The Filipino Veterans Equity Movement: A Case Study in Reparations Theory

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INTRODUCTION

In February 2009, the United States enacted a law that provided $198 million in one-time direct individual payments and official service recognition to Filipino veterans who fought for the United States in the Pacific theater of World War II.1 Under the payment program, Filipino veterans with U.S. citizenship will receive $15,000, while non-U.S. citizen Filipino veterans will receive $9,000.2 The payments and official recognition are the most recent victory in a battle for redress that Filipino veterans have waged for more than sixty years.

The impetus for the veterans' struggle dates back to the 1940s, when at the close of World War II, hundreds of thousands of Filipino soldiers expected significant benefits from the United States in exchange for their military service. Most importantly, the soldiers expected (1) the U.S. government to fulfill its promise of a path to American citizenship for foreign soldiers who served the United States in World War II, and (2) to join the ranks of noncitizen U.S. veterans, a group that includes nationals of more than sixty countries.3

1. American Reinvestment and Recovery Act, Pub. L. No. 111-5, §§ 1002(i), (I), 123 Stat. 115 (2009). This appropriations bill, the main purpose of which was to stimulate a flagging U.S. economy, included a provision that awarded one-time payments and official service recognition to Filipino veterans who served in World War II. Id. §§ 1002(e), (i). The bill is discussed in detail in Part II.
2. Id. § 1002(c).
Instead, the United States began to treat the Filipino soldiers as second-class veterans almost as soon as the war ended. In 1945, the American government began blocking the veterans' path to citizenship. The following year, the U.S. Congress enacted the Rescission Acts, which state that the wartime conduct of the Filipino veterans is not considered "active military, naval, or air service" under U.S. law. The Rescission Acts caused painful effects for the Filipino Veterans: the soldiers found themselves partially or completely cut off from benefits accorded fully-recognized U.S. veterans; their service-based route to naturalization was totally foreclosed; and, perhaps worst of all, the 1946 law denied Filipino soldiers official recognition for their service.

For the last sixty-four years, Filipino veterans of World War II have sought redress for the Rescission Acts. The ultimate goal of this struggle is what the veterans call "Full Equity"—a complete repudiation of the Rescission Acts that would put the Filipino veterans on equal footing with U.S. veterans. The veterans have also sought increases in the limited veterans benefits they receive from the United States, a restoration of their service-based path to citizenship, and official recognition of their service. In seeking redress for the Rescission Acts, the veterans have doggedly pursued their goals both in federal courts and before the U.S. Congress. These efforts have been carried out by various individuals and organizations struggling to achieve a common goal—better treatment for the Filipino veterans of World War II. Some refer to the activism of the veterans and their supporters as the Filipino Veterans Equity

4. As explained in Part II, the American government began to systematically deny naturalization to Filipino veterans in 1945. For a thorough account of this history, see id. at 37–38.
7. Id. at 38.
8. See Ken McLaughlin, Filipino-American Vets Celebrate Victory 63 Years in the Making, S.J. MERCURY NEWS, Apr. 12, 2009, at B1. Veteran Dominador Valdez speaks of the importance of official recognition for the veterans' service, suggesting that the lack of recognition is a central part of the injury caused by the Rescission Acts. The harms worked by the Rescission Acts are described more fully below in Part II.A.3.
9. See Nakano, supra note 3, at 39–50 (detailing the veterans' efforts).
10. Richard Simon, Filipino Veterans of WWII Win a Battle in Struggle for Benefits, L.A. TIMES, Dec. 17, 2003, at A20 (a supporter of the veterans "said the Filipino veterans deserve all of the same benefits as U.S. veterans, and his group plans to stage rallies around the country in an effort to win full 'equity' for Filipino veterans.").
13. Jon Melegrito, The Long, Hard Road to Equity, FILIPINAS MAGAZINE, Apr. 2009, at 25–27 (describing legislation that provides for $198 million in direct payments to veterans was the product of many Filipino American organizations' efforts, including the National Alliance for Filipino Veterans Equity, the American Coalition for Filipino Veterans, and the National Federation of Filipino American Associations).
Movement (FVEM),\textsuperscript{14} the term I use throughout this Comment. The award of $198 million in reparations payments announced in February 2009 is the most recent victory in FVEM's decades-long history, which has been marked by incremental success and failure.\textsuperscript{15}

FVEM's achievement in 2009 recalls the Civil Liberties Act of 1988, which provided an official apology and individual payments of $20,000 to Japanese Americans who had been unlawfully incarcerated in domestic U.S. prison camps during World War II without charges or trial.\textsuperscript{16} The 1988 law, widely considered a package of reparations,\textsuperscript{17} spurred debate in the field of reparations theory.\textsuperscript{18} In this Comment, I examine the FVEM's recent success within the context of this scholarship, making two arguments. First, I argue that the 2009 law providing official recognition and direct individual payments to surviving Filipino veterans should be considered a form of reparations.\textsuperscript{19} Second, I contend that the FVEM's history suggests that reparations movements should direct their claims for redress to legislatures rather than seek justice through reparations lawsuits.

In Part I, I establish a framework for understanding reparations theory, focusing on two approaches to obtaining redress: legislative reparations and reparations lawsuits. In Part II, I provide a historical background of FVEM, focusing on Filipino veterans' service during World War II, the Rescission Acts of 1946, and the veterans' decades of activism in the United States. In Part III, I argue that FVEM should be viewed as a reparations movement and that the

\textsuperscript{14} Professor Nakano calls the veterans' redress efforts the "Filipino Veterans Equity Movement." Nakano, supra note 3, at 48. The veterans and groups working on their behalf often use the term "equity" to describe their goal of full and equal U.S. veteran status. For example, one of the coalitions seeking to overturn the Rescission Acts is called the National Alliance for Filipino Veterans Equity. Melegrito, supra note 13. A 2007 bill that would have overturned the Rescission Acts was called the Filipino Veterans Equity Act of 2007. S. 57, 110th Cong. (2007).

\textsuperscript{15} See Nakano, supra note 3, at 39–50 (describing FVEM's successes and failures). For example, in Quiban v. Veterans Admin., the Filipino veterans who sued the government prevailed at the trial stage but lost on appeal. Quiban, 928 F.2d at 1155–56. In Congress, the veterans recently won the $198 million in direct individual payments, but they have also seen proposed bills fail. Melegrito, supra note 13 (in 2008, Congressman Filner of California introduced a bill providing direct payments to the veterans that the U.S. Congress did not enact).


\textsuperscript{17} Id. at 42–43.


\textsuperscript{19} The activism that Japanese Americans carried out during the 1980s, culminating in the Civil Liberties Act of 1988, is in certain respects similar to FVEM. As with FVEM, the U.S. government's unfair treatment of Asians and Asian Americans during World War II formed the historical impetus for the Japanese Americans' redress movement. Further, the Japanese American movement sought redress through litigation and the political process, not unlike FVEM's efforts, which are described in detail below in Part II. For more information on the history of the Japanese American reparations movement, see ERIC K. YAMAMOTO ET AL., RACE, RIGHTS AND REPARATION 277–86 (examining Japanese American lawsuits), 318–40 (also on the lawsuits), 390–409 (examining lawsuits and political activism resulting in the Civil Liberties Act of 1988) (2001).
2009 law awarding payments and recognition to the veterans should be considered a form of reparations. I argue in Part IV that FVEM’s history, including its recent success, suggests that redress movements should direct their limited resources and energy towards legislative reparations rather than reparations lawsuits.

In essence, this Comment is about strategy: what forum should reparations movements choose to optimize their chances of success? While reparations movements have largely defined themselves through aspirational goals rather than specific definitions of reparations or strategies for achieving redress, some scholars suggest that reparations movements are increasingly achieving concrete results. As Professor Ogletree puts it, “[t]he issues are clear, the venues are identified, and the time is now.” My hope is that this Comment might help those who seek redress to evaluate the available options.

I

THEORETICAL BACKGROUND ON REPARATIONS THEORY

As Professor Brooks has observed, we have entered into an age of apology. Across the globe, governments and businesses have taken concrete steps to make amends for historic harms inflicted against victim groups. As mentioned above, in 1988 the United States granted a considerable package of reparations to Japanese Americans interned by the U.S. government during World War II, including an official apology by President Reagan, money for education about the history of the internment, and a one-time direct payment of $20,000 to each surviving internee. In the 1990s, South Africa created a Truth and Reconciliation Commission to grapple with that nation’s history of state-sanctioned violence against Blacks during apartheid. The Commission afforded immunity to those who confessed to apartheid-related crimes; the facts uncovered by the confessions, together with the perpetrators’ taking responsibility for their crimes, provided some degree of closure for victims.

20. The 2009 law providing redress to the Filipino veterans bears some similarity to the Civil Liberties Act of 1988. The 1988 law provided individual payments to survivors of the Japanese American concentration camps living in 1986, an official apology from the U.S. government, and funding for programs aimed at educating Americans about the internment apparatus. BROPHY, supra note 16, at 43. As described in detail below in Part II, the 2009 law also provided several forms of reparations to the Filipino veterans, including official recognition of service, individual payments, and congressional findings describing the history of the veterans’ service.


22. See, e.g., id. at xi. See also Charles J. Ogletree, Jr., The Current Reparations Debate, 36 U.C. DAVIS L. Rev. 1051, 1065 (2003).


25. BROPHY, supra note 16, at 43–44.

26. Id. at 46.

27. Id.
In 2004, the insurance firm New York Life paid a $20 million settlement to family members of victims of the Armenian Genocide of 1915 whose life insurance policies the firm had previously refused to honor.\(^\text{28}\) Despite—or perhaps because of—the inhumanity of the twentieth century, apologies and reparations have increased in frequency on an international scale.\(^\text{29}\)

Concurrently, scholarly discussion of reparations has also increased in breadth and depth.\(^\text{30}\) In addition to examining the contours, implications, and wisdom of reparations, reparations theorists often endorse or support models that articulate the conditions required for a successful reparations movement. I suggest in this Comment that FVEM’s success in 2009 holds meaning in this area. In this Section, I provide a short explanation of reparations theory, focusing on two strands of contrasting approaches: legislative reparations and reparations litigation. I begin by laying out a theoretical overview of reparations movements, centered on the definition of reparations movements that Professor Brophy provides in *Reparations Pro & Con*.\(^\text{31}\) I then discuss representative works of reparations theory that emphasize reparations lawsuits and legislative reparations.

### A. Defining Reparations

To explore the impact of FVEM on reparations theory, a working vocabulary is required. A broad definition of reparations is useful as a starting point: reparations are programs that are (1) justified on the basis of a historic group-based harm and (2) designed to assess and correct that harm and/or improve the lives of victims in the future.\(^\text{32}\) Thus defined, a claim for reparations is very different from a typical legal claim for recovery based on a harm suffered by a plaintiff and caused by a defendant. Examining the ways in which a claim for reparations differs from a more familiar claim for recovery—a personal injury claim in tort based on an automobile accident—helps illustrate the contours of the two elements of reparations.\(^\text{33}\)

\(^{28}\) *Id.* at 119–20.

\(^{29}\) For a description of various reparations programs in recent decades, see *id.* at 19–52.

\(^{30}\) For a short survey of reparations theory’s development starting in the 1990s, see *id.* at 62–74.

\(^{31}\) BROPHY, supra note 16. The book provides an overview of the history of reparations, as well as the arguments for and against reparations, with particular emphasis on reparations that African Americans sought in response to slavery and Jim Crow. I have chosen Professor Brophy’s definition of reparations as a starting point for my analysis because his framework proceeds at a level of abstraction that permits flexible analysis of various specific factual contexts, like FVEM.

\(^{32}\) This definition is based on Professor Brophy’s definition in *Reparations Pro & Con*, supra note 16, at 9: “We might think of reparations, then, as programs that are justified on the basis of past harm and that are also designed to assess and correct that harm and/or improve the lives of victims into the future.”

\(^{33}\) This Comment uses Professor Matsuda’s comparison between a standard legal claim and a claim for reparations to explicate the definition of reparations. See Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 Harv. C.R.-C.L. L. Rev. 323, 374–75 (1987).
1. Reparations Are Justified by a Historic Group-Based Harm

In a typical auto-accident lawsuit, a plaintiff seeks to recover damages from a defendant to compensate the plaintiff for injuries resulting from the wreck the defendant caused. In this hypothetical, the parties are individuals and the accident is a particular and recent action or set of actions that can be described with reasonable specificity.

A typical reparations claim, however, looks very different. In a reparations claim, a victim class seeks redress from a perpetrator for a historic group-based harm. Unlike the particular and specific harms alleged in an auto-accident case, the historic, group-based harm in a reparations claim is often a large set of harmful actions directed at a group of victims. For example, Japanese Americans imprisoned by the U.S. government during World War II sought reparations for a multitude of harms caused by the internment apparatus, which involved curfews and "exclusion" zones that limited Japanese Americans' movements, and, the four-year incarceration of 120,000 Japanese Americans in concentration camps in the western United States. The internees suffered enormously: in addition to experiencing physical suffering due to the terrible conditions at the camps, they lost real property, considerable wealth, and several years of opportunity for education, professional development, and personal fulfillment.

The Japanese American example is instructive because it highlights two aspects of the harm reparations movements seek to address. First, the harm at issue in a reparations movement is directed at a group. In the internment example, the United States targeted the Japanese Americans not as individuals, but as a racial group, a decision principally motivated by anti-Japanese racial hysteria. Second, the harm at issue in reparations movements is of considerable scale. Redress movements do not form to address a single automobile accident. Rather, reparations movements arise in response to widespread and systematic injustice, like the Japanese American internment.

A claim for reparations also differs from an automobile accident claim in terms of the parties. Unlike the discrete individual plaintiff in the hypothetical car wreck, the victim class in a reparations claim is a group of individuals. The shared experience of victimhood—that is, the past harm for which the group

34. Id. at 375.
35. YAMAMOTO ET AL., supra note 19, at 38–40.
37. Id. at 364.
38. The dynamic described in this paragraph bears similarity to class action lawsuits. Indeed, reparations activists have sought to use class action lawsuits as a vehicle to obtain redress. For example, in In re African-American Slave Descendants Litigation, 375 F. Supp. 2d 721 (N.D. Ill. 2005), a group of descendants of African American slaves attempted to bring a class action lawsuit to obtain damages for the harms caused by chattel slavery in the United States. See id. at 736–37.
seeks reparations—binds the group members together.\textsuperscript{39} Members of a victim class “necessarily think of themselves as a group, because they are treated and survive as a group” and because “[t]he continuing group damage engendered by past wrongs ties victim group members together.”\textsuperscript{40} In many cases, group members are bound by a shared racial identity, as well as by a shared experience of victimization, because the past harm was racially motivated.\textsuperscript{41}

Unlike the discrete individual defendant in a hypothetical personal injury claim, the perpetrator in a reparations claim is usually the State,\textsuperscript{42} although in some cases, the perpetrator is a private actor like a corporation.\textsuperscript{43} Public and private perpetrators can have a perpetual existence,\textsuperscript{44} and thus a group seeking reparations from such an entity often demands redress from the same organization that originally victimized the group, even though the persons who control the State or the corporation are not those who controlled the State or corporation at the time of the historic injury.

2. Reparations Are Programs Designed to Assess and Correct for the Historic Group-Based Harm and/or Improve the Lives of Victims in the Future

In a typical case involving an automobile accident, the individual defendant pays money damages to the plaintiff. A claim for reparations differs from a typical claim for recovery because the relief sought by a reparations movement can be far broader in type and scope than mere payment of monetary damages. In this Comment, I define reparations broadly as programs designed to assess and correct for a historic group-based harm, to improve the lives of victims in the future, or both.\textsuperscript{45} As such, reparations often involve more than cash payments.

There are four modes of reparations: (1) truth commissions and apologies; (2) civil rights litigation and legislation; (3) community-building legislation; and (4) direct payments to individuals.\textsuperscript{46} Truth commissions and apologies are

\textsuperscript{39} Matsuda, supra note 33, at 376–77.
\textsuperscript{40} Id. Professor Matsuda illustrates the connections between members of victim groups with two examples: indigenous Hawaiians, who have sought redress for the United States’ annexation of Hawaii, and Japanese Americans, who have sought redress for United States’ mass internment of Japanese Americans during World War II. Id. at 377–79.
\textsuperscript{41} Id. at 364 (explaining that the Japanese American internment system was motivated by racial hysteria).
\textsuperscript{42} See, e.g., Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995). In Cato, the plaintiffs sued the United States for $100 million in damages arising from slavery.
\textsuperscript{43} See, e.g., In re African-American Slave Descendants Litig., 375 F. Supp. 2d 721 (N.D. Ill. 2005). In this case, a class of descendants of slaves sued corporations that had been involved in the slave trade for harms arising from slavery. Id. at 736–38.
\textsuperscript{44} Brophy, supra note 16, at 79.
\textsuperscript{45} Id. at 9.
\textsuperscript{46} Id. at 10–18, 169–75. Professor Brophy does not include civil rights litigation as a mode of reparations. His discussion of civil rights legislation focuses on the types of reparations that may be achieved through a legislature. However, I include civil rights litigation as a mode of reparations here because, as discussed below, groups seeking redress have brought civil rights
modest forms of reparations because they are limited to remaking present understandings of the past,\textsuperscript{47} are relatively inexpensive from the perpetrator’s point of view,\textsuperscript{48} and do not alter existing relations between individuals or provide material benefits to victims.\textsuperscript{49} In contrast, civil rights litigation and legislation, community-building programs, and direct payments to individual victims are more robust forms of reparations because they restructure relationships between individuals and provide concrete material benefits to victims.\textsuperscript{50}

Truth commissions are organizations charged with the project of studying a group-based past harm for the purpose of creating an accurate history that can lay the foundation for other forms of reparations, like apologies or civil rights litigation.\textsuperscript{51} For example, U.S. Congressman John Conyers has proposed the establishment of a truth commission charged with studying the history of chattel slavery in the United States.\textsuperscript{52} If Congressman Conyers’s bill is enacted, the resulting truth commission would be responsible for examining the institution of slavery and the effects of slavery on African Americans today.\textsuperscript{53}

Another modest form of reparations is apology.\textsuperscript{54} A prominent example is U.S. President Reagan’s official apology to Japanese Americans for the World War II internment system.\textsuperscript{55} President Clinton provided other examples during his term: he apologized for, was part of apologies for, or discussed apologizing for American slavery, Rwandan genocide, executions of civilians during the Korean war, U.S. support of Guatemala’s military while it committed genocide, medical experiments on African Americans at Tuskegee, and the deprivation of native Hawaiians’ land.\textsuperscript{56}

Apologies and truth commissions are valuable because they can vindicate the history of the victims and serve as a basis for future arguments.\textsuperscript{57} Additionally, apologies and truth commissions can serve as “a way of preparing people to understand the nature of the harm and why reparations are needed”

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\textsuperscript{47} Brophy, supra note 16, at 16.
\textsuperscript{48} Id. at 173.
\textsuperscript{49} See id. at 173–75. Professor Brophy explains that more concrete forms of reparations involve transferring money to victims, either through programs aimed at ameliorating conditions in the victim community, or directly.
\textsuperscript{50} See id. at 169–75. Professor Brophy explains that modest forms of reparations like truth commissions and apologies are distinguishable from more robust forms reparations, like community building programs and direct payments to individuals. Id. at 169–70, 174, 175.
\textsuperscript{51} Id. at 170.
\textsuperscript{53} Id. § 2(b).
\textsuperscript{54} Brophy, supra note 16, at 10–11.
\textsuperscript{55} Id. at 43.
\textsuperscript{56} Id. at 48. For more information on the particulars of President Clinton’s apologies, see Professor Brophy’s notes to page 48 of REPARATIONS PRO & CON at 227–28.
\textsuperscript{57} Id. at 12–13.
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before more robust forms of reparations obtain.58 For example, Congressman Conyers's proposed truth commission would recommend further remedies based on its findings.59 Truth commissions and apologies are thus sometimes the opening steps to more concrete reparative action, like civil rights litigation and legislation, community-building programs, and direct payments to individuals.60

Civil rights legislation and litigation can create new legal rights for victims of past group-based harm.61 Individuals or groups seeking justice for ongoing or past injury use these rights to obtain redress through private civil actions. For example, Title VII of the Civil Rights Act of 1964 provides a cause of action for employment discrimination because of race, sex, and other characteristics.62 Civil rights legislation like Title VII can be viewed as a form of reparations that allows individuals to use the legal system to privately pursue relief for current discrimination linked to past injustice, like slavery, Jim Crow, and denial of basic civil rights to women.63 Further, while legislation can create additional rights, judicial interpretation can—in some situations—extend rights to individuals not previously protected by a statute. For example, the U.S. Supreme Court arguably recognized a new legal right in Price Waterhouse v. Hopkins, a 1989 case that established an actionable Title VII claim when an employer bases an adverse employment decision on an employee’s failure to conform to stereotypes about the employee’s sex.64 Because civil rights litigation and legislation can create new legally recognized and enforceable rights which individuals and groups can use to seek redress for past harms, they are both modes of reparations.

Community-building programs aimed at improving the lives of victims constitute a more robust and concrete mode of reparations.65 For example, one advocate of reparations for slavery in the United States urges the establishment of a Reparations Trust Fund, which would direct resources to the poorest members of the African American community by addressing problems in educational access, health care, housing, insurance, employment, and other social goods.66 Some suggest the Great Society’s welfare payments67 should be

58. Id. at 14.
59. H.R. 40, 111th Cong. § 2(b).
61. See id. at 172–73.
63. BROPHY, supra note 16, at 172–73. Professor Brophy also argues that the Anti-Ku Klux Klan Act of 1871 and the Voting Rights Act of 1965 are forms of reparations. Id. at 172–73.
65. BROPHY, supra note 16, at 73.
67. During the administration of U.S. President Lyndon Johnson, the United States enacted
considered reparations.\textsuperscript{68} Direct payments to individuals are another mode of robust reparations.\textsuperscript{69} These are the most commonly discussed form of reparations,\textsuperscript{70} as well as the most controversial.\textsuperscript{71} As discussed below, the $198 million grant to Filipino veterans in 2009 should fall into this category.

In addition to the four modes of reparations, there is a conceptual distinction between backward-looking and forward-looking reparations programs. Retrospective programs focus on measuring a historical injury and then correcting for it.\textsuperscript{72} Such programs are similar to what is known as “corrective justice”—an effort to return victims to the position in which they would have been if not for a group-based historical injustice.\textsuperscript{73} In contrast, prospective reparations programs seek to improve victims’ lives in the future much like what is known as “distributive justice,” which refers to distributing property in a fair and appropriate manner today without calculating past harm.\textsuperscript{74}

\textbf{B. Litigation or Legislation?: Different Approaches to Redress}

There are two principal forums in which individuals or groups seek redress for historic group-based harm: the courts and the legislature.\textsuperscript{75} Different reparations theories emphasize approaches that focus on seeking redress in one setting or the other. In the following Parts, I survey works representative of these two theoretical approaches: Professor Ogletree’s \textit{Repairing the Past: New Efforts in the Reparations Debate in America},\textsuperscript{76} which articulates a framework for reparations lawsuits based on slavery and Jim Crow, and Professor Brooks’s \textit{The Age of Apology},\textsuperscript{77} which articulates a theory of redress
based in legislative reparations.

Both of these thoughtful works provide useful roadmaps for thinking about the different burdens and benefits associated with seeking redress in courts or the legislature. The purpose of this Section is to explore the differences between these approaches. While my Comment argues that FVEM vindicates theoretical models that emphasize legislative reparations, I do not suggest that there exists a sharp divide in reparations theory between commentators who support legislative reparations and those who promote reparations lawsuits. This is not an either/or debate. Rather, both reparations lawsuits and legislative reparations are important strategies for practical reparations movements and theoretical discussion.

1. Reparations Lawsuits

Many individuals and groups have sought redress for historic group-based harms by filing reparations lawsuits. Examples include Japanese Americans, who sought redress in court from the U.S. government for their World War II internment; Holocaust victims and their descendents, who sued Swiss banks that refused to return deposits made by Holocaust victims prior to World War II; and African Americans, who have sued the U.S. government and business concerns for slavery.78 Charles Ogletree’s essay *Repairing the Past*, which explores the contours of reparations lawsuits brought by individuals seeking redress for American slavery and Jim Crow, is one contribution among many to reparations theory that supports seeking redress for historic group-based injustice through reparations lawsuits.79

One of Ogletree’s goals in *Repairing the Past* is to help “reparations advocates to craft arguments that squarely address claims within the traditional individual rights framework.”80 His analysis begins with a recognition that slavery and Jim Crow reparations lawsuits face serious doctrinal challenges, including statutes of limitations, sovereign immunity, and indeterminacy of compensation amounts.81 Ogletree responds to each objection by suggesting strategies that reparations plaintiffs may employ.82

79. Examples of other works that articulate strategies for reparations lawsuits include: Alfred L. Brophy, *Reparations Talk: Reparations for Slavery and the Tort Law Analogy*, 24 B.C. THIRD WORLD L.J. 81, 90–92, 120 (2004) (discussing how reparations plaintiffs can overcome statutes of limitations and use tort law to frame their cases); Matsuda, supra note 33, at 373–88 (suggesting solutions to common objections to reparations lawsuits, including difficulties in identifying perpetrator and victim groups, lack of sufficient connection between the past wrong and the present claim, and the difficulty of calculating damages); Alfreda Robinson, *Corporate Social Responsibility and African American Reparations: Jubilee*, 55 RUTGERS L. REV. 309, 364–76 (2003) (articulating solutions to obstacles facing plaintiffs in slavery reparations lawsuits filed against corporations, including statutes of limitations, standing, causation, and damages).
81. Id. at 293–94.
82. Id. at 298–307.
For example, Ogletree addresses statutes of limitations, which generally preclude recovery for injuries inflicted more than two years prior to a lawsuit.\textsuperscript{83} The principal rationale supporting statutes of limitations is the concept of repose: after a period of time, a legal controversy must end in order to ensure that a defendant has a fair opportunity to raise a defense before memories fade and evidence becomes stale.\textsuperscript{84} Courts have dismissed reparations lawsuits based on slavery or Jim Crow because the statute of limitations for the injuries at issue had run.\textsuperscript{85}

Ogletree articulates arguments that reparations advocates might use to work around statutes of limitations, including equitable tolling and equitable estoppel.\textsuperscript{86} Equitable tolling is the idea that a statute of limitations should not run where a plaintiff has been unable to file suit through no fault of her own and has exercised due diligence in investigating her claim.\textsuperscript{87} Equitable estoppel is the idea that a defendant may not assert a statute of limitations defense if the defendant's own misconduct is what caused the plaintiff to file an untimely claim.\textsuperscript{88} Relying on recent case law, Ogletree suggests that plaintiffs can use these arguments to overcome the statute of limitations hurdle in the context of slavery and Jim Crow reparations lawsuits.\textsuperscript{89}

While Ogletree situates his essay in a broader context and recognizes that his contribution is part of a larger discussion involving both reparations legislation and litigation,\textsuperscript{90} his work is part of an approach to redress that emphasizes the use of lawsuits to achieve reparations in the context of slavery and Jim Crow. By articulating specific methods by which reparations advocates can achieve redress in court, Repairing the Past and similar scholarship promote reparations lawsuits as a viable and effective means for assessing and correcting historic group-based harm and improving the lives of victims in the future.

2. Legislative Reparations

Many groups have sought reparations by pressuring legislatures to provide redress for historic group-based injuries. The Japanese American redress movement, mentioned above, is one example.\textsuperscript{91} Another example of reparations

\textsuperscript{83} Id. at 299.
\textsuperscript{84} Id. at 301.
\textsuperscript{85} See, e.g., Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (dismissing a reparations lawsuit, in part, because the statute of limitations had run).
\textsuperscript{86} Ogletree, supra note 23, at 300.
\textsuperscript{87} Id.
\textsuperscript{88} Id.
\textsuperscript{89} Id. at 300-01.
\textsuperscript{90} Id. at 307-08. Ogletree discusses how legislative reparations can clear the way for reparations lawsuits by eliminating procedural hurdles like the statute of limitations, in addition to providing sweeping reform similar to that which the Japanese Americans received in the 1980s.
\textsuperscript{91} Brophy, supra note 16, at 43-44.
is the Native Alaska Claims Settlement Act of 1971. Prompted by Native Alaskans' long-standing claims for compensation for land taken by the United States, the U.S. Congress awarded Native Alaskan tribes nearly $1 billion and returned nearly forty million acres of land.

Professor Brooks’s chapter The Age of Apology is one of many contributions to reparations theory that emphasizes a legislative approach. The Age of Apology articulates a “theory of redress” consisting of four elements. First, demands for redress must be made to legislatures rather than courts. Observing that the judiciary has the least lawmakers power of all governmental branches, Brooks contends that legislators, “quite simply, can do more than judges.” Because courts are structurally limited to applying existing rights and remedies, courts cannot create new avenues for redress—an ability that is essential to granting reparations.

Second, in order for reparations movements to succeed, considerable political pressure must be placed on legislatures. Recognizing the fact that not all valid claims for reparations succeed despite their logical or moral force, Professor Brooks argues that the vagaries of representative politics more often determine the outcome of redress movements than the merits, wisdom, or justice of a reparations claim. Potent political pressure is thus a necessary condition for successful redress.

Third, successful reparations movements require strong internal support. Aggrieved groups must themselves exhibit intense and unanimous backing for their claims. Professor Brooks argues that the Japanese American redress movement set the bar for the “passion and necessity”

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93. BROPHY, supra note 16, at 41–42.
94. BROOKS, supra note 24.
95. Other works that emphasize seeking legislative reparations include Robert Westley, Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?, 19 B.C. THIRD WORLD L.J. 429 (1998), and Professor Brophy’s REPARATIONS PRO & CON, supra note 16. Professor Westley writes: “Legislatures, it may be argued, provide a friendlier forum for racial redress for both formal and substantive reasons.” Westley, Many Billions Gone, 19 B.C. THIRD WORLD L.J. at 435. Similarly, Professor Brophy writes: “Given the limitations of lawsuits, significant reparations are going to come—if at all—through legislation. Legislative bodies . . . can move with flexibility that courts do not have.” BROPHY, supra note 16, at 141.
96. BROOKS, supra note 24, at 6–7.
97. Id. at 6.
98. Id.
99. Id. ("most of the time, the highest court in the land can only apply existing rights and remedies; it cannot create new ones.").
100. Id.
101. Id. ("the success of any redress movement has depended largely on the degree of pressure (public and private) brought to bear upon the legislators—that is, politics—than with matters of logic, justice, or culture.").
102. Id.
103. Id.
104. Id. at 6–7.
required for legislative reparations.\textsuperscript{105}

Fourth, the injured group must present a meritorious claim for reparations because “[t]here must be something of substance for lawmakers to promote” when a victim group seeks redress.\textsuperscript{106} The Age of Apology lays out five criteria for such a claim: “(1) a human injustice must have been committed; (2) it must be well-documented; (3) the victims must be identifiable as a distinct group; (4) the current members of the group must continue to suffer harm; and (5) such harm must be causally connected to a past injustice.”\textsuperscript{107}

While his model focuses primarily on legislative reparations, Professor Brooks includes a role for lawsuits—he recognizes that courts “play a useful role in the redress process . . . [because] [t]hey can and have been used to interpret and enforce extant rights and laws handed down by the legislature.”\textsuperscript{108} As I explain below in Parts III and IV, FVEM’s history—its recent success in Congress, together with its previous failures in the courts—suggests that the line of thought exemplified in The Age of Apology offers redress movements a better chance of success than the approach that Repairing the Past and similar scholarship emphasize. In other words, the Filipino veterans’ experience suggests that legislative reparations are a better strategic option for redress movements than reparations lawsuits. In the next Part, I provide a historical background of Filipino World War II military service and an overview of FVEM and its efforts to seek redress in the courts and from the legislature. This background will lay the foundation for my analysis in Parts III and IV.

II

HISTORICAL BACKGROUND OF THE FILIPINO VETERANS EQUITY MOVEMENT

Veteran Cenon Antonio concisely summed up the tragic history of the World War II Filipino veterans: “When America was down, we Filipinos stood up and fought beside America, but when peacetime came, the Americans were stingy.”\textsuperscript{109} Another veteran, Franco Arcebal, expressed the veterans’ sense of betrayal this way: “We were loyal to the United States. Even up to now, we are loyal to the United States, except that the United States has forgotten us in many ways.”\textsuperscript{110} Indeed, for some veterans, the most painful part of the Rescission Acts’ legacy is that the veterans’ contribution to the Allied victory is

\begin{footnotesize}
\begin{enumerate}
\item[105.] \textit{Id.}
\item[106.] \textit{Id.} at 7.
\item[107.] \textit{Id.} Professor Brooks’ set of five prerequisites for a meritorious legislative reparations claim is a modified version of those identified by Professor Matsuda in \textit{Looking to the Bottom}, \textit{supra} note 33, at 362–97.
\item[108.] \textit{Brooks, supra} note 24, at 6.
\end{enumerate}
\end{footnotesize}
not recognized as valid service. As veteran Dominador Valdez sees it, "The recognition is more important than the money."

Starting in 1941, more than one hundred thousand Filipino soldiers answered the United States’ call to arms and fought under the American flag alongside U.S. soldiers against the Japanese invasion of the Philippines. In exchange for their service, the veterans expected to be treated as full U.S. veterans, entitled to the considerable material benefits that accompany U.S. veteran status and a service-based path to American citizenship. Yet in 1946, the U.S. Congress enacted the Rescission Acts, which declared that the veterans’ wartime service would not be considered “active military, naval, or air service” under U.S. law. In 2009, after fighting for decades for recognition of their service, Filipino veterans and their supporters achieved a partial legislative victory in Washington, D.C.—limited recognition of the veterans’ wartime service and the award of direct individual payments to surviving veterans.

In this Part, I trace the history of the veterans’ struggle for redress from 1941 to 2009. I begin with a discussion of the Philippines’s participation in World War II. I then discuss the Rescission Acts and their negative impact on the Filipino veterans, focusing on the foreclosure of their path to American citizenship and the unequal level of benefits they have received relative to their U.S. counterparts: Lastly, I outline FVEM’s development from the 1960s until today, discussing in particular the veterans’ lawsuits in federal courts, their efforts to secure justice from Congress, and the 2009 law that provides direct payments and recognition to surviving veterans.

A. The History of the Filipino Veterans

1. The Role of the Philippines in World War II

External colonial powers dragged the Philippines into World War II, an unsurprising result given that between 1565 and 1946, three different empires directly controlled the Philippines: Spain, the United States, and Japan.

111. McLaughlin, supra note 8, at 1.
113. Levs, supra note 110, at 1. ("During the war, the Philippines was a U.S. commonwealth. The U.S. military promised full veterans benefits to Filipinos who volunteered to fight."). The naturalization and veterans benefits are discussed in greater detail below in Part II.A.3.
117. Id. at 1, 188–99.
These three colonial powers exerted dominion over the islands as a means to an end, not because they desired the country itself: the Spanish accidentally "discovered" the islands while searching for the Moluccas, also known as the Spice Islands; the Americans maintained control of the Philippines because it provided the United States a location from which the Americans could trade with China; and the Japanese invaded the Philippines to eliminate the American presence and threat to Japanese activities in the region during the 1940s. In a sense, the Philippines' role in World War II was that of an innocent bystander—the country became a battleground for world powers that sought to confront one another, not because of hostility between the Philippines itself and other nations.

By the time U.S. President Franklin Roosevelt integrated the Filipino armed forces into the American military in 1941, the Philippines had been an American colony, or "commonwealth," for forty years. From the beginning of the American period, the U.S. government envisioned that the Philippines would eventually become an independent country. To this end, the United States passed the Philippine Independence Act in 1934, which provided that the Philippines would transition from a colony to an independent nation in 1946. Between 1934 and full independence in 1946, the Philippines adopted a constitution and organized a new government.

In 1935, the new Philippine Commonwealth legislature established the Philippine Army. Under the Philippine Independence Act, however, the Americans retained control of foreign affairs and national defense, as well as the power to "call into the service of [the U.S.] armed forces all military forces organized by the Philippine government" at any time. Accordingly, though the Philippines had a measure of control over its domestic affairs, the United States held the ultimate authority over its colony until Japan successfully occupied the islands in 1942.

As World War II escalated and open war with Japan became more likely, the United States exercised its power to conscript the colony's armed forces into the American military. President Roosevelt called the Philippine Army to U.S. service by executive order on July 26, 1941. The Philippine Army merged with U.S. forces stationed in the Philippines to form the United States
Armed Forces in the Far East (USAFFE). On December 7, 1941, Japan simultaneously bombed a U.S. military base at Pearl Harbor, Hawaii and began its invasion of the Philippines. Despite USAFFE’s orders to resist, it soon became clear that the American and Filipino forces were outmatched and unprepared for the attack. The invasion lasted about six months, from December 1941 until May 1942, when USAFFE surrendered control of the islands to Japan.

Perhaps the Bataan Death March of April 1942 best epitomizes the tragedy of this period. By early 1942, the Japanese armed forces had taken Manila, the Filipino capital, while USAFFE had grouped its forces on the Bataan peninsula on the west side of Manila Bay. For several months, USAFFE repelled multiple Japanese offensives onto the peninsula. USAFFE, however, was in an isolated position and lacked reinforcements and supplies from the United States; by March 1942, the Filipino and American soldiers suffered casualties from starvation, dysentery, and malaria at rates that eclipsed those caused by combat. In early April, the USAFFE units on the peninsula surrendered, and within one month, Japan took control of the entire country.

For their part, the Japanese armed forces lacked sufficient manpower, plans, or organization to humanely coordinate the massive occupation project they faced upon USAFFE’s capitulation on Bataan. The Japanese military forced about 76,000 soldiers who surrendered on the peninsula—64,000 Filipinos and 12,000 Americans—to march from Mariveles, on the southern tip of the Bataan region, to a prison the Japanese established at Camp O’Donnell, fifty-five miles to the north. Because of a lack of coordination and a marked brutality by some of the Japanese soldiers guarding the column of prisoners, 7,700 Filipino and 2,300 American soldiers died of malaria, exhaustion, starvation, thirst, suffocations, beatings, and murder during the five-day “death

129. Cabotaje, supra note 112, at 75.
130. See generally RICARDO TROTA JOSE, THE PHILIPPINE ARMY 1935–1942, 201–214 (1992) (describing the shortcomings of the Philippine Army). During the American colonial period, the United States had feared the possibility of a strong Philippine Army because of the attendant risk of revolution such a military might bring. Id. at 218. USAFFE was formed to respond to mounting Japanese American tensions in the region only some four months before the Japanese invasion of the Philippines began. Id. at 192. Consequently, the Philippine Army was not well equipped or well trained in 1941. Id. at 214. USAFFE’s plan called for a full mobilization of the Philippine Army; the complete integration of Philippine Army units and American forces was scheduled for mid-1942. Id. at 210. The Japanese invasion, beginning in December 1941, cut this process short. Id.
132. WOODS, supra note 116, at 55.
133. Id. at 55–56.
134. Id. at 56.
135. Id. at 56–57.
136. Id. at 65–67.
137. Id. at 60.
march” to the prison camp.\textsuperscript{138}

For the next three years, the Philippines was a Japanese colony.\textsuperscript{139} During this period, the Japanese colonial authority organized a puppet civilian government.\textsuperscript{140} Many within Filipino society actively collaborated with the Japanese during this period; indeed, Filipinos were part the new government’s staff.\textsuperscript{141} However, many Filipinos actively worked against the colonial government.\textsuperscript{142} USAFFE soldiers who had escaped capture during the surrender along with Filipino politicians organized anti-Japanese guerilla bands that waged clandestine warfare against the Japanese from 1942 to 1945.\textsuperscript{143} The guerillas attacked and ambushed Japanese troops, relayed intelligence back to the Allied forces, and kept the Filipino population informed about the progress of the war.\textsuperscript{144} In August 1944, the U.S. military returned to the Philippines to reclaim the islands and continue the Allied campaign against Japan.\textsuperscript{145} This counteroffensive was especially brutal. In the month-long battle to retake Manila in February 1945, the capital was turned into a bloody battlefield where 100,000 Filipino civilians died.\textsuperscript{146} With the instrumental assistance of tens of thousands of Filipino guerillas, however, the United States successfully ended the Japanese occupation and reacquired the colony in the fall of 1945.\textsuperscript{147}

World War II wrought tremendous destruction in the Philippines. More than 1.1 million Filipinos died during the war.\textsuperscript{148} Almost 500,000, or 80 percent, of the Japanese soldiers who invaded the Philippines never returned home.\textsuperscript{149} In 1950 dollars, World War II caused $5.8 billion worth of damages to the Philippines,\textsuperscript{150} leaving the country in a state of exhaustion, devastation, and chaos.\textsuperscript{151} The economy was effectively paralyzed, agricultural land was rendered a wasteland, manufacturing facilities and infrastructure were in ruins, and much of the nation’s housing had been razed.\textsuperscript{152} Above all, the destructive conflict between the United States and Japan left an acute shortage of food in the Philippines.\textsuperscript{153} Farm production had fallen to less than 60 percent of prewar

\begin{enumerate}
\item \textsuperscript{138} \textit{Id.} at 64–67.
\item \textsuperscript{139} Woods, \textit{supra} note 116, at 198–99.
\item \textsuperscript{140} \textit{Id.} at 57.
\item \textsuperscript{142} \textit{Id.} at 5.
\item \textsuperscript{143} \textit{Id.} at 5; Woods, \textit{supra} note 116, at 57.
\item \textsuperscript{144} Woods, \textit{supra} note 116, at 57
\item \textsuperscript{145} Corina Carlos et al., \textit{Philippine Army: The First 100 Years} 108 (1997).
\item \textsuperscript{146} Ikehata, \textit{supra} note 141, at 17.
\item \textsuperscript{147} Carlos et al., \textit{supra} note 145, at 108–09. \textit{See also} Ikehata, \textit{supra} note 141, at 2.
\item \textsuperscript{148} Nakano, \textit{supra} note 3, at 36.
\item \textsuperscript{149} Ikehata, \textit{supra} note 141, at 1.
\item \textsuperscript{150} Nakano, \textit{supra} note 3, at 36.
\item \textsuperscript{151} Ikehata, \textit{supra} note 141, at 18.
\item \textsuperscript{152} \textit{Id.}
\item \textsuperscript{153} Woods, \textit{supra} note 116, at 60.
\end{enumerate}
levels and livestock levels were reduced by 65 percent. In sum, World War II brought monstrous tragedy and suffering to the Philippines.

It was the United States' post-war treatment of the Filipino soldiers who fought under the American flag, however, that created the impetus for FVEM. In the following Parts, I describe who these soldiers were and the history of their second-class veteran status.

2. The Filipino Veterans of World War II

When the U.S. Congress enacted the law that provides direct individual payments to the Filipino veterans in February 2009, it was estimated that between 15,000 and 18,000 were still alive. Most of these were in their late eighties and early nineties and dying at a rate of ten per day. It was thought that about 3,000 were located in the United States while the rest resided in the Philippines. Those living in the United States faced considerable poverty. Many lived in substandard housing, frequented soup kitchens, and subsisted on Supplemental Security Income while living thousands of miles from the families they left behind in the Philippines to pursue full veterans benefits in the United States.

During World War II, Filipino soldiers serving the United States numbered in the hundreds of thousands. The exact number is difficult to ascertain because there are few official estimates. Various sources place the number at 470,000, 300,000, 250,000, and 200,000. For the purposes of this Comment, I will refer to the number as 200,000, though the actual number may be higher. The 200,000 veterans break down into four

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154. Id.
155. Different sources report different total numbers of surviving veterans. In Perry & Simon, supra note 109, the number is stated as 15,000. In Ken McLaughlin, Seven Local Filipino Veterans Are Among First to Receive $15,000 Checks for Their World War II Service, S.J. MERCURY NEWS, May 11, 2009, at 2B, the stated number is 18,000.
156. Melegrito, supra note 13.
158. Levs, supra note 110, at 1 (quoting veteran Franco Arcebal, who stated, "Practically all of us are below the poverty line now at this age. We have no way of earning a living."); Benjamin Pimentel, Dreaming of Home, S.F. CHRON., Dec. 14, 1997, at Z1 (describing the desperate conditions that many veterans in the United States face).
160. Nakano, supra note 3, at 36.
162. See Cabotaje, supra note 112, at 73.
163. See McLaughlin, supra note 8; Levs, supra note 110.
164. See Nakano, supra note 3, at 36.
165. The 2009 statute conferring the individual payments to the veterans states that "more than 100,000 members of the Philippine Commonwealth Army were called into the service of the United States." Pub. L. 111-5, § 1002(a)(3) (2009). However, this number only refers to one group of the Filipino soldiers who served during the war and does not include any of the three other groups. As the sources cited in the previous four footnotes suggest, the total number is considerably higher.
groups. The distinctions between the categories are relevant because the different groups have received different levels of veterans benefits over the years.

The first group of Filipino veterans is the Old Philippine Scouts. This small unit of Filipino soldiers was originally organized by the United States in 1899, long before World War II. The United States formed this unit of Filipino soldiers during the Philippine-American War, the armed conflict waged in the Philippines after Spain ceded the islands to the U.S. government at the turn of the twentieth century. The Old Philippine Scouts' original purpose was to quell the contemporary native resistance movement—that is, to kill other Filipinos who were rebelling against the then-new American colonial government. During World War II, this unit fought against the Japanese. Because this unit was incorporated into the U.S. Army long before World War II, its members have always been considered full U.S. veterans and have always had veterans benefits for their World War II service equal to that of their American counterparts.

The second group consists of members of the Philippine Army, the army that the Philippine colonial government raised following the Philippine Independence Act of 1934. During its years as part of USAFFE, soldiers in the Philippine Army fought under the direction of the United States alongside the U.S. Army.

The third group of Filipino veterans is composed of recognized anti-Japanese guerilla fighters. The recognized guerillas were led either by U.S. Army or Philippine Army commanders and maintained contact with the U.S. military during the occupation. During the liberation campaign in 1944 to 1945, these men were formally called into the service of the U.S. military.

The fourth group of Filipino veterans is the New Philippine Scouts, organized by the United States in October 1945 shortly after the liberation of the Philippines. The United States enlisted these soldiers to assist with the

166. Cabotaje, supra note 112, at 76–77.
167. Id. at 77–79.
169. Id.; Cabotaje, supra note 112, at 72.
170. Cabotaje, supra note 112, at 72.
171. Id.
172. Id.
173. Id. at 73.
174. Id. at 74.
175. Id. at 76. There are also many unrecognized guerilla fighters. Nakano, supra note 3, at 36. In particular, one large group of leftist peasant guerillas called the Hukbalahap were not recognized as authorized veterans of the war. Id. The Hukbalahap considered its resistance part of an international antifascist movement and did not try to join the USAFFE guerilla bands. Ikehata, supra note 141, at 6.
177. Id.
178. Cabotaje, supra note 112, at 76.
occupation of Japan following the war. Even though members of the New Philippine Scouts served after Japan surrendered, their service is considered World War II service.

Out of the 200,000 Filipino veterans who fought during the war, approximately 120,000 were members of the Philippine Army, equal to 60 percent of the total. There were 70,000 recognized guerillas and New Philippine Scouts combined, equal to 35 percent of the total. There were only about 12,000 Old Philippine Scouts.

B. The Rescission Acts and Their Effects on the Filipino Veterans

The Rescission Acts of 1946 state that wartime service of veterans of the Philippine Army, the recognized guerillas, and the New Philippine Scouts is not "active military, naval, or air service for the purposes of any law of the United States conferring rights, privileges, or benefits." These laws have significant practical implications for the Filipino veterans. First, the Rescission Acts have denied the Filipino soldiers U.S. veteran status and its considerable attendant benefits. Second, the Acts have denied the Filipino veterans a service-based path to U.S. citizenship. The following Section describes these effects in turn.

1. Veterans Benefits Under the Rescission Acts

Full U.S. veteran status carries a broad range of benefits. Among other things, U.S. veterans currently receive: compensation for service-related disabilities, dependence and indemnity compensation (for veterans' survivors), medical care, education benefits for veterans and their children, pension for nonservice-connected disability, death pension (paid to veterans' survivors), burial benefits (including burial allowance, burial flag, and burial in a national cemetery), a clothing allowance, guaranteed housing loans, small business loans, veterans employment training service, adaptive housing grants, and adaptive vehicle grants. In principle, veterans benefits are available to any person regardless of their nationality provided he or she is a former member of some branch of the U.S. military.

The Rescission Acts prevent veterans of the Philippine Army, the

179. Quiban, 928 F.2d at 1157.
181. Nakano, supra note 3, at 36.
182. Id.
183. Id.
186. 38 U.S.C. § 101(2) (2006) (defining the term "veteran" without any mention of national origin); Cabotaje, supra note 112, at 77; Nakano, supra note 3, at 34.
recognized guerillas, and the New Philippine Scouts from fully availing themselves of this panoply of benefits. While a person who serves "in the active military, naval, or air service" of the United States is normally entitled to U.S. veteran status, Filipinos who served in World War II (aside from the Old Philippine Scouts) are not recognized as full U.S. veterans under the Rescission Acts even though, as discussed above, the Philippine Army, the recognized guerillas, and the New Philippine Scouts served under the American flag. The Rescission Acts thus undid a prior determination of the U.S. Veterans Administration that veterans of the Philippine Army were full U.S. veterans. The Rescission Acts represent the only instance in which the United States has discriminated against members of a particular national origin group in granting access to veterans benefits.

Despite the lack of recognition, the United States has continuously provided veterans of the Philippine Army, the recognized guerillas, and the New Philippine Scouts with certain benefits since the end of the war. These benefits have consistently been less in amount and in kind than what the United States pays to full U.S. veterans, and veterans of these three excluded groups and their dependents have been largely ineligible for many of the benefits that U.S. veterans normally receive. The process of paying the Filipino World War II veterans at lower rates relative to their American counterparts began with the Rescission Acts themselves.

During the decades since the enactment of the Rescission Acts, the United States has incrementally increased the level of benefits provided to the three excluded groups of Filipino veterans, although the access to the benefits was uneven between the different categories. For example, the veterans of the Philippine Army were initially eligible only for service-related benefits and life insurance that was already in place, but were entirely ineligible for non-service-related benefits. Veterans of New Philippine Scouts were initially subject to similar limitations, and the recognized guerillas were not provided for at all. The uneven allocation of benefits to the various groups continued

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188. See OVERVIEW, supra note 185, at 8.
190. See id. at 10–15 (tracing the increasing level of benefits that the U.S. Veterans Administration provided to Filipino veterans).
191. Cabotaje, supra note 112, at 78.
192. See id. at 10–15 (describing the distribution of benefits in the decades since the enactment of the Rescission Acts).
193. Id. at 7.
194. Cabotaje, supra note 112, at 78.
195. See OVERVIEW, supra note 185, at 7–8. For example, under the original Rescission Acts, veterans of the Philippine Army were to be paid one peso for each dollar that a veteran of the U.S. Armed Forces would receive. Id. at 8.
196. See id. at 10–15 (describing the distribution of benefits in the decades since the enactment of the Rescission Acts).
197. Id. at 7.
through the years. For example, starting in 1951, veterans of the Philippine Army could collect funeral and burial benefits (at half the normal rate), but the New Philippine Scouts could not. In 1961, the United States began providing dependents’ and survivors’ education assistance (again at half the normal rate) to children of Philippine Army and New Philippine Scouts veterans, but the recognized guerillas were again left out.

Currently, Filipino veterans from the three excluded groups still receive lesser benefits, both in type and in amount, than full U.S. veterans, including the Old Philippine Scouts. The three excluded groups all receive compensation for service-connected disability, education benefits for their children, burial allowance, a burial flag, and a clothing allowance, although some veterans receive these benefits at half the normal rate. Some of the excluded veterans groups receive medical care and a burial in a national cemetery. None of the excluded veterans groups receive pensions for nonservice-related disabilities, death pension for their survivors, guaranteed housing loans, small business loans, veterans employment training services, or adaptive grants. The disparity between the benefits that the three excluded groups of Filipino veterans receive on the one hand and the benefits that the full U.S. veterans receive on the other became one impetus for FVEM. In the next Section, I describe a second aspect of the Rescission Acts’ legacy—naturalization privileges—that became a driving force behind FVEM.

2. Naturalization Benefits Under the Rescission Acts and the Application of the Nationality Act of 1940 to the Filipino Veterans

By the war’s end, Filipino veterans expected a path to U.S. citizenship based on their wartime service. As discussed in this Section, the Rescission Acts and the United States’ implementation of then-extant immigration law denied the veterans this naturalization privilege. Seeking redress for this injury became another goal animating FVEM.

During World War II, the United States offered naturalization to all foreign soldiers who fought under the American flag during the campaign. To accomplish this, the United States in 1942 amended the Nationality Act of 1940 such that noncitizens who served in the U.S. military “during the present war” could naturalize. The amendment relaxed several prerequisites

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198. Id. at 13.
199. See id.
200. Id. at 17 tbl.1.
201. Id.
202. Id.
203. Nakano, supra note 3, at 37.
205. Second War Powers Act, Pub. L. 77-507, Tit. X (1942). Title X of this Act added sections 701-705 to the Nationality Act of 1940, which relaxed the naturalization requirements described in the text. See also Nakano, supra note 3, at 37.
for naturalization, including the requirements of residence in the United States, English literacy, and educational testing. The amendment also made another significant change to the existing immigration law: servicemen on active duty could naturalize without appearing before a U.S. immigration court. The revised Nationality Act directed the U.S. Immigration and Naturalization Service (INS) to send officers to overseas military posts to naturalize non-citizen servicemen on the spot. Congress’s intent in establishing such a mechanism was clear: "If a man is ready to fight for our country, we ought to give him the benefits of citizenship without the normal peacetime requirements of time, declaration of intent, and so forth..." The revised Nationality Act thus represented a promise to foreign soldiers who fought for the United States: risk your life for us and survive, and you can become a U.S. citizen. Many foreign veterans did just that. Following the 1942 amendment to the Nationality Act, INS officials naturalized over 142,000 non-U.S. citizen servicemen across the globe in places including England, Iceland, North Africa and the Pacific islands.

Importantly, the early cutoff date for the overseas naturalization process and several administrative obstacles made it virtually impossible for veterans to obtain U.S. citizenship. The December 31, 1946 deadline meant that Filipino veterans theoretically had seventeen months, from the end of the war in August 1945 until the end of 1946, to avail themselves of the service-based path to citizenship promised in the Nationality Act. However, the United States took steps on multiple fronts to discourage the veterans from naturalizing, including failing to send INS officers to the Philippines to naturalize the veterans, refusing to accept applications, and not publicizing information about the Nationality Act to the Filipino veterans. For obvious reasons, no INS officials could be stationed in the Philippines to naturalize Filipino soldiers during the Japanese occupation. After the Allies retook the Philippines, the U.S. government set up a system to implement the Nationality Act in Manila. On August 1, 1945, the U.S. government authorized the vice consul of the United States stationed in the Philippines to naturalize Filipino soldiers on the spot. Less than two months later, however, the U.S. attorney general revoked the vice consul’s power to naturalize. The revocation came more than a year

206. Nakano, supra note 3, at 37.
207. Id.
208. Id.
210. Id. at 467.
211. Nakano, supra note 3, at 37.
212. See id. at 37-39.
213. Id. at 37.
214. Id.
215. Id. at 37-38.
before the December 31, 1946 cutoff date. The motive for the revocation is unclear. The official position of the United States was that the revocation was a response to a request from an official at the then-new Filipino government, which feared a mass exodus of soldiers. Some critics suggest that this justification is simply thin cover for the United States’ true motivation—preventing Filipinos from immigrating in large numbers to the United States.

Whatever the case, no on-the-spot naturalizations took place in Manila for eleven months, from September 1945 until August 1946. Recognizing that this lack of implementation in the Philippines was “anomalous,” the INS reversed course and sent an official to restart naturalizations in the Philippines on August 1, 1946. In the five months remaining before the December 31, 1946 cut-off date, this official naturalized four thousand Filipino soldiers. All of these men, however, were veterans of the Old Philippine Scouts. The INS official refused to naturalize members of the Philippine Army, the recognized guerilla groups, or the New Philippine Scouts, who comprised the vast majority of the Filipino soldiers. The United States’ refusal was based on the Rescission Acts, which had been passed during the eleven months in which no on-the-spot naturalizations were permitted in the Philippines.

This convoluted history suggests that the United States undertook serious efforts on multiple fronts to prevent Filipino veterans from availing themselves of service-based naturalization. The combination of INS intransigence, the U.S. government’s opposition to veteran immigration, and the passage of the Rescission Acts denied Filipino veterans the naturalization privilege that the Naturalization Act promised. As Supreme Court Justice Douglas put it, the U.S. government’s actions constituted “the deliberate—and successful—effort on the part of agents of the Executive Branch to frustrate the congressional purpose [of the revised Nationality Act] and to deny substantive rights to Filipinos.” This material injury would become another impetus for FVEM, the history of which I discuss in the following Section.

C. The Filipino Veterans Equity Movement

The veterans’ response to the Rescission Acts and their legacy became FVEM. Activism to seek redress for the legacy of the Rescission Acts began in

216. Id. at 37.
217. See id. at 37–38. Professor Nakano points out that the unnamed Filipino official who purportedly requested the cessation of naturalization has never been identified and that 1940s U.S. immigration law discriminated against migrants from Asian countries. Id. at 38.
218. Id.
219. Id.
220. Id. at 38.
221. Id. at 45.
222. Id. at 38, 45.
223. Id. at 45.
the 1960s and continues to this day. The activism has ranged from disparate lawsuits brought by individual Filipino veterans seeking immigration privileges, to lobbying efforts organized by Filipino interest groups before the U.S. Congress, to political demonstrations carried out by Filipino veterans and their supporters to increase public awareness of and support for the veterans. Taken together, these efforts constitute a movement wherein the activists share a common goal—obtaining redress in one form or another for the legacy of the Rescission Acts. In outlining the history of this movement, I divide discussion between the veterans’ efforts to seek (1) service-based immigration privileges and (2) redress for unequal benefits. As discussed below, the veterans have proceeded on both fronts by filing lawsuits and by lobbying the U.S. Congress.

1. Efforts to Obtain Service-Based Naturalization Benefits

In this Section, I first discuss naturalization lawsuits filed by the veterans and then proceed to the veterans’ efforts to secure immigration privileges from the U.S. Congress. Starting in the mid-1960s, the Filipino veterans sought to obtain U.S. naturalization through litigation by petitioning for citizenship in U.S. federal court. Generally, the veterans petitioning for citizenship argued that they deserved to naturalize because the U.S. government failed to grant the veterans citizenship after the war as promised.

Though some veterans occasionally obtained citizenship, none of the cases established a lasting precedent that could vindicate the veterans' interests more broadly. In other words, while courts granted some veterans citizenship, the courts never set

225. Nakano, supra note 3, at 39 (“It was in the middle of the 1960s . . . that Filipino veterans finally began their struggle to recapture the immigration privileges once denied them.”).

226. Id. (describing a petition for naturalization filed by a Filipino veteran in federal court).

227. Id. at 49 (describing the American Coalition of Filipino Veterans, the largest Filipino veterans lobbying group in the United States).

228. Id. at 46–47 (describing outspoken demonstrations that Filipino veterans carried out in Washington, D.C.).


230. See, e.g., INS v. Hibi, 414 U.S. 5, 7–8 (1973). In Hibi, a Filipino veteran argued that the United States was estopped from applying the Nationality Act's deadline to him because of the INS’s unfair implementation of the Nationality Act following the war, which was described above. See id. at 7–8. In In re Naturalization of 68 Filipino War Veterans, 406 F. Supp. 931 (N.D. Cal. 1975), the plaintiffs argued that the INS’s actions were a violation of due process. Id. at 936. Despite the different theories, the basic argument in both cases was that the United States should have naturalized the veterans who applied for citizenship shortly after the war but failed to do so.

231. For example, the plaintiff in Hibi prevailed at the trial court and the circuit court levels. Hibi, 414 U.S. at 8. In 68 Filipino War Veterans, some of the plaintiffs prevailed at the trial level. 406 F.Supp. at 940.

232. See Nakano, supra note 3, at 39–41 (describing litigation aimed at obtaining citizenship for Filipino veterans). Hibi, the first Supreme Court case addressing FVEM, “failed to establish definitive criteria as a precedent case.” Id. at 40. None of the other naturalization cases set a precedent that allowed veterans to obtain service-based naturalization. Id. at 40–41.
down a rule that would allow all Filipino veterans an opportunity to claim their naturalization benefits.

*INS v. Hibi,* the first naturalization case to reach the U.S. Supreme Court, is emblematic of the veterans' naturalization lawsuits. Veteran Marciano Hibi served in the Old Philippine Scouts but did not apply for naturalization before the Nationality Act's December 31, 1946 deadline. Nevertheless, in 1964, he came to the United States and applied for citizenship. Hibi argued that the U.S. government's efforts to discourage Filipino veterans from naturalizing under the Nationality Act were affirmative misconduct that estopped the government from applying the deadline to his case. Though Hibi won his citizenship in federal court at the trial and circuit levels, he lost when the case reached the Supreme Court. The Court ruled that the United States' failures to inform Filipinos about the Nationality Act and to station an INS officer in the Philippines for much of the time between the war's end and the Nationality Act's deadline were not affirmative misconduct. Absent a showing of affirmative misconduct, the Court concluded that the deadline was fair and that Hibi's claim was twenty years too late.

And so it went (more or less) for twenty-four years. In 1988, the U.S. Supreme Court finally took a firm stance against the Filipino veterans in *INS v. Pangilinan.* The Court considered various arguments for naturalization brought by Filipino veterans over the years, including those which had proved successful in lower courts, and rejected them all. The Court explained that "[t]he congressional command here could not be more manifest," referencing the Nationality Act's deadline and other statutory limitations that foreclosed the veterans' claims: "Neither by application of the doctrine of estoppel, nor by invocation of equitable powers, nor by any other means does a court have the power to confer citizenship in violation of these limitations.

By explicitly closing the door on relief in the courts, *Pangilinan* represented a turning point from naturalization lawsuits to legislative action. Soon after their defeat in the Supreme Court, the veterans and their supporters obtained a political solution to the service-based naturalization issue: the

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234. *Id.* at 5, 7–8.
235. *Id.* at 7.
236. *Id.* at 7–8.
237. *Id.* at 5.
238. *Id.* at 8–9.
239. *Id.* at 9.
240. See Nakano, *supra* note 3, at 39–41 (describing naturalization cases during this period).
242. *Id.* at 885. The Court held that the United States' failure to place an INS officer in the Philippines during the statutory naturalization window did not violate due process. *Id.* at 883–84.
243. *Id.* at 884. For a critique of *Pangilinan,* see Pimentel, *supra* note 209, at 476–77.
244. Nakano, *supra* note 3, at 41–42.
Immigration Act of 1990.\textsuperscript{245} Section 405 of the Act provided veterans of the Philippine Army, the recognized guerillas, and the New Philippine Scouts a two-year window in which to apply for U.S. citizenship based on their service in World War II.\textsuperscript{246} The act’s deadline was extended to 1995.\textsuperscript{247} Senator Dan Inouye of Hawaii, a U.S. veteran of World War II and long-time supporter of the Filipino veterans,\textsuperscript{248} authored section 405.\textsuperscript{249} In addition to Senator Inouye’s efforts, congressional support for the veterans was on the rise, as evidenced by other contemporary naturalization bills sponsored by Congressmen Tom Campbell of California and Benjamin Gilman of New York.\textsuperscript{250} Nonetheless, the legislative battle to include section 405 in the Immigration Act was hard-fought. As late as 1988, legislation granting service-based citizenship to the veterans appeared to be a nonstarter because Congressional support was lacking.\textsuperscript{251} However, the veterans and their supporters doggedly applied pressure to members of Congress through voluminous letter-writing campaigns.\textsuperscript{252} In 1990, when Senator Inouye was unable to pass legislation granting citizenship to the veterans as a stand-alone law, he instead managed to incorporate his bill’s language as section 405 of the larger immigration reform package that became the Immigration Act of 1990.\textsuperscript{253} Section 405 had powerful ramifications for the Filipino veterans. Despite their dwindling numbers and advancing age (they were at this time reaching their seventies), many veterans took advantage of the chance to obtain citizenship. By 1998, more than 28,000 of the 70,000 living veterans naturalized under the Act.\textsuperscript{254} Of these, 17,000 actually moved to the United

\textsuperscript{246} Id. §§ 405(a)(1)(A)–(D).
\textsuperscript{247} See 8 C.F.R. § 329.5(e) (2009).
\textsuperscript{249} Marvine Howe, \textit{Immigrant Act Aids Filipino Veterans}, N.Y. TIMES, Nov. 25, 1990, at A24; Filipino Veterans, supra note 248 (stating that Senator Inouye authored the provision that became section 405 of the Immigration Act of 1990).
\textsuperscript{250} Nakano, supra note 3, at 42.
\textsuperscript{251} David Schrieberg, \textit{Filipinos Ask U.S. to Honor Promise}, S.J. MERCURY NEWS, Aug. 7, 1988, at A1 (“Bills have been introduced in both the House and the Senate to grant them citizenship, but Congress so far has shown little interest.”).
\textsuperscript{252} The Promised Land, L.A. TIMES, Nov. 6, 1994, (Magazine), at 22.
\textsuperscript{253} See Howe, supra note 249; George Ramos, Long Fight Over for Filipino Vets, L.A. TIMES, Dec. 18, 1990, at A3 (Section 405 was “added to the immigration bill by Congressional supporters of citizenship for Filipino veterans”).
\textsuperscript{254} Nakano, supra note 3, at 43; Pimentel, supra note 209, at 480.
States.255 These veterans immigrated for several reasons. Many sought a way out of the poverty they faced in the Philippines.256 Others migrated so that they could extend U.S. citizenship and a better life to their children in the Philippines.257 Thus, section 405 had an enormous effect on the lives of thousands of veterans and their families, accomplishing what twenty-four years of naturalization lawsuits had failed to achieve.

As the number of Filipino veterans in the United States continued to climb during the 1990s, the veterans began to gain ground in other areas as well.258 In a sense, this influx of veterans helped to create a critical mass of activism. In the next Section, I discuss the history of the veterans’ efforts to achieve equal veterans benefits.

2. Efforts to Obtain Veterans Benefits Equal to Full U.S. Veterans

The Filipino veterans have sought veterans benefits equal to their U.S. counterparts through both lawsuits and political activism directed at the U.S. Congress. As in the previous Section, I first address their litigation efforts and then move onto the veterans’ attempts to secure increased benefits from the legislature.

In the early 1990s, several veterans and some of their family members filed lawsuits challenging the constitutionality of the Rescission Acts in federal court.259 As with the naturalization suits, some of the veterans attained success at the trial level only to lose their cases on appeal.260 The plaintiffs in these cases argued that the Rescission Acts violated the U.S. Constitution’s Equal Protection Clause.261 For example, in Quiban v. Veterans Admin., two Filipino veterans and the surviving wife of a third sued the Veterans Administration (“VA”), challenging the VA’s refusal, under the Rescission Acts, to provide veterans benefits to the plaintiffs equal to those received by fully recognized U.S. veterans.262 The plaintiffs argued that the Rescission Acts were unconstitutional because they singled out Filipino veterans on the basis of national origin.263 Though the plaintiffs prevailed at the trial level, the D.C. Circuit Court of Appeals held the Rescission Acts constitutional under the “rational basis” standard of review.264 Under this standard, the Rescission Acts

255. Nakano, supra note 3, at 43.
257. Nakano, supra note 3, at 43; Pimentel, supra note 158, at Z1 (describing how two veterans “saw U.S. citizenship as a way out of poverty.”).
258. See, e.g., Nakano, supra note 3, at 47 (“naturalized Filipino veterans residing in the United States became very vigorous campaigners in the late 1990s”).
260. See, e.g., id. at 1156.
261. See id. at 1155–56.
262. Id. at 1158–59.
263. Id. at 1160.
264. Id. at 1156, 1161.
are constitutional unless the court concludes there was no rational basis for Congress to enact the law.\textsuperscript{265} The court reasoned that there were three such bases: (1) the Philippines does not pay taxes that help pay for U.S. veterans benefits; (2) the cost of providing benefits would be immense; and (3) the court believed that giving full benefits to the Filipino soldiers would disrupt the Filipino economy.\textsuperscript{266} Relying on \textit{Quiban}, the Ninth Circuit Court of Appeals also held the Rescission Acts constitutional in \textit{Besinga v. United States}.\textsuperscript{267}

Not unlike \textit{Pangilinan}, \textit{Quiban} and \textit{Besinga} closed the door on Filipino veterans seeking a remedy for the legacy of the Rescission Acts in court.\textsuperscript{268} In contrast, the veterans’ struggle to obtain increased veterans benefits in the political arena has achieved more success than the lawsuits. These efforts have proceeded on two legislative fronts. First, the veterans have consistently sought passage of a law that would repudiate the Rescission Acts entirely. For example, in 2007, Senator Inouye sponsored the Filipino Veterans Equity Act of 2007, which would have revised the Rescission Acts to recognize the veterans’ World War II service as “active military service” for the purposes of military benefits.\textsuperscript{269} Unfortunately for FVEM, the bill was not enacted.\textsuperscript{270} Essentially the same bill has been introduced and died in numerous sessions of Congress since 1991.\textsuperscript{271}

On a second front, the veterans have pushed for incremental increases to the Filipino veterans’ benefits with mixed results. One example of success occurred in 2003, when Congressman Bob Filner of California, a longtime supporter of the Filipino veterans,\textsuperscript{272} authored language that became part of the Veterans Health Care, Capital Asset, and Business Improvement Act of 2003.\textsuperscript{273} The Act, which provided VA health care to veterans of the Philippine Army, recognized guerillas, and New Philippine Scouts living in the United States.\textsuperscript{274} An example of a failure occurred in 2007 when Senator Daniel Akaka

\begin{itemize}
  \item \textsuperscript{265} Id. at 1159.
  \item \textsuperscript{266} Id. at 1161. For a critique of Quiban, see Cabotaje, supra note 112, at 92–96.
  \item \textsuperscript{267} 14 F.3d 1356, 1362 (9th Cir. 1994).
  \item \textsuperscript{268} For example, in Talon v. Brown, 999 F.2d 514 (Fed. Cir. 1993), the Federal Circuit relied on Quiban in ruling against a Filipino veteran who challenged the constitutionality of the Rescission Acts. Id. at 516–17.
  \item \textsuperscript{269} S. 57, 110th Cong. § 1 (2007).
  \item \textsuperscript{270} Id.
  \item \textsuperscript{272} Faye Fiore, \textit{To Filipinos, This Congressman Is 'Elvis'}, L.A. TIMES, Apr. 29, 1997, at A3.
  \item \textsuperscript{274} Pub. L. 108-170 § 103, 117 Stat. at 2044; \textit{OVERVIEW}, supra note 185, at 15.
\end{itemize}
of Hawaii, another consistent supporter of Filipino veterans,275 introduced the Disabled Veterans Insurance Improvement Act of 2007.276 The bill would have increased benefits for the Filipino veterans living outside the United States.277 The bill that House and Senate eventually passed, however, did not include Senator Akaka’s provisions relating to Filipino veterans.278

These legislative actions were responses to FVEM’s political activism during the last two decades, which began to increase in strength during the 1990s.279 Prior to 1990, increases in the level of veterans benefits provided to Filipino veterans were largely the result of high-level bilateral negotiations between the Philippines and the United States, and less a product of outright political agitation.280 After 1990, the situation changed because, as discussed above, the Immigration Act of 1990 enabled thousands of Filipino veterans to move to the United States. As more veterans arrived and a critical mass of political agitation began to form, the veterans and their supporters began to characterize the veterans’ concerns as a civil rights issue.281 The new presence of significant numbers of naturalized Filipino veterans allowed FVEM to forcefully frame its position as a matter of equal rights.282 With more veterans on hand to apply political pressure in an increasingly public and emotional fashion, FVEM converted its cause into a controversy in which equality among U.S. citizens was at stake.283

FVEM’s activism took the form of compelling public demonstrations. At a 1997 protest, several Filipino veterans and Congressman Filner were arrested after chaining themselves to the iron fences in front of the White House.284 In a similar demonstration during the same year in Los Angeles’s MacArthur Park, several veterans chained themselves to a statue of their former commander, General MacArthur.285 The veterans’ demonstrations also included a touring “Equity Caravan,” the performance of “die-ins” in front of Department of Veterans Affairs offices, publicly tearing up food stamps in front of audiences, and hunger strikes.286

The veterans and their supporters, both inside and outside Congress, have also made the case for increased benefits and full equity at congressional

275. Simon, supra note 248.
277. OVERVIEW, supra note 185, at 15–16.
278. Id. at 16.
279. Nakano, supra note 3, at 47.
280. Id. at 46.
281. Id. at 46–47.
282. See id. at 47.
283. See id.
284. Id. at 46–47.
286. Nakano, supra note 3, at 47.
hearings.287 For example, in 2002, supporters of the veterans made statements to the House of Representatives Subcommittee on Health of the Committee on Veterans Affairs, urging Congress to provide increased health benefits for the veterans.288 In 2007, Filipino veterans made statements before the Senate Committee on Veterans Affairs, requesting full U.S. veterans benefits and a complete repudiation of the Rescission Acts.289

The highly publicized nature of the veterans’ activism during the last two decades contrasts with their efforts to achieve naturalization privileges, which largely played out in the courts and, to a lesser extent, in Congress.290 From the 1990s onward, the Filipino veterans have flexed their political muscle. Twelve years after their powerful demonstration in front of the White House, the veterans obtained their most recent legislative achievement: section 1002 of the American Recovery and Reinvestment Act (ARRA), the 2009 law which provided $198 million in direct payments and partial recognition to the veterans.

3. Section 1002 of the ARRA: The Veterans’ Most Recent Legislative Achievement

In late 2008, the United States entered a severe economic downturn. To respond to “the worst financial crisis since the Great Depression,”291 the U.S. Congress enacted the ARRA on February 17, 2009.292 Congress designed the $787 billion appropriations bill293 to strengthen the U.S. economy.294 The law also contained section 1002, which provides for $198 million in direct payments and partial service recognition to surviving Filipino veterans.295

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287. Id.


290. Nakano, supra note 3, at 47.


292. Watson, supra note 161.


295. Pub. L. No. 111-5, § 1002(l), 123 Stat. at 200 (2009). Technically, section 1002 did not appropriate the $198 million for the payments; rather, it authorized the payments, which are drawn from a separate fund called the Filipino Veterans Equity Fund. Id. § 1002(b). 155 Cong. Rec. S1617-02 (Feb. 5, 2009), at S1617 (statement of Sen. Inouye) ("[T]his bill doesn’t contain a penny for the Filipinos. It recognizes them. And we will provide the money later."). In other words, the $787 billion price tag of the ARRA does not include that $198 million for the veterans, which are drawn from other sources.
Section 1002 confers three principal benefits to veterans of the Philippine Army, the recognized guerillas, and the New Philippine Scouts. First, it provides direct cash payments to the Filipino veterans: noncitizens are entitled to a one-time payment of $9,000 while veterans who are U.S. citizens receive $15,000. Second, section 1002 recognizes the surviving veterans’ service as “active military service,” thereby partially responding to the veterans’ demands for acknowledgement of their wartime service. Third, the law contains many “findings” that chronicle the veterans’ wartime service and the effect of the Rescission Acts, publicly declaring the history of the Filipino veterans’ significant wartime contributions.

Congress’s inclusion of section 1002 in the ARRA is the result of a convergence of forces. First, there was strong support from the veterans and their lobbying organizations, including the National Alliance for Filipino Veterans Equity (NAFVE), the American Coalition for Filipino Veterans, (ACFV), and the National Federation of Filipino American Associations (NaFFAA). In particular, NAFVE personnel led the grassroots lobbying campaign that culminated in Congress’s decision to incorporate section 1002 into the ARRA. Second, legislators who have been longtime supporters of the Filipino veterans recently came to occupy powerful positions within the U.S. Congress: Senator Inouye became Chairperson of the U.S. Senate Committee on Appropriations; Senator Akaka became Chairperson of the U.S. Senate Committee on Veterans’ Affairs; and Congressman Filner became Chairperson of the U.S. House Committee on Veterans’ Affairs. Third, the panicked political climate caused by the economic downturn meant that the ARRA represented “must-pass” legislation that Congress would enact even with the inclusion of provisions that were unrelated to the bill’s goal of promoting short-term economic recovery. Recognizing this, the veterans and their supporters in Congress seized on an opportunity to attach the direct payments provision to the ARRA.
Nevertheless, section 1002's inclusion in the ARRA was the endpoint of a difficult process that moved in fits and starts. In September 2008, Congressman Filner had introduced the language that became section 1002 as a stand-alone bill, the Filipino Veterans Equity Act of 2008. After the U.S. House of Representatives passed the bill, Senator Akaka attempted to introduce the bill into a joint House-Senate conference. However, Senator Richard Burr of North Carolina, the ranking minority member of the Committee on Veterans' Affairs, successfully blocked Senator Akaka's efforts, objecting to what he pejoratively termed "aid for foreigners." Senator Burr also opposed separate legislation that would have expanded the Filipino veterans' benefits, arguing that the increased benefits for the Filipino soldiers would take "money away from our veterans in this country."

In January 2009, Senator Inouye remained determined to accomplish something for the veterans, but he had concluded that Congressman Filner's stand-alone Veterans Equity Act of 2008 would not succeed. Meanwhile, the economic downturn had created overwhelming congressional support for passing the massive ARRA bill quickly. Seizing the opportunity, Senator Inouye used his power as chairperson of the Senate Committee on Appropriations to attach virtually all of the language from Filner's bill to the ARRA as section 1002.

Many of the veterans and their supporters celebrated the enactment of section 1002. Veteran Dominador Valdez expressed the sense of relief that he and his comrades felt after decades of struggle for redress: "We are happy and grateful to the 111th Congress for finally taking this action." He also articulated section 1002's effect on the veterans' morale: "We no longer feel dishonored." NAFVE National Coordinator Ben DeGuzman stated that section 1002 "is an important victory and helps correct the grievous mistake committed by the Congress."

305. H.R. 6897, 110th Cong. (2008); Melegrito, supra note 13.
307. Id.
308. This bill was S.1315, The Disabled Veterans Insurance Improvement Act of 2007, discussed above in Part II.B.2.
310. Melegrito, supra note 13.
311. Id.
312. Id.
313. McLaughlin, supra note 8, at B1.
314. Id.
Macapagal Arroyo remarked, “Despite America’s economic challenges, the U.S. Congress voted to correct a historic wrong and incorporate the lump-sum benefit for our veterans.” However, many veterans and their supporters have also expressed ambivalence or even disappointment about the payments. Veteran Rudy Panaglima commented, “It’s a bittersweet victory... so many had fought hard and only a few of us are left to reap the fruits of their struggle.” Similarly, veteran Cenon Antonio stated, “This payment is not nearly enough to compensate for what we did.”

Thousands of veterans have applied for payment under section 1002 since the ARRA’s enactment in February 2009. By February 1, 2010, the Department of Veterans Affairs had received almost 36,000 applications for payment, twice the anticipated number. The United States has made payments to nearly 6,200 noncitizen veterans and 6,200 citizen veterans, while denying payment to 8,700 applicants. The rejected applicants are composed of persons who did not serve, ineligible relatives of veterans, and veterans who have submitted more than one application. Two weeks before the February 16, 2010 deadline, 17,000 applications were still pending review. Due to their old age, some veterans died before receiving their payments while waiting for the government to sort through their applications. The backlog of pending claims means that the Department of Veterans Affairs will continue processing timely applications after the deadline elapses, so final statistics on how many veterans avail themselves of the payments are not yet available.

FVEM did not achieve all of its goals in section 1002; the veterans and their supporters continue to seek new legislation, focusing in particular on the complete repudiation of the Rescission Acts. Two days after the ARRA’s enactment, NAFVE co-founder Lourdes Tancinco made it clear that FVEM
will continue working, stating: "We remain committed to supporting our Filipino veterans’ struggle for justice and full equity." As NAFVE co-chair Lillian Galedo remarked, “This is yet another beginning. But for now, we need to celebrate the small victories that we get, because it’s part of building a movement for political empowerment.”

Despite the payments’ shortcomings, section 1002 represents a successful effort by the veterans to obtain redress through the legislature. In the remaining Parts of this Comment, I analyze these payments and FVEM’s history within the context of reparations theory.

III
THE ARRA PAYMENTS TO FILIPINO VETERANS ARE REPARATIONS

In this Section, I contend that the $198 million in direct payments to the Filipino veterans should be considered reparations crafted to correct for the legacy of the Rescission Acts and improve the veterans’ lives today. To analyze the payments, I use Professor Brophy’s definition of reparations, which provides a useful and abstract analytical framework for thinking about the contours of redress. Under Brophy’s definition, reparations are programs that are justified on the basis of a historic group-based harm and designed to assess and correct that harm and/or improve the lives of victims in the future. The discussion in this Section is organized around three concepts contained in Professor Brophy’s definition of reparations. First, I explore how the Rescission Acts and their legacy constitute a group-based historic harm. I then proceed to contextualize the veterans as victim class and U.S. government as perpetrator. Finally, I examine section 1002 of the ARRA as an example of a program designed to correct for the Rescission Acts.

A. The Rescission Acts Constitute a Group-Based Historic Harm

In the context of FVEM, the Rescission Acts of 1946 and their legacy constitute a group-based historic harm. As described above, the Rescission Acts worked three injuries against the veterans. By denying that the veterans’ World War II service was “active military, naval, or air service for the purposes of any law of the United States conferring rights, privileges, or benefits,” the Rescission Acts helped foreclose a service-based path to citizenship, created unequal treatment with respect to veterans benefits, and denied the veterans recognition for their wartime service. These injuries are both material and dignitary.

328. Melegrito, supra note 13.
331. For detailed discussion of these harms, see Part II.A.3 above.
With regard to the material harms, the Rescission Acts continue to deny the veterans of the Philippine Army, the recognized guerillas, and the New Philippine Scouts the complete host of privileges afforded full U.S. veterans. The Rescission Acts also formed an integral part of the U.S. government's successful efforts to prevent veterans from taking advantage of service-based naturalization under the Nationality Act of 1940. Full veterans benefits would have provided considerable income, educational opportunities, financing, and better medical care. Had the veterans been allowed to naturalize, many would have become American citizens to seek better employment opportunities and a higher relative standard of living in the United States.

The gravest material harm of the Rescission Acts is thus an unquantifiable set of lost opportunities. No one can know how much better off these soldiers and their families might have been had the veterans received full U.S. veterans benefits and service-based naturalization.

The Rescission Acts also inflicted dignitary harm upon the Filipino veterans. By denying that the Filipinos' conduct in World War II was active military service, the Rescission Acts invalidated the soldiers' hard work, suffering, and sacrifice. As discussed above, FVEM has never been solely about obtaining the same level of benefits accorded U.S. veterans or service-based naturalization privileges. Rather, the veterans have also sought full recognition of their effort and casualties to remedy their sense of betrayal.

Reflecting this grievance, one veteran explained that the Rescission Acts left them "dishonored." Veteran Simeon Abastilla articulated the insult felt by the veterans this way: "Maybe many Americans hate us veterans. Or maybe they do not appreciate us for what we have done. I cannot tell." Another veteran, Macario Nicdao, expressed his indignation in the following manner: "We offered our blood and lives. Now what have they done to us? Where is America's heart?" The dignitary nature of the harm is also reflected by many of the veterans' view that section 1002's principal benefit was that it provided

332. OVERVIEW, supra note 185, at 17 (listing lower levels of benefits that Filipino veterans receive relative to full U.S. veterans).
333. Nakano, supra note 3, at 38 (noting that the INS in 1946 refused to accept naturalization applications from Filipino veterans "based on the 'Rescission Act' of February 1946").
334. See Woods, supra note 116, at 107 (noting that 40 percent of people in the Philippines live below the poverty line). A service-based path to citizenship would have permitted migration, thereby affording Filipino veterans the chance to build lives in the United States.
336. See McLaughlin, supra note 8.
recognition rather than money. Veteran Alberto Bacani expressed this view when he answered a reporter’s question on whether he considered the payments sufficient: “It’s a satisfactory amount considering the government is in debt and we’re all tightening our belts now. But it’s not the amount that matters. It’s the recognition of what we did in the service of the United States for the sake of democracy.”

B. The Filipino Veterans as the Victim Class and the U.S. Government as the Perpetrator

In the context of reparations, a victim class is unified by a shared experience of victimhood—that is, the past harm for which the group seeks reparations binds the group members. Members of a victim class “necessarily think of themselves as a group because they are treated and survive as a group” and because “[t]he continuing group damage engendered by past wrongs ties victim group members together.”

In the context of FVEM, the Filipino veterans constitute the injured group. Binding them together is their shared experience of victimhood: the denial of veterans benefits and immigration privileges by the Rescission Acts, as well as the lack of recognition for their service. The veterans of the Philippine Army, the recognized guerillas, and the New Philippine Scouts all continue to suffer these material harms today, though the veterans who receive payments under section 1002 of the ARRA will finally have some degree of legal recognition of their service.

In the context of reparations, the perpetrator is often the State. So it is for FVEM. Responsibility for the Rescission Acts can be laid squarely on the U.S. Congress and U.S. President Harry Truman. President Truman, for his part, recognized the iniquitous nature of the Rescission Acts. Indeed, the U.S. government’s actions in this matter are hard to square with ideals of honor, equality, and justice prevalent in American culture.

Anti-Asian racist sentiments prevalent in the United States in the 1940s animated and facilitated the Rescission Acts, although the dearth of legislative history surrounding their enactment makes it difficult to discern the government’s true motives. Moreover, the leading cases on the

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341. Id. at 376–77.
342. Pub. L. 111–5 § 1002(i), 123 Stat. at 202 (2009) (veterans who receive payment under the law are deemed to have participated in “active military service”).
343. See, e.g., Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995) (plaintiffs sued the United States for $100 million in damages arising from slavery).
344. Cabotaje, supra note 112, at 79.
345. OVERVIEW, supra note 185, at 8 (legislative history is thin).
constitutionality of the Rescission Acts, Quiban\textsuperscript{346} and Besinga,\textsuperscript{347} make little mention of the legislative intent behind the Acts. What little "official" legislative history exists suggests that Congress sought to "balance competing financial interests by providing some benefits, such as pensions for service-connected disability or death, while at the same time reducing the U.S. liability for future benefits."\textsuperscript{348} In other words, Congress's stated reason for the Rescission Acts was to reduce the price tag of providing veteran benefits promised to Filipino soldiers. Indeed, the price tag was not insignificant. In a 1945 letter, the director of the Veterans Administration informed the Senate Committee on Appropriations that the cost of providing benefits to Filipino veterans and their dependents would be $3 billion over 75 years.\textsuperscript{349} The Rescission Acts cut this projection to $500 million.\textsuperscript{350} Yet during the same period, the United States made significant fiscal commitments to reconstructing post-war western Europe. In just four years, from 1948 through 1951, the United States contributed $13.3 billion to rebuild European countries ravaged by war.\textsuperscript{351} This suggests that a high price tag was not the only reason for the Rescission Acts.

As the Filipino veterans and their supporters have suggested, the Rescission Acts were in fact motivated by anti-Asian racism present in the United States during World War II.\textsuperscript{352} In the pre-Civil Rights Movement era, the United States maintained openly racist immigration policies that prohibited immigration from many Asian countries.\textsuperscript{353} It was not until 1965 that Congress repealed the racist exclusionary immigration laws in a meaningful sense.\textsuperscript{354} More egregiously, the United States during World War II engaged in one of the most shamefully racist projects in its history: the incarceration of 120,000 Japanese Americans in the western United States without charges or trial.\textsuperscript{355}

Further, Filipinos in the United States during the first half of the twentieth century faced considerable racial animus. For example, openly racist anti-miscegenation laws in the western United States prohibited Filipinos from

\begin{itemize}
  \item Quiban v. Veterans Admin., 928 F.2d 1154 (D.C. Cir. 1991).
  \item Besinga v. United States, 14 F.3d 1356 (9th Cir. 1994).
  \item OVERVIEW, supra note 185, at 9.
  \item Id. at 3. See also Filipino Am. Veterans & Dependents Ass'n v. United States, 391 F. Supp. 1314, 1318 n.4 (N.D. Cal. 1974).
  \item Filipino Am. Veterans, 391 F. Supp. at 1318 n.4.
  \item Levs, supra note 110, at 1 ("The National Alliance for Filipino Veterans Equity offers a different explanation: 'In 1946, discrimination against people of color was the rule of law').
  \item YAMAMOTO ET AL., supra note 19, at 35.
  \item Id. at 38–40.
\end{itemize}
marrying Whites. Racial tension between Whites and Filipinos in several instances erupted into violence. In the 1930s, there were several White-Filipino riots, the most publicized of which occurred in Watsonville, California. Emboldened by a police department that would not protect Filipinos, a mob consisting of five hundred Whites raided Watsonville farms, killing one Filipino and injuring several more.

These examples of extant racism during this era demonstrate a level of official and public hostility toward Asians in general and Filipinos in particular. This animus played a key role in the enactment of the Rescission Acts. In essence, the 1946 appropriations law was a feat of political expediency enabled and motivated by contemporary racial animus. By reneging on veterans benefits and a service-based path to citizenship, the U.S. government cynically protected its own financial interests instead of keeping its commitments to the Filipino soldiers, which even President Truman recognized as a “moral obligation.” The prevalent racism of this period made this outcome possible and perhaps unsurprising.

C. Section 1002 of ARRA Constitutes Prospective Reparations Addressing Both the Material and Dignitary Harms Caused by the Rescission Acts

Reparations are programs designed to assess and correct for a historic group-based harm, to improve the lives of victims in the future, or both. Reparations, as I use the term in this Comment, include multiple modes of recompense extending beyond direct cash payments to truth commissions, apologies, civil rights litigation and legislation, and community-building programs. Within this conceptual framework, section 1002 of the ARRA offers a package of different types of reparations. By addressing the material and dignitary harms wrought by the Rescission Acts, the law both improves the Filipino veterans’ lives today and partially corrects for the Rescission Acts.

First, the payments improve the lives of the Filipino veterans still alive today. Most of the veterans residing in the United States today live in poverty. The balance of the veterans live in the Philippines, where the

357. Id. at 807.
358. Id.
359. Id.
360. Cabotaje, supra note 112, at 67. Despite expressing his view that the United States had a moral obligation to provide for the welfare of the Filipino veterans following the war, President Truman signed the Rescission Acts. Id. at 79.
362. Id. at 10–18. For a detailed discussion of the modes of reparations, see Part I.A.2 above.
363. Levs, supra note 110, at 1 (quoting veteran Franco Arcebal, who stated, "Practically
average household income in 2008 was $2,864 per year.\textsuperscript{364} For all of these veterans, the payments represent a considerable sum of money.

The payments are primarily prospective reparations in that they are designed to provide the veterans a better life now and in the future, rather than to return the veterans to the position in which they would have been but for the Rescission Acts.\textsuperscript{365} The math associated with the payments demonstrates this point. Section 1002 provides, on average, $13,200 per living veteran,\textsuperscript{366} which equals $210 per veteran per year since 1946.\textsuperscript{367} Alternatively, these payments are equal to $990 for each of the 200,000 Filipino soldiers who served in World War II under USAFFE, or about $16 per veteran per year for the 63 years between 1946 and 2009.\textsuperscript{368} It is thus clear that the reparations payments under section 1002 are not designed to bring the veterans to the material position they would be in but for the Rescission Acts. Viewed in this light, the payments’ reparative effect is principally symbolic, rather than a measure that would actually account for the tangible losses wrought by the Rescission Acts.

Section 1002 of the ARRA also addresses the dignitary harm caused by the Rescission Acts. Under section 1002(i), service in the Philippine Army, the recognized guerilla groups, or the New Philippine Scouts “is hereby recognized as active military service in the Armed Forces for purposes of, and to the extent provided in, this section.”\textsuperscript{369} Section 1002 thus partially repairs the Rescission Acts’ invalidation of the veterans’ wartime service. The lump-sum payments also reinforce and make this recognition concrete.

However, section 1002 also contains limitations. The law does not completely address the Filipino veterans’ dignitary grievance because it only extends recognition of service to living veterans who apply for the direct payments.\textsuperscript{370} It neither categorically nor automatically deems a veteran’s military service during World War II as “active military service.” Because veterans must personally apply to receive payments, deceased veterans cannot receive recognition under section 1002, and their families cannot avail themselves of any of the section’s benefits.\textsuperscript{371} Further, a veteran who chooses to

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\textsuperscript{365} See Brophy, supra note 16, at 7–8 (discussing retrospective and prospective reparations).

\textsuperscript{366} $198,000,000 \div 15,000$ veterans = $13,200$ per veteran.

\textsuperscript{367} $13,200$ veteran + 65 years since 1946 = $206.25$ per veteran per year.

\textsuperscript{368} $198,000,000 \div 200,000$ veterans = $990$ per veteran. $990 + 64$ years since 1946 = $15.47$ per veteran per year.


\textsuperscript{370} See id. §§ 1002(c),(d), (i), 123 Stat. at 201–02. Section 1002 only provides its monetary and recognition benefits to veterans who apply, thus limiting recognition to surviving veterans.

\textsuperscript{371} Section 1002(c)(2) provides that the spouse of an eligible veteran may collect the
receive the direct payment might forfeit the right to seek any other type recovery from the U.S. government going forward because section 1002 contains a provision stating that a payment "constitute[s] a complete release of any claim against the United States by reason of any service" in World War II.\textsuperscript{372} The statute does not specify the types of the recovery that might be precluded by this release provision. However, another provision in section 1002 ensures that electing to receive the direct payment will not take away any other benefits to which a Filipino veteran is otherwise entitled, like health care, survivor, or burial benefits.\textsuperscript{373} Litigation or further legislation may be required to clear up what types of limitations the release provision actually creates, though on its face it would seem to block a reparations lawsuit like the one presented in \textit{Quiban}, which requested veterans benefits equal to full U.S. veterans benefits by challenging the constitutionality of the Rescission Acts.\textsuperscript{374}

Notwithstanding its limitations, section 1002 addresses the material and dignitary aspects of the Rescission Acts’ painful legacy through multiple modes of reparations.\textsuperscript{375} First, section 1002 provides direct payments to individuals, one of the more robust and controversial modes of reparations.\textsuperscript{376} Second, section 1002’s findings\textsuperscript{377} constitute a short, but clear account of the veterans’ World War II service and the Rescission Acts. In a sense, these findings might be considered the findings of a "quasi-truth commission" because they create an accurate history that lays the foundation for other forms of reparations, including the direct payments provided for under section 1002.\textsuperscript{378} Third, while section 1002 does not explicitly express remorse to the veterans, it approaches a form of apology for the Rescission Acts. Though some have expressed ambivalence about whether section 1002 is sufficient to address the Rescission Acts’ dignitary injury to the veterans,\textsuperscript{379} section 1002 can be viewed as official contrition for withholding recognition and benefits to the veterans. In this sense, it might be considered a “quasi-apology,” as reflected in Senator Inouye’s comments during a congressional debate on section 1002:

\begin{itemize}
\item \textit{Id.} § 1002(c)(2), 123 Stat. at 201. However, the statute is silent as to what a veteran’s children may collect should the spouse have predeceased the veteran or if the veteran had no spouse.
\item Id. § 1002(h)(1), 123 Stat. at 202.
\item Id. § 1002(h)(2), 123 Stat. at 202.
\item \textit{Quiban v. Veterans Admin.}, 928 F.2d 1154, 1155–56 (D.C. Cir. 1991).
\item The four modes of reparations are (1) truth commissions and apologies; (2) civil rights litigation and legislation; (3) community-building legislation; and (4) direct payments to individuals. \textit{Brophy, supra} note 16, at 10–11.
\item \textit{Id.} at 175 (“The most controversial form of reparations is direct payments to individuals.”).
\item Public Law 111-5, §§ 1002(a)(1)–(8), 123 Stat. at 200 (2009).
\item \textit{See Brophy, supra} note 16, at 14 (truth commissions are “opening steps to a larger program of reparations”).
\item Perry & Simon, \textit{supra} note 109, at 2. (Veteran Cenon Antonio stated, “This payment is not nearly enough to compensate for what we did.”).
\end{itemize}
It is about time we close this dark chapter. I love America. I love serving America. I am proud of this country, but this is a black chapter. It has to be cleansed, and I hope my colleagues will join me in finally recognizing that these men served us well. They died for us. They got wounded for us. And they deserve recognition.380

Importantly, section 1002 vindicates the history of the Filipino veterans and serves as a foundation for future action by FVEM as it moves beyond its partial victory in 2009. The considerable payments and the government’s acknowledgment of the veterans’ service, incomplete as they may be, represent an undeniable step toward healing the historical injury.

IV

FVEM’S HISTORY VINDICATES LEGISLATIVE REPARATIONS

A. The 2009 Reparations Are the Product of a Successful Campaign for Legislative Reparations

FVEM’s considerable achievement in 2009 represents the culmination of years of activism by the veterans and their supporters. In this Section, I contend that FVEM’s efforts to secure the reparations embodied in section 1002 closely track the theoretical contours of a successful reparations movement. As discussed above, Professor Brooks articulated a theory of redress containing four elements of a successful redress movement: (1) victims who demand redress must address the legislature rather than the courts; (2) victims must exert considerable political pressure on the legislature; (3) the aggrieved victim group must exhibit strong internal support for the reparations; and (4) the victims’ claims must be meritorious.381 FVEM’s success in 2009 followed this framework very closely, vindicating Professor Brooks’s approach.

First, FVEM directed its demands for reparations payments to the U.S. Congress. The veterans have never sought tort damages from the United States in a manner similar to other reparations movements.382 The veterans and their advocates likely recognized the judiciary’s limited ability to award reparations, direct payments or otherwise, in part because of the previous failures of Filipino reparations lawsuits that challenged the constitutionality of the Rescission Acts383 or the U.S. government’s denial of service-based naturalization.384

Second, FVEM focused on bringing intense political pressure to bear on the U.S. Congress. As discussed above, the veterans and their supporters

381. BROOKS, supra note 24, at 6–7.
382. See, e.g., Cato v. United States, 70 F.3d 1103, 1106 (9th Cir. 1995).
383. See Besinga v. United States, 14 F.3d 1356 (9th Cir. 1994); Quiban v. Veterans Admin., 928 F.2d 1154 (D.C. Cir. 1991).
ramped up the campaign to obtain lump-sum payments for the Filipino veterans prior to the ARRA’s enactment in February 2009. Crucial to FVEM’s successful political pressure was the fact that congressional supporters of the Filipino veterans, including Senators Inouye and Akaka and Congressman Filner, occupied prominent positions within powerful congressional committees during this period.

Third, the victimized community was internally supportive of the reparations effort. Among the veterans themselves, support for FVEM in general has been strong and stretches back for decades. In the past, many of the veterans and their supporters have not supported one-time direct payments to the veterans, at times viewing the idea as an “all-or-nothing” solution lacking in principle. However, section 1002’s enactment in 2009 was the result of strong lobbying and political activism carried out by an array of Filipino-American organizations, including NAFVE, ACFV, and NaFFAA, demonstrating the strong internal support of the victim group.

Finally, FVEM presented a meritorious claim for redress. Professor Brooks articulated five elements of such a claim: “(1) a human injustice must have been committed; (2) it must be well-documented; (3) the victims must be identifiable as a distinct group; (4) the current members of the group must continue to suffer harm; and (5) such harm must be causally connected to a past injustice.” Here, FVEM’s efforts to enact section 1002 fulfilled all five elements. First, as I showed in Part III.A, the Rescission Acts constitute the relevant human injustice. Second, the Rescission Acts, as federal statutes, are reasonably well-documented, making the cause of reparations far easier than would have been the case without a clear public record. Unlike other reparations movements, opponents of FVEM have never challenged the notion of providing reparations to Filipino veterans by arguing that the Rescission Acts never happened, that the Filipinos were never conscripted, or that the Philippines was not subject to a sovereign-colony relationship during the relevant time period. Third, the victims of the Rescission Acts are clearly

385. Melegrito, supra note 13 (NAFVE National Director Ben De Guzman, “who led the lobby and grassroots campaign in 2007 through 2008 with former legislative assistants Irene Bueno and Charmaine Manansala, worked very closely with the staffs of Senators Daniel Inouye (D-HI), Daniel Akaka (D-HI), Senator Majority Leader Harry Reid, House Speaker Nancy Pelosi, and Representatives Bob Filner (D-CA), Mike Honda (D-CA) and Xavier Becerra (D-IL”).

386. Simon, supra note 248.

387. Id. (“The veterans, many of whom are in their 80s and 90s, have fought hard for the benefits.”).

388. Nakano, supra note 3, at 49 (some veterans and their supporters have in the past opposed legislation to provide reparation payments).

389. BROOKS, supra note 24, at 7.

390. For example, in a congressional debate on section 1002, Senator McCain of Arizona argued against the payments to the Filipino veterans: “There is nobody who appreciates more than [I do] the contribution that Filipino war veterans made to winning the Second World War. We are
identifiable as a distinct group. This is due to the fact that the terms of the Rescission Acts themselves specifically target the veterans of the Philippine Army, the recognized guerillas, and the New Philippines Scouts. Unlike a historic group-based injury like chattel slavery in the United States, where it is more difficult to identify persons directly harmed by slavery today, the identifying characteristics of the Filipino victim class are specifically named in the offending laws themselves. Fourth, the members of the victim group continue to suffer harm caused by the Rescission Acts, including the material deprivations caused by unequal veterans benefits and the dignitary harm attending the U.S. government’s failure to recognize the veterans’ service. Lastly, the continuing harm is causally connected to the past injustice. The Rescission Acts themselves continue to prevent the veterans from receiving full U.S. benefits and to deny the veterans recognition for their service.

In sum, FVEM’s success in 2009 closely followed the elements for a successful reparations movement articulated in Professor Brooks’s theory of redress. On its own, this suggests that legislative reparations can be successful provided certain conditions are met. In the next Section, I examine the veterans’ recent success in relation to the results they have obtained in their past redress efforts to further argue that legislative reparations are a better strategic option than reparations lawsuits.

B. FVEM’s History Demonstrates That Reparations Movements Should Direct Their Resources to Legislatures Rather Than Courts

Throughout their struggle for redress, the veterans have sought to achieve multiple goals, including a court decision declaring the Rescission Acts unconstitutional, service-based naturalization privileges, a complete repudiation of the Rescission Acts, increased benefits for Filipino veterans, and direct cash payments. Viewed in the context of FVEM’s many goals, it becomes clear that section 1002 answers some of the veterans’ grievances but not others. Section 1002 provides three forms of reparations: direct monetary payments, the establishment of a clear history of the historic

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393. I discuss the material and dignitary harms in detail in Part III.B.1 above.
396. See, e.g., Veterans Equity Act of 2007, S. 57, 110th Cong. (2007), which was not enacted.
397. See, e.g., Disabled Veterans Insurance Improvement Act of 2007, S. 1315, 110th Cong. § 401 (2007), which would have provided increased benefits for some of the Filipino veterans. OVERVIEW, supra note 185, at 15–16.
398. See, e.g., Public Law 111-5 §§ 1002(c)–(e).
group-based harm (a "quasi-truth commission"), and partial recognition of service (a "quasi-apology").

However, section 1002 does not grant other important redress goals. First, the law does not repudiate the Rescission Acts. Further, it does not overturn cases like Quiban or Besinga, which upheld the constitutionality of the Rescission Acts.\(^{399}\) Section 1002 also does nothing to increase Veterans Administration benefits for the Filipino veterans—it only provides a one-time lump sum payment to living veterans. Accordingly, while the reparations obtained in 2009 are significant, they are in certain respects narrow because they are unavailable to deceased veterans and their families.\(^{400}\)

Moreover, taking stock of FVEM's victories and losses over the years suggests that some approaches to redress have worked better than others for the Filipino veterans. FVEM's redress efforts in the legislative arena have obtained a mixed record of success and failure. While FVEM remains unable to persuade Congress to commit to a wholesale overturning of the Rescission Acts, the veterans have been successful in securing legislation that increases benefits for Filipino veterans in a piecemeal fashion. Examples of this step-by-step progress include the Immigration Act of 1990, which relaxed hurdles to immigration for Filipino veterans and enabled 28,000 to naturalize;\(^{401}\) the Foster Care Independence Act of 1999, which permitted U.S. citizen Filipino veterans residing in the Philippines to receive Supplemental Security Income payments from the U.S. government;\(^{402}\) and the Veterans Benefits Act of 2003, which increased benefits for veterans of the Philippine Army and the recognized guerilla forces who reside in the United States.\(^{403}\) Though FVEM has yet to obtain Full Equity, its incremental successes have made a material difference in the lives of the veterans who survived long enough to receive them. Section 1002 may be the most symbolically resonant achievement to date because of its recognition provision, limited though it may be.

In contrast, the veterans' reparations lawsuits have produced few positive outcomes. By and large, the naturalization suits fell flat. Though some veterans obtained success at the trial level,\(^{404}\) the appellate courts were largely unfriendly to the veterans' lawsuits and the Supreme Court forcefully closed the door on the naturalization plaintiffs in Pangilinan.\(^{405}\) Further, the veterans'
constitutional challenges to the Rescission Acts also failed. Quiban and Besinga made clear that the judiciary will use rational basis review when adjudicating constitutional challenges to the Rescission Acts. Because rational basis review nearly always results in upholding a challenged statute, future reparations lawsuits premised on challenging the constitutionality of the Rescission Acts carry a low chance of success.

As discussed above in Part I, some reparations theorists emphasize reparations lawsuits, while others focus on legislative reparations. FVEM’s record of partial victories in the legislative arena and almost total defeat in court suggests that pursuit of legislative reparations provides a better chance of success than reparations lawsuits and that reparations movements of the future should direct their energy and resources to politics rather than litigation.

This outcome is consistent with Professor Westley’s view that legislatures are the preferable forum for redress. In the context of reparations for chattel slavery in the United States, Professor Westley observed that legislatures “provide a friendlier forum for racial redress for both formal and substantive reasons.” Formally, although a legislature’s actions may be subject to judicial review, it is not constrained by judicial doctrines of standing, deference, timing, or res judicata, which can negatively impact reparations lawsuits. A reparations lawsuit, he points out, “inevitably presents issues, some of them political, that many courts would find difficult, if not impossible, to resolve.” In contrast, legislatures are formally empowered to conduct hearings, make factual findings, and take action within the scope of constitutional power. Substantively, legislatures are also preferable to courts because of a legislature’s ability to enact comprehensive solutions to social problems and “the inherent susceptibility of legislators not only to constituent pressure but also to trading votes.” As Professor Westley notes, “historically it has been legislatures, not courts, that have in fact initiated the most comprehensive remedies to racial subordination.” FVEM’s experience is consistent with Professor Westley’s observation. Viewed alongside his arguments in the context of slavery reparations, the explanation for the failure of the Filipino veterans’ redress lawsuits is clear. For example, the plaintiff in Hibi lost his naturalization case because of the statute of limitations.

408. Westley, supra note 95, at 435–36.
409. Id. at 435.
410. Id.
411. Id.
412. Id.
413. Id. at 435–36.
414. Id. at 436.
plaintiffs in *Quiban* lost their constitutional challenges to the Rescission Acts because of the standard of judicial review required by Supreme Court precedent.\(^{416}\) These results are consistent with Professor Westley’s observation that judicial doctrines like those held dispositive in *Hibi* and *Quiban* often thwart reparations lawsuits.\(^{417}\) By contrast, Congress is unconfined by judicial restraints and was thus free to craft a remedy in section 1002 that provides three modes of reparations to the Filipino veterans.

In short, FVEM’s record of achievement and failure suggests that redress movements should direct their energies toward legislative reparations rather than reparations lawsuits. Courts, of course, retain a vital role in the redress process because they interpret and enforce extant rights and laws handed down by legislatures.\(^{418}\) Moreover, if limitless resources were available to an injured group, then an attack on both fronts—legislative and judicial—would be ideal. Indeed, FVEM’s history demonstrates that the veterans employed this kind of “360-degree attack” over the course of several decades. However, just like FVEM, future redress movements will likely be strapped for resources. The veterans’ experience in court and with Congress implies that these reparations advocates would do well to focus their activism on obtaining legislative victories rather than favorable judgments in court.

**CONCLUSION**

“To rescind” is defined as “to make void.”\(^{419}\) Thus the name of the Rescission Acts could not have been more fitting: by declaring the Filipino veterans’ contributions to not have been active military service, they legally nullified the veterans’ role in World War II and created a legacy of material and dignitary injuries for 200,000 soldiers and their families. In contrast, the root of the term “reparations” is “to repair,” which means to “set right or make amends for.”\(^{420}\) Conceiving of FVEM as a reparations movement and section 1002 of the ARRA as reparations is therefore particularly apt, for above all the veterans and their supporters have strived to set right the void left by the Rescission Acts.

Despite the fact that Full Equity continues to elude the veterans for the time being, there is much to celebrate in FVEM’s success in 2009. Section 1002 represents a serious effort by the perpetrators of a grave injustice to improve the lives of victims today, both in material and dignitary dimensions. By recognizing the veterans’ service, albeit in a limited fashion, section 1002 finally restores a degree of the dignity and honor that the veterans have sought for so long. In so doing, the 2009 law might affirm the common bonds of

\(^{417}\) See Westley, *supra* note 95, at 435.
\(^{418}\) *Brooks, supra* note 24, at 6.
\(^{419}\) *Black’s Law Dictionary* 1420 (9th ed. 2009).
humanity that connect us all despite war, colonialism, and acts of rescission. As Veteran Celestino Almeda put it, section 1002 is "a moral victory, a light after waiting in darkness for many years."\textsuperscript{421}

\textsuperscript{421} Melegrito, \textit{supra} note 13.