuperscript{100} to Southern and Eastern European immigrants in the first decade of this century.\textsuperscript{101}

The California political landscape provides an elucidating illustration of the current political battle over America's immigration issues. With its location along the western coast of the United States, and its southern border along Mexico, California has been an obvious point of entry for large numbers of immigrants—both legal and illegal. Immigrants have arrived in California throughout its history, and there have often been political backlashes against these immigrants from native communities.\textsuperscript{102} Immigrants continue to cross California's borders today, and with its large immigrant population and a continuing influx of newcomers, the current political cli-

\textsuperscript{94} During the Reagan and Bush administrations, the difference between these two rates grew even larger. By 1990, the Black unemployment rate was 2.76 times greater than the white unemployment rate. \textit{Andrew Hacker, Two Nations: Black and White, Separate, Hostile, Unequal} 103 (1992).
\textsuperscript{95} \textit{Id.} at 100.
\textsuperscript{96} \textit{Id.} at 180.
\textsuperscript{97} While the Black community is perhaps the worst off in this respect, other non-white communities have also fared less well than whites. For example, Asian poverty rates are roughly twice that of whites. \textit{William P. O'Hare & Judy C. Felt, Asian Americans: America's Fastest Growing Minority Group} 6-7 (1991).
\textsuperscript{98} Bernstein, \textit{supra} note 49, pt. IV, at 5.
\textsuperscript{99} \textit{See} Gallup Organization, \textit{supra} note 1, at A4.
\textsuperscript{100} \textit{Tarnished Golden Door, supra} note 28, at 8.
mate in California has become center stage for many crucial immigration issues.

Given this political and social climate, it is hardly surprising that various local, state, and national politicians have turned to immigration issues as a means of increasing their points in the polls. In 1993, California Democrats, including then-Treasurer and prospective gubernatorial candidate Kathleen Brown, called for enforcement of employer sanctions, notwithstanding the fact that they were fraught with civil rights problems. Brown offered her own proposals to curb illegal immigration: 1) increase employer sanctions enforcement, 2) use a "secure identification card" for legal residents to determine eligibility for work and benefits, and 3) have undocumented felons serve their time abroad. Democratic California Senator Barbara Boxer proposed sending the National Guard to the U.S.-Mexico border to work with the Border Patrol. This move caused great alarm in Latino communities since the Border Patrol has been responsible for numerous acts of misconduct and violence at that border. California Senator Dianne Feinstein, also a Democrat, proposed a one dollar border-crossing toll to help pay for more Border Patrol agents. Furthermore, Republican California Governor Pete Wilson has advocated amending the 14th Amendment in order to deny citizenship to U.S.-born children of undocumented aliens and to allow states to deny public education to undocumented students. He also proposed the idea that eventually manifested itself as the recently passed Proposition 187, despite a Supreme Court ruling that such a measure would violate the 14th Amendment.

106. The General Accounting Office found that 19% of employers polled unlawfully discriminated on the basis of national origin and citizenship as a result of the employer sanctions law. U.S. Gen. ACCOUNTING OFFICE, IMMIGRATION REFORM: EMPLOYER SANCTIONS AND THE QUESTION OF DISCRIMINATION 38 (Mar. 1990).
108. See Kershner, supra note 107, at A15.
112. See supra notes 4-6 and accompanying text.
Thus, immigrants in the United States are facing political opposition from both Republicans and Democrats, and they have become convenient scapegoats for this country's economic woes. Unfortunately, the anti-immigrant sentiment among political leaders is a mere reflection of a growing anti-immigrant sentiment within the larger American society. As one Latino politician notes about the current period, "[t]he political environment is very racist and discriminatory. Politicians are staking out their positions. It seems like there's an arms race of anti-immigrant proposals."\textsuperscript{114}

C. Anti-Immigration Legislation

Proponents of legislative attempts to curb immigration have argued that immigrants are hurting the U.S. economy and becoming an unwarranted burden on this country.\textsuperscript{115} The Select Commission on Immigration and Refugee Policy, created by President Jimmy Carter, held hearings in 1979–1980 to lay the groundwork for an overhaul of immigration laws in order to curb immigration.\textsuperscript{116} While the hearings provided a forum where civil rights and immigrant rights advocates could articulate their concerns, the hearings also placed a general governmental imprimatur on the growing restrictionist movement that sought stiff measures to stop illegal immigration. From 1982 to 1985, various measures were introduced in Congress to curb both legal and illegal immigration, but all failed to pass.\textsuperscript{117}

The anti-immigrant sentiment was eventually codified in the Immigration Reform and Control Act of 1986 (IRCA), which introduced two major changes in the law. The first was a legalization program allowing undocumented persons to gain lawful temporary resident status and eventually permanent resident status and U.S. citizenship upon meeting one of the following criteria: 1) entry into the United States before January 1, 1982, or 2) employment as a farm worker in the United States for certain specified periods of time.\textsuperscript{118} Secondly, the Act included an employer sanctions provision penalizing employers who knowingly hired undocumented workers, and requiring employers to check whether new hires were authorized to work.\textsuperscript{119}

As a consequence of the strict eligibility criteria for legalization, however, many aliens remain undocumented. This group includes all those who entered the United States without documentation on or after January 1, 1982, and who did not qualify for the Special Agricultural Workers Pro-


\textsuperscript{115}See Nat'l Lawyrs Guild, supra note 101, at 2-12.

\textsuperscript{116}Id. at 2-13.

\textsuperscript{117}See id. at 2-14 to 2-17.


\textsuperscript{120}8 U.S.C. § 1324a (1988).
gram or were otherwise unable to gain legal status. Moreover, many potentially eligible undocumented immigrants failed to come forward due to inadequate or conflicting public information about eligibility requirements, fear of the INS, and inability to document their eligible status. Anti-immigrant legislation has obviously not remedied the situation.


Current concerns regarding the status of the non-Black, non-white sector of American society are highlighted by the debate over the inclusion of employer sanctions in the Immigration Reform and Control Act of 1986, as proposed in the Simpson-Rodino Bill. The difficulty of placing issues concerning this non-Black, non-white population on the traditional civil rights agenda is also illustrated by this debate. A major complaint levied in Congress against the employer sanctions provision was that it would result in discrimination against Latinos and Asians. Community leaders argued that employers seeking to comply with the law would “play it safe” by refusing to hire Latinos, Asians, or anyone else who spoke with an accent. Latino and Asian advocates asserted that unscrupulous employers would use the immigration law as a pretext for practicing unlawful racial or national origin discrimination.

However, these charges of discrimination did not convince prominent civil rights leaders to oppose the bill. In fact, the NAACP’s representative in Washington, D.C., the late Althea Simmons, testified repeatedly during congressional debates on the Simpson-Mazzoli Bill (a substantively similar predecessor of the Simpson-Rodino Bill) that undocumented immigrants competed with African Americans for jobs and that consequently the


By 1986, [three] million to [five] million undocumented immigrants were living in the United States. Following IRCA’s legalization program and the implementation of employer sanctions, estimates put the number of immigrants living in the United States illegally at between 1.8 million and [three] million people, a big drop from 1986 levels. However, the number of undocumented immigrants in the country has begun to grow again. Illegal entries fell off sharply for only a short time following IRCA, and the legalization program is now over. The best current estimate of the size of the undocumented population was 3.2 million in October 1992, with growth estimated at 200,000 to 300,000 each year.


123. The Simpson-Rodino Bill called for the imposition of sanctions on employers who hired undocumented workers and placed annual ceilings on the numbers of immigrants that could be hired. It did, however, include an amnesty program for those already in the country illegally. NAT’L LAWYERS GUILD, supra note 46, at 2-14 to 2-19.

124. See Hearings on H.R. 3080 supra note 76, at 113, 123, 131-32 (statements by Raul Yzaguirre, President, National Council of La Raza; Richard P. Fajardo, Acting Association Counsel, Mexican American Legal Defense and Educational Fund; and Joseph M. Trevino, Executive Director, League of United Latin American Citizens).

125. Id.
NAACP supported strong employer sanctions. This view was buttressed by the AFL-CIO, which alleged that illegal immigration adversely affected the working conditions of citizens and legal aliens.

Yet, an array of organizations, including the ACLU, MALDEF, the National Council of La Raza, the California Fair Employment and Housing Commission, the United States Commission on Civil Rights, and the United States Catholic Conference, forcefully insisted that employer sanctions would produce an inevitable discriminatory impact on Latinos and Asians. Opponents of employer sanctions also convinced Representative Edward Roybal (D-Cal.) to introduce, on behalf of the Congressional Hispanic Caucus, an alternative immigration reform bill which did not mention employer sanctions, relying instead on increased enforcement of existing labor laws.

Despite the national coverage that the employer sanctions issue received, the LCCR failed to take a stand on this major civil rights issue. Conflict among its members, who were transfixed upon the views of the NAACP and the AFL-CIO, paralyzed the LCCR at a time when its non-Black minority members were pleading for help. In the absence of unified and strong opposition from the traditional civil rights community, Congress passed the employer sanctions provision of IRCA.

Confirming the fears of Latinos and Asians, the U.S. General Accounting Office (GAO), after a three-year study of employer sanctions, issued a report in March 1990 concluding that employer sanctions had caused a "widespread pattern of discrimination" against Asians and Latinos. The study concluded that one out of five employers engaged in unlawful dis-

126. See Hearings on S. 1200, supra note 8, at 383; Hearings on H.R. 3080, supra note 76, at 157. Ironically, however, African Americans were negatively impacted when IRCA was finally enacted and implemented in 1986. In May 1987 the California Employment Development Department conditioned job referrals to unemployed job seekers on the presentation of employment authorization or proof of citizenship or lawful permanent residency. Thus, any Blacks who did not have passports or birth certificates since they were not born in the state or were born during segregation and had no official record of their birth were denied job referrals, further decreasing job opportunities. See William R. Tamayo, State Verification of Immigration Status: The California System, NAT'L IMMIGRATION PROJECT NEWSLETTER, Sept.-Oct. 1987, at 6-7.

127. See Kirschten, supra note 8, at 497. The campaign to exclude the Chinese in the 1870s was similarly based upon the perception of American workers of a threat to jobs that "belonged" to white Americans. See TARNISHED GOLDEN DOOR, supra note 28, at 8.


129. See NAT'L LAWYERS GUILD, supra note 101, at 2-15 to 2-16.

130. See Sanchez, supra note 8, at A12.


132. GAO REPORT, supra note 106, at 71-72.
crimination, violating IRCA’s anti-discrimination provisions. Armed with the GAO report, Latino advocates urged the NAACP and LCCR to support the repeal of employer sanctions.

At its July 1990 convention, the NAACP, upon the recommendation of its Executive Director Benjamin Hooks, adopted a resolution supporting the repeal of employer sanctions. The measure was passed by a three-to-two margin over vocal opposition. The LCCR balked at first, but eventually called for a repeal of the sanctions when MALDEF and the National Council of La Raza threatened to leave the Conference. However, the LCCR was careful to acknowledge that not all of its members (i.e. the AFL-CIO) supported the repeal efforts.

While traditional civil rights organizations like the NAACP did join the effort to repeal employer sanctions, the consensus for repeal was based on the argument that employer sanctions violated the rights of documented Latinos and Asians—that is, citizens and lawful permanent residents. Even within the predominantly immigrant Asian American community, there has been a failure to establish a firm position regarding the rights of undocumented persons.

Extensive media coverage on this crisis highlighted the tension between the “old guard” civil rights community and the emerging non-Black, non-white communities. More importantly, it revealed the inability of the “old guard” to include within the ambit of its civil rights advocacy the needs of immigrant communities. The debate over employer sanctions within the civil rights community highlighted the movement’s inability to address the changing demographics and accompanying evolution of political concerns within the non-white community today.

133. Id. at 38. In response to the GAO report, there were attempts in Congress to repeal employer sanctions. Senators Orrin G. Hatch (R-Utah) and Edward M. Kennedy (D-Mass.) introduced S. 2797 (the Employer Sanctions Repeal Act of 1990) in the Senate, while Rep. Edward R. Roybal (D-Cal.) introduced a companion bill, H.R. 5185, in the House. Bills Proposed to Repeal Employer Sanctions; Subcommittee Holds Hearing, 67 Interpreter Releases 717, 717 (July 9, 1990). Senator Hatch stated that “employer sanctions simply are not worth the price in increased employment discrimination and increased burdens on business.” Id. at 718. Neither of these bills ultimately passed.

134. Sanchez, supra note 8, at A12; Tobar, supra note 63, at B8.

135. Tobar, supra note 63, at B1, B8.

136. See Kirschten, supra note 8, at 500; Tobar, supra note 63, at B1, B8.

137. See Kirschten, supra note 8, at 500; Sanchez, supra note 8, at A12.

138. See Kirschten, supra note 8, at 500. Among the members of the AFL-CIO which did not support employer sanctions and advocated for their repeal were unions such as the Service Employees International Union, the Asian Pacific American Labor Alliance, and the Coalition of Labor Union Women. Battling Employer Sanctions, Network News (Nat’l Network for Immigrant and Refugee Rights, Oakland, Cal.), June-July 1992, at 1, 4.

139. Id.

2. Proposed Congressional Welfare Cuts to Legal Immigrants

In the 104th Congress, several proposals have been made to limit the access of non-citizens to public benefits and services. One such proposal denies to non-citizens virtually all public benefits, as well as participation in over 60 programs, by limiting such benefits and participation to non-citizens over the age of 75 and legal refugees who have been in the country for less than five years. Another proposal denies almost all immigrants (not just the undocumented) access to many federal means-tested public benefits programs, including Medicaid, Food Stamps, and Supplemental Security Income; it also prohibits state and local governments from providing cash assistance or any non-emergency need-based assistance to the undocumented.

Support for these reforms, and other welfare cuts, has been garnered by the portrayal of welfare recipients as being principally non-white. While these reform proposals pose a major threat to the welfare of marginalized communities, the common goal of fighting such perceptions also creates opportunities for coalition building between African Americans and immigrant communities.

III.

INCREASING THE INCLUSION OF THE NON-BLACK, NON-WHITE SECTOR WITHIN THE CIVIL RIGHTS MOVEMENT

Thus, the challenge is presented: how can the contemporary Civil Rights Movement more fully incorporate the cause of the non-Black, non-white immigrant population within the United States?

A. The Entitlements of Non-citizens

Immigrants who arrive in the United States are afforded some protections under our laws. The Constitution, as well as both statutory and case law, have granted many rights to non-citizens. Non-citizens are protected by the 14th Amendment to the Constitution. Furthermore, while Congress has plenary power to regulate immigration, the Constitution does not authorize alienage-based discrimination within the United States unless Congress specifically sanctions such practices. Under Title VII of the Civil Rights Act of 1964, alienage discrimination is not barred unless such

143. See Henderson, supra note 91, at 50; Nichols, supra note 92, at 30.
144. See Yick Wo v. Hopkins, 118 U.S. 365 (1886) (finding a violation of equal protection in the discriminatory administration of a laundry licensing regulation).
145. See Chinese Exclusion Case, 130 U.S. 581, 603 (1889) (recognizing Congress' plenary power to exclude aliens as "a proposition which we do not think open to controversy"). See also Fiallo v. Bell, 430 U.S. 787 (1977).
146. See Graham v. Richardson, 403 U.S. 365 (1971) (striking down state statutes that denied welfare benefits to resident aliens as violative of equal protection).
discrimination results in national origin or race discrimination. However, non-citizens, including the undocumented, are protected by Title VII’s proscriptions on employment discrimination. Other labor protections for the undocumented have been recognized under the Fair Labor Standards Act and the National Labor Relations Act.

Non-citizens who are in this country legally are further afforded protection under IRCA, which bars alienage discrimination in the hiring, recruiting, referral, or discharge of individuals. However, IRCA’s protections are limited to those specific circumstances and do not encompass citizenship discrimination governing other conditions of employment. Moreover, the scope of its protection is narrowly focused upon citizens, refugees, asylees, and lawful permanent residents who apply for citizenship within six months of eligibility and who are naturalized within two years of submitting an application for citizenship.

Local jurisdictions have also endowed immigrants with additional rights. While the right to vote has generally been limited to citizens, some jurisdictions have allowed non-citizens to vote. For example, New York City allows non-citizen parents with children enrolled in public schools to vote in school board elections. In Takoma Park, Maryland,

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147. See Espinoza v. Farah Manufacturing Co., 414 U.S. 86 (1973) (holding that an employer’s refusal to hire a person because he is not a United States citizen does not constitute employment discrimination on the basis of “national origin”).


149. See Patel v. Quality Inn South, 846 F.2d 700 (11th Cir. 1988) (ruling that undocumented alien was employee eligible to bring suit within meaning of Fair Labor Standards Act), cert. denied, 489 U.S. 1011 (1989); In re Reyes, 814 F.2d 168 (5th Cir. 1987) (holding that inquiry into documentation of aliens for purposes of determining coverage under Fair Labor Standards Act was improper).

150. See Sure-Tan, Inc. v. Nat’l Labor Relations Bd., 467 U.S. 883 (1984) (holding that although undocumented workers have labor rights under the National Labor Relations Act, back pay could not be awarded to undocumented workers who had already left the country since it was speculative and not tailored to actual injury); Local 512, Warehouse and Office Workers’ Union v. Nat’l Labor Relations Bd., 795 F.2d 705 (9th Cir. 1986) (holding that undocumented employees, whose rights under the National Labor Relations Act were violated, were entitled to back pay unless out of the country and unavailable for work).


152. Id.

153. Id. The net result of these limitations is that persons who do not apply for citizenship within six months of attaining eligibility or who were denied a promotion or given additional work on the basis of their citizenship status have no basis for complaint.


155. WENDY AVIVA SHIMMELMAN, LOCAL VOTING RIGHTS FOR NON-U.S. CITIZEN IMMIGRANTS IN NEW YORK CITY: A REPORT PREPARED FOR THE CENTER FOR IMMIGRANTS RIGHTS 1-2 & n.9 (1992) (citing N.Y. State Education Code § 2590(c)).
non-citizens have the right to vote in city elections.\(^{156}\) In fact, during the eighteenth and nineteenth centuries, nearly one half of the states and territories at some point allowed non-citizens to vote.\(^{157}\)

Thus, immigrants in the United States, including the undocumented, possess important rights under the U.S. Constitution. Yet these rights are subject to the same kind of hostile public attacks that plague all marginalized groups. The recognition and defense of immigrant rights requires the sort of persistent advocacy that has been the hallmark of the Civil Rights Movement.

### B. Racism: The Common Thread Between All Non-whites

While certain sectors of the civil rights community have consistently defended the rights of the foreign-born and the undocumented, there has been some ambivalence regarding this issue within the predominantly African American civil rights establishment. Perceptions that certain immigrant communities are insensitive to African American concerns\(^ {158}\) and that undocumented workers compete with African Americans for already scarce jobs exacerbate attempts to forge a united front.\(^ {159}\) Yet, a substantial part of the civil rights leadership’s vision (which must include the protection of the foreign-born) must come from the African American community, as African Americans built the movement’s foundation and constitute a critical portion of the movement.

The African American community’s ability to lead the Civil Rights Movement in this period of global migration and demographic change requires a reexamination of the “Black v. white” framework of race relations. That framework does not capture the racialized nature of the debate on immigration, immigrant rights, and the rights of other non-Black non-whites. Professor Elizabeth Martinez has observed that “‘[i]mmigrants’ today means only two things: Mexicans and Central Americans, or Asians.”\(^ {160}\) Furthermore, she points out that “[a] rigid line cannot be drawn between racial and national oppression when all victims are people of color. Both are racism, and in combination they generate new varieties of racism. All this suggests why we need to understand more than the Black/white model today.”\(^{161}\)

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156. Id. at 1 & n.6 (citing Notice of Amendment to the Municipal Charter of the City of Takoma Park).


158. See, e.g., Coleman, supra note 76, at 188.

159. See id. at 189; Tobar, supra note 63, at B1. One delegate at the July 1990 NAACP convention characterized the IRCA’s employer sanctions provisions as a means “to keep undocumented aliens from taking food from black children.” Tobar, supra note 63, at B8.


161. Id. at 32.
Racism continues to drive both public policy and public opinion regarding immigrants in this country. The Civil Rights Movement must recognize this fact and use it as a basis from which to develop a common strategy for the advancement of both African Americans and other non-whites, including immigrants. Like African American males and teenage women on welfare, immigrants become the scapegoat for this country’s problems.162

Some African Americans have tried to investigate this process by drawing parallels between the immigrant and African American experiences. In the words of writer Joe Williams III:

By joining the popular uproar against undocumented aliens, African Americans are forgetting our own history. Polls show that African Americans are among the strongest supporters of the crackdown on illegal immigrants. And Black leaders—generally at the forefront of protest over civil and human rights abuses—are noticeably silent about the harassment of the undocumented . . . . Yet the reality is that if every Latino immigrant in America were deported, African Americans would still be hurting. We’re hurting in areas of the country where the Latino community doesn’t even exist.163

Defining a unified strategy of advocacy for all people of color requires affirmation of the common ground shared by these communities. First, civil rights advocates must acknowledge that racism has been and will continue to be a necessary component in the development and management of the U.S. economy and political system. As Professor Derrick Bell argues, racism “is an integral, permanent, and indestructible component of this society.”164 Race remains a critical factor in the general development of domestic U.S. policy,165 including its immigration policies. From the first major exclusionary law, the Chinese Exclusion Act of 1882,166 to modern-day restrictive quotas on immigration, which effectively extend otherwise repealed racial exclusion laws, racism has pervaded U.S. immigration policies. Racism is indeed embedded in the values, culture, and social structure of this country.

Second, it must be recognized that all non-white groups are subjected to racism. Social and economic opportunities for all non-white groups have

162. Tarnished Golden Door, supra note 28, at 1-2. Moreover, “[t]he arbitrary and discriminatory treatment of aliens has been conducted with the approval of the American legislative bodies. State legislatures as well as the Congress have enacted legislation limiting the full participation of aliens or immigrants in our society.” Id. at 2.


165. See generally Winant, supra note 72, ch. 3 (describing a range of “racial projects” that compete to promote their respective visions of race in the ordering of U.S. society).

been limited to some degree by race. Yet, the dialogue about racism in the United States consistently revolves around the “Black v. white” paradigm.

Third, during the next few years and perhaps for the next few decades, we will witness an unprecedented migration, primarily of non-whites leaving the Third World for advanced capitalist countries like the United States. We have already seen growth in the non-white population of this country due to this increase in the level of global migration. By the year 2000, the combined national Asian American and Latino populations are projected to outnumber the African American population. The political dynamics which impact the reception of these new “coloreds” in the United States will be shaped by the legacy of racial discrimination which has been firmly embedded in U.S. immigration laws.

Fourth, public education is sorely needed in all communities. Within Asian and Latino immigrant communities, there is a need for education on the history of the Civil Rights Movement, the history of African American oppression, and the historical role of racism in U.S. society. Simultaneously, the broader public needs to be educated about the global migration of the 1990s. Information about the impact of racism on non-white, non-Black communities must be made more readily available.

Finally, immigrants, especially non-white immigrants, must remember that they owe their success and opportunities in part to the vision, sacrifices, and commitment of the Civil Rights Movement. If immigrants are to share in these civil rights gains, they must also play a critical role in this Movement and help address the plight of the African American community. They must develop the compassion to understand historical conditions which have shaped the present. Immigrants have a duty to participate in the Civil Rights Movement and to protect its gains, and those active in the Movement must encourage immigrants to play a significant role. Fuller inclusion and survival in our society will remain a dream for these new “coloreds” if we cannot bring a broader vision to the Civil Rights Movement.

167. See generally Ronald Takaki, Strangers From a Different Shore (1989) (chronicling the history of Asian Americans); Tarnished Golden Door, supra note 28, at 7-13 (describing discrimination aimed at immigrants); Juan Williams, supra note 13 (describing the story of the African American civil rights movement in the 1950s and 1960s).

168. Martinez, supra note 160, at 22.


170. Bureau of the Census, U.S. Dep't of Commerce, Statistical Abstract of the United States 13 (1994). By July 1, 2000, the Bureau projects that the Asian population in this country will be over 12 million and the Hispanic population will be over 31 million while the Black population will only be roughly 35 million. Id.
IV. A STRATEGY FOR BROADENING THE CIVIL RIGHTS MOVEMENT

A. Utilizing International Human Rights Covenants

I. The Universal Declaration of Human Rights

The City Council of Oakland, California, made an unprecedented use of the United Nations' Universal Declaration of Human Rights in drafting its "City of Refuge" resolution. This resolution laid the groundwork for at least one means for broadening the contemporary Civil Rights Movement. The "City of Refuge" resolution prohibits city employees, including the police, from cooperating with the INS in arrests, detentions, investigations, or deportations of immigrants unless required to cooperate by federal law. The City Council premised the resolution in part on the "Personal Liberty" laws of the 1850s, which prohibited cooperation with the federal government's efforts to find and return fugitive slaves. Relying also on the United States' support for the United Nations' adoption of the declaration, the City Council of Oakland reasoned that the City of Oakland was bound by international human rights instruments such as the Universal Declaration of Human Rights.

The reference to the Universal Declaration of Human Rights in the Oakland "City of Refuge" resolution indicates the type of vision which the modern Civil Rights Movement should adopt in order to address the needs of the non-Black, non-white immigrant population. The declaration states, in part:

Article 14 (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution. . . .

Article 23 (1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment. . . .

(3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

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172. Oakland, Cal., City Council Res. No. 63950, at 2-4. See also Oakland, Cal., Administrative Instruction No. 323 (Oct. 31, 1986) (instructing city employees not to assist federal authorities in investigating, detaining, or deporting undocumented immigrants).


174. See Oakland, Cal., City Council Res. No. 63950, at 1; Tamayo, supra note 173, at 149.


176. Id. at 75.
The City Council’s recognition that local governments were bound by international human rights law was bold and unprecedented, and it sets a tremendous example for other governments to follow. The civil rights community should similarly look to international human rights standards when articulating its guiding principles.

2. The International Convention for the Protection of Migrants

The International Convention for the Protection of Migrants and their Families sets forth principles of international law addressing the phenomenon of global migration. Although that convention is not yet in force, it presents basic principles which the Civil Rights Movement should incorporate into its platform. These include, among others: freedom from arbitrary or unlawful interference with privacy, family, and home (Article 14); freedom from unlawful attack on a person’s honor or reputation (Article 14); the right to the liberty and security of one’s person (Article 16); and the right to equality with citizens of the state before courts and tribunals (Article 18).

However, the Convention is limited in that it recognizes state power to bar the employment of undocumented workers. Still, as immigrant and labor rights attorney Linda S. Bosniak points out:

[T]he draft Convention makes tremendous headway in advancing new normative standards of entitlement and protection for undocumented migrant workers and members of their families. Although the provisions of the Convention are unlikely to be treated as customary international law within the foreseeable future, they may well contribute to a change in the “criteria of international legitimacy” (citations omitted) associated with the treatment of these migrants.

Bosniak further envisions the Convention as evidence of an emerging recognition of migrants within the regime of international human rights law: “By promulgating this Convention, and by including the breadth of protections for undocumented immigrants that it has, the United Nations has
demonstrated a notable, albeit partial, willingness to rise to the challenge of universality which the international law of human rights has imposed."\textsuperscript{184}

The limits of the Convention, in still allowing governments to bar employment for undocumented workers, maintain the potential for racial and national-origins based employment discrimination. Yet, the Convention provides a good starting point for recognizing the rights of both documented and undocumented immigrants.

3. International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights,\textsuperscript{185} which was adopted and opened for signature, ratification, and accession by the United Nations on December 16, 1966, was ratified by the United States in 1992.\textsuperscript{186} While the Senate’s ratification contains a reservation clause which requires implementing legislation to fully incorporate the covenant into United States law,\textsuperscript{187} the covenant provides a meaningful anchor for civil rights advocacy for all people, including immigrants. The covenant recognizes numerous individual rights including: the right to liberty and security of person (Article 9);\textsuperscript{188} freedom of movement (Article 12);\textsuperscript{189} right to equal protection (Article 14);\textsuperscript{190} right to privacy (Article 17);\textsuperscript{191} freedom of thought, conscience, and religion (Article 18);\textsuperscript{192} free speech and expression (Article 19);\textsuperscript{193} and other important rights. While the U.S. Constitution provides for many of these rights, any future restrictions on constitutional rights through court decision or amendments would have to be consistent with the International Covenant. Thus, any restrictions on the rights of non-citizens or other persons would have to be scrutinized as to its consistency with international human rights law.\textsuperscript{194}


Other international human rights instruments have already been used to protect the rights of non-white immigrants in the United States. A refer-

\textsuperscript{184} Bosniak, supra note 182, at 765.


\textsuperscript{186} United Nations, Multilateral Treaties Deposited with the Secretary-General 125 (1994).

\textsuperscript{187} Id. at 133.

\textsuperscript{188} International Covenant on Civil and Political Rights, supra note 185, at 54.

\textsuperscript{189} Id.

\textsuperscript{190} Id.

\textsuperscript{191} Id. at 55.

\textsuperscript{192} Id.

\textsuperscript{193} Id.

\textsuperscript{194} For a further discussion on the applicability of other international human rights law instruments to undocumented workers, see Neil A. Friedman, A Human Rights Approach to the Labor Rights of Undocumented Workers, 74 Cal. L. Rev. 1715 (1986).
ence to the Refugee Act of 1980 and the 1967 Protocol Relating to the Status of Refugees served as the basis of support for Haitian refugees before the Supreme Court. Thus, there is precedent for arguing that the Civil Rights Movement should look to international covenants when addressing the new civil rights issues posed by recent immigrants, both documented and undocumented. However, current use of such precedents remains limited. It has only been utilized in litigation and has focused primarily on refugee rights. Incorporating international human rights principles into its ideology would help the Civil Rights Movement shed its nationalist blinders and address the global migration phenomenon. Furthermore, recognition of the global nature of the fight against racism would help the Civil Rights Movement attain the unity it needs to advocate for all people of color.

B. Expanding Political Empowerment

Efforts to politically empower new immigrants require expansion of the voting franchise. Proponents of immigrant and refugee rights have advocated extending the franchise to permanent residents. This idea is not unprecedented. In fact, New York City allows all parents with children in the public schools to vote in school board elections, regardless of the parent’s citizenship status. Non-citizens are also eligible to vote in the local elections of several towns in Maryland and in school board elections in Chicago.

This idea, however, has been opposed by some members of the African American community. When Los Angeles Unified School Board member Leticia Quezada proposed such an idea, African American members spoke out in opposition. Such opposition reflects an unwillingness to "grant the franchise" to non-citizens who have not "fought for the right to vote" as African Americans have, but who nevertheless pay taxes and have children in the school system. More importantly, it was a tacit acknowledgment that granting the franchise to thousands of Latino, Asian, and Arab parents could result in fewer African Americans on the school board. With-

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197. Jamin B. Raskin, Legal Aliens and Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage, 141 U. Pa. L Rev. 1391, 1393 (1993) (pointing out that resident aliens have, at various times over the course of 150 years, been allowed to vote in at least 22 states and territories). Raskin further argues that the disenfranchisement of aliens contradicts ideals of liberalism and republicanism. Id. at 1394.
out ballot participation, however, taxpaying parents with children in the school system are denied meaningful empowerment. Addressing this lack of empowerment should remain on the civil rights agenda.

C. Coalition Building

The Civil Rights Movement has had a mixed history regarding the advocacy of immigrant rights and the rights of Asians and Latinos. However, there has been some coalition work on behalf of immigrants, both white and non-white, by the African American community. For example, when immigrant Chinese laborers in Kern County, California, went on strike for higher wages in 1884, employers tried to replace them with African Americans, but African American workers refused to act as strikebreakers.

While advocacy on behalf of immigrants has been limited to a few civil rights groups like the ACLU and MALDEF, the precedent has nevertheless been set for other sectors of the civil rights community to take up the cause. Some civil rights coalitions have already successfully lobbied on behalf of non-white immigrants. Coalition efforts on behalf of immigrants, following INS raids in major cities, have resulted in executive orders prohibiting local government from cooperating with the INS in enforcing federal law. For example, Harold Washington, the late mayor of Chicago and an African American, issued the first executive order in the nation granting full benefits, opportunities, and services to all residents of Chicago, including the undocumented. The Order prohibits all city employees and departments from investigating the residency status of any person and from disseminating such information unless legally required to do so. Similar guidelines were subsequently issued by the City Council of New York City. Furthermore, the City Council of Oakland, California, passed a "City of Refuge" resolution, prohibiting city employees including the police from helping the INS arrest, detain, investigate, or deport immigrants, unless required by federal law.

201. See discussion supra Part I.A.2.
203. See supra notes 32-34 and accompanying text.
204. Chicago, Ill., Exec. Order No. 85-I (Mar. 7, 1985). Washington was also the first big city mayor to declare non-cooperation with the INS to protect the undocumented. Tamayo, supra note 173, at 148 n.18.
205. Tamayo, supra note 173, at 148.
207. See discussion supra Part IV.A.1.
208. Oakland, Cal., City Council Res. No. 63950, at 2-3. See also Oakland, Cal., Administrative Instruction No. 323.
However, not all coalition efforts have met their full potential. After the 1992 riots in Los Angeles, substantial efforts were made to bridge the gap existing between the Latino, African American and Korean communities. There is still much coalition building to be done, as all of these communities are still recovering from the devastation of the riots.\textsuperscript{209} The success of these smaller scale civil rights coalitions on behalf of non-white immigrants illustrates what could be accomplished on behalf of new immigrants with general support from the Civil Rights Movement. Therefore, coalition efforts must be an integral part of a Civil Rights Movement agenda for protecting the rights of the non-Black, non-white immigrant population in America.

**Conclusion**

The campaign to block the passage of Proposition 187 in California was a test for the Civil Rights Movement. However, the test was not so much whether it could actually stop the initiative, but rather whether communities of color would unite to oppose it. The racially charged nature of the issue was indicated by the racial polarization of the vote: the measure passed among fifty-nine percent of the electorate, despite the fact that seventy-eight percent of Latinos, fifty-six percent of African Americans and fifty-four percent of Asian Americans opposed it.\textsuperscript{210} Although all minority groups voted against it, white voters overwhelmingly supported it,\textsuperscript{211} indicating the white majority's discomfort with the continuing influx of undocumented immigrants.\textsuperscript{212}

Given the hostility between the African American community and the new immigrants,\textsuperscript{213} why did fifty-six percent of African Americans vote against Proposition 187? The key to the African American vote against Proposition 187 was the leadership of African American activists who pointed out the racist underpinnings of the initiative and the moral duty of African Americans to oppose it. Joe Hicks of the Southern Christian Leadership Conference, a national African American civil rights organization, stated, "[w]e've got to send a message to the rest of the nation that California will not stand on a platform of bigotry, racism, and scapegoating."]\textsuperscript{214} In a similar vein, John Mack of the National Urban League commented, "[t]here are [B]lack people and other minority people who are at odds over jobs. But if you're [B]lack and you vote for 187, you're not just voting against Hispanics, but you're also voting for the kind of thing that has been

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\textsuperscript{210} Democratic Wipeout, Voter Anger and California's Challenge, supra note 31, at B6.

\textsuperscript{211} Id.

\textsuperscript{212} Ayres, supra note 31, at A21.

\textsuperscript{213} See discussion supra Part II.A.

\textsuperscript{214} Ayres, supra note 31, at A21.
used against [B]lacks since time began.’”215 Other African American leaders including the NAACP LDF Regional Counsel, African American city council members, L.A. Police Chief Willie Williams, and former L.A. Mayor Tom Bradley, also publicly denounced the initiative.216 In light of the fact that a majority of African Americans opposed the proposition, the vote reflects a growing awareness on the part of the African American community as to the plight of immigrants and the common fight against racism shared by the African American community and the new immigrant community. The Civil Rights Movement must fight to increase this awareness.

The goal of the Civil Rights Movement is to force this country to live up to its constitutional ideals. This goal is far from accomplished, as racism still shapes this country’s immigration policies and American attitudes about immigrants. Thus, the futures of the minority and immigrant populations are intertwined. Scapegoating among minority populations serves no purpose other than to divide communities with common interests.

215. Id.
216. Hicks & Rice, supra note 31, at B7 (the NAACP LDF Regional Counsel and the Exec. Director of the SCLC); Chet Fuller, California Cities Dread Crackdown on Immigrants, ATLANTA J.-CONST., Nov. 21, 1994, at A6 (Chief Willie Williams); Paul Feldman, Former Mayor Bradley Opposes Prop. 187 in Rare Appearance, L.A. TIMES, Sept. 23, 1994, at A3 (former Mayor Tom Bradley).