Wartime Internment of Japanese-Americans: An Examination of Current Reparations Proposals

During World War II the United States government removed 120,000 persons of Japanese ancestry\(^1\) from the West Coast and interned them in relocation centers hundreds of miles from their homes. The main justification given for this action was the prevention of sabotage and espionage. In retrospect, however, the suspicion of sabotage and espionage by Japanese-Americans was unfounded.\(^2\) The suddenness of the evacuation and lack of adequate safeguards resulted in effectively requiring Japanese-Americans to abandon their homes, possessions and jobs. Estimates of their losses in both physical injury and property damage are in the billions of dollars.\(^3\)

Because the Supreme Court has upheld the constitutional-ity of the evacuation out of deference to military judgment in times of war, Japanese-American claims based on internment injuries are precluded from judicial remedy.\(^4\) The Court has rec-

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1. At the time of the internment, persons of Japanese ancestry included both citizens and non-citizens. At that time, the law forbade first generation immigrants (Issei) from becoming citizens. Ozawa v. United States, 260 U.S. 178 (1922); 1 Stat. 103 (1790). The second (Nisei) and third (Sansei) generations gained citizenship automatically by birth in this country. Those interned consisted primarily of Issei and Nisei.

This comment uses the term Japanese-Americans to refer to all persons of Japanese ancestry regardless of citizenship at the time of the internment.

2. See infra notes 6-8 and accompanying text.

3. See infra note 86.

4. The constitutional issues raised by the evacuation and internment are beyond the scope of this article. The United States Supreme Court upheld the constitutionality of the military's actions. Korematsu v. United States, 323 U.S. 214 (1944); Yasui v. United States, 320 U.S. 115 (1943); Hirabayashi v. United States, 320 U.S. 81 (1943). Commentators have criticized the Supreme Court decisions. Freeman, Genesis, Exodus, and Leviticus Geneology, Evacuation, and Law, 28 CORNELL L.Q. 414 (1943); Rostow, The Japanese-American Cases—A Disaster, 54 YALE L.J. 489 (1945). Contra Alexandre, The Nisei—A Casualty of World War II, 23 CORNELL L.Q. 385 (1943). The Supreme Court itself granted a habeas corpus petition in at least one detention of a concededly loyal Japanese-American. Ex parte Endo, 323 U.S. 283 (1944). Nonetheless, with the creation of the Commission on Wartime Relocation and Internment of Civilians, several Japanese-American groups have raised constitutional challenges to the evacuation and internment. See, e.g., Bay Area Attorneys for Redress, Brief by Bay Area Attorneys for Redress on Selected Constitutional Issues Before the Commission on Wartime Relocation and Internment of Civilians (1981) and Subcommittee on Japanese-American
ognized, however, that Congress may remedy judicially noncognizable claims.\(^5\) Recognizing its ability to remedy the inequity done to the Japanese-Americans and the need for a remedy, Congress has established a commission to investigate the causes of the internment and extent of the injury suffered, and to recommend an appropriate remedy.\(^6\) Various groups have proposed numerous alternative remedies ranging from direct compensation to establishing a corporation to fund projects benefiting the Japanese-American community.

To remedy Japanese-American claims, Congress must acknowledge the extensive injuries that resulted from the government's evacuation and subsequent internment of Japanese-Americans and the inadequacy of its previous remedy. Congress also must exercise its ability to remedy the equitable claims of Japanese-Americans by enacting a remedial plan that provides both direct and indirect compensation for injuries suffered as a result of the evacuation and internment.

This comment will analyze the proposed remedies in light of the injury done by the internment. First, a discussion of the history surrounding the internment will establish the existence of an injury and the extent of the injury suffered by the Japanese-Americans. Second, the previous remedy will be examined. Third, this comment will establish that Congress has the power to satisfy judicially noncognizable claims and that Japanese-American claims justify Congressional action. Fourth, the goals a remedial plan must seek to achieve will be examined. Finally, the individual remedial plans are analyzed in light of those goals, ultimately concluding a plan involving both direct and

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Redress/Reparations, Legal Services Section, State Bar of California, Japanese-American Redress and Re却ations: A Basis for Congressional Action (July 1981) (report submitted at public hearing before Commission on Wartime Relocation and Internment of Civilians, Washington, D.C.). These challenges include denial of fifth amendment due process rights, denial of first amendment freedom of speech rights, and denial of the sixth amendment right to trial. Id.


It is the purpose of this Act to establish a commission to (1) review the facts and circumstances surrounding Executive Order 9066, issued February 19, 1942, and the impact of such Executive Order on American citizens and permanent resident aliens; (2) review directives of United States military forces requiring the relocation and, in some cases, detention in internment camps of American citizens, including Aleut civilians, and permanent resident aliens of the Aleutian and Pribilof Islands; and (3) recommend appropriate remedies.

indirect compensation that most effectively meets those goals.

In 1941, President Roosevelt, realizing war with Japan was imminent, and fearing the potential of internal subversion, ordered a secret investigation to determine the loyalty of Japanese-Americans.7 This investigation culminated in the Munson Report revealing that Japanese-Americans were extraordinarily loyal, that intelligence services had identified what few suspect individuals were present, and concluding there was no "Japanese problem."8 Moreover, with the outbreak of war,9 the FBI immediately rounded up all Japanese-Americans suspected of being enemy aliens.10 Thus, shortly after the outbreak of war the threat to national security identified in the Munson Report had been eliminated.

Immediately after the bombing of Pearl Harbor public opinion was largely sympathetic towards Japanese-Americans.11 In subsequent months public sentiment changed. Statements from both the military and anti-Japanese groups accusing Japanese-Americans of subversion and suggesting their evacuation mobilized public support for an evacuation.12

8. Id. at 33-53.
12. By March, 1942, public sentiment was strongly in favor of evacuation. B. Hosokawa, Nisei: The Quiet Americans, 264-92 (1969). The military gave many reasons to justify the evacuation. First, the evacuation was necessary to protect the West Coast from sabotage, espionage, and other fifth column activities. The military thought that persons of Japanese ancestry living in the United States supported and approved of Japan's military aggression, and that the Japanese government exerted great influence over them. Second, military and political leaders said the Japanese people had settled around strategic military points to support an invasion by the Japanese government. Third, the evacuation was necessary to protect Japanese-Americans from violent anti-Japanese sentiment and they could prove their loyalty by cooperating with the evacuation. Fourth, the government could not separate the loyal Japanese-Americans from the disloyal. M. Grodzins, Americans Betrayed: Politics and the Japanese Evacuation 400-10 (1949).

General DeWitt expressed the sentiment of the time: "In the war in which we are now engaged racial affinities are not severed by migration. The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become 'Americanized', the racial strains are undiluted." J.L. DeWitt, Final Report Japanese Evacuation from the West Coast 1942, 34 (1943). In fact, no Japanese-American was found to be disloyal, or was charged or convicted of espionage or sabotage. M. Weglyn, supra, note 7, at 29.
Despite the findings of the Munson Report, President Roosevelt responded to public opinion and pressure from the military and set the evacuation machinery in motion. On February 19, 1942, the President signed Executive Order 9066. The order authorized the Secretary of War to establish military areas and regulate travel within them. To carry out the mandate of Executive Order 9066, the military commander in charge of defending the West Coast, General DeWitt, issued Public Proclamation No. 1 establishing military areas and indicating that "certain persons soon to be designated" would be excluded from those areas.

The "certain persons" were designated by Public Proclamation No. 3. That proclamation excluded Japanese, Italian, and German aliens, as well as persons of Japanese ancestry, from military areas. Moreover, Congress had made it a federal offense to violate any regulation issued pursuant to Executive Order 9066. Therefore, the Japanese-Americans effectively were compelled to follow the military regulations or face criminal prosecution.

Initially, the military encouraged alien and non-alien Japa-

Some Caucasian economic interests supported the evacuation by downplaying the contribution of the Japanese-Americans to local economies in an effort to rid the marketplace of Japanese competition. M. Grodzins, supra at 400-10. Japanese made up one percent of the population of California. They controlled one-half of the commercial truck crops, even though they were not permitted to own land in their own name. M. Weglyn, supra note 7, at 37; See generally B. Hosokawa, supra at 3-190 (discussion of Japanese-American immigration and social history from the nineteenth century to 1940). For a detailed discussion of the pressure brought in favor of evacuation by Caucasian special interest groups see M. Grodzins, supra. For a list of the various groups involved see A. Bosphorus, supra note 10, at 38-40.

14. Id.
17. Id.
19. Proclamation No. 3, 7 Fed. Reg. 2543 (1942). Proclamation No. 5, 7 Fed. Reg. 2713, issued on March 30, 1942, made it clear the Japanese were the target of the evacuation order. This proclamation established classes of persons who were exempt from the evacuation orders. The proclamation established six exempt classes for German and Italian aliens, and only two exempt classes for Japanese citizens and aliens. See J.L. DeWitt, supra note 12, at 305; See also Alexandre, supra note 4, at 387-88; Freeman, supra note 4, at 420.
nese to voluntarily relocate outside Military Area No. 1.20 Persons attempting to resettle, however, met with such hostility they had to return to their homes.21 Responding to the failure of "voluntary" relocation, General DeWitt issued Public Proclamation No. 4 terminating that scheme.22 In its place, the military adopted a compulsory relocation plan requiring Japanese-Americans to report to designated relocation centers,23 and prohibiting their leaving established assembly or relocation centers without permission.24

The military executed the evacuation and relocation within five months.25 Many Japanese-Americans had just one week to evacuate their homes.26 The Army allowed them to bring only minimal belongings, requiring much to be left behind.27

20. See J.L. DeWitt, supra note 12, at 43-48. This note uses the word alien to refer to persons from another country living in the United States who are not United States citizens. See supra note 1.

21. Most Intermountain States did not want the Japanese to relocate within their borders. Kansas required the state highway patrol to turn away Japanese trying to enter the state. C. McWilliams, supra note 11, at 130. A typical reaction was a statement made by the Nevada Bar Association: "We feel that if Japs are dangerous in Berkeley, California, they are likewise dangerous to the State of Nevada." Id. at 128-30; see also J.L. DeWitt, supra note 12, at 106 (statements expressing similar sentiments).


23. See, e.g., Civilian Exclusion Order No. 1, 7 Fed. Reg. 2581 (1942). All Civilian Exclusion Orders required reporting to civil control centers which registered all persons of Japanese ancestry, prepared them for movement, and directed their movement to assembly or relocation centers. General DeWitt issued 108 exclusion orders, one order for each exclusion area. See J.L. DeWitt, supra note 12, at 91, 115, 290 (map inserts I, II, and III).


27. See R. Daniels, Concentration Camps USA: Japanese-Americans and World War II 86 (1971). The Army limited the items evacuees could bring to "bedding, toilet articles, clothing, and sufficient eating utensils for each member of the family." Id. One author described the evacuation of Terminal Island:

Near-panic [sic] swept the community, particularly those where the family head was in custody. Word spread quickly and human vultures in the guise of used-furniture dealers descended on the island. They drove up and down the
The Western Defense Command delegated authority to several agencies to protect evacuee property. Rather than taking direct responsibility for the property, however, the agencies encouraged evacuees to dispose of their own property. Those who attempted to dispose of their property were forced to do so at distress sale prices. Even when the agencies did attempt to take responsibility the result was inadequate, causing the Japanese-Americans to lose land because of inability to meet lease and mortgage payments, lose merchandise through post-evacuation looting of their stores, and lose bank accounts to unscrupulous creditors.

streets in trucks offering [five dollars] for a nearly new washing machine, [ten dollars] for a refrigerator, [twenty-five dollars] for pianos—pittances for household goods which soon could be resold for many times the price. And the Japanese, angry but helpless, sold their dearly purchased possessions because they didn’t know what to do with their goods and because they sensed the need in the uncertain days ahead for all the cash they could squirrel away. Even so, an employee of the Federal Security Agency visited [Terminal Island] the day after the Japanese had left and found all manner of household equipment and enough expensive fishing nets and rubber boots to fill eight trucks—abandoned because there was not time to get it moved and no custodians to take possession.

B. HOSOKAWA, supra note 12, at 310-11.

28. See D. Myers, supra note 25, at 246. An underlying consideration of the evacuation was to have a minimum of economic loss and social dislocation. See J.L. DeWitt, supra note 12, at 128. To minimize economic loss, the Federal Reserve Bank took charge of storing evacuee personal property, including motor vehicles, and facilitating the liquidation or management of businesses. The Farm Security Administration took charge of protecting evacuee farm property and keeping farmlands producing food to help meet wartime requirements. See generally J.L. DeWitt, supra note 12, at 127-44; D. Myers, supra note 25, at 245-49.


30. See D. Myers, supra note 25, at 247. An example of this inadequacy was the storage of motor vehicles. The Federal Reserve Bank provided storage for cars, at the owner’s risk, without insurance, in open spaces. Consequently, the cars deteriorated rapidly. Id.

31. See A. GIRDNER & A. LOFTIS, supra note 26, at 130-33. The Federal Reserve Bank had the power to freeze bank accounts so creditors could not attach them. The bank used this power on only one occasion. See D. Myers, supra note 25, at 248.

The War Relocation Authority issued a report in 1946 entitled “The Wartime Handling of Evacuee Property.” This report assessed the government’s failure to protect evacuee property and listed several factors which combined to make the evacuee’s substantial losses inevitable.

First of all, under stress of wartime fears and hatred, the prevailing sentiment of the West Coast population was opposed to any recognition of the rights and privileges of this little known and habitually misrepresented minority that was racially associated with the enemy across the Pacific.

Second, with the evacuation a foregone conclusion, the Federal Government was slow to set up machinery for safeguarding the property of the people
Under the compulsory relocation plan the Japanese-Americans first reported to assembly centers. These were nothing more than hastily converted fairgrounds or racetracks used to temporarily detain them. From the assembly centers the military moved the Japanese-Americans to relocation centers where they remained until their release in the latter part of 1945. The relocation centers were hastily constructed barracks, guarded at all times, surrounded by barbed wire and watch towers; they resembled prisons.

who were to be evacuated, thus allowing an interval of golden opportunity to swindlers and tricksters who had a terrified group of people at their mercy.

Third, when federal provisions were made for assisting evacuees with unsolved property problems, they were inadequate to prevent ... loss to the absentee owners during the period when the Exclusion Orders remained in force.

Fourth, responsibility for safeguarding evacuee property bounced from agency to agency, finally coming to rest in the War Relocation Authority after evacuation was an accomplished fact, well after the period when strong measures might have prevented much hardship . . .

Fifth, most of the local and state law enforcement authorities of the West Coast . . . have shown a considerable indifference to vandalism and even to arson committed upon evacuee property and have put up effective passive resistance to requests to conduct investigations which might lead to arrest and prosecution of offenders.

Sixth, The Western Defense Command, after ordering and conducting the evacuation, took no direct responsibility for safeguarding physically the property which the evacuees were obliged to leave behind them, although that responsibility was very clearly assigned to the Western Defense Command . . .


32. Assembly centers were temporary detention facilities. The military created twelve assembly centers located in California at Fresno, Marysville, Merced, Pinedale, Pomona, Sacramento, Salinas, Santa Anita, Stockton, Tanforan, Tulare, and Turlock. Other assembly centers were in Mayer, Arizona; Portland, Oregon; and Puyallup, Washington. J.L. DeWitt, supra note 12, at 290 (map II).

33. See B. Hosokawa, supra note 12, at 322-32. The Army admitted conditions in some kitchens did not meet Army cleanliness standards. See R. Daniels, supra note 27, at 89. But see J.L. DeWitt, supra note 12, at 195-98.

34. Relocation centers were the permanent detention facilities. The military built ten relocation centers located at Jerome, Arkansas; Rohwer, Arkansas; Colorado River (Poston), Arizona; Gila River, Arizona; Manzanar, California; Tule Lake, California; Grandada, Colorado; Minidoka, Idaho; Central Utah (Topaz), Utah; and Heart Mountain, Wyoming. J.L. DeWitt, supra note 12, at 256.

35. The government closed the relocation centers by the end of 1945. Although some residents wanted to stay, the government required all residents to leave. See D. Myers, supra note 25, at 203-04.


37. See B. Hosokawa, supra note 12, at 329-33.
The inadequate facilities and substandard conditions resulted in physical and psychological injuries to many of the internees.\(^{38}\) Moreover, the communal nature of life at the relocation centers destroyed family solidarity and the moral underpinnings of the Japanese culture.\(^{39}\) Internment humiliated the Japanese-Americans; they lost pride in both themselves and their country.\(^{40}\)

Release from the centers did not end the problems of Japanese-Americans. Hometown citizens discouraged them from returning to, or remaining in, their homes.\(^{41}\) These communities instituted economic boycotts to drive the Japanese-Americans out of business.\(^{42}\) Most Japanese-Americans had to start their lives over; the evacuation and internment caused the loss or destruction of their land and assets.\(^{43}\)

Regardless of the losses suffered in the evacuation, Japanese-Americans presently have no judicially recognizable legal claim against the United States.\(^{44}\) The United States Supreme

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38. Testimony before the Commission revealed instances of illness due to poor camp conditions or lack of care. See Pacific Citizen, Aug. 28, 1981, at 1, col. 1. One man was shot and killed. Id. at 1, col. 3. See also id., Sept. 25, 1981, at 2, col. 1; id., Aug. 21, 1981, at 3, col. 2.

39. The Japanese family was a cohesive unit. Living and eating arrangements broke this family unity and prevented parental control over children's behavior. See C. McWilliams, supra note 11, at 170-74. The internment affected groups of Japanese-Americans differently. The group most affected was the Issei (first generation) men. In the family, the man had been the breadwinner and decision-maker. See D. Kitagawa, "Issei and Nisei" THE INTERNMENT YEARS 90-92 (1967). Each center had a governing council but only American citizens could be on the council. The first generation were the traditional leaders of Japanese-American society. But, with the requirement of citizenship for the governing councils, the second generation became the leaders, thus destroying traditional Japanese culture. See A. Bosworth, supra note 10, at 151.

40. See C. McWilliams, supra note 11, at 206-14, 219-22; A. Girdner & A. Loftis, supra note 26, at 238.

41. Soon after the evacuation, anti-Japanese groups began a movement to keep the Japanese from returning. But many Japanese did return to their pre-evacuation homes. In some instances they were greeted with acts of violence. See A. Girdner & A. Loftis, supra note 26, at 387-92.

42. A boycott of evacuee farm produce was organized in the Pacific Northwest. To end this discrimination the War Relocation Authority sent in market specialists that helped the Japanese-Americans find other outlets for their produce. In several West Coast communities merchants refused to sell merchandise to the Japanese-Americans. Again, the WRA was able to encourage merchants to change their policies. See D. Myers, supra note 25, at 200-01.

43. "Every socio-economic group save one profited from the war, for the Japanese-Americans it was a serious economic setback. Although most did not become impoverished, their economic progress was significantly retarded, not only during the war but in the post-war period as well." R. Daniels, supra note 27, at 169.

44. The Supreme Court upheld the constitutionality of the military's actions. See
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Court has held, however, that Congress may legislate concerning any claim arising from an equitable obligation not recognizable in a court of law. Such claims or obligations are not limited to those of a legal character but may be grounded in general principles of right and justice. Moreover, in remediying equitable obligations Congress is not bound by traditional legal standards. Nonetheless, Congress has implicitly adopted standards to assure that only meritorious claims are satisfied. Though such standards are traditionally applied to private bills, they are equally applicable to remedial legislation addressed to Japanese-Americans as well. Both private claims and Japanese-American claims involve claimants injured by government action who have no recognizable legal claim.

The standards Congress uses to evaluate private claims consist of three elements. First, the government must be responsible for the private loss, as shown by the government’s control over or connection to the instrumentality that caused the loss. Second, the party asserting the claim must have exhausted all

supra note 4. Because no legal liability attached to the government actions, no legal remedy exists. Congress has recognized the need for redress in the past and has granted a remedy, but this remedy was inadequate. See infra text accompanying notes 56-76. The statute that granted relief also absolved the United States of any further liability. The statute reads,

[P]ayment of an award shall be final and conclusive for all purposes, notwithstanding any other provision of law to the contrary, and shall be a full discharge of the United States and all of its officers, agents, servants, and employees with respect to all claims arising out of the same subject matter.


46. See Gellhorn & Lauer, supra note 45, at 1328. “So far as the Constitution is concerned, Congress may legislate as it may wish concerning any claim that in its judgment ‘grows out of general principles of right and justice’ being based on considerations that would appeal to the ‘conscience or the honor of an individual.’” Id. at 1330 (quoting United States v. Realty Co., 163 U.S. 427, 440 (1896)).


48. Gellhorn & Lauer, supra note 45, at 1331. Gellhorn and Lauer derived these standards from review of committee records, personal interviews, and an examination of the legislative product. Id. at 1330.
available remedies. Finally, the claimant must be free from fault.49

Under these standards, Japanese-American claims based on internment injury warrant Congressional action.50 The executive branch of government, through both the President and the military, was responsible for the orders activating, and the actions executing, the evacuation and internment—the instrumentalties causing the loss. All non-Congressional remedies are exhausted because none are available. The Supreme Court, by accepting military necessity as the grounds for validating the evacuation, precluded adjudication of claims on tort (under the Federal Tort Claims Act)51 and constitutional theories.52 Finally, the Japanese-Americans are free from fault. The previously discussed history of the evacuation and internment53 demonstrates that most Japanese-American losses resulted from the government-instituted evacuation and internment rather than action proving bad faith or less than reasonable conduct on the part of the evacuees themselves.54

Congress, implicitly applying these standards,55 adopted the Evacuation Claims Act of 1948.56 The purpose of the Act was to allow adjudication of Japanese-American claims against the United States for losses arising out of their evacuation from the

49. Id. at 1334. Although Gellhorn and Lauer identify five elements, only the three identified above address the substantive merits of the private claim. The remaining two elements discussed by Gellhorn and Lauer relate to the availability of other remedies. Id.

50. Opponents to redress argue that allowing recovery to the Japanese-Americans will set a precedent for recovery by other minority groups. See Pacific Citizen, Aug. 14, 1981, at 10, col. 2. The use of standards to determine the merit of claims aids Congress in distinguishing between legitimate and illegitimate claims.


52. See supra note 44.

53. See supra text accompanying notes 25-41. The reason for the evacuation and internment was fear of espionage and sabotage, yet, no Japanese-American was ever convicted of these crimes. See supra note 12.


55. See id.

West Coast during World War II. The Act authorized the Attorney General to "determine according to law" any claim for damage to real or personal property that is a reasonable and natural consequence of the evacuation, and to settle claims up to $2,500.

The Act was inadequate to address losses suffered during the internment. First, the Attorney General interpreted the Act to require an adjudication of each claim, thus slowing down the claims process and requiring the production of documentary or corroborative evidence often lost or destroyed during the evacuation. As a result many meritorious claims were dismissed. Second, because the $2,500 settlement limitation did not cover most property claims, forty percent of the lawful claimants had to wait for Congressional appropriations to receive payments. Third, the Act did not allow claims for death, personal injury, physical hardship, mental suffering, or loss of anticipated profits or earnings. Finally, the Act imposed burdensome time restrictions requiring claimants to file their claims within eighteen months after passage of the Act.

Congress rectified some of these problems by two amendments to the Act. The first amendment, passed in 1951, elimi-
nated the adjudication requirement. The amendment allowed the Attorney General to settle claims for the lesser of three-fourths of the total amount or $2,500.66 This facilitated rapid settlement of most pending claims.68 The second amendment, passed in 1956, increased the amount the Attorney General could offer for settlement of claims to $100,000.67 Congress passed this amendment because the remaining unsettled claims exceeded the $2,500 limit.68

Regardless of the amendments, the Evacuation Claims Act still proved inadequate.69 Procedural barriers such as proof of ownership and settlement restrictions70 prevented sufficient compensation to claimants. Also the amended Act did not compensate for lost income, death, and physical injury.71 While the Federal Reserve Bank estimated property loss to be $400,000,000,72 the government paid only $38,000,000 in damages73 not accounting for accumulated interest or post war inflation.74 Moreover, of the eligible 110,000 claimants,75 only approximately 24,000 of those claimants filed within the eighteen month period.76 Thus, the government compensated roughly one-fifth of the persons injured for less than ten percent of their property losses.

To date Congress has not acted to correct the inadequacy of the Evacuation Claims Act. Given the merit of Japanese-American claims and the ineffectiveness of the previous remedy, Congressional action to devise an effective remedial plan is neces-

67. Before the 1956 amendment, the 1,936 claims that remained to be settled were above the $2500 limit. 1956 U.S. Code Cong. & Ad. News, 84th Cong., 2nd Sess., 3057-58.
68. See F. Chuman, supra note 29, at 243-44.
69. See F. Chuman, supra note 29, at 244.
70. Id.
71. Id.
72. Id.
73. See R. Daniels, supra note 27, at 168.
74. See F. Chuman, supra note 29, at 243-44.
76. See A. Girdner & A. Loftis, supra note 26, at 21.
necessary. Congress, recognizing the continuing merit of Japanese-American claims, recently established a commission to investigate the causes of the internment and, if appropriate, to recommend remedial legislation. The remainder of this article examines the goals a remedy should seek to achieve and analyzes the four primary plans warranting consideration.

The potential goals remedial legislation for Japanese-Americans must seek to achieve are broad and diverse. By definition such legislation should provide compensation for the losses suffered. But other goals are important as well. Remedy Japanese-American losses provides a unique opportunity to educate the American people regarding the potential abuse of any racially defined action and to deter future occurrences through facilitating the elimination of discrimination. Additionally, to avoid the problems experienced under the Evacuation Claims Act a plan must be administratively efficient. This comment does not attempt to consider all possible goals, but merely to apply the above goals to analyze the various remedies proposed. Japanese-American groups have proposed four redress plans. Under the first plan (the direct payment plan), Congress would compensate individual Japanese-Americans by paying a fixed amount to those who were interned. The second plan (the individualized compensation plan) calls for Congress to establish categories of injury and compensate internees according to the type of injuries sustained. The third redress plan (the group compensation plan) requires group compensation through Congressional establishment of a charitable corporation. With the fourth plan (the mixed plan) Congress would provide both individual and group compensation for injuries suffered by the Japanese-Americans.

77. See supra note 6.


79. See infra note 97 at 3-7, 19-20.


82. See S. Castelnuovo, supra note 80 at 15.
The first plan provides for direct government payments to injured individuals following the precedent set by previous wartime compensation plans. In the past, Congress has provided individual compensation for both internment and property damage resulting from wartime actions. American civilians interned by enemy governments during wartime have received detention benefits under the War Claims Act. During World War II, interned American citizens received sixty dollars per month. Congress adjusted the amount for subsequent wars; most recently during the Vietnam War, interned American citizens received one hundred fifty dollars per month.

Congress has also compensated individuals for property damage resulting from wartime actions. The Rehabilitation of the Philippines Act compensated Philippine citizens whose property was damaged during World War II. While the Act limited compensation to damage resulting from certain enumerated perils, damage resulting from actions taken by the United

84. Id. The purpose of the War Claims Act is to provide relief for internees. 1948 U.S. CODE CONG. SERV., 80th Cong., 2nd Sess. 2317. This relief is "a symbolic gesture on the part of the United States expressing recognition of the hardship suffered by the beneficiaries." S. Rep. No. 878, 91st Cong. 2nd Sess., reprinted in 1970 U.S. CODE CONG. & AD. NEWS, 3303, 3306. "[The bill] provides payment for all civilian American citizens who are held captive by the North Vietnam forces at the rate of $60 per month, which is in addition to any payments they may receive under the Missing Persons, Defense Base, or War Hazard Acts." Id.
88. The enumerated perils include:
(1) enemy attack; (2) action taken by or at the request of the military, naval, or air forces of the United States to prevent property from coming into possession of the enemy; (3) action taken by enemy representatives, civil or military, or by the representative of any government cooperating with the enemy; (4) action taken by the armed forces of the United States or other forces cooperating with the armed forces of the United States in opposing, resisting, or expelling the enemy from the Philippines; (5) the looting, pillage or other lawlessness or disorder accompanying the collapse of civil authority determined by this Commission to have resulted from any of the other perils enumerated in this sec-
States military in opposing the enemy was one of those compensable perils.\(^9\)

Congressman Mike Lowry, in 1979, introduced legislation establishing a direct payment compensation plan.\(^9\) The aim of the legislation was to recognize and redress injuries received in the evacuation and internment, and to discourage similar action in the future.\(^9\) The Attorney General would implement the plan by paying any interned individual a sum of $15,000 plus $15 per day of internment.\(^9\) If the internee is deceased or cannot be located the legal heirs would receive the damage payment.\(^9\) Additionally, the plan allows the Attorney General the use of government records to determine who was interned and the number of days interned.\(^9\)

The direct payment plan fails to meet the compensatory goal. The plan provides compensation for an amount equal to the total aggregate property loss\(^9\) but makes individualized dis-

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\(^{90}\) See supra note 4. Further support for individual compensation is found in the payment the United States made to the United States citizens taken hostage in Iran. See The President’s Commission on Hostage Compensation, The Final Report and Recommendations of The President’s Commission on Hostage Compensation (1981).

\(^{91}\) H.R. 5977, 96th Cong., 1st Sess., 125 CONG. REC. H11319 (daily ed. Nov. 28, 1979). Congress did not pass this bill in the 96th Congress. The bill has not been reintroduced.

\(^{92}\) The stated purpose of the Act is:
(1) to recognize and redress the injustices and violations of human rights perpetrated during the World War II internment period against individuals of Japanese ancestry by the United States; (2) to discourage similar injustices and violations of human rights in the future; and (3) to make more credible and sincere the declarations of concern by the United States over violations of human rights committed by other nations.

\(^{93}\) at § 2.

\(^{94}\) at § 4(a)(1).

\(^{95}\) at § 4(2)(A-D).

\(^{96}\) at § 4(b).

In determining . . . the number of days that an eligible individual was interned or detained or forcibly relocated, the Secretary shall use any available records from the Wartime Civil Control Administration and the War Relocation Authority and shall obtain, if the Attorney General determines it is necessary, affidavits from eligible individuals and witnesses.

\(^{97}\) Id. at § 4(b).

\(^{98}\) The Federal Reserve Bank estimated Japanese-American property losses at $400 million in 1942 dollars. See supra text accompanying note 72. Accounting for interest and inflation, Japanese-American groups have estimated loss from property damage
burelements based only on days interned, not the individual's actual property loss. As a result, the flat sum payment may overcompensate some individuals whose injuries were not as extensive as others, and at the same time, not fully compensate those whose injuries were more severe. Moreover, it suffers the same defect as the Evacuation Claims Act. The direct payment plan has no mechanism for compensating individual injuries such as death, personal injury, emotional distress, and lost earnings, thus failing to compensate injuries Japanese-Americans suffered as a result of the internment.

The direct payment plan fails in other respects as well. The plan will not discourage the recurrence of similar governmental action. First, while monetary damages traditionally serve to deter undesirable conduct as well as compensate victims, payment of substantial damages by the United States government would only stand as a reminder of the possible consequences of its actions, and as an historic precedent for potential victims of a future internment. Arguably such a reminder and historic precedent could deter similar future actions, but given the vast monetary resources of the United States government, the deterrent effect of the direct payment plan would be negligible. Second, by paying substantial damages, the United States would not be legally bound to prevent a future internment. Nor would payment of damages guarantee the government would be punished for similar future actions. Finally, the direct payment plan does not address racial discrimination, an underlying cause of the internment.

The plan also fails to educate the American public about the internment. A number of common misperceptions remain prevalent: that Japanese-Americans supported Japan in the war effort; that they engaged in sabotage and espionage; that the evacuation and subsequent internment were justified because individual loyalty could not be determined at the time; that

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96. See supra text accompanying notes 25-41.
98. Id. at 2. See supra text accompanying notes 3-12.
100. See supra note 12.
101. Id. See also supra note 99.
the United States government is not responsible for the serious injuries it caused its own citizens through the internment.\textsuperscript{102} The direct payment plan does nothing to dispel these misperceptions. The only educational effect of the plan is through media attention surrounding the payment process.\textsuperscript{103} But because the plan itself requires only a short time to execute, media coverage would also be short and would provide no assurance that the American public's understanding of the evacuation and internment would increase.

The primary advantage of the direct payment plan is its administrative simplicity. The claims process is simple. The Attorney General would base awards on government records, not on individual claims, thus keeping costs to a minimum and avoiding the problems of the Evacuation Claims Act. This single advantage, however, is insufficient to overcome the substantial failures of this plan.

A second proposed compensation plan utilizes a major portion of the Federal Compensation Law of Germany (hereinafter BEG) as a model.\textsuperscript{104} The West German government designed the BEG to compensate German residents\textsuperscript{105} victimized by Nazi Germany. Like the Japanese-Americans, the beneficiaries of the BEG were citizens injured by their own government during wartime. In both situations race discrimination was a basis for the government's actions.\textsuperscript{106}

\textsuperscript{102} See supra note 99. One comment is typical: "I feel that reparation should be made to the Japanese-Americans interned, but by the Japanese government. Japan started the war, we didn't. We chose the best means available at the time to protect ourselves—or we thought." \textit{Id.}

\textsuperscript{103} See text accompanying note 78.

\textsuperscript{104} See \textit{Institute of Jewish Affairs, World Jewish Congress, The (West German) Federal Compensation Law and Its Implementary Regulations} (N. Robinson trans. 1957) [hereinafter cited as \textit{West German Compensation Law}]. As noted in the text the West German law itself is referred to as BEG.

\textsuperscript{105} The BEG also compensates people who belong to the German sphere of language and culture. Schwerin, \textit{German Compensation For Victims of Nazi Persecution}, 67 Nw. U.L. Rev. 479, 509 (1972).

\textsuperscript{106} One reason for the evacuation of Japanese-Americans was race discrimination. \textit{See supra} note 12. Race discrimination also was one basis for the Jewish persecution by the Nazi government in Germany. \textit{See} Schwerin, \textit{supra} note 105, at 481-84. However, perhaps because of its dictatorial form of government with fewer inherent checks and balances than that of a democratic government such as in the United States, the German government could more severely and extensively injure the Jewish people than could the American government injure people of Japanese ancestry. \textit{See} S. Castelnuovo, \textit{supra} note 80, at 13. This distinction indicates that a remedial plan for Japanese-Americans might not have to be as comprehensive as the BEG was for the Nazi persecuted.
The individualized compensation plan has the advantage of procedural simplicity for the claimant. To settle evacuee claims, compensation offices would be established in key cities throughout the country. 107 Applications for compensation would be filed at these offices and would disclose the nature of the injuries sustained, any substantiating evidence of those injuries, and the amount of payment received under the Evacuation Claims Act, if any. 108 The compensation office would investigate the claim by gathering all available evidence 109 and use it to make a settlement determination. 110 If the parties could not reach a final settlement, either party would be allowed to submit the claim to the Federal Court of Claims with final appeal to the United States Supreme Court. 111

The individualized compensation plan uses the BEG as a model to determine who would be compensated and what injuries would be compensable. As with the BEG any individual who was interned, regardless of United States citizenship or residence would be eligible for compensation. 112 If an internee is dead, the heirs may file a claim. 113 The BEG uses several catego-

107. Examples of such key cities include San Francisco, Portland, Seattle, Chicago, and New York. An office could be established wherever a significant number of Japanese-Americans live.

108. West German Compensation Law, supra note 104, at 42 (BEG § 190). This would allow introduction of evidence if any existed and would avoid the evidentiary problems that the Japanese Evacuation Claims Act produced.

109. Examples of organizations that may have pertinent records include the Federal Reserve Bank, The Bank of Tokyo, the War Relocation Authority, and prewar tax statements.

110. BEG § 176 provides for a similar procedure. West German Compensation Law, supra note 104, at 55-56. If no conclusive or convincing evidence can be found, the fact may be established in favor of the claimant. Id. at 56. The United States Department of the Interior uses a similar claims procedure to investigate claims filed for damage caused by irrigation projects. See Gellhorn & Lauer, supra note 45, at 1344-50.

111. See S. Castelnuovo, supra note 80. Additionally, the plan would provide legal aid to those who could not afford to appeal the settlement decision. Id.

112. The BEG provided limited compensation to stateless persecutees who were not part of the German sphere of culture and influence. West German Compensation Law, supra note 104, at 49-52. BEG §§ 149-66. During World War II, the United States not only imprisoned Japanese-Americans but also persons from the Aleutians and Japanese from South America. The United States secured the cooperation of South American governments in the arrest and deportation of their respective Japanese populations. The United States paid for the transportation of South American Japanese to the United States and interned them in relocation centers upon their arrival. At its peak the number of interned Japanese from South America exceeded two thousand. See M. Weglyn, supra note 7, at 56-66.

113. West German Compensation Law, supra note 104, at 8 (BEG § 1). See also S. Castelnuovo, supra note 80, at 16.
ries to define the various injuries suffered by the persecuted and to establish minimum and maximum levels of compensation for each category. 114 The individualized compensation plan could apply any of the following categories to Japanese-American claims: loss of life, 115 damage to property, 116 damage to possession, 117 damage to health or limb, 118 and damage to economic and vocational pursuits. 119 Likewise, Congress could establish minimum and maximum amounts recoverable under each category by analyzing the type of injury suffered and determining its worth. 120

The individualized compensation plan compares more favorably than the direct payment plan to the goals of remedial legislation. The use of BEG categories allows flexibility sufficient to assess and compensate individual injuries beyond the property loss provided for under both the Evacuation Claims Act and the direct payment plan. Additionally, the categories assure that individuals will be more accurately compensated for injuries actually suffered, thus avoiding the inequitable payment problem of the direct payment plan. 121

The individual compensation plan more successfully addresses the deterrence and educational goals than the direct payment plan. Since the individualized compensation plan is more inclusive in the injuries it could compensate, it may be more costly. If deterrent effect is proportional to cost, a future

114. The BEG divides injuries into seven categories which include: loss of life, damage to limb and health, damage to liberty, damage to property, damage to possessions, losses incurred through payment of discriminatory levies, fines, penalties and costs, and damage to vocation and economic pursuits. West German Compensation Law, supra note 104, at 8 (BEG § 1).

115. Compensation under the BEG for loss of life includes compensation for both deliberate and unintentional killing, as long as there is a "probable" nexus between death and persecution. Id. at 11-12 (BEG § 15).

116. The BEG defines property compensation as any tangible object belonging to a person which was damaged, destroyed or defaced, or left to be looted. Id. at 50 (BEG § 51).

117. Under the BEG damage to possessions includes impairment of use of property or possessions, or damage caused by a boycott. Id. at 23 (BEG § 56).

118. Damage to health or limb, as defined by the BEG, requires damage that resulted in a lasting impairment of mental or physical faculties that had a probable nexus to the persecution. Id. at 17 (BEG § 28).

119. Damage to vocational pursuits is defined as damage to use of working power and includes interruption of pre-vocational training. Id. at 26, 39-40 (BEG §§ 65, 115). Damage to economic pursuits covers loss of insurance benefits. Id. at 42-45 (BEG §§ 127-38).

120. See S. Castelnuovo, supra note 80.

121. See supra text accompanying notes 95-103.
internment is less likely under this plan than under the direct payment plan. Moreover, though the plan has no means to eliminate discrimination or educate the American public, media attention would be of longer duration since the plan itself would take longer to administer. Additionally, media attention to the BEG type categories would increase the public’s awareness.

For the claimant the individualized compensation plan is administratively simple. All that is required is the filing of written evidence. Adversary proceedings are unnecessary; the administrative problems of the Evacuation Claims Act are thereby avoided.\textsuperscript{122} However, the administrative cost to the government is greater than the administrative cost of the direct payment plan. The government would have to establish and maintain offices throughout the country for a specified period of time. Additionally, the claims procedure requires the investigation of each claim and the use of government records to aid in settlement determinations. This individualized investigation and settlement would thus be more costly than a direct payment to internees.\textsuperscript{123}

Instead of direct or individualized compensation, Congress could choose a third alternative: group compensation. The idea of federal group compensation is not new. Congress relied on a group compensation scheme in the Rehabilitation of the Philippines Act\textsuperscript{124} and in the Alaska Native Claims Settlement Act.\textsuperscript{125} Under the Rehabilitation of the Philippines Act, Congress provided for rebuilding the entire Philippine economy after World War II.\textsuperscript{126} Under the Alaska Native Claims Settlement Act, Congress gave an extensive system of land and monetary grants to Alaskan natives.\textsuperscript{127} The Asian Law Association has suggested

\textsuperscript{122} See supra text accompanying notes 70-76.

\textsuperscript{123} The United States government uses similar claims procedures in processing claims against the Department of the Interior and claims against the Post Office. See Gellhorn & Lauer, supra note 45, at 1342-50, 1358-60.


\textsuperscript{126} The Act provided for rebuilding roads, ports and harbors, improving public health services, restoring inter-island commerce, training persons for the merchant marines, establishing inter-island air facilities, meteorological facilities, and rehabilitating the fisheries. 50 U.S.C. app. §§ 1782-1790 (omitted 1951). The reason for this relief was to rebuild the Philippine economy, which had been destroyed by World War II, and to allow the Philippines to become independent from the United States. See S. Rep. No. 755, 79th Cong., 2d Sess., reprinted in 1946 U.S. CODE CONG. SERV. 1144.

\textsuperscript{127} The purpose of the grants was to quiet claims of aboriginal land titles. 43 U.S.C. § 1601(a) (1976).
that the group compensation plan take the form of a charitable non-profit corporation. Corporations previously established by Congress have had specific statutory purposes defining the reason for the corporation's existence and limiting its powers.

The statutory purpose of creating a corporation for Japanese-Americans would be to recognize the injuries caused by the internment and, in an attempt to redress those injuries, to fund projects that benefit Japanese-Americans. Funding could focus on projects designed to benefit internees. For example, because internment took place forty years ago, many internees are now elderly. Thus, projects benefiting the elderly such as senior centers, health care centers, and low income housing could be funded. Japanese-Americans also have suggested financing businesses, research, religious and community structures, and educational scholarships. As part of redressing injuries, the corporation could also fund programs to educate the American public about the internment and programs to eliminate discrimination.

Under the group compensation plan a board of directors, elected by the Japanese-American community, would administer the non-profit corporation. Internees and direct descendents of internees would be eligible to vote for directors. The board of directors would determine the projects to fund with input from those eligible to vote. The statute creating the corporation would allow input into funding decisions by creating local committees of eligible voters to determine local funding priorities. The local committees would report their decisions to the board of directors who would make funding decisions in light of local priorities.

131. See supra note 97, at 21.
132. Id.
133. See S. Castelnuovo, supra note 80, at 7.
134. See supra note 97, at 21.
135. Eligible voters would be ascertained from government records.
136. The statute creating the Legal Services Corporation uses a similar idea. The statute requires state advisory councils to oversee the expenditures of the Legal Services Corporation within each state, and requires the councils to report back to the corpora-
The group compensation plan also provides mechanisms to insure that the corporation fulfills its statutory duty and to insure its responsiveness to the Japanese-American community. The General Accounting Office would audit the corporation annually.\textsuperscript{137} In addition, the corporation would submit annual reports to Congress of expenditures, financial conditions, operations, activities, and accomplishments.\textsuperscript{138} To insure responsiveness to the Japanese-American community, the corporation would publish an annual report of its activities and expenditures, and hold an annual meeting to discuss the report.\textsuperscript{139} Additionally, corporate responsiveness would be insured by allowing eligible Japanese-Americans to vote on very large expenditures or major decisions.

Congress would fund the corporation with an amount determined by an assessment of the value of compensation injuries. This amount could be paid outright to the corporation, or paid over a period of years.\textsuperscript{140} The corporation would decide whether to allocate all monies received to funding projects, or whether to protect some capital through investment, thus creating a corporation of longer duration.

The group compensation plan is the least effective plan in meeting the compensatory goal but has great potential for meeting the deterrence and educational goals. On one hand, funding projects that benefit Japanese-Americans does not guarantee that internees would be compensated. In fact, funding of projects could create the opposite result. Those persons not interned could receive the greatest benefit from the plan.\textsuperscript{141} But on the other hand, the plan has some preventive effect through payment of damages,\textsuperscript{142} and also could fund programs directed toward eliminating discrimination and educating the American people about the internment. The desired effect of this funding

\textsuperscript{137} Congress requires most corporations to be audited annually. See, \textit{e.g.}, Legal Services Corp., 42 U.S.C. 2996(h) (1976); Corp. for Public Broadcasting, 47 U.S.C. § 396(1) (1976).

\textsuperscript{138} See supra note 97, at 14.

\textsuperscript{139} \textit{Id.} at 21-22.

\textsuperscript{140} Congress did this under the Alaska Native Claims Settlement Act. 43 U.S.C. § 1605 (1976).

\textsuperscript{141} Even if Congress structured the remedy as previously suggested, since most internees are elderly, arguably, the younger generations, who were least injured, will receive the greatest benefit from this plan. See S. Castelnuovo, \textit{supra} note 80, at 12.

\textsuperscript{142} See supra text accompanying note 97.
is to increase understanding about the internment and its causes, thus decreasing the likelihood of a similar occurrence in the future.

Administratively, the group compensation plan is also more costly than the direct payment plan. The group compensation plan requires an organization to elect directors, solicit input from, local levels and report to both Congress and the Japanese-American community. Additionally, a staff may be necessary to implement these requirements and to administer the funding process. The administrative requirements of this plan are similar in magnitude to the individualized compensation plan.

The final and most effective plan combines individual and group compensation. Precedent for a mixed plan exists under both the Rehabilitation of the Philippines Act and the West German BEG. The Rehabilitation of the Philippines Act compensated individuals for property damage and facilitated the rebuilding of the Philippine economy at the same time. Under the BEG individuals were compensated for their actual injury, but unclaimed compensation went to private organizations who used the funding for various community service projects. One scholar has suggested a mixed plan that is a modification of the individualized compensation plan.

The mixed plan would provide compensation to injured individuals as described in the individualized compensation plan. Compensation offices would be established to process individual claims. The amount of compensation would be determined by the use of BEG categories which identify the type of injury compensable and the minimum and maximum amounts recoverable for each category.

The group compensation aspect would adopt a form of the charitable corporation previously discussed. The corporation would assert claims of persons who either do not wish to make a claim or had claims but died without descendents. Claims

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144. See supra note 87 and accompanying text.
145. Id.
146. See Schwerin, supra note 105, at 514.
147. See S. Castelnuovo, supra note 80.
148. See supra text accompanying notes 107-20.
149. See supra text accompanying notes 131-40.
asserted would be limited to readily ascertainable types of injuries. As in the group compensation plan, the corporation would use the money recovered to fund projects that benefit Japanese-Americans. Local committees would give the board of directors input into local funding priorities with the directors making the final funding decisions.

The mixed plan is the most effective plan for meeting the goals of a remedy for Japanese-Americans. The compensatory goal is met since all injured persons are compensated for their injuries through the use of categories with minimum and maximum amounts of recovery for each type of injury. Additionally, because the corporation would pursue unasserted claims and claims to heirless property, even claims traditionally not recognized are enforced. Thus, awards are made for all compensable injuries. The group compensation aspect of the mixed plan also meets the preventive goals by funding projects that educate the American public about the internment and that facilitate the elimination of discrimination.

Administratively the mixed plan is the most costly remedy plan. It requires not only a system of compensation offices to investigate individual claims, but also a corporate structure to make claims for heirless property and to administer monies received to fund projects that benefit Japanese-American groups. The substantial benefits of the mixed plan, however, justify the higher administrative expense.

To this point this comment has avoided discussing the amount of compensation an effective remedy must provide. Any monetary remedy will be costly and perhaps unpopular. Socially and politically, any remedy may result in more, rather than less, discrimination against Japanese-Americans. The Japanese-Americans are the most successful minority group both professionally and economically. Editorial have suggested that because of this subsequent success, Japanese-Americans are not entitled to any remedy. If that view is widely held legislation

151. Id.
152. This includes Japanese-Americans who do not wish to submit a claim. Id.
153. This includes funding projects that educate the American public about the internment and projects that facilitate the elimination of discrimination.
providing any remedy could result in a "social backlash" against Japanese-Americans. Furthermore, the greater the amount of compensation, the greater the likelihood of adverse public reaction. The injuries Japanese-Americans suffered, however, are not limited to mere property loss; neither should the compensation Congress provides. Congress should pay the full obligation however costly. Congress must not allow high cost and possible adverse public reaction to obscure the fact that it has an unmet obligation. The obligation extends to injuries encompassing physical, emotional and cultural injury as well as property loss. The mixed plan provides the flexibility for Congress to compensate all injuries fully. At the same time the plan has the educational and deterrent ability to minimize social backlash and avoid a recurrence of similar governmental actions. In other words the plan allows Congress to meet its obligation effectively.

The evacuation and internment of thousands of civilians during World War II is a sad epoch in American history. Under the guise of military necessity United States citizens were uprooted from their homes, frequently severed from family and friends, and suffered millions of dollars in property loss alone. To date Congress has adopted only a half-hearted and minimally effective plan to compensate these losses.

Through the Commission on Wartime Relocation and Internment of Civilians, Congress has the opportunity to adequately assess the extent of injury caused and develop a proper plan of compensation. Various groups have proposed numerous alternative plans. The plan that most effectively provides redress for the harms done relies on both individual compensation by assessing individual injury and group compensation through educational and other community projects. Most importantly, the plan allows Congress to finally address in full the equitable obligation owed to the Japanese-American people. The claims are meritorious; the obligation exists; Congress should act.

Cindy K. Smith