

# The History of Japanese Racism, Japanese American Redress, and the Dangers Associated with Government Regulation of Hate Speech

by HIROSHI FUKURAI AND ALICE YANG\*

## Introduction

Japan has numerically small yet historically significant racial and ethnic minority populations. These groups include indigenous Ainu people, Ryukyuan, Koreans, Chinese, Burakumins, and newly arrived foreign workers from around the globe, all of whom remain among Japan's marginalized populations. Despite the fact that Japan's Constitution prohibits discrimination because of "race, creed, sex, social status or family origin,"<sup>1</sup> Japanese society has long tolerated hate speech and racial animosity toward Japan's minority populations. In order to regulate hate speech, Professor Craig Martin calls for greater government involvement in the revision of Japan's hate speech laws to include more specific restrictions and sanctions.<sup>2</sup> This Article argues that "trusting" and empowering the government to define hate speech can be potentially dangerous and may even harm people's right to free speech, including criticisms of racialized government policies.

This Article further argues that Japan's racism has deep historical roots and traces the historical genealogy of Japan's racial hate against Asians and other marginalized racial and ethnic minorities in Japan. After the Western

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\* Professor of Sociology and Legal Studies, University of California, Santa Cruz; Associate Professor of History, University of California, Santa Cruz. We thank Professor Setsuo Miyazawa for organizing the symposium on Hate Speech Laws in Japan in Comparative Perspectives, on September 22, 2017, at the UC Hastings College of the Law. Our appreciation is extended to Professor Keith Hand, who also co-hosted the symposium and History Professor Alan Christy at UCSC who read the draft and gave valuable suggestions for revisions.

1. NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 14, ¶. 1 (Japan).

2. See Craig Martin, *Striking the Right Balance: Hate Speech Laws in Japan, the United States, and Canada*, 45 HASTINGS CONST. L.Q. 455 (2018).

concept of race was first introduced in Japan in the late nineteenth century, state planners and political elites incorporated its concept to construct a set of “racialized” ideologies to promote a new nation-state building project. These manufactured ideologies included an imagined national unity based on its divine cultural roots in the “three-thousand-year history” of the imperial family, a myth of racial homogeneity of its national subject, and claims of Japanese racial superiority over other Asian races. Japan’s nation-building project and efforts to strengthen the centralized authority of the national government has led to a number of imperial projects including the 1868 annexation of Ezo or Hokkaido which had been the homeland of the indigenous Ainu people and the forced amalgamation of the Ryukyu Kingdom in Okinawa in 1879.<sup>3</sup> The supposed supremacy of the “Japanese race” was also propagated to justify and facilitate Japanese imperial ventures in Asia, leading to the invasion and forced annexation of Taiwan in 1895, South Sakhalin in 1905, Korea in 1910, and Manchuria in the northeastern region of China in 1931. Japan’s participation in the First World War and the defeat of Germany also led to the mandate control of islands in the North Pacific Ocean in 1919.<sup>4</sup>

The rhetoric of “Japanese supremacy” fused within nationalist agendas was further amplified by state propaganda agencies and provided the normative justification for Japan’s aggressive colonial policies and brutal rule over ethnic Asians in Japan and abroad. For example, the rumor of Korean uprisings in the aftermath of the Kanto Great Earthquake led to the killing of more than 6,000 ethnic Koreans by Japanese militias in Tokyo metropolitan areas in 1923. The fusion of racism and sexism also led to the systematic sexual enslavement of nearly 200,000 Asian women and the establishment of comfort stations throughout Asia; the full-scale invasion of China in 1937, including the killing of hundreds of thousands of Chinese civilians such as women, children and babies during the Nanjing massacre; the exploitation of Chinese, other Asians, and Allied POWs as laboratory subjects in biochemical human experiments by Unit 731 military doctors; the brutal suppression of indigenous resistance against the puppet state Manchukuo in China; and the forced migration of Koreans, other Asians, and

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3. See MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION* (2d ed.1992). This Article relies on the theory of racial formation advanced by sociologists Michael Omi and Howard Winant. According to Omi and Winant, a racial project is part of sociopolitical processes in society that “mediate between discursive or representational means in which race is identified and signified on one hand, and the institutional and organization forms in which it is routinized and standardized on the other.” *Id.* at 60. This Article examines the role of state elites and institutions in the representation of the meaning of race in language, imaginary, and popular discourse and situates Japan’s racial project within the greater social structure and state-centered political programs.

4. MILTON W. MEYER, *JAPAN: A CONCISE HISTORY 182–185* (2014).

Allied POWs to work as slave laborers in Japan's coal mines, war factories, agricultural fields of Manchuria, and other colonized regions throughout Asia during the first half of the twentieth century.

Despite these war crimes and atrocities in Japan and Japanese occupied areas, the Japanese government has never acknowledged the role of racism or "Japanese supremacy" in justifying their imperial projects. In contrast, after WWII, the German government accepted responsibility for the Holocaust based on a racist doctrine that asserted the superiority of the Aryan race over Jews, Roma, Slavs, and other so called "inferior" races, offering apologies and compensation to victims. Additionally, in 1988, the U.S. government acknowledged racial prejudice behind the policy of mass removal and incarceration of more than one hundred thousand Americans of Japanese ancestry during WWII. Decades of grassroots activism and political lobbying finally convinced the U.S. government to recognize that the wartime incarceration was motivated by racism rather than national security.<sup>5</sup> The passage of the 1988 Civil Liberties Act required a formal government apology, the payment of \$20,000 compensation to each surviving former victim, and the creation of an educational foundation.

This Article begins by critically examining the history of Japanese racism in relation to Japan's imperial projection of racialized policies and military ventures unleashed by Japanese government and propaganda agencies. We then examine Japanese Americans' successful redress movement in the U.S. and the lessons of this campaign for other victims of racist government policies. Many lawsuits have been filed against the Japanese government to demand both apologies and reparations. The plaintiffs included Ainu people who were stripped of their land and subjected to Japan's forced assimilation policies;<sup>6</sup> Korean victims and families whose members were murdered by Japanese militias during the Great Kanto

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5. See Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 904, 50a U.S.C. § 1989b *et seq.* (1988). The legislation acknowledged that mass removal and incarceration "were motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership." *Id.* The legislation utilized the conclusions of The Commission on Wartime Relocation and Internment of Civilians, which called for additional funding of "comparative studies of similar civil liberties abuses . . . upon particular groups of racial prejudice embodied by Government action in times of national stress." COMM'N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED PART 2: RECOMMENDATIONS 9 (1983). See also Chalmers Johnson, *Some Thoughts on the Nanjing Massacre*, 7 JAPAN POL'Y RES. INST. 1 (2000).

6. GAVAN MCCORMACK, THE EMPTINESS OF JAPANESE AFFLUENCE 201 (2001); see JOHN BATCHELOR, THE AINU OF JAPAN: THE RELIGION, SUPERSTITIONS, AND GENERAL HISTORY OF THE HAIRY ABORIGINES OF JAPAN 26 (1892) (explaining Ainu people's history of grievances and calls for compensation).

Earthquake in 1923;<sup>7</sup> Okinawan civilians who were killed or forced to commit suicide during the Battle of Okinawa in 1945;<sup>8</sup> and Burakumins who have been long subjected to both corporate and governmental discrimination, as well as other Asian victims of Japanese imperialism, including families and/or victims of sexual enslavement, forced laborers, among many others.<sup>9</sup>

This Article also critically examines the possible dangers associated with giving governments the authority and power to regulate the parameters of hate speech and free speech. Professor Craig Martin's article assumes that the Japanese government should act as a principal organ to regulate and legislate hate speech.<sup>10</sup> This Article argues that the governments in Japan and the U.S. have often acted against the interests of racial and ethnic minorities and that greater public debate and discussion is needed to examine the potential ramifications of government regulation of hate speech that might limit the freedom of speech, especially speech critical of the government. This Article further argues that today's resurgence of racism and racial prejudice against marginalized populations in Japan must be understood within the context of the historical legacy of Japanese governmental policies that propelled racialized nation-building and imperial projects in both Japan and Asia in the late nineteenth century and the early half of the twentieth century. This Article substantiates that the failure to acknowledge the role of Japanese racism and the Japanese government's refusal to accept Japanese war responsibilities may lie at the heart of today's resurgence of racism and hate speeches against Japan's minority populations.

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7. The families of Korean victims established an organization to demand the Japanese government provide a formal apology and compensation. See *Kanto Daishinsai no Chosenjin Gyakusatu: Giseisha Izokukai ga Hossoku: Kankoku* [Korean Massacre During the Great Kanto Earthquake: The Bereaved Families Association Established in South Korea], YANHAP NEWS AGENCY, Aug. 30, 2017.

8. *Okinawasen Soshō: Genkoku ga Koso* [Litigation of the Battle of Okinawa: Appeal by the Plaintiffs], RYUKYU SHIMPO, Mar. 30, 2016.

9. See IAN NEARY, *THE BURAKU ISSUE AND MODERN JAPAN: THE CAREER OF MATSUMOTO JICHIRO 76–78* (2010) (discussing Burakumins' demand for redress/reparations for systemic racism and discrimination by the Japanese government. Instead of demanding reparations for all Burakumin populations, individual lawsuits targeted for specific apologies and compensation have been more successful. For example, in the *Takamatsu* Case in 1933, two Burakumin youths were convicted of kidnapping a non-Burakumin girl. She agreed to marry one of them without being informed that he was a Burakumin member. Her father then accused them of kidnapping and they were sent to prison. The *Suiheisha*, prior to today's Buraku Liberation League, decided to launch a national campaign about the Takamatsu court decision, which ultimately led to the forced retirement of the trial judge and the demotion of both the police chief and lead prosecutor.)

10. Martin, *supra* note 2.

## I. The Origin of Racial Rhetoric and Racist Narratives

Scientific evidence suggests that race is an artificial construct and does not exist in nature.<sup>11</sup> Social science research also argues that race is a political and legal construction and serves an important organizing principle of people's everyday experiences in society.<sup>12</sup> Furthermore, ideologies of race can force the identities of mass populations into a predetermined, fixed mold of categories, thereby creating a system of racial hierarchy based on socially constructed cognitive abilities and concepts such as intelligence, creativity, aesthetics, and morality.<sup>13</sup> The fact that race is a social construction also suggests that there are no universally fixed categories and/or meanings of race. Specifically, researchers suggest that "racial categories . . . [have been] created, inhabited, transformed, and destroyed"<sup>14</sup> through social conditions in specific historical processes in order to accommodate the institutional practices and everyday experiences that are synchronized and intertwined around the changing definition and principle of race in order to maintain the racial order.<sup>15</sup> In the U.S., race became an effective designator of sociopolitical and legal status to regulate and determine one's access to scarce societal goods and resources such as property, freedom, justice, and equality.

Today, America's resurgence of racist speech and open racism against African Americans, Latinx, American Indians, Arab Americans, and Muslims has been fostered by the greater visibility and assertiveness of white supremacist movements led by white nationalists, neo-Nazis, Ku Klux Klan, the so-called alt-right, and other religious and white extremist groups.<sup>16</sup> These racist attitudes and racial prejudice against minority populations have deep historical roots in colonial North America where emergent socioeconomic systems justified the subordination of racial and ethnic minorities, such as Africans in slavery;<sup>17</sup> the colonization of Mesoamerica

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11. See generally HIROSHI FUKURAI & RICHARD KROOTH, RACE IN THE JURY BOX: AFFIRMATIVE ACTION IN JURY SELECTION 20–59 (2003).

12. FUKURAI & KROOTH, *supra* note 11.

13. FUKURAI & KROOTH, *supra* note 11.

14. OMI & WINANT, *supra* note 3, at 56.

15. OMI & WINANT, *supra* note 3, at 56.

16. Jesse Singal, *Undercover with the Alt-Right*, N.Y. TIMES, Sept. 19, 2017, <https://www.nytimes.com/2017/09/19/opinion/alt-right-white-supremacy-undercover.html>; Matt Stevens, *White Nationalists Reappear in Charlottesville in Torch-Lit Protest*, N.Y. TIMES, Oct. 8, 2017, <https://www.nytimes.com/2017/10/08/us/richard-spencer-charlottesville.html>.

17. WILLIAM L. VAN DEBURG, SLAVERY AND RACE IN AMERICAN POPULAR CULTURE 51 (1984); see EDWARD E. BAPTIST & STEPHANIE M.H. CAMP, NEW STUDIES IN THE HISTORY OF AMERICAN SLAVERY (2006) (discussing more recent studies of the history of American slavery).

and subordination of Mexicans in the aftermath of the 1846 U.S. invasion of Mexico;<sup>18</sup> the continued extermination of indigenous populations throughout North America;<sup>19</sup> and the postbellum “importation” of slave laborers from Asia, including Chinese coolies to work in the construction of continental railroads, shaft mining in the Midwest, and agricultural fields in the Southwest.<sup>20</sup> Racial attitudes and stereotypes were often couched in altruistic rhetoric to rationalize and justify the subordination of non-white populations. Prominent American historian Ulrich Bonnell Phillips, for instance, defended slavery in 1918 as a benevolent institution that white Europeans created so that uncivilized naked savages from Africa could be saved from a bitter pagan fate, in which they would be properly fed, clothed, and sheltered in slavery.<sup>21</sup>

Japan also had a comparable history of creating a system of racial supremacy and racial order to promote nation-state consolidation and national unity. Claims of the supremacy of the Japanese race also justified and facilitated Japan’s imperial ventures in Asia in the late nineteenth and early twentieth centuries. After Japan declared its independence in 1868, state elites incorporated Western ideas of race in the late nineteenth century and developed racial classifications to be applied to citizenship, conscription, and family registries within the grand scheme of Japan’s imperial military design and the expansion of the Japanese sphere of influence in Asia.<sup>22</sup>

Rather than incorporating the Western concept of race and its racial classification which was based on tenuous phrenological and phenotypical differences, Japan’s racial classification of group membership infused the concept of race with that of ethnicity based on a common “blood,” imagined ancestry, and shared national identity.<sup>23</sup> The emperor, as father of the nation

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18. *See generally* JOSE ANGEL HERNANDEZ, *MEXICAN AMERICAN COLONIZATION DURING THE NINETEENTH CENTURY* (2012).

19. JEFFREY OSTLER, *GENOCIDE AND AMERICAN INDIAN HISTORY*, OXFORD RES. ENCYC. OF AM. HISTORY (2015).

20. WILLIAM TRAVIS HANES & FRANK SANELLO, *THE OPIUM WARS: THE ADDICTION OF ONE EMPIRE AND THE CORRUPTION OF ANOTHER* 164 (2004); NOAM CHOMSKY, *HOPES AND PROSPECTS* 78 (2010) (“the pig trade brought kidnapped Chinese workers to the United States to build railroad and perform other hard labor”).

21. *See* ULRICH BONNELL PHILLIPS, *AMERICAN NEGRO SLAVERY* (1918).

22. TSUYOSHI HASEGAWA AND KAZUHIKO TOGO, *EAST ASIA’S HAUNTED PRESENT: HISTORICAL MEMORIES AND THE RESURGENCE OF NATIONALISM* 233 (2008) (“Racial superiority was an overriding psychological motivation that governed Japanese conduct from the top policy-makers down to the soldiers on the ground. Racism imparted an especially brutal character in Japanese imperialism, unique even among imperialist powers.”).

23. YUKO KAWAI, *RACE AND RACISM IN MODERN EAST ASIA: VOL. II: INTERACTIONS, NATIONALISM, GENDER AND LINEAGE* 368–88 (2015).

and descendent of the Sun Goddess, was a key to the emergence of the idea of the Japanese people as a single race unified by blood whose superiority was manifested in the notion of an unbroken line of imperial rule from the beginning of time to the present. The term “*minzoku*” represented race, ethnic community, nation, or the combination of all of these distinct dimensions, while the term “*jinshu*” also referred to skin color, physical stature, hair texture, cranial structure, and other facial and physical characteristics.<sup>24</sup> Both terms became overlapped in meaning, imbued with an imagined ancestry and a distinct Japanese national identity and racial politics, suggesting that race-ethnicity dynamics became “at the heart of the struggle over how to represent the Japanese people and, consequently, the nation itself.”<sup>25</sup> Ethnic nationalism “began to take on a new significance in Japan after the turn of the twentieth century, just as the concept of ethnic nation (*minzoku*) entered Japanese political discourse.”<sup>26</sup>

During this period of nation-state building at home and Japanese colonial expansion and imperial ventures in Asia from 1868 through the 1940s, the Japanese government exploited the idea of racial homogeneity to differentiate and identify ethnically marginalized populations such as Okinawans, the Ainu, and other underrepresented populations, imposed assimilation programs in language, culture, and religion, and forcefully integrated them into the Japanese national agendas.<sup>27</sup> The ideological emphasis on a single and pure Japanese race further consolidated the modern nation-state and justified centralized state authority.

State elites also used imported concepts of race to situate a unique Japanese race in the hierarchy of Asian races and propagated their racial superiority over other races of people in the Asian peripheries. Japanese colonial and territorial expansion in Asia brought struggles with the indigenous populations of Taiwan, Korea, China, and Russia, and the modernizing elites developed a system of racial classification and hierarchy,

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24. KAWAI, *supra* note 23.

25. Kevin M. Doak, *Ethnic Nationalism and Romanticism in Early Twentieth-Century Japan*, 22 J. OF JAPANESE STUD. 77, 81 (1996).

26. *Id.*

27. See generally PATRICK HEINRICH, *THE MAKING OF MONOLINGUAL JAPANESE: LANGUAGE IDENTITY AND JAPANESE MODERNITY* (2012).

itizenship, language uniformity, and cultural identity in the colonial territories of Taiwan,<sup>28</sup> Korea,<sup>29</sup> and Manchuria.<sup>30</sup>

But the advent of the Japanese empire presented a particular ideological conundrum for the discourse on race and ethnicity in Japan. Emerging in a place that had articulated its own intense modernization project as anti-imperialist, the task of imperial ideology was to portray the expansionist Japanese empire as “liberator.” Japanese apologists for empire clung to the idea of justifying the Japanese empire as a liberation of their Asian “brothers” from Western imperialism. The notion of the common ancestry (*dōsorōn*) of the Japanese people and their Asian neighbors, especially Koreans, or the common cultural grounds (*dōbunron*) shared with Asian societies, especially Chinese, was linked to a narrative of Japan as a kind of melting pot of Asia, proposed most famously by Okakura Kakuzo in *The Ideals of the East* in 1903.<sup>31</sup> Posing Japan as occupying a unique position as the place where all of Asian cultures and all Asian peoples merged gave Japanese ideologues a formula for arguing why Japanese empire was not the imposition of rule of one alien race over another while also giving agents of Japanese empire a way to argue for their natural role as leaders. In other words, Japanese imperial ideologues could argue for both “brotherhood” and the “superiority” of Japanese. By using metaphors of the “family” that were prevalent in Confucian philosophy, Japanese could argue that their Asian neighbors owed them loyalty and obedience and this, in turn, could then justify stiff regulations separating Japanese from their colonized subjects and at times brutal enforcement of Japanese rule. While this discourse on “brotherhood” and “mixed origins” dominated the early years of the empire, advocates of a view of Japanese as “pure blood,” uncontaminated by their inferior Asian neighbors circulated as a minority view.

An ethnically distinguished national consciousness remained, nonetheless, very strong in the domestic consolidation, colonial policies and projections in Asia, and international relations with the West. As the crises

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28. See generally PING-HUI LIAO AND DAVID DER-WEI WANG, *TAIWAN UNDER JAPANESE COLONIAL RULE, 1895-1945: HISTORY, CULTURE, MEMORY* (2012).

29. MARK E. CAPRIO, *JAPANESE ASSIMILATION POLICIES IN COLONIAL KOREA, 1910-1945* (2011).

30. See generally LOUISE YOUNG, *JAPAN’S TOTAL EMPIRE MANCHURIA AND CULTURE OF WARTIME IMPERIALISM* (1999); see also Mariko Asano Tamanoi, *Victims of Colonialism? Japanese Agrarian Settlers in Manchukuo and Their Reparation*, 7 *ASIAN-PAC. J.* 1 (2009) (discussing the impact of imperial policies on Japanese settlers in Manchuria).

31. See generally OKAKURA KAKUZO, *THE IDEALS OF THE EAST: WITH SPECIAL REFERENCE TO THE ART OF JAPAN* (1903); see generally OGUMA EIJI, *A GENEALOGY OF ‘JAPANESE’ SELF-IMAGES* (2002).



in China intensified in the wake of the Japanese invasion of Manchuria and as the resistance of Koreans proved to be more durable than the “brotherhood” ideologues had imagined, “pure blood” advocates began to win the day.<sup>32</sup> As total war erupted in China in 1937 and war with the U.S. began in 1941, Japanese racial discourse swung hard toward an articulation of Japanese racial superiority based on the idea of Japanese purity.<sup>33</sup> During WWII, Japanese racial politics aligned with German racial ideologies and fueled the ideological battles among different races and nation-states.

In the postwar years, in the midst of a collective affirmation of racial unity based on common sentiments rooted in nature, history, and imagined-ancestry, the “discourse on Japaneseness” (*nihonjinron*) was born and constructed the core belief of national identity with assertions about unique Japanese blood and thought processes.<sup>34</sup> While “there is no such entity of the ‘Japanese race’ in the objective sense, the Japanese have tended to perceive themselves as a distinct ‘racial group.’”<sup>35</sup> Ironically, in the postwar years, the notion of Japanese “purity” and unconnectedness to their former Asian colonies retained salience with the Tokyo War Crimes Trials, only now it was used to explain why the Japanese had been ill-suited to running an empire and to explain why the empire had been so brutal. Japanese “purity” also became the foundation of a new “anti-imperial” ideology for postwar Japan in which Japanese as a unique ethnic group in the world were inherently inward-oriented and therefore non-expansionist. The prewar empire was dismissed as an aberration and the “racial supremacy” of the Japanese that undergirded Japanese militarism was tamed as a “racial uniqueness” that guaranteed Japanese peacefulness. Japan’s national identity, especially in the postwar years, was built upon the myth of a unified and uniquely shared imagined community based on the purity of race.

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32. T. FUJITANI, *RACE FOR EMPIRE: KOREANS AS JAPANESE AND JAPANESE AS AMERICANS DURING WORLD WAR II* (2011) (presenting a revision of this argument about the hegemony of “pure blood” during the war through a comparison of Japanese Americans and Korean Japanese during the war, arguing that the pressures of the war, especially the demands for total mobilization, led to a resurgence of a “liberal” line on the potential for Korean equality under a “brotherhood” discourse).

33. JOHN W. DOWER, *WAR WITHOUT MERCY: RACE AND POWER IN THE PACIFIC WAR* (1986).

34. KOSAKU YOSHINO, *CULTURAL NATIONALISM IN CONTEMPORARY JAPAN: A SOCIOLOGICAL INQUIRY* (2005).

35. *Id.* at 24.

### A. State Propaganda on Race and Japan's Racial Supremacy in Asia and Beyond

The Japanese government had been fully aware of the power of propaganda, the new science of population control without the use of force or violence. Both British and American governments used propaganda campaigns to achieve their political agendas in the beginning of the twentieth century. The British Ministry of Information convinced American elites to participate in the First World War, while the Committee on Public Information (“CPI”), created by Woodrow Wilson in 1917, also helped transform isolationist Americans into raging war mongers stirred by jingoist hysteria within a matter of six months.<sup>36</sup> Adolf Hitler also noted in his autobiography, *Mein Kampf (My Struggles)*, the effectiveness of U.S. propaganda strategies and he concluded that Germany lost WWI because it lost the propaganda battle. Hitler pledged that next time around they would have their own propaganda system, which they did during WWII.<sup>37</sup> Hitler’s *Mein Kampf* was also studied by Japanese scholars and its first full translation was published in 1932.<sup>38</sup> The American business community also became impressed by the propaganda effort, and Edward Bernays, a key CPI member who also published the book *Propaganda* in 1928, went on to build the first public relations industries in the U.S. Bernays stated that it was possible to “regiment the public mind every bit as much as an army regiments their bodies.”<sup>39</sup> The Japanese government emulated the U.S. and German propaganda agencies, and multiple Japanese agencies were created and mobilized, including the Cabinet Board of Information, the Ministry of Foreign Affairs, military propaganda specialists, Special Higher Police (*Tokko Keisatsu*) personnel, both public and private media, commercial advertisers, publishers, and writers who all worked to implant and disseminate Japan’s justification of imperial ventures against perceived internal enemies such as communists, socialists, anarchists, and Korean and Chinese nationalist subversives.<sup>40</sup> Japanese imperial ventures in China and other regions were also justified in order to prevent Western Powers’ intrusion in Asia and bring liberty for all Asians from the tyranny of white

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36. NOAM CHOMSKY & DAVID BARSAMIAN, PROPAGANDA AND THE PUBLIC MIND 164 (2015).

37. ADOLF HITLER, MEIN KAMPF (James Murphy trans. 1925).

38. TAKAJI SAKAI, YONO-TOSO [MY STRUGGLES] (1932). Other Japanese scholars also translated the book and published their work in Japan.

39. EDWARD BERNAYS, PROPAGANDA 52 (1928).

40. BARAK KUSHNER, THOUGHT WAR: JAPANESE IMPERIAL PROPAGANDA (2007).

rule, though Japan's racial narratives themselves instituted much of the same vision of racial hierarchy of the West that they supposedly disparaged.<sup>41</sup>

The Japanese government also created a police agency to ensure public compliance with state propaganda. For example, the Special Higher Police that was dubbed as "thought police" imposed heavy surveillance on the general population, arrested and tortured dissidents considered "seditious," and refused to follow the official line of propaganda. This special police unit was created by the Home Ministry in 1911 after a planned assassination attempt on the Meiji Emperor. Its mission then expanded to monitor subversive activity and civil unrest by foreign agents, communists, anarchists, and other insurgent elements.<sup>42</sup> The Police Bureau of the Home Ministry also published numerous propaganda journals and periodicals, such as the Special Higher Police Monthly Report, Foreign Activities Monthly, Foreign Activities Police Report, and Police Report on Publishing. These journals promoted imperial propaganda, justifying Japan's aggressive imperial ventures, while monitoring the potentially seditious activities of Chinese and Koreans in Japan and abroad.<sup>43</sup> What deviated from Nazi ideology and propaganda was the use of Confucianism and patriarchal family relations adopted in the schematics of racial relations in Asia. The racially superior Japanese were supposed to serve as parents over other Asian children in a strict racial hierarchy in order to rule eternally over the family of Asian nations. The document also implied that Japan would eventually become the head of the family of global nations.<sup>44</sup>

Until the Japanese invasion of China in the late 1930s, Japanese propaganda stressed Japan's commonalities and shared characteristics of culture and tradition with people in the Asian peripheries.<sup>45</sup> As Japan represented both the culmination and combination of all Asian cultures and people, Japanese propaganda exploited heterogeneous traits and common backgrounds to promote further economic investment and expansion, as well as the imposition of colonial ventures and political interventions in Asian countries.<sup>46</sup> As Japan's military power, industrial might, economic wealth,

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41. KUSHNER, *supra* note 40.

42. KUSHNER, *supra* note 40, at 51–53.

43. KUSHNER, *supra* note 40, at 52.

44. KUSHNER, *supra* note 40, at 22. See also Helen Tomoko Tanabe, *Military Use of the Japanese Educational System for War Propaganda During the Years 1931–37* (1960) (unpublished M.S. dissertation, University of Wisconsin, on file with the University of Wisconsin, Madison, General Library System) (discussing the impact of Confucianism on imperial educational policies).

45. See EIJI OGUMA, *A GENEALOGY OF 'JAPANESE' SELF-IMAGE* (2002).

46. *Id.*

and ideology of national confidence grew, Japan's heterogeneous character in culture and people was transformed to stress the purity of Japanese blood and the supremacy of the Yamato race. By the time Japan decided to invade China in 1937, propaganda on the uniqueness of the Japanese race reinforced the idea that racial others in Asia no longer fit into domestic and international social agendas.<sup>47</sup> In August 1937, for example, the government launched a movement called "Mobilizing the Spirit of all Japanese Nationals" (*Kokumin Seishin Sodoin*), to enlist the colonial peoples of Korea and Taiwan for the Sino-Japan War.<sup>48</sup> Korean and Taiwanese soldiers who were conscripted into the Japanese Imperial Army were treated as nonnationals and were ineligible for benefits given to Japanese military personnel. Yet, after the war Korean and Taiwanese soldiers still faced charges as members of the Japanese wartime military and many of them were executed for their war crimes.<sup>49</sup>

At the end of WWII, Japanese propaganda perpetuated this strict hierarchical view of Asia in racial terms. With Japan at its apex, the propaganda asserted that Japan's three thousand year history and unparalleled racial supremacy bestowed a civilizing mission on the country.<sup>50</sup> The racial hierarchy was clearly spelled out in the 1943 Ministry of Health, Labor and Welfare population policy program report, called "An Investigation of Global Policy with the Yamato Race as Nucleus."<sup>51</sup> The Meiji Constitution established that the Emperor was a direct descendant of the original Yamato clan.<sup>52</sup> This secret report surveyed the European concept of race from Plato, and other Greek philosophers, to German scientists, drawing connections between racism, nationalism, and the justification of imperial ventures.<sup>53</sup>

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47. OGUMA, *supra* note 45.

48. CHIEN-JUNG HSU, *THE CONSTRUCTION OF NATIONAL IDENTITY IN TAIWAN'S MEDIA* 8 (2014).

49. BRUCE STRONACH, *BEYOND THE RISING SUN: NATIONALISM IN CONTEMPORARY JAPAN* 153 (1995).

50. BARAK KUSHNER, *THE THOUGHT WAR: JAPANESE IMPERIAL PROPAGANDA* 9, 36 (2006).

51. THE JAPANESE MINISTRY OF HEALTH AND WELFARE, *YAMATO MINZOKU WO CHUKAKU TO SURU SEKAI SEISAKU NO KENTO* [AN INVESTIGATION OF GLOBAL POLICY WITH THE YAMATO RACE AS NUCLEUS] (July 1, 1943).

52. R. H. P. MASON & J. G. CAIGER, *A HISTORY OF JAPAN: REVISED EDITION* 39 (1997) (The promulgation of the Meiji Constitution was "one of the great occasions of the reign, the date chosen, the national foundation day, was the anniversary of the legendary accession of Emperor Jimmu to the throne of Yamato in 660 B.C.").

53. THE JAPANESE MINISTRY OF HEALTH AND WELFARE, *supra* note 51.

## B. Post-War Japanese Supremacy and Racism

Such a strong sense of racial superiority over Asian neighbors continued after WWII largely due to U.S. Cold War strategies in Asia, which placed Japan on the U.S. side against many Asian countries that Japan had ruled in the first half of the twentieth century; including Communist China after the takeover of the mainland in 1949, North Korea during the Korean War in the early 1950s, and North Vietnam in the 1960s and early 1970s. The Japanese government also supported other U.S. policies in Asia, including the brutal military suppression of the democratic movement in Vietnam in the 1950s, the military coup of the Sukarno government in Indonesia in 1965, and the bombings of Laos and Cambodia during the Vietnam War in the 1960s and 1970s, among others; thereby, placing themselves on the side of the U.S. to support policies designed to curtail and eliminate internal insurgents in Asia and bring “freedom and prosperity” to the region, a similar justification propagated by imperial Japan in the early half of the twentieth century.<sup>54</sup>

Japanese propaganda of racial purity and the uniqueness of the Japanese race returned to post-WWII Japan largely due to the support of the Allied Forces. The original policies of the allied occupation were to democratize Japan by deconstructing the *Zaibatsu*, long controlled by corporate oligarchs, and prosecuting high-ranking fascist war criminals. Washington soon changed their policies in the late 1940s and decided to release Class-A war criminals, support fascist collaborators, and reconstitute prewar conservative business rules. George Kennan, an American diplomat and the principal architect of a top secret policy planning report called PPS/23, argued: “Recognizing that the former industrial and commercial leaders of Japan are the ablest leaders in the country, that they are the most stable element, that they have the strongest natural ties with the U.S., it should be U.S. policy to remove obstacles to their finding their natural level in Japanese leadership.”<sup>55</sup> The new U.S. policy in Japan terminated the purge of Japanese war criminals and reinstated the fundamental structure of Japan’s pre-war fascist regime that was responsible for the creation and manifestation of prewar Japanese propaganda that emphasized the purity of Japanese blood and the uniqueness of the Yamato race and culture.

The Japanese government’s support, and in some cases, indifference, to postwar U.S. military maneuvers and interventions in Asia helped solidify a

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54. Robert A. Fisher, *The Erosion of Japanese Pacifism: The Constitutionality of the 1997 U.S.-Japan Defense Guidelines*, 32 CORNELL INT’L L.J. 394, 400 (1999).

55. NOAM CHOMSKY, YEAR 501: THE CONQUEST CONTINUES 249 (1993).

close alliance with the U.S. and maintain the superior socio-political position of Japan in the region. Such U.S. actions included U.S. genocidal policies in East Timor in the 1970s and 1990s,<sup>56</sup> the support of the Thai government in opposition to the democratization of Cambodia in the aftermath of halting the Khmer Rouge genocide against its own population—a regime that was supported by the Reagan Administration throughout the 1980s<sup>57</sup>—military and political support to stop the democratization of South Korea in the late 1980s,<sup>58</sup> among many others. As the only country in Asia that escaped Western colonial occupation, Japan developed its economy and industry with strong protectionist policies, and justified the economic and political exploitation of Asian countries through its racialized propaganda. Japan’s political acquiescence led to the expansion of American and Western colonial projections that the prewar Japanese government, at least rhetorically, tried to prevent by its own imperial policies in Asia.

## II. A Lack of Redress or Reparation for Japan’s Minorities

The Japanese government has not acknowledged racism or the role of “Japanese supremacy” used to justify imperial projects that led to massive atrocities in both Japan and Japanese colonized Asian peripheries. The post-WWII German government has accepted responsibility for the Holocaust which was based on a racist doctrine that led to the death and immiseration of millions of Jews, Slavs, Roma, and other racially “undesirable” populations in German-occupied areas of Europe. Post-WWII German reparation programs then became one of the largest reparation programs ever implemented. Reparations were paid to the State of Israel, as well as Jewish Holocaust survivors regardless of their nationality.<sup>59</sup> The U.S. government also finally accepted responsibility for the racism behind President Franklin Delano Roosevelt’s 1942 executive order that led to the removal and incarceration of more than one hundred thousand people of Japanese

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56. See MATTHEW JARDINE, *EAST TIMOR: GENOCIDE IN PARADISE* (2d ed. 1999).

57. KENTON CLYMER, *THE UNITED STATES AND CAMBODIA, 1969-2000: A TROUBLED RELATIONSHIP* (2013).

58. MI PARK, *DEMOCRACY AND SOCIAL CHANGE: A HISTORY OF SOUTH KOREAN STUDENT MOVEMENTS, 1980-2000* 141–43 (2008).

59. See generally ARIEL COLONOSOMOS & ANDREA ARMSTRONG, *GERMAN REPARATIONS TO THE JEWS AFTER WORLD WAR II, THE HANDBOOK OF REPARATIONS* 390 (Pablo De Greiff ed. 2006) (arguing that the way in which Germany responded to war atrocities was different from Japan’s because of varied historical context and interpretations of war memories. We argue that the common thread that penetrates different historic cities of two countries was the common use of racism to perpetuate war crimes.). See Alan S. Christy, *Germany: Japan: Apples: Oranges: Rethinking War Memory Studies*, 3 *BUNKASHIGENAKU* 1 (2006).

ancestry during WWII. Political activism and grassroots efforts for many decades finally forced the U.S. government to accept that the mass removal and incarceration policies were motivated by racism. The government also passed the Civil Liberties Act in 1988 which required a formal government apology and the payment of \$20,000 compensation to each of the surviving victims.

While many attempts have been made to force the Japanese government to pay reparations to victims by Asian neighbors, the litigation in Japanese courts has not been successful.<sup>60</sup> Asian victims, including former military sex slaves and prisoners of war who were forced to become slave laborers, also filed a civil lawsuit in U.S. Federal Court, using the 1789 Alien Tort Claims Act against Japanese firms that benefitted from Japanese imperial projects during Japanese colonial rule.<sup>61</sup> However, the federal court has so far ruled in favor of Japanese corporations that operated in Asia in conjunction with Japan's imperial government and local business establishments.<sup>62</sup>

### **A. Japanese American Redress/Reparation Movements**

Redress activists in Japan note that the U.S. government apologized and provided compensation for victims of racist policies during WWII, in 1988. In the United States, Japanese Americans and their allies fought for more than four decades to obtain redress for the WWII mass removal and incarceration of Japanese Americans. Several factors played critical roles in helping this effort succeed. First, Japanese-American activists needed to persuade the community that it was time to end decades of silence and to seek justice from the government.<sup>63</sup> Second, they had to present the evidence that imprisoning 110,000 people, two-thirds of whom were U.S. born citizens, was unjust and was caused by racism and illegitimate national security concerns.<sup>64</sup> Third, Japanese Americans had to educate the public on the extent of the suffering they experienced during and after the war to counter images that they had recovered and succeeded as a "model minority" because they embraced educational and occupational opportunities and

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60. Philip A. Seaton, JAPAN'S CONTESTED WAR MEMORIES: THE 'MEMORY RIFTS' IN HISTORICAL CONSCIOUSNESS OF WORLD WAR II 53 (2007).

61. See LEGACIES OF THE COMFORT WOMEN OF WORLD WAR II (Margaret D. Stez & Bonnie B. C. Oh eds., 2015).

62. *Id.*

63. See generally ALICE YANG MURRAY, HISTORICAL MEMORIES OF THE JAPANESE AMERICAN INTERNMENT AND THE STRUGGLE FOR REDRESS (2007).

64. *Id.* See also FRANKLIN ODO, THE COLUMBIA DOCUMENTARY HISTORY OF THE ASIAN AMERICAN EXPERIENCE 5 (2002).

eschewed the protest tactics of “radical” minorities.<sup>65</sup> This required former prisoners to share accounts of the anguish they and their families endured because they were uprooted from their homes and forced to live in camps surrounded by barbed wire. Finally, the community needed to win public support by getting positive media coverage of redress activists, strengthening alliances with advocates outside the community, and persuading key political leaders, including conservatives as well as liberals, to endorse the campaign.<sup>66</sup>

In many ways, the first obstacle of getting victims of racism to band together as a community and denounce their oppression was the most daunting. The racism that caused Japanese Americans as a group to be feared as spies and saboteurs was not just a product of the attack on Pearl Harbor. It had become entrenched by discriminatory legislation that targeted Japanese Americans for many decades before WWII started.<sup>67</sup> Japan’s attack on Pearl Harbor on December 7, 1941 helped revive anti-Japanese racism on the West Coast that had vilified Japanese immigrants and their children ever since they began arriving in large numbers in the 1880s.

Japanese immigrants became victims of the anti-Asian “yellow peril” imagery that had been cultivated to attack Chinese immigrants in the 1840s and led to Chinese exclusion in 1882.<sup>68</sup> While the end of Chinese immigration at first contributed to the recruitment of Japanese immigrant laborers, it did not take long before the anti-Chinese forces turned their attention to these immigrant laborers. These forces argued that Japanese were dangerous and unassimilable, which achieved the ending of Japanese immigration in 1924. State “alien land laws,” first passed by California in 1913, prevented Japanese immigrants from owning land. Japanese immigrants also could not become naturalized American citizens after the Supreme Court ruled in 1922 in *Ozawa v. U.S.* that they were racially “ineligible for citizenship” because they were not white.<sup>69</sup> Anti-miscegenation laws, school segregation, and employment discrimination made it clear that immigrants and their children were seen as racially inferior.

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65. YANG MURRAY, *supra* note 63, at 193.

66. YANG MURRAY, *supra* note 63, at 256–59.

67. YANG MURRAY, *supra* note 63, at 22–23.

68. See ERIKA LEE, *AT AMERICA’S GATES: CHINESE IMMIGRATION DURING THE EXCLUSION ERA, 1882–1943* (2003); MOON-HO JUNG, *COOLIES AND CANE: RACE, LABOR, AND SUGAR IN THE AGE OF EMANCIPATION* (2006); ADAM MCKEOWN, *MELANCHOLY ORDER: ASIAN MIGRATION AND THE GLOBALIZATION OF BORDERS* (2011); and JOSHUA PADDISON, *AMERICAN HEATHENS: RELIGION, RACE, AND RECONSTRUCTION IN CALIFORNIA* (2012).

69. *Takao Ozawa v. United States*, 260 U.S. 178 (1922); Mae M. Ngai, *The Architecture of Race in American Immigration Law: A Reexamination of the Immigration Act of 1924*, 86 J. AM. HIST. 67, 81 (1999).



Pearl Harbor revitalized the xenophobic forces on the West Coast that had attacked Japanese Americans for many decades. The Native Sons of the Golden West denounced “treacherous Japs” for “colonizing in strategic locations” while a representative for the Grower-Shipper Vegetable Association called for the eviction of “Japs” so that “white farmers can take over.”<sup>70</sup> California Congressman Leland Ford called for the creation of “inland concentration camps” and helped persuade a delegation of representatives from California, Washington, and Oregon to send a letter to President Roosevelt recommending the removal of “all persons of Japanese lineage.”<sup>71</sup>

Ironically, while many of the politicians calling for the imprisonment of Japanese Americans on the West Coast cited false claims of sabotage or espionage at Pearl Harbor as evidence of a security threat posed by Japanese Americans, there was no mass removal or incarceration in Hawai’i.<sup>72</sup> While Japanese Hawaiians also were viewed with suspicion and distrust during the war, they were a large percentage of the population and played a major role in rebuilding Pearl Harbor.<sup>73</sup> In Hawai’i, people of Japanese ancestry made up thirty-seven percent of the total population and were a vital source of labor.<sup>74</sup> As a result, military governor General Delos Emmons resisted calls by President Roosevelt and Secretary of Navy Frank Knox for mass removal and implemented a policy of selective incarceration of approximately two-thousand individuals labeled as potentially disloyal.<sup>75</sup> Some of these individuals had been under surveillance for years before the war started because of their positions as community leaders—prominent businessmen, Japanese Association officials, Japanese language teachers, and Buddhists priests—and were classified as “enemy aliens” because of these roles rather than any specific evidence of wrongdoing.<sup>76</sup> Rounded up within hours of the

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70. MORTON GRODZINS, *AMERICANS BETRAYED: POLITICS AND THE JAPANESE EVACUATION* 48 (1949).

71. Roger Daniels, *AMERICAN CONCENTRATION CAMPS: A DOCUMENTARY HISTORY OF THE RELOCATION AND INCARCERATION OF JAPANESE AMERICANS, 1942-1945* (Roger Daniels ed. 1989) (citing Letter from Leland M. Ford to Henry L. Stimson (Jan. 16, 1942)); *see also* COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, *PERSONAL JUSTICE DENIED* 81–82 (1942) (citing recommendations of the Pacific Coast Subcommittee on Alien Enemies and Sabotage).

72. YANG MURRAY, *supra* note 63, at 28–29.

73. YANG MURRAY, *supra* note 63, at 28–29.

74. LOUISE CHIPLEY SLAVICEK, *DANIEL INOUE* 57 (2007) (“At the time of Pearl Harbor attack, persons of Japanese descent represented 37 percent of the Island’s total population and the majority of Hawai’i’s agricultural laborers, transportation workers, and skilled tradesmen.”).

75. *Id.*

76. *See generally* Harry N. Scheiber et al., *Hawai’i’s Kibei under Martial Law: A Hidden Chapter in the History of World War II Internments*, 22 *W. LEGAL HIST.* 1 (2009).

attack on Pearl Harbor, many of these immigrant leaders were taken to detention camps run by the army and the Immigration and Naturalization Service (“INS”). While they received hearings in these camps, they were denied legal representation and were often imprisoned for the duration of the war based on little or no evidence.<sup>77</sup>

Other Japanese Americans on the islands, while not incarcerated, endured martial law for almost three years until October 24, 1944.<sup>78</sup> All residents had to submit to a curfew, registration and fingerprinting, and army control over wages and working conditions. Japanese immigrants could not travel or change residences without prior authorization or meet in groups of more than ten people during blackouts. Excluded from certain areas in O’ahu, many farmers lost valuable property and fishermen lost their jobs because of fears they could be spies. Habeas corpus was suspended until 1944 and military courts, which failed to provide due process rights such as warrants for the search and seizure of evidence, replaced civilian courts.<sup>79</sup>

The mistreatment of Japanese Hawaiians by Emmons, however, was very different from the way Japanese Americans living on the West Coast were treated by his counterpart, John L. DeWitt, head of the Western Defense Command. Initially, Dewitt was more concerned about the danger posed by all “enemy aliens,” including German and Italian immigrants, than about second generation Japanese American citizens. Meetings with California politicians supporting removal, such as Governor Culbert Olson and Attorney General Earl Warren, along with the influence of his friend Allen Gullion, Army Provost Marshall, and Gullion’s assistant Karl Bendetsen helped persuade him that citizens of Japanese ancestry also threatened strategic areas.<sup>80</sup> As DeWitt later explained in the government’s official justification for mass removal and incarceration, “the Japanese race is the enemy race” and while generations born in the US might be “Americanized” citizens, the “racial strains are undiluted.”<sup>81</sup> At a 1943 press conference, he unapologetically reiterated this racist rationale by declaring to reporters, “a Jap’s a Jap.”<sup>82</sup>

President Roosevelt’s history of anti-Japanese prejudice, exemplified by his support for alien land laws and immigration restrictions, may explain

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77. *Id.* at 12–20.

78. *Id.* at 24.

79. *Id.* at 62–71.

80. JOHN L. DEWITT, U.S. ARMY, JAPANESE EVACUATION FROM THE WEST COAST 34 (1943), <http://jerrykang.net/wp-content/blogs.dir/1/files/2010/10/dewitt-revised-final-report.pdf>.

81. *Id.*

82. Transcript of Conference, “DeWitt and Newspapermen,” Apr. 14, 1943, Record Group 338, National Archives and Records Service, Wash. D.C.

why he approved plans to remove all Japanese Americans despite clear evidence that the group posed no security threat. As tensions with Japan increased in the weeks before Pearl Harbor, the president commissioned an investigation by John Franklin Carter that determined there was “no Japanese ‘problem’ on the Coast” and that the Nisei (second generation US born citizens) were “pathetically eager” to show their loyalty. Based on businessman Curtis B. Munson’s consultation with the Federal Bureau of Investigation and naval intelligence, the report, as Carter noted, concluded that the “Japanese are more in danger from the whites than the other way around.”<sup>83</sup> Carter, however, also provided a one-page summary that misleadingly highlighted a few concerns raised by Munson that there might be the “odd case of fanatical sabotage” and that “dams, bridges, harbors, power stations, etc. are wholly unguarded everywhere.”<sup>84</sup>

Predisposed to view Japanese Americans in racialized terms, Roosevelt may have misinterpreted these warnings as evidence of a much larger menace that made him more receptive to the members of the War Department who lobbied for mass removal than Attorney General Francis Biddle and members of the Justice Department who worried about citizenship rights. Apparently indifferent to concerns about the constitutional rights of citizens, Roosevelt left this decision up to Secretary of War Stimson, who ultimately supported mass removal because of fears that the Nisei might help Japanese raids on the West Coast.<sup>85</sup> On February 19, 1942, President Roosevelt signed Executive Order 9066 authorizing Stimson or any military commander he selected, to remove people from designated military areas.<sup>86</sup> While the order never specifically named Japanese Americans, it became immediately apparent that only they would be targeted for mass removal.<sup>87</sup>

Given the long history of anti-Japanese racism, it is not surprising that very few Japanese Americans felt it worthwhile to challenge the legality of Executive Order 9066. While sympathetic neighbors and Christian supporters,

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83. See GREG ROBINSON, BY ORDER OF THE PRESIDENT: FDR AND THE INTERNMENT OF JAPANESE AMERICANS 123 (2001); HENRY L. STIMSON & MCGEORGE BUNDY, ON ACTIVE SERVICE IN PEACE AND WAR 66 (1948).

84. STIMSON & BUNDY, *supra* note 83, at 68.

85. DeWitt, *supra* note 80, at 105 (“there are already ‘rumblings’ of vigilante activity which has been caused in the main, by the influx of Japanese from the evacuated areas”).

86. Exec. Order No. 9066, 7 Fed. Reg. 1,407 (Feb. 19, 1942).

87. YASUKO I. TAKEZAWA, BREAKING THE SILENCE: REDRESS AND JAPANESE AMERICAN ETHNICITY 30 (2014) (“although Executive Order 9066 did not specify Japanese residents or Japanese Americans, nationals of other enemy countries and their descendants were never subject to mass evacuation and internment”).

most notably members of the American Friends Service Committee, tried to help Japanese Americans prepare for removal, Norman Thomas, the Socialist candidate for president, was the only national figure to condemn Executive Order 9066 as “totalitarian justice” in public speeches.<sup>88</sup>

Even the national American Civil Liberties Union, the usual standard bearer for citizenship rights, was divided on how to respond to Executive Order 9066. On March 20, as the government prepared removal plans, ACLU director Roger Baldwin sent President Roosevelt a letter on behalf of the board, questioning the order’s “constitutional grounds of depriving American citizens of their liberty and use of their property without due process of law.” Instead of uprooting all Japanese Americans from the West Coast, the letter called for individual loyalty hearings for Japanese Americans.<sup>89</sup> This letter provoked a split in the board between those who wanted to challenge the constitutionality of Executive Order 9066 and a coalition of opponents that included those who felt the organization should defer to the president and military in times of war, those who couldn’t bear to criticize their fellow liberal president, and those who believed the effort to defeat fascism required their unquestioning support.<sup>90</sup> The board voted 2-1 to approve a resolution that affirmed the government’s ability to establish military zones that could exclude people “when their presence may endanger national security” and Baldwin informed West Coast offices on June 22 that they should not sponsor cases opposing the government’s right to remove Japanese American citizens.

A few maverick lawyers, however, agreed to help Japanese Americans willing to bring legal challenges. Ernest Besig, Executive Director of the ACLU Northern California branch, informed Baldwin that he would not drop the case of Fred Korematsu. Korematsu had been arrested in San Leandro, California, in May 1942 for refusing to report for incarceration.<sup>91</sup> Unlike Minoru Yasui and Gordon Hirabayashi, who wanted to mount legal test cases, Korematsu was simply a welder who didn’t want to leave behind his Italian American girlfriend.<sup>92</sup> After he was arrested, however, Korematsu

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88. See generally Greg Robinson, *Norman Thomas and the Struggle Against Japanese Internment*, 29 PROSPECTS 419 (2009); Robert Shaffer, *Cracks in the Consensus: Defending the Rights of Japanese Americans During World War II*, 72 RADICAL HIST. REV. 84 (1998).

89. STEPHANIE BANGARTH, VOICES RAISED IN PROTEST: DEFENDING NORTH AMERICAN CITIZENS OF JAPANESE ANCESTRY IN NORTH AMERICA, 1942-49 53 (2008).

90. *Id.*

91. See generally PETER IRONS, JUSTICE AT WAR: THE STORY OF THE JAPANESE AMERICAN INTERNMENT CASES (1983).

92. *Id.* at 95.

was approached by Besig who visited him in jail and asked if he'd consider filing a lawsuit against forced removal even though the climate of racism and judicial deference to the military made success unlikely. Impressed by Besig's commitment to this obviously uphill battle, Korematsu agreed.<sup>93</sup> Besig then recruited attorney Wayne Collins to represent Korematsu for the test case. Unhappy with the ACLU's "vacillating policy," Besig informed Baldwin that since he had taken Korematsu's case before the June 22 decision, he felt obligated to continue. Collins, known for his belligerence, then deliberately ignored the national office's directives and explicitly attacked Executive Order 9066 as unconstitutional.<sup>94</sup> Besig and Collins also defended Japanese Americans who protested against mass confinement within the camps. Besig helped individuals challenge their "imprisonment within a prison" as another violation of due process and supported Wayne Collins as he represented thousands of citizens who claimed they had been pressured by government authorities and factional leaders to renounce their citizenship and fought government attempts to deport them during and after the war.<sup>95</sup>

Other lawyers also defended Japanese-Americans protesters. Jewish attorney A. L. Wirin represented Ernest and Toki Wakayama when they came to the Southern California branch of the ACLU in April 1942 to challenge their incarceration.<sup>96</sup> Ernest, a World War I veteran and American Legion officer, seemed an ideal plaintiff and Wirin accepted the case.<sup>97</sup> When leaders of the CIO pressured him to drop the case, he refused, resigned from the ACLU and opened his own firm. Working with African-American attorney Hugh Macbeth, Wirin filed a habeas corpus petition for the Wakayamas while they were imprisoned at the Manzanar camp charging that there was no "military necessity" for mass removal and that DeWitt's exclusion order usurped civilian authority.<sup>98</sup> In oral arguments, Macbeth also charged that imprisoning Japanese Americans in camps was unconstitutional racial discrimination.<sup>99</sup> The court refused to act on the

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93. *Id.* at 97–99.

94. *Id.* at 58.

95. DONALD E. COLLINS, *NATIVE AMERICAN ALIENS: DISLOYALTY AND THE RENUNCIATION OF CITIZENSHIP BY JAPANESE AMERICANS DURING WORLD WAR II* (1985).

96. IRONS, *supra* note 91, at 114–15.

97. IRONS, *supra* note 91, at 114–15.

98. Greg Robinson, *Defending Nikkei: Hugh MacBeth and the Japanese American Internment*, June 7, 2007, <http://www.blackpast.org/perspectives/defending-nikkei-hugh-macbeth-and-japanese-american-internment>.

99. *Id.*

petition until February 1943 and by that time, the Wakayamas were so disillusioned by their treatment at Manzanar that they withdrew their petition and requested “repatriation” to Japan.<sup>100</sup>

Yet while individual lawyers like Besig, Collins, Wirin, and Macbeth recognized and condemned the racism behind the mistreatment of Japanese Americans, the nation’s highest court ultimately upheld the policies of mass exclusion and incarceration when it ruled, in a 6-3 decision in *Korematsu v. United States*, that detention was constitutional because it was based on “military necessity” and not racism.<sup>101</sup> The December 18, 1944, majority opinion by Hugo Black stated that “all legal restrictions which curtail the civil rights of a single racial group are immediately suspect” and subject to tests of “the most rigid scrutiny.”<sup>102</sup> Nevertheless, Black concluded “pressing public necessity may sometimes justify the existence of such restrictions”<sup>103</sup> and that Fred Korematsu and other Japanese Americans were excluded because “the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily.”<sup>104</sup>

Some of the justices recognized that the government failed to present evidence that Japanese Americans posed as a group a substantive security threat. In his dissent, Justice Frank Murphy noted that “No adequate reason [was] given for the failure to treat these Japanese Americans on an individual basis by holding investigations and hearings to separate the loyal from the disloyal, as was done in the case of persons of German and Italian ancestry.”<sup>105</sup> Calling the decision a “legalization of racism,” Justice Robert Jackson’s dissent declared the exclusion order a violation of the Fourteenth Amendment’s Equal Protection Clause reminiscent of the “abhorrent and despicable treatment of minority groups by the dictatorial tyrannies which this nation is now pledged to destroy.”<sup>106</sup>

As the war continued, others also became more vocal in criticizing the hypocrisy of wartime rhetoric touting America’s commitment to defend democracy abroad while discriminating against minorities at home.

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100. IRONS, *supra* note 91, at 181.

101. *Korematsu v. United States*, 323 U.S. 214, 223 (1944).

102. *Id.* at 216.

103. *Id.*

104. *Id.* at 223.

105. *Korematsu*, 323 U.S. at 241.

106. *Id.*

Activists like A. Philip Randolph denounced unfair labor practices and pressured President Roosevelt into banning discrimination in defense industries with Executive Order 8802 in 1941 and compelled his successor, President Harry S. Truman, into ending segregation in the armed forces in 1948 with Executive Order 9981.<sup>107</sup>

Others criticized the logic of “total war” that condoned targeting civilians in Axis cities. While military authorities defended the bombing of Hamburg in 1943 and Dresden in 1945, many took particular glee in wiping out civilians in Japanese cities. Admiral William Halsey repeatedly called the Japanese “yellow bastards” and “yellow monkeys” and told reporters in early 1945 that he believed “the Japanese were a product of mating between female apes and the worst Chinese criminals who had been banished from China by a benevolent emperor.”<sup>108</sup> In March of 1945, *Leatherneck*, a monthly U.S. Marine magazine, praised the US policy of firebombing Japanese cities with the cartoon “Louseous Japonicas.” Presenting the Japanese as buck-toothed, bespectacled lice, the caption celebrated marine efforts using “flame throwers, mortars, grenades, and bayonets” to remove these pests from Guadalcanal, Tarawa, and Saipan. The caption proclaimed, “[B]ut before a complete cure may be effected . . . the origin of the plague, the breeding grounds around the Tokyo area, must be completely annihilated.”<sup>109</sup> While most Americans celebrated the devastation produced by dropping atomic bombs on Hiroshima and Nagasaki, Roy Wilkins drew a parallel in the September 1945 issue of the NAACP’s *The Crisis* between the atomic bomb and racist attitudes that dehumanized the Japanese and condoned roasting Japanese soldiers alive with flamethrowers. Such barbaric tactics made Wilkins wonder, “who is barbarian and who is civilized?”<sup>110</sup>

Japanese Americans also began campaigning for redress during the war. Draft resisters had called for the restoration of constitutional rights before requiring compliance with induction procedures. After the War Relocation Authority announced it would close the camps in 1945, thirty representatives from seven camps organized a conference and sent a letter petitioning the

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107. CYNTHIA TAYLOR, *A. PHILIP RANDOLPH: THE RELIGIOUS JOURNEY OF AN AFRICAN AMERICAN LABOR LEADER* (2006).

108. JOHN DOWER, *WAR WITHOUT MERCY: RACE AND POWER IN THE PACIFIC WAR* 85 (1987).

109. *Id.* at 91.

110. PAUL BOYER, *BY THE BOMB’S EARLY LIGHT: AMERICAN THOUGHT AND CULTURE AT THE DAWN OF THE ATOMIC AGE* 199 (2005).

government to provide financial payment for wartime losses before forcing Japanese Americans to leave the camps.<sup>111</sup>

Certain leaders within the Japanese American Citizens League (“JACL”), however, believed that the best way to improve conditions for Japanese Americans was to cooperate with camp officials and demonstrate patriotism through military service. Immediately after Pearl Harbor, Japanese Americans who tried to volunteer for the military were classified as 4-C enemy aliens. Japanese Americans from Hawai’i who were already in the army before the war started, however, were able to serve in the 100th Infantry Battalion.<sup>112</sup> JACL leaders helped publicize the 100th Battalion’s heroic record in Italy and the Varsity Victory Volunteers’ labor for the army in Hawai’i to convince military and political leaders of the merits of creating a unit that would include Japanese Americans within the camps.<sup>113</sup> The US government also wanted to counter Japanese propaganda that anti-Japanese racism and the mass incarceration in the US justified Japanese expansionist oppression in Asia as a campaign against white supremacy and colonialism. On March 23, 1943, the government created the 442nd Regimental Combat Team (“RCT”), a segregated unit that would later incorporate the 100th Battalion. Approximately 1,500 men from the mainland, most from within the camps, volunteered for the 442nd. In Hawai’i, where there had been no mass incarceration, almost 10,000 men responded to the call for military service. The remarkable combat record of the combined 100th Battalion/442nd RCT included 29 Distinguished Service Citations, 588 Silver Stars, over 4,000 Bronze Stars, and more than 4,000 Purple Hearts. Only one Medal of Honor was awarded, but after a reevaluation was conducted in 1997, twenty more were issued to recognize Japanese American valor during the war.<sup>114</sup>

JACL leaders trumpeted this history of loyalty and patriotism to mobilize support to repeal the anti-Japanese legislation that discriminated against Japanese immigrants as “aliens ineligible to citizenship.” In 1947 A. L. Wirin petitioned the Supreme Court to invalidate the Alien Land Act as a violation of Nisei citizens’ Fourteenth Amendment rights stating it was

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111. UNITED STATES DEP’T OF THE INTERIOR, WAR RELOCATION AUTHORITY, COMMUNITY GOVERNMENT IN WAR RELOCATION CENTER 99 (1946).

112. *See generally*, ROBERT ASAHINA, JUST AMERICANS: HOW JAPANESE AMERICANS WON A WAR AT HOME AND ABROAD (2006).

113. *Id.* at 106–09.

114. Donn Jones, *Congress to Bestow Highest Honor on Japanese-American Soldiers: Awards Awakens Memories for Watsonville World War II Veterans*, SANTA CRUZ SENTINEL, Oct. 31, 2011, <http://www.santacruzsentinel.com/article/zz/20111031/NEWS/111039586>.



race legislation that presumed any land they received from their immigrant parents was a ploy to evade the law.<sup>115</sup> In *Oyama v. California*, the Supreme Court in 1948 upheld the right of citizens to hold land purchased by immigrant parents to get around California's alien land law.<sup>116</sup> Then in the 1952 cases *Sei Fuji v. California* and *Masaoka v. California*, the court affirmed the rights of immigrants themselves by determining that all alien land laws violated their right to equal protection under the Fourteenth Amendment.<sup>117</sup>

To win support for the 1948 Evacuation Claims Act, JACL leaders also reminded Congress of Nisei heroism on the battlefield. The Act appropriated \$38 million to provide token compensation for lost property but omitted lost opportunities, earnings, or interest.<sup>118</sup> More than 23,000 Japanese Americans filed claims for over \$131 million in damages and had to face daunting bureaucratic hurdles, such as a lack of written documentation for property lost during the week-long chaos before families were uprooted.<sup>119</sup> Desperate for funds to help them start over after leaving camp, many families accepted the government's counter-offer of \$2,500 or three-fourths of their original claim, whichever was less, to avoid years of litigation.<sup>120</sup>

Although JACL leaders celebrated the government's acknowledgement of its responsibility to provide at least token compensation, the organization's decision to support the 1952 McCarran-Walter Immigration Act proved controversial.<sup>121</sup> More radical activists criticized this Cold War anticommunist legislation because it increased federal powers to detain and prosecute suspected subversives. The JACL supported the measure because it ended Asian exclusion by providing token immigration quotas to Japan and other Asian countries. It also affirmed the rights of immigrants to become naturalized citizens. The Act's sponsors included the Asian

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115. MARK BRILLIANT, *THE COLOR OF AMERICA HAS CHANGED: HOW RACIAL DIVERSITY SHAPED CIVIL RIGHTS REFORM IN CALIFORNIA 1941-1978* (2012).

116. *Id.* at 28–41.

117. *Id.* at 218–21.

118. *See generally* BILL HOSOKAWA, *NISEI: THE QUIET AMERICANS; THE STORY OF A PEOPLE* 446 (1969).

119. *Id.*

120. Nancy Nanami Nakasone-Huey, *In Simple Justice: The Japanese-American Evacuation Claims Act of 1948* (Nov. 6, 1986) (unpublished Ph.D. dissertation, University of Southern California) (on file at ProQuest) (illustrating that sixty percent of these claims were for less than \$2,500. Others pursued litigation, but the last claim was not settled until 1965).

121. *See generally* William R. Tamayo, *Asian Americans and the McCarran-Walter Act*, *ASIAN AMERICANS AND CONGRESS: A DOCUMENTARY HISTORY* 337–528 (Hyung-Chan Kim ed., 1996).

immigration and naturalization components to appeal to liberals and divide congressional opposition. This strategy proved successful, the controversial legislation passed, and Congress overrode President Truman's veto.<sup>122</sup>

### **B. The Reorganization of the JACL for the Redress Movement**

The Act's more repressive features helped inspire campaigns to reform the JACL from within and replace JACL's community leadership with more militant groups in the 1960s and 1970s. Some leaders proclaimed pride in the fact that relatively few Japanese Americans joined more militant demonstrations by black power and anti-Vietnam War activists against government policies.<sup>123</sup> A few even joined conservative commentators in denouncing African-American and Latinx protesters for not emulating Japanese Americans and pulling themselves up by their own bootstraps.<sup>124</sup>

This re-evaluation of individual and communal silence proved critical in mobilizing support for redress activism in the 1970s. Before activists could mount a mass movement, they had to persuade former victims to refute images they had "recovered" from the war by speaking out about the suffering that continued to haunt individuals, families, and the entire community. JACL reformers, like Edison Uno argued that the time had come for the organization to stop fearing a conservative backlash and align itself with more "radical" civil rights and antiwar protesters.<sup>125</sup> Uno joined a growing chorus of former prisoners and Sansei (third generation) activists that connected the wartime injustice with other historical and current examples of discrimination against people of color.<sup>126</sup> These activists sponsored pilgrimages to campsites and day of remembrance programs to encourage former prisoners to share their accounts of the pain and anger created by the wartime incarceration and to ensure that the injustice never happened again.<sup>127</sup>

Activists in the 1960s and 1970s also dismantled claims that the camps were necessary for national security by publicizing studies that documented the racism behind mass exclusion and incarceration. To gain credibility

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122. NAOKO SHIBUSAWA, *AMERICA'S GEISHA ALLY: REIMAGINING THE JAPANESE ENEMY* 269 (2006).

123. YANG MURRAY, *supra* note 63, at 186.

124. HOSOKAWA, *supra* note 118, at 91.

125. Edison Uno, *Manzanar—More Than a Memory*, *RAFU SHIMPO*, Jan. 12, 1970. *See also* Jim Matsuoka, *December 27, 1969, reprinted in THE MANZANAR PILGRIMAGE: A TIME FOR SHARING* 12 (1981).

126. YANG-MURRAY, *supra* note 63, at 186–99.

127. YANG-MURRAY, *supra* note 63, at 186–99.

outside the community, it was important that a growing list of books by non-Japanese-American researchers could be cited as evidence for the injustice of the incarceration.<sup>128</sup> Accounts by historian Roger Daniels and journalist Allan R. Bosworth denounced government euphemisms that called mass removal an “evacuation” and labeled the camps as “relocation centers.”<sup>129</sup> Instead, these authors argued that the camps should be called “concentration camps” because they had caused widespread suffering. Documenting the racist views of DeWitt and other architects of the incarceration, this scholarship helped Japanese Americans recognize the camps were not just a wartime “mistake,” but reflected a long history of anti-Asian racism.<sup>130</sup> Researchers also began presenting evidence of suffering within the camps, including the fact that several prisoners were shot and killed by trigger happy guards, which helped activists persuade former prisoners that there was no shame in sharing their personal accounts of trauma they experienced during and after the war. Activists frequently quoted this scholarship to convince Americans who had no familiarity with the Japanese-American community that the damage mass incarceration inflicted on individuals, families and the community was significant and pervasive.<sup>131</sup>

To counter claims that Japanese Americans should “move on” and avoid dwelling on the past, activists Edison Uno and Raymond Okamura organized a grassroots campaign in 1967 to repeal Title II of the 1950 Internal Security Act to prevent other groups from being incarcerated without due process.<sup>132</sup> This act provided funding for detention sites, including the former Japanese-American camp at Tule Lake, to imprison individuals labeled as subversives without hearings. While the act specifically targeted communist agitators, black power and antiwar protesters feared that they also might be placed in “concentration camps.” After the campaign gained momentum within the ethnic community and increasing media coverage, more conservative JAACL lobbyists, Senator Daniel Inouye, and Congressman Spark Matsunaga shepherded the legislation through Congress in 1971.<sup>133</sup>

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128. YANG-MURRAY, *supra* note 63, at 234–40.

129. YANG-MURRAY, *supra* note 63, at 234–40.

130. YANG-MURRAY, *supra* note 63, at 234–40.

131. YANG-MURRAY, *supra* note 63, at 234–40.

132. Raymond Okamura, *Background and History of the Repeal Campaign*, 2 AMERASIA J. 73 (1974).

133. Hiroshi Kanno, *Broader Implications of the Campaign (A Commentary)*, AMERASIA J. 105 (1974).

This history of militant community activists putting pressure on more conservative leaders who then used their political contacts to achieve legislative changes became a model for redress' passage. In 1970, Edison Uno persuaded the JACL to pass a resolution calling on the government to "compensate on an individual basis a daily per diem requital for each day spent in confinement and/or legal exclusion."<sup>134</sup> Uno passed away in 1976 without seeing any significant progress. Two years later, however, the JACL elected an outsider, Clifford Uyeda, as president and he, in turn, recruited John Tateishi, the son of a famous critic of the wartime JACL, to serve as JACL's redress chair.<sup>135</sup>

Under this new leadership, the JACL developed a multifaceted campaign to build support for redress. To overcome redress opponents and skeptics within the JACL, Uyeda wrote thirty-five articles for the JACL's newsletter defending the concept of redress and explaining that the campaign's goal was not to "put a price tag on freedom or justice" but "to acknowledge the mistake by providing proper redress for the victims of the injustice, and thereby make such injustices less likely to recur."<sup>136</sup> To help marshal support for one plan, the redress committee reviewed various proposals that defined redress eligibility, form, and scope in different ways. Seattle activists maintained that redress compensation should be determined by the amount of time spent behind barbed wire. Critics of this plan argued that it would penalize Japanese Americans who left camp early to serve in the military, to attend college, and to find jobs to support their families.<sup>137</sup> JACL old guard leaders, offended by the concept of individual compensation, called for the creation of a community trust fund that could support educational programs and charity projects. Critics of this plan questioned who would administer the program and worried that public relations programs would take priority over housing and health services for low-income Japanese Americans.<sup>138</sup>

To achieve consensus, Uyeda and Tateishi incorporated components from multiple proposals. Their 1978 proposal called for both a community trust fund and payments of \$25,000 to each individual, or their heirs, who had experienced removal and incarceration regardless of age, national origin, or camp experience. Ironically, the \$25,000 figure was based on a fabricated

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134. YANG MURRAY, *supra* note 63, at 289.

135. YANG MURRAY, *supra* note 63, at 290–93.

136. YANG MURRAY, *supra* note 63, at 290–93.

137. YANG MURRAY, *supra* note 63, at 290–93.

138. YANG MURRAY, *supra* note 63, at 290–93.

claim made by a JACL leader during hearings for the 1948 Evacuation Claims Act that the Federal Reserve had calculated Japanese Americans lost \$400 million in property during the war.<sup>139</sup> Realizing that Japanese Americans needed to project an image of unity before the government, JACL leaders designed a survey that disguised conflicting views of redress eligibility and compensation. They simply asked if “the injustice of internment affected your life” and if people favored the concept of redress without wading into more specific definitions.<sup>140</sup> As a result, the campaign could claim a mandate based on support by ninety-four percent of the organization for redress and eighty-three percent for compensation.<sup>141</sup>

JACL activists then developed a media campaign to educate other Japanese Americans and the mainstream public about the injustice Japanese Americans experienced during the war. They were unintentionally assisted by redress opponents who made inflammatory comments that attempted to minimize or deny Japanese American suffering. The most prominent critic, S. I. Hayakawa, a Canadian-born semanticist and Republican senator from California who spent the war in Chicago, actually claimed the camps were “the best thing that could have happened” to Japanese Americans because they “forced them out of their segregated existence” and allowed them to take “advantage of new opportunities.”<sup>142</sup> News outlets spread Hayakawa’s claims along with redress criticism by others who continued to blame Japanese Americans for Pearl Harbor, the Bataan Death March, and more recent trade wars with Japan. Instead of diminishing support for redress, this publicity boosted the campaign by enraging former prisoners who felt compelled to counter Hayakawa’s depiction of the benefits of mass removal and incarceration and to debunk the racist conflation of Japan and Japanese Americans.<sup>143</sup> Such accounts made it difficult to argue that racism was an irrelevant vestige of history and convinced more Japanese Americans to become activists.<sup>144</sup>

The creation of a federal commission to investigate the causes and consequences of the wartime removal and incarceration became a vital component in the passage of redress. Japanese-American members of Congress advised JACL redress leaders that such a commission was necessary to educate the public about what happened during the war. JACL

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139. YANG MURRAY, *supra* note 63, at 297.

140. YANG MURRAY, *supra* note 63, at 298.

141. YANG MURRAY, *supra* note 63, at 298.

142. YANG MURRAY, *supra* note 63, at 287–88.

143. YANG MURRAY, *supra* note 63, at 287–88.

144. YANG MURRAY, *supra* note 63, at 287–88.

leaders knew that this proposal would be controversial and would be criticized as a stalling tactic or a replacement for meaningful redress. JACL reformers, especially within the Seattle chapter, denounced this strategy and argued there was no need for an investigation given the large body of scholarship that documented the racism behind Executive Order 9066.<sup>145</sup>

Declaring that redress delayed was redress denied, JACL redress leaders noted that increasing numbers of former prisoners were passing away each month. Political leaders, however, recognized that having a government commission provide an official determination of the injustice was critical to win congressional support. Senator Daniel Inouye and Congressmen Spark Matsunaga, Norman Mineta, and Robert Matsui co-sponsored the legislation that created the Commission on the Wartime Relocation and Internment of Civilians in 1980.<sup>146</sup> This Commission held hearings in twenty cities around the country and included testimony from more than 750 witnesses.<sup>147</sup> As the National Coalition for Redress and Reparations (“NCR”) activist Lillian Nakano explained, “the burden of guilt has finally shifted onto the government, where it rightly belongs.” “Bitter tears,” she proclaimed, “intermingled with pride and determination as we reaffirmed our resolve to continue our quest for justice.” “At every city hearing,” she noted, “the united demand for monetary reparations was virtually unanimous, and irresistible.”<sup>148</sup>

Media portrayals of the incredibly moving testimony completely obliterated “model minority” images of Japanese Americans and increased public understanding of the trauma experienced by former prisoners and their children. For example, *Time*’s 1981 article, “Burden of Shame,” noted the “terrible ironies” of Fourth of July celebrations held “behind barbed wire, in the shadow of sentry towers” and “parents wasting away in tar-paper camp shacks” that “proudly displayed starred banners indicating that their sons were American soldiers.”<sup>149</sup> While some Japanese Americans worried that this focus on loyalty and patriotism obscured a history of protest and resistance within the camps, it clearly helped in winning support for redress outside of the Japanese American community.<sup>150</sup>

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145. President Franklin D. Roosevelt signed Executive Order 9066 on February 19, 1942, which authorized the mass removal of Japanese Americans.

146. YANG MURRAY, *supra* note 63, at 311.

147. YANG MURRAY, *supra* note 63, at 350.

148. YANG MURRAY, *supra* note 63, at 327.

149. YANG MURRAY, *supra* note 63, at 345.

150. YANG MURRAY, *supra* note 63, at 345.

For Japanese Americans who wanted a more confrontational campaign, the National Council for Japanese-American Redress (“NCJAR”), led by William Hohri, filed a class action lawsuit in 1983.<sup>151</sup> Hohri’s NCJAR newsletters reached 3,500 subscribers and mobilized support for the suit by criticizing JACL cooperation with the government during the war and during the redress movement and by presenting the suit as a continuation of wartime resistance. The suit listed twenty-two causes of action and demanded \$10,000 per cause of action that included “constitutional violations, loss of property and earnings, personal injury, and pain and suffering.”<sup>152</sup> Demanding the “unambiguously adversarial” amount of \$220,000 per victim, and estimating a total number of 125,000 wartime victims, the lawsuit called for \$27.5 billion in compensation.<sup>153</sup>

NCJAR supporter and Commission researcher Aiko Herzig-Yoshinaga documented the suit’s charges of government fraud and conspiracy when she discovered evidence that the government deliberately suppressed and withheld from the Supreme Court during the war. She found a draft copy of General DeWitt’s *Final Report* that stated Japanese American loyalty could never be ascertained because “it was impossible to separate the sheep from the goats.” Recognizing that such a blatantly racist argument could weaken the government’s case before the Supreme Court because it eliminated the pressure of time as a factor, Assistant Secretary of War John J. McCloy ordered that all copies of this report be destroyed and a revised version prepared. One copy, however, escaped destruction and was discovered by Herzig-Yoshinaga in the National Archives.<sup>154</sup> Legal historian Peter Irons and a team of Sansei lawyers presented this draft report and other evidence concealed from the Supreme Court to petition for a writ of coram nobis (“the error before us”) that ultimately vacated the wartime convictions of Fred Korematsu, Minoru Yasui, and Gordon Hirabayashi. Media coverage of this evidence and the oral arguments NCJAR presented before the Supreme Court in 1986 helped redress gain additional support. Unfortunately for NCJAR’s twenty-five plaintiffs, the Supreme Court decided the lawsuit belonged in a different jurisdiction, ordered that the case be heard by the U.S. Court of Appeals for the Federal Circuit, and then refused to reconsider this court’s dismissal of the suit in 1988. NCJAR supporters and Congressman

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151. YANG MURRAY, *supra* note 63, at 302–04.

152. WILLIAM HOHRI, *REPAIRING AMERICA: AN ACCOUNT OF THE MOVEMENT FOR JAPANESE-AMERICAN REDRESS* 225 (1988).

153. *Id.*

154. *United States v. Hohri*, 482 U.S. 64 (1987).

Barney Frank, however, have stated that that the lawsuit made JACL's proposal for \$25,000 appear to be more moderate and reasonable.<sup>155</sup>

JACL's campaign was bolstered when the Commission issued the results of their investigation in two important public documents. The first was a 1983 report, *Personal Justice Denied*, that definitively declared that mass removal and detention were caused not by "military necessity" but by "race prejudice, war hysteria, and a failure of political leadership." The Commission deliberately issued these findings first so that the surrounding publicity would highlight the injustice of the wartime removal and the evidence of racism behind the decision. After giving the public four months to digest and reflect on these findings, the Commission then disseminated a series of recommendations that called for Congress and the President to provide a national apology, \$20,000 to all surviving prisoners, and an educational foundation. The Commission selected \$20,000 in compensation, \$5,000 less than the JACL had requested, to show it was supportive of the JACL but still independent. Eliminating the eligibility of heirs also helped avoid establishing a model for descendants of other victims of racism that some feared would make redress a prohibitively costly precedent.<sup>156</sup>

The Commission's report and recommendations galvanized redress activism but it would still take five years for the 1983 legislation to implement the commission's recommendations to become law.<sup>157</sup> The eventual success of these efforts shows the importance of analyzing internal political dynamics and developing a campaign that takes into account existing political power structures and is tailored to appeal to key political leaders. Grassroots advocacy, especially by NCRR activists, helped sustain the movement within the ethnic community. They sent more than 20,000 letters to members of Congress endorsing the legislation and in 1987, 120 activists affiliated with NCRR visited 101 congressional offices to lobby for support.<sup>158</sup> JACL redress leaders like Grayce Uyehara also mounted a grassroots campaign by providing lobbying advice, sample endorsement letters, and "action alerts" analyzing the redress position of every member of Congress. JACL was especially adept at obtaining endorsements from allies outside the ethnic community and by 1987 could cite redress support from more than 200 organizations, including state legislatures and veteran group.

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155. *United States v. Hohri*, 482 U.S. 64 (1987).

156. HOHRI, *supra* note 152, at 350–53.

157. HOHRI, *supra* note 152, at 366–67.

158. HOHRI, *supra* note 152, at 366–67.



<sup>159</sup> Democratic congressional representatives Norman Mineta and Robert Matsui shared their personal stories of being incarcerated as children as they urged the House to vindicate their families' loyalty and patriotism by supporting the legislation. While a few left politicians like Ron Dellums denounced the racism that led to the mass incarceration, most Democrats and Republicans who endorsed redress cited the heroism of the 442nd to explain their support.<sup>160</sup>

In the Senate, Spark Matsunaga, a popular senator from Hawaii and a decorated veteran, persuaded 75 of his colleagues to co-sponsor the legislation.<sup>161</sup> JACL lobbyist Grant Ujifusa helped win over conservative supporters by depicting redress as an indictment of liberal icon Franklin Delano Roosevelt and intrusive big government.<sup>162</sup> He also characterized redress as a reward for military heroism and "model minority" restraint. Given that redress activists in the 1970s initiated the campaign to refute this "model minority" image, this strategy was ironic. Finally, to prevent Reagan from vetoing the legislation, Ujifusa convinced Republican governor Thomas Kean to remind the president of a wartime speech he gave while presenting the family of Kazuo Masuda with a posthumous Distinguished Service Cross.<sup>163</sup> When Reagan signed the Civil Liberties Act on August 10, 1988, he quoted this speech and declared "blood that has soaked into the sands of a beach is all of one color."<sup>164</sup> Reagan's budgets, however, failed to allocate funding for redress. Senator Daniel Inouye, the second-ranking Democrat on the Appropriations Committee, then stepped in and made redress an entitlement that provided \$500 million in funding in 1991 and 1992 and \$250 million in 1993.<sup>165</sup>

For many Japanese Americans, the passage of redress legislation reaffirmed the US government's commitment to equality and the protection of constitutional rights. Some activists truly hoped the Civil Liberties Act of 1988 would ensure that no other groups would ever experience the racist hatred that led to the Japanese American mass incarceration. Other activists, however, feared that the "racial prejudice, wartime hysteria, and a failure of political leadership," that the commission indicted, could be revived during

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159. HOHRI, *supra* note 152, at 366–67.

160. HOHRI, *supra* note 152, at 371–73.

161. YANG MURRAY, *supra* note 63, at 371.

162. YANG MURRAY, *supra* note 63, at 375–76.

163. YANG MURRAY, *supra* note 63, at 375–76.

164. HOHRI, *supra* note 152, at 374–78.

165. LESLIE HATAMIYA, *RIGHTING A WRONG: JAPANESE AMERICANS AND THE PASSAGE OF THE CIVIL LIBERTIES* 185 (1994).

other national crises. For these activists, the lesson of redress activism was a determination to defend and protect other groups threatened by government discriminatory policies. After 9-11, as Muslim and Arab Americans were subjected to government round-ups, detention and deportation, these activists drew parallels between racist policies during World War II and during the war on terrorism.<sup>166</sup> Denouncing the government's denial of due process to suspected terrorists, they helped organize vigils and demonstrations to send a message to the government that they would not allow civil liberties to again be sacrificed in the name of national security.

### III. Governmental Authority to Regulate Free Speech

The history of racism and racial hatred against Japan's minorities and the U.S. government's decision to imprison Japanese Americans during World War II has shown that governments have often acted against the welfare and civil rights of racially marginalized populations in order to achieve their political objectives. While Professor Craig Martin calls for greater government action in revising Japanese hate speech laws to provide stricter prohibitions and more concretely delineated sanctions,<sup>167</sup> greater public debate and discussion may be needed to examine the ramifications of such governmental decisions on the parameters of the freedom of speech. The proposal to further empower the government in regulating the legal framework of free speech may be potentially dangerous and even harm the freedom of expression which has been guaranteed by both Japanese and U.S. constitutions.<sup>168</sup> For instance, as the latest Japanese hate speech bill was hotly debated in April 2016, Takashi Nagao, a powerful Lower House member of the ruling Liberal Democratic Party from Osaka, argued that the peaceful demonstrators who called for the U.S. military to get out of Okinawa might be guilty of hate speech. Criticizing American military bases could be construed as "unjust racial statements" against Americans, even if the protests were directed against Japanese policies that supported the disproportionately large presence of American military bases in Okinawa and not an attack on all things American.<sup>169</sup>

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166. *NCRR 9/11 Committee*, NIKKEI FOR CIVIL RIGHTS AND REDRESS, <http://www.ncrr-la.org/about.html>, (last visited Nov. 3, 2005).

167. Martin, *supra* note 2.

168. NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION], art. 21, para. 1 (Japan); U.S. CONST. amend. I.

169. Eric Johnston, *LDP Lawmaker Suggests Using Hate Speech Bill on Protesters in Okinawa*, JAPAN TIMES, Apr. 26, 2016, <https://www.japantimes.co.jp/news/2016/04/26/national/politics-diplomacy/ldp-lawmaker-suggests-using-hate-speech-bill-protesters-okinawa/>.

Similar concerns have been raised in the U.S. against proposals to increase governmental regulation of the freedom of expression. Within the first two months of Donald Trump's presidency in 2017, Republican lawmakers in eighteen states proposed legislation that threatened the right to peaceful assembly by significantly increasing the penalties for public protesters, including blocking highways as a felony offense punishable by a five-year prison sentence, seizing the assets of people who participate in demonstrations that become violent, and switching the liability from drivers who unintentionally hit protesters with their cars to the protesters themselves.<sup>170</sup>

Free speech rights also came under attack after a North Carolina state senator was outraged by hecklers shouting "shame" and "bigot" at Republican Governor Pat McCrory because he signed legislation requiring transgender people to use public bathrooms that corresponded to the gender listed on their birth certificates instead of their gender identity.<sup>171</sup> Dan Bishop, the author of the bathroom law, announced in January 2017 that he would sponsor legislation making it a crime to "threaten, intimidate or retaliate against a present or former North Carolina official in the course of, or on account of, the performance of his or her duties."<sup>172</sup> He also declared that people who join a "chanting mob" or become "ubiquitous leftist rioters" could expect to face a five-year prison sentence.<sup>173</sup> In August 2017, Massachusetts Republican state committee member Marty Lamb proposed that a resolution condemning hate speech include "Black Lives Matter" as a leftist hate group.<sup>174</sup> Lamb, who is Jewish, argued that Black Lives Matter activists' characterization of Israel's treatment of Palestinians as a "form of genocide," preaches "hatred against me and my people to the same extent as those white supremacists and need to be named."<sup>175</sup> Lamb's proposal illustrates how public statements that some might view as legitimate criticism can be seen by law makers as harmful hate speech.

Furthermore, in March 2017, Benjamin Cardin, a Democratic member of Congress from Maryland, and Illinois Republican Senator Peter Roskam introduced legislation that would make it a crime to support an international

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170. Christopher Ingraham, *Republican Lawmakers Introduce Bills to Curb Protesting in at Least 18 States*, WASH. POST, Feb. 24, 2017.

171. Abbie Bennett, *Does Pat McCrory Need Protection? One NC Senator Thinks So*, NEWS & OBSERVER, Jan. 23, 2017.

172. *Id.*

173. *Id.*

174. Frank Phillips, *State GOP Debates Condemning Hate Group—and That Might Include Black Lives Matter*, BOSTON GLOBE, Aug. 27, 2017.

175. *Id.*

boycott against Israel.<sup>176</sup> This attempt to criminalize political speech and activism was designed to shut down the boycott, divestment and sanctions (“BDS”) movement that tries to pressure Israel to change its settlement policies. The proposed legislation made promoting or even supplying information about an anti-Israel boycott a crime punishable by fines of up to \$1 million and a twenty-year prison sentence. ACLU attorneys David Cole and Faiz Shakir condemned the bill for targeting “free speech and political beliefs” and noted that the bill “would prohibit even the act of giving information to a U.N. body about boycott activity directed at Israel.”<sup>177</sup> They argued that individuals rather than the government “should have the right to decide whether to support boycotts against practices they oppose.”<sup>178</sup> One might expect that such an obvious threat to free speech would be immediately attacked. Unfortunately, as of July 2017, many lawmakers on both sides of the aisle had supported the legislation. In the House, 174 Republicans and 63 Democrats agreed to become cosponsors. In the Senate, 29 Republicans and 14 Democrats agreed to become cosponsors. The bill’s backers included a pantheon of so called liberal champions, including Chuck Schumer, Kirsten Gillibrand, Ted Lieu, Eric Swalwell, and Adam Schiff.<sup>179</sup>

The fact that recent politicians and law makers failed to recognize that public boycotts and popular protestations should be a protected form of expression under the First Amendment is appalling and suggests we should think very carefully before increasing the power of government officials to define threatening or hateful speech. These recent examples show why empowering governments and their law makers, whether in the U.S. or Japan, to define hate speech appropriately can be potentially dangerous and further harm people’s right to the freedom of expression.

#### **A. Lessons Learned or Unlearned?**

Despite great advances in the protection of the freedom of speech and the public condemnation of racist government policies against Japanese Americans and other marginalized communities, the discriminatory treatment of Korean residents in Japan as well as Muslim and Arab Americans in the U.S., especially after the 9/11 attack in 2001, is a sobering reminder that there is still no guarantee that the government will refrain from

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176. Israel Anti-Boycott Act, H.R. 1697, 115th Cong. § 720 (2017).

177. David Cole & Faiz Shakir, *This Piece of Pro-Israel Legislation is a Serious Threat to Free Speech*, WASH. POST, July 24, 2017.

178. *Id.*

179. Glenn Greenwald, *U.S. Lawmakers Seek to Criminally Outlaw Support for Boycott Campaign Against Israel*, INTERCEPT, July 19, 2017.

the adoption of racialized policies. In September 2017, the Japanese government responded angrily to North Korea's ballistic missile launch over the northern Island of Hokkaido.<sup>180</sup> As international tension and Japanese hostility toward North Korea increases, the Japanese government could view Korean residents in Japan as potential spies and saboteurs and subject them to increased surveillance, interrogation, and even preemptive detention policies. If Korean residents attempted to defend their civil rights by criticizing discriminatory policies of the Japanese government directed against them, it is plausible that their criticisms of government policies could be labeled as "anti-Japanese hate speech," and they might be prosecuted by the government.

In the U.S., Muslim and Arab Americans have been targeted for prosecution by the U.S. government. In the weeks following the 9/11 attack, the Justice Department arrested and interrogated over 1,200 Muslim, Arab and South Asian American "suspected terrorists."<sup>181</sup> Instead of charging them with direct links to terrorists, the government held hundreds of these individual suspects, the majority from Pakistan and Egypt, for immigration violations such as overstaying temporary visas.<sup>182</sup> On September 20, 2001, the INS issued a rule allowing for detentions of indeterminate length during periods of "emergency or other extraordinary circumstances."<sup>183</sup>

Japanese Americans swiftly denounced such policies. In the hours and days following the attack on the World Trade Center, the JACL issued numerous press releases and action memos denouncing a presumption of guilt by ethnic association. The organization warned Americans to not make the same mistakes that "were made in the hysteria of World War II following the attack on Pearl Harbor."<sup>184</sup> On September 19, the JACL joined the

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180. Motoko Rich, *North Korea's Threat Pushes Japan to Reassess Its Might and Rights*, N.Y. TIMES, Sept. 15, 2017, <https://www.nytimes.com/2017/09/15/world/asia/japan-north-korea-missile-defense.html>.

181. *Racial Profiling Post 9/11: A Threat to All Our Rights*, SOCIALIST ALTERNATIVE, Sept. 2002, <https://www.socialistalternative.org/911-and-the-war-on-terror/racial-profiling-post-911-threat-to-all-our-rights/>.

182. *Preventing Terrorism*, MIGRATION NEWS, Nov. 2001, <https://migration.ucdavis.edu/mn/more.php?id=2482>.

183. S.D. Ikeda, *For Asian Americans, a War on Two Fronts*, *Asian-American Village*, [www.imdiversity.com](http://www.imdiversity.com). Noting that only ten to fifteen of those imprisoned for weeks and even months were suspected of being Al Qaeda sympathizers, Jane Brunner, the vice mayor of Oakland, also reminded the public of the treatment of Japanese Americans, condemned the government's refusal to even release the names of the detained, called for an end to the use of "non-citizens as scapegoats." See Jane Brunner, *Letters to the Editor*, S.F. CHRON., Dec. 8, 2001.

184. Dale Ikeda, *DOR Ground-Breaking Remarks*, PINEDALE ASSEMBLY CTR. MEMORIAL, Feb. 19, 2007, <http://pinedalememorial.org/2007/02/19/dor-ground-breaking-remarks/>.

Organization of Chinese Americans and other groups for a rally at the Japanese American National Memorial in Washington D.C., to urge “solidarity and an end to hate-motivated violence.” At the rally, Karen Narasaki called for Americans to take to heart the “lessons of World War II” when her “parents and hundreds of other Japanese-American families were herded behind barbed wire simply because they happened to look like the enemy.”<sup>185</sup>

Japanese Americans also joined other Americans in attacking the sweeping powers given by the so-called Patriot Act, enacted six weeks after 9/11, to law enforcement agencies and prosecutors without judicial oversight. They criticized FBI questioning of people based on their religion or ethnicity at their workplaces and homes, the selective targeting and enforcement policies of the INS, and the detention and deportation of Arab, Muslim, and South Asian Americans for minor immigration violations. In February 2003, John Tateishi, the national JACL executive director and former redress chair, drew a parallel between the government’s registration program, targeting noncitizens from the Middle East, and the treatment of Japanese, German and Italian permanent residents during World War II.<sup>186</sup> Both “alien registration” acts required immigrants to register, be fingerprinted, and photographed. The Bush registration program, Tateishi explained, “echoes something from our own experience in 1942,” because it was “really about racial identity” and “racial profiling.” California Congressman Mike Honda also called for the protection of legal residents of foreign birth who were especially vulnerable.<sup>187</sup> The House passed his 2004 resolution to make February 19 a National Day of Remembrance that not only condemned Executive Order 9066 for removing and imprisoning Japanese Americans but also acknowledged the injustice of interning almost 11,000 German and over 3,000 Italian individuals labeled as “enemy aliens.” Honda explained that “at a time when inflamed passions from our current conflict with Iraq and the war on terrorism may prompt similar discrimination against targeted ethnic groups, we must remember the lessons from this shameful chapter in U.S. history.”<sup>188</sup>

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185. *Americans Who ‘Look Like the Enemy’ Deplore Rising Number of Ethnic Attacks*, SEATTLE PI (Sept. 19, 2001), <http://www.seattlepi.com/news/article/Americans-who-look-like-the-enemy-deplore-1066290.php>.

186. David L. Beck, *House Supports Creation of Day of Remembrance*, SAN JOSE MERCURY NEWS, Mar. 5, 2004.

187. *Id.*

188. Beck, *supra* note 186.

Japanese American individuals and groups worked with Arab, Muslim, and South Asian Americans to challenge discriminatory government policies. The NCCR 9/11 Committee held a series of educational programs with the Revolutionary Alliance of Women from Afghanistan, the Muslim Public Affairs Council, the Council on American-Islamic Relations, and the American Arab Anti-Discrimination Committee.<sup>189</sup> J.T. Takagi's 7 minute film, "Homeland Insecurity," released in December 2001, documented hate crimes after the 9/11 attack and included comments by former Japanese American detainees, comparing the jingoism and nationalism after Pearl Harbor and the 9/11 attack.<sup>190</sup> The 2004 Day of Remembrance program in San Francisco highlighted the premier of Lisa Hoshino's, "Caught in Between." This documentary provided interviews with former detainees, their children, and citizens and immigrants from the Japanese and Muslim American communities about being made the enemy, questioning freedom, and fighting for civil liberties and human rights.<sup>191</sup>

One of the most prominent and passionate critics of racial profiling during the war on terror was Fred Korematsu. In November 2002, Korematsu and the coram nobis legal team that helped overturn his wartime conviction for challenging exclusion and incarceration orders circulated a letter, by email, calling for the removal of John Ashcroft as Attorney General. His policies to "justify the mass internment of 'suspected terrorists,'" they argued, were an attempt to "revive" the "ugly precedent" set by the Korematsu, Hirabayashi, and Yasui decisions of 1943 and 1944.<sup>192</sup> Korematsu also filed an amicus curiae brief in November 2003 to support petitions on behalf of the hundreds of Guantanamo Bay detainees and Yaser Esam Hamdi, an American citizen captured in Afghanistan and being held in a military brig in Virginia. Korematsu, 84 and in frail health, declared in his brief, "it is only natural that in times of crisis our government should tighten the measures it ordinarily takes to preserve our security" but "we know from long experience that we often react too harshly in circumstances of felt necessity and underestimate the damage to civil liberties."<sup>193</sup>

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189. *NCCR 9/11 Committee*, *supra* note 166.

190. DVD: *Homeland Insecurity* (Third World Newsreel 2001).

191. DVD: *Caught in Between: What to Call Home in Times of War* (Densho Encyclopedia 2004).

192. *Lessons of the WWII Internment?* Nov. 27, 2002, <http://www.umass.edu/legal/Arons/250-Summer04/Lessons%20of%20the%20WWII%20Internment.pdf>.

193. Linda Greenhouse, *Finding Common Ground in Asking the Court to Act*, N.Y. Times, Nov. 11, 2003, <http://www.nytimes.com/2003/11/11/us/finding-common-ground-in-asking-the-court-to-act.html>.

While Fred Korematsu passed away in 2005, his daughter, Karen Korematsu, along with Gordon Hirabayashi's son Jay and Minoru Yasui's daughter Holly, filed an amicus curiae brief in September 2017 to oppose President Donald Trump's Executive Order 13780, issued on March 6, 2017, temporarily suspending travel to the U.S. for citizens of six Muslim-majority nations (Syria, Sudan, Iran, Somalia, Libya, and Yemen) and for all refugees lacking either a visa or valid travel documents.<sup>194</sup> This order revised the original order he issued in January 2017, popularly known as the "Muslim ban," that Trump claimed would protect the country from possible terrorists. The second order eliminated Iraq from the list, removed preferential treatment for "persecuted religious minorities" hoping to come to the U.S., and abolished extra restrictions that had been placed on Syrian refugees. A third revision, issued on September 24, restricted travel from eight countries: Iran, Libya, Syria, Venezuela, Somalia, Yemen, Chad, and North Korea.<sup>195</sup>

Solicitor General Noel Francisco filed papers in November 2017 with the Supreme Court defending the ban by claiming that the ban protects "national security" and that "the Constitution and acts of Congress confer on the President broad authority to prevent aliens abroad from entering this country when he deems it in the nation's interest."<sup>196</sup> The three children of former Japanese American defendants who appeared before the Supreme Court, however, argued that these bans, regardless of minor revisions, violated the Constitution and exceeded presidential authority under federal immigration law. Their brief argued that their fathers' cases should serve as "powerful reminders not only of the need for constant vigilance in protecting our fundamental values, but also of the essential role of the courts as a check on abuses of government power, especially during times of national and international stress." They reminded the court that by "refusing to scrutinize the government's claim that its abhorrent treatment of Japanese Americans was justified by military necessity," the Supreme Court during World War II "enabled the government to cover its racially discriminatory policies in the cloak of national security."<sup>197</sup> The brief urged the court to avoid repeating

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194. Press Release, White House, Executive Order 13780: Protecting the Nation from Foreign Terrorist Entry into the United States (Mar. 6, 2017), <https://www.whitehouse.gov/the-press-office/2017/03/06/executive-order-protecting-nation-foreign-terrorist-entry-united-states>.

195. Ariane de Vogue, *Challengers Back at Supreme Court Hoping to Block Latest Travel Ban*, CNN, Nov. 28, 2017, <http://www.cnn.com/2017/11/28/politics/travel-ban-supreme-court/index.html>.

196. *Id.*

197. Chris Fuchs, *Children of Internment Resisters Attack Travel Ban in Supreme Court Brief*, NBC NEWS, Sept. 20, 2017, <https://www.nbcnews.com/news/asian-america/children-internment-resisters-attack-travel-ban-supreme-court-brief-n803241>.



“[the same] failures of the past” and “repudiate them and affirm the greater legacy of those cases: Blind deference to the Executive Branch even in areas in which decision-makers must wield wide discretion, is incompatible with the protection of fundamental freedoms.”<sup>198</sup>

## Conclusion

This Article examined the history of Japan’s racism against Asian neighbors and Japanese residents of Asian and marginalized communities. This Article also analyzed how Japanese-American activism could lead to the passage of redress legislation in 1988. The success of this movement showed that more militant or radical activists could initiate a campaign despite individual and community fears of a backlash. These communities could present scholarship and other evidence to document the racism behind the wartime injustice and persuade former victims to share their accounts of the suffering they experienced before a government commission. The Commission’s recommendations to provide an apology, individual compensation, and an educational fund then became the basis for redress legislation. Developing a multifaceted campaign that included grassroots activism within the ethnic community, a class action lawsuit and the political lobbying of key officials showed the importance of assessing political power structures and appealing to different constituencies within and outside the Japanese-American community.

The recent re-emergence of racial animosity and deep-seated hatred in Japan towards minorities accentuates the historical residue of racism that has not been officially recognized by the Japanese government. Our study substantiates that, after the Japanese declaration of independence and sovereignty in 1868, political elites and state planners of the young government incorporated racialized ideologies to promote a nation-state building project. These propagated ideologies included a myth of racialized ideology, an imagined national unity based on its divine ancestral roots in the imperial family, and the racial superiority of Japanese people over other Asian races. These ideologies helped strengthen the central authority of the national government and facilitated the colonization and annexation of Asian neighbors and regions. America’s propaganda efforts during the First World War and Hitler’s analysis of Germany’s WWI loss that he attributed to ideological warfare strategies had been translated and studied by Japanese political elites and policy planners who also went on to institute an elaborate system of propaganda to further facilitate and justify Japanese colonial

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198. Brief for Fred T. Korematsu Center for Law and Equality et al. as Amici Curiae Supporting Appellees, *Hawai’i v. Trump*, (No. 17-15589) (2017).

ventures in Japan and abroad. U.S. postwar policies in Japan that helped reconstitute the prewar fascist regime further helped strengthen Japan's racial superiority in Asia.

As of today, the Japanese government has not officially offered apologies or reparations to victims of Japan's imperial ventures in Asia that explicitly acknowledges this history of racism and racial supremacy. Activists may be able to challenge assumptions about Japanese ideas of purity, homogeneity, and superiority by promoting new scholarship that recognizes and documents a discourse on Japanese heterogeneity and Japanese commonality with their Asian neighbors. Research by Oguma Eiji persuasively argued that ideas about Japanese having "mixed blood" were dominant for much of the empire and that ideas about Japanese supremacy were often rooted in claims that the Japanese represented a culmination and combination of all Asian peoples and cultures. The idea that the Japanese were, rather characterized by the purity of their race became dominant as the war in China intensified. Oguma also maintained that the "myth" that prewar Japan was dominated by "pure blood" discourse was really a product of postwar Japanese critiques of fascism that were encouraged by the American Occupation. In this context, "pure blood" discourse became the foundation for postwar Japan's "peaceful nature."

Consequently, more research can assist activists in Japan in developing a more nuanced comparison of "white" and "Japanese" supremacy ideologies that will help them analyze the distinctiveness of the two contexts and the important role that Americans played in Japanese postwar discourses.<sup>199</sup> Activists also can emphasize the role of Japanese researchers, such as Yoshimi Yoshiaki who documented Japanese military complicity in the exploitation of military sexual slaves, and Japanese feminists who have criticized funds given through the Asian Women's Fund as indirect compensation.<sup>200</sup> Perhaps the educational component in Japan's 2016 hate speech law could be used to publicize this research documenting the atrocities Koreans and other minorities experienced in Japan and in Japanese colonies during the war. Previous apologies by Chief Cabinet Secretary Yohei Kono in 1993 and Prime Minister Tomiichi Murayama in 1995 could be included as well as evidence of sincere but insufficient apologies that need

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199. Christy, *supra* note 59.

200. YOSHIMI YOSHIKI, *COMFORT WOMEN: SEXUAL SLAVERY IN THE JAPANESE MILITARY DURING WORLD WAR II* (2002); C. SARAH SOH, *THE COMFORT WOMEN: SEXUAL VIOLENCE AND POSTCOLONIAL MEMORY IN KOREA AND JAPAN* (2009).

to acknowledge Japanese racism and racial supremacy.<sup>201</sup> Providing apologies that explicitly recognize Japanese racism and direct individual compensation for wartime discrimination would give the public more confidence that the Japanese government's commitment to opposing hate speech was genuine. While this would not guarantee that the government would not in the future abuse its power to define hate speech and limit free speech, it would provide Koreans and other minorities in Japan with a precedent they could use to remind the public of the suffering caused by racism and the need to be vigilant about protecting the rights of minorities and government critics.

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201. *Statement by the Chief Cabinet Secretary Yohei Kono on the Result of the Study on the Issue of "Comfort Women,"* MINISTRY OF FOREIGN AFFAIRS OF JAPAN (Aug. 4, 1993), <http://www.mofa.go.jp/policy/women/fund/state9308.html>; *Statement by Prime Minister Tomiichi Murayama, On the Occasion of the 50th Anniversary of the War's End,* MINISTRY OF FOREIGN AFFAIRS OF JAPAN (Aug. 15, 1995), <http://www.mofa.go.jp/announce/press/pm/murayama/9508.html>.

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