The Japanese American Incarceration Revisited: 1941-2010*

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What follows is largely an oft-told tale, but it is a tale modified by being told in post-9/11 America. What you see depends on where you stand.

First it is in order to provide a reminder of what happened to Japanese Americans after the United States was attacked by Japan in December 1941 and her allies, Germany and Italy declared war on the United States.

There were more than a million nationals of the three main Axis powers living in the United States, Hawaii, and Alaska: nearly 700,000 Italians and more than 300,000 Germans had chosen not to be naturalized, and about 90,000 foreign-born Japanese who, like most other Asians, were ineligible for naturalization. All became alien enemies. Those “fourteen . . . and upward” were liable to internment.

Clearly the government had no pre-war plans for mass incarceration or any intention of rounding up most alien enemies. Federal authorities took some 11,000 enemy aliens into custody, but interned only about a third of them, one percent of the total. They took some 2,100 Japanese, 1,200 Germans, fewer than 250 Italians, and a couple of handfuls of other nationalities. Although most posed no threat to the United States, their confinement conformed to the statute and each was entitled to a hearing, without counsel, after imprisonment, resulting, sometimes, in release.2

The internment in the continental United States of 2,100 Japanese men and a few women, depriving the community of many of its leaders and most Buddhist priests and language school teachers, was orderly and generally governed by rules set forth in the Geneva Convention.

Initially federal authorities carefully distinguished between aliens and citizens. But as far as most Americans were concerned, the 275,000

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1. See generally Proclamation No. 2525, 3 C.F.R. 117 (1941); Proclamation No. 2526, 3 C.F.R. 121 (1941); Proclamation No. 2527, 3 C.F.R. 122 (1941) (President Franklin Roosevelt signed and executed the Proclamations before the congressional declarations of war, authorizing the internment of Japanese, German and Italian nationals in the United States).

Americans who looked like the enemy were the enemy, something reiterated by journalists, radio commentators, and politicians. Some two-thirds of the 275,000 were birthright citizens. The majority of Japanese Americans, some 150,000, lived in the Territory of Hawaii and were so vital to its functioning as the focal point of the Pacific War that a real “military necessity” required that almost all of them, regardless of citizenship, be left at liberty. Their wartime story will not otherwise concern us this afternoon, although it needs to be better known.

Our chief concern is the 125,000 Japanese in the forty-eight states and Alaska: 90,000 of them lived in California, with most of the rest in coastal Washington and Oregon. They, and the very few in Alaska and a small part of Arizona, were eventually subjected to mass incarceration. The few thousand who had lived in or fled to the rest of the United States lived in nervous liberty during the war.

But the West Coast Japanese Americans, men, women, children, and infants, were exiled from their homes in the spring of 1942 in what we have learned to call ethnic cleansing. They were temporarily warehoused in unsanitary fairgrounds, race tracks, and livestock pavilions close to their homes for months before being shipped off to ten ramshackle, purpose built concentration camps in late summer or fall. These were in desolate places where few other persons have ever lived. This exodus has been authoritatively described as caused by “racism, war hysteria, and a failure of political leadership,” factors, I must say, that are still active and viral in our political life.

But history is made by men and women, and we need to understand who caused this disaster of democracy and why. The perpetrator in chief was Franklin Delano Roosevelt. On February 11, Secretary of War Henry L. Stimson, who the night before had written in his diary that “the racial characteristics [of the second generation Japanese] are such that we cannot understand or trust even the citizen Japanese. This latter is the fact but I am afraid it will make a tremendous hole in our constitutional system to apply it,” telephoned Roosevelt in the White House and asked for authority to remove the Japanese Americans from the West Coast. He reported to his key subordinate, Assistant Secretary of War John J. McCloy, that the president had given them “carte blanche” in dealing with the West Coast Japanese, adding only, “Be as reasonable as you can.”

Eight days later, February 19, 1942, the real date of infamy for constitutional liberty, the president signed Executive Order 9066. Written

in the War Department, Executive Order 9066 gave the Army absolute power over the West Coast Japanese Americans, although neither they nor any other group was named in the order.\(^5\)

Why did Roosevelt sign it? There is no definitive answer to that question; the president never once discussed his decision publicly or, as far as we know, in private. It seems to me that his perception of political advantage was that such an action was expedient, at a time when the war was going very badly for the United States and his greatest domestic concern was national unity. The great clamor raised about the dangers of Japanese American sabotage by journalists, radio commentators, politicians, and professional patriots, had made it seem to be the expedient thing to do, and Roosevelt’s reaction responded to these fears. No major act of his wartime presidency received greater approval.

Soon thereafter he was willing to meliorate his decision in certain ways. When, encouraged by educators, including the president of this university, Robert Gordon Sproul, as well as by some of his own aides, Roosevelt ordered in the Spring of 1942 that incarcerated students might be released to attend colleges and universities away from the West Coast,\(^6\) and in 1943, as part of restoring the right of Nisei to enlist in the Army, he said that “Americanism is a matter of the mind and the heart; Americanism is not and never was a matter of race and ancestry.”\(^7\) Many young Nisei did in fact, enlist; others asked, “If that is the case, why are we in concentration camps?” A year later the President restored another right, the right to be drafted. Most of those called up for the draft while in concentration camps, obeyed, but a significant minority resisted although they could neither flee nor hide.

There is no time, today, to go into the conditions of camp life. Except for the camp at Tule Lake, which became a place where the government sent troublemakers, the treatment was generally humane: the American concentration camps were not death camps, but on several occasions incarcerated Japanese American protesters confronted armed American soldiers and as would happen later at Kent State and at some black colleges, some protesters were shot and killed. And in one instance in an isolated portion of the Utah concentration camp known as Topaz, a soldier in a guard tower shot and killed an aged prisoner and went unpunished although the available forensic evidence justifies an indictment for murder.\(^8\)

Government lawyers had feared that the courts might interfere with incarcerating civilians by military means without a declaration of martial

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law, but alas, their fears were unwarranted. The courts, in wartime, almost always give the government great latitude in questions that claim to affect national security, and the Roosevelt Court—he had put each man in his seat—was no exception. Four Nisei in their twenties who did not know one another and had little institutional or community support and much opposition from community leaders, nonviolently resisted the government’s efforts to incarcerate them. They subsequently instituted lawsuits that reached the Supreme Court, which in the Japanese American Cases, rendered three terrible decisions in June 1943 and December 1944 effectively ratifying Roosevelt’s orders and the actions of Congress in implementing them as a constitutional exercise of war power.

In the first case, *Hirabayashi v. United States*, the Court held that imposing a curfew on persons of “Japanese ancestry” even if they were citizens of the United States, was permissible. In the second case, *Korematsu v. United States*, the Court concluded that a citizen of Japanese ancestry who failed to report for certain exile and incarceration when ordered to do so by a general, could be punished. And in the third case, *Ex Parte Endo*, the Court ruled that a loyal citizen could not be held, but only referenced the War Relocation Authority, rather that the president who created it. The *Endo* decision did have the effect of forcing the government to cancel its longstanding orders that prevented most citizen Japanese Americans from returning to their West Coast homes even after they had been released from camps. Apparently two justices had tipped off the White House and/or the Army, as to what *Endo* would hold, and the government announced the cancellation of those orders the day before the decision was announced by the Court. It was very much what Justice Brandeis might have called “a dirty business.” The Court’s December 1944 decisions did speed up the closing of the camps.

Many of those who have written about the wartime Japanese Americans comment, appropriately, on their resilience, often comparing them to bamboo. But such celebrations usually ignore the fact that many were so traumatized by their experience and fearful of what life outside camp might hold for them that they literally had to be evicted so the camps could be shut down. In postwar Los Angeles, where most returning Japanese began to reestablish themselves economically without significant government help, there were more Japanese—mostly elderly aliens—on relief than there had been in the depths of the Great Depression.

The government did little to ease their passage. The WRA furnished camp leavers with train or bus tickets and $25 a head. In July 1946

President Harry S. Truman had a ceremony staged on the Ellipse behind the White House for elements of the Nisei 442nd Regimental Combat Team in which he awarded that much decorated unit its seventh distinguished unit citation and remarked that "You fought not only the enemy, but you fought prejudice—and you have won." 12

Truman in his 1948 Civil Rights message noted that "one hundred thousand Japanese-Americans were evacuated from their homes in the Pacific states solely because of their racial origin" and "suffered property and business losses as a result of this forced evacuation and through no fault of their own." 13 At his urging Congress enacted the Japanese American Claims Act appropriating $38 million to settle claims that eventually totaled $131 million. Congress refused, in 1948, to make a judgment about the 1942 decision. As the Senate Committee on the Judiciary put it: "The question of whether the evacuation of the Japanese people from the West Coast was justified is now moot." 14

The Department of Justice in a seventeen-year process litigated and adjudicated claims aggressively. One case file that I examined of a Japanese American who had lost his farm in Kent on Seattle’s “eastside” because he could not meet his mortgage payments while in camp showed that he received only half of the reduced settlement agreement he had signed. When he complained, the Justice Department explained that Washington was a community property state. And since his Caucasian wife did not have to accompany him to the camp he—really they—could not be compensated for her share of the loss. 15

In September 1950, after the beginning of the undeclared Korean War, Congress passed, over Truman’s veto, the Internal Security Act of 1950, an extreme example of legislative hysteria. A part of it known as the Emergency Detention Act of 1950, introduced and supported by Democratic liberals including Hubert H. Humphrey and Herbert H. Lehman, was explicitly modeled on the procedure used to incarcerate Japanese Americans. Its sponsors repeatedly pointed out that the procedure had been approved by the Supreme Court. The purpose of the statute, as described in Section 101, paragraph 14 was to enable:

The detention of persons who there is reasonable grounds to believe will commit or conspire with others to commit espionage is, in a time of internal security emergency, essential to the common defense and to the safety and security of the territory, the people and the Constitution of the

12. Remarks Upon Presenting a Citation to a Nisei Regiment, I PUB. PAPERS 347 (July 15, 1946).
15. DANIELS, supra note 8, at 283-89.
Section 102 defined an “Internal Security Emergency” and authorized the president to declare such an emergency and institute the procedure described in Section 103: “[T]he President, acting through the Attorney General, is hereby authorized to apprehend and by order detain each person as to whom there is reasonable grounds to believe will probably engage in, or probably will conspire to engage in, acts of espionage or sabotage...”

This was the method of Executive Order 9066, with the Attorney General substituted for the Secretary of War, and ideological enemies substituted for ethnic ones. It remained unused as a kind of sleeper law on the statute books for twenty years. The only part of the law that required action was a provision providing that standby facilities be prepared, and, making the tie to the Japanese American incarceration a little clearer, the facility at Tule Lake was designated as a standby detention camp.

After massive numbers of Chinese “volunteers” entered the Korean conflict in late 1950, many Chinese Americans feared that they might become the target of government reprisals. At the time, there was heightened activity by the Immigration and Naturalization Service against Chinese Americans who were perceived to be communists, including a confession program which offered amnesty to persons who had entered the United States illegally as so called paper sons, if they would inform on relatives, real and fictive, who were radicals. At the same time the Justice and State Departments tried to prevent Chinese nationals who had received scientific or technical training in American colleges and universities from returning to China, as opposed to Taiwan.

Further emphasizing the ending of ethnic exclusionism was the dropping of ethnic bars to naturalization, beginning with the repeal of the Chinese Exclusion Acts in 1943, which also made the Chinese eligible for naturalization and continued piecemeal until 1952, when the otherwise reactionary McCarran-Walter act made naturalization color blind while increasing ideological barriers to immigration and even prohibiting visits, including academic visits, to the United States by persons believed to be communists.

17. Id.
The long-overdue admission of Hawaii in 1959 changed the political dynamics for Japanese and other Asian Americans. The House of Representatives had voted to admit Hawaii in 1947, 1950, and 1953, but Southern Democrats in the Senate had blocked it each time. Ernest Gruening, the New Dealer who oversaw the territories and island possessions, remembered that after several Japanese Americans had testified during statehood hearings in Honolulu in 1937, Mississippi's John E. Rankin turned to him and said, "My God, if we give them folks statehood we're likely to have a Senator named Moto." From its first post-statehood election Hawaii has sent a steady progression of Asian Americans to Congress, beginning with Hiram Leong Fong in the Senate and Daniel Ken Inouye in the House. It is difficult to overestimate the positive effect that this representation had on the changing roles of Japanese and other Asian Americans in American life.

Now that we have reached what is roughly the halfway point in our story it seems appropriate to ask, "Where, in what the Library of Congress delights in calling the American Memory, were the wartime experiences of 120,000 Japanese Americans nearly a quarter of century after all of the camps which held them were closed?" One cannot say that their experience was secret or unknown. It had been described in daily wartime newspapers, and there had been books and articles by scholars and journalists.

But there was simply no place in the "Victory Culture" which dominated the postwar quarter-century for what could be called an American war crime, particularly one that claimed 120,000 victims. Many of those victims themselves wanted to hear no more about it while many of the younger Nisei and Sansei literally knew nothing about it, including some who had been born in the camps.

College students learned precious little about what happened to Japanese Americans in that time. The year I began my graduate study at UCLA in 1957, not one of the several historians teaching survey courses in American history even mentioned it in lectures and the most extensive standard textbook treatment—in a book whose lead author was the iconic Columbia historian, Richard Hofstadter—allotted it just one long sentence, in a section called "Civilian Mobilization": "Since almost no one doubted the necessity for war, there was much less intolerance than in World War I, although large numbers of Japanese-Americans were put into internment camps under circumstances that many Americans were later to judge unfair or worse." Many college texts of those years said nothing at all about the

22. Id.
Japanese American wartime ordeal, and I am not aware of any mention of it in a secondary school text before 1965.

For most of the rest of this afternoon I will try to trace and explain how the World War II mass incarceration, so little noted in the quarter-century following the war, was restored to the American Memory. Two distinct narratives have emerged. One celebrates the eventual vindication of a betrayed people and is the kind of story that audiences like to hear, while the other makes the incarceration an increasingly influential reference point for those concerned with the expansion of the American national security state and the corresponding shrinkages of individual rights. Thus the tale becomes both triumphal and cautionary. The focus of the story also changes. Before 1970 Japanese Americans were largely portrayed as the objects of history; only after that date do they regularly appear as actors affecting their own destinies.

By the beginning of the 1970s a growing sense of Asian American community consciousness was developing, nowhere stronger than in San Francisco where the engineer/historian Him Mark Lai (1925-2009), the community activist Edison Uno (1929-1976), and others created the first college courses in Asian American history at San Francisco State College, courses long shunned by more prestigious institutions. Uno, one of the first to propose what became known as redress, was instrumental in a campaign, aided by the Hawaiian congressional delegation, to repeal the Emergency Detention Act of 1950. An assistant attorney general subsequently told the Senate Judiciary Committee of the "unfounded fears" of many Americans that the Act might be used to apprehend and detain "citizens who hold unpopular beliefs," and he hoped that the repeal of this legislation "will allay" such fears.24 "This benefit outweighs any potential advantage which the Act may provide."25 The repeal, which was passed by lop-sided majorities in both Houses in September 1971 and was called the "Non-Detention Act," contained the sentence "No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress."26 It was eventually made nugatory by the 2001 Patriot Act.27

President Gerald R. Ford, in a move that surprised contemporaries, chose the thirty-fourth anniversary of Roosevelt's executive order to repeal it with a bicentennial proclamation which observed that an "honest reckoning" of history had to acknowledge "our national mistakes":28 "We

25. Id.
now know what we should have known then – not only was that evacuation wrong, but Japanese-Americans were and are loyal Americans.\textsuperscript{29}

Ford’s proclamation, little noticed in the national press, had a paradoxical effect within the Japanese American community. Conservative community leaders, who were resisting efforts by mostly younger activists who were calling for a formal apology and some kind of monetary compensation, could now argue that Ford’s action was such an apology and that attempts to get monetary compensation were unrealistic. The activists, of course, drew particular encouragement from the action by a genuinely conservative president. The redress movement was eventually embraced by most Japanese Americans. The stunning, unprecedented, and highly improbable result—Harry Kitano called it “the impossible dream”\textsuperscript{30}—that the activists eventually gained from Congress and a president, after a struggle that went on until 1988 and was not fully consummated until February 1999.

The struggle within the Japanese American community was acute and complex. Initially only a minority favored a campaign for redress. The as yet unpersuaded majority was not so much opposed on principle, although such opposition did exist, but rather disbelieved in the possibility of a good result. After two failed attempts, the activists succeeded in getting the endorsement of the ethnic group’s major organization, the Japanese American Citizens League (JACL), at its 1978 convention.\textsuperscript{31} Its chief goals were a formal apology from Congress and individual payments to victims of $25,000, thereby setting an upper limit on what individuals could even hope to receive.

Only then did the JACL committee appointed to direct the redress campaign meet with the Japanese American members of Congress to plan strategy. It received a rude awakening. The elected officials, with Senator Inouye taking the lead, said that no bill calling for compensation could possibly pass, but promised to support a bill calling for the appointment of a presidential commission to investigate what happened in 1942 and recommend any remedies that it found appropriate.\textsuperscript{32}

The committee was forced to accept the commission approach and a bill sponsored by Inouye—with more than a majority of the Senators as co-sponsors—easily passed Congress in the closing days of the Carter administration under whose aegis the Commission was appointed.\textsuperscript{33} The misnamed Commission on the Wartime Relocation and Internment of

\textsuperscript{29} Id.
\textsuperscript{31} Id. at 79-80.
\textsuperscript{32} Id. at 85.
\textsuperscript{33} Id. at 96.
Civilians (CWRIC) was a blue ribbon group whose most effective members were former Supreme Court Justice Arthur J. Goldberg and Philadelphia Judge William Marutani (1923-2004), the only Nisei on the panel who had been incarcerated briefly in the camp at Tule Lake before being released to go to college.\textsuperscript{34} It took testimony from more than 750 witnesses during twenty days of hearings in the capital and cities across the country.\textsuperscript{35}

Although one erudite but insensitive staff attorney described the hearings as “irrelevant freak shows” they were an important rite of passage as hundreds of former camp inmates, narrating their captivity after four decades of silence, often punctuated by tears, shouts, and curses and otherwise behaving in ways inappropriate for a “model minority” amazed not only journalists and other observers but also their own children and grandchildren.\textsuperscript{36} A few years later a Nisei woman, speaking to a “Nisei week” audience at the fiftieth anniversary of her wartime acceptance at a small Missouri Bible college said, “I never said anything to anybody before speaking at a Commission hearing. That loosened my tongue and I have been talking about what it was like in camp ever since.”\textsuperscript{37}

The CWRIC published its unanimous report—titled \textit{Personal Justice Denied}—in February 1983. It was a root and branch condemnation of what the government had done to Japanese Americans which concluded:

> Executive Order 9066 was not justified by military necessity, and the decisions that followed from it—detention, ending detention and ending exclusion—were not driven by analysis of military conditions . . . A grave injustice was done to American citizens and resident aliens of Japanese ancestry, who without individual review or any probative evidence against them, were excluded, removed and detained by the United States during World War II.\textsuperscript{38}

The unanimous report was issued without recommendations, which were delayed until June. One commissioner, Republican California Congressman Daniel E. Lundgren dissented from the recommendation of a monetary award to individuals.\textsuperscript{39} The other eight commissioners agreed that each survivor should receive a one-time compensatory payment of twenty thousand dollars.\textsuperscript{40} Other recommendations were for a formal apology from the Congress; a presidential pardon for all who were convicted of violating

\begin{itemize}
  \item \textsuperscript{34} \textit{Id. at} 97.
  \item \textsuperscript{35} \textit{Id. at} 99.
  \item \textsuperscript{36} \textit{Id. at} 106.
  \item \textsuperscript{37} Personally witnessed.
  \item \textsuperscript{38} \textsc{U.S. Comm'n on Wartime Relocation & Internment of Civilians, Personal Justice Denied} 18 (1997).
  \item \textsuperscript{39} \textsc{Maki et al.}, \textit{supra} note 30, at 112.
  \item \textsuperscript{40} \textit{Id. at} 113.
\end{itemize}
edicts of the Western Defense Command and that the Justice Department review all federal convictions of ethnic Japanese during the war; Congressional instructions to all agencies to be liberal in restoring any rights or benefits Japanese Americans might have lost because or stemming from their wartime mistreatment; and finally, that Congress fund an educational foundation to educate Americans about what their government had inflicted on Japanese Americans during the war.\footnote{41}

The bill that enacted the Commission’s recommendations, the Civil Liberties Act of 1988 was given the number H.R. 442,\footnote{42} the designation of the Nisei unit that fought so well in Italy and France. Meanwhile, in November 1983, five months after the CWRIC’s recommendations, a Federal District Judge in San Francisco, voided Fred Korematsu’s original conviction which had been upheld by the Supreme Court in the most potent of its three wartime Japanese American decisions.\footnote{43} This highly unusual, perhaps unique situation had come about because Peter Irons, a political scientist and attorney, had in the course of researching a book about the wartime Justice Department found evidence of blatant misconduct—deliberate suppression of evidence—in the preparation of the government brief presented to the court in 1943 and 1944.\footnote{44} Irons and a group of largely Sansei attorneys, all working \textit{pro bono} were able to reopen not only Korematsu’s case in San Francisco, but Hirabayashi’s case in Seattle, and a second curfew case involving Minoru Yasui in Portland. Only Korematsu’s case will concern us here.

The attorneys applied successfully for a writ of \textit{coram nobis}—the Latin means “the error before us”—which had been used by Alger Hiss in his unsuccessful attempt to get his 1950 perjury conviction overturned.\footnote{45} After considerable delay, the Justice Department moved to vacate the conviction, but refused to admit previous government misconduct. The district judge, Marilyn Hall Patel, a Carter appointee, ruled the government’s motion out of order, accepted Korematsu’s petition, voided the original indictment, and reversed Korematsu’s original conviction. In her opinion she warned that “\textit{Korematsu . . . stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant, [that] the government must not be used to protect government actions from close scrutiny and accountability.”\footnote{46}
The successful attorneys were delighted by the victory but were disappointed that the government failed to appeal as they had hoped that the case might again be heard by the Supreme Court and reversed there. In addition their victory was one more argument for the redress bill in Congress.47

Reagan’s Justice Department, opposing the bill, told a congressional committee: “. . . it may be the [Commission] is correct in concluding that the assumptions on which the exclusion and detention programs were based were erroneous [but] some of [its] conclusions are erroneous. These matters are best left to historical and scholarly analysis rather than debated by Congress.”48

The legislative process was painfully slow: a divided Congress, Republicans in control of the Senate and Democrats the House, the hostility of the administration, and the constant budget crises of the 1980s meant that final passage came more than five years after the Commission issued its recommendations. HR 442 initially passed the Senate by a comfortable 69-27 margin but similar House approval by a vote of 243-141 was close enough to suggest that a presidential veto would be upheld. And all the signs were that Reagan would veto it.

But on the day that a conference committee report adjusting minor differences between the House and Senate versions was to be voted on, the President sent a letter to the Democratic Speaker of the House endorsing the bill and urging its passage to end “a sad chapter in American history in a way that reaffirms America’s commitment to the preservation of liberty and justice for all.”49

At the bill’s signing ceremony the President read from a December 1945 newspaper clipping describing Joseph W. Stillwell’s award of a posthumous Distinguished Service Cross to the sister of Staff Sergeant Kazuo Masuda of the 442nd at her farm home in Orange County, CA. Ignoring what General Stilwell said the president described:

[T]he motion picture actress Louise Allbritton, a Texas girl, told how a Texas battalion had been saved by the 442nd. Other show business personalities paid tribute—Robert Young, Will Rogers, Jr. And one young actor said: “Blood that has soaked into the sands of a beach is all of one color. America stands unique in the world: the only country not founded on race but on a way, an ideal . . . The name of that young actor – I hope I pronounce this right—was Ronald Reagan.50

47. See Daniels, supra note 43, at 153-54.
Unlike many of Reagan's anecdotes, this one was largely true, but incomplete. The "young actor" was 34-year-old Air Force Captain Reagan completing his three years of military service with the Air Force film unit in Hollywood. Stilwell's mission was in response to orders from Truman after he had been alerted by Eleanor Roosevelt about the abuse returning Japanese Americans were receiving after returning to the West Coast and Reagan's lines were written by military public relations types.

Despite the low comedy at the ceremony something important had been done. A victorious nation acknowledged that it had done wrong and paid a significant price for it. Eventually some 82,000 persons received payments totaling $1.6 billion dollars. And, in an echo effect, in the days after Reagan's signing, the Canadian government concluded negotiations with a Japanese Canadian organization for similar payments, $21,000, to a smaller number of victims of its wartime policies. While human rights advocates had hoped that the principle of meaningful monetary redress for wartime actions against a nation's own citizens would be adopted elsewhere, it has had no tangible effect outside North America.

An important intangible change was that the wartime exile and incarceration, all but forgotten in the postwar decades, was firmly implanted in the American Memory. This was demonstrated with striking clarity in the aftermath of what we have come to call 9/11.

In the days following the destruction of the World Trade Center and its more than three thousand dead and throughout the nine years and counting since that horrific event countless persons have raised the haunting specter of "Arab" or "Middle Eastern" or now more often "Muslim" Americans becoming the 21st century's equivalent of Japanese Americans.

Historical analogies are always tricky propositions, particularly when one is dealing with a contemporary event. Current history is, after all, a contradiction in terms. Nevertheless there are striking similarities as well as differences between the events of 1941-5 and those of our current decade. In both periods race prejudice—augmented by religious prejudice in our time—and war hysteria were abundantly present, but at the highest levels of recent government there were repeated warnings not to make assumptions about guilt based on race, ethnicity or religion, and there was an almost total restriction of punitive actions to non-citizens. But when it came to treatment of prisoners we must remember that while the World War II Afrika Korps veterans brought to America later described their places of confinement treatment as a "goldener Käfig," a golden cage, no

51. GREG ROBINSON, A TRAGEDY OF DEMOCRACY 300 (2009).
52. Id. at 301. See generally id. (giving a comparative account of the American and Canadian incarcerations).
such praise will come from the survivors of Guantanamo or its populist
version, Abu Ghraib.

While in the aftermath of Roosevelt’s 1942 order there was almost no
public criticism of the extreme measures taken against Japanese
Americans, so many public figures and others made reference to the
Japanese American experience after 9/11 that it seems obvious that an
increased awareness of what had happened in 1942 was a factor in the
heightened sensibilities about violations of civil rights in 2001. And no one
should imagine that what has happened in the last nine years is on the same
scale. Some critics have insisted that even to mention both eras in the same
breath is inappropriate or worse.

These optimists assure us that a mass incarceration of American
citizens in concentration camps will not recur and point to the relative
mildness of the governmental reaction after 9/11 as evidence of that. But
reflection on our past suggests we ought not to be so sanguine. We must
remember that it was not just the disaster at Pearl Harbor, but the
subsequent sequence of Japanese triumphs that triggered Executive Order
9066 seventy-four days later. Shouldn’t we ask, “If terrorist attacks on
American soil had continued after September 11, would the current
government reaction have been so moderate?” And, were there to be a
recurrence of such attacks, would there not be those in our security
establishment who would argue that the moderation after 9/11 was a
contributing factor in the renewed assaults?