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CITIZENSHIP AND EXCLUSION: WYOMING'S ANTI-JAPANESE ALIEN LAND LAW IN CONTEXT

*Gabriel J. Chin**

The year 1943 was a bad one for many people around the world, Japanese Americans among them. In 1943, the Supreme Court began upholding portions of the military action regulating their presence on the West Coast that had begun the previous year. After being subjected to a race-based curfew in 1942, by 1943 the Japanese Americans of California, Washington, and Oregon had been moved to relocation camps, such as Wyoming's Heart Mountain, where they lived surrounded by armed guards and fences.¹ In *Hirabayashi v. United States*,² the Supreme Court upheld a criminal conviction for violation of the nighttime curfew applicable to persons of Japanese ancestry, alien and citizen alike. The Court also heard argument in *Korematsu v. United States*,³ although it was not until a year later that they upheld Fred Korematsu's conviction for violating the order excluding persons of Japanese ancestry from the coast.

*Ex parte Endo*⁴ was issued the same day as *Korematsu*. Through *Endo*, the Court created an O. Henry ending to the tale: The day after the executive branch terminated the detention of internees in the camps, the Supreme Court held that President Roosevelt's executive order and the statute criminalizing violations of orders issued under it did not authorize detention of concededly loyal citizens in the absence of individualized suspicion. After the government stopped doing what it was doing, in short, the Court courageously held that the whole thing was unauthorized freelancing on the part of the War Relocation Authority and the U.S. Army—Congress and the Commander in Chief had directed no

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1. See generally ERIC YAMAMOTO, ET AL., RACE, RIGHTS AND LIBERTY: THE LAW OF JAPANESE AMERICAN INTERNMENT & REDRESS, A CRITICAL INQUIRY (2001); PETER IRONS, JUSTICE AT WAR: THE STORY OF THE JAPANESE AMERICAN INTERNMENT CASES (1983); ROGER DANIELS, CONCENTRATION CAMPS NORTH AMERICA; JAPANESE IN THE UNITED STATES AND CANADA DURING WORLD WAR II (1981).

2. 320 U.S. 81 (1943).

3. 323 U.S. 214 (1944).

4. 323 U.S. 283 (1944).

such thing, and presumably were shocked that their orders had been so egregiously misunderstood.

The federal government entangled Wyoming in the Internment by placing a camp in the state. Near the end of the 1943 session the Wyoming Legislature passed Senate Joint Resolution Number 1, declaring a period for “the people of the great State of Wyoming to join in a program of unity, to the end that all differences be laid aside in a spirit of mutual coordination of our efforts toward the one thing we all seek at this time—victory in the present war.”⁵ One might have hoped that this would bode well for gracious treatment of the Internees, but it turned out that the unity the Legislature sought was not all-encompassing.

During that busy week, the Wyoming Legislature passed two statutes dealing with the interned Japanese Americans. One statute, persuasively described as unconstitutional,⁶ disenfranchised the Japanese Americans in the camps.⁷ The Legislature also passed and the governor approved a statute prohibiting land ownership by “aliens ineligible to citizenship.”⁸ The legislative history of Wyoming laws in this period is sparse, but in an article published more than fifty years ago, the *Wyoming Law Journal*, a predecessor to this publication, discussed the alien land law statute and analyzed the motivation for its passage: the article stated the statute was “[o]bviously enacted to prevent West Coast Japanese, removed from their homes for security reasons at the outbreak of the war with Japan, from acquiring property in Wyoming.”⁹ The article explained that the law was “not unlike those long in effect in California and in several other western states. Wyoming is the tenth state to adopt these anti-Japanese land laws.”¹⁰ Similarly, the *Wyoming Eagle* reported in 1943:

Two bills relating to aliens are planned by a group of state senators. One would prevent Asiatic aliens from buying or owning property in Wyoming. Under federal law, natives of Japan, China and other Asiatic nations can never become United States Citizens. Another project proposal calls for a joint memorial to congress asking for removal after the war of all aliens and other

5. 1943 Wyo. Sess Laws at 168.

6. Eric Muller, *Apologies or Apologists? Remembering the Japanese American Internment in Wyoming*, 1 WYO. L. REV. 473 (2001).

7. 1943 Wyo. Sess. Laws ch. 27, § 1.

8. *Id.* at ch. 35.

9. *Legislation: Acquisition of Property-Alien Land Law*, 1 WYO. L.J. 127, 128 (1947).

10. *Id.* at 127 n.10.

persons interned in Wyoming by the war department or other federal agencies.¹¹

The latter measure apparently failed, but the law aimed at preventing the internees from buying land remained on the books until February 2001.¹²

The Internment of Japanese Americans was a mistake, but arguably it was not Wyoming's mistake. If the reaction of the government officials at the time is regarded as related exclusively to Internment, it might be more readily thought of as regrettable involvement with a wave of behavior, caused by the War, part of a national phenomenon largely beyond the control of Wyoming or any other individual state. However, although Internment was the occasion for adoption of Wyoming's alien land law, the statute's language engaged anti-Asian legal tradition with much deeper roots, namely, a body of laws designed to exclude Asians from the United States. While the foundations of federal anti-Asian policy were laid decades before organization of the Dakota Territory, Wyoming had a role in establishing and perpetuating federal Anti-Asian immigration policy, primarily but not exclusively through its congressional delegation.

I. ASIAN NATURALIZATION AND THE ALIEN LAND LAW

From the beginning of the Republic, Congress restricted citizenship by naturalization by race. In 1790, the first Congress passed and George Washington signed a naturalization law extending benefits only to "free white persons."¹³ Naturalization was extended to persons of African nativity and descent in 1870.¹⁴ The Immigration Act of 1924 made clear that ineligibility to citizenship was a racial classification tied to the naturalization definition. The statute stated that the "term 'ineligible to citizenship' when used in reference to any individual means an individual who is debarred from becoming a citizen of the United States under section 2169 of the Revised Statutes"¹⁵ Section 2169, defining eligibility for naturalization, provided that "[t]he provisions of this title shall apply to aliens being free white persons, and to aliens of African nativity and persons of African descent."¹⁶

11. *Early Supply of Legislative Measures is Assured Here*, WYO. EAGLE-CHEYENNE, Jan. 13, 1943, at 1, 29.

12. *See supra* note 60 and accompanying text.

13. Act of Mar. 26, 1790, ch. 3, 1 Stat. 103.

14. Act of July 14, 1870, ch. 254, § 7, 16 Stat. 254, 256.

15. Immigration Act of 1924, 43 Stat. 153, § 28(c).

16. American Indians were naturalized as a group in 1924; members of races native to the Western hemisphere were made eligible for naturalization by statute in 1940. Chinese were added to the list in 1943; Indians and Pilipinos in 1946. Naturalization

Given the racial composition of the nation in 1790, it cannot have been created with Asians in mind. By the 1870s, though, it was clear that Congress maintained the “free white person” restriction to ensure the exclusion of Asians from the privilege of naturalization. In 1870, the Fifteenth Amendment became law, and many of the senators and representatives who passed the Reconstruction amendments still served. Charles Sumner of Massachusetts moved to amend a technical naturalization bill to remove the word “white” from the naturalization law.¹⁷ A majority of the Senate first agreed,¹⁸ but then reversed itself after hearing arguments about the problematic nature of the Chinese immigrants.¹⁹ The Senate voted to create an exception for aliens of African nativity and descent, but otherwise to retain the racial restriction.²⁰

In 1874, the commissioners who prepared the Revised Statutes accidentally omitted the words “free white persons” from the naturalization section. During hearings to correct this scrivener’s error and others in 1875, all recognized that naturalization of “Asiatics” was the issue at stake in the decision of whether to leave the statute race-neutral or restoring the color line.²¹ Congress restored it. In a 1922 decision holding that a Japanese person could not naturalize because the individual was not a “free white person,” the U.S. Supreme Court explained that the racial restriction “was a rule in force from the beginning of the government, a part of our history as well as our law, welded into the structure of our national polity by a century of legislative and administrative acts and judicial decisions.”²²

Chapter 35 of the Wyoming Laws of 1943²³ created the Alien Land Law. The statute tapped in to this racially restrictive definition of alien ineligible to citizenship. It provided:

Be it enacted by the Legislature of the State of Wyoming:
Alien Land Law. Section 1. There is hereby created an “Alien Land Law.”

was put on a wholly race-neutral basis in 1952. See Gabriel J. Chin, *Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1, 13-14 (1998), reprinted in 19 IMMIGR. & NAT'LITY L. REV. 3 (1999).

17. CONG. GLOBE, 41st Cong., 2d Sess. 5121 (1870).

18. *Id.* at 5124.

19. *Id.* at 5176.

20. *Id.*

21. 2 CONG. REC. 1081-82, 1236-38 (1875).

22. *Ozawa v. United States*, 260 U.S. 178, 194 (1922).

23. 1943 Wyo. Sess. Laws ch. 35, codified at WYO. COMP. STAT. §§ 66-401 *et seq.* (1945).

Certain Aliens May Not Possess Land, etc. Section 2. All aliens not eligible to citizenship under the laws of the United States are hereby prohibited from acquiring, possessing, enjoying, using, leasing, transmitting and inheriting real property, or any interest therein, in this State, or having in whole or part the beneficial use thereof.

Transfer to Alien Void. Section 3. Any transfer of real property or any interest therein in this State, in whole or part, to any alien not eligible to citizenship under the law of the United States is absolutely void and of no effect whatsoever.

Chinese Excluded. Section 4. Provided that Chinese nationals shall be excluded from the provisions of this Act.

Violation of any Provision by Alien a Felony. Section 5. Any alien, not eligible for citizenship under the laws of the United States, violating any of the provisions of this Act is deemed guilty of a felony.

Violations of Provisions by Citizen a Felony. Section 6. Any citizen of the United States or any person eligible to citizenship of the United States who knowingly violates any of the provisions of this Act shall be guilty of a felony.

Penalty. Section 7. Any person violating any of the provisions of this Act shall be subject to a fine of not more than five thousand dollars and sentenced to not more than five years in the state penitentiary, either or both, at the discretion of the court.

Section 8. This Act shall take effect and be in force upon and after its passage and approval.

As the *Wyoming Law Journal* article noted, the statute seems to conflict with the Wyoming Constitution just as did the disenfranchisement provision. Article 1, section 29 of the Wyoming Constitution, "Rights of Aliens," provides that: "[n]o distinction shall ever be made by law between resident aliens and citizens as to the possession, taxation, enjoyment, and descent of property."²⁴

24. In *Applegate v. Lum Jung Luke*, 291 S.W. 978 (Ark. 1927), the Arkansas Supreme Court held a similar statute invalid in the face of a similar constitutional provision.

The harshness of this criminal statute is apparent. Although citizens or eligible aliens who could be convicted of violating of section 6 of the Act only if they acted “knowingly,” there was no *mens rea* term in section 5. Under a traditional form of statutory interpretation, then, ineligible aliens might have been strictly liable for violation of the statute.²⁵

The statute was also extraordinarily broad. There was no exception for residential purposes, making it impossible, on a straightforward reading of the statute, for ineligible aliens to purchase, rent, or be given a place to live; only the Supremacy Clause, apparently, saved alien internees from criminal charges simply for living in the camp, which of course was real property. In addition, ineligible aliens could not “possess,” “use,” or “enjoy” real property, or have “in whole or part” the beneficial use thereof. Broadly read, it seems that it was possible for aliens to be charged with a violation simply for setting foot in Wyoming, thus at least using or enjoying the benefit of part of real property.

The statute betrayed its racial focus by exempting Chinese in section 4. An exception for citizens of our World War II ally China was necessary only because the euphemism “alien not eligible to citizenship” meant Asians. Wyoming was one of a number of states with an alien land law. Because of the similar history and language of the Alien Land Laws, it is appropriate to look to the purpose and meaning of the laws of sister states; as the Wyoming Supreme Court has said, “[w]hen the Wyoming legislature adopts a statute from another jurisdiction, that jurisdiction’s case law construing the statute is considered persuasive authority and an aid to determine legislative intent.”²⁶ Non-racial factors could prevent an individual alien from being eligible to citizenship, such as criminal convictions or lack of good moral character. However, “[w]hile any alien is ineligible to naturalization, whatever his race, if he lacks any one of several other qualifications required for naturalization, the [Alien Land Laws] have been interpreted as applying solely to those ‘ineligible aliens’ whose ineligibility is due to their race.”²⁷ The laws which did not have exceptions affected all Asians ineligible for citizen-

25. See, e.g., *United States v. Morris*, 928 F.2d 504 (2d Cir. 1991).

26. *Palato v. State*, 988 P.2d 512, 514 (Wyo. 1999) (citing *Apodaca v. State*, 627 P.2d 1023, 1027 (Wyo. 1981)); *Woodward v. Haney*, 564 P.2d 844, 845-46 (Wyo. 1977)); see also 2B NORMAN J. SINGER, STATUTES AND STATUTORY CONSTRUCTION § 52.03, at 307-08 (6th ed. 2000) (statutes of other states relevant if it appears “through similarity of language that the act being construed was copied from another state or states.”).

27. Dudley O. McGoveney, *The Anti-Japanese Land Laws of California and Ten Other States*, 35 CAL. L. REV. 7, 7 n.1 (1947).

ship; not only Japanese²⁸ but also Chinese,²⁹ Asian Indians,³⁰ and Koreans.³¹ Because of the clarity of the relationship between the Alien Land Laws and the federal naturalization laws, courts without exception have recognized that the term "alien ineligible for citizenship" was used as a racial classification.³² Scholars also unanimously recognize the racially discriminatory intent of the laws. In support of his conclusion that the laws were racially discriminatory, for example, Dean Kevin R. Johnson wrote: "While incorporating a facially neutral phrase from the immigration laws into the land laws, the state effectively barred certain non-whites from owning property."³³ Many other scholars agree.³⁴

California led the states in passing and enforcing anti-Asian land laws; its statute was a model for other states.³⁵ Proponents of the California law made no secret of its aims. Professor Milton Konvitz wrote that the California law was designed "to drive the Japanese from the land (and ultimately from California)."³⁶ California Attorney General Ulys-

28. *In re Fujimoto's Guardianship*, 226 P. 505 (Wash. 1924).

29. *Cal. Delta Farms, Inc. v. Chinese Am. Farms*, 278 P. 227 (Cal.) (Chinese), *appeal dismissed per stipulation*, 280 U.S. 520 (1929).

30. *Carter v. Utley*, 231 P. 559, 559 (Cal. 1924).

31. RONALD TAKAKI, *STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS* 272 (1989).

32. *Takahashi v. Fish & Game Comm'n*, 334 U.S. 410, 412 (1948) (noting that "[f]ederal laws, based on distinctions of 'color and race' have permitted Japanese and certain other nonwhite racial groups to enter and reside in the country but have made them ineligible for United States citizenship.") (citations omitted); *Oyama v. California*, 332 U.S. 633, 646 (1948) (striking down portion of California's law prohibiting ownership by aliens ineligible to citizenship, noting that it operated to "discriminat[e] . . . on the basis of . . . racial descent").

33. Kevin R. Johnson, *"Aliens" and the U.S. Immigration Laws: The Social and Legal Construction of Non-persons*, 28 U. MIAMI INTER-AM. L. REV. 263, 281-82 (1997).

34. See, e.g., PAULI MURRAY, *STATES' LAWS ON RACE AND COLOR* 19 (1951) ("The purpose of these laws is to prevent Chinese, Japanese and certain Oriental groups from acquiring land"); Keith Aoki, *No Right to Own? The Early Twentieth-Century "Alien Land Laws" as a Prelude to Internment*, 40 B.C. L. REV. 37, 38-39 (1998) ("The salient point of these laws was their strongly racialist basis—'aliens ineligible to citizenship' was a disingenuous euphemism designed to disguise the fact that the targets of such laws were [Japanese]"); Edwin E. Ferguson, *The California Alien Land Law and the Fourteenth Amendment*, 35 CAL. L. REV. 61, 61-62 (1947) ("the alien land law was enacted and has been enforced solely as a discriminatory law directed against the Japanese"); McGoveney, *supra* note 26, at 7 (Alien Land Laws apply to "aliens who are racially ineligible to naturalize") (emphasis in original); *The Alien Land Laws: A Reappraisal*, 56 YALE L.J. 1017, 1017 n.3 (1947) ("The phrase 'ineligible for citizenship' initially operated to exclude all Asiatics").

35. FRANK CHUMAN, *THE BAMBOO PEOPLE: THE LAW AND JAPANESE AMERICANS* 76-77 (1981); TAKAKI, *supra* note 31, at 206-07; McGoveney, *supra* note 27, at 7-8.

36. MILTON KONVITZ, *THE ALIEN AND THE ASIATIC IN AMERICAN LAW* 158 (1946).

ses S. Webb was a central figure in the western anti-Asian movement. He had a hand in promoting the Internment and during the War he pursued a test case designed to obtain a ruling that persons of Japanese ancestry born in the United States were not citizens.³⁷ Webb was a leader in the passage of California's land law; many of the Supreme Court cases upholding their constitutionality bear his name as a party.³⁸ He explained its purpose as follows:

The fundamental basis of all legislation upon this subject State and Federal, has been, and is, race undesirability. The simple and single question is, is the race desirable [The law] seeks to limit their presence by curtailing their privileges which they may enjoy here; for they will not come in large numbers and long abide with us if they may not acquire land.³⁹

The alien land laws of many states were enforced by harsh measures, including criminal prosecution and "escheat," forfeiture of the property without compensation.⁴⁰ As the Arizona Supreme Court explained, interpreting its fairly typical land law:

The state may take the real property of an ineligible alien, or any interest he may acquire therein, from him by a proceeding to escheat it. It may also prosecute an ineligible alien who has conspired with another to effect a transfer of realty, or an interest in realty, to him, criminally and punish him severely. And these remedies may be used concurrently Our law has real teeth in it, and persons who violate it may suffer very severe penalties, that is, they may have their lands escheated to the state besides being made to suffer criminal punishment—as much as two years in the State Penitentiary or a \$5,000 fine, or both.⁴¹

Many individuals, Asians and the landowners who dealt with them, were successfully prosecuted criminally for engaging in land transactions.⁴²

37. *Regan v. King*, 49 F. Supp. 222 (N.D. Cal. 1942) (person of Japanese ancestry born in United States is citizen), *aff'd*, 134 F.2d 413 (9th Cir.), *cert. denied*, 319 U.S. 753 (1943).

38. *Frick v. Webb*, 263 U.S. 326 (1923); *Webb v. O'Brien*, 263 U.S. 313 (1923); *Porterfield v. Webb*, 263 U.S. 225 (1923); *see also Jones v. Webb*, 231 P. 560 (Cal. 1924).

39. KONVITZ, *supra* note 36, at 159.

40. *Cf. Dutton v. Donohue*, 8 P.2d 90 (Wyo. 1932) (discussing escheat).

41. *Tagiguchi v. State*, 55 P.2d 802, 803, 805 (Ariz. 1936) (citations omitted).

42. *See, e.g., People v. Osaki*, 286 P. 1025 (Cal. 1930); *People v. Entriken*, 288 P. 788 (Cal. App. 1930); *People v. Cockrill*, 216 P. 78 (Cal. App. 1923), *aff'd*, 268 U.S. 258 (1925); *see also Ex parte Nose*, 231 P. 561 (Cal. 1924) (denying habeas corpus),

Historical documentation of the Alien Land Law cases does not reveal the “scope of financial hardship and emotional trauma which the statutes created. We do know, however, the financial losses were real.”⁴³ After California strengthened its statute in 1921, “more than 30,000 Japanese farmers [prepared] to abandon nearly 500,000 acres of California’s richest crop lands.”⁴⁴ This had a permanent effect on the position of the Japanese Americans in the community. “Had the [aliens ineligible for citizenship] been able to consolidate a larger agricultural base, their power potential could have been far more substantial.”⁴⁵ The consequence of the discriminatory laws was a “heightened sense of alienation from American life and intensified . . . feelings of subordination.”⁴⁶ These laws and their enforcement “deeply demoralized the community.”⁴⁷

After World War II, America’s wider role in the world⁴⁸ and revulsion at the racism of the Nazi regime⁴⁹ stimulated a reaction against Jim Crow and other racial discrimination. Several state supreme courts declared their alien land laws unconstitutional in violation of the Fourteenth Amendment. For example, in *Sei Fujii v. State*,⁵⁰ the California Supreme Court explained: “By its terms the land law classifies persons on the basis of eligibility to citizenship, but in fact it classifies on the basis of race or nationality. This is a necessary consequence of the use of the express racial qualifications found in the federal code.” In *State v.*

appeal dismissed, 273 U.S. 772 (1926).

43. Thomas E. Stuen, *Asian Americans and their Rights for Land Ownership*, in *ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY* 620 (Hyung-Chan Kim ed., 1992).

44. *Japanese Exodus from California*, *THE LITERARY DIGEST*, Jan. 12, 1924, at 14.

45. JERE TAKAHASHI, *NISEI/SANSEI: SHIFTING JAPANESE AMERICAN IDENTITIES AND POLITICS* 24 (1997).

46. *Id.*

47. DAVID J. OBRIEN & STEPHEN S. FUGITA, *THE JAPANESE AMERICAN EXPERIENCE* 24 (1991).

48. *See, e.g.*, MARY DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2000).

49. Wyoming, for example, in sympathy with the Jewish people killed in the Holocaust, passed a memorial in support of a homeland for the Jewish people in Palestine. 1945 Wyo. Sess. Laws 228 (House Joint Memorial No. 3) (“[W]e, the legislature of the State of Wyoming, express our profound sympathy with the millions of innocent victims of the enemy’s ruthless extermination policy, and that we demand just punishment of all those who perpetrated these horrible crimes against humanity, and . . . the United States should take appropriate measures to the end that Palestine should be opened to free immigration . . . so that the Jewish people may rebuild their ancestral homeland . . .”)

50. 242 P.2d 617, 625 (Cal. 1952).

Oakland,⁵¹ Montana reached the same conclusion; Oregon struck down its laws in *Namba v. McCourt*.⁵² Other states repealed their laws.

Wyoming took a different tack, amending its statute several times. It is extremely unlikely that the Legislature did so with racial animus toward Asians or other groups; much more probable given the nature of the amendments is that it simply did not know what the term “alien ineligible to citizenship” meant; this was the explanation of a reviser of the Florida Constitution for leaving that state’s alien land provision in the constitution.⁵³

The Wyoming statute was amended in 1959⁵⁴ to limit its operation to *non-resident* aliens ineligible to citizenship, making the statute consistent with the Wyoming Constitution, and to create an exception for aliens who were citizens of foreign countries that permitted Americans to own property there. The restriction to non-resident aliens was puzzling. Immigration lawyers distinguish between immigrants, who are allowed to live in the United States permanently, and non-immigrants, who are here temporarily, as students, say, or tourists. In general, only immigrants have the potential under federal law to become naturalized citizens. Thus, does “non-resident” mean non-resident of the United States, or non-resident of Wyoming? Does it apply to a permanent resident alien who lives in Colorado? To a foreign non-immigrant on a student visa studying at the University of Wyoming who wishes to rent dorm space? The law does not say.

More fundamentally, by 1959, no aliens were racially ineligible to citizenship, the original concern of the law. Who were the “ineligibles” now targeted? Only a tiny class of resident aliens who avoided military service in the United States were permanently ineligible to naturalize,⁵⁵ but all non-immigrants by definition could not meet the qualifications for naturalization, and even many aliens with green cards were ineligible because they had not resided in the United States for the requi-

51. 287 P.2d 39, 42 (Mont. 1955) (declaring state’s Alien Land Law unconstitutional for reasons set forth in *Sei Fujii* and *Namba*).

52. 204 P.2d 569, 614 (Or. 1949) (“[O]ur Alien Land Law . . . must be deemed violative of the principles of law which protect from classifications based on race, color and creed.”).

53. Randall Pendleton, *Old Law Bars Asian Property Ownership*, FLA. TIMES UNION, Feb. 12, 2001 (alien land provision not removed in 1998 constitutional revision because “apparently nobody knew what it meant.”), available at http://www.jacksonville.com/tu-online/stories/021201/met_5375163.html.

54. 1959 Wyo. Sess. Laws ch. 118, codified at WYO. STAT. ANN. §§ 34-15-101 to 103.

55. See INA § 315, 8 U.S.C. § 1426.

site period, or had not yet passed the U.S. history test required for citizenship. It is hard to imagine precisely what class of aliens were the objects of the law. The Wyoming Supreme Court has explained that “[t]his court’s primary focus when interpreting a statute is to determine the legislature’s intent upon enactment.”⁵⁶ The alien land law was now hopelessly ambiguous. In 1983, the legislature amended the statute again to create an exception for residential property not to exceed one acre;⁵⁷ the implication that that non-resident aliens who, nevertheless, lived in Wyoming were not covered by the law hardly dispelled the mystery of what the law was supposed to do decades after the War was over.

In 2000, the student and faculty⁵⁸ editors of the University of Cincinnati *Immigration and Nationality Law Review*⁵⁹ prepared a memorandum for the Governor and Legislature of Wyoming arguing that the statute should be repealed. The Legislature passed, and the Governor signed, a law repealing the statute effective February 22, 2001.⁶⁰

The Alien Land Law was not the only provision remaining on the books that imposed special burdens on Asians because of their ineligibility for citizenship. Wyoming’s Constitution reflects this distinction. Article XIX, section 3, part of the original 1889 Constitution, provides: “No person not a citizen of the United States or who has not declared his intention to become such shall be employed upon or in connection with any state, county or municipal works or employment.” Because Asians were prohibited from becoming citizens, they could not formally declare their intention by filing papers in court to become such. Other laws passed in the exclusion era remain in force granting privileges only to citizens or declarant aliens (notwithstanding that declaration of intent is no longer part of the naturalization process).⁶¹

A consequence of the ineligibility of Asians to become United

56. *Palato v. State*, 988 P.2d 512, 513 (Wyo. 1999) (citing *Tietema v. State*, 926 P.2d 952, 953 (Wyo. 1996)).

57. 1983 Wyoming Sess. Laws ch. 3, amending WYO. STAT. ANN. §§ 34-15-101 to 103.

58. *I.e.*, the author of this essay.

59. Available at <http://www.law.uc.edu/inlr>.

60. 2001 Wyo. Sess. Laws, Senate File 0067, available at <http://legisweb.state.wy.us/2001/introduced/sf0067.htm>.

61. See WYO. STAT. ANN. § 36-5-101(a) (“No person shall be qualified to lease state lands unless that person . . . is a citizen of the United States, or has declared an intention to become a citizen of the United States.”) (added by 1929 Wyo. Sess. Laws ch. 108, § 9); WYO. STAT. ANN. § 36-7-403 (lands available to “[a]ny adult citizen of the United States or any adult person having declared his intention of becoming a citizen of the United States.”) (added by 1895 Wyo. Sess. Laws ch. 38, § 18).

States citizens of particular relevance to the legal community is the delay of the development of an Asian American bar.⁶² Because members of non-Asian immigrant groups could naturalize, the first generation was able to develop a class of lawyers with the implications for the political and economic development of the community that entails. Thus, of the several statutes in force discriminating against aliens, one is particularly intriguing, not least because it was declared unconstitutional more than twenty years ago. Wyoming Statutes section 33-5-105 provides that “[n]o one shall be admitted to the bar of this state who shall not be an adult citizen of the United States and a person of good moral character.” In 1979, the Wyoming Supreme Court held this statute unconstitutional in *State ex rel. Mansfield v. State Board of Law Examiners*;⁶³ it had little choice because the U.S. Supreme Court had held such statutes invalid six years earlier.⁶⁴ Chief Justice Raper concurred stating:

While it represents only my personal view, it is my thought that the legislature should not strike by repeal that . . . clause . . . requiring United States citizenship as a prerequisite for admission to the Wyoming State Bar, even though for the moment it is rendered invalid. It has symbolic as well as a real significance as an expression of our loyalty and recognition as a State of the importance of United States citizenship and the ideals of a free people. . . .⁶⁵

The Legislature evidently listened, leaving the requirement untouched. There is reason to doubt the wisdom of the practice of keeping unconstitutional but symbolically interesting statutes on the books; both the alien land law and the disenfranchisement law were unconstitutional when enacted, but by this reasoning they were a perfectly valid means of symbolic expression.

There is another symbol that is sometimes invoked in this context, obedience to the rule of law, which would seem to require compliance with laws with which one disagrees as well as those that one favors. For the Legislature to thumb its nose at constitutional provisions it does not care for seems inconsistent with its expectation that individuals comply with such provisions.

62. See, e.g., *In re Takuji Yamashita*, 70 P. 482 (Wash. 1902) (Japanese person could not practice law, in spite of his naturalization and training); *In re Hong Yen Chang*, 24 P. 156 (Cal. 1890).

63. 601 P.2d 174 (Wyo. 1979).

64. *In re Griffiths*, 413 U.S. 717 (1973).

65. 601 P.2d at 176 (Raper C.J., concurring specially).

Maintenance of provisions discriminating against aliens as if it were a matter of deep principle is also ironic given the centrality of equality to Wyoming's political identity. The state motto is "Equal Rights,"⁶⁶ and Wyoming is famous for granting suffrage to women from organization. The Constitution contains other provisions demonstrating the state's commitment to equality,⁶⁷ as does the code.⁶⁸ The Wyoming Supreme Court has also articulated Wyoming's policy of equality, explaining "[t]he Wyoming Constitution is construed to protect people against legal discrimination more robustly than does the federal constitution."⁶⁹

II. ASIAN EXCLUSION AND WYOMING'S CONGRESSIONAL DELEGATION

The alien land law discriminated on the basis of eligibility for citizenship. It also tied into another legal tradition, exclusion of Asians. For over a century, Wyoming legislators have played a role in the debates over racial exclusion. In a remarkable 1879 speech, Delegate William Corlett⁷⁰ spoke at length in support of Chinese Exclusion:

The vast number of the Asiatic tribes who manifest an inclination to plant themselves in our midst and who will in all probability come to the country if we do not inaugurate measures to prevent it will constitute an inundation of immigration that will be but too sure to submerge everything before it. This danger is

66. WYO. STAT. ANN. § 8-3-107 (LEXIS 1999).

67. WYO. CONST. art. 1, § 2, "Equality of all," provides: "In their inherent right to life, liberty and the pursuit of happiness, all members of the human race are equal." *Id.* at art. 1, § 3, "Equal political rights," provides that, "[s]ince equality in the enjoyment of natural and civil rights is only made sure through political equality, the laws of this state affecting the political rights and privileges of its citizens shall be without distinctions of race, color, sex, or any circumstance or condition whatsoever other than individual incompetency, or unworthiness duly ascertained by a court of competent jurisdiction." *Id.* at art. 1 § 34, "Uniform operation of general law", provides that "[a]ll laws of a general nature shall have a uniform operation."

68. In addition, the Legislature has prohibited many forms of invidious discrimination. WYO. STAT. ANN. § 27-9-105 (LEXIS 1999) prohibits discrimination in employment based on age, sex, race, creed, color, national origin, or ancestry. Section 6-9-101 criminalizes denial of enjoyment of public accommodations on the basis of race, religion, color, sex, or national origin. Section 6-9-102(a) provides "No person shall be denied the right to life, liberty, pursuit of happiness or the necessities of life because of race, color, sex, creed, or national origin."

69. *Johnson v. Hearing Exam'rs Office*, 838 P.2d 158, 165 (Wyo. 1992).

70. Positions held by William Corlett include: Postmaster of Cheyenne, Territorial Senator, Prosecuting Attorney, Laramie County, Delegate to Congress, 1877-79. Biographical information, available at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=C000777>.

not merely conjectural. The first swell of the wave is already upon us and at our doors.⁷¹

Corlett's speech is learned, legally sophisticated, in many respects humane, practical and persuasive. It succinctly and reasonably expresses arguments that ultimately prevailed. The most successful rhetorical strategies of the argument included evidently sincere defenses of the Chinese, or at least arguments that they should not be excluded on grounds inconsistent with American traditions and freedoms. He urged: "[l]et us hear no more . . . about excluding the Chinese because their religious views do not accord with our own." As to the peculiar beliefs of the Chinese, "'homogeneity of ideas' is not desirable, and even if it was, a government has no right to compel uniformity of opinion by law."⁷² Their immorality was also no cause for exclusion: "[t]he truth would probably be that in this particular the comparison would show that the Mongolians were inferior in some respects to the other races and in other respects were superior, so that upon a general balancing it would be doubtful who would be entitled to the palm for moral behavior."⁷³ Corlett continued: "In my judgment all such untenable and questionable arguments should be abandoned. We cannot afford to sacrifice principles fundamental in our scheme of social organization for some merely temporary benefit."⁷⁴

But Delegate Corlett's explanation for the necessity of racial discrimination involved just such a compromise. The centerpiece of the argument was its accommodation of the "all men are created equal" line of the Declaration, and the inconvenient provision of the Burlingame Treaty between China and the United States that recognized the "inalienable right of man to change his home and allegiance." Simultaneously, he refused to deny or enforce these principles:

As a statement and enunciation of principles of moral philosophy, capable of demonstration by the severest rules of logic, the extracts from the Declaration of Independence and the fifth article of the Burlingame treaty express deductions that I believe to be true, and admirable because true. The force and effect of these expressions of broad, comprehensive and indefeasible rights in man cannot be destroyed by a construction of the terms of the expressions limiting their application to the Caucasian race or to any designation that does not include all men. . . . In

71. 9 CONG. REC. APP. 51 (1879)

72. *Id.* at 55.

73. *Id.* at 55-56.

74. *Id.* at 56.

this argument I disdain to employ any such subterfuge as would either deny the truth or the value of the universal application of the principles just stated. But while I thus concede to the philosophical deductions found in the Declaration of Independence and the . . . treaty with China their fullest meaning, I do not by any means concede that they are practical or even possible of practical application among all the people of the earth under all their varying conditions and circumstances.⁷⁵

Corlett demonstrated the limits of the Declaration of Independence by offering evidence of the Framers' interpretation in the context of slavery: "the nation which was born of that revolution by the express words of its fundamental law not only did not recognize and protect the equality of man as an inalienable right, but actually permitted one man to own and control the person and labor of another against that other's consent."⁷⁶ The founder's practical wisdom was reflected in the fact that "[a]s philosophers seeking to express truth, they expressed it in all the beauty and perfection of completeness. As statesmen they did not attempt the impossible in framing the fundamental law of the nation."⁷⁷ In sum, principle would have to submit to practicality:

Neither can the problem which now confronts this nation be solved by an appeal to sentiment or to any general principles concerning the "brotherhood of man" or "inalienable rights," however well such notions may suffice to satisfy what Charles Dickens designated the "telescopic philanthropy" of the times. The "gospel of gush" is much too abstract and too narrow to furnish a guide when we find ourselves under the necessity of acting upon a question so intensely imminent, urgent, and practical.

. . .⁷⁸

The conclusion was that Corlett objected to the particular bill because it was too lenient:

This bill should have been so framed and guarded as to provide for the absolute prohibition of any further immigration of the Chinese into this country from any source whatever or by any means whatever . . . [N]o one can feel a more abiding and absolute conviction than myself of the necessity of wholly prohibit-

75. *Id.* at 53.

76. *Id.* at 54.

77. *Id.*

78. *Id.*

ing further immigration of Chinamen to this country at an early date.⁷⁹

Wyoming contributed to the national debate after the Chinese Exclusion Act became law. In many regions, Chinese immigration met with violent resistance. As noted historian Roger Daniels wrote: "The late nineteenth century American West was a violent region; with the exception of the American Indians, no group there suffered as much from violence as did the Chinese. No one can ever know how many Chinese were murdered and brutalized. . . ."⁸⁰ In a well-known incident in 1885, a white mob killed twenty-eight Chinese railroad workers and injured fifteen at Rock Springs.⁸¹

The violence in Wyoming was used to fuel arguments for more vigorous exclusion of the Chinese. "The fact that the presence of the Chinese in the workshops, in the mines, in all agricultural pursuits, leads to more or less frequent riots, in which they are killed or their houses burned, is a reason why they should not be allowed to come in numbers,"⁸² wrote California U.S. Senator A. A. Sargent in an article about the Rock Springs incident in a national magazine.

Only one willfully blind can fail to see that the Caucasian race will not allow itself to be expelled from this country, or totally impoverished, without a bloody struggle. If the law does not measure the difficulty and obviate it, the laboring masses will. This is not a threat, it is a prophecy.⁸³

Congress continually made Asian exclusion regulation more rigorous and comprehensive. In 1892, Representative Clarence Clark⁸⁴ and Senator Francis Warren⁸⁵ voted for a ten-year extension of Chinese Ex-

79. *Id.* at 52.

80. ROGER DANIELS, *ASIAN AMERICANS: JAPANESE AND CHINESE IN THE UNITED STATES SINCE 1850*, at 58-59 (1988).

81. *Id.* at 61-62 (citing Paul Crane & Alfred Larson, *The Chinese Massacre*, 12 ANNALS OF WYOMING 47-55, 153-60 (1940)).

82. A. A. Sargent, *The Wyoming Anti-Chinese Riot*, OVERLAND MONTHLY, Nov. 1885, at 508.

83. *Id.*

84. Positions held by Clarence Clark include: Prosecuting Attorney, Uinta County, U.S. Representative, 1890-93, U.S. Senator, 1895-1917. Biographical information, available at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=C000425>

85. Positions held by Francis Warren include: Territorial Senator, Treasurer and Governor; First Governor of State; U.S. Senator, 1890-93, 1895-1929. Biographical information, available at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=W000164>.

clusion,⁸⁶ but U.S. Representative Franklin Mondell⁸⁷ may have been the most enthusiastic proponent of Asian restriction. In 1900, he proposed an investigation of Japanese immigration.⁸⁸ In 1901, he introduced a bill “prohibiting and regulating the coming of Chinese persons into the United States.”⁸⁹ His bill did not pass, but he spoke in favor of the 1902 statute ultimately adopted, which made Chinese Exclusion permanent. He explained:

[T]here are races the members of which seem to be utterly lacking in those elements which are essential to citizenship in a country like ours, whose traits and characteristics, fixed by long centuries of isolation and nonintercourse with the outer world, have developed a race of men who, whatever their virtues may be, are certainly lacking in many of those which characterize all of the races which have progressed along the lives of civil and religious liberty and free government. This is peculiarly and especially true of the Chinese, whose continued and more complete exclusion from our shores we expect to provide by the measure now before the House.⁹⁰ I am thankful, Mr. Chairman, that our portals are still to be more safely guarded against the coming of the yellow peril. I have no fear that continued exclusion will affect in any way our trade with China; but if it should, it were infinitely better that we never sold China a dollar’s worth of merchandise or produce than we should degrade our people by compelling them to compete with coolie labor or endanger our institutions by an influx of hordes of the heathen Chinese. [applause.]⁹¹

Senators Clark and Warren also voted for permanent exclusion.⁹²

Addressing the local situation, the Wyoming Legislature passed

86. 23 CONG. REC. 3879, 3925 (1892). Senator Joseph Carey did not vote. *Id.* at 3879.

87. Positions held by Franklin Mondell include: Mayor of Newcastle, State Senator, Wyoming’s representative in Congress from 1895-97 and 1899-1923. Biographical information, available at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=M000852>.

88. 34 CONG. REC. 5454 (1901).

89. 35 CONG. REC. 96 (1901).

90. 35 CONG. REC. 3807 (1902).

91. *Id.* at 3808. “Heathen Chinese” is an allusion to the Bret Harte poem, an inevitable literary reference of members of Congress in this era, which includes the lines: “That for ways that are dark, And for tricks that are vain, The heathen Chinese is peculiar.”

92. *Id.* at 4252.

a bill prohibiting interracial marriage in 1913: "All marriages of white persons with Negroes, Mullatoes, Mongolians or Malays hereafter contracted in the State of Wyoming are and shall be illegal and void."⁹³ Violations could be punished by terms of imprisonment from one to five years. Wyoming was not alone; as Professor Pauli Murray wrote in 1951:

One of the most widespread racial restrictions is found in the field of marriage. Thirty states forbid marriages between white persons and Negroes or mullatoes. Fifteen of those statutes also prohibit marriages between white persons and persons of Mongolian or Oriental descent and five states bar marriages between whites and American Indians.⁹⁴

Not surprisingly, the impulse to separate the races in marriage was used by racists to justify separation in other areas. In 1943, Representative Leroy Johnson of California introduced a bill in Congress to strip many Japanese Americans of their citizenship. At a hearing on his bill, he explained that part of the rationale for deporting U.S. citizens of Japanese ancestry was based on these laws:

I want to mention one thing here that may subject me to some criticism but I think it is fair to look these situations in the face. According to the law of every Western State no Japanese can marry a white person. And that means no matter how long these people are here, if they are here a hundred years or 200 years or 500 years, if that policy is continued they will always be a group set apart with other racial characteristics and that situation will be a focal point of friction. We cannot melt every single colored person into our population. We have serious race problems now.⁹⁵

Japanese immigration was restricted by the Gentlemen's Agreement of 1907-08, a series of telegrams between United States and Japanese diplomats that concluded with a Japanese undertaking not to issue travel documents to laborers headed for the United States. In 1917,

93. 1913 Wyo. Sess. Laws ch. 57, § 1, codified at WYO. COMP. STAT. § 50-108 (1945).

94. MURRAY, *supra* note 34, at 18.

95. Expatriation of Certain Nationals of the United States: Hearings before the Committee on Immigration and Naturalization, 78th Cong., 2d Sess. on H.R. 2701, H.R. 3012, H.R. 3489, H.R. 3446, and H.R. 4103, Bills to Expatriate Certain Nationals of the United States; To Create a Japanese Deportation Commission; and to Deport Disloyal Japanese, 78th Cong., 2d Sess. 13-14 (1944).

Congress created the Asiatic Barred Zone, a geographical area of mainland Asia from which immigration was barred. Representative Mondell voted for it.⁹⁶ Although Senators Clark and Warren voted in vain to sustain President Wilson's veto,⁹⁷ their other votes suggest that it may have been some other feature of the bill that troubled them.

Senator Clark's successor, John Kendrick,⁹⁸ joined the Wyoming delegation in supporting the 1921 and 1924⁹⁹ legislation creating the National Origins Quota system. Representative Charles Winter¹⁰⁰ explained that the quality of recent immigration had been mixed:

While millions of these have become the very best of citizens, we know that among those heretofore admitted there is a large element which is vicious and hostile; there are many indifferent to the spirit of Americanism; there are those who are ready and willing to conform and be transformed into true Americans but who have not been taught and educated and imbued with the genius of the new World.¹⁰¹

Winter also observed that in "those states having the largest percentage of the foreign element we find the greatest opposition to the eighteenth amendment and the enforcement act."¹⁰² The National Origins system discriminated against Southern and Eastern Europeans, undoubtedly because of their Jewish and Catholic religions, and prohibited virtually all immigration of "aliens ineligible to citizenship," halting Asian immigration. The purpose of this feature of the statute was to eliminate the Asian presence in the United States; as the House Report explained, "[a]ll must agree that nothing can be gained by permitting to be built up in the United States colonies of those who cannot, under the law, become naturalized citizens"¹⁰³

This restriction was also related to Internment. In upholding the

96. 54 CONG. REC. 2457 (1917).

97. *Id.* at 2629.

98. Positions held by John Kendrick include: State Senator, Governor, U.S. Senator, 1917-33. Biographical information, *available at* <http://bioguide.congress.gov/scripts/biodisplay.pl?index=K000098>.

99. 61 CONG. REC. 968 (1921) (reflecting votes of Senators Warren and Kendrick).

100. Positions held by Charles Winter include: Wyoming District Judge, U.S. Representative, 1923-29, Attorney General and Acting Governor of Puerto Rico. Biographical information, *available at* <http://bioguide.congress.gov/scripts/biodisplay.pl?index=W000643>.

101. 65 CONG. REC. 6264 (1924).

102. *Id.* at 6265. Senators Kendrick and Warren also supported the law. *Id.* at 6649.

103. H.R. REP. NO. 68-350, at 6 (1924).

race-based curfew in *Hirabayashi*, the U.S. Supreme Court recognized that the denial of citizenship, immigration opportunities, and the opportunity to purchase land had isolated the Japanese American community from the rest of the country:

There is support for the view that social, economic and political conditions which have prevailed since the close of the last century, when the Japanese began to come to this country in substantial numbers, have intensified their solidarity and have in large measure prevented their assimilation as an integral part of the white population Federal legislation has denied to the Japanese citizenship by naturalization and the Immigration Act of 1924 excluded them from admission into the United States. State legislation has denied to alien Japanese the privilege of owning land.¹⁰⁴

Like Delegate Corlett, the Court felt the need to bow the putative practicalities of the situation, but it began to recognize that the problem was not entirely the fault of the Japanese Americans.

Some members of the Wyoming delegation were less sympathetic, attacking the internees in Congress. They drew on images of Asians as foreign and dangerous which earlier laws had helped solidify and perpetuate. Senator Edward V. Robertson,¹⁰⁵ himself an immigrant, spoke at length about the excessive and unreasonable kindnesses shown to the internees.

Since Kipling wrote, “[o]h, East is East and West is West, and never the twain shall meet,” truer words have never been written or uttered When the question of this camp in Wyoming was first raised, it was strongly opposed by the then Governor, Nels H. Smith. Governor Smith’s attitude was straightforward, it was western and consequently thoroughly American. He said “The only condition under which we will have them is that at the conclusion of the war they shall be returned to the place whence they came, and that if they are to be used to work on our farms or in the beet fields, they must return to the camp on a stipulated date.” What has actually occurred? Many of these people have left the camp for town jobs in Wyoming, Montana and other States.

104. *Hirabayashi v. United States*, 320 U.S. 81, 96 & n.4 (1943) (citations omitted).

105. Positions held by Edward Robertson include: U.S. Senator, 1943-49. Biographical information, available at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=R000320>.

Robertson applied his knowledge of the Japanese character to explain the dangers presented by the internees: "They are supposed to be loyal citizens. It was evidently the assumption of the relocation authorities that any American citizen of Japanese ancestry was a loyal American. Anyone who has ever had dealings with these people knows that such an assumption is false and impossible."¹⁰⁶

Robertson had helped *Denver Post* reporter Jack Carberry get into the camp; Carberry reported that the internees were living lives of luxury. Robertson railed against this coddling. He seemed to reason that the internees bore some responsibility for the actions of Imperial Japan, and that pampering justifiably might induce violent retaliation for Pacific atrocities.

The people of Wyoming, and of other States where these camps are located, are not going to stand by and see these Japanese, whether American citizens or not, petted and pampered. Our people are doing all they can in the war effort, certainly doing without many of the things which these Japanese are being given by an indulgent administration. Is it difficult to imagine the feelings of our people who see this day after day, who think of their loved ones fighting at Guadalcanal, New Guinea, the Marshall Islands, or who are prisoners of war of Bataan, Corregidor, or Wake Island? [M]r. President, these Japanese . . . must be kept in an internment camp, kept inside, Mr. President. They must be treated as prisoners of war, and unless they are, the responsibility for whatever happens will rest on the head of this administration.¹⁰⁷

Representative Frank Barrett¹⁰⁸ agreed: "Without question these Japs are being coddled and pampered and treated better than the people of my State." Indeed, the treatment of the internees was so excessive that it represented "sabotage of the war effort."¹⁰⁹

In 1944, Robertson urged the Senate to encourage the Army to abandon a plan to remove some of the Military Police from the camp. Robertson explained: "many men from Park County, Wyo were em-

106. 89 CONG. REC. 4040 (1943).

107. *Id.* at 4041.

108. Positions held by Frank Barrett include: State Senator, University of Wyoming Trustee, U.S. Representative, 1943-49, Governor, 1951-53, U.S. Senator, 1953-59. Biographical information, available at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=B000176>.

109. 89 CONG. REC. APP. 2090 (1943).

ployed in the Construction work on Wake Island prior to Pearl Harbor, December 7, 1941. Very little has been heard from or of the majority of these men, and this condition naturally causes deep resentment against the occupants of this relocation camp."¹¹⁰

Wyoming's congressional delegation continued to lead in the area of immigration, but beginning no later than 1952, the majority advocated for the anti-racist position. Senator Joseph O'Mahoney¹¹¹ had kept his own counsel about the internees during the War, on the Senate floor at least. In 1952, he supported the liberal immigration bill advanced by Senators Herbert Lehman and Hubert Humphrey as a substitute for the restrictive bill sponsored by Senator Pat McCarran of Nevada. The main substantive differences were that under O'Mahoney's bill, Asians would no longer be discriminated against and unused visas would be reallocated to people who would use them.¹¹² O'Mahoney argued:

In certain portions of my State there are counties, citizens of which have been recruited from almost every country in Europe and from many nations in the New World as well. I am thinking particularly of Sweetwater County, Wyo., the population of which probably is made up of a greater variety of nationalities than any other county in the United States, not excepting New York, or Manhattan, in the city of New York. Sweetwater County is a coal-mining area. Working in the mines of Sweetwater County there are to be found persons from almost every country and almost every race—Serbs, Croatians, Slovenes, Italians, Albanians, Austrians, Armenians, Basques, Chinese, Czechoslovakians, Danes, Finns, French, Germans, Greeks, Hebrews, Hungarians, Japanese, Norwegians, Mexicans, Poles, Negroes, Rumanians, Russians, Spaniards, Swedes, Turks, Dutchmen, Irishmen, Englishmen, Scots and Welsh. I am proud to be personally acquainted with many of them and to have visited them in their homes.¹¹³

The year 1952 was a war year, and O'Mahoney mentioned that lists of United States "casualties included the names of Japanese and

110. 90 CONG. REC. 1139 (1944).

111. Positions held by Joseph O'Mahoney include: Cheyenne City Attorney, U.S. Senator, 1934-53, 1954-61. Biographical information, *available at* <http://bioguide.congress.gov/scripts/biodisplay.pl?index=O000088>.

112. *See* E.P. HUTCHINSON, LEGISLATIVE HISTORY OF AMERICAN IMMIGRATION POLICY, 1798-1865, at 304 (1981).

113. 98 CONG. REC. 5628 (1952).

Hawaiians.”¹¹⁴ In vain, O’Mahoney and Senator Lester Hunt voted for the substitute bill and to sustain President Truman’s veto of the restrictive McCarran Walter Act.¹¹⁵ Representative William Henry Harrison, however, voted for the bill retaining racial restrictions.¹¹⁶

Wyoming was ahead of the curve again when it repealed its miscegenation statute in 1965.¹¹⁷ The state thus anticipated by two years the Supreme Court’s decision in *Loving v. Virginia*,¹¹⁸ holding such statutes unconstitutional.

Wyoming’s congressional delegation played a role in the great 1965 reform act, which ended discrimination against Asians and Southern and Eastern Europeans.¹¹⁹ Senator Gale McGee¹²⁰ co-sponsored the bill along with notables including Hiram Fong, Daniel Inouye, Robert Kennedy, Edward Kennedy, Jacob Javits, and Walter Mondale.¹²¹ Senator McGee defended the bill on the floor of the Senate, arguing:

Save for the voice of the Red Man in our country, no other voices raised against immigrants should be heeded or can speak with naught but ill grace. . . . It is time that as Americans we realize that we have little right, in my judgment, to slam closed the door, once we ourselves get in the “club.”¹²²

Senator McGee’s vote for reform was joined by Senator Milward Simpson¹²³ and Representative Teno Roncalio.¹²⁴

CONCLUSION

The great lesson from the Internment is that “guilt is per-

114. *Id.* at 5629.

115. *Id.* at 5630, 8267.

116. *Id.* at 4444.

117. 1965 Wyo. Sess. Laws ch. 4.

118. 388 U.S. 1 (1967) (citations omitted).

119. See Gabriel J. Chin, *The Civil Rights Revolution Comes to Immigration Law: A New Look at the Immigration and Nationality Act of 1965*, 75 N.C. L. REV. 273 (1996), reprinted in 17 IMMIGR. & NAT’LITY L. REV. 87 (1995-96).

120. Positions held by Gale McGee include: Professor, University of Wyoming, U.S. Senator, 1959-77. Biographical information, available at <http://bioguide.congress.gov/scripts/biodisplay.pl?index=M000445>.

121. 111 CONG. REC. 24783 (1965).

122. *Id.* at 24779.

123. *Id.* at 24783.

124. *Id.* at 21820.

sonal."¹²⁵ Individuals who did not participate in Internment or other historical wrongs are not accountable as individuals even if they now hold positions of responsibility. Of course, non-responsibility for events one was not involved in implies responsibility for acts a person did engage in.

The principle that guilt is personal does not apply to institutions or organizations. It would be no defense to a tort or contract claim, for example, for a corporation to say that none of the responsible officers or employees remained at the firm, and therefore the company should not be liable. Before and after the particular tragedy of Internment, many of the people's representatives in the past found it appropriate to participate in the Asian question, and for that the people's representatives had an obligation to recognize these mistakes, not for themselves as individuals, but for the institution, for the state.

And they did. For the past five decades, Wyoming's congressional delegation has opposed racism in immigration and citizenship law. In 1988, the U.S. Congress voted to issue a formal apology to the Japanese Americans without reservation:

The Congress recognizes that, as described by the Commission on Wartime Relocation and Internment of Civilians, a grave injustice was done to both citizens and permanent resident aliens of Japanese ancestry by the evacuation, relocation, and internment of civilians during World War II. As the Commission documents, these actions were carried out without adequate security reasons and without any acts of espionage or sabotage documented by the Commission, and were motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership. The excluded individuals of Japanese ancestry suffered enormous damages, both material and intangible, and there were incalculable losses in education and job training, all of which resulted in significant human suffering for which appropriate compensation has not been made. For these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation.¹²⁶

Representative Richard Cheney voted for apology and repara-

125. *Hirabayashi v. United States*, 320 U.S. 81, 107-08 (1943) (Douglas J., concurring).

126. 50 U.S.C. app. § 1989a(a).

tions,¹²⁷ as did Senator Alan Simpson, who was a co-sponsor of the legislation, although Senator Malcolm Wallop opposed it, in part because it involved monetary payment.¹²⁸ In the context of fifty years of leadership of the Wyoming Congressional delegation, culminating in an informed and direct apology for Internment on behalf of the nation, Governor Geringer's and Mayor Milburn's letter offering less is a disappointment.

127. 134 CONG. REC. H6307-02 (1988).

128. *Id.* at S4396-02.

