

Making Amends for History: Legislative Reparations for Japanese Americans and Other Minority Groups

Sarah L. Brew*

On August 9, 1988, in order "to right a grave wrong,"¹ President Ronald Reagan signed the Civil Liberties Act of 1988,² providing an apology and restitution to Japanese Americans who were interned during World War II. As President Reagan noted, this internment was "without trial and without jury. It was based solely on race."³ This article explores the history behind the Civil Liberties Act of 1988 and its implications for other groups who deserve redress and restitution for governmental violations of their civil rights. Part I provides a brief historical overview of the internment of American citizens and resident aliens of Japanese ancestry and the resulting litigation. Part II describes the circumstances and debate surrounding the recent renaissance of the reparations and redress movement. Finally, Part III argues that Native and African Americans also deserve legislative apologies and monetary reparations for governmental injustices, but that the economic, political and social manifestations of past and present discrimination render the enactment of such legislation unlikely.

I. Inequality and Internment: 1941-1948

Throughout their history in this country, American citizens of Japanese ancestry have felt the impact of racism and discrimination.⁴ Thus, when the United States declared war on Japan on December 8, 1941, the day after the bombing of Pearl Harbor, many Japanese Americans foresaw the inevitable—that they would become targets for both governmental reprisal and vigilante terrorism. Yet in the early days of 1942, Japanese Americans were

* The author will receive her J.D. from the University of Minnesota in May, 1990.

1. L.A. Times, Aug. 11, 1988, at 1, col. 1.

2. 50 U.S.C. App. § 1989.

3. L.A. Times, Aug. 11, 1988, at 16, col. 1.

4. See generally Frank Chuman, *The Bamboo People: The Law and Japanese-Americans* chs. 2-7 (1976); Bill Hosokawa, *JACL in Quest of Justice* ch. 1 (1982); Peter Irons, *Justice At War* 9-13 (1983).

largely ignored by the military as intelligence reports concluded that Japanese Americans and resident aliens, despite their large concentration on the Pacific Coast, presented no real threat to the security of the western United States.⁵ In addition, the press helped calm potential public hostility by editorializing in favor of tolerance and understanding.⁶

Within weeks, however, public opinion was dramatically reversed. As headlines announced victory after victory for the Japanese in the Pacific, the press began to fuel the pervasive anti-Asian sentiment on the West Coast. For example, accounts of actual Japanese shelling off the coast near Santa Barbara, California were followed by dozens of false reports of local Japanese Americans signaling the enemy from shore.⁷ In this atmosphere of increasing suspicion and hostility towards Japanese Americans, radio commentators and journalists, ranging from Walter Lippman to Westbrook Pegler, urged mass evacuation of all Japanese citizens and aliens.⁸

Various West Coast organizations such as American Legion posts in Washington, Oregon and California joined in the clamor to round up and imprison Japanese Americans. Federal Post 97 in Portland, Oregon demanded that all people of Japanese ancestry be relocated at least 300 miles inland.⁹ Labor Unions such as the Grower-Shipper Vegetable Association and the California Farm Bureau also agitated for the removal of the ethnic Japanese, their main economic competitors.¹⁰ Even a majority of the members of

5. Irons, *supra* note 4, at 6-7.

6. *Id.*

7. Donald Collins, *Native American Aliens* 14 (1985).

8. Although Lippman, a liberal, intellectually respected columnist, and Pegler, a right-wing commentator, both supported the same end, the means by which they justified it were quite different. Lippman's concern over constitutional rights led him to propose a system of internment that would compel all persons in a military zone to prove a good reason to be there. Under that system, he argued: "[a]ll persons are in principle treated alike." Commission on Wartime Relocation and Internment of Civilians, *Personal Justice Denied* 80 (1982) [hereinafter Report]. Pegler, on the other hand, stated:

We are so dumb and considerate of the minute constitutional rights . . . of people whom we have every reason to anticipate with preventive action! . . . The Japanese in California should be under armed guard to the last man and woman right now and to hell with *habeas corpus* until the danger is over.

Id. See also Chuman, *supra* note 4, at 148-49.

9. Morton Grodzins, *Americans Betrayed: Politics and the Japanese Evacuation* 42-43 (1949).

10. The Grower-Shipper Vegetable Association blatantly admitted the significant economic motivation behind forcing Japanese American farmers off their land and into camps:

We're charged with wanting to get rid of the Japs for selfish reasons. We might as well be honest. We do. It's a question of whether the

the Northern California Civil Liberties Union favored evacuation.¹¹

West Coast political leaders responded swiftly to these concerns.¹² Earl Warren,¹³ then Attorney General of California, testified before a Congressional committee studying evacuation and urged immediate evacuation of all Japanese Americans and resident aliens.¹⁴ Most West Coast members of Congress expressed similar views.¹⁵ For example, Representative John Z. Anderson not only favored internment, but also proposed a constitutional amendment providing that persons whose parents were ineligible for citizenship should not become citizens merely by birth in the United States.¹⁶

Despite this intense pressure to evacuate Japanese Americans, Attorney General Francis Biddle and the Justice Department opposed such drastic measures.¹⁷ Biddle and the Justice Department conceded that resident aliens should not have access to certain restricted areas, but they saw no military justification for a mass relocation of citizens and aliens of Japanese heritage.¹⁸ Their position was based upon the analysis of J. Edgar Hoover, Director of the Federal Bureau of Investigation. Hoover asserted that the political pressure for mass evacuation sprang from public hysteria and comments by the media rather than from actual military necessity.¹⁹

The Army responded by creating a "military necessity" for relocating Japanese Americans. In early 1942, Lieutenant General John L. DeWitt, Commander of West Coast defense, submitted a report to the Secretary of War, Henry L. Stimson.²⁰ In his report, DeWitt declared that Americans of Japanese descent must be evacuated and interned, as a military necessity, since their distinc-

white man lives on the Pacific Coast or the brown man. They came into this valley to work, and they stayed to take over. . . . If all the Japs were removed tomorrow, we'd never miss them in two weeks, because the white farmers can take over and produce everything the Jap grows. And we don't want them back when the war ends, either.

Report, *supra* note 8, at 69.

11. *Id.*

12. *Id.* at 69-71.

13. Warren later regretted his involvement in the internment process. See Jack Harrison Pollack, Earl Warren: The Judge Who Changed America 364 (1979).

14. Chuman, *supra* note 4, at 150-51.

15. Report, *supra* note 8, at 70; see also Grodzins, *supra* note 9, at 64-65.

16. Chuman, *supra* note 4, at 149.

17. Report, *supra* note 8, at 72-73.

18. *Id.*

19. *Id.* at 73.

20. U.S. Department of War, Final Report: Japanese Evacuation From the West Coast, 1942 (1943) [hereinafter Final Report].

tive racial characteristics predisposed them to disloyalty, sabotage and espionage.²¹ In reaching this conclusion, DeWitt ignored FBI and naval intelligence reports concluding that Japanese Americans posed no real threat to national security.²² Instead, DeWitt based his findings on his own racial prejudices²³ and the undocumented accusations of West Coast political leaders such as Earl Warren.²⁴ Nonetheless, the Report convinced Secretary Stimson that removal and relocation of Japanese Americans was urgent, and he in turn persuaded President Franklin D. Roosevelt.²⁵

On February 19, 1942, President Roosevelt signed Executive Order 9066²⁶ authorizing Stimson to designate military areas "from which any or all persons may be excluded."²⁷ After Congress ratified the order,²⁸ a three-part evacuation plan was implemented. First, persons of Japanese ancestry were excluded from all designated military areas.²⁹ Second, they were placed under curfew at home from 8:00 p.m. until 6:00 a.m.³⁰ Third, they were relocated in concentration camps,³¹ euphemistically referred to as relocation centers, for an indefinite period of confinement.³² By late 1942, 119,000 Japanese Americans were behind barbed wire in ten in-

21. *Id.* at 33-37.

22. Irons, *supra* note 4, at 280-81 (discussing FBI report); *id.* at 202-03 (discussing naval intelligence report).

23. The Report's overt racism is exemplified by statements such as the following:

In the war in which we are now engaged, racial affinities are not severed by migration. The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become "Americanized", the racial strains are undiluted. . . . That Japan is allied with Germany and Italy in this struggle is not ground for assuming that any Japanese, barred from assimilation by convention as he is, though born and raised in the United States, will not turn against this nation when the final test of loyalty comes. It, therefore, follows that along the vital Pacific Coast over 112,000 potential enemies, of Japanese extraction, are at large today.

Final Report, *supra* note 20, at 34.

24. Report, *supra* note 8, at 90.

25. Irons, *supra* note 4, at 56-63.

26. Exec. Order No. 9066, 3 C.F.R. 1092 (1968).

27. These areas included "zones around airports, dams, powerplants, pumping stations, harbor areas and military installations." Report, *supra* note 8, at 72.

28. Act of March 21, 1942, ch. 191, 56 Stat. 173 (repealed 1976).

29. Report, *supra* note 8, at 100-01.

30. *Id.* at 101.

31. For detailed descriptions of the harsh physical and psychological conditions of the camps, see Paul Bailey, *Concentration Camp, U.S.A.* (1972); Roger Daniels, *Concentration Camps USA* (1972); Anne Reeploeg Fisher, *Exile of a Race* (1965); Dillon Myer, *Uprooted Americans* (1971). See also Chuman, *supra* note 4, at 144-45; Irons, *supra* note 4, at 73-74.

32. Report, *supra* note 8, at 185.

ternment camps throughout the interior of the United States.³³ Most would remain interned for an average of thirty months.³⁴

This policy of exclusion, removal and detention was carried out without individual review, and prolonged internment continued despite the fact that no documented acts of espionage, sabotage or unloyal activity were shown to have been committed by any person of Japanese ancestry.³⁵ Congress, fully aware of the policy of removal and detention, supported it by enacting a federal statute that criminalized the violation of orders issued pursuant to Executive Order 9066.³⁶

In 1943, three cases were brought before the United States Supreme Court to test the constitutionality of the three aspects of the military exclusion plan—the curfew, the evacuation and the internment.³⁷ The first case, *Hirabayashi v. United States*,³⁸ presented the question of whether the curfew restriction unconstitutionally discriminated between citizens of Japanese ancestry and those of other ancestries in violation of the fifth amendment.³⁹ Although the Court acknowledged the hardships imposed by the exclusion order on Japanese Americans, it unanimously affirmed the validity of the restriction. The Court relied on the fact that the nation was at war and accepted the idea that residents with ancestors from the invading nation may possess dangerous “ethnic

33. The camps' locations and the number of people they housed are as follows:

1. Manzanar, California	10,000
2. Tule Lake, California	16,000
3. Poston, Arizona	20,000
4. Gila River, Arizona	15,000
5. Minidoka, Idaho	10,000
6. Heart Mountain, Wyoming	10,000
7. Granada, Colorado	8,000
8. Topaz, Utah	10,000
9. Rohrer, Arkansas	10,000
10. Jerome, Arkansas	10,000

Chuman, *supra* note 4, at 144.

34. Irons, *supra* note 4, at 74.

35. Chuman, *supra* note 4, at 147.

36. Act of Mar. 21, 1942, Pub. L. No. 503 (repealed 1976).

37. Litigation was not the only means by which Japanese Americans responded to these injustices. By March 17, 1945, the Attorney General had accepted 5,589 renunciations of citizenship from Americans of Japanese descent. All of the renunciations came from people in relocation centers—5,461 from Tule Lake, and the remaining 128 from eight other relocation centers. Most of these renunciants later had their citizenship restored, but only after a twenty-two-year legal battle. See Collins, *supra* note 7, at 101.

38. 320 U.S. 81 (1943). *Hirabayashi's* conviction was vacated in Federal District Court in 1986. 627 F. Supp. 1445 (W.D. Wash. 1986), *aff'd*, 828 F.2d 591 (9th Cir. 1987).

39. The fifth amendment provides that “No person shall be . . . deprived of life, liberty, or property, without due process of law” U.S. Const. amend. V.

affiliations.”⁴⁰

In the second case, *Korematsu v. United States*,⁴¹ the Court upheld the constitutionality of the evacuation order in a 6 to 3 decision.⁴² Relying entirely and without question on the “facts” establishing “military necessity” in DeWitt’s Final Report,⁴³ the Court deferred to military judgment and denied any implication of racial discrimination.⁴⁴

On the same day the *Korematsu* case was decided, the Court also considered a third case, *Ex Parte Endo*,⁴⁵ which tested the validity of the internment order. The Court unanimously held that the continuing internment of a citizen whose loyalty had been determined⁴⁶ was prohibited. It did so, however, on extremely narrow grounds—that the detention was not authorized by Congress

40. The court explained its reasoning as follows:

We cannot say that these facts and circumstances, considered in the particular war setting, could afford no ground for differentiating citizens of Japanese ancestry from other groups in the United States. . . .
 . . . We cannot close our eyes to the fact, demonstrated by experience, that in time of war residents having ethnic affiliations with an invading enemy may be a greater source of danger than those of a different ancestry.

320 U.S. at 101 (Stone, J.).

41. 323 U.S. 214 (1944). *Korematsu*’s 1942 conviction was vacated in 1984. 584 F. Supp. 1406 (N.D. Cal. 1984).

42. Dissenting opinions were filed by Justices Owen Roberts, 323 U.S. 214, 225; Frank Murphy, 323 U.S. 214, 233; and Robert Jackson, 323 U.S. 214, 242. All three justices argued that the evacuation order went beyond the constitutional boundary of military authority and was clearly racist.

43. Justice Frank Murphy’s dissenting opinion criticized the overt racism in the Final Report and quoted DeWitt’s remarks made before a congressional committee: “I don’t want any of them here. They are a dangerous element. . . . It makes no difference whether he is an American citizen, he is still a Japanese. . . . [W]e must worry about the Japanese all the time until he is wiped off the map.” 323 U.S. 214, 236 (Murphy, J., dissenting).

44. To cast this case into outlines of racial prejudice, without reference to the real military dangers which were presented, merely confuses the issue. *Korematsu* was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and . . . decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily.

Id. at 223.

45. 323 U.S. 283 (1944).

46. Mitsuye Endo applied to leave the Tule Lake Relocation Center. The War Relocation Authority [hereinafter WRA] reviewed her application and determined that she was a loyal, law-abiding citizen. However, after making this determination, the WRA kept her detained for an additional period so that the relocation process could be planned and orderly. *Id.* at 292-97. She then filed a writ of *habeas corpus*, alleging that she was a loyal citizen, that no charges had been brought against her, and that she was confined in the relocation center against her will. *Id.* at 294.

or by an explicit executive order.⁴⁷

The day before the Supreme Court announced its decisions in *Korematsu* and *Endo*, the War Department issued a press release announcing the revocation of the exclusion order.⁴⁸ In December of 1944, the War Relocation Authority, the civilian agency that oversaw the camps, declared that the camps would be closed and emptied by late 1945, regardless of the progress of the war.⁴⁹ At the time of this announcement only about 80,000 Japanese Americans, mostly young and elderly, remained interned.⁵⁰ During the course of the war, approximately 30,000 Japanese Americans had left the camps to join the Army, attend school or work in the surrounding areas.⁵¹ These internees were permitted to leave only after the War Relocation Authority conducted a loyalty review.⁵² Releasing the remaining internees, however, proved much more complicated and time-consuming than the original round-up. Both bureaucratic red tape and the absence of homes and businesses to which the internees could return forced many Japanese Americans to leave the camps only to be temporarily housed in hostels throughout the West Coast.⁵³

Even before their release from the internment camps, many Japanese Americans began arguing for official recognition that they were the victims of a mass injustice and demanded adequate reparations.⁵⁴ After the war, the Japanese American Citizens League (JACL) lobbied intensely and successfully for the passage of the Japanese-American Evacuation Claims Act on July 2, 1948.⁵⁵ Under this Act, internees were given until January 3, 1950 to file claims for lost property, but not for lost income or for pain and suffering. To expediate the payment of claims, the Attorney General was allowed to pay a "compromise" settlement consisting of three-fourths of the amount of a valid claim or \$2,500, whichever was less.⁵⁶ While Japanese Americans welcomed Congress' recognition of their right to compensation for a wrong, and over \$37 million was eventually distributed, these payments were woefully inadequate.⁵⁷ Many Japanese Americans did not file claims

47. *Id.* at 297-300.

48. Irons, *supra* note 4, at 345.

49. Report, *supra* note 8, at 234-36.

50. Hosokawa, *supra* note 4, at 269.

51. *Id.*

52. Report, *supra* note 8, at 190-92.

53. Hosokawa, *supra* note 4, at 270-71.

54. *Id.* at 343.

55. 50 U.S.C. App. § 1981.

56. *Id.* See also Report, *supra* note 8, at 120 and n.14.

57. Report, *supra* note 8, at 121.

because they lacked the necessary documentation of loss.⁵⁸ Those who did file received "compromise" settlements that amounted to 10 cents for every dollar lost.⁵⁹ Furthermore, these payments in no way compensated for the loss of time, dignity and liberty Japanese Americans suffered while they were imprisoned.

II. The Redress and Reparations Movement: 1978-1988

After they were released from the camps, most internees devoted their time and energy to rebuilding their lives and thus had little interest in discussing the issue of more substantial reparations.⁶⁰ Yet a few Japanese Americans continued to strive for recognition of the injustice of internment and for adequate compensation.⁶¹ As early as 1946, the JACL began discussing the reparations issue at their annual conventions.⁶² However, a cohesive reparations and redress movement did not gain force until nearly three decades later as younger Japanese Americans, who gained second-hand experience of the camps from the stories of parents and grandparents, became convinced of the need for restitution.⁶³ One branch of the movement persuaded Representative Michael Lowry (D-WA) to introduce a bill⁶⁴ providing direct monetary compensation to those who had been interned or their heirs.⁶⁵ The more conservative JACL correctly predicted that Lowry's bill was too extreme to gain broad political support. The JACL instead supported more moderate legislation establishing a commission to determine first whether any wrong was committed against Japanese Americans by Executive Order 9066 before any consideration would be given to reparations.⁶⁶ Supported by

58. Hosokawa, *supra* note 4, at 290.

59. *Id.*

60. *Id.* at 343-44.

61. Some internees sought redress through the courts. *See, e.g.,* Hohri v. U.S., 586 F. Supp. 769 (D. D.C. 1984) (applicable statute of limitations barred damage claims brought by Japanese Americans interned during World War II), *aff'd in part and rev'd in part*, 782 F.2d 227 (D.C. Cir. 1986), *reh'g denied, en banc*, 793 F.2d 304 (D.C. Cir. 1986), *vacated*, 482 U.S. 64 (1987), *on remand*, 847 F.2d 779 (D.C. Cir. 1988) (affirming District Court's dismissal of claims by internees under applicable statute of limitations), *cert. denied*, 109 S.Ct. 307 (1988); *see also* Case Comment, Sovereign Immunity: Hohri v. United States, 55 Geo. Wash. L. Rev. 1068 (1987) (authored by Glenn Harris).

62. Hosokawa, *supra* note 4, at 343.

63. *Id.*, at 344.

64. H.R. 5977, 96th Cong., 1st Sess., 125 Cong. Rec. 33966 (1979). Entitled "World War II Japanese American Human Rights Violation Redress Act," this bill directed the Justice Department to locate all internees, determine the length of their internment, and pay each \$15,000 plus \$15 per day of internment.

65. Irons, *supra* note 4, at 348.

66. *Id.*

House majority leader James Wright (D-TX)⁶⁷ and Senator Daniel Inouye (D-HI),⁶⁸ this legislation was approved by Congress on July 31, 1980.⁶⁹

The nine-person Commission on Wartime Relocation and Internment of Civilians⁷⁰ was established with the following Congressional mandate: 1) to review the facts and circumstances surrounding Executive Order 9066 and the impact of the Order on citizens and resident aliens of Japanese descent; 2) to review the directives of military officials requiring the relocation and detention of American citizens; and 3) to recommend appropriate remedies.⁷¹ To fulfill this directive, the Commission heard testimony from over 750 evacuees, government officials, public figures, historians and others. The Commission also made an extensive review of documents and records relating to the internment of Japanese American citizens.⁷²

In February of 1983, the Commission submitted a unanimous

67. H.R. 5499, 96th Cong., 1st Sess., 125 Cong. Rec. 26884 (1979).

68. S. 1647, 96th Cong., 1st Sess., 125 Cong. Rec. 22333 (1979).

69. Commission on Wartime Relocation and Internment of Civilians Act, Pub. L. No. 96-317, 94 Stat. 964 (1980).

70. Chaired by Joan Bernstein, a Washington attorney and former Carter administration official, the Commission included former Supreme Court Justice Arthur Goldberg; two former Massachusetts representatives, Senator Edward Brooke and Representative Robert Drinan; California Representative Daniel Lungren; former Washington Senator Hugh Mitchell; Arthur Flemming, chair of the U.S. Civil Rights Commission; and Ishmael Gromoff, a Russian Orthodox priest from Alaska. Hosokawa, *supra* note 4, at 352-53. The only Japanese American member was Philadelphia Judge William Marutani, who had been interned as a teenager. *Id.*

71. Congress also directed the Commission to examine the treatment of the Aleuts, who were evacuated during World War II when the Japanese attacked the Aleutian Islands. The Commission found that, unlike the internment of Japanese Americans, the evacuation of the Aleuts was not motivated by racism but by concern for the safety of the Aleuts. *See* Report, *supra* note 8, at 323-25. Still, the Commission recommended that Congress pay each surviving Aleut \$5,000 and pay for removing debris and repairing damage on the Aleutian Islands. Commission on Wartime Relocation and Internment of Civilians, Personal Justice Denied, Part 2: Recommendations 11-12 (1983) [hereinafter Recommendations]. *See also* Report, *supra* note 8, at 317-59. These recommendations were substantially enacted in the Civil Liberties Act of 1988. *See, e.g.*, 50 U.S.C. App. § 1989C-5 (authorizing payment of \$12,000 to each eligible Aleut); 50 U.S.C. App. § 1989C-6 (authorizing the Aleutian Island restitution program). In addition to individual payments to Aleuts, reparation funds may also be used for:

- (A) the benefit of elderly, disabled or seriously ill persons on the basis of special need;
- (B) the benefit of students in need of scholarship assistance;
- (C) the preservation of Aleut cultural heritage and historical records;
- (D) the improvement of community centers in affected Aleut villages; and
- (E) other purposes to improve the condition of Aleut life, as determined by the trustees.

50 U.S.C. App. § 1989C-4(c)(2).

72. Report, *supra* note 8, at 1-2.

report to Congress, detailing the history and circumstances surrounding Executive Order 9066. The report concluded that Executive Order 9066 was not based on military necessity, but rather on racism, war hysteria and the failure of political leadership.⁷³ As a result, "[a] grave personal injustice was done to the American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed and detained. . . ."⁷⁴

From these conclusions, the Commission recommended that Congress pass a legislative apology recognizing the injustice of the internment program and that the president pardon all persons convicted of either curfew violations or refusal to accept discriminatory treatment.⁷⁵ The Commission also recommended that executive agencies liberally review applications by Japanese Americans for restitution for positions, status or entitlements lost as a consequence of wartime detention.⁷⁶ The Commission further urged that Congress establish a special foundation to fund education about and research into the causes and effects of discrimination against Japanese Americans during World War II and of racism and discrimination in general.⁷⁷ Finally, and most importantly, the Commission recommended that Congress appropriate \$1.5 billion to provide per capita compensatory payments of \$20,000 to each surviving internee and to fund the research and educational activities above.⁷⁸

Shortly after the Commission released its findings and recommendations, bills were introduced in Congress to implement some or all of these recommendations.⁷⁹ These bills languished within the legislative machinery for four years before final versions of the Commission's recommendations were introduced into the Senate as S. 1009⁸⁰ and into the House of Representatives as

73. Recommendations, *supra* note 71, at 5.

74. *Id.*

75. *Id.* at 8.

76. *Id.* at 8-9.

77. *Id.* at 9.

78. *Id.* at 9-10.

79. See, e.g., H.R. 4110, 98th Cong., 1st Sess., 129 Cong. Rec. H8193 (daily ed. Oct. 6, 1983) and S. 2116, 98th Cong., 1st Sess., 129 Cong. Rec. S16606 (daily ed. Nov. 17, 1983) (conforming exactly to the Commission's recommendations); H.R. 3387, 98th Cong., 1st Sess., 129 Cong. Rec. H4329 (daily ed. June 22, 1983) (differing from the Commission's recommendations by advocating compensation for both surviving victims and heirs of deceased victims); S. 1520 98th Cong., 1st Sess., 129 Cong. Rec. S8915 (daily ed. June 22, 1983) (proposing compensation, but without specifying a formula).

80. S. 1009, 100th Cong., 1st Sess., 133 Cong. Rec. S5156 (daily ed. April 10, 1987). Sen. Spark Matsunaga (D-HI) drafted this legislation, and he, along with 70 of his colleagues, introduced it into the Senate. *Id.*

H.R. 442.⁸¹ Although these bills varied slightly, they both contained a formal apology and authorized the creation of a trust fund from which tax-free payments of \$20,000 would be made to each living internee.⁸² The fund would also finance educational programs to combat racism.⁸³

Most opponents of this legislation, such as Senator Larry Pressler (R-SD), accepted the Commission's findings but thought that in an era of increasing debt and deficits, monetary compensation was unjustified.⁸⁴ Senator Sam Nunn (D-GA) also supported an official apology, but believed that the Japanese-American Evacuation Claims Act had already provided adequate compensation to internees.⁸⁵

Other opponents, however, challenged the very basis of the

81. H.R. 442, 100th Cong., 1st Sess., 133 Cong. Rec. H156 (daily ed. Jan. 7, 1987). The number assigned to the bill was chosen to honor the 442nd regimental combat team of World War II. Comprised entirely of Japanese Americans, the unit fought in some of the fiercest campaigns in Europe and was the most decorated unit of its size in the military history of the United States. *Id.*

82. About 60,000 people, half of those interned, are eligible for payment. The right to restitution vests at the time of enactment so that the heirs of those who die after the legislation passed may receive payment. In 1989, Congress approved funding of \$1.8 million for the Office of Redress Administration (ORA) merely to begin identifying Japanese Americans for the purpose of making reparation payments. 135 Cong. Rec. H3114 (daily ed. June 23, 1989). As of April 1989, the ORA had contacted over 54,000 persons to verify their identity and the fact that they were interned during World War II. 135 Cong. Rec. H1402 (daily ed. April 26, 1989) (statement of Rep. Edwards).

83. Congress has yet to provide funding for actual reparation payments or educational programs. In fact, even the funding of reparations payments remains controversial and uncertain. Although the Commission recommended that \$1.5 billion be appropriated to finance the reparations payments and educational programs, *supra* note 78 and accompanying text, the Civil Liberties Act of 1988 authorized only \$500 million in spending on compensation for Japanese Americans for 1990. In its 1990 budget proposal, the Reagan administration slashed this amount to \$20 million. The Bush administration likewise proposed only \$20 million in its 1990 budget recommendations. In 1989, the House Appropriations Committee recommended \$250 million in reparations funding, half of the amount authorized by the Civil Liberties Act of 1988, yet over twelve times the amount proposed by the Reagan and Bush administrations. 135 Cong. Rec. H1397 (daily ed. April 26, 1989) (statement of Rep. Levine). As Rep. Mel Levine (D-CA) explained:

Unfortunately, despite the broad partisan support demonstrated for this legislation last session, the Reagan and Bush Administrations have been reluctant to fund the redress program. . . . It is urgent that the redress program be promptly and fully funded. . . . Many of the internees are now elderly, and as Congress delays funding, fewer of the internees will survive to benefit from the redress program. As a result, in this case justice delayed may truly be justice denied.

Id. at H1397-98.

Sen. Matsunaga's office projects that actual payments to internees will begin in late 1990.

84. 134 Cong. Rec. S11257 (daily ed. Aug. 9, 1988) (statement of Sen. Pressler).

85. 134 Cong. Rec. S5412-13 (daily ed. May 10, 1988) (statement of Sen. Nunn).

Commission's determinations. For instance, Senator S. I. Hayakawa (D-CA) argued that the detention of his fellow Japanese American citizens was neither a mistake nor an injustice in light of the exigency of war.⁸⁶ Instead, he contended, the internment actually benefited Japanese Americans, providing them with jobs and education and teaching them self-reliance; therefore, any apology would be inappropriate.⁸⁷ Still more opposition to the need for any apology was brought on behalf of veterans' groups, especially World War II prisoners of war,⁸⁸ who urged that until American prisoners received an apology and compensation from Japan, none should be given to American citizens of Japanese descent.⁸⁹

In response to these objections, supporters of the legislation emphasized the Commission's findings and fundamental American values. Senator Spark Matsunaga (D-HI), for example, pointed out that "compensatory remedies," not mere apologies, "are deeply rooted in American jurisprudence" therefore, as victims of false imprisonment, Japanese Americans should be awarded damages for pain and suffering, mental anguish, and perhaps even punitive damages.⁹⁰ Matsunaga further argued that while the Japanese-American Evacuation Claims Act nominally compensated intern-

86. 134 Cong. Rec. S11257-60 (daily ed. Aug. 9, 1988) (statement of Sen. Pressler quoting Sen. Hayakawa).

87. L.A. Times, Apr. 29, 1986, at 5, col. 1.

88. For instance, a former United States government employee, assigned to the Philippines during World War II, made the following complaint:

Having been a prisoner of the Japanese during World War II for three years and two months, I wrote our two California senators suggesting the U.S. pay us \$20,000 for our time of internment along with the payments to the American Japanese interned here. We received \$2 a day for our "relocation" in four camps. . . . Perhaps now that . . . Japanese are so affluent they might like to pay us.

L.A. Times, Sept. 29, 1988, at 6, col. 4.

89. Rep. Helen Bentley (R-MD) explained the reason behind her vote as follows:

[L]ast night when I arrived home, my husband, who served in the Army during the Korean War, came into the kitchen shaking his head and muttering, "If you want a fast divorce, you vote for that outrageous expenditure of our money."

. . . . [H]e had been watching C-SPAN and had heard the floor debate concerning the reparations for those persons who had been incarcerated during World War II.

"That was wartime," he shouted, "and we did not start the war. If anyone should get anything, it should be the American prisoners who were treated cruelly and frequently tortured"

134 Cong. Rec. H6309 (daily ed. Aug. 4, 1988) (statement of Rep. Bentley).

90. 134 Cong. Rec. S4270 (daily ed. April 19, 1988) (statement of Sen. Matsunaga). Sen. Matsunaga submitted as exhibits sixteen cases in which victims of false imprisonment were given substantial damage awards. *Id.* at S4271-72.

ees for their documented property losses, the United States has a moral obligation to make the victims of injury whole, an obligation that cannot be dismissed by mere budgetary considerations.⁹¹ Proponents also stressed the moral imperative of correcting a "monumental injustice" and "blatant Constitutional violations."⁹² As U.S. Representative Norman Mineta (D-CA) explained:

This bill is certainly about the specific injuries suffered by a small group of Americans. But the bill's impact reaches much deeper, into the very soul of our democracy.

....

. . . [T]his legislation touches all of us, because it touches the very core of our Nation. Does our Constitution indeed protect all of us, regardless of race or culture? Do our rights truly remain inalienable, even in times of stress; and especially in time of stress?

The passage of this legislation answers these questions with a resounding yes.⁹³

Yet opponents of the reparations and redress legislation also raised a compelling Constitutional fairness argument. As Senator Nunn argued during the floor debates:

Those are worthy goals, . . . but there are other ethnic groups in this country who have been the victims of Government misconduct in the past. In particular American Indians and American Blacks have cause for complaint against past actions of our Government. Is it fair to do this for Japanese Americans and not do the same for other Americans?⁹⁴

Opponents also pointed to the economic dimensions of this argument: compensating Japanese Americans would create a precedent resulting in the payment of millions of dollars to other groups mistreated by the United States government.⁹⁵ The Senate responded to this concern by amending S. 1009 to include an exclusion of claims section providing that the Act shall not be construed as recognizing any claims by "Mexico or any other country or any Indian tribe" other than Aleutian Indians.⁹⁶

91. *Id.* at S4271.

92. 134 Cong. Rec. H6312-13 (daily ed. Aug. 4, 1988) (statement of Rep. Mineta).

93. *Id.* at H6313.

94. Statement of Sen. Nunn, *supra* note 85, at S5413.

95. The National Governors' Association, for example, refused to endorse the reparations litigation because of its high cost in terms of both payments to Japanese Americans and possible future reparations to other minority groups. *Christian Science Monitor*, *Midwestern Edition*, Aug. 5, 1983, at 16.

96. Amendment No. 1969, 134 Cong. Rec. S4397 (daily ed. April 20, 1988). This amendment was drafted by Sen. Jesse Helms (R-NC), who unsuccessfully attempted to weaken the bill with other amendments, including one that would not allow funds for reparations to be appropriated "until the government of Japan has fairly compensated the families of the men and women who were killed as a result of the Japanese bombing of Pearl Harbor. . . ." Proposed Amendment No. 1971, 134

On September 14, 1987, the House passed H.R. 442 by a vote of 243-141,⁹⁷ and on April 11, 1988, the Senate passed S. 1009 by a 91-4 vote.⁹⁸ Although H.R. 442 lacked an exclusion of claims section, the House agreed to the Senate amendment in the conference committee,⁹⁹ and this language was incorporated into the final version of the Civil Liberties Act of 1988 that President Reagan signed into law on August 9, 1988.¹⁰⁰

III. Racism and Reparations: Can Other Minority Groups Gain Redress?

Although there is no doubt that Japanese Americans suffered a massive injustice at the hands of the United States government during World War II, the Congressional debate surrounding the Civil Liberties Act of 1988 suggests that the controversy over reparations for governmental acts of discrimination will continue. As Congress anticipated, a few members of other minority groups have followed the precedent the Civil Liberties Act of 1988 created and are demanding reparations for past mistreatment.¹⁰¹ Native and African Americans clearly deserve redress and reparations for decades of governmental discrimination and denial of their fundamental rights, and a legislative program of reparations would benefit minority groups and society as a whole. Unfortunately, the lingering economic, political and social effects of past and present discrimination against these groups make the enactment of such legislation unlikely.

Spurred by the passage of the Civil Liberties Act of 1988, Woodrow Bussey, a Cherokee Indian, recently filed suit in Federal District Court seeking reparations on behalf of his ancestors who suffered through the forced march known as the Trail of Tears.¹⁰²

Cong. Rec. S4397 (daily ed. April 20, 1988). Amendment No. 1969 was incorporated into the bill, which became the Civil Liberties Act of 1988, Pub. L. No. 100-383, (1988) (codified at 50 U.S.C. § 1989). Amendment No. 1969 appears at § 301, 102 Stat. 903, 916 (1988) (50 U.S.C. § 1989d).

97. 133 Cong. Rec. H7559 (daily ed. Sept. 17, 1987).

98. 133 Cong. Rec. S4322 (daily ed. April 20, 1988).

99. The Senate passed the Conference Committee Report on July 26, 1988, 134 Cong. Rec. S10151, S10153 (daily ed. July 27, 1988); and the House passed the Report on Aug. 4, 1988, 134 Cong. Rec. H6312, H6314 (daily ed. Aug. 4, 1988).

100. Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903 (1988) (codified at 50 U.S.C. § 1989). President Reagan, who originally opposed legislative reparations for Japanese Americans, commented as he signed the Act, "No payment can make up for those lost years. So what is important in this bill has less to do with property than honor, for here, we admit a wrong. Here we reaffirm our commitment as a nation to equal justice under the law." L.A. Times, Aug. 11, 1988, at 1, col. 1. This reasoning could easily apply to reparations for other minority groups.

101. See *infra* notes 102-03.

102. L.A. Times, Aug. 7, 1988, at 2, col. 5. In order to clear the way for west-

Likewise, U.S. Representative John Conyers (D-MI) will soon introduce legislation to acknowledge the fundamental injustices of slavery, to establish a commission to examine the impact of slavery and subsequent discrimination against African Americans, and to assess the appropriateness of reparations.¹⁰³ Both of these de-

ward-pushing settlers, the United States implemented a policy of "removing" several Native American tribes. During the early part of the 19th century, the Choctaw, Creek, Chickasaw and Seminole tribes were all removed from their ancestral homelands surrounding the Appalachian Mountains. The Cherokee, a tribe which had by the 1820s established a written constitution modeled after the United States Constitution, a newspaper, schools and several industries, resisted removal. They appealed to the United States Supreme Court, and in 1831 Chief Justice John Marshall handed down an opinion in *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 16-17 (1831), declaring that the Cherokee were a "domestic dependent nation." The following year, in *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832), the Court ruled that the federal government had exclusive jurisdiction over the Cherokee. Responding to pressure from the state of Georgia, President Andrew Jackson ordered federal troops to evict all Cherokee Indians from Georgia in 1838. Accompanied by armed troops, the Cherokee were forced to march over 800 miles to Fort Gibson, Oklahoma. Due to harsh weather and poor government planning, over 4,000 Cherokees died during the march, earning it the name "Trail of Tears." See, e.g., Thurman Wilkins, *Cherokee Tragedy: The Ridge Family and the Decimation of a People* (2d ed. 1986). For other accounts of the tragic impact of United States policy on Native Americans, see Dee Alexander Brown, *Bury My Heart at Wounded Knee* (1970); John Neihardt, *Black Elk Speaks* (1988 ed.).

103. Salim Muwakkil, *Blacks Call for Reparations to Break Shackles of the Past*, In These Times, Oct. 11-17, 1989, at 6. The draft of Rep. Conyer's bill includes the following section on findings and purposes:

(a) Findings.—The Congress finds that—

(1) approximately 4,000,000 Africans and their descendants were enslaved in [North America] from 1619 to 1865;

(2) the institution of slavery was constitutionally and statutorily sanctioned by the Government of the United States from 1789 through 1865;

(3) the slavery that flourished in the United States constituted an immoral and inhumane deprivation of Africans' life, liberty and cultural heritage, and denied them the fruits of their own labor; and

(4) sufficient inquiry has not been made into the effects of the institution of slavery on living African Americans and American society.

(b) Purpose.—the purpose of this Act is to establish a commission to—

(1) examine the institution of slavery which existed from 1619 through 1865 within the United States and the colonies that became the United States, including the extent to which the Federal and State governments constitutionally and statutorily supported the institution of slavery;

(2) examine de jure and de facto discrimination against freed slaves and their descendants from the end of the Civil War to the present;

(3) examine the lingering negative affects [sic] of the institution of slavery and the discrimination described in paragraph (2) on living African Americans and on American society;

(4) recommend appropriate ways to educate the American public of the Commission's findings;

(5) recommend appropriate remedies in consideration of the

mands for reparations possess considerable merit.

First, in terms of pure economic loss, Native and African Americans have experienced greater financial harm through governmental discrimination than Japanese Americans experienced during World War II. The internees' property losses of approximately \$400 million¹⁰⁴ are small in comparison to the value of Native American land claimed and taken by the United States, estimated at more than ninety million acres between the years of 1887 and 1930 alone.¹⁰⁵ The confiscation of Native American lands and the erosion of the Indian nations' sovereignty rights continues to this day.¹⁰⁶

Since Americans of African descent were themselves "property" for much of this country's history, they had little property to lose,¹⁰⁷ and the impact of state policy and actions on their eco-

Commission's findings on the matters described in paragraphs (1) and (2); and

(6) submit to the Congress the results of such examination, together with such recommendations.

Conyers, John. Discussion Draft, May 19, 1989, at 3-4 (on file in the *Law and Inequality* office).

In addition, William Owens, a Massachusetts state senator introduced a bill in December of 1988 that would form a commission to negotiate reparation payments by the state to "people of African descent." Muwakkil, *supra*, at 6. In April of 1989, the African-American Summit passed a resolution calling for reparations, and the Detroit City Council unanimously passed legislation urging Congress to establish a \$40 billion education fund for the descendants of slaves. *Race: The Price of Penance*, Time, May 8, 1989, at 33.

104. Report, *supra* note 8, at 120.

105. Derrick Bell, *Race, Racism and American Law* 68 (1974). However, the monetary value of confiscated tribal lands pales in comparison to the human costs that accompanied the conquest and colonization of North America. "Policies of the Spanish, French, English, and the United States may have reduced the population of the new world by as many as twenty-five million. Genocide is the modern word for a long historic experience which is no stranger to the American continent." Rennard Strickland, *Genocide-At-Law: An Historic and Contemporary View of the Native American Experience*, 34 U. Kan. L. Rev. 713, 714 (1986).

106. For instance, in 1987 the federal government moved more than 12,000 Navajo Indians from land they had occupied for generations so that private developers could build a multi-million dollar real estate development. Andy Zipser & Jill Morrison, *Developers Made Millions on Quiet Land Grab*, The Business Journal—Phoenix and the Valley of the Sun, Oct. 19, 1987, § 1, at 1. The Navajos are being relocated to towns bordering their reservation such as Flagstaff, Winslow and Page and to "New Lands," land where the ground water has been poisoned by radioactive wastes. *Id.*

107. Richard Burkey, *Racial Discrimination and Public Policy in the United States* 16, 20 (1971). In the South, slaves could not own any property except at the will of their master. Even if their masters consented, slaves were prohibited by law from owning cattle, horses, hogs, mules, sheep, books, or weapons. They could not buy liquor, receive gifts, make a will, or inherit anything. *Id.* at 16. In New York and Oregon free Blacks were statutorily prohibited from owning land. In New Jersey free Blacks could not own property of any kind until after the Revolutionary War. *Id.* at 20.

conomic status is much more difficult to quantify. Yet statistical techniques, based on median black family income, show that black families are economically penalized because of their race.¹⁰⁸ These statistics indicate that slavery, disenfranchisement and segregation imposed by, or with the help of, the federal government have shaped the socio-economic position of black Americans today.¹⁰⁹ As Justice Thurgood Marshall explained, "the relationship between [unemployment and poverty statistics] and the history of unequal treatment afforded the Negro cannot be denied. At every point from birth to death the impact of the past is reflected in the still disfavored position of the Negro."¹¹⁰

Second, governmental violation of the human and civil rights of Native and African Americans has spanned the course of American history, subjecting them to discrimination much earlier and much longer than Japanese Americans were. For example, while Japanese Americans were interned from 1942 to 1945, African Americans were legally disenfranchised from before the American Revolution¹¹¹ until the passage of the fifteenth amendment in 1865.¹¹² Furthermore, through the use of poll taxes and literacy tests, African Americans were effectively disenfranchised in southern states¹¹³ until the passage of the Voting Rights Act of 1965.¹¹⁴ In the words of Representative Major Owens (D-NY), "After sus-

108. In 1973, the median income for a black family was 58% of that for whites, resulting in an average of \$1,430 less in earnings per year than for whites. Charles Bullock, III & Harrell Rodgers, Jr., *Racial Equality in America: In Search of an Unfulfilled Goal* 7 (1975). The statistics have become even bleaker in recent years. In 1987 the median income for black Americans was 57.1% of that for white Americans, a figure lower than any year of the 1970s. The portion of blacks living in poverty, 33%, was three times the rate for whites and was higher than in 1969. Morton Kondracke, *The Two Black Americas*, *The New Republic*, Feb. 6, 1989, at 17-18.

109. Bullock and Rodgers, *supra* note 108, at 7-8. A direct link also exists between past racial discrimination and present minority housing conditions, education, and physical and psychological health. *Id.*

110. *Regents of the University of California v. Bakke*, 438 U.S. 265, 396 (Marshall, J., separate opinion).

111. Burkey, *supra* note 107, at 17-20. In the South, slaves were not citizens and could not vote. Free Blacks could vote, but could not testify in court against a white person. *Id.* at 17. In the North, free Blacks were not citizens and could not vote. In New York only, Blacks could vote, but they had to own at least \$250 worth of property. *Id.* at 19-20.

112. The fifteenth amendment provides that: "The right of citizens of the United States to vote shall not be abridged by the United States on account of race, color, or previous condition of servitude." U.S. Const. amend. XV, § 1.

113. Burkey, *supra* note 107, at 23.

114. 42 U.S.C. § 1971. The Act outlawed "tests and devices" prerequisite to voting, such as literacy tests. The Voting Rights Act has successfully increased minority registration, voting and holding office. *See, e.g.*, Harvard Sitkoff, *The Struggle for Black Equality 1954-1980* 229-30 (1981); Kenneth Thompson, *The Voting Rights Act and Black Electoral Participation* (1982).

taining unprecedented damages as a people under 200 years of criminal enslavement, and an additional 100 years of governmental abuse and neglect, we need and deserve massive reparations."¹¹⁵

Native Americans have likewise been systematically disenfranchised for much of this country's history. Although the fourteenth amendment declared that "All persons, born or naturalized in the United States . . . are citizens of the United States. . .,"¹¹⁶ the Supreme Court held that this language did not apply to Native Americans who were born as members of an Indian tribe.¹¹⁷ Thus, Native Americans were not considered United States citizens and were not given the right to vote until the Dawes Act was passed in 1887.¹¹⁸ As one commentator notes, before compensating Japanese Americans, "settling [these] older scores should come first."¹¹⁹

Third, reparations for Native and African Americans would be no more difficult to implement than compensation to Japanese Americans. As in the case of the internees, the amount of compensation would not reflect actual economic loss or mental anguish, a figure impossible to calculate. Instead, the payments would serve as a symbolic gesture, demonstrating the country's commitment to "set American history straight."¹²⁰ Critics of reparations for minority groups contend that locating and distributing relief to individual victims of racism and discrimination would be impossible.¹²¹ However, these critics fail to recognize that past and present discrimination are inseparable. They mistakenly assume that some members of minority groups have escaped the impact of nearly three centuries of American racism.¹²² Furthermore, these critics seem oblivious to the fact that racism and bigotry stem from assumptions made about groups, not individuals.¹²³ "Thus, the phenomenon of discrimination has made the group a morally relevant unit and an appropriate subject for compensation."¹²⁴

115. 135 Cong. Rec. E625 (daily ed. March 2, 1989) (statement of Rep. Owens).

116. U.S. Const. amend. XIV, § 1.

117. *Elk v. Wilkins*, 112 U.S. 94 (1884).

118. Dawes Act, ch. 119, 24 Stat. 388-91, Feb. 8, 1887.

119. Robert Gordon, *Casualties of History: Making Amends to Japanese-Americans*, The New Republic, Aug. 15, 1988, at 11.

120. L.A. Times, Mar. 27, 1988, at 5, col. 1 (editorial on reparations to Japanese Americans).

121. See, e.g., *Time supra* note 103, at 33; Muwakkil, *supra* note 103, at 6.

122. See Myrl Duncan, *The Future of Affirmative Action: A Jurisprudential/Legal Critique*, 17 Harv. C.R.-C.L. L. Rev. 503, 510-13 (1982).

123. Joel Friedman, *Redefining Equality, Discrimination, and Affirmative Action Under Title VII: The Access Principle*, 65 Tex. L. Rev. 41, 82-85 (1986) (discussing the administrative convenience of using race as a basis for compensating victims of discrimination, rather than making individual determinations of victimization). See also Duncan, *supra* note 122.

124. Friedman, *supra* note 123, at 84.

Accordingly, Congress should authorize reparation payments to African and Native Americans as groups, rather than individuals. Reparation funds could be distributed to Native and African American community groups, scholarship funds, research projects, libraries, museums, arts and cultural programs, and similar endeavors. The Commission on Wartime Relocation and Internment of Civilians strongly supported this approach to restitution as it related to Japanese American redress:

The Commissioners all believe a fund for educational and humanitarian purposes related to the wartime events is appropriate, and all agree that no fund would be sufficient to make whole again the lives damaged by the exclusion and detention. The Commissioners agree that such a fund appropriately addresses an injustice suffered by an entire ethnic group, as distinguished from individual deprivations.¹²⁵

Moreover, group reparations for Native and African Americans are especially appropriate as this country enters the 1990s. Many Americans born after the 1950s are shockingly ignorant of the civil rights movement and know even less of the conditions that precipitated that era of our nation's history.¹²⁶ A national museum housing artifacts of racism and segregation, such as "whites only" signs, would help ensure that this shameful part of our past is not forgotten.¹²⁷ In addition, it would expose the historical sources of today's racial discord, perhaps allowing Americans to empathize with the issues and problems presently facing minority groups.

Reparation funds not only could preserve the lessons of the past, but also could address social issues confronting minority groups today. For instance, too few people are aware of the serious impact of Fetal Alcohol Syndrome on the Native American population.¹²⁸ A national campaign to promote public understand-

125. Recommendations, *supra* note 71, at 9.

126. See Jonathan Alter, *Out of Sight, Out of Mind: Forgetting the Civil Rights Movement*, Newsweek, Jan. 23, 1989, at 52. Alter explains, "[T]he history of the civil-rights movement—so central to American history itself—remains hazy in the public consciousness. Schools, the news media and Hollywood have all fallen short in bringing it to life. And while [Martin Luther King Jr.'s] birthday has been institutionalized, his memory is in danger of dimming for the generation born after his death." *Id.*

127. In the past few years, the Smithsonian Institute has presented several exhibits focusing on the experience of minority groups in America, including exhibits on the internment of Japanese Americans, the migration of African Americans to northern cities in the late nineteenth and early twentieth century, and the contributions of African American inventors, who were often unrecognized and uncompensated.

128. For a personal account of the tragedy caused by Fetal Alcohol Syndrome (FAS), see Michael Dorris, *The Broken Cord* (1989). Dorris argues that FAS "is the most destructive thing to hit Indians since the European diseases five hundred

ing of Fetal Alcohol Syndrome, funded with reparation money, would help combat this deadly problem faced not only by Native Americans, but by all Americans.

Thus, a reparations program based upon group relief would be a step towards making amends for our past, as well as a means to improve the present status of traditionally disadvantaged groups. Additionally, distributing reparation funds to cultural and educational programs will ensure that future generations will not forget and, even more important, will not perpetuate the American legacy of discrimination. Despite these clear benefits, such legislation will most likely never be realized due to the very effects of racism and stereotypes that minority groups are attempting to overcome.

First, cohesive redress and reparations movements are only beginning to emerge from the Native and African American populations.¹²⁹ Individual Japanese Americans and Japanese American organizations such as the JACL lobbied Congress for reparations for years, investing inordinate amounts of time and money.¹³⁰ They drafted the legislation, planned the strategy and mustered political and public support.¹³¹ However, Native and African American individuals and organizations cannot engage in comparable tactics because their resources must be allocated between a multitude of high-priority issues. For instance, Reagan-era cutbacks in social programs such as Aid to Families with Dependent Children and Medicaid have had a disproportionately detrimental effect on traditionally disadvantaged minority groups.¹³² As a result, Native and African American groups have had to devote their resources to fighting cutbacks and helping those who are no longer able to obtain adequate food, clothing, housing or health care.¹³³ African and Native Americans also have had to spend time and money protecting the civil rights advancements they made during the 1960s and 1970s.¹³⁴ In 1982, for example, minority groups had to rally to prevent the Reagan administration from undermining the Voting Rights Act of 1965.¹³⁵ Thus, because Native and Afri-

years ago." *Id.* at 158. For a thorough, scientific discussion of the causes and symptoms of FAS, see Ernest Abel, *Fetal Alcohol Syndrome and Fetal Alcohol Effects* (1984).

129. *Jet*, Aug. 22, 1988, at 9; Muwakkil, *supra* note 103, at 6.

130. Hosokawa, *supra* note 4, at 343-59.

131. *Jet*, *supra* note 129, at 9.

132. Alphonso Pinkney, *The Myth of Black Progress* 173-76 (1984).

133. *See id.*

134. *See id.* at 167-79.

135. *See Rhoda Lois Blumberg, Civil Rights: The 1960s Freedom Struggle* 166 (1984); Pinkney, *supra* note 132, at 172-73.

can American organizations must divide their resources between a variety of pressing issues, they have little time and capital left to devote to a redress and reparations movement.

Second, redress for Japanese Americans was publicly and politically popular because they are a "model minority."¹³⁶ As a group, they are affluent, highly-educated and not perceived, despite their push for reparations, as agitators or militant opponents of the status quo.¹³⁷ In fact, the Japanese American experience is often cited as proof that the American dream of economic success through hard work and self-help is still obtainable.¹³⁸ Accordingly, most Americans sympathized with the Japanese American redress movement and, consequently, politicians were receptive to reparations legislation.¹³⁹

In contrast, Native and African Americans are haunted by racist stereotypes and bigoted generalizations. For example, according to several studies, African Americans are misperceived as "superstitious," "lazy," "ignorant."¹⁴⁰ In addition, Native and African Americans have been unable to achieve the economic success of Japanese Americans.¹⁴¹ The progress they have made on the civil rights front has been hard-fought, earning them, unlike Japanese Americans, a reputation of militancy.¹⁴² As a result, the public, and therefore politicians, probably will not support redress legislation for African and Native Americans with the same enthusiasm they demonstrated for reparations to "model" Japanese Americans.

136. Report, *supra* note 8, at 295.

137. *Id.* In contrast to the economic profile of Black Americans, *supra* note 108, the median family income for Japanese Americans is 32 percent higher than the national average. Thomas Sowell, *Ethnic America* 177 (1981).

The economic achievements of Japanese Americans today are due primarily to (1) their working more—a higher than average percentage are in the labor force, a lower than average percentage are unemployed, and a higher proportion of Japanese-American families have multiple income earners—and to (2) higher than average levels of education, combined with a concentration in higher paying scientific and applied fields.

Id. (footnotes omitted).

138. Anthony Gary Dworkin & Rosalind Dworkin, *The Minority Report: An Introduction to Racial, Ethnic, & Gender Relations* 263 (2d ed. 1982).

139. See Hosokawa, *supra* note 4, at 358.

140. Gordon Allport, *The Nature of Prejudice* 198 (1954). In a 1989 poll, 43 percent of white Americans said that economic differences between black and white Americans occur mainly because Blacks "don't have the motivation or willpower to pull themselves out of poverty." Richard Morin & Dan Balz, *There's Still Room for Improvement in Racial Relations*, *Washington Post National Weekly Edition*, Oct. 30-Nov. 5, 1989, at 37.

141. See *supra* notes 108-109.

142. See Allport, *supra* note 140, at 155 (discussing public perceptions of black militancy and violence).

Finally, the fact that Native and African Americans have no recent, universal symbol of injustice, such as internment, inhibits their chances for legislative redress. Ironically, the sheer scope and magnitude of injustices towards African and Native Americans deprives them of one single, distinct event behind which they can unite and to which Americans of European descent can respond.¹⁴³ For example, while almost every black American has felt the impact of past discriminatory policies, not all black Americans experienced Jim Crow laws in the South during the 1950s.¹⁴⁴ Native Americans also remain subject to the lingering effects of past racist actions, yet not all Native American children were "assimilated" by being shipped off to boarding school.¹⁴⁵ Moreover, lack of such a symbol prevents African and Native Americans from gaining broad public support.¹⁴⁶ Unlike Japanese Americans, they have no concrete symbol on which to focus the public spotlight. The media gave extensive coverage to the Committee's redress hearings, dramatically reminding Americans of the injustice of the internment camps;¹⁴⁷ yet no recent event has encouraged comparable media attention to the horrors of slavery or the tragic removal of Native Americans from their ancestral homelands.

IV. Conclusion

Over forty years after they were unfairly imprisoned during World War II, Japanese Americans finally received justice in the form of a legislative apology and monetary reparations. Though there is no doubt that Japanese Americans deserve this compensation for the wartime abridgement of their civil rights, a great irony remains: other minority groups, equally deserving of redress for governmental violations of their civil rights, probably will never be offered an apology or receive monetary reparations due to the very discrimination for which they should be compensated. Despite the many obstacles, Native Americans, African Americans, and other minority groups should strive for recognition of and compensation

143. See Roger Cobb & Charles Elder, *Participation in American Politics: The Dynamics of Agenda-Building* 131-32 (1983). According to Cobb and Elder, "symbol weight" is important not only in gaining extensive support from members within a certain group, but also in gaining outside support. The symbol must be appropriate for both of these elements.

144. In the South, segregation was implemented through Jim Crow laws requiring that Blacks and Whites use separate hospitals, schools, cemeteries, and public accommodations. Sitkoff, *supra* note 114, at 5.

145. See James Olson & Raymond Wilson, *Native Americans in the Twentieth Century* 60-62, 111-12 (1984).

146. See Cobb & Elder, *supra* note 143, at 131-32.

147. Hosokawa, *supra* note 4, at 358.

for past governmental injustices. Such compensation need not be given on an individual basis, but instead can be given to minority educational and cultural programs. After all, it is not so much the individual recipient or the amount of reparations that is significant—what really matters is that, after all these years, we make amends for our nation's extensive history of governmental discrimination.

