Cultural Zoning as Reparations:
Providing Power to Asian American Communities

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Introduction

In 1885 and 1886 alone, at least 168 communities in the western United States forcibly removed their Chinese residents, displacing more than 20,000 individuals from their homes.[1] White vigilantes drove out Chinese residents through "harassment, intimidation, arson, bombing, assault and murder."[2] In 1885, in Rock Springs, Wyoming, a white mob massacred twenty-eight Chinese miners and set their residences on fire.[3] Shortly after, in Tacoma, Washington, a force of white men displaced the local Chinese population, threatening that "if the Chinese did not leave they were going to cut their throats, kill them and destroy their property."[4] In 1871, a Los Angeles mob lynched seventeen Chinese residents in the presence of witnesses.[5] The immense racial violence that early Asian migrants faced, even while making crucial contributions to the nation's infrastructure on projects like the Transcontinental Railroad, is often overlooked by historical accounts.[6] Systemic racism and race-based violence against Asian Americans (and other communities of color) have unfortunately continued to the present, as most recently seen during the Covid-19 pandemic.[7]

To work towards justice, the United States and its citizens must think seriously about what it owes ethnic minorities. Doing so requires acknowledging the bloody and inequitable history of the nation and the tendrils of injustice that extend from this history into the present. It also requires thinking about effective countermeasures to the pernicious harms brought about by racial discrimination and violence. To this end, Black and Native scholars have done invaluable work leading the conversation on what forms such remedies could take. Building upon this literature, this Article explores one such remedy, reparations, and considers its merit for Asian American communities.

This Article combines three different concepts that have previously been researched into something novel. It starts by exploring how Asian Americans can justifiably claim reparations for over a century of xenophobia and exclusion committed by the American government and society. The Article then

1. *See* Beth Lew-Williams, The Chinese Must Go: Violence, Exclusion, and the Making of the Alien in America 1 (2018).

2. *Id.* at 2.

3. *Id.* at 117.

4. *Id.* at 97.

5. *Id.* at 3.

6. "By late 1865 Chinese workers composed the vast majority of the labor force on the Central Pacific and numbered in the thousands. As Leland Stanford reported in a letter to US President Andrew Johnson that year, 'Without them it would be impossible to complete the western portion of this great national enterprise, within the time required by the Acts of Congress.'" Gordon H. Chang, Shelley Fisher Fishkin & Hilton Obenzinger, Introduction, in The Chinese and the Iron Road: Building the Transcontinental Railroad 2 (Gordon H. Chang, Shelley Fisher Fishkin, Hilton Obenzinger & Roland Hsu eds., 2019).

7. *See* U.S. Dep't. of Justice & U.S. Dep't of Health & Human Services, Raising Awareness of Hate Crimes and Hate Incidents During the COVID-19 Pandemic 1 (2022).

considers what form reparations should take, considering cultural zoning and its usage by Asian Americans in cities like San Francisco and New York. Then, it considers the value of minorities being granted power rather than relying only on the assertion of legal rights, incorporating Professor Maggie Blackhawk's writing about Indigenous communities. Crucially, Professor Blackhawk notes that even the most championed civil rights have considerable limitations when it comes to providing minority communities the ability to protect themselves from political and social harm.

Synthesizing these three distinct ideas, the Article then outlines a mechanism to achieve reparations for Asian American communities by granting these communities the power to create cultural zones. Such a mechanism would allow these communities to protect their unique interests and to wield a limited degree of sovereignty over spaces and institutions that have become important to them. After identifying some concerns with this policy proposal, this Article will consider how a cultural zoning power would have been helpful in the recent struggles over development in the Two Bridges neighborhood of New York City.

I. Reparations

Reparations is "a system of redress for egregious injustices," typically those committed by a government body.[8] Reparations are meant to address past harms that continue to have consequences in the present. Redress might include formal apologies, but the primary goal is to make recipients whole through the provision of tangible benefits. Despite its long history of colonization, enslavement, and oppression, the United States has rarely provided reparations. In 1946, the federal government created the Indian Claims Commission to attempt to compensate Native tribes and bands for the value of land that was taken by the government.[9] However, this form of reparations was insufficient. Awards from the Commission were meager, and "on a per capita basis Indian people for the most part [] realize[d] only a few thousand dollars each from their tribes' awards . . . land evaluations [were] low, offsets cut down the size of claims awards, and the costs of preparing Indians' cases [were] deducted from their awards."[10] The Hawaiian Homes Commission Act of 1921 was another instance of reparations, responding to the United States government's colonization of the island.[11] The act put approximately 200,000 acres of land into a public trust, allowing individuals who could prove they were at least 50 percent Native Hawaiian to lease a parcel of land for

8. Rashawn Ray & Andre M. Perry, *Why We Need Reparations for Black Americans*, Brookings (Apr. 15, 2020), https://www.brookings.edu/policy2020/bigideas/why-we-need-reparations-for-black-americans [https://perma.cc/A96A-RCBB].

9. *See* Indian Claims Commission Act of 1946, 25 U.S.C. § 70.

10. Nancy Oestreich Lurie, *The Indian Claims Commission*, 436 Annals Am. Acad. Pol. & Sco. Sci. 97, 102 (1978).

11. *See* Hawaiian Homes Commission Act, 1920, Pub. L. No. 67-34, § 201(a)(7), 42 Stat. 108, 108 (1921).

ninety-nine years for one dollar. In 1990, the lease length was extended to a 199-year term for one dollar[12], but questions remain about inefficiencies of the Commission.[13] More recent efforts have also sought to secure reparations for Black Americans, who have never received reparations from the federal government.[14] In 2021, Evanston, Illinois approved a form of reparations for Black residents—the first American city to do so.[15] The plan sought to remedy the racially motivated redlining that made home ownership incredibly difficult for Black Evanston residents for much of the 1900s.[16] Evanston provided for sixteen Black individuals to receive $25,000 in mortgage assistance and home improvement grants. In California, the state legislature passed AB-3121 to create a Reparations Task Force on how the state could provide reparations to Black residents. The Task Force submitted its final report of findings in June of 2023, containing 200 recommendations on how reparations might be implemented.[17]

Like Black Americans, Asian Americans can also make an argument for reparations based on historical harm. In fact, Japanese Americans did receive reparations for the Japanese internment program imposed by the federal government during World War II. However, these reparations were controversial. Some recipients felt the payments were insufficient for the grave harm done through internment while others feared that accepting reparations would break solidarity with Black and Indigenous people, who have yet to receive meaningful reparations.[18] Indeed, some Japanese Americans have expressed public support for reparations to Black Americans.[19]

12. *See* Hawaiian Homes Commission Act Amendments, Pub. L. No. 102-398, 106 Stat. 1953 (1992).

13. *See* Troy J.H. Andrade, *Belated Justice: The Failures and Promise of the Hawaiian Homes Commission Act*, 46 Am. Indian L. Rev. 1 (2022).

14. *See* Ray & Perry, *supra* note 8.

15. *See* Char Adams, *Evanston is the First U.S. City to Issue Slavery Reparations. Experts Say it's a Noble Start.*, NBC News (Mar. 26, 2021, 11:18 AM), https://www.nbcnews.com/news/nbcblk/evanston-s-reparations-plan-noble-start-complicated-process-experts-say-n1262096 [https://perma.cc/MBG7-V94T]

16. *See* Memorandum from Kimberly Richardson, Interim Assistant City Manager, to Honorable Mayor and Members of City Council, City of Evanston (March 22, 2021) (on file with author).

17. *See* Lil Kalish, *California's Reparations Task Force Explained*, Cal Matters (Apr. 13, 2022), https://calmatters.org/california-divide/2022/04/californias-reparations-task-force/ [https://perma.cc/S5XC-QSSB]; Wendy Fry, Erica Yee & Rya Jetha, *California is the First State to Tackle Reparations for Black Residents. What that Really Means*, Cal Matters (Jun. 8, 2022), https://calmatters.org/explainers/reparations-california [https://perma.cc/5Q7B-J7SA]; Task Force to Study and Develop Reparation Proposals for African Americans, *The California Reparations Report*, Cal. Dep't of Just. (June 29, 2023).

18. *See* Chris K. Ijima, *Reparations and the "Model Minority" Ideology of Acquiescence: The Necessity to Refuse the Return to Original Humiliation*, 40 B.C. L. Rev. 385, 387–388 (1998).

19. *See* Michela Moscufo, *"Because We Know It is Possible": Japanese Americans Join Fight For Reparations*, NBC (Jan.13 2022), https://www.nbcnews.com/news/nbcblk/-know-possible-japanese-americans-join-fight-reparations-rcna11256 [https://perma.cc/39KC-JED9].

The reparations this Article calls for are not primarily financial, but rather the power to create cultural zones. Cultural zoning aims to preserve a sense of Asian American identity and to address struggles faced by Asian Americans. While some might demand direct financial payment or grants of land, as other ethnic minorities have called for, such forms of recompense are inappropriate. The harms done to Native Americans and Black communities stretch beyond the country's founding and require more potent remedies. Black Americans and civil rights groups themselves have predominantly called for financial reparations, in large part because the profit generated from slave labor was never received by enslaved individuals or their descendants.[20] Although Asian Americans experienced great violence and exploitation, as this Article will explore, they have not been subject to the same system of chattel slavery as Black Americans. Further, cultural zoning is a tool that already exists and has been used to recognize Asian American enclaves, as in San Francisco, California and Washington, D.C.[21] Framing cultural zoning as a form of reparations emphasizes that the cultural zoning power is not a gift to Asian Americans to be accepted obsequiously, but rather a remedy that may be necessary to repair deep historical and present harm.

Reparations are also important in shaping the collective understanding of our history and nation. Ta-Nehisi Coates defines reparations as "the full acceptance of our collective biography and its consequences . . . the price we must pay to see ourselves squarely."[22] When it comes to Asian Americans, an effort by the government to provide reparations would help the public understand the Asian American community more clearly. Reparations will naturally spark education about the historical coolie trade, the tremendous violence against Asian enclaves, and other harms done to Asian Americans. These conversations may help expose the model minority narrative that is, for the most part, neither accurate nor helpful. Reparations via cultural zoning would be an important way to fill in the collective biography of this country and of Asian Americans.

The argument for reparations to Asian Americans begins around 1840 with the introduction of the coolie trade.[23] Chinese migrants were brought, sometimes against their will or consent, to work in the Americas as indentured laborers, or coolies.[24] While these coolies were spared the harshest

20. *See Reparations*, Nat'l Ass'n for the Advancement of Colored People (2019), https://naacp.org/resources/reparations [https://perma.cc/VF8L-EJM8]; *Reparations*, The Movement for Black Lives, https://m4bl.org/policy-platforms/reparations [https://perma.cc/X86M-KWXW].

21. *See Chinatown Area Plan*, San Francisco Plan. Dep't, https://generalplan.sfplanning.org/Chinatown.htm [https://perma.cc/7VFH-VNY2]; D.C. Mun. Regs. tit. 11-I § 609 (West).

22. Ta-Nehisi Coates, *The Case for Reparations*, The Atlantic (June 2014), https://www.theatlantic.com/magazine/archive/2014/06/the-case-for-reparations/361631 [https://perma.cc/FAJ2-PLMS].

23. *See* Elliott Young, Alien Nation: Chinese Migration in the Americas from the Coolie Era Through World War II9 (2014).

24. *See id.* at 35.

violence of the chattel slavery that was imposed upon enslaved Black individuals, they were similarly subjected to auction blocks, coercive labor practices, and heavily restricted autonomy.[25] Early Asian migrants also faced racial terrorism when they sought to establish their own ethnic enclaves in the United States. Some estimate that by the 1880s, around 200 Chinatowns established by early migrant workers had been burned down or destroyed by white supremacists.[26] Violence used to further the goals of white supremacy continues to have ramifications for Asian Americans. In 1986, a home in Revere, Massachusetts where twenty-one Cambodian Americans lived was burned down, just one of many racist aggressions the Cambodian community faced from fellow residents in the state.[27] During the COVID-19 pandemic, there was a spike in anti-Asian American hate crimes as Asian Americans were subject to prejudiced and incorrect connections to the spread of the virus.[28]

Policies of *de jure* and *de facto* segregation also denied Asian migrants the opportunity to buy land and accumulate generational wealth. Although Asian Americans born in the United States were deemed citizens after 1898's Supreme Court decision in *Wong Kim Ark*[29], it would not be until the passage of the McCarran-Walter Act in 1952 that all Asian migrants were legally allowed to become citizens by naturalization.[30] In addition, many states passed Alien Land Laws that prevented non-citizens from purchasing land. Lawmakers explicitly passed these policies, in conjunction with the federal ban on naturalization, to prevent Asian immigrants from owning land, either for residential or agricultural use. For example, the California Alien Land Law Act of 1913 prohibited migrants ineligible for citizenship from owning agricultural land or leasing it for extended periods of time. Californian lawmakers designed the act to target Japanese migrants, who operated agricultural businesses and could not claim citizenship in 1913. In 1859, the Oregon constitution was rewritten, saying that no "Chinaman, not a resident of the State at the adoption of this Constitution" could hold "any real estate, or mining

25. *See id.* at 21.

26. *See* Caitlin Yoshiko Kandil, *How 1800s Racism Birthed Chinatown, Japantown and Other Ethnic Enclaves*, NBC News (May 13, 2019, 5:40 AM), https://www.nbcnews.com/news/asian-america/how-1800s-racism-birthed-chinatown-japantown-other-ethnic-enclaves-n997296 [https://perma.cc/F5NB-VFCF].

27. For example, Song notes that "One day in the summer of 1983, the Boston Police broke into a Cambodian home and searched their refrigerator for dog meat." Elaine Song, To Live in Peace…Responding to Anti-Asian Violence in Boston 6 (1987).

28. *See* Han Sungil, Jordan R. Riddell & Alex R. Piquero, *Anti-Asian American Hate Crimes Spike During the Early Stages of the COVID-19 Pandemic*, 38 J. Interpersonal Violence 3513, 3516–17.

29. *See* United States v. Wong Kim Ark, 169 U.S. 649 (1898); *In re* Ah Yup, 1 F. Cas. 225 (C.D. Cal 1878).

30. Chinese and Filipino individuals could migrate prior to this Act, but this marked the first time other groups like Japanese and Koreans migrants were allowed to do so. Quotas on migrants from Asian countries still remained. *See* Immigration and Nationality Act of 1952, 8 U.S.C. Ch 12.

claim."[31] In 1866, Washington Territory added a constitutional provision that prohibited "aliens ineligible to citizenship from owning land" after a mob of white citizens rioted against and forcibly displaced the small Chinese population in Seattle.[32] Combined with laws against naturalization and citizenship in existence at the time, the provision effectively ensured that Asian non-citizens could not benefit from homestead acts that provided white citizens with substantial opportunities to claim and own land.[33]

Government discrimination against Asian Americans did not end with issues of land and citizenship. In the 1900s, racially restrictive housing covenants were used to target minority communities, including Asian Americans, throughout the United States. Many of these covenants are still present in property records in places like California[34] and Kansas.[35] In San Francisco, Chinatown and Manilatown faced threats of formal government destruction well into the 20th century.[36] Beginning in 1946, the government began to seize and demolish parts of Manilatown, calling these projects blight removal and slum clearance. The subsequent, supposed renewal of the area made it difficult for Asian citizens and immigrants to afford housing in the area. In 1977, city riot police forcibly evicted the tenants of the I Hotel in Manilatown, many of whom were low-income and elderly Filipino individuals.[37]

In sum, Asian Americans have faced formal and informal discrimination since they first arrived in the United States. The examples above are just a fraction of the history of harm done. The inability to build generational wealth and financial stability through land ownership and the legacy of racial terror continues to have consequences for the descendants of early Asian migrants. Since the struggles of these first migrants, Asian American communities continue to be plagued by racial violence and obstacles to housing and community. This history serves as a significant basis for a claim to reparations. While new waves of immigration in the 1900s brought wealthier and more educated immigrants, recognizing the historical harm done to earlier Asian American communities is important. Reparations serve to acknowledge the struggles of these groups and to dispel the model minority myth

31. Or. Const. of 1859, art. II, § 6, art. XV, § 8.c

32. *See* Nicole Grant, *White Supremacy and the Alien Land Laws of Washington State*, Seattle Civil Rts. & Labor Hist. Project (2008), https://depts.washington.edu/civilr/alien_land_laws.htm [https://perma.cc/3A4S-K33S].

33. *See id.*; United States v. Wong Kim Ark, 169 U.S. 649 (1898).

34. *See* Justin Phillips, *Anti-Asian and Anti-Black Racial Housing Covenants Can Still Be Found in the Bay Area. Why?*, San Francisco Chron. (July 22, 2020), https://www.sfchronicle.com/living/article/Anti-Asian-and-anti-Black-racial-housing-15426732.php [https://perma.cc/6MVH-6GTU].

35. *See* Cheryl W. Thompson et al., *Racial Covenants, A Relic of the Past, Are Still on the Books Across the Country*, NPR Morning Edition (Nov. 17, 2021), https://www.npr.org/2021/11/17/1049052531/racial-covenants-housing-discrimination [https://perma.cc/LKC4-7RZJ].

36. *See* Chuo Li, *Postwar Urban Redevelopment and the Politics of Exclusion: The Case of San Francisco's Chinatown*, 18 J. Plan. Hist. 27, 29 (2019).

37. *Id* at 35.

that suggests that Asian Americans are a historically favored minority group. Further, the specific form of reparations I propose, cultural zoning, would work to preserve areas that earlier waves of migrants established, rather than exclusively reward newer arrivals.

II. Cultural Zoning

Zoning is a government tool commonly used to designate land use within a city and can play an important role in determining the commercial and social value of an area. For example, zoning plans can set aside historical and cultural zones within a general municipality grid. This Article contends that zoning might also be used to protect ethnic enclaves, allowing groups like Asian Americans to protect important services, housing, businesses, cultural traditions, and more. This use of the zoning power will be referred to as cultural zoning in this Article. Effective cultural zones for Asian Americans living in ethnic enclaves might include rent protections for low-income individuals, public funding for elderly homes, language services, funding for dual language schools within the zone, or local hire agreements requiring that hires for new construction in the zone be representative of the zone's residents. Zoning is important because many Asian Americans have faced difficulty in protecting their communities from developers and local government. Asian American cultural groups in concentrated enclaves face significant hurdles in accessing or obtaining the traditional forms of political power required to exert influence over local zoning. Without political power, these communities are left vulnerable. Different communities also face different political and social struggles. Some Asian migrants, like those from China and India, enter the United States because they have education and/or skills, and thus may have some degree of economic security.[38] However, disaggregated data suggest that many Asian Americans and Pacific Islanders face significant socioeconomic barriers in the United States.[39] Scholars have noted

38. "Often viewed as homogenous, AANHPIs include more than 50 detailed race groups that can differ dramatically across key social and economic indicators. For example, while only 3 in 50 Filipino Americans nationwide live below the poverty line, approximately 1 in 4 of Hmong Americans are poor. Similarly, about 1 in 2 of Marshallese live below the poverty line, while only 1 in 20 Fijians are poor. Pay equity is another example of where disaggregating data is critical to understand the needs and concerns of specific subgroups. While AANHPI women are paid an average of 86 cents for every dollar a Caucasian male is paid, disaggregated data demonstrates that Native Hawaiian women are paid only 66 cents for every dollar a white male is paid. Additionally, in contrast to what a Caucasian male is paid, Vietnamese, Laotian, and Samoan American women earn 61 cents; Burmese American women 53 cents; and Bhutanese American women only 38 cents on that same dollar." *FAQs: Data Disaggregation and Asian Americans*, Asian Ams. Advancing Just. (2019), https://censuscounts.org/wp-content/uploads/2019/03/FAQs-on-Data-Disaggregation-and-Asian-Americans.pdf; *see also* Rakesh Kocchar & Anthony Cillufo, *Income Inequality in the U.S. is Rising Most Rapidly Among Asians*, Pew Rsch. Ctr. (July 12, 2018), https://www.pewresearch.org/social-trends/2018/07/12/income-inequality-in-the-u-s-is-rising-most-rapidly-among-asians [https://perma.cc/5FV7-9TS9].

39. *Id*.

that regardless of economic status, "[i]nstitutional and demographic factors constitute important barriers to Asian American voting."[40]

Without sufficient protections for important cultural spaces and residential areas, Asian Americans living in ethnic enclaves face the risk of gentrification and displacement of important cultural spaces. One example is the upzoning efforts that have generated considerable harm to the character and residents of New York City's Chinatown by favoring business and upper-middle class interests.[41] In 1967, New York City removed approximately 1,800 working class residents from their homes for the creation of the Seward Park Urban Renewal Area, transforming the area into vacant land.[42] The City and its corporate partners have since developed the area with minimal protections for residents, and the average pricing for new housing developments is significantly more than the average income for current Chinatown residents. Of the 2,000 families originally displaced, the City has brought back only six residents (over fifty years later) to the new development.[43] In 2006, developers demolished a historic two-story Chinese movie theater and replaced it with the eighteen-story Wyndham Garden Hotel.[44] In 2009, the construction process for the hotel led to structural instability for two nearby apartment buildings, which led to the displacement of sixty residents from

40. *See* Janelle S. Wong & Karthick Ramakrishnan, *Asian Americans and the Politics of the Twenty-First Century*, 26 Ann. Rev. Pol. Sci. 305, 310 (2023).

41. For more on upzoning, see Cecilia Rouse, Jared Bernstein, Helen Knudsen & Jeffrey Zhang, *Exclusionary Zoning: Its Effect on Racial Discrimination in the Housing Market*, White House Council of Econ. Advisors (June 17, 2021), https://www.whitehouse.gov/cea/written-materials/2021/06/17/exclusionary-zoning-its-effect-on-racial-discrimination-in-the-housing-market ("After the United States Supreme Court banned the use of explicit race-based zoning in *Buchanan v. Warley* (1917), city planners remained capable of segregating via indirect methods. For example, St. Louis's 1919 zoning laws were designed to preserve homes in areas that were unaffordable to most Black families, and the city's zoning commission would change an area's zoning designation from residential to industrial if too many Black families moved in. Similarly, research on Seattle's 1923 zoning laws shows that areas in which Black or Chinese-American families lived were disproportionately likely to receive commercial zoning.").

42. *See* Alia Soomro, *Dismantling Mid-Century Urban Renewal: A Community-Based Approach for the Future of New York City*, 84 Brook. L. Rev. 955, 976 (2019).

43. *See Essex Crossing Development (Seward Park)*, New York City Econ. Dev. Corp., https://edc.nyc/project/essex-crossing-development-seward-park [https://perma.cc/8VYX-QW9G].

44. During my first year of law school, I lived very close to this hotel. I was disturbed to learn its origins and it made me consider how my own move into Chinatown might have contributed to gentrification and general harms of upzoning. *See* Jennifer S. Lee, *Luxury Hotel Exposes Competing Visions of Chinatown*, N.Y. Times (Dec. 20, 2007), https://archive.nytimes.com/cityroom.blogs.nytimes.com/2007/12/20/luxury-hotel-exposes-competing-visions-of-chinatown [https://perma.cc/VC29-JNXZ].

their homes.[45] Making matters worse, the New York City government has refused to acquiesce to local demands for cultural zoning protections.[46]

The increasing gentrification in New York's Chinatown has prompted calls for action from local community organizations and residents. The introduction of luxury developments and entertainment facilities catered to upper-class taste and buying power have contributed to working-class immigrant families being displaced or even evicted as the cost-of-living increases. In response, several grassroots organizations have called for a rezoning of Chinatown and the Lower East Side.[47] These groups have requested a special zoning district to protect tenants and small businesses and restrict new developments. Such proposed protections include implementing heightened protections against evictions and harassment by landlords and increasing affordable housing requirements on new developments.[48] Proposed zoning plans would also impose standards for the demolition of existing structures and would limit the floor area of retail space to discourage large chain stores from moving into Chinatown.

However, efforts to create a special zoning district protecting Chinatown have been repeatedly rejected. In fact, former Mayor De Blasio advocated for upzoning Chinatown, which would likely accelerate the process of displacement and destruction of neighborhood character.[49] Complicating matters is the support that upzoning has received from some older Chinatown organizations, who represent many of the existing business interests and large property owners.[50] The question of who gets to speak on behalf of an ethnic enclave and advocate for zoning reform is quite tricky for all ethnic communities. While Part IV of this Article addresses some of these concerns, the reconciliation of various interests within the Asian American community is a massive project with no easy solution.

45. *See* Julie Shapiro, *60 Tenants Thrown Out as Chinatown Tenement is Shut*, Downtown Express (Aug. 20, 2009), https://www.amny.com/news/60-tenants-thrown-out-as-chinatown-tenement-is-shut [https://perma.cc/HKA8-XBA4].

46. A Court of Appeals recently ruled in favor of the NYC Planning Commission and private developers to push through the development of four luxury apartment towers despite the opposition of coalition of residents and local community groups. *See* Council of City of New York v. Dep't of City Plan. of City of New York, 188 A.D.3d 18, 131 N.Y.S.3d 1 (2020).

47. *See* Peter Kwong & Samuel Stein, Preserve and Protect Chinatown 1–3 (2015).

48. *See* Abigail Savitch-Lew, *Chinatown Zoning Plan Meets Resistance in de Blasio Administration*, City Limits (Sept. 15, 2015), https://citylimits.org/2015/09/15/chinatown-zoning-plan-meets-resistance-in-de-blasio-administration [https://perma.cc/8KRP-XZWY].

49. *See* Juan Rivero, *De Blasio's Plan for SoHo/NoHo/Chinatown Small Business: Replace Them with Big Box Chain Stores*, Village Pres. Blog (Aug. 27, 2021), https://www.villagepreservation.org/2021/08/27/de-blasios-plan-for-soho-noho-chinatown-small-business-replace-them-with-big-box-chain-stores [https://perma.cc/CEB2-MS7U].

50. *See* Sarah Ngu, *Will Luxury Towers Edge Out the Last of the Working-class Chinese in New York's Iconic Chinatown?*, Vox (Sep. 25, 2019), https://www.vox.com/the-highlight/2019/9/18/20861446/new-york-city-chinatown-gentrification-lower-east-side [https://perma.cc/DEU9-77CY].

Even when granted, cultural zones can be sources of tension for ethnic enclaves. In Washington, D.C., the Chinatown Sub-Area was created "to protect and enhance downtown's only ethnic cultural area by maintaining and expanding the existing concentration of retail uses emphasizing Chinese or Asian cultural and community facilities, as well as merchandise and related wholesale operations serving residents, visitors, tourists, and business travelers."[51] Unfortunately, residents and community organizers have voiced concerns that the D.C. Chinatown commodifies Chinese culture by serving as a tourist destination while doing little to support Chinese residents.[52] Cultural zoning, especially when initiated by groups and individuals outside of an ethnic enclave, is not necessarily amenable or helpful to community goals. Without real power to shape if and how cultural zones are created, Asian American enclaves cannot adopt such policies and lack true agency to preserve their neighborhoods.

III. Power, Not Rights

The final element I would like to introduce is the importance of giving minority communities power rather than depending solely on a civil rights framework for protection. This concept has been championed by NYU Professor Maggie Blackhawk in her article, *Federal Indian Law as Paradigm Within Public Law*.[53] Professor Blackhawk looks critically at the fixation on rights as an ideal solution for protecting minority peoples in the United States. She notes that Native Nations have benefitted from the recognition of their tribal sovereignty, a form of power that allows Native peoples to have self-governance and control over their lands. This form of power may have protected Native peoples from assimilation and further domination by the federal government.[54]

Power challenges our predominant conception of how minorities should be involved in American democracy. The traditional framing, the civil rights framework, positions minority groups as necessarily dependent on the will of a majority to further their interests. Civil rights serve primarily to limit egregious harms done to individuals and rely on enforcement by courts. In contrast, granting power helps sever minority dependence on the good will of a majority voting bloc (who must create and enforce rights) and on the

51. D.C. Mun. Regs. tit. 11-I § 609 (West).

52. *See* Yanan Wang, *D.C.'s Chinatown has Only 300 Chinese Americans Left, and They're Fighting to Stay*, Wash. Post (July 18, 2015), https://www.washingtonpost.com/lifestyle/style/dcs-chinatown-has-only-300-chinese-americans-left--and-fighting-to-stay/2015/07/16/86d54e84-2191-11e5-bf41-c23f5d3face1_story.html [https://perma.cc/82EU-K2N9].

53. Maggie Blackhawk, *Federal Indian Law as Paradigm Within Public Law*, 132 Harv. L. Rev. 1787, 1787–1877 (2019).

54. *Id.* at 1862 ("The recognition of inherent tribal sovereignty and the use of power to mitigate colonialism and subordination should take its place aside Brown and the celebration of rights as a vital way to mitigate constitutional failure and to protect minorities from subordination.").

court system. Having power enables groups to proactively advocate for what they want, rather than defend against harms done to them. Examples that Blackhawk raises include the power of petition, which allows Native groups to "meaningfully intervene in the lawmaking process"[55] by providing a formal procedure for petitioners to engage with lawmakers.

Asserting rights is often a highly individual process in which one must identify a specific harm and convince a court that a right has been violated. This process is dangerous for minority claimants because it is vulnerable to the biases of the legal system and relies on standards for evaluating rights that are subject to change. Further, remedy often arrives well after the harm has occurred (if at all) and only seeks to make specific plaintiffs whole without considering the need for broader structural protections. The rights framework also does little to protect against more insidious problems like gentrification and destruction of neighborhood culture. Such harms may be technically legal and not in violation of any rights, but still greatly impact individuals and communities. Professor Deborah N. Archer, a leading civil rights scholar, writes that "the Court has interpreted civil rights laws in a way that strips them of their potential to dismantle the tools of institutionalized privilege and structural racism."[56] Courts interpreting laws like Title VI of the Civil Rights Act of 1964 have often required showing of intentional discrimination when challenging discriminatory infrastructure projects.[57] Further, courts have ruled that no private right of action exists under Title VI for disparate impact claims.[58]

Given these severe limitations, legal protection and remedy are hard to come by. Lawmakers and courts, as this Article has shown, are often hostile to minorities like Asian Americans. Even when lawmakers do use legal powers to putatively further Asian American interests, they may do little to actually help Asian American residents, like D.C.'s creation of the Chinatown zone. More often, Asian American communities have improved their lives and protected their communities through persistent activism and creativity. Consider Philadelphia's Chinatown, which spent a decade fighting Pennsylvania's Department of Transportation's 1966 plan to destroy parts of Chinatown through the creation of an expressway. In 1975, organized residents received a city grant to create a report regarding the urban policy and design for Chinatown, leading "Mayor Frank Rizzo to commit funding to

55. *Id.* at 1865.

56. Deborah N. Archer, *"White Men's Roads Through Black Men's Homes": Advancing Racial Equity Through Highway Reconstruction*, 73 Vanderbilt L. Rev. 1259, 1307 (2020).

57. Archer uses as an example *Nashville I-40 Steering Comm. v. Ellington*, 387 F.2d 179, 185 (6th Cir. 1968) in which the 6th Circuit court denied the request of Nashville's Black communities to halt a highway that would require the destruction of Black neighborhoods. The court wrote that "In the absence of proof of racial discrimination, we do not consider this matter to be a justiciable issue. The routing of highways is the prerogative of the executive department of government, not the judiciary." *See id*. at 1311.

58. *See* Alexander v. Sandoval, 532 U.S. 275, 293 (2001).

build houses in Chinatown for low and moderate income residents displaced by government action."[59]

Allowing Asian American communities the power to initiate cultural zoning would empower these communities to engage in their own flourishing and protection. The activism of Philadelphia's Chinatown community is a wonderful success, but it should not take a decade to secure minimal protections for local residents facing the destruction of their homes. While few examples of grants of power to minorities exist, especially outside of the Native American context, the zoning power could be an important avenue to try. Rather than rely on solutions from legislatures, which often lack meaningful representation, Asian American communities could proactively force changes based on actual community needs. Doing so may allow communities to initiate a collective response to systemic harm, rather than leaving individuals to fight for basic rights and protections alone.

IV. Mechanism for Reparations through Cultural Zoning

Putting together the above elements, granting Asian American groups the power to create their own cultural zoning schemes may be an appropriate form of reparations. This Part outlines one plan to do so. However, each Asian American enclave or neighborhood may require different solutions. Additionally, different groups and interests within an ethnic enclave often have different ideas on zoning. Consider New York's Chinatown: business interests and real estate developers often have a great deal of political power and push for upzoning efforts, while many residents and community organizations advocate for affordable housing protections. It would be unwise to blindly reject plans by some groups in favor of others without a process to evaluate different plans. Accordingly, this Part includes a set of criteria that a court should use when deciding between various plans under the proposed policy.

A. *Sample Policy*

1. Rezoning Procedure

Individuals and groups located within an area containing an ethnic minority population can present a rezoning plan to create a special cultural zone for the ethnic minority group. To do so, they must collect sufficient signatures for their rezoning plan. The number of signatures required could be proportional to the number of signatures required for candidacy in the lowest level of local government office, a recognized standard for acknowledging political viability. Cultural zoning plans that meet the criteria specified in

59. *See The History of the Philadelphia Chinatown Development Corporation is Inextricably Tied to the History of Chinatown*, Phila. Chinatown Dev. Corp., https://chinatown-pcdc.org/about/history [https://perma.cc/YY42-8D5U] (last visited July 29, 2023); *see also* Mary Yee, *The Save Chinatown Movement: Surviving Against All Odds*, 12 Pa. Legacies 24, 29 (2012).

Subpart II must be accepted by local zoning board unless there is a competing plan. Competing plans are addressed in Subpart IV.

2. Criteria for Cultural Zoning

a. Standards for considering if a cultural zone is appropriate for an ethnic group.

i. Population Size

The greater the percentage of a proposed zoning area's population an ethnic group makes up, the stronger the case for granting the creation of a cultural zone for that group. For example, if Korean American-led organizations attempt to create a "Koreatown" zoning district in city A, but Korean Americans are only the third largest ethnic group in that area, a decision maker may be less inclined to grant a cultural zone. This is meant to encourage groups to set the boundaries of their proposed zone appropriately, as discussed in 2(b) of this subpart. While population size of an ethnic group is an important consideration for cultural zoning, it is not dispositive. A space may hold very important cultural value to an ethnic group but, due to formal and informal displacement, may not contain many residents belonging to that group.

ii. History in the Proposed Zone

Another important consideration is an ethnic group's relationship to the specific land contained in a proposed zone. Some Asian American neighborhoods, business districts, and cultural hubs have existed for over a century and hold deep historical meaning. These might include Chinatowns and Japantowns.[60] Other areas may have shorter histories but still serve a significant role as a place for immigrants to gather and have a sense of community. These include South Asian neighborhoods, "Little Saigons," and Korean enclaves.[61]

iii. History of Discrimination

As discussed previously, there is a long history of discrimination against Asian Americans. Evidence of racially restrictive covenants or eminent domain being used to destroy or displace Asian American communities within the cultural zone could be very persuasive when considering a grant of the cultural zoning power. While intentional discrimination may be obvious in some cases, the decision maker should also be aware that displacement may have been disguised with strategic language.

Discrimination has been disguised in this manner in the past. For example, San Francisco authorities displaced Asian communities in the late 19th and early 20th centuries by condemning Chinatown as a "nuisance" and

60. Michael Liu & Kim Geron, *Changing Neighborhood: Ethnic Enclaves and the Struggle for Social Justice*, Soc. Just. 18, 23 (2008).

61. *Id* at 19.

"laboratory of infection."[62] Using the guise of slum clearance and urban renewal, these officials used incorrect and racist beliefs about the impurity of Asian populations to justify forced fumigations, quarantines, and denials of medical services.[63] In 1899, the Hawaiian Board of Health used the finding of two cases of bubonic plague to justify removing 4,500 Chinese from the Honolulu Chinatown to a quarantine camp and subsequently burned down the Chinatown.[64]

If an Asian American community has endured such treatment or can show that discriminatory practices displaced large swathes of its community, a zoning board should be inclined to grant the creation of a cultural zone. In these situations, a cultural zone serves as a form of reparations for past harms and allows the community to reclaim the space.

iv. Conditions of Present Displacement and Gentrification

Under this policy, a cultural zone should be presumed if there is evidence that residents living in a proposed zoning area need protections from displacement and gentrification. Zoning policies can and should be used to protect tenants, regardless of ethnicity, from both immediate eviction and from long term threats of development and rising cost of living. Metrics for measuring gentrification have not been standardized, but there are several methods one could use. One way might be to create a "housing change index [to] compile change in median housing costs, share of low-income renters paying more than 30 percent of their income for rent, and number of federally subsidized units per 1,000 households."[65] Comparing changes in the index over time may allow zoning boards to determine if gentrification is occurring. A simpler method could be to look for drastic changes in development. One such change could be if a zone has experienced a consistent increase in luxury developments charging rent far above median income. Another might be an influx of national commercial businesses coupled with a decrease in local small businesses.

b. Zoning Dimensions

To determine if a proposed cultural zone has been created appropriately, we can borrow the factors that are considered when creating voting districts. These include compactness, contiguity, and the presence of a community of

62. Joan B. Trauner, *The Chinese in California*, 57 Cal. Hist. 70, 74, 81 (1978). San Francisco officials baselessly accused Chinese residents of concealing medical conditions, and one political group wrote that "[t]he Chinese cancer must be cut out of the heart of our city, root and branch, if we have any regard for its future sanitary welfare . . . with all the vacant and health territory around this city, it is a shame that the very centre be surrendered and abandoned to this health-defying and law-defying population. We, therefore, recommend that the portion of the city here described be condemned as a nuisance; and we call upon the proper authorities to take the necessary steps for its abatement without delay." *Id.* at 74.

63. *Id.* at 78, 82.

64. *Id.* at 77.

65. Mychal Cohen & Kathryn Petit, Guide to Measuring Neighborhood Change to Understand and Prevent Displacement 9 (2019).

interest.[66] A zoning board would examine if the community seeking to create a cultural zone has drawn boundaries that are not overly expansive. This can be done by considering the presence of important residential buildings, cultural landmarks, or businesses within the zone. A zone might also reasonably include land that was once important to an ethnic enclave but was taken forcibly by development interests and local government.

However, a cultural zone should not expand beyond the areas typically used by members of the ethnic enclave. Further, zones should be contiguous for the sake of clarity and policymaking. In New York, for example, it would be more appropriate for Chinese American interest groups to seek individual cultural zones for the distinct Chinese communities that exist in Manhattan's Chinatown, Sunset Park (Brooklyn), and Flushing (Queens) rather than creating one zone containing multiple different locations.[67]

3. Zoning Plans: Contents

Local groups and individuals should have great freedom when proposing what a cultural zone should look like. Existing cultural zones emphasize preservation of historic and culturally significant buildings and creation of language resources for non-English speakers.[68] Other proposals have called for restrictions on development, specifying maximum building height or storefront dimensions.[69] Two other elements worth discussing are local hire programs and dual language programs at schools within a cultural zone.

Local hire programs and similar programs, like Community Working Agreements (CWAs), mandate that a certain percentage of the workforce for public construction projects consist of local residents.[70] There have been successful implementations of local hiring agreements nationwide. One prominent example is the city of Los Angeles, which has negotiated CWAs on a variety of public works projects. The Partnership for Working Families notes that in 2010, CWAs in Los Angeles covered:

> over $375 million in construction value and over 7500 construction jobs. The agreements vary slightly but tend to require 30–40% of new

66. UCLA Latino Pol'y & Pols. Inst., *Redistricting Criteria and Legal Requirements*, https://latino.ucla.edu/redistricting-criteria-and-legal-requirements [https://perma.cc/5HWU-UMNA].

67. Mangin notes that "migration patterns also had an ethnic and linguistic component, with newer, poorer, and largely undocumented migrants from Fujian province ('Downtown Chinese') heading to Sunset Park and Mandarin-speakers from the mainland and Taiwanese ('Uptown Chinese') heading to Flushing." John Mangin, *Ethnic Enclaves and the Zoning Game*, 36 Yale L. & Pol'y Rev. 419, 451 (2018).

68. *See e.g.*, *Chinatown Design Guide Study*, District of Columbia Office of Planning at 9 (amend. April 2019).

69. *See Two Bridges Community Plan*, Chinatown Working Group (2017), https://static1.squarespace.com/static/5d4b46243e231f0001e4b702/t/61ddd5ee33738d4d96e490dd/1641928174383/TBCPPublicENGonepager.pdf [https://perma.cc/3VFM-5VJA].

70. *See* Carol Zabin & Jenifer MacGillvary, *Demand-Side Workforce Policy Levers in* Putting California on the High Road: A Jobs & Climate Action Plan for 2030, at 66, 68 (Carol Zabin ed., 2020).

> construction jobs created to be filled by residents of neighborhoods adjacent to the project. The agreements establish further requirements that 10–15% of construction work hours be performed by at-risk workers, including workers from poor households and workers with a history of incarceration or recipients of public assistance, among other things.[71]

Implementing a local hire program as part of a zoning plan would ensure that any new public and private development projects benefit and employ locals.

Language immersion plans for schools located within the zoning district could also be an attractive feature of a cultural zoning plan. Depending on the ethnic makeup of the zone and the groups crafting the zoning plan, these programs might include multiple languages besides English. Immersion programs are useful for allowing students to retain native language skills while learning English.[72] This could be very helpful for immigrant families with many non-native English speakers, and generally attractive to Asian American families who wish to preserve their language. For example, St. Paul, Minnesota created the Hmong Dual Language Program and Hmong Language and Culture Program in its school district to serve the Hmong immigrant population.[73] This implementation has been a helpful resource for Hmong children trying to adjust to the American school system.

4. Weighing Competing Plans

If a local zoning board receives multiple cultural zoning proposals, it should defer the responsibility of deciding between the proposals to a court. Under this sample policy, the zoning board cannot seek to substitute its own plan or unilaterally merge the plans together. Doing so could taint the power to create a cultural zone that is being offered to these groups. A court should evaluate between plans by using the standards outlined in Subpart II above. Evaluation would start by determining which plan has the most appropriate scope given the ethnic enclave's population and history in the area. Then, it should consider the specifics of each zoning plan and how well the plans address the historical and present discrimination and/or gentrification threatening residents. Courts should also hear testimony about the makeup of the different groups submitting plans and their connection to the community. Using this approach, a court will be able to determine whether a zoning proposal is designed to protect the wealthy and powerful or the average resident.

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71. *See Policy & Tools: Community Workforce Agreement Examples*, P'SHIP FOR WORKING FAMS., https://www.forworkingfamilies.org/page/policy-tools-community-workforce-agreement-examples [https://perma.cc/M3ES-S9NL].

72. *See* Anne Neveu, Kimberly Crespo, Susan Ellis Weismer & Margarita Kaushanskaya, *Does Long-term Dual-language Immersion Affect Children's Executive Functioning?*, 208 J. EXPERIMENTAL CHILD PSYCH. 1, 2 (2021).

73. *See* John Rosales, *Dual-Language Immersion Programs Boost Student Success*, NAT'L EDUC. ASS'N (Nov. 26, 2018), https://www.nea.org/advocating-for-change/new-from-nea/dual-language-immersion-programs-boost-student-success [https://perma.cc/ALZ9-C8X6].

In the case of New York's Chinatown, a court might find itself considering a proposal from a collection of developers and real estate businesses and another from the Coalition to Protect Chinatown and the Lower East Side, a group of community organizations, small businesses, and residents.[74] Both might have strong ties to the Chinatown area, but a court should analyze how each plan serves the goals of preventing harm to current residents and common cultural landmarks. The pro-business group, which has advocated for luxury development and practices commonly associated with gentrification, would likely lose its zoning petition based on this test.

Other solutions might exist for choosing between plans. One alternative solution would be to hold a local vote within the cultural zoning area to decide between competing plans. While this could be feasible, this Article relies on the court as a decision maker because of the risk of political apathy and/or corruption that could affect a local vote.

V. Concerns

Immediate concerns raised by the sample policy described above may include that it is far-fetched and unrealistic. Cultural zoning already exists, but it seems unlikely that legislatures will grant the power to force rezoning. Under the proposed policy, the only check on rezoning plans would be other competing plans that might be initiated instead. While the plan's political feasibility may be an issue, this Article contends that the increasing dissolution of Asian American ethnic enclaves requires significant countermeasures. However, these countermeasures are not beyond the bounds of political possibility. Community input on zoning is not uncommon nor does it give communities absolute sovereignty over an area. Petitions to make zoning changes are common and often accepted, and this policy would simply put minority communities in the driver's seat for making such changes. Further, the zoning power does face some restrictions through the Fourteenth Amendment and legislation like the Fair Housing Act.[75] A proposed zoning plan could not, for example, specify that only South Asian individuals can live in the zone. The zoning power granted here largely seeks to protect against harms that plague Asian American communities but does not provide specific benefits based on race. Indeed, the zoning powers proposed in this article would likely benefit low-income residents and small businesses owners of any ethnicity because of the suggested protections against gentrification and local hiring provisions.

Another potential concern is that the cultural zoning power proposed here will not benefit all Asian Americans and thus fails as a form of reparations. This Article contends that the preservation of important ethnic enclaves and cultural centers does benefit all Asian Americans. These places serve important purposes for protecting Asian American identity within the United States. Further, not all Asian Americans are equally in need of the

74. *See Coalition to Protect Chinatown and LES*, People First NYC, https://peoplefirstnyc.org/about [https://perma.cc/J69Z-SRPD].

75. *See* Fair Housing Act, 42 U.S.C. §§ 3601–3631 (2022).

material benefits that a cultural zoning power would provide. Ethnic enclaves are typically places established by the first immigrant waves of a particular ethnicity and are often the sites of severe discrimination.[76] Wealthier Asian Americans, who are less likely to be part of these early immigrant waves or to live in these enclaves, may certainly face racial discrimination but are less likely to have experienced the deep-rooted harms that reparations typically address.[77] Implementing the cultural zoning power may be an effective way to build political power and protections where they are most urgently needed.

Lastly, there is a legitimate concern that the imposition of a cultural zone by one minority group might harm other groups living in the proposed zoning area. This Article sought to address this problem by including considerations of population and compactness in the zoning review process. However, other solutions might exist. For example, coalitions of various ethnicity groups might have overlapping interests and could submit joint zoning plans. Such plans might reflect important considerations for each ethnic group. For example, the Koreatown in Los Angeles might be rezoned by a coalition of Latinx and Korean groups. In recognition of the cultural significance of Koreatown to the Korean American population, a joint zoning plan might include Korean language street signs and protections for the restaurant industry. To protect the majority Latinx population of Koreatown, that same joint plan might limit new development and require protections against urban renewal programs. This might require some financial sacrifice by Korean individuals and groups who still benefit most from property ownership and the tourism industry.[78] However, both groups would benefit from protections against tenant eviction and the provision of language services. To encourage collaboration between different minority communities, a zoning board might consider whether a zoning plan championed by one ethnic group will have a discriminatory impact on another. A court might also consider a plan supported by a multi-ethnic coalition more favorably in its evaluation of competing plans.

76. *See* Kandil, *supra* note 26; Song, *supra* note 27.

77. Little Cambodia in the Bronx of New York provides a good example of the gap between those who remain in an ethnic enclave like Little Cambodia and those who leave: "Cambodians who remain in New York tend to be older and in failing health; those who leave are typically younger emigrés who attended school in the United States and have the ability or the resources to find jobs elsewhere, often in hotels or garment factories." David Shaftel, *Little Cambodia, Growing Still Littler*, N.Y. Times (Jan. 20, 2008), https://www.nytimes.com/2008/01/20/nyregion/thecity/20camb.html?smid=nytcore-ios-share&referringSource=articleShare [https://perma.cc/N9PE-FBG5]; Kocchar & Cilluffo, *supra* note 34.

78. *See* Anne Kim-Dannibale, *In L.A.'s Koreatown, Travelers Find a 'Second Seoul*,' Nat'l Geographic: Travel (Nov. 8, 2021), https://www.nationalgeographic.com/travel/article/in-los-angeles-koreatown-travelers-find-a-second-seoul [https://perma.cc/2BKN-X9MA]; Carol Tucker, *Finding the Heart of L.A.'s Koreatown*, USC News (Feb. 10, 1997), https://news.usc.edu/12161/Finding-the-Heart-of-L-A-s-Koreatown [https://perma.cc/QM4Y-3W73].

VI. Case Study: The Two Bridges Community Plan

As aforementioned, residents of New York City's Chinatown have long been struggling against City efforts at gentrification and removal. Most recently, advocacy groups and residents in the Lower East Side have been attempting to stop the construction of luxury high rise apartments in the Two Bridges area of Manhattan.[79] Two Bridges is a mixed income neighborhood and majority Asian American with a substantial Latinx population.[80] In December 2018, the City Planning Commission granted approval for the construction of three luxury condo towers to be constructed in Two Bridges.[81] A coalition of advocates, many of whom had long been calling for inclusionary zoning in Chinatown and the Lower East Side, mobilized in response. In 2018, the group convinced a court to nullify the Commission's approval of the tower development, citing fears about impacts to the surrounding neighborhood.[82] However, this decision was overturned in Appellate Court and construction process has recently begun again with permission from the city government.[83]

The advocacy coalition, the Chinatown Working Group, submitted the "Two Bridges Community Plan" as an alternative zoning plan.[84] This plan would "promote mixed use development that produces new affordable housing" through measures like requiring new developments to offer 50 percent of their units for affordable housing, imposing height limits of 350 feet on new development, and limiting some land uses such as prohibiting big-box stores

79. *See Coalition to Protect Chinatown and LES*, *supra* note 34; *Using NY's New Environmental Protections, AALDEF Files Lawsuit Against Two Bridges Development in LES and Chinatown*, Asian Am. Legal Defense & Educ. Fund (Oct. 21, 2022), https://www.aaldef.org/press-release/using-ny-s-new-environmental-protections-aaldef-files-lawsuit-against-two-bridges-development-in-les-and-chinatown [https://perma.cc/H4RS-EBZF]; Elizabeth Kim, *LES And Chinatown Community Groups Sue City Over Two Bridges Mega Development*, Gothamist (Mar. 24, 2019), https://gothamist.com/news/les-and-chinatown-community-groups-sue-city-over-two-bridges-mega-development [https://perma.cc/E682-7TWB]; *Lower East Side Residents Protest Construction of New Luxury Buildings*, CBS News N.Y. (Oct. 16, 2021), https://www.cbsnews.com/newyork/news/lower-east-side-luxury-buildings-protest [https://perma.cc/BV2G-4KQM].

80. *See generally Two Bridges Neighborhood Council, Decade After 9/11: A Look at Who We Are Now*, Two Bridges Neighborhood Council (May 2011).

81. *See* Amy Plitt, *Two Bridges Skyscrapers Get City Planning Approval*, Curbed N.Y. (Dec. 6, 2018), https://ny.curbed.com/2018/12/5/18127400/lower-east-side-two-bridges-skyscrapers-nyc-housing [https://perma.cc/TZ9X-YDU3].

82. *See* Council of City of New York v. Dep't of City Plan. of City of New York, 131 N.Y.S.3d 1 (2020).

83. *See Two Bridges 'Mega-Reversal' as Court Rules Against Community Suit*, The Village Sun (Feb. 19, 2021), https://thevillagesun.com/two-bridges-mega-reversal-as-court-rules-against-community-suit [https://perma.cc/S367-BJCR]; Dashiell Allen, *Two Bridges Towers Foes Fight to Stop Buildings' Foundation Work Before 421A Program Ends in June*, The Village Sun (Apr. 15, 2022), https://thevillagesun.com/two-bridges-towers-foes-fight-to-block-foundation-work-before-421a-program-ends-in-june [https://perma.cc/3MKL-NXHJ].

84. *See Two Bridges Community Plan*, *supra* note 34.

and nightclubs.[85] However, the Chinatown Working Group has been unsuccessful in getting the Two Bridges Community Plan passed and has largely been powerless to stop development.

If armed with the power to enact cultural zoning under the policy this Article proposes, the Chinatown Working Group would likely succeed in passing the Two Bridges Community Plan. First, the working group has garnered substantial local support, evidenced through protests and zoning challenges submitted by New York residents.[86] Further, the working group consists largely of local residents who can likely speak for the community's needs better than a developer. Second, the Two Bridges area would meet the criteria for a cultural zone. The neighborhood contains a significant Asian American population. The Two Bridges area is also sufficiently compact and contiguous. Further, the luxury towers are strong evidence of gentrification, which suggest a need for zoning protections. Third, the zoning requests in the Two Bridges Community Plan are reasonable and serve to protect the majority of residents in Two Bridges through land use requirements and restrictions. Additionally, the plan does not unconstitutionally exclude other ethnic groups since it was made in partnership with representatives of the Latinx community and serves to benefit the Latinx residents of Two Bridges.[87] Finally, if the developer submitted a competing rezoning plan, the Two Bridges Community Plan would likely prevail in court. The developer's interests are financial and not tied to specific community benefits or protections. A developer might argue that building a high rise allows for greater density and could create more affordable housing if units are dedicated to that purpose. However, the Chinatown Working Group could respond that the affordable housing plan set out by the developer is insufficient compared to the increased cost of living and harms to the neighborhood's character that luxury towers would bring.

Most importantly, if a court decided that the Two Bridges Community Plan was the best zoning scheme based upon the desired criteria, the plan would be enacted without restrictions from an unwilling zoning board. This is a form of power that activists currently lack, as they rely on appeals to courts and city government to reverse the decisions of the City Planning Commission. If given the rezoning power, activists could simply institute the Two Bridges Community Plan rather than waste precious time and resources attempting to persuade officials to enact it. Putting the rezoning power in the hands of local activists would also insulate the local community from decision makers like the City Planning Commission who have obviously sided with development interests.

85. *See* Chris Walters, *To Protect Chinatown and the Lower East Side, Pass the Two Bridges Community Plan*, ANHD (Mar. 12, 2020), https://anhd.org/blog/protect-chinatown-and-lower-east-side-pass-two-bridges-community-plan [https://perma.cc/H9CD-F3SJ].

86. *See id*.

87. *See* Sarah Ngu, *supra* note 50.

Conclusion

There is tremendous potential in giving power to Asian American enclaves to advocate for, protect, and grow their communities through zoning. The necessity of granting this power is rooted in present harms to Asian American communities and in the long history of unremedied harm to Asians in the United States. While Asian Americans are no longer violently displaced en masse as they were in the 1800s, communities remain under threat from acts of racial violence, gentrification, and cultural appropriation. This Article provides a preliminary attempt to describe a cultural zoning power and how it should be granted as a form of reparations. Asian American enclaves have been sites of incredible struggle, often formed out of necessity and with the threat of racial violence constantly looming. These communities are also a testament to the resilience and cultural flourishing of Asian Americans despite the multitude of hardships faced. To protect this legacy and empower Asian Americans to build upon it, it will be important to embrace creative and bold applications of law that allow minorities to proactively shape the neighborhoods in which they live.