

Chapter 1. Prologue from

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## CHAPTER 1

# Prologue: Willed Concealing, Forgetting, Remembering and Repairing

## A. Introduction

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George Santayana's famous dictum that those who cannot remember the past are condemned to repeat it has had remarkably little traction in American life. Rather, Americans have often dealt with the painful impact of political crises by "willed forgetting"—that is, by deliberate acts of collective amnesia. Historian David Blight has notably described how by the end of the 19<sup>th</sup> century, the meaning of the U.S. Civil War was transfigured from the defense of the union against rebellion into a shared noble cause on both sides, thus conveniently obscuring the sectional divide over slavery that drove the original conflict.<sup>1</sup> Through popular White nostalgia and desire for national reconciliation, the status of the African Americans who had been liberated by the war and assured equality afterwards ceased to trouble the nation's conscience. And in an 1896 ruling suffused with disingenuousness, the U.S. Supreme Court proclaimed in *Plessy v. Ferguson* that Jim Crow laws, which enforced the isolation and exclusion of African American citizens on a racial basis, did not violate the Constitution.<sup>2</sup> Hence the Court approved the creation of a legal caste system, one that would endure until the Court began to dismantle it with its ruling in *Brown v. Board of Education* in 1954.<sup>3</sup>

A similar act of injustice capped by willed forgetting occurred on the United States home front during World War II: military removal of over 110,000 West Coast Japanese Americans from their homes during spring 1942, to transport and confine them to federally administered and euphemistically termed relocation centers—essentially involuntary prison or American-style concentration camps—referred to throughout this book as incarceration or internment camps. As the war progressed, an increasing number of newspaper editors, civil rights activists and ordinary citizens questioned this policy. And a handful of U.S.-born citizens of Japanese ancestry (sometimes referred to as Nisei, or second generation) contested the military orders based upon Executive Order 9066 in federal court. Eventually, the U.S. Supreme Court heard the separate cases of Gordon Hirabayashi, Minoru Yasui, Fred Korematsu and Mitsuye Endo.<sup>4</sup> In a series of decisions in these Japanese American internment cases during 1943 and 1944, the Court sanctioned the official sequestering and dislocation of citizens on a racial basis—although it

adroitly avoided a direct constitutional ruling on the mass confinement that resulted. Like *Plessy*, these decisions enshrined an expedient deviation from equal justice as constitutional principle.

Yet almost as soon as the war ended, mass oblivion swiftly descended on Executive Order 9066 and its consequences. The government closed down the camps, dismantled their buildings and sites and sent away those held there—in a few cases forcibly. Despite an initial push for review and restitution by the Japanese American Citizens League (JACL), the official actions disappeared from view and the careers of those responsible progressed unscathed. As the experience of the victims and their trauma disappeared from notice, American democracy largely failed to absorb the underlying lessons of these events. For example, during the war, confined Japanese Americans had been required to answer government questionnaires purporting to examine their loyalty and therefore fitness for eventual release from the internment camps. Instead these loyalty tests generated considerable confusion and led to further injustice such as segregation. Despite the arbitrary nature and practical uselessness of such tests, their use became institutionalized as a tool of coercion during the postwar anti-Communist hysteria. Indeed, when Congress passed the Internal Security Act of 1950 (also known as the McCarran Act),<sup>5</sup> which included provisions for confining suspected subversives without charge in concentration camps, the government prepared the wartime Japanese American internment camp at Tule Lake for eventual use to hold dissidents. Most frighteningly, the U.S. Supreme Court and lower federal courts took no action to reverse their discredited wartime decisions, although most jurists of repute eventually distanced themselves from the results. As Justice Robert Jackson predicted in his 1944 dissent in the central case, *Korematsu v. United States*, the precedent has continued to lie “about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.”<sup>6</sup>

However, in the early 1970s, a growing circle of activists, including lawyers, writers and academics, penetrated the clouds of amnesia that had obscured history. They held Days of Remembrance on February 19 each year (to mark the day President Roosevelt signed Executive Order 9066), made speeches at demonstrations and fundraisers, wrote pamphlets and articles, organized associations and lobbied their political representatives to offer redress to the Japanese Americans affected. Eventually, pressure from this political movement, skillfully managed by Nisei members of the U.S. Congress, led Congress to appoint a historical body, the U.S. Commission on Wartime Relocation and Internment of Civilians (CWRIC), to hear testimony and recommend action. The testimony at the CWRIC commission’s hearings, and its final report published in 1982-3, entitled PERSONAL JUSTICE DENIED, did much to jog American memories and reawaken the conscience of the nation. Following in-depth research and hearings that brought forth impassioned testimonials, the CWRIC concluded that the curfew, exclusion and wholesale detention of Japanese Americans without charges or hearing were not based on military necessity but stemmed from “war hysteria, racial prejudice and a failure of political leadership.”<sup>7</sup>

In the midst of this wave of action, various people connected with this redress movement concluded that revisiting the wartime judicial rulings on Japanese Americans constituted a central aspect of their struggle. First, there was the matter

of historical truth to consider. The U.S. Supreme Court's opinions had lent credence to false accounts of Japanese American fifth columnists, and its wartime decisions contributed to cementing in the public mind the official misinformation about Japanese American disloyalty upon which the mass removal was based. Furthermore, the Court's rulings had placed a legal imprimatur upon these official actions. Indeed, as early as 1948, when the JACL was spearheading efforts to win evacuation claims legislation to compensate Japanese Americans for property losses, former U.S. Attorney General Francis Biddle had informed its leaders that these judicial decisions were the chief obstacle to their quest.<sup>8</sup> As long as they remained good law, and the U.S. government could claim that its actions had been constitutional, Japanese Americans had no legal claim for any damages.

Thus, in the early 1980s, a team of young lawyers—many of whom had parents who had been interned—mobilized to petition the courts to overturn the convictions of the three wartime defendants who had lost their cases. Their actions offered a potential antidote to the willed forgetting about the unjust indefinite wartime detention of over 100,000 innocent Japanese Americans. The various legal teams employed an ancient, seldom-used petition for writ of error *coram nobis*. This obscure legal device enables criminal defendants who have served their sentences to challenge convictions infected by egregious governmental misconduct and to correct the most fundamental errors, under the legal standard of “manifest injustice.”<sup>9</sup> The cornerstones of these three identical petitions on behalf of Hirabayashi, Korematsu and Yasui, filed in the original federal district courts that convicted them, were newly discovered World War II government documents.<sup>10</sup> These revealed that the original federal prosecutors had hidden exculpatory evidence, falsified central facts on military necessity and, in essence, deliberately misled the U.S. Supreme Court and larger public in order to legitimate the exclusion orders and the indefinite detention that followed. Based mainly on these documents, the *coram nobis* legal teams in San Francisco, Seattle and Portland asserted successfully that:

- Before the internment, various representatives of the federal government's intelligence services assigned to investigate claims of espionage and sabotage had already informed the highest officials of the military as well as the Justice and War (now Defense) Departments of the executive branch that West Coast Japanese Americans had *not* committed acts of disloyalty and posed no serious danger. Thus, the government's own internal documents available at the time indicated no justifiable basis for mass internment.
- Nonetheless, key military officials based their decisions on a claim of military necessity due to alleged acts of espionage and sabotage—an assertion unsupported by evidence. Combining this claim with racial stereotypes regarding Japanese Americans' propensity to disloyalty, and overt government misrepresentations that its officials had insufficient time to distinguish between loyal and disloyal persons of Japanese ancestry, government lawyers then argued that the military actions authorized by Executive Order 9066 were justified.
- Government officials within the War and Justice Departments, including lawyers, concealed, altered, and destroyed crucial evidence and, moreover, deliberately misled the Court in 1943 and 1944 when it considered this central

legal issue of military necessity for the curfew and exclusion orders contested in the original *Hirabayashi*, *Korematsu* and *Yasui* cases.

Despite the government's opposition to the 1980s *coram nobis* petitions, lower federal courts, in differing ways, agreed with these assertions of governmental misconduct.<sup>11</sup> Several courts made critical factual findings of "manifest injustice" in the original convictions of the three wartime internment challengers.<sup>12</sup> These judicial victories also underscored the injustice of the overall wartime government policy for all other Japanese American internees. Combined with the CWRIC Report these judicial decisions provided a vital legal cornerstone for the Congressional enactment of historic reparations legislation. The Civil Liberties Act of 1988,<sup>13</sup> signed into law by President Ronald Reagan, mandated a presidential apology and \$20,000 reparations payments to each surviving internee. It also created a public education fund. This legislation not only promoted healing for some Japanese Americans, but also raised prospects of reparatory justice for others in the United States and potentially worldwide. For example, it directly catalyzed the brokering six weeks later of a redress settlement by Canada's government with Japanese Canadians, who had also been subjected to mass incarceration during World War II,<sup>14</sup> which in turn eventually ushered in recognition of Ukrainian Canadians who were interned during World War I.<sup>15</sup>

Before you then is a comprehensive yet concise study of both the original Japanese American internment cases and the subsequent successful legal efforts for redress, showing how these cases evolved from judicially sanctioned discrimination to reparations. Their constitutional law lessons are part of a larger project to shed light on Executive Order 9066 and the cases within the larger narrative of American history. To this end, the law professor authors have included edited case opinions, excerpts from scholarly articles and original essays, as well as selected oral histories, primary documents and photos—so that the volume stands as a valuable historical reference guide and text for disciplines such as American studies, ethnic studies and U.S. history as well as law.<sup>16</sup>

Structurally, the book is organized into four parts, entitled succinctly: Context, Internment, Redress and Legacy. The first two parts are chronological and treat relevant events according to the book's thematic interplay between race and rights. The latter two parts—organized around concise case studies, notes and questions—address the third theme of reparations. It ends with an elaboration of the present-day significance of the Japanese American wartime and *coram nobis* cases to redress movements in the United States and worldwide, as well as to post-9/11 issues of national security and civil liberties.

The remainder of this introductory chapter provides a sweeping yet selectively detailed overview of the entirety. It also summarizes the documentary evidence of deception and dissembling by officials at the highest echelons of government in order to justify what was then and is now an essentially unjustifiable government policy: the removal and indefinite mass detention of tens of thousands of people without individual charges or trial. Further analyzed, described and reflected in the original documents reproduced and excerpted throughout subsequent chapters, and available on-line,<sup>17</sup> the evidence clearly reveals that a majority of the U.S. Supreme

Court had accepted at face value, and without careful scrutiny, the unsupported claims of military necessity then proffered by the War and Justice Departments.

## B. Overview

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Part I (Chapters 1 and 2, including this Prologue) of the book, called **Context**, situates the Japanese American cases within the legal history of Asian Americans. In the century following the first large migration of people from East Asia to the United States (Chinese attracted to California by the Gold Rush of 1849), Asian Americans were continually faced by the campaigns of White racists, both in California and nationwide, to push them over the color line into the legally inferior status then accorded to African Americans and Native Americans. As the carefully selected cases in this book illustrate, the very constitutional bases of the plenary power doctrine in modern immigration and national security law date from this early era. Like the Chinese immigrants before them, the Issei—the first-generation Japanese immigrants—were excluded on racial grounds from obtaining citizenship and taking up certain occupations. In many states, they and their American-born children, the Nisei, were barred from marrying Whites. However, the protection provided by the military and political weight of the Japanese Empire of Japanese nationals in the United States meant that those with Japanese ancestry could not be as easily targeted for arbitrary exclusion as other Asians in America. When the city of San Francisco attempted to segregate Japanese schoolchildren in 1906, for example, President Theodore Roosevelt feared that such open discrimination would lead to war, and he blocked the action by making a face-saving compromise with Japan. Under the provisions of the so-called “Gentlemen’s Agreement” of 1907-1908,<sup>18</sup> which followed similar arrangements with Australia and Canada, the United States promised not to bar Japanese immigrants or discriminate against existing residents as long as Japan made sure that no more laborers arrived. Racist legislators in various states such as California and Washington soon violated the spirit of this agreement by enacting a series of discriminatory measures, most notably the alien land laws that deprived the Issei of property rights under the transparent guise of barring “aliens ineligible to citizenship.” Since Congress had enacted the 1790 federal naturalization statute, which restricted naturalization to only “free White persons,”<sup>19</sup> a legal color line in the federal naturalization law was thus enlisted in the service of invidious state discrimination.

Like the Chinese before them, Japanese immigrants went to court to contest these laws. However, in the 1922 case of *Ozawa v. United States*,<sup>20</sup> the U.S. Supreme Court definitively declared that Japanese were ineligible for citizenship. In the following year, the Court upheld Washington State’s alien land act in *Terrace v. Thompson*.<sup>21</sup> Emboldened by these decisions, anti-Asian Congressmen successfully pushed for an absolute federal ban on Japanese immigration a year later. These materials illustrate a pervasive history of anti-Asian sentiment (particularly virulent on the West Coast), which set an important legal context for the wartime cases described in the following part. They partially explain how the federal government was able to engage successfully in blatant ethnic and racial discrimination against Japanese Americans during the early 1940s.

Part II (Chapters 3 and 4) of this book, starkly entitled **Internment**, deals with the wartime incarceration experience of Japanese Americans, and focuses on the quartet of Japanese American internment cases that eventually wound their various ways up to the U.S. Supreme Court. Because of its significance, a detailed summary of the core of the government misconduct (and subsequent reparations) follows here.

In the period before the Pearl Harbor attack, agents from federal intelligence agencies such as the Office of Naval Intelligence (ONI), as well as private informants chosen by the President, were sent to investigate and address the so-called “Japanese Question” on the West Coast.<sup>22</sup> These inquiries all concluded that the Japanese population was overwhelmingly loyal and that any problems of disloyalty could be handled individually.

However, in the early weeks of 1942, the head of the Western Defense Command based in San Francisco, Lieutenant General John L. DeWitt, and his assistant, Captain (later Colonel) Karl Bendetsen of the Provost Marshal General’s Office, demanded the total removal of the local Japanese population from the West Coast. Although DeWitt admitted there was no good evidence of any disloyal activity, he simultaneously insisted that the “racial strains”<sup>23</sup> of Japanese Americans, and their alleged connections with Japan, made them a risk to national security. DeWitt added that spies were engaging in radio signaling and shore-to-ship communication with Japanese submarines, which were sinking American ships. Such accusations were lent extra credence by the fallacious declaration of Navy Secretary Frank Knox that Japanese Americans in Hawai‘i had operated as a fifth column at the time of Pearl Harbor.

DeWitt’s conclusions were swiftly but not publicly discredited by the Federal Communications Commission (FCC), and also refuted by then-FBI Director J. Edgar Hoover.<sup>24</sup> The U.S. Attorney General was aware of the cogent recommendation against mass treatment of Japanese Americans by Lieutenant Ringle of ONI, whose year-long investigation had broken a pre-war Japan spy-ring (not involving Japanese Americans), and whose report had largely cleared the Japanese American community after Pearl Harbor.<sup>25</sup>

Still, the pressure from DeWitt set off debate within the White House. DeWitt’s views were seconded by West Coast whites inspired by racism and economic self-interest, and amplified by pressure from a solid bloc of opportunistic West Coast politicians, such as then-California Attorney General and future U.S. Supreme Court Chief Justice Earl Warren.<sup>26</sup> War Department heads, notably Assistant Secretary of War John McCloy, felt obliged to back their local commander against U.S. Attorney General Francis Biddle, who saw no necessity for mass racial exclusion and initially refused to support it. Ultimately, President Franklin Roosevelt sided with the military, apparently ignoring contrary intelligence. Roosevelt signed Executive Order 9066 on February 19, 1942.<sup>27</sup> Based on the need (in its own words) for “every possible protection against espionage and against sabotage,”<sup>28</sup> this critically decisive order set into motion the machinery for mass removal of Japanese Americans from the West Coast and into the internment camps.

Although neutral on its face and referring only to “persons,” Executive Order 9066 was expressly designed to skirt the constitutional rights of American citizens

of Japanese ancestry—dubbed “non-alien”<sup>29</sup> in the War Department’s euphemistic language. With criminal enforcement power quickly granted by Congress through Public Law 503,<sup>30</sup> this order became the instrument through which General DeWitt declared the entire West Coast a military area, imposed a curfew targeted toward those of Japanese ancestry and then used troops to remove all the region’s citizens and long-term legal residents of Japanese ancestry during the spring of 1942. A military bureau called the Wartime Civil Control Administration oversaw the exclusion and initial confinement of Japanese Americans in holding areas known as assembly centers.<sup>31</sup> Soon the White House created a civilian agency, the War Relocation Authority (WRA), to assume control over the internees.<sup>32</sup> Its first director, Milton Eisenhower, at first explored plans to resettle individuals removed from the West Coast. However, he soon faced large-scale hostility from public opinion and political leaders in non-coastal western states, who made clear their strong opposition to relocation within their states.<sup>33</sup> Thus, with the approval of the President and of the War Department, and under cover of Executive Order 9066, Eisenhower instituted a program of involuntary and indefinite mass incarceration. During the second half of 1942, the Issei and Nisei in official custody were herded inland and placed in a network of ten WRA-run internment camps hastily built in inhospitable areas, where they remained behind barbed wire under armed military guard, in most cases for the remainder of the war years.<sup>34</sup>

In the face of the official actions, a handful of Nisei, supported by non-Japanese American sympathizers, resolved to take action in defense of their liberties. They faced grave obstacles. The JACL, whose leaders had reluctantly offered the federal government full cooperation with removal in hopes of tempering and securing some influence over the removal process, denounced all legal challenges to removal as futile and potentially disloyal—a position they sustained until the cases reached the U.S. Supreme Court.<sup>35</sup> The internment cases were also marked by conflict between the national office of the American Civil Liberties Union (ACLU) and the local West Coast branches. Sympathizers of the Roosevelt Administration on the ACLU’s national board forced a referendum and won a resolution that Executive Order 9066 was constitutional. Thus, while West Coast ACLU lawyers could still contest the order’s unfair enforcement against Japanese Americans, their main argument against it was substantially weakened.<sup>36</sup>

Individual Nisei nevertheless persisted, and lower courts ultimately heard a number of legal challenges to official government policy.<sup>37</sup> Among these, the book centers on the four cases that reached the U.S. Supreme Court—the challenges brought by Hirabayashi, Yasui, Korematsu and Endo. Although treated independently in three separate federal district courts initially as prosecutions for violating the military orders, the first three legal challenges centered on a common set of legal questions: In wartime, what are the constitutional limits of military authority, supported by the President and Congress, to impose a curfew upon a group of citizens and legal residents of a specific race on asserted grounds of national security? And what are the analogous constitutional limits upon military authority to remove and indefinitely detain this same racial minority group? These first three cases also became the basis of the subsequent *coram nobis* challenges in the 1980s, filed separately in each original court, but coordinated by the activist lawyers who worked collaboratively. Endo’s *habeas corpus* challenge to her incarceration in the early 1940s resulted in a unanimous decision by the Court

freeing her on statutory grounds, but falling short of a majority finding of unconstitutionality. Justice Murphy's brief concurring opinion in *Endo* pointed out directly that her detention was "another example of the unconstitutional resort to racism inherent in the entire evacuation program."<sup>38</sup>

Inextricably intertwined with the abstract principles at stake were both the factual background of the cases and the unsavory, if not unethical, official manipulation that marked their preparation and presentation before the courts. As stated earlier, War Department officials, led by Assistant Secretary McCloy, defended the military's West Coast exclusion orders. They were driven in part by fears that if Japanese Americans prevailed, the Army would be discredited as acting tyrannically. Moreover, they believed that if exclusion were lifted, those returning *en masse* to California might spark bloodshed by fearful Whites.<sup>39</sup>

Yet the War Department officials were caught in a dilemma of their own making. They had deferred to Western Defense Commander DeWitt and California advocacy groups without closely examining the proffered factual justifications for the exclusion and ongoing detention. There are indications that McCloy sensed that he may have been misled by DeWitt, who was heavily biased against those of Japanese ancestry without any solid ground.<sup>40</sup> Under prodding from McCloy, who may have wished to atone for his previous actions,<sup>41</sup> the Army began accepting Nisei volunteers in early 1943.<sup>42</sup> Its goal was both to increase military strength and to permit Japanese Americans to prove their loyalty. To judge the admissibility of the recruits and reassure public opinion, Army officials designed a loyalty examination (a procedure soon extended to all adult Japanese Americans).<sup>43</sup> Having conceded the principle that it *was* possible to determine individual loyalty, the government then seized on the false premise that the Army had insufficient time to sort those who were disloyal from the loyal in order to justify mass removal.<sup>44</sup>

In April 1943, while the Justice Department's lawyers were preparing for arguments before the U.S. Supreme Court in the *Hirabayashi* and *Yasui* cases and while the first *Korematsu* appeal was pending in that Court, General DeWitt completed his FINAL REPORT: JAPANESE EVACUATION FROM THE WEST COAST (DeWitt Final Report or Report).<sup>45</sup> The deliberate suppression of the original version of this central piece of evidence and the surrounding government cover-up eventually played a major role in the *coram nobis* cases of the 1980s. DeWitt had selectively distributed within the War Department a completed, printed and bound original version of his Final Report (but withheld it from the Justice Department). Immediate infighting ensued within the War Department to alter the Report, particularly to modify DeWitt's explicit statement that lack of time was not a factor:

It was impossible to establish the identity of the loyal and the disloyal with any degree of safety. It was not that there was insufficient time in which to make such a determination . . . .<sup>46</sup>

This recitation of DeWitt's actual rationale for the race-based incarceration threatened to undercut the government's argument of military necessity to the U.S. Supreme Court—particularly the contention by Justice Department attorneys in all three cases then pending that the government did not have time to conduct individualized review of evidence regarding loyalty. After heated internal debate, McCloy



compelled DeWitt to recall his already finished Report. It was then altered to imply the opposite of what it originally recited:

To complicate the situation, no ready means existed for determining the loyal and the disloyal with any degree of safety. It was necessary to face the realities—a positive determination could not have been made.<sup>47</sup>

The after-added rationale of the altered Report (“no ready means”) was later adopted by the Court’s majority in its *Korematsu* opinion as one justification for the exclusion.<sup>48</sup>

After DeWitt reluctantly altered his Report, War Department officials ordered destruction of all copies of the original version of the Report, along with all drafts and notes, as they might reveal the censored rationale for removal.<sup>49</sup> One copy, however, fortuitously survived, and was later discovered in the 1980s by Peter Irons and Aiko Herzig-Yoshinaga. The revised Final Report, though dated June 1943, was not actually made public until January 1944. In May 1943, the Court heard arguments in *Hirabayashi* and *Yasui*. A month later, DeWitt transmitted the revised Final Report to the War Department. Neither text, however, was provided at first to the Justice Department (although, interestingly, parts of the earlier drafts were apparently leaked to various western state officials for inclusion in their *amicus curiae* briefs to the Court).<sup>50</sup>

In late June 1943, the government won unanimous decisions from the U.S. Supreme Court in *Hirabayashi* and *Yasui*. The Justices exercised some breathtaking judicial hairsplitting by ruling only on the curfew provision ordered by DeWitt and not on mass exclusion, removal and resulting detention. Applying a deferential level of scrutiny (rational basis review), they also agreed that even in the absence of any actual proof of disloyal activity, the military could rely on group identity to predict individual behavior.<sup>51</sup> The Court then proceeded to schedule arguments in fall 1944 on the constitutionality of DeWitt’s exclusion orders, challenged in *Korematsu*, as well as the ensuing mass detention, challenged by *habeas corpus* petition in *Ex parte Endo*.

Once again, the timing of DeWitt’s Final Report was critical to the government’s litigation strategy. The Justice Department (and the public) first received the altered Final Report in early 1944. The Justice Department planned to submit the Final Report to the U.S. Supreme Court along with its brief in the second *Korematsu* appeal. It planned to rely on the Final Report to establish the factual basis for the government’s claim of military necessity. As in the earlier *Hirabayashi* and *Yasui* appeals, the government had a two-part assertion of military necessity: (1) that there was insufficient time to handle disloyalty on an individual basis (contested within the War Department and known to be inaccurate by DeWitt himself) and (2) continuing insinuations of espionage and/or sabotage by some Japanese Americans (despite the great weight of military intelligence to the contrary). But because the Report had not been entered into evidence by the trial court (the normal procedure), and because DeWitt had not been subjected to cross-examination under oath, the Report’s statements could be accepted as evidence in support of military necessity if the recited facts were beyond dispute. Only under the doctrine of judicial notice could an appellate court rely on facts unsupported by record evidence.

Those crucial facts regarding espionage and/or sabotage were sharply disputed by many with special knowledge within the government, and became the basis not only of a dispute between executive branch agencies but also within the Justice Department itself. Most notably, both versions of the Final Report, drafted by DeWitt and his assistant Bendetsen, presented as factually true the earlier-reported accusations of clandestine West Coast radio transmissions to offshore Japanese ships.<sup>52</sup> They also recited as fact the signaling of nearby Japanese submarines. This apparent evidence implicated Japanese Americans in espionage against the United States.<sup>53</sup> The assertion of these ostensible acts of espionage later enabled the U.S. Supreme Court to state that “[t]here was evidence of disloyalty on the part of some.”<sup>54</sup>

Equally important, however, was what the Final Report omitted about these proffered facts. Three government agencies assigned to investigate possible Japanese American espionage and sabotage (the FBI, FCC and ONI, as mentioned earlier) had directly refuted DeWitt’s factual claims and at differing times had reported that DeWitt’s factual recitations were unfounded.<sup>55</sup> The FCC had investigated claims of radio signaling and had reported to DeWitt himself that there was no evidence of any illegitimate activity.<sup>56</sup> FBI Director Hoover had concluded that the push for the internment was motivated by politics rather than military need.<sup>57</sup> And the ONI—the intelligence office designated by President Roosevelt to head the investigation of the West Coast “Japanese Question”—had concluded just before the internment that the situation was under control and that there was no need for group racial treatment rather than individualized review.<sup>58</sup> Collectively, these intelligence assessments flatly rebutted the central allegations of espionage in the revised Final Report. They discredited the military’s claim in the revised Final Report that the internment had been justified, either because of the disloyalty of some or because more time was needed to distinguish disloyal from loyal Japanese Americans.

Had these contrary intelligence assessments by reputable agencies been disclosed, the U.S. Supreme Court would have found it far more difficult to take judicial notice of the factual recitations in the Final Report. A volatile debate occurred within the Justice Department between Edward Ennis, then head of the Alien Enemy section of the Justice Department, and Solicitor General Charles Fahy about whether the failure to reveal crucial intelligence reports on the critical issues of military necessity “might approximate the suppression of evidence.”<sup>59</sup>

Deeply troubled by the government’s dissembling, the two Justice Department lawyers charged with drafting the government’s brief in *Korematsu*—Ennis and Assistant Attorney General John L. Burling—inserted a significant footnote in the then-final version of their brief to the U.S. Supreme Court. Their version of this important footnote would have alerted the Court to unrevealed government intelligence assessments contradicting the factual recitations in the revised Final Report, particularly concerning shore-to-ship signaling. They asked the Court not to take judicial notice of the recited facts, “[i]n view of the contrariety of reports on this matter.” This version of the brief stated:

The recital [in the Final Report] of circumstances justifying the evacuation as a matter of military necessity, however, is in several respects, particularly with reference to the use of illegal radio transmitters and to shore-to-ship signalling by per-

sons of Japanese ancestry, in conflict with information in the possession of the Department of Justice. In view of the contrariety of the reports on this matter, we do not ask the Court to take judicial notice of the recital of those facts contained in the Report.<sup>60</sup>

But War Department officials and Justice Department lawyers at the highest levels intervened as the brief neared final publication. McCloy pressured Herbert Wechsler, Assistant Attorney General for the War Department, to squelch the footnote. In response, Burling argued that the presentation of “intentional falsehoods”<sup>61</sup> to the U.S. Supreme Court would constitute unethical lawyering behavior and be unfair to thousands of still-incarcerated Japanese Americans. In the end, Ennis and Burling lost the internal fight. After edits made at the highest levels by both Fahy and Wechsler, the revised footnote in the final Justice Department brief to the Court read:

We have specifically recited in this brief the facts relating to the justification for the evacuation, of which we ask the Court to take judicial notice, and we rely upon the *Final [sic] Report* only to the extent that it relates to such facts.<sup>62</sup>

Therefore the government’s *Korematsu* brief asked the Court to take judicial notice of the government’s proffered facts justifying the mass exclusion as if those facts were settled and true beyond doubt—with DeWitt’s mendacious Final Report accompanying the brief as the *only* factual record submitted to the Court. The government brief’s footnote was sufficiently opaque, however, that Chief Justice Stone and other Justices were moved to question the Solicitor General carefully during oral argument about whether the Court could properly take judicial notice of the key facts recited in DeWitt’s Report. In response, Solicitor General Fahy stated during argument that

[i]t is even suggested that because of some foot note [sic] in our brief . . . that we do not ask the Court to take judicial notice of the truth of every recitation or instance in the final report of General DeWitt, that the Government has repudiated the military necessity of the evacuation. It seems to me, if the Court please, that that is neat little piece of fancy dancing . . . [N]ot only the military judgment of the general, but the judgment of the United States, has always been in justification of the measures taken; and *no person in any responsible position has ever taken a contrary position* . . .<sup>63</sup>

By stating that “no person in any responsible position has ever taken a contrary position,” the Solicitor General committed what might be called willed concealment, further distorting a razor-thin factual record on military necessity before the Court.

In the *Korematsu* decision, a majority of Justices took refuge in further concealment by artificially dividing exclusion from the involuntary detention that followed, just as it had divided the curfew from the exclusion in the prior *Hirabayashi* and *Yasui* cases.<sup>64</sup> In all three of these cases, the Court found the military orders to be constitutional responses to a military emergency. But by the time the *Korematsu* case was decided in 1944, some of the Justices voiced serious doubt about the government’s claim of necessity. Justices Jackson, Murphy and Roberts expressed their misgivings in three powerful dissents. As Justice Murphy pointed out, “[l]eisure and deliberation seem to have been more of the essence than speed”<sup>65</sup> in determining the loyalties of Japanese Americans interned.

On the same day in 1944 as it issued its *Korematsu* opinion, the U.S. Supreme Court also decided *Ex parte Endo*. Official skullduggery also marked this case. Once Mitsuye Endo filed her *habeas corpus* petition, government officials removed her inland, out of the district court's jurisdiction. Following this transfer, the WRA's Solicitor General personally visited Endo at the camp and tried to influence her to drop her case in exchange for a permit to resettle elsewhere. Endo bravely refused and remained in confinement for 18 months in order to pursue her case. By this time, almost three years had elapsed from the signing of Executive Order 9066. The Court decided that the WRA-run camps where Japanese Americans were confined had never been statutorily authorized, and that the government could not detain a concededly loyal citizen. By avoiding a ruling on the constitutionality of the detention itself, however, the *Endo* Court effectively endorsed after-the-fact determinations of individual innocence long after mass incarceration had been completed, thus turning due process on its head.

For all its historical influence as the first U.S. Supreme Court pronouncement of a more searching judicial review of government classifications based upon race,<sup>66</sup> the *Korematsu* decision had no immediate impact on the position of incarcerated Japanese Americans. Instead, it was a retrospective confirmation of actions already taken. By contrast, the *Endo* ruling, while largely forgotten today, dramatically changed the lives of Issei and Nisei by ordering the government (and providing consequent cover) to open the camps and allow the vast majority of internees to resettle without restriction.

In the end, the government's cumulative decisions to exclude, remove and indefinitely detain West Coast Japanese Americans were comprised of many hypocrisies and ironies. As Eugene V. Rostow, who had served in the State Department during wartime and eventually became dean of Yale Law School, wrote soon after the conclusion of World War II, "[t]here was no reason to suppose that the 112,000 persons of Japanese descent on the West Coast, less than 2 per cent of the population, constituted a greater menace than such persons in Hawai'i, where they were 32 per cent of the population."<sup>67</sup> Yet no mass internment of Japanese Americans occurred in Hawai'i, the site of the initial attack by the Japanese on the United States in Pearl Harbor.

The second part of the book concludes with a separate chapter on the consequences of incarceration within the internment camps. Chapter 4 provides a salutary reminder that the cases challenging Executive Order 9066 did not comprise the sum total of legal and constitutional issues raised by mass incarceration. It further illuminates the paradoxical status of American citizens confined without charge or trial. For example, the Heart Mountain Draft Resisters and those at other internment camps campaigned to refuse military conscription. The conundrum they raised was deceptively simple: Did the government have the power to oblige citizens who had been denied their constitutional rights to fulfill the duties of citizenship? There was also the matter of the so-called "renunciants," inmates who had renounced their American citizenship and who claimed afterwards that such actions were made under duress. The legal limbo in which American citizens of Japanese ancestry discovered themselves was brought out most strongly by the aforementioned loyalty tests—a kind of parole procedure designed by the WRA to allow Nisei (and later Issei) to resettle outside the West Coast while reassuring a

hostile public that no dangerous persons were being liberated. This public relations exercise, though meant to help inmates escape confinement, cost them dearly. By ordering all confined Japanese Americans to fill out the questionnaires and placing a burden on them to establish that they were loyal, the government reversed the presumption of innocence inherent in due process.

Moreover, as Eric Muller has shown, the tests substituted an undefined (and undefinable) quality of loyalty for evidence of overt menaces.<sup>68</sup> Given the inherent impossibility of determining an individual's thoughts or emotions, the government instead scored each person's loyalty based on an arbitrary and largely irrelevant set of considerations, such as religious affiliation or whether the individual had bank accounts in Japan, and then tabulated scores according to a shifting scale. Even though the vast majority of inmates were finally adjudged loyal, not all were thereby automatically liberated. And those who proved unable or unwilling to provide the right answers were adjudged security risks and moved to the center at Tule Lake, where a high-security segregation center was soon established. These inmates were harassed by hostile guards and shut up alongside a circle of hardline pro-Tokyo militants, who exercised a reign of terror. Although lesser-known, these legal and political issues remind us of how the confinement of Japanese Americans during wartime imposed disproportionate social trauma upon a relatively small minority, resulting in tremendous harm and injustice.

Many laws discriminating against Asian Americans had piggybacked on the legal status difference between those aliens eligible and those ineligible for citizenship by naturalization. For example, the so-called "anti-Japanese" or alien land laws applied not only to Japanese Americans but to all ineligible Asians. With the end of the war and of the internment, the U.S. Supreme Court and other courts began to dismantle the constitutional basis for these laws, in cases such as *Takahashi v. Fish and Game Commission*,<sup>69</sup> and *Oyama v. California*.<sup>70</sup> These cases struck down as unconstitutional the racial bars to employment and ownership of property, respectively. Former internees also grappled with initial remedial compensation measures in the Evacuation Claims Act of 1948<sup>71</sup> that fell far short of the actual economic damages incurred. The period from 1942-1952 thus represents an important transition phase from the discriminatory government acts examined in earlier chapters of this book to a period of partial government regret and reparations.

Part III (Chapters 5 and 6) of the book is devoted to **Redress**. It addresses issues central to the legitimacy of modern democracies committed to civil and human rights. These two chapters address how a government repairs serious harm it inflicts upon its own citizens, especially when those citizens are members of a group targeted because of its race and/or ethnicity. This section specifically explores the kinds of remedies sought and received for the mass internment of 120,000 Japanese Americans during World War II—a powerful example of willed remembering of historic injustices.

The Japanese American redress movement engaged each branch of the federal government. In the judiciary, Japanese Americans initiated two different kinds of lawsuits in the 1980s. The first was the *coram nobis* litigation. As discussed above, three separate civil lawsuits were brought by the individuals convicted of violating the wartime curfew and exclusion orders. This litigation sought to void these 40-year old convictions, alleging that they were based upon flagrant prosecutorial

misconduct in falsifying the evidentiary record on military necessity. These *coram nobis* petitioners did not seek monetary relief. The second type of lawsuit, *Hohri v. United States*,<sup>72</sup> was a class action for civil damages filed by former internees to obtain monetary compensation for the material and psychological harms of the internment.<sup>73</sup>

Chapter 5 examines in detail the *coram nobis* cases and their important role in the overall effort for redress. The lawyers who volunteered to fight anew the *Korematsu*, *Hirabayashi* and *Yasui* cases faced a huge challenge. No criminal conviction upheld by the U.S. Supreme Court had ever been later legally overturned, and many people both inside and outside the government expressed skepticism about attempts to reopen the cases. However, the legal teams were able to combine the documentary evidence (summarized above) with convincing legal arguments, to challenge the Court's wartime rulings. One cornerstone of their evidence was the documentary research of Peter Irons and of Aiko Herzig-Yoshinaga, who discovered the "smoking gun" text of the sole surviving copy of the initial version of the Final Report. Combined with the originally suppressed intelligence reports and newly revealed Justice Department memoranda regarding the footnote in the Justice Department's brief to the Court, the *coram nobis* petitions demonstrated simultaneously the military's actual racist rationale for the mass exclusion and detention and the absence of a *bona fide* factual grounding for the government's claim of necessity. By so doing, the legal teams reopened the question of the legitimacy of the larger set of wartime government actions toward Japanese Americans, 40 years after the original misconduct.

Although these *coram nobis* cases did not put the U.S. Supreme Court itself on trial (for there is no procedural mechanism for doing so), they demanded executive branch accountability for the reprehensible misconduct of its high-echelon officials. As described above, some of these government agents, including respected lawyers, had engaged in suppressing, altering and fabricating evidence in order to justify the internment as a military necessity, essentially engaging in various and cumulative acts of prosecutorial misconduct. By bringing this evidence to light, the *coram nobis* legal teams highlighted the Court's failure as a judicial institution to exercise careful review over the executive branch's falsified claim of necessity. In vacating *Hirabayashi*, *Korematsu* and *Yasui*'s convictions, the federal district courts and U.S. Court of Appeals for the Ninth Circuit grasped the larger lessons. As U.S. district court judge Marilyn Hall Patel wrote, the U.S. Supreme Court's original *Korematsu* decision, and the reasoning behind it, "stands overruled in the court of history."<sup>74</sup> Interspersed throughout Chapter 5 are excerpts of the documentary evidence that convinced these courts that "manifest injustice" had occurred in the original prosecutions and appeals.

Chapter 6 then addresses redress efforts taking place within the two other branches of federal government: initiatives by the President and Congress. On the executive level, intense lobbying culminated in President Ford's 1976 repeal of Executive Order 9066 during the nation's bicentennial.<sup>75</sup> In the legislative arena, members of Congress from California and Hawai'i successfully pushed through federal legislation creating a study commission—the aforementioned CWRIC. Cumulatively, these various efforts—the CWRIC hearings and its influential Report, continuing grass-roots organizing and lobbying by many groups, as well as

the successful outcome of the *coram nobis* lawsuits—resulted in the passage of the Civil Liberties Act of 1988 by Congress. This legislation committed the President to apologize to the former internees and established a \$1.25 billion trust fund for reparations payments of \$20,000 to each surviving internee. It also created a fund for public education about the internment and its lessons for the future.

Against this backdrop, the book concludes with Part IV (Chapters 7-8), aptly entitled **Legacy**. This part gleans the many current social justice implications of the Japanese American internment and redress experience, situating them firmly within a project of willed repairing. Chapter 7 moves from legal-political history to an exploration of the present-day and future relevance of the internment cases and redress. It examines the global legacy of internment redress—the first large-scale American initiative of apology, reparations and public education. This chapter contextualizes the Japanese American redress movement and its likely impact on other ongoing redress movements in the United States and abroad. Its analytical framework includes four generations of reparations theory and practice and then four ongoing redress and reconciliation initiatives directly supported or indirectly influenced by Japanese American redress. The first chronicles foreign claimants' reparations claims against the United States for stark human rights violations on U.S. soil—the Japanese Latin American World War II internees who were deliberately excluded from Civil Liberties Act of 1988. The following two initiatives involve reparations claims in the United States against both federal and state governments—African American claims for the harms of slavery and Jim Crow segregation, as well as Native Hawaiian human rights claims arising out of the U.S.-aided illegal overthrow of the sovereign Hawaiian nation. The fourth case study involves the so-called “comfort women” whom Japan conscripted into sexual slavery during World War II. The chapter chronicles their persistent attempt to harness political and legal pressure in the United States (with support from internment redress advocates) and worldwide to compel redress from the Japanese government. In examining the social justice import of redress and reconciliation, Chapter 7 posits that the legacy of the Japanese American internment redress is “unfinished business.”<sup>76</sup> Its evolving meanings turn upon the ways that it helps foster reparatory justice on multiple fronts, domestically and internationally.

The wholly new Epilogue, Chapter 8, addresses the ongoing national security and civil liberties implications of the Japanese American internment cases. As stated at the outset of this Prologue, one of the generally unheeded lessons of the original *Korematsu* decision was Justice Robert Jackson's dissenting warning that the majority's deference to the government's unsubstantiated claim of military necessity established a legal principle that sanctioned racial discrimination under the possibly false mantle of national security—a principle that “lies about like a loaded weapon ready for the hand of any authority that can bring forward a claim of urgent need.”<sup>77</sup> Exploring this warning lies at the heart of this concluding chapter.

Through three case studies, this final chapter explores the relevance of Justice Jackson's prescient words to contemporary events occurring shortly before and immediately after 9/11. It begins with an account of the 1998-2001 prosecution of Chinese American scientist Dr. Wen Ho Lee on false charges of nuclear weapons spying for China, which resulted in his being incarcerated in solitary confinement and badly mistreated. The Justice Department engaged in apparent racial targeting

and judicial deception.<sup>78</sup> Coupled with the federal court's initial deference to the government's claim of national security, the federal government abused an innocent American through the legal system. Persistent government lies to the court and public, along with likely racial scapegoating, compelled the chagrined federal judge later to apologize to Dr. Lee in open court for the government overreaching in the name of national security that had "embarrassed the nation."<sup>79</sup>

Following this is a second, necessarily abridged, case study of government national security reactions to 9/11. The chapter thus segues into the post-9/11 treatment of persons of Arab ancestry or Islamic faith in America. The introductory note on racial and religious profiling and harassment illuminates civil liberties aspects of the government's war on terror. More particularly, it explores the extent to which the executive branch has employed race, religion and national origin as proxies for criminal or terrorist predisposition and as the bases for denying basic liberties. The case study then examines public assumptions about disloyalty and danger, based on ethnicity and race. Finally, it describes government rhetoric and plans for a possible post-9/11 internment.

The book concludes with a third and final case study on the ongoing legal challenges to government detention in the aftermath of 9/11. Beginning again with a brief introductory note describing the legal difficulties faced by so-called "enemy combatants," the chapter then examines *Rasul v. Bush*.<sup>80</sup> This litigation challenged indefinite detention of those designated as enemy combatants by the United States at its Guantánamo Bay prison without charges, access to counsel or trial. Some of the detainees claimed innocence and sought hearings in American courts to show that they were not threats to national security. The case study focuses on Fred Korematsu's 2004 *Rasul amicus* brief, which drew upon both his 1944 case and the *coram nobis* litigation that nullified his conviction. Through this final case study, Chapter 8 revisits critical questions about the role of the judiciary in national security-civil liberties controversies generally, and in post-9/11 debates specifically. As the book is going to press, the *coram nobis* team lawyers filed a critical *amicus* brief in *Hedges v. Obama*,<sup>81</sup> a case pending before the U.S. Court of Appeals for the Second Circuit. Their brief in support of appellee criticizes provisions of the National Defense Authorization Act (NDAA),<sup>82</sup> which allows the indefinite military detention of civilians suspected of supporting terrorism, including American citizens, without basic due process guarantees. Filed on behalf of the children of Fred Korematsu, Minoru Yasui and Gordon Hirabayashi, it describes the terrifying parallel between the measures allowed by the NDAA and the incarceration of Americans of Japanese ancestry during World War II. Like this Prologue, the Epilogue distills the multiple lessons of the wartime cases found throughout the core of this book for contemporary readers and discerns its legacy for future generations.

## C. Conclusion

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Returning to Justice Jackson's "loaded weapon" warning, the book concludes by resisting the willed concealing and forgetting that initially shadowed the history



of Japanese American confinement in North America. The book insistently probes the impact of past experiences on current legal challenges and queries:

- *Will today's judiciary draw upon yesterday's lessons to demand that the government justify its "loaded weapon" assertion of national security when curtailing fundamental liberties?*
- *Or will the courts again defer to the executive during times of public fear, and decline to exercise "watchful care," as articulated in *Ex parte Milligan*,<sup>85</sup> over civil liberties of citizens and non-citizens?*
- *And how might advocates and the general public influence which approach courts embrace?*

In closing, we note what one of us, Greg Robinson, has written elsewhere: the granting of redress to Japanese Americans exemplified the famous aphorism attributed to William Dean Howells that what the American public wants is a tragedy with a happy ending.<sup>84</sup> That is, the government's apology and reparations payment both underlined the apparently isolated and bygone nature of official injustice by exemplifying the triumph of democracy over prejudice. The wartime confinement of Japanese Americans was thereby absorbed into a larger and positive justice narrative. It remains nevertheless very much an open question how people both in the United States and worldwide will understand and act upon the lessons of these wartime events. This book provides an essential guide for reflecting on the yet-to-be determined legacy of the Japanese American experience. It illustrates the most dangerous and the best of legal process and politics within American democracy—with implications far beyond its impact upon a small ethnic and racial group within the United States.

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### Note: Terminology

At present there is no clear agreement about the most appropriate terminology for what Japanese Americans underwent during World War II. In the 1940s, officials of the federal government and U.S. military used euphemisms to describe their actions against people of Japanese ancestry in the United States. The deceptiveness of the language can now be judged according to evidence from many sources . . . .<sup>85</sup>

Some of the central vocabulary used throughout this book is subject to ongoing debate by activists, legal scholars, professional historians and others. Terms such as internment, internment camp and race are distilled representations of complex and non-neutral meanings. For example, historians prefer different words to indicate the experience of Japanese Americans once they had been removed and segregated within military camps. These choices range from confinement<sup>86</sup> to incarceration.<sup>87</sup> Theirs and others' current usage do not necessarily correspond to the usage, euphemistic or not, by government officials during World War II. In some cases, the current terminology is explicitly political, and designed to counteract older and current vocabulary. Acknowledging and understanding the necessity of the terminological inquiry, this note provides a succinct guide to the various debates circulating around some of these words and the rationale of the authors in using some terms over others.<sup>88</sup>

### Internment and Internment Camps

As stated by the Denshō Project:

“Internment” refers to the legally permissible detention of enemy aliens in time of war. It is problematic when applied to American citizens; yet two-thirds of the Japanese Americans incarcerated were U.S. citizens. Although “internment” is a recognized and generally used term, Denshō prefers “incarceration” as more accurate except in the specific case of aliens detained in a separate set of camps run by the army or Justice Department. “Detention” is used interchangeably, although some scholars argue that the word denotes a shorter time of confinement than the nearly four years the Japanese American camps were in operation.<sup>89</sup>

Similarly, the JACL recently adopted an official statement that the term internment has

a legal definition that refers to the confinement or impounding of enemy aliens in a time of war (Merriam-Webster Dictionary, 2011). Most of the several tens of thousands of people of Japanese ancestry that were incarcerated in WRA camps during World War II were American citizens; thus the term does not apply. A few thousand mostly Issei men were held in the Army and DOJ internment camps, but with the family reunification program and Nikkei from Latin American countries, the total exceeded 17,000 men, women, and children.

... The word incarceration more accurately describes those held in WRA camps. Incarcerate is generally defined as to confine or imprison, typically as punishment for a crime. This term reflects the prison-like conditions faced by Japanese Americans as well as the view that they were treated as if guilty of sabotage, espionage, and/or suspect loyalty.<sup>90</sup>

Although these views are justified, the authors adopted the term **internment** for the first edition, and continue its usage here—while also adopting and occasionally using the currently preferred term **incarceration** (or sometimes **detention**). Although we well understand why internment is not applicable to U.S. citizens as a legal term of art, an enormous literature employs the term internment in its less legalistic sense. As well, the legal issues at stake discussed in this book largely do not turn on the precise definition of the term internment. While perhaps technically overinclusive because it is being applied to U.S. citizens, this usage also corresponds to the fact that some Issei (who were permanent legal U.S. residents, but nonetheless “aliens” rather than citizens) were indisputably subject to internment in its legal sense. The undifferentiated mix of U.S. citizens and non-U.S. citizens held in the military camps complicates the project of using the term internment with respect to non-U.S. citizens only. Both populations were often equally affected by the government’s policies of forced removal to camps segregating them indefinitely from the general population. Thus the terms **internment**, **incarceration** and **indefinite detention** are used here interchangeably.

As this book (and many others) makes clear, the internment did not happen overnight, but rather incrementally and insidiously. The legal cases challenging the internment exemplify some of the many government policies that eventually added up to the mass incarceration of the West Coast Japanese Americans. These steps include a series of military orders issued after Executive Order 9066. The orders mandated a curfew, mandatory exclusion from the West Coast (combined with prohibitions on voluntary movement) and forced removal from the West Coast into

internment camps, followed by indefinite detention without charges, hearing or trial. Often treated as if they are one larger entity, it is important to understand the separate parts of the process. To the extent that it is useful to treat these pieces as one event, the book often refers to the overall process as **internment**—or, less often, **removal** or **exclusion**, as opposed to *evacuation*.<sup>91</sup>

Regarding the camps themselves, terms widely considered now to be euphemisms include *assembly centers*<sup>92</sup> and *relocation centers*.<sup>93</sup> Again, as the Denshō Project documents:

In fact, they were prisons—compounds of barracks surrounded by barbed wire fences and patrolled by armed guards—which Japanese Americans could not leave without permission. “Relocation center” inadequately describes the harsh conditions and forced confinement of the camps. As prison camps outside the normal criminal justice system, designed to confine civilians for military or political purposes on the basis of race and ethnicity, these so-called relocation centers also fit the definition of “concentration camps.”<sup>94</sup>

Within this book, these two terms (*assembly center* and *relocation center*) are used strictly in their historic sense, as the U.S. government would have used these terms during wartime and later.

With respect to **internment camps**, however, there are additional suggested terms: *concentration camp* (which the U.S. government sometimes did use at the time, but also often substituting the euphemism *relocation center*<sup>95</sup>) or *American concentration camp* (a term suggested currently to distinguish these concentration camps from others, such as the Nazi death camps during World War II in Europe).<sup>96</sup> Because the term *concentration camp* is closely associated with the Nazi death camps, we opt to avoid it here. For many of the reasons stated above with respect to the term **internment**, the authors retain the term **internment camp** and, in addition, occasionally adopt a stronger synonym **incarceration camp**. Thus both terms—**internment camp** and **incarceration camp**—are used here interchangeably, with the understanding that incarceration has a stronger normative impact.<sup>97</sup>

Some of the materials in this book address the Japanese American’s successful quest for redress and reparations. These two terms are often used interchangeably; however, they do have different meanings: “**redress** can imply an apology; **reparations** specifically refer to monetary compensation,”<sup>98</sup> but can and often do include other forms of repair (the root of “reparations” is repair), including **reconciliation**, public education and other attempts to address tears in the social fabric. These other reparations efforts are explored in greater detail in this book.

### Race

Fraught with tremendous political and social debate, racial terminology also requires some discussion. In the course of telling this story, we use the term **Asian American** broadly to include not only those Asians with U.S. citizenship but all Asians in America—citizens or not—who staked their futures and their children’s futures in this country. More precise references to citizenship status are used where appropriate. We disfavor the use of the term *alien* (and even more the Orwellian term *non-alien*)—but use these terms as historic documents dictate. Our preferred substitutes for *alien* are **non-citizen** or **legal permanent U.S. resident**. There is no preferred substitute for **citizen**, which we take to be a central status, legal or otherwise.

Parenthetically, the term **Asian American** became popular with the activism of the late 1960s. It replaced the terms *Oriental* and *Asiatic*, which were and still are considered demeaning because of the connotations of exoticism. The term also emphasized the American identity of the communities being described. Historian Yuji Ichioka is credited with inventing the concept.<sup>99</sup> It became popular through the formation of student groups on college campuses and eventually passed into the popular lexicon.<sup>100</sup>

The book also employs the terms **Issei** and **Nisei**, to refer to different generations of Americans of Japanese ancestry. We adopt the umbrella term **Japanese American** when distinguishing between these generations is unnecessary:

The Nisei (“second generation”) were U.S. citizens born to Japanese immigrant parents in the United States. The accurate term for them is “Japanese American,” rather than “Japanese.” In public documents, the government referred to the Nisei as “non-alien” rather than “citizens.” Their parents, the Issei (“first generation”) were forbidden by discriminatory law from becoming naturalized American citizens. By the 1940s, most Issei had lived in the United States for decades and raised their families here. Many had no plans for returning to Japan, and would have become naturalized citizens if allowed. (They remained aliens until 1952, when immigration law was changed.) To reflect this condition, *Denshō* and other sources use the term “Japanese American” to refer to the Issei as well as the Nisei.<sup>101</sup>

Finally, as we wrote in the Preface to the first edition, we often use the terms **White American** and **African American** (or less frequently **Black American**) to denote racial groups in the United States that currently are often termed simply white and black. Those of Latin American ancestry are termed **Latin Americans of Japanese ancestry (JLAs)** and/or **Latina/os**, depending upon context. Because we provide historical materials, outdated terms such as *Caucasian*, *Negro*, *Asiatic* and *Oriental* will be encountered in the text. The reader should always read the terms italicized in this note with implicit scare quotes, and the ones in boldface here as the primary choices for this book.

Of course, we deploy all of these terms fully cognizant that categories, especially racial ones, may best be understood as social constructs without totally fixed, determinate and scientifically determined meanings, and that our choice of terms is subject to debate.

