

Civil Rights and their Limitations: On Redress for Japanese Latin Americans

“In 1943, Yamamoto was only 7-and-a-half years old and known by her family name, Maoki. She lived with her parents and two siblings in Chiclayo in northern Peru. In January 1943 Peruvian authorities took her father into custody. The rest of the Maoki family was rounded up in July and sent along with other Japanese Peruvians to be held behind barbed wire in the United States”¹.

1. Introduction

There is expansive scholarship on the incarceration of Japanese Americans and Japanese permanent residents during WWII, and on the subsequent movement for Japanese American redress. Many Americans are taught this history in school, and are well versed in the injustices that occurred. Lesser known however, are the stories of the 3000 Japanese Latin Americans who were arrested, deported, and incarcerated in the United States. Even lesser known is the fact that these individuals were arrested in order to make possible exchanges with the Japanese Government for American civilians². While the incarcerated were Japanese Latin Americans from thirteen countries, one salient group was the Japanese Peruvians who constituted 80% of those incarcerated. Moreover, after the war, Japanese Peruvians faced further turmoil as Peru refused to allow reentry to the majority of those incarcerated. Uncovering the aforementioned history brings a salient question to mind: what occurred to effectively write Japanese Peruvians and Japanese Latin Americans out of the history of World War II incarceration?

In exploring the history of the incarcerated Japanese Latin Americans and their exclusion from the Civil Liberties Act of 1988, one uncovers the limits of civil rights frameworks. By equating redress with legal status, the United States was able to both ignore the human rights abuses made

¹ Ota, John. “50 Years Later, Many Internees From Peru Still Denied Redress.” *Asianweek*, 1993, p. 1.

² Corbett, P. (1987). *Quiet passages: The exchange of civilians between the United States and Japan during the Second World War*. Kent, Ohio: Kent State University Press.

against Japanese Latin Americans during their unjust incarceration, and put a qualifier on receiving justice. Moreover, the government was able to neatly wrap up a violent history with a shiny bow that was the Civil Liberties Act; thus giving the United States the opportunity to portray themselves as the hero by ‘righting’ the wrong of civil and constitutional rights violations. In omitting Japanese Latin Americans from redress, the United States government excluded those incarcerated not only from reparations, but from the mainstream narratives of World War II incarceration in the United States.

2. “Those Forgotten People: Japanese Peruvians in U.S. Prison Camps”³

During World War II and on invitation by the United States government, “[...]approximately 3,000 residents of Latin America were deported to the United States for internment to secure the Western Hemisphere from internal threats and to supply exchanges for American citizens held by the Axis”⁴. This official declaration made by the *Commission on Wartime Relocation and Internment of Civilians* details part of the history, yet fails to acknowledge the fact that this program was not primarily one of security. Rather, the highest priority was the creation of a pool of hostages for civilian trade. In *A Fence Away from Freedom*, Ellen Levin writes, “Within months of America’s entry into the war, it was clear there was no serious threat of sabotage by Japanese living in this hemisphere. Yet the removal and transport to United States prison camps continued.”⁵. In fact, many of the Peruvian Japanese who were arrested and deported faced such a fate at the end of 1942-1944⁶. Clearly, the actions being taken were not for the sake of security. The history of United States incarceration of Japanese Latin Americans, then, details a history of human rights abuses and unjust

³ Levine, E. (1995). *A fence away from freedom: Japanese Americans and World War II*. New York: G.P. Putnam's.

⁴ United States. Commission on Wartime Relocation Internment of Civilians, & Washington State Library. Classics in Washington History. (1992). *Personal justice denied: Report of the Commission on Wartime Relocation and Internment of Civilians: Report for the Committee on Interior and Insular Affairs*. Washington: US.

⁵ Levine, E. (1995)

⁶ Higashide, S. (1993). *Adios to tears: The memoirs of a Japanese-Peruvian internee in U.S. concentration camps*. Honolulu, Hawaii (5265 Lawelawe Pl., Honolulu 96821): E & E Kudo.

treatment in order to serve the nations interests. The government disregarded the livelihoods of Japanese Peruvians in order to create a pool of hostages, effectively determining that their stately interests were more important than the dignity of 3,000 people.

2.1 Internment during the War

Once Japanese Peruvians reached the United States, they were placed under the jurisdiction of the U.S. Immigration and Naturalization Service (INS) and its Border Patrol. This placement was partly due to the Justice Department's interpretation of the status of those incarcerated as "illegal aliens". Ironically, "[...]the embassy in Lima had been instructed not to issue the appropriate papers, and those who did possess Peruvian or Japanese passports had them confiscated abroad the ships"⁷. This would prove to become a huge issue after the war in attempting to determine the legal status of the remaining incarcerated individuals. Furthermore, this unjust action would provide the basis for the exclusion of many Japanese Latin Americans from redress decades later. Thus, not only did the United States abduct and incarcerate these individuals, but they attempted to make it appear as though these individuals had entered the United States illegally, and therefore were lawfully detained.

Not only were Japanese Peruvians arbitrarily incarcerated, but they were separated from their families as well. Following outrage from the Japanese government, the State Department decided in mid 1943 to halt further deportations of male heads-of-households until accommodations could be made for their entire families to join them in internment⁸. That being said, not every family was reunited by the policy change. As illustrated in *Adios to Tears*, a memoir written by Seiichi Higashide about his incarceration, "There were a number of people who were pushed into unbearably sad circumstances[...]One of them was Kenzo Watanabe[...]circumstances had not allowed the Watanabe family to settle their affairs in time to board that final ship"⁹. The final ship referenced

⁷ Corbett, P.

⁸ Corbett, P.

⁹ Higashide, S.

being the last of those provided by the United States to reunite family members in Peru with their incarcerated fathers.

It is worth emphasizing that the United States decided to make the reunification effort only due to fear of retaliation by the Japanese government. Moreover, even given the option of reuniting meant that those incarcerated had to choose between asking their families to become incarcerated as well, or potentially risk not seeing them again due to the many unknowns of arbitrary incarceration. Thus, not only was the incarceration of Japanese Peruvians based on national interest rather than a real war-time security threat, but the treatment during the incarceration continued to violate the human rights of those taken as well. Further, the United States made the decision on the basis that their national interests were more important than the rights and livelihoods of the Japanese Latin Americans.

2.2 Legal Limbo

By the end of the war, half of the incarcerated Japanese Peruvians had been deported to Japan in civilian exchanges. The other half, having been regarded as “illegal aliens” since the beginning of the incarceration, were told by the United States government to go back to Japan or Peru. This was made difficult by Peru’s refusal to allow reentry to anyone of Japanese ancestry. Given that many incarcerated felt they had no other place to go, between November 1945 and June 1946, “over 900 more were ‘voluntarily’ deported to Japan”¹⁰. Instead of taking the first step toward real reparation and offering citizenship, the United States pressured these individuals to move to Japan so that the government could go on business as usual.

In 1946, the Peruvian government ultimately allowed 79 persons to return. Those who held Peruvian citizenship and their families were permitted, but not an individual more. This left 364 Japanese Peruvians in the United States in a place of legal limbo as they had no desire to ‘return’ to

¹⁰ Levine, E.

Japan, a country they had never seen, yet were not allowed to go back to Peru¹¹. In *Adios to Tears*, Higashide writes that in order to end their legal nightmare, the United States sought to force the deportation of the remaining 364 Japanese Peruvians to Japan. Regarding their status, the government again took the position that these individuals were “illegal aliens”. Given the ridiculousness of this claim, Wayne M. Collins, an attorney from San Francisco, immediately took up the case upon learning about the situation. On June 25, 1946, Collins filed on behalf of the 364 Japanese Peruvians. The outcome was that the government placed these individuals in “relaxed internment”. Higashide writes that almost all of the remaining Japanese Peruvians headed to Seabrook Farms in New Jersey wherein they lived under “restricted parole” as a consequence of the relaxed internment.

Art Shibayama, an individual who would later become a key player in the movement for Japanese Latin American redress, remembers that Seabrook Farms was much like an internment camp except for no fences or guards. Shibayama remembers that “We lived in barracks and had communal showers”¹². What’s more, the Japanese Peruvians were required to work – packing frozen vegetables 12 hours a day with one day off every two weeks. This led to the Japanese from Peru living in a state of both legal limbo and perpetual poverty.

In June of 1952, the remaining 364 Japanese from Peru finally became eligible to adjust their legal resident status. This was mostly due to the desire of the United States government to end the legal nightmare and let the incarceration of Japanese Peruvians fade into history. The opportunity had a narrow time window, between August 1954 and June 1955. This short window of opportunity created confusion, and ultimately led to difficulty in applying¹³. Shibayama remembers the confusing

¹¹ Higashide, S.

¹² Ota, John. “Justice For All Or For Some?: Japanese Peruvian Is Tired Of Runaround.” *Asianweek*, 1993, p. 32.

¹³ Nishioka, Joyce. “JLA Brothers File Suit: \$5,000 Settlement Isn't Enough, Even If You Can Get It, They Say.” *Asianweek*, 1999, p. 8.

communications. After serving in the Korean War and an unsuccessful attempt by his officer to get him citizenship, Shibayama went back to the INS in 1956 and was advised to go to Canada and re-enter the country as a means of establishing legal entry. “He did so, as did many other Japanese Peruvians. Little did he know that following the government’s advice would decades later call into question his eligibility for redress”¹⁴.

The experiences of Shibayama and many other Japanese from Peru illustrate the human rights abuses perpetuated not only by their unjust incarceration, but also by the treatment received after the fact. The United States government treated those incarcerated as political pawns – people that they could make arbitrary decisions about based on their legal status as non-permanent residents or citizens. Of course, Japanese Americans and legal permanent residents faced abuses of their rights as well. The difference being, the United States decided to take accountability in some senses for what had occurred simply because of the legal status of these individuals. This prepared the United States to both erase actions taken against the Japanese Peruvians, and to be painted as the hero and righter of wrongs when the Civil Liberties Act was finally passed.

3. The Japanese American Redress Movement – A Brief Overview

In order to understand the way in which Japanese Latin Americans were later denied redress, it is important to look at what in fact the United States government agreed to offer redress for. In the following section, an overview of the movement and subsequent government decision is outlined.

The redress movement began in the 1970’s¹⁵, and largely culminated with the 1988 Civil Liberties Act. The key organizations include the Japanese American Citizens League (JACL), the National Coalition for Redress/Reparations (NCRR), and the National Council for Japanese

¹⁴ Ota, J. (1993, Jul 16).

¹⁵ Maki, Mitchell T., et al. *Achieving the Impossible Dream: How Japanese Americans Obtained Redress*. University of Illinois Press, 1999.

American Redress (NCJAR). In many narratives of the redress movement, there is general consensus that incarcerated Japanese Americans and legal residents ought to receive redress either for their being loyal citizens and/or for the violation of constitutional rights and civil liberties. While it is certainly true that reparations as deserved due to loyalty was a contested notion that led to contention between organizations such as the JACL and the NCRR/NCJAR¹⁶, the prevailing language of the movement was an emphasis on two thirds of the internees being citizens. This led to a focus on the need to right these constitutional wrongs and civil liberties violations.

It is important to note, however, that there were members of the redress movement fighting for reparations for all those incarcerated. One example is seen in the efforts made by Henry Miyatake of Seattle. By 1973, Miyatake had formulated a reparations plan that called for a payment of \$5,000 to all individuals affected by the government's actions during World War II – inclusive of the Aleuts, Germans, Italians, Latin American Japanese, Japanese immigrants, and Japanese Americans¹⁷.

3.1 Personal Justice Denied – Report of the CWRIC

There were efforts for redress happening on both local and national levels. The Commission on Wartime Relocation and Internment of Civilians (CWRIC), proposed by Senator Daniel Inouye and appointed by Congress in 1980, gave major weight to the redress movement by documenting personal stories and giving official recommendations for reparations. While the official report of the commission, *Personal Justice Denied*, included a section on Japanese Latin American internment in the appendix, the commission officially recommended reparations to be made only to “[...] Americans

¹⁶ Murray, A. (2008). *Historical memories of the Japanese American internment and the struggle for redress* (Asian America). Stanford, Calif.: Stanford University Press.

¹⁷ Shimabukuro, R. (2001). *Born in Seattle: The campaign for Japanese American redress* (Scott and Laurie Oki series in Asian American studies). Seattle: University of Washington Press.

and resident alien Japanese, and to the Aleuts”¹⁸. In addition, *Personal Justice Denied* centers the injustice on the fact that the incarceration of individuals occurred “...without regard for their demonstrated loyalty to the United States”¹⁹. The injustice was the arbitrary incarceration of individuals, but also the inherent abuse of human rights. In failing to mention the latter, the report confirms the idea that it was the abuse of civil and constitutional rights of American citizens and legal residents that lead to the requirement of reparations. *Personal Justice Denied*, then, lead the way for the the United States government to brush over the abduction and incarceration of the Japanese Latin Americans. Furthermore, it began to re-write the history of internment to exclude the experiences of Japanese Latin Americans.

3.2 Civil Liberties Act of 1988

On August 10, 1988, after almost two decades of grassroots campaigning, political strategy and activism by the Japanese American community and their allies, President Reagan signed Public the Civil Liberties Act into effect. The act sought to “acknowledge the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry during WWII”²⁰. The act stipulated two monetary reparations. A payment of twenty thousand dollars was to be made to eligible individuals of Japanese ancestry who were United States citizens or legal permanent residents at the time of incarceration. Additionally, a payment of twelve thousand dollars was mandated for each eligible Aleut. The act notably seeks to offer compensation to citizens and legal residents on the basis of “violations of the basic civil liberties and constitutional rights,”²¹ noting nothing of human rights violations or Japanese Latin Americans.

¹⁸ THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, "PERSONAL JUSTICE DENIED PART 2: RECOMMENDATIONS." June 1983. <https://www.archives.gov/files/research/japanese-americans/justice-denied/part-2-recommendations.pdf>

¹⁹ United States.

²⁰ Civil Liberties Act of 1988. Pub L 101-383. 102 Stat. 903-916. 10 August 1988. Retrieved from <https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg903.pdf>

²¹ Civil Liberties Act of 1988.

While a small number of Japanese Latin Americans were eligible for redress, the Office of Redress Administration ruled that the majority of Japanese Peruvians were not. According to an article by John Oto in San Francisco's *Asianweek*, "The different [in eligibility] is apparently a legal technicality: whether they were granted permanent resident status retroactive to their date of entry to the United States"²². As previously mentioned, the retroactive status had only been available during a short time period between August 1954 and June 1995, and was confusing to navigate.

One such ineligible individual was Art Shibayama. Shibayama was told that he gained legal resident status upon return from Canada as opposed to gaining retroactive status and therefore, would be ineligible for redress²³. This legal technicality points to the fact that the United States was never interested in making right on the abuses perpetuated by the state. Rather than deliver real justice, the United States sought to end the story of WWII incarceration with themselves painted in a positive light.

4. Mochizuki v. United States

In 1996, five Japanese Latin Americans filed a civil suit, *Mochizuki v. United States*, due to their denial for redress under the 1988 act. *Mochizuki v. United States* was settled with the Justice Department on June 12, 1998. The settlement declared that "Nearly 600 Japanese Latin Americans who were interned during World War II will each be eligible for \$5,000 and an apology[...]"²⁴. While this case ended in a degree of success, Japanese Latin Americans were only eligible to apply for two months; the deadline for the reparations program had been set with the passing of the 1988 act as August 10, 1998²⁵. Unsurprisingly, many missed the deadline. Those that did apply on time faced concerns over whether they would receive redress as the funds ran out after only 145 Japanese Latin

²² Oto, J. (1993, Feb 12).

²³ Oto, J. (1993, Jul 16).

²⁴ United States of America. Department of Justice. *JAPANESE LATIN AMERICANS TO RECEIVE COMPENSATION FOR INTERNMENT DURING WORLD WAR II*. Department of Justice, 12 June 1998. Web.

²⁵ "Briefs: Most Japanese Latin Americans Miss Redress." *Asianweek*, 1998, p. 8.

Americans were paid. This reluctant and sloppy inclusion of Japanese Latin Americans in the redress program illustrates the lack of concern that the United States felt over the abuses perpetuated at the hands of the state. Further, it points to the fact that the framework of civil rights violations allowed the government to make arbitrary decisions over who deserved justice, and who they thought ought to be happy with a few thousand dollars thrown their way.

In June 1999, Joyce Nishioka of *Asianweek* reported that President Bill Clinton had allotted \$4.3 million dollars to pay the remaining Japanese Latin Americans who had applied for redress²⁶. This, however, did not completely rectify the situation or the feeling that an injustice had occurred. Julie Small, co-chair of Campaign for Justice, said to Nishioka that “the additional funds will not help the Japanese Latin Americans who were deemed ineligible for reparations under the Mochizuki settlement...For one, the U.S. government gave the Japanese Latin Americans just six weeks to apply for the money after publishing notices in only one newspaper in Japan and one in Peru. Of the 2,264 Japanese Latin Americans interned, only 730 applied for settlement”. This action once again illustrated the lack of sincerity in the United States’ commitment to acknowledge its actions in a meaningful way. Had they wanted to do so at this time, the government would have gone back and admitted their wrongs not only in incarceration decades before, but in the way Japanese Latin Americans had been treated since that point.

4.1 The Continued Struggle

17 Japanese Latin Americans opted out of redress and decided to pursue cases against the government themselves. One such individual was Art Shibayama. For Shibayama, the suit was a way of bringing attention to the fact that the government admitted a mistake yet denied equal justice to Japanese Latin Americans due to legal technicalities²⁷. “I was brought here by army transport

²⁶ Nishioka, Joyce. “\$4.3 Million Alloted to Pay Japanese Latin Americans.” *Asianweek*, 1999, p. 10.

²⁷ Nishioka, J. (1999, Mar 03).

administered by the INS,' said Art Shibayama. 'We didn't want to come. We were kidnapped and brought by the government. How can that not be legal?'"²⁸. Shibayama's case was dismissed by the United States, so he decided to take it international.

In 2003, Shibayama took his case be heard before the Inter-American Commission on Human Rights (IACHR) and in 2017, was finally given a hearing. While an official ruling is not expected for a number of years, "Francisco José Eguiguren Praeli, IACHR president and commissioner from Peru, extended a personal apology to Shibayama"²⁹. Sadly, Shibayama passed away on June 31, 2018, never to find resolution or redress.

The fight for redress that Shibayama led to his dying day is evident of the fact that Japanese Latin Americans never received resolution for the human rights abuses they experienced at the hands of the United States government. Not only were they arbitrarily incarcerated during the war, but also treated as not deserving of justice as they were excluded from the Civil Liberties Act of 1988. For one, this points to the limitations of a civil and constitutional rights lens. In taking such a lens, it becomes possible to ignore human rights abuses based on ones' legal status. Not only does this exclude people from reparations, but in the case of Japanese Latin Americans, it excluded them from many historical narratives of internment during WWII as well. There is something wrong with a mainstream historical narrative that ends with a neat bow when the reality is that there are thousands of people who continue to be treated unjustly by the refusal of the government to recognize their actions.

5. Limits of Civil Rights

The violations against the Japanese Latin Americans are certainly covered within Universal Declaration of Human Rights. Article 9 declares that "No one shall be subjected to arbitrary arrest,

²⁸ Nishioka, J. (1999, Mar 03).

²⁹ Nakagawa, Martha.

detention, or exile”. The token \$5,000 awarded to Japanese Latin Americans ten years after the passing of the initial Civil Liberties Act of 1988 illustrates clearly that the United States never looked at internment as a violation of human rights. The name of the act itself points to this fact. The questions then become: What are the limitations of pursuing justice through a civil rights lens? Who is left behind? What responsibility does the perpetrator of such violation of rights get to avoid? The answers, one could argue, are many limitations resulting in many left behind, and a lack of accountability for the perpetrator of rights violations. In many narratives, the internment by the United States government is framed as an exceptional act that was a gross violation of citizens’ rights in the United States. One might argue that while a citizenship frame allows other American citizens to relate to the horrors as citizens themselves, it leaves out the many who had their human rights violated. Furthermore, it doesn’t call upon the United States to reconcile with what did in incarcerating Japanese Latin Americans and further, what it did by omitting them from redress. In excluding Japanese Latin Americans from the civil liberties act, the United States was able to neatly wrap up a gross injustice and write out an entire group of people from mainstream historical narratives.

In a February 16, 1965 speech, Malcolm X alludes to just that. “Civil rights are within the jurisdiction of the government where they are involved. But human rights is part of the charter of the United Nations [...] anyone who classifies his grievances under the label of human rights violations, those grievances can then be brought to the United Nations and be discussed by people all over the world. For as long as you call it civil rights, your only allies can be the people in the next community...But when you call it human rights it becomes international [...] And anybody on this earth can become your ally”³⁰. These words spoken in 1965 reign true today, especially in the context of Japanese Latin American redress. Moreover, the actions taken by Shibayama in 2003 indicate that

³⁰ X, M., & Perry, Bruce. (1989). *Malcolm X: The last speeches* (1st ed.). New York: Pathfinder.

he too was aware of that fact. Perhaps civil rights are not enough because they are associated with a given government. They are subject to legal technicalities such as those experienced by Shibayama. Human rights, however, are universal. Although the United States failed to recognize the Japanese Latin Americans with the Civil Liberties Act, their experience is real and they deserve justice.

During World War II, the United States government made sweeping violations of human rights in the incarceration of 120,000 innocent people. In recognizing the wrong in the context of civil and constitutional rights, the government failed to properly address what had occurred. Moreover, the government was allowed to wrap up the history neatly and appear the hero in their recognition of what they had done. Not only did this exclude Japanese Latin Americans from redress, but it effectively wrote them out of the history. What's more, it created a legal status hierarchy. If you were a citizen or legal permanent resident, you deserved justice. If not, blame it on the legal technicality. Perhaps this is evidence of something far more insidious plaguing the United States government. True justice, then, will only be achieved when the United States acknowledges not only the human rights violations that occurred during incarceration and the subsequent discrimination against Japanese Latin Americans, but also the fact that this is but one of many episodes in the history of the United States. In omitting Japanese Latin Americans from the Civil Liberties Act, the United States sought to re-write history. Justice requires that this course be reversed – that this history be excavated, explored, and grappled with.

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