

# REDRESS IN CANADA AND ITS HUMAN RIGHTS LEGACY

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## I. INTRODUCTION

Eric Yamamoto's book *Healing the Persisting Wounds of Historic Injustice: United States, South Korea and the Jeju 4.3 Tragedy*<sup>1</sup> is valuable not only for the study it provides of the tragic events in South Korea and its aftermath, but also for the insight it offers into the larger questions at play: How do we come to terms with historic injustice? How to achieve reconciliation? Can we ever heal the resulting wounds? A related question, if a less obvious one, is this: what are the advantages for leaders of a society of engaging in such a process, and how can it benefit the non-members of the afflicted group? A classic precedent for such reconciliation, as Eric Yamamoto himself and others have recognized, is the Japanese American and Japanese Canadian redress process.<sup>2</sup> However, the evolution of the respective redress movements in the two countries and their legacies were quite different. In fact, as demonstrated by the debate over granting equal marriage rights to same-sex couples, it is the Japanese Canadian experience that exemplifies most clearly the value of examining historic injustice as a means to increase protections for human rights generally.<sup>3</sup>

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1. ERIC K. YAMAMOTO, *HEALING THE PERSISTING WOUNDS OF HISTORIC INJUSTICE: UNITED STATES, SOUTH KOREA AND THE JEJU 4.3 TRAGEDY* (2021).

2. Eric K. Yamamoto, *Beyond Redress: Japanese Americans' Unfinished Business*, 7 *ASIAN L.J.* 131 (2000).

3. Portions of the following three paragraphs are drawn from GREG ROBINSON, *THE UNSUNG GREAT: STORIES OF EXTRAORDINARY JAPANESE AMERICANS, 181-85* (2020) (exploring the paths of redress in the United States and Canada at greater length).

## II. THE REDRESS MOVEMENTS

On August 10, 1988, following almost two decades of political organizing, lawsuits, and lobbying by Japanese Americans and their supporters for reparations (in what they dubbed the Campaign for Redress), the Civil Liberties Act of 1988 was enacted by the U.S. Congress and signed by President Ronald Reagan. It granted an official apology and a \$20,000 tax-free payment to surviving members of the group of 120,000 Japanese Americans who had been forcibly removed from the West Coast without charge under Executive Order 9066 and confined in government camps during World War II. Six weeks later, following a settlement brokered by the National Association of Japanese Canadians (NAJC) and the government of Prime Minister Brian Mulroney, Canada's Parliament approved a redress package. Under this legislation, reparations were granted to survivors of the 22,000 Japanese Canadians who had been removed from their homes during World War II under Order-in-Council 1486 and who had thereafter been stripped of their property by the Canadian government and forced to pay for their own confinement. The Mulroney government offered victims an official apology and, in recognition of the greater burden of injustice that Japanese Canadians faced, a redress payment of \$21,000, which was also paid out more rapidly, as a deliberate aspect of the policy.<sup>4</sup>

Superficially, the redress struggles in the two countries closely resembled each other, and it goes without saying that the Japanese Canadian campaign was heavily influenced by its counterpart south of the border. Certainly, had the U.S. Congress not acted in the summer of 1988, it is likely the final settlement for Japanese Canadian redress would have been granted much later—if at all.<sup>5</sup> Nonetheless, the evolution of redress was quite different in the two countries. At the cost of rigidly oversimplifying, we can note that in the United States, the movement for reparations started with rather universalistic goals and motivations and grew progressively narrower as the granting of redress became a realistic possibility. Conversely, north of the border, what started as a fairly narrow movement took on wider popularity as time went on. Indeed, it was in the years following the actual enactment of the redress package that the symbolic power of reparations became most evident.

What became known as the Redress Movement began in the United States in the early 1970s as a grassroots moment encompassing groups with

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4. On the campaigns for redress in the two countries, see GREG ROBINSON, *A TRAGEDY OF DEMOCRACY: JAPANESE CONFINEMENT IN NORTH AMERICA* 297-301 (2009); KAREN M. INOUE, *THE LONG AFTERLIFE OF NIKKEI WARTIME INCARCERATION* 91-118 (2016).

5. See ROBINSON, *supra* note 4, at 301.

widely differing points of view.<sup>6</sup> The National Council for Japanese American Redress, led by William Hohri, was one of the first groups to emerge. Hohri favored a class action lawsuit for reparations.<sup>7</sup> The leaders of the Japanese American Citizens League (JACL), the largest Japanese American organization, were slower to act. Although activist Edison Uno successfully campaigned within the JACL during the mid-1970s for resolutions endorsing reparations,<sup>8</sup> it was not until the election of Clifford Uyeda as its national president in 1978 that redress became a primary goal of the organization.<sup>9</sup> The JACL and its congressional allies pushed for the creation of a historical fact-finding committee to report on the matter, despite opposition from other groups who claimed that the relevant facts were already well established. The U.S. Commission on Wartime Relocation and Internment of Civilians (CWRIC) was established by act of Congress in 1980.<sup>10</sup> The CWRIC's report, *Personal Justice Denied*, and its official recommendation for payment of reparations were crucial steps in the redress process.<sup>11</sup>

Meanwhile, a team of Japanese American lawyers, including such figures as Dale Minami, Kathryn Banai, Peggy Nagae, and Eric Yamamoto, launched a legal campaign to challenge the U.S. Supreme Court's decisions upholding the constitutionality of wartime removal. Using material uncovered by lawyer-historian Peter Irons and activist-researcher Aiko Herzig-Yoshinaga that demonstrated official concealment and manipulation of relevant evidence in the wartime trials, they presented a series of petitions for the rarely-used writ of *coram nobis* as a means to overturn the convictions

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6. See Allison Shephard, "*Pride and Shame: The Museum Exhibit that Helped Launch the Japanese American Redress Movement*," SEATTLE CIV. RTS. & LAB. HIST. PROJECT, WASH. UNIV. (2006), <https://depts.washington.edu/civilr/prideandshame.htm> [<https://perma.cc/8EJR-NANL>].

7. See WILLIAM MINORU HOHRI, REPAIRING AMERICA: AN ACCOUNT OF THE MOVEMENT FOR JAPANESE-AMERICAN REDRESS 203 (1988). See generally LESLIE T. HATAMIYA, RIGHTING A WRONG: JAPANESE AMERICANS AND THE PASSAGE OF THE CIVIL LIBERTIES ACT OF 1988 (1993) (expanding on redress); MITCHELL T. MAKI ET AL., ACHIEVING THE IMPOSSIBLE DREAM: HOW JAPANESE AMERICANS OBTAINED REDRESS (1999) (discussing how Japanese American concentration camp survivors organized, gathered political support, and succeeded in obtaining a written apology from the president of the United States and monetary compensation under the 1988 Civil Liberties Act).

8. See ROBINSON, *supra* note 3, at 293.

9. Greg Robinson, *Clifford Uyeda and Ben Kuroki: Nisei Conservatives in the 1960s*, DISCOVER NIKKEI (Sept. 24, 2018), <http://www.discovernikkei.org/en/journal/2018/9/24/nisei-conservatives/> [<https://perma.cc/K5AC-5ED8>].

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

11. COMM'N ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED: REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS (1997) [hereinafter PERSONAL JUSTICE DENIED].

of Gordon Hirabayashi, Fred Korematsu, and Minoru Yasui for violating the government's wartime orders. Following a series of federal court hearings, the group of attorneys succeeded in persuading the courts to overturn the convictions of Korematsu and Hirabayashi (Yasui died before his case could be resolved).<sup>12</sup>

The initial organizing period of the campaign for reparations took place in the wake of the civil rights and Black Power movements, and those most heavily responsible for pushing the idea of reparations for Japanese Americans were loosely associated with a larger multigroup movement against white supremacy. In keeping with their overall vision, activists frequently referred to their wartime confinement as an episode in a larger history of racial discrimination, especially that against Black Americans. Meanwhile, the movement's chief outside supporters during these years were members of the African American political class in California, notably black elected leaders such as Los Angeles Mayor Tom Bradley and representatives Augustus Hawkins, Yvonne Braithwaite Burke, and especially Mervyn M. Dymally, who introduced in Congress in 1982 the first version of the redress legislation that was ultimately enacted.<sup>13</sup>

Perhaps surprisingly, the most vehement congressional opponent of redress for Japanese Americans during this period was S.I. Hayakawa, a Canadian-born Nisei who was elected U.S. Senator from California in 1976. Hayakawa asserted that the affluent Japanese community did not require reparations for their wartime banishment, as it had helped its members escape West Coast ghettos and enter the mainstream of society.<sup>14</sup>

During the 1980s, however, the Japanese American Redress movement shifted "from protest to politics" (to borrow the phrase of the late Bayard Rustin).<sup>15</sup> In the hands of Nisei members of Congress, notably Senator Spark Masayuki Matsunaga of Hawaii and Representative Norman Mineta of

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12. See generally PETER IRONS, JUSTICE AT WAR: THE STORY OF THE JAPANESE-AMERICAN INTERNMENT CASES (1983) (discussing the redress struggle in the courts and the *coram nobis* cases); PETER IRONS ET AL., JUSTICE DELAYED: THE RECORD OF THE JAPANESE-AMERICAN INTERNMENT CASES (Peter Irons ed., 1989) (describing the cases of Fred Korematsu, Gordon Hirabayashi, and Minoru Yasui and their legal battle to clear their records).

13. On the involvement of African Americans in the Japanese American redress movement, and the tensions between the two groups over priority of reparations, see Greg Robinson, *The Paradox of Reparations: Japanese Americans and African Americans at the Crossroads of Alliance and Conflict*, in MINORITY RELATIONS: INTERGROUP CONFLICT AND COOPERATION 159, 170-72, 181-82 (Greg Robinson & Robert S. Chang eds., 2016) [hereinafter MINORITY RELATIONS].

14. See GERALD W. HASLAM WITH JANICE E. HASLAM, IN THOUGHT AND ACTION: THE ENIGMATIC LIFE OF S. I. HAYAKAWA 337-38 (2011).

15. On the civil rights movement that evolved from protest to politics, see BAYARD RUSTIN, TIME ON TWO CROSSES: THE COLLECTED WRITINGS OF BAYARD RUSTIN 116-29 (Devon W. Carbado & Donald Weise eds., 2d ed. 2015).

California, whom seasoned JACL lobbyists seconded, the push for redress became more narrowly focused on the passage of special legislation.<sup>16</sup> In the process, it lost much of its initial universalistic quality. Rather than connecting their experience with the plight of other non-white groups facing historical racism, redress supporters pivoted to underlining the exceptional nature of the wartime “internment” and shifting the demand for reparations (which the activists redubbed “redress” to soften its implications) to encompass only surviving individuals, and not the families of deceased inmates. The principal reason for this was to ease fears by conservative legislators that any posthumous act of reparative justice would set a precedent for demands by African American groups for slavery reparations. In the same way, redress advocates underlined the wartime loyalty and patriotism of Japanese Americans by reference to Nisei soldiers, and the Civil Liberties Bill was deliberately registered as H.R. 442 in tribute to the 442nd Regimental Combat Team, the segregated Nisei military unit that was renowned for its wartime combat exploits in Europe.<sup>17</sup>

In Canada, by contrast, the reparations movement started small and grew more universalistic over time. In the generation following 1949, Japanese Canadians were finally granted voting rights nationwide and were permitted to return to their former West Coast home region. They generally devoted themselves to recovering from the massive financial losses they experienced due to the confiscation of their properties and to the psychological impact of the war: getting an education, working, and raising families.<sup>18</sup> Japanese Canadians sponsored a handful of newspapers and formed the National Association of Japanese Canadians (NAJC) and other political organizations to lobby for political reform. Unlike in the United States, where the JACL lobbied for civil rights legislation and gained a national platform in support of racial equality for all (and where Nisei were elected to Congress), Canadian groups such as the NAJC operated on a rather small, decentralized basis.<sup>19</sup> They did not form strong alliances with other racialized minorities,

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16. *See generally* Memorandum from John Tateishi, Chairman, JACL National Committee for Redress (Febr. 8, 1979) (on file with author) (providing a report on the meeting between JACL representatives and Nikkei members of the United States Senate and House of Representatives held on February 1, 1979, in Washington, D.C.).

17. *See* Robinson, *supra* note 13, at 169, 177.

18. On the financial and psychological burdens of wartime confinement, see generally ANN GOMER SUNAHARA, *THE POLITICS OF RACISM: THE UPROOTING OF JAPANESE CANADIANS DURING THE SECOND WORLD WAR* (1981); *LANDSCAPES OF INJUSTICE: A NEW PERSPECTIVE ON THE INTERNMENT AND DISPOSSESSION OF JAPANESE CANADIANS* (Jordan Stanger-Ross ed., 2020) (discussing the actions of the Canadian government towards Japanese Canadians in 1942).

19. *See* Michela Moscufo, ‘*Because We Know it is Possible*’: *Japanese Americans Join Fight for Reparations*, NBC NEWS (Jan. 13, 2022, 9:57 AM), <https://www.nbcnews.com/news/nbcblk/-know-possible-japanese-americans-join-fight-reparations-rcna11256> [<https://perma.cc/K9Q9->

though in select cases local individuals and communities brokered coalitions with members of diverse ethnic and racial groups. There were no Japanese Canadian Members of Parliament in Canada until the election of Conservative Bev Oda in 2004.<sup>20</sup>

The postwar disappearance of Japanese American confinement as a subject of public discourse in the United States was closely paralleled in Canada, where the cases of Japanese Canadians remained obscured through the postwar years. In a 1961 television interview, former Prime Minister Louis St-Laurent (who as Justice Minister in the postwar years had spearheaded efforts to deport Japanese Canadians involuntarily) defended the removal decision on racial grounds, stating that “[b]lood is thicker than water.”<sup>21</sup> In 1964, another Prime Minister, Lester Pearson, drew new attention to the historical wartime injustice when he delivered a speech at the opening of the Japanese Canadian Cultural Centre in Toronto and publicly referred to removal as “a black mark” in the nation’s history.<sup>22</sup> By the beginning of the 1970s, as Canada reopened its doors to Asian immigration on an equal basis and the government instituted a policy of official multiculturalism and ethnic affirmation, Japanese Canadians began to organize remembrances of the wartime events and educational campaigns on the model of those taking place south of the border.<sup>23</sup> The new spirit of affirmation was dramatized by the publication within a short period of time of Ken Adachi’s landmark group history, *The Enemy That Never Was* in 1976;<sup>24</sup> the touring exhibition and trilingual photography book, *A Dream of*

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7EQP]. See generally KEN ADACHI, *THE ENEMY THAT NEVER WAS: A HISTORY OF THE JAPANESE CANADIANS* (1976) (detailing the postwar history of Japanese Canadians).

20. *Ontario’s Japanese History: Bev Oda, Member of Parliament*, MULTICULTURAL ONTARIO COLLECTION, <https://vitacollections.ca/multiculturalontario/480/exhibit/10> [https://perma.cc/AD2S-USWA].

21. Greg Robinson, *Internment of Japanese Canadians*, CANADIAN ENCYCLOPEDIA (Feb. 15, 2017), <http://www.thecanadianencyclopedia.ca/en/article/internment-of-japanese-canadians> [https://perma.cc/MXV5-E8FS].

22. *Id.*

23. See Roy Miki, *Constructing a Redress Identity: History, Memory and Community Formation*, in REDRESS: INSIDE THE JAPANESE CANADIAN CALL FOR JUSTICE 241-68 (2005). See generally ROY MIKI & CASSANDRA KOBAYASHI, *JUSTICE IN OUR TIME: THE JAPANESE CANADIAN REDRESS SETTLEMENT* (1991) (discussing the Japanese Canadian redress movement).

24. See ADACHI, *supra* note 19.

*Riches* in 1978,<sup>25</sup> and Joy Kogawa's novel *Obasan* in 1981.<sup>26</sup> *Obasan* soon became a classic work of Canadian literature.

During these years, the NAJC and other groups organized to lobby for redress. Here, also to an important degree, activists in Canada took the campaigns in the United States as a model. One important leader who bridged the Japanese Canadian redress struggle and that of the Japanese Americans was Professor Gordon Hirabayashi of the University of Alberta, who was one of the defendants in the U.S. Supreme Court's above-mentioned wartime "Japanese internment" cases.<sup>27</sup> Hirabayashi's support for Japanese Canadian redress was all the more laudable as he did not stand to benefit personally from any financial award. At the same time, even more than in the United States, former inmates are divided bitterly over strategic questions, notably the size of a proposed redress package and whether to claim individual reparations or accept a lump-sum payment; as well as over the larger question of *who* could claim the right to speak and negotiate in the name of the community.<sup>28</sup>

Meanwhile, even more than in the United States, the efforts of the NAJC and other groups to lobby for redress were met with widespread official resistance. Canadian war veterans who had been captured during the fall of Hong Kong and placed in Japanese Prisoner of War camps opposed what they considered a "special treatment" for Japanese Canadians. Furthermore, Liberal Prime Minister Pierre Elliot Trudeau, who in 1970 had invoked the War Measures Act under which the Japanese Canadians had been confined to declare martial law as part of a crackdown on Quebec nationalists, remained hostile. While Trudeau admitted during a speech in Tokyo in 1976 that the wartime treatment of Japanese Canadians represented a deprivation of civil rights, he publicly rejected the principle of reparations for past injustices (which extended to those still living).<sup>29</sup>

Even scholarly approaches differed in the two countries. In the United States, the CWRIC, a congressionally-appointed historical fact-finding

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25. See generally JAPANESE CANADIAN CENTENNIAL PROJECT COMM., *A DREAM OF RICHES: THE JAPANESE CANADIANS 1877-1977* (1978). An irony of history is that one of the directors of the project that produced *A Dream of Riches* was Tamio Wakayama, who had been an important witness of the Civil Rights Movement in the United States and the official photographer for the Student Nonviolent Coordinating Committee. See Leslie G. Kelen, *Preface and Acknowledgements of THIS LIGHT OF OURS: ACTIVIST PHOTOGRAPHERS OF THE CIVIL RIGHTS MOVEMENT*, at 9-12 (Leslie G. Kelen ed., 2011).

26. See generally JOY KOGAWA, *OBASAN* (1981).

27. See *supra* notes 10-13 and accompanying text.

28. See ROY MIKI, *The Toronto Cauldron: Community Conflict and the Founding of the "Toronto Chapter,"* in REDRESS: INSIDE THE JAPANESE CANADIAN CALL FOR JUSTICE, *supra* note 23, at 187-214.

29. ROBINSON, *supra* note 4, at 300-01; see also MIKI, *supra* note 23, at 187-214.

committee, was selected to inquire into the history.<sup>30</sup> At the outset of the 1980s, the Commission held a series of hearings in Washington D.C. and across the country, compiling a detailed documentary record from which it produced an extensive historical study.<sup>31</sup> Scholars such as Peter Irons and Roger Daniels assisted the CWRIC and offered historical testimony to Congress.<sup>32</sup> Conversely, J.L. Granatstein, the most distinguished scholar in Canadian history, publicly opposed reparations and drew specious equivalencies between the wartime treatment of Japanese Canadians in Canada and Canadian war prisoners in Japanese camps.<sup>33</sup>

In the face of such resistance, Japanese Canadians reached out to members of other groups, which they generally had not done initially, and were thereby able to gain important supporters for the movement.<sup>34</sup> For example, in early 1984, just before Pierre Trudeau resigned as Prime Minister, the national executive of the Canadian Jewish Congress (CJC), including President Milton Harris and National Chair Dorothy Reitman, sent Trudeau a telegram expressing firm support for moral and material restitution to Japanese Canadians. The telegram states that “[t]he violation of human rights of Canadians of Japanese ancestry cries out for redress and stands as a unique case of injustice for which all Canadians must atone.”<sup>35</sup> The CJC and other Jewish groups would repeatedly raise the issue of redress in Ottawa in the following years. The Canadian Mennonite Church made its own apology to Japanese Canadians and created a scholarship fund for the study of human rights as an act of reconciliation.<sup>36</sup>

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30. See Tetsuden Kashima, *Foreword* to PERSONAL JUSTICE DENIED, *supra* note 11, at xvii.

31. See *id.*, at xvii-xviii.

32. See ALICE YANG MURRAY, HISTORICAL MEMORIES OF THE JAPANESE AMERICAN INTERNMENT AND THE STRUGGLE FOR REDRESS 357, 416 (2008).

33. See J.L. Granatstein & Gregory A. Johnson, *The Evacuation of the Japanese Canadians, 1942: A Realist Critique of the Received Version*, in ON GUARD FOR THREE: WAR, ETHNICITY, AND THE CANADIAN STATE, 1939-1945, at 101-30 (Norman Hillmer et al. eds., 1988). See generally PATRICIA ROY ET AL., MUTUAL HOSTAGES: CANADIANS AND JAPANESE DURING THE SECOND WORLD WAR (1990) (providing a comparative study of confinement practices of the Japanese and Canadian governments during World War II).

34. See Kerri Sakamoto, *Community Leaders Support JC Redress*, NEW CANADIAN, June 10, 1984.

35. *Canadian Jewish Congress Hits Trudeau for His Views on Redress for J.C.'s*, NEW CANADIAN, Apr. 24, 1984.

36. See Greg Robinson & Zacharie Leclair, *The Canadian Japanese Mennonite Scholarship: In Support of Reconciliation*, DISCOVER NIKKEI (Apr. 7, 2020), <http://www.discovernikkei.org/en/journal/2020/4/7/mennonites/> [<https://perma.cc/63EF-UTBX>].



In 1984, a national election swept the Conservative government Brian Mulroney into office by a large majority.<sup>37</sup> “Mulroney was sympathetic to claims by Japanese Canadians (and may have also hoped to use redress as an incentive for Tokyo to sign a free trade treaty), but he hesitated to place a dollar amount on a settlement.”<sup>38</sup> The NAJC responded by commissioning a study from Price Waterhouse, a renowned accounting firm (known today as PricewaterhouseCoopers). The firm estimated that the wartime actions of the Canadian government had cost the Japanese community in Canada about \$333 million in revenue and \$110 million in property loss (in 1986 dollars). This impressive finding increased the credibility of community claims for damages.<sup>39</sup>

A final round of negotiations between Japanese Canadians and the Mulroney government on a redress package was scheduled in 1988, as the U.S. Congress passed H.R. 442. The Prime Minister designated his close associate, Secretary of State Lucien Bouchard, to lead the government’s team when the parties were unable to reach an agreement. Bouchard used his influence to broker an agreement on a redress package, which was confirmed by Parliament in September 1988, approximately six weeks after the redress law was enacted in Washington.<sup>40</sup>

The Canadian settlement’s terms, which included an official apology and a payment for redress, were largely similar to those in the United States. Japanese Canadians may have felt that the amount of redress was insufficient, but following the enactment of H.R. 442 in the United States, it was clear to everyone that a package similar in type was the only one that could command widespread support by Canadians. However, Ottawa made a \$21,000 redress payment, in view of the particularly harsh nature of its confinement of Canadian Issei and Nisei during World War II, and the Mulroney government provided individuals with expedited payments.<sup>41</sup>

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37. *Brian Mulroney Wins Stunning Landslide Victory in 1984*, CBC (June 21, 2018, 9:25 AM), <https://www.cbc.ca/archives/brian-mulroney-wins-stunning-landslide-victory-in-1984-1.4675926> [<https://perma.cc/4J3H-VVVJ>].

38. ROBINSON, *supra* note 4, at 301.

39. See Roy Miki, *Getting the NAJC in Order: Forging the Language of Redress*, in REDRESS: INSIDE THE JAPANESE CANADIAN CALL FOR JUSTICE, *supra* note 23, at 238.

40. ROBINSON, *supra* note 4, at 301; see also Roy Miki, *The Redress Settlement: Negotiations with the Nation*, in REDRESS: INSIDE THE JAPANESE CANADIAN CALL FOR JUSTICE, *supra* note 23, at 304, 306-07.

41. See MIKI & KOBAYASHI, *supra* note 23, at 134-39; see also ROBINSON, *supra* note 4, at 301.

### III. MARRIAGE RIGHTS, THE CHARTER, AND THE LEGACY OF THE JAPANESE CANADIAN REDRESS

The redress history was marked by a central tension between multiracialism and exceptionalism, universalism, and narrow political interests. In the United States, as the redress movement achieved its goals, it “grew less attractive and relevant to other minority groups,” though they remained engaged with the principle of reparations.<sup>42</sup> At the same time, the redress movement in Canada evolved into a similarly transformative movement to the Civil Rights movement in the United States, albeit on a much smaller scale: it was a morally engaged movement by a minority group that altered how citizens of all backgrounds viewed their government and their fundamental rights. The Japanese Canadian case dovetailed with the larger argument for a Charter of Rights and Freedoms: its proponents asserted that if a group of citizens and legal residents could be stripped of their basic rights at will by the government, nobody could be truly safe. It is one of the ironies of history that Pierre Trudeau, the opponent of redress, should have been the chief creator of the Canadian Charter of Rights and Freedoms (CCRF), a Canadian Bill of Rights ratified in 1982.<sup>43</sup> Perhaps fittingly, in the fall of 1980, when Parliament’s Joint Committee on the Constitution was considering the adoption of the CCRF and held public hearings, a delegation of Japanese Canadians arrived in Ottawa to be present. Gordon Kadota, president of the NAJC, Roger Obata, and Dr. Arthur Shimizu testified in favor of making the CCRF fundamental law that was not subject to an exception.<sup>44</sup>

The precedent of Japanese Canadian confinement in terms of human rights and constitutional law, and the implications for reconciliation, has remained powerful in Canadian discourse into the 21st century. I would make the case that its greatest contemporary influence has been on the issue of equal marriage rights for same-sex couples. To begin with, the experience of the Japanese Canadians underlay the first successful marriage case brought by a same-sex couple. In 2001, a Vancouver Sansei, Joy Masuhara, and her partner, Jane Eaton Hamilton, were one of the eight couples who petitioned

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42. MINORITY RELATIONS, *supra* note 13, at 159.

43. See generally JOHN ENGLISH, JUST WATCH ME: THE LIFE OF PIERRE ELLIOTT TRUDEAU: 1968-2000 (2009) (discussing the controversial public figure of Pierre Trudeau and the Canadian Charter of Rights and Freedoms). In Quebec, where the same War Measures Act that had been used in 1942 to remove Japanese Canadians was invoked by Prime Minister Trudeau in 1970 to declare martial law against separatists, the lesson was surely not lost.

44. *Japanese-Canadians Challenge Rights Bill*, VANCOUVER SUN, Nov. 27, 1980, at A11. Despite the NAJC’s testimony, in the final bill the Parliament added a “notwithstanding clause” that national and provincial governments could use to evade the provisions of the Charter.

the B.C. Supreme Court to secure these marital rights. Whether because of their status as a mixed-race couple or just their generally articulate (and photogenic) presentation, Masuhara and Hamilton attracted widespread media attention and became the most publicly visible of the couples.<sup>45</sup>

In her affidavit to the Supreme Court of British Columbia, Masuhara eloquently drew a parallel between the silencing and shaming her family had faced as Japanese Canadians in the wartime era and what she had been made to feel as a lesbian:

I grew up with the paradoxically shameful legacy of my parents being “relocated” during the war. I say shameful because when my parents talked about it they discussed it in humiliated and disgraced tones. They also expressed resentment, sadness and anger at all their losses. Whenever WWII and the Japanese were brought up in school, I always mirrored this embarrassment and shame regarding my heritage. The “Japs” were the enemies, and weren’t my parents “Japs”, wasn’t I? Or was I Canadian? The reality was we were all Canadian—born and bred. I say paradox because my parents and grandparents, who suffered through internment, shouldn’t have been the ones to feel ashamed. But it was hard for me as a child to understand this.<sup>46</sup>

In October of that year, B.C. Supreme Court Justice Ian Pitfield rejected the couples’ petition on the grounds that “marriage” referred only to unions of opposite-sex partners.<sup>47</sup> Masuhara and Hamilton, as well as the other litigants, appealed the case to the B.C. Appeals Court of British Columbia. On May 1, 2003, the British Columbia Court of Appeal ruled 3-0 in the couples’ favor, holding that denial of marriage licenses to same-sex couples was a violation of the Canadian Charter of Rights and Freedoms.<sup>48</sup> The victory in the court led to British Columbia becoming the first government in North America to undertake the legalization of same-sex marriage.<sup>49</sup>

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45. See Neal Hall, *Same-Sex Couples Launch Court Action*, VANCOUVER SUN, July 24, 2001, at A3 (included an interview and photograph of the couple).

46. Greg Robinson, *Frontiers of Citizenship: Race, Citizenship, and Same-sex Marriage*, in FAMILY, COMMUNITY AND EDUCATION (Yuko Takahashi & Teruko Ishikawa eds., 2011) (Japan) (quoting Joy Masuhara’s testimony before the Supreme Court of British Columbia); see also Kim Pemberton, *Same-Sex Unions Won’t Cause Upheaval, Court Told*, VANCOUVER SUN, July 26, 2001, at A7.

47. See Kim Pemberton, *B.C. Court Rejects Petition for Same-Sex Marriages*, VANCOUVER SUN, Oct. 4, 2001, at B.

48. See Robert Matas, ‘We Just Want to Get Married,’ GLOBE & MAIL (May 2, 2003), <https://www.theglobeandmail.com/news/national/we-just-want-to-get-married/article1014311/> [<https://perma.cc/D587-2B6Z>].

49. See *Another Court Ruling Challenges Ban Against Same-Sex Marriage*, ENTERPRISE-RECORD, May 2, 2003, at 9A (noting that in June 2003, before the British Columbia ruling took effect, the Ontario Court of Appeal upheld a lower court ruling and declared same-sex marriage legal in Ontario forthwith, making that province the first to actually recognize same-sex marriage).

In the weeks that followed the Masuhara-Hamilton case, the Liberal government of Prime Minister Jean Chrétien declared that it would not appeal the Ontario and British Columbia court rulings recognizing marriage rights for same-sex couples in those provinces. Instead, in the interests of equity, the Chrétien government announced soon after that it would introduce legislation to recognize marriage for same-sex couples nationwide. Government lawyers—led by Minister of Justice Irwin Cotler, who had previously been an outspoken supporter of Japanese Canadian redress—referred a draft bill on same-sex marriage to the Supreme Court of Canada, asking the Court to offer its judgment on the law's constitutionality. In January 2004, following the fall of the Chrétien government, the new government of Prime Minister Paul Martin added another question in its reference to the court, thereby slowing the Justices' response. In December 2004, after holding hearings on the case, the Supreme Court of Canada ruled that the government indeed had the authority to amend the legal definition of marriage but did not take a position on whether the equality provisions of Canada's Charter of Rights and Freedoms required such an amendment. In early 2005, after the court rendered its judgment, the Martin government officially introduced a bill to grant equal marriage rights to same-sex couples. The Civil Marriage Act was enacted by the Canadian Parliament and became law on July 20, 2005.<sup>50</sup>

During these years, as Canadians debated whether to recognize marriage rights of same-sex couples, the parallels that Joy Masuhara had drawn between the mass removal of Japanese Canadians and the status of lesbian, gay, bisexual, and transsexual (LGBT) Canadians became a frequent motif in public discourse.<sup>51</sup> An interesting example is David Suzuki. In a published excerpt of his autobiography, he stated:

Among the rights that have been hard-won are those of visible minorities to vote, own property, attend university, or even to drink in a pub. And even today, we are grappling with the recognition that gay people, transsexuals and hermaphrodites as human beings deserve full legal rights, including the right to marry.<sup>52</sup>

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50. See Peter W. Hogg, *Canada, Canada: The Constitution and Same-Sex Marriage*, 4 INT'L J. CONST. L., 712, 712 (2006). On the history of same-sex marriage in Canada, see SYLVAIN LAROCQUE, *GAY MARRIAGE: THE STORY OF A CANADIAN SOCIAL REVOLUTION* (Robert Chodos et al., trans., 2006).

51. See generally Suzanne Judith Lenon, *A White Wedding? The Racial Politics of Same-Sex Marriage in Canada* (2008) (Ph.D. thesis, University of Toronto) (on file with the University of Toronto).

52. David Suzuki, "Get lost, Jap. We beat you!", *GLOBE & MAIL*, Apr. 8, 2006, at F1. Suzuki, now a renowned Canadian academic, describes his experience in a Japanese internment camp at the end of World War II "as the place where he first discovered nature." See Glen Schaefer,

In fact, it was in the course of the parliamentary debates over legalizing same-sex marriage that the wartime treatment of Japanese Canadians was referenced. Ironically, the speaker responsible for bringing up Japanese Canadians was Stephen Harper, the leader of the opposition, who opposed granting marriage rights to same-sex couples. Harper mentioned the historic injustice in challenging the authority of the Martin government to act as a steward for freedom. Harper emphasized that “[i]t is the Liberal Party that interned Japanese Canadians in camps on Canada’s West Coast, an act which [former prime minister] Pierre Trudeau refused to apologize or make restitution for.”<sup>53</sup> Harper’s position drew immediate criticism from the National Association of Japanese Canadians. Spokesperson Audrey Kobayashi issued a statement protesting Harper’s comments stating that “Mr. Harper is resorting to cheap political shots at deceased politicians rather than facing the inconsistency of his position on human rights.”<sup>54</sup> When Harper proposed a free vote on the repeal of the Civil Marriages Act if the Conservative Party won the next election, columnist Chantal Hebert was scathing: “One has to go back to the Second World War internment of Japanese Canadians for one of the last times a federal government took away the existing rights of a minority.”<sup>55</sup>

Meanwhile, supporters of equal marriage rights asserted that LGBT Canadians represented a minority whose fundamental rights required legal protection. When introducing the Civil Marriage Act in Parliament, cabinet minister John McCallum stated that the plight of the Japanese Canadians showed the need for the Canadian Charter to protect the fundamental rights of individuals:

One cannot pick and choose between minorities whose rights one wants to defend and minorities whose rights one chooses to oppose . . . Let us not forget that before Canada had the Charter of Rights, there were times in our history when we failed to protect the rights of minorities. Think of the internment of Japanese Canadians, the Chinese head tax, and the abuses of aboriginal people. We must never return to a situation where the tyranny of the majority overrides the rights of minorities . . . including gay Canadians.<sup>56</sup>

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*The Inside Story of David Suzuki*, CHAN CTR. FOR PERFORMING ARTS (Dec. 10, 2009), <https://chancentre.com/news/inside-story-david-suzuki/> [<https://perma.cc/JJ92-QADH>].

53. Brian Laghi, *Anti-racism Groups Denounce Harper’s Tactics*, GLOBE & MAIL (Feb. 18, 2005), <https://www.theglobeandmail.com/news/national/anti-racism-groups-denounce-harpers-tactics/article22505134/> [<https://perma.cc/B7U5-LSQE>].

54. LAROCQUE, *supra* note 50, at 242.

55. Chantal Hebert, *Harper Rolling Dice Over Gay Marriage*, RED DEER ADVOC., Mar. 12, 2005, at A5.

56. Hon. John McCallum, Minister of Nat’l Revenue, Lib., Speech at the 38th Parliament, 1st Session (Mar. 21, 2005), (transcript available at <https://www.lipad.ca/full/permalink/4296522>).

The editors of the *Regina Leader-Post* newspaper chimed in that the wartime treatment of Japanese Canadians offered a continuing marker of the importance of Charter provisions to protect constitutional rights in times of danger: “[w]hen Canada was writing a new Constitution 25 years ago, the country’s best minds thought back to outrages like . . . the federal government’s treatment of Japanese-Canadians in 1942, then decided our courts should have the power to curb over-excited assemblies.”<sup>57</sup> Columnist Keith Baxter welcomed the Civil Marriage Act as a legal change which redeemed the cause of the Japanese Canadians: “the past mistreatment of Chinese and Japanese persons, even those who were legal immigrants and Canadian citizens, are nothing to be proud of. Today, however, is a proud day. Today the more than 300 legal rights and privileges of spouses in marriage have been extended to another 10 percent of Canadian adults, a group to whom they had been denied until now.”<sup>58</sup>

#### IV. CONCLUSION

The history of the redress movements in North America, and especially Canada, and their success in catalyzing reparative legislation, make them an important part of an ongoing international conversation about “race, rights, and reparation.”<sup>59</sup> The history of the redress campaigns in both Canada and the United States was marked by a central tension between multiracialism and exceptionalism, universalism, and narrow political goals. In the United States, even as the redress movement achieved its goals, it grew less connected with other minority groups, though it remained interested in the principle of reparations. Japanese Canadian redress likewise set an important precedent for demands for reparation by other groups, whether Native peoples defending their historic rights or immigrants needing protection from arbitrary treatment. More than that, it offered Canadians of all backgrounds a potent historical example of the importance of preserving the fundamental rights of minorities from oppression by hostile majorities and their elected representatives. It thereby gave supporters of same-sex couples a frame of reference to explain the vital importance of equal access to marriage rights for all Canadians and end historic injustice.

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57. *Same-Sex Vote Will Be Tricky*, LEADER-POST, June 12, 2006, at B7.

58. Keith Baxter, *A Proud Day for Canada and Its People*, SHERBROOKE REC., Aug. 2, 2005, at 7.

59. *See generally* ERIC K. YAMAMOTO ET AL., RACE, RIGHTS AND REPARATION: LAW AND THE JAPANESE AMERICAN INTERNMENT (2001) (examining the legal, social, and ethical ramifications of the internment of Japanese-Americans during World War II and the success of the reparations movement in 1980s).