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Race, Federalism, and Diplomacy: The Gentlemen's Agreement A Century Later

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In 1908 the governments of Japan and the United States completed the final negotiations on an informal, non-binding “Gentlemen’s Agreement” to limit Japanese immigration to the United States. The goal of this agreement was to resolve disputes over immigration and the status of Japanese immigrants in the United States without resorting to formal legislation or treaties. The 1908 agreement replaced a less successful one developed in 1900. Under the 1908 agreement Japan promised to voluntarily restrict Japanese immigration to the United States while the administration of Theodore Roosevelt promised to protect the rights of Japanese immigrants and their children living in the United States. While reducing some tensions between the two nations over these issues, the Gentlemen’s Agreement of 1908 formed a rocky foundation for relations between the United States and Japan. Usually relegated to a footnote in American history – and even less than that in the field of immigration law – the Gentlemen’s Agreement deserves greater attention.¹⁾ The one hundredth anniversary of the final “Gentlemen’s Agreement” in 2008 provides an appropriate moment to revisit these Agreements and reconsider their place in history.

Under the Gentlemen’s Agreement of 1900, Japan promised to stop issuing exit visas to common laborers seeking to migrate to the United States but continued giving common laborers exit visas for Hawaii. This Agreement was relatively ineffective. After a short dip in immigration in 1901, the number of Japanese entering the country rose to new levels in 1902 and continued rising until 1909.²⁾

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During this period a significant number of Japanese migrated to Hawaii, Canada, and Mexico and then eventually moved on to the United States.

The failure of the first Gentlemen's Agreement in 1900 led to legislation in 1907 aimed at stopping this remigration.³⁾ Under the new law the president was given discretionary power to prohibit immigrants, like the Japanese, from entering the United States through a third country, such as Mexico or Canada. While this statute successfully reduced the number of Japanese coming to the United States by way of Canada, Mexico, and elsewhere, it did not reduce the number of Japanese entering the mainland United States via Hawaii. More importantly, the new rules failed to placate the deep hostility to Japanese immigration in California. While millions of people from southern and eastern Europe poured into the United States – including significant numbers to California – large numbers of people in the Golden State remained adamantly opposed to the relatively small number of Japanese coming into their state. Their hostility manifested itself at the official level in anti-Japanese laws, resolutions, and regulations, including a resolution by the San Francisco school board to segregate Japanese children in the public schools. At the unofficial level, this hostility led to boycotts of Japanese businesses, destruction of property owned by Japanese, and violent attacks on Japanese visitors and immigrants.

These acts and events, while taking place mostly in California, had far reaching consequences because they undermined United States foreign policy and violated an 1894 treaty with Japan granting Japanese immigrants full protections of American law.⁴⁾ Initially, President Roosevelt attempted to protect Japanese rights and allow for Japanese immigration. This was in part due to his deep respect for the Japanese people – “What wonderful people the Japanese are!” he wrote in 1905⁵⁾ – and also to Roosevelt's belief that antagonizing Japan would undermine American foreign policy and possibly lead to war. However, in response to virulent anti-Japanese agitation in California, Roosevelt eventually abandoned his support for the rights of Japanese immigrants and pushed for a new diplomatic understanding, which led to the final Gentlemen's Agreement of 1908.

Under this Agreement, the Japanese government voluntarily restricted the number of exit visas it issued Japanese citizens migrating to the United States and promised to deny exit visas to common laborers trying to enter the United States. The result was a sudden and dramatic decline in Japanese migration to the United States, with immigration dropping from 30,226 in 1907 to 3,111 in 1909 when the Agreement was fully implemented. In 1910, Japanese immigration dropped to 2,720 but then rose steadily, surpassing 10,000 in 1918.⁶⁾ In the Immigration Act of

1924 the United States unilaterally abrogated the Gentlemen's Agreement, over the protest of the Japanese government, by generally prohibiting the immigration of aliens "ineligible for citizenship."⁷⁾

The events that preceded the final Gentlemen's Agreement – including the San Francisco school segregation ordinance – were deeply humiliating and hostile to the Japanese government and Japanese immigrants. The Gentlemen's Agreement itself was essentially one sided and inherently insulting to Japan. In 1900 most Japanese believed "America was a friend."⁸⁾ After the negotiations over the Gentlemen's Agreement this was no longer the case. As such, the final Gentlemen's Agreement was the first step in the long decline in relations between the two nations which culminated in the Japanese attack on Pearl Harbor and the devastating war that followed. The Gentlemen's Agreements illustrate the corrosive effects of racism and discrimination on both foreign and domestic policy and support the arguments of some legal scholars that racial bias has long affected American immigration and naturalization rules.⁹⁾

From a constitutional perspective, the final Gentlemen's Agreement also underscores how federalism can endanger the national government and disrupt foreign policy. The negotiations that led to the 1908 Gentlemen's Agreement began in response to a decision by the San Francisco school board to segregate Japanese children in the public schools. The Japanese government correctly saw this action as deeply insulting to the Japanese people and argued that this action by a local school board violated the 1894 treaty between the two nations.¹⁰⁾

The actions of the San Francisco school board illustrate one of the great problems of the American constitutional system. In the early part of the twentieth century the regulation of both race relations and public education were inherently state matters. (A century later, of course, the regulation of public education still remains largely in the hands of local and state officials.) Thus, in 1906 the national government could not easily undo the damage to international relations caused by the racism of the authorities in San Francisco. Federalism thus undermined and complicated diplomacy.

In a letter to Baron Kentaro Kaneko, the Japanese Minister of Justice, President Theodore Roosevelt explained that among the "disadvantages" of the American system of government was that the national administration could not easily respond to local "movements like" the growth of anti-Japanese sentiment.¹¹⁾ When negotiations with California authorities failed, Roosevelt's administration sued the school board. This cumbersome method of enforcing the treaty was unsuccessful in quickly ending San Francisco's policy. In March 1907, after meeting with President

Roosevelt, the San Francisco school board rescinded its rule for Japanese and Japanese-American children. By this time though, relations between the two nations had been severely damaged and the “dismay, frustration and ultimately anger” the Japanese felt toward the United States would not be easily undone.¹²⁾ There are modern corollaries to this problem.¹³⁾ Thus, for a variety of reasons, revisiting the Gentlemen’s Agreement offers us some historical perspective on the modern world, which is complicated by racial and ethnic diversity and competition. This history also sheds light on the “disadvantages,” as Roosevelt called them, of a United States constitutional structure that is hamstrung by a system of federalism developed more than two centuries ago.

I: Asian Immigration to the United States and the Japanese “Problem”

Until the 1840s there was almost no Asian presence in the United States. Americans began trading with China shortly after the Revolution and an occasional Chinese sailor or merchant came to the nation. They were, for the most part, curiosities, strange in their physical appearance, clothing, and manners, but so few in number that no one was alarmed by their presence. This changed after 1849.

The discovery of gold in California led to significant Chinese immigration to the American west coast. In 1850, there were only 1,135 people of Asian birth living in the United States. In 1860, there were over 36,000. This number grew to 64,000 by 1870 and eventually surpassed 107,000 by 1880.¹⁴⁾ During these three decades almost all Asians in the United States were from China.¹⁵⁾ Californians initially welcomed this source of cheap labor, but soon the vast majority of Californians came to resent the presence of these apparently strange people whose culture, language, religion, forms of dress, food – and most of all physical appearance – were so alien to most Americans.

The Chinese on the West Coast soon faced significant discrimination, first in California, and later in Oregon, Washington, and some other western states. Laws prevented them from testifying against whites¹⁶⁾ and other non-Chinese.¹⁷⁾ After the adoption of the Fourteenth Amendment these rules disappeared,¹⁸⁾ but courts remained skeptical of the value of Chinese testimony. Thus, in 1886 the Oregon Supreme Court observed that “[e]xperience convinces every one that the testimony of Chinese witnesses is very unreliable, and that they are apt to be actuated by motives that are not honest.”¹⁹⁾ They were barred from naturalization,²⁰⁾ although under the Fourteenth Amendment their American-born children were citizens.²¹⁾

Hostility to Chinese immigration culminated in the Chinese Exclusion Act of 1882,²²⁾ which dramatically reduced Asian immigration. The Asian born population

in the United States grew by less than six thousand between 1880 and 1890, and about one third of these new immigrants were from Japan.²³⁾ Despite its name, the law did not exclude all Chinese immigrants. Rather, it was focused largely on Chinese laborers. Chinese merchants, students, and tourists were still allowed to enter the nation, as were the Chinese wives of husbands living in the United States. This included women who were married in China through proxies and saw their husbands for the first time when they arrived in the United States.²⁴⁾

The Exclusion Act was thus more porous than its supporters expected, which only tended to infuriate opponents of Asian immigration. Congress amended the law a number of times to limit immigration and to prevent some Chinese aliens from returning to the United States if they left the country.²⁵⁾ The Supreme Court upheld these regulations in various cases,²⁶⁾ although occasionally the Court required a certain level of fairness in their application.²⁷⁾

At the time Congress passed the Exclusion Act, Japan did not allow its citizens to freely emigrate and consequently there were virtually no Japanese immigrants in the United States. Thus, immigrants from Japan were not covered by the Chinese Exclusion Act in 1882.²⁸⁾ In 1886, Japan began to allow its citizens to emigrate, although initially only a few moved to the United States. In 1890, there were only 2,039 Japanese in the country but, by 1900, there were more than 24,000, with just over 10,000 in California.²⁹⁾ In the next eight years Japanese emigration to the United States exploded, as 127,000 Japanese entered the country.³⁰⁾ Just as Ellis Island proved to be a “Golden Door” for millions of Europeans in this period, San Francisco was very much a golden gate beckoning Japanese immigrants. Japanese immigration was initially slow and did not attract much attention in California until the late 1890s. Therefore, hostility to Asian immigrants continued to focus mainly on the Chinese. Congress tinkered with the Chinese Exclusion Act in the 1880s and 1890s, and in 1902 finally settled the issue by making the Act permanent.³¹⁾

When Congress passed the Chinese Exclusion Act in 1882, China was a weak and almost powerless nation. Its prestige and power continued to decline, thus making it impossible for China to protest or fight against this anti-Chinese legislation. Following the Boxer Rebellion in 1901, seven western powers plus Japan forced China to cede virtual sovereignty over some of its territory and pay enormous reparations. A year later the ban on Chinese immigrants to the United States was made permanent.³²⁾ Supporters of the 1902 law argued that the Chinese should be permanently excluded from the United States because they were racially inferior and incapable of ever being true Americans. As one member of Congress put it during this debate, “the Chinaman in America is forever and always an

alien.”³³⁾ Members of Congress asserted that “the Mongolian race [is] not a desirable addition to our population.”³⁴⁾ However, the law only affected Chinese immigration, even though presumably Japanese were also members of “the Mongolian race.”

The failure to include the Japanese in the final Chinese Exclusion Act of 1902 infuriated some in California. As early as 1899 the *San Francisco Chronicle* argued “that Japanese immigration was more serious than Chinese because Japan had attained the status of a great power whereas China had not.”³⁵⁾ Similarly, in 1901 Governor Henry T. Gage noted the “Japanese problem” in his annual message.³⁶⁾ But at the time there were still relatively few Japanese in the United States. Moreover, in 1900 the Japanese government announced that it would voluntarily restrict emigration of Japanese laborers to the United States. This was the first Gentlemen’s Agreement.

After implementation of this Agreement, Japanese emigration to the United States declined from over 12,000 in 1900 to just under 5,000 in 1901.³⁷⁾ However, despite the intentions of the Japanese government, Japanese migration to the United States increased after 1901. The 1900 Agreement only limited Japanese migration to the mainland of the United States, and under the agreement a significant number of Japanese emigrated to Hawaii mostly to work on sugar plantations. They then moved to California.³⁸⁾ This led to an explosion of nativist opposition to the Japanese³⁹⁾ in California and especially in San Francisco.

Californians wanted to end Japanese immigration and also, as much as possible, to undermine the economic and social progress of the Japanese in the United States. However, curbing Japanese immigration was not as simple as dramatically reducing Chinese immigration. China was an utterly weak and powerless nation in the late nineteenth century while Japan was a rising power by the early twentieth century.

Under the 1894 treaty Japan gained most-favored-nation status with the United States and Japanese citizens were generally allowed to enter the United States without restriction.⁴⁰⁾ The treaty was a recognition of Japan’s new prestige in the world. While the treaty was being negotiated Japan successfully flexed its growing military muscle in the Sino-Japanese War (1894-95) which resulted in Korea becoming a Japanese protectorate, China ceding Taiwan to Japan, and China paying indemnities to Japan. In the Boxer Rebellion (1900-01) Japan provided more troops than any other nation. Its 20,000 or so troops constituted about 40 percent of the entire non-Chinese forces used to suppress the rebellion. Four years later Japan defeated Russia in the Russo-Japanese War, startling the world. The smaller, non-Western, non-Christian country had defeated the largest nation in Europe. Japan

was clearly a power to be reckoned with, and not one to be gratuitously insulted. President Theodore Roosevelt negotiated an end to the war between Russia and Japan, and was awarded the Nobel Peace Prize for his efforts. While leading the peace talks Roosevelt came to appreciate the strength of Japan and the nation's military potential. The Japanese were particularly sensitive to the racism of the Russians and other westerners during both the war and the peace negotiations.⁴¹⁾

Japan's rise as an important power coincided with two other developments that lead to tensions between Japan and the United States. During and immediately after the Spanish-American War (1898) the United States established an overseas Pacific presence that included the acquisition of Guam, American governance of the Philippines, and the annexation of Hawaii. After the Boxer Rebellion (1901) the United States also had a presence in China. In addition, in 1904 the United States began construction of the Panama Canal. Thus, just as Japan was emerging as a world power it faced a powerful non-Asian nation edging close to its doorstep, asserting its own growing political, economic, and military might, with the near term potential (once the Canal was completed) to easily move its fleet from the Atlantic to the Pacific.

American officials saw the rise of Japan and the development of America's Pacific empire as a source of potential conflict. In 1906, Secretary of State Elihu Root told a cabinet colleague that "Japan is ready for war," and had "the most effective equipment and [military] personnel in the world."⁴²⁾ In 1907 and 1908 the Roosevelt administration began to seriously gather intelligence about Japanese military capabilities and its "preparedness for war."⁴³⁾ In 1907-08, just as the last part of the Gentlemen's Agreement was being negotiated, President Theodore Roosevelt sent sixteen battleships (with numerous escort and support vessels) – known as the Great White Fleet for the color the ships were painted – on a world-wide cruise. Roosevelt was clearly worried about rising tension with Japan, telling Secretary of State Root: "I am more concerned over the Japanese situation than almost any other. Thank Heaven we have the navy in good shape. It is high time, however, that it should go on a cruise around the world."⁴⁴⁾

The message of vast American power with its state-of-the-art dreadnaught battleships was clear to the Japanese when the Great White Fleet steamed into Yokohama Bay in October 1908. This was necessary, in part, because Roosevelt could not control the "hideous sensationalism and offensiveness of the yellow press" which was a "serious menace to us in our foreign relations."⁴⁵⁾ Roosevelt correctly feared that the attacks on Japan and Japanese-Americans in the press, combined with the actions of the officials in California and some violent attacks on

Japanese in San Francisco, would “cause the greatest irritation against us” in Japan.⁴⁶⁾ At least a show of force might, in Roosevelt’s mind, help temper Japanese responses to the virulent racism against them coming out of California.

II: The Rise of Anti-Japanese Sentiment and School Segregation in San Francisco

At the same time that both nations were emerging as Pacific powers Japanese emigration to the United States increased in part because of the growing demand for labor in California’s agricultural industry caused by a decline in the availability of cheap labor as a result of the Chinese Exclusion Act. In 1882, the year the Exclusion Act was passed (but before it went into effect), just under 39,600 Chinese had entered the United States, most of whom were laborers. But in the entire decade of the 1890s only about 20,000 Chinese arrived, most of whom were not laborers.⁴⁷⁾ The cumulative affect of this decline in Chinese labor – what people at the time called Coolie labor – stimulated the rapid increase in Japanese immigration.

The rise of anti-Japanese sentiment in California was tied to labor conditions, historic racism towards Asians in the state going back to the 1850s, and the growing number of Japanese immigrants coming to the United States. As much as Japanese labor was needed, white Californians, especially those in urban areas, also resented these new immigrants. Initially the response to the Japanese was a carryover from anti-Chinese attitudes – as Roger Daniels perceptively noted, “[i]n 1900 the anti-Japanese campaign . . . was mainly a tail to the anti-Chinese kite.”⁴⁸⁾ But, the focus of anti-Japanese sentiment shifted as white Californians realized that Japanese immigrants (unlike the Chinese) were intent on obtaining an education for themselves and their children and moving beyond the role of unskilled laborers. In 1900, the voice of San Francisco’s labor movement offered a deeply racist analysis of Japanese immigration that highlighted the upward mobility of the Japanese:

Chinatown, with its reeking filth and dirt, its gambling dens and obscene slave pens, its coolie labor and bloodthirsty tongs, is a menace to the community; but the sniveling Japanese, who swarms along the streets and cringingly offers his paltry services for a suit of clothes and front seat in our public schools, is a far greater danger to the laboring portion of our society than all the opium soaked pigtailed who have ever blotted the fair name of this beautiful city.⁴⁹⁾

White working class Californians resented the Japanese, not only because they were

non-white competitors, but because they also seemed poised to leapfrog over them in economic status.

The *San Francisco Chronicle* later observed that the Japanese “probably would have attracted small attention” if they “had throttled [their] ambition.”⁵⁰⁾ But, the *Chronicle* noted that the Japanese aspired “to progress beyond mere servility to the plane of the better class of American workman and to own a home with him” and that when they achieved that status they “cease[d] to be an ideal laborer.”⁵¹⁾ This may have been somewhat of an exaggeration, since anti-Asian sentiment in California undoubtedly would have been directed at the Japanese no matter how much or how little education and economic progress they sought. The Chinese, after all, faced discrimination and exclusion even though they were mostly also viewed as “an ideal laborer.” Nevertheless, the paper’s main point is probably accurate: that resentment toward the Japanese grew as they sought to achieve upward mobility. The fact that the crisis leading to the final Gentlemen’s Agreement came over school segregation reflects this tension.

At the very time Japan was rising as an international power – and as President Roosevelt was coming to admire the nation and its people – the United States Industrial Commission told the nation that the Japanese “are more servile than the Chinese, but less obedient and far less desirable. They have most of the vices of the Chinese, with none of the virtues. They underbid the Chinese in everything, and are as a class tricky, unreliable, and dishonest.”⁵²⁾ This official position of a United States Government agency clashed dramatically with President Roosevelt’s foreign policy goals and his views of the value of Japanese immigrants.

The theme of anti-Japanese sentiment was the simultaneous fear that the Japanese would undercut wages – “they underbid the Chinese in everything” as the United States Industrial Commission claimed⁵³⁾ – while at the same time they sought to improve their status through home ownership and education – “a front seat in our public schools” as the journal *Organized Labor* put it.⁵⁴⁾ These themes coalesced in the crisis that precipitated the Gentlemen’s Agreement when San Francisco tried to segregate the Japanese in the public schools.⁵⁵⁾

In 1905, the San Francisco school board passed a resolution to segregate all Asians in the city’s public schools. However, the San Francisco earthquake in April 1906 delayed its implementation. On October 11, 1906 the school board passed a new resolution to segregate all Asian students.⁵⁶⁾ When schools reopened after the earthquake, Japanese were excluded from schools that they had previously attended.⁵⁷⁾ In this regard, the Japanese were treated the same way as the Chinese and other Asians.

But the Japanese government was not the same as the Chinese, and the relationship between the United States and Japan was far different from China's relationship to the United States. Fresh from its victory in the Russo-Japanese War as well as providing the largest number of troops to suppress the Boxer Rebellion, Japan was a growing power unwilling to ignore this insult from the San Francisco school board. The Japanese government thus immediately protested to President Theodore Roosevelt, complaining that this segregation violated the 1894 treaty between the two nations⁵⁸⁾ which provided that "[t]he citizens or subjects of each of the two High Contracting Parties shall have full liberty to enter, travel, or reside in any part of the territories of the other Contracting Party, and shall enjoy full and perfect protection for their persons and property."⁵⁹⁾ The treaty also provided that "in all other matters connected with the administration of justice they shall enjoy all the rights and privileges enjoyed by native citizens or subjects."⁶⁰⁾

The Japanese government naturally believed that under these provisions of the 1894 treaty Japanese immigrants and their children could not be segregated. The Californians doubtlessly saw their policy as consistent with the American Constitutional regime, which allowed the states to regulate race relations almost at will. In a series of decisions⁶¹⁾ culminating in *Plessy v. Ferguson*,⁶²⁾ the Supreme Court allowed the states to require separate facilities for members of different races as long as the separate facilities were "equal." By 1900, the pretense of equality for black facilities in the South no longer existed and the Supreme Court showed little inclination to interfere with the South's aggressive segregation of all aspects of southern life. By this time all public schools in the South were completely segregated.⁶³⁾ The American South took advantage of the *Plessy* decision and other cases to segregate almost every aspect of southern life.⁶⁴⁾ Californians followed suit, believing that if white Southerners could segregate blacks and discriminate against them in other ways, they could segregate all Asians, including the Japanese, and also discriminate against them beyond the school setting. Indeed, the San Francisco school policy was part of a larger movement in California to end all Japanese immigration into the country.

There was, of course, an ironic difference between Japanese immigrants and their children and American blacks living in the South. The rights of African-Americans were protected only by the United States Constitution and were dependent on the whims of the courts, the national government, and, under the Supreme Court's interpretation of the Fourteenth Amendment, the state governments. In the *Civil Rights Cases*,⁶⁵⁾ the Supreme Court held that Congress had limited power to regulate and protect the civil rights of blacks under the

Fourteenth Amendment. In *Plessy v. Ferguson*, the Court allowed the states to practice segregation as long as the separate facilities were “equal,” but neither the courts nor the federal executive branch were willing, or able, to investigate whether such facilities were actually “equal.” Nor was the federal government willing to exert its constitutional power to protect black voting rights or black civil rights from state deprivation. Thus, the power of protecting the civil rights of black Americans was entirely in the hands of the state governments. In the North this led to state laws protecting civil rights.⁶⁶⁾ But in the South, the Court’s narrow and racially biased interpretation of the Fourteenth Amendment left blacks trapped in a world of increasing segregation. In contrast, Japanese immigrants could legitimately turn to their home country for protection and support. The government of Japan, operating under the 1894 treaty and bolstered by its rising status as a military and economic power, could demand protection for its citizens living in the United States. Furthermore, the states – in this case California – were obligated to defer to the federal government on the treatment of the Japanese because under the Supremacy Clause of the United States Constitution a treaty was binding on the states.⁶⁷⁾ Thus, unlike the segregation of blacks in the South, the segregation of the Japanese in California was an international issue in which the administration in Washington had a concern.

Although President Theodore Roosevelt found the anti-Japanese movement in California abhorrent, he was hardly a racial liberal. He believed that “race purity must be maintained”⁶⁸⁾ and famously refused to support black soldiers who defended themselves from the attacks of white civilians in Texas.⁶⁹⁾ While, he favored some limitations on Asian immigration – and to that extent he sympathized with some of the goals of the anti-Japanese and anti-Chinese movements on the West Coast – unlike the West Coast nativists, he was not opposed to immigration per se or to all Asian immigration. Unlike the Californians, he clearly did not favor stopping all Japanese immigration. In fact, he greatly admired the Japanese and even suggested that America’s naturalization laws be changed to allow Japanese immigrants to become citizens.⁷⁰⁾ In 1897, he had endorsed limiting Chinese immigration and other immigrant “laborers who are ignorant, vicious, and with low standards of life and comfort.”⁷¹⁾ In his first annual message to Congress, in the wake of the assassination of President William McKinley by an immigrant anarchist, Roosevelt asked for legislation to prevent anarchist immigrants, to “reenact immediately the law excluding Chinese laborers and to strengthen it wherever necessary in order to make its enforcement effective,” and to “stop the influx of cheap labor.”⁷²⁾ In his annual message of 1905, he asserted that the nation

could never “have too much immigration of the right sort and we should have none whatever of the wrong sort.”⁷³⁾

It is not clear, however, that he thought the Japanese were “the wrong sort.” His notion of the “right sort” and “wrong sort” of immigrant was tied to character and motivation, and reflective of his own concepts of rugged individualism. Thus, he argued that we should not “discriminate for or against any man who desires to come here and become a citizen, save on the ground of that man’s fitness for citizenship.”⁷⁴⁾ The nation had a “right and duty to consider his moral and social quality,”⁷⁵⁾ but Roosevelt asserted that the nation should:

Pay no heed to whether he is of one creed or another, of one nation, or another. We cannot afford to consider whether he is Catholic or Protestant, Jew or Gentile; whether he is Englishman or Irishman, Frenchman or German, Japanese, Italian, Scandinavian, Slav, or Magyar.⁷⁶⁾

Roosevelt then went on, at some length, to explain why the “questions arising in connection with Chinese immigration stand by themselves.”⁷⁷⁾ He endorsed “the policy of excluding Chinese laborers, Chinese coolies,” but declared that “Chinese students, business and professional men of all kinds” including “merchants” and “bankers, doctors, manufacturers, professors, travelers, and the like—should be encouraged to come here.”⁷⁸⁾ Thus it seems that the President favored an immigration policy based on class and moral stature rather than race. Significantly, he listed the Japanese along with Europeans as the kind of people who should be allowed into the nation and only singled out the Chinese for special consideration.

Roosevelt’s views of the Japanese were complex and conflicted. He thought Japan would become one of the “great civilized powers,” but because of race and “their own ancestral civilization” they would “be of a different type from our civilizations.”⁷⁹⁾ Despite these racial and cultural differences, Roosevelt believed that there were things Japan “can teach us,” and predicted that Japan would become a “formidable industrial competitor.”⁸⁰⁾ He believed it was important to “treat her courteously, generously, and justly, but we should keep our navy up and make it evident that we are not influenced by fear.”⁸¹⁾ In his annual message to Congress in 1906 Roosevelt extolled the virtues of Japanese society. He thought the growth of Japan’s economy under the Meiji was “literally astounding.”⁸²⁾ He noted that Japan had “a glorious and ancient past” with a “civilization older than that of the nations of northern Europe—the nations from whom the people of the United States have chiefly sprung.”⁸³⁾ This statement is particularly significant, given the growing obsession of most white American Protestants with racial and ethnic heritage, the

purity of races, and social Darwinian notions of superior and inferior races. Roosevelt had essentially concluded that the Japanese were “equal” to white Protestant Americans of Anglo-Saxon and Germanic origins. The President stated that in less than four decades of modernization “[t]he Japanese have won in a single generation the right to stand abreast of the foremost and most enlightened peoples of Europe and America; they have won on their own merits and by their own exertions the right to treatment on a basis of full and frank equality.”⁸⁴⁾ This claim to equality was bolstered by Japan’s recent military successes. Thus, in his 1906 message Roosevelt declared that Japan “now stands as one of the greatest of civilized nations; great in the arts of war and in the arts of peace; great in military, in industrial and artistic development.”⁸⁵⁾ The military hero of the Spanish American War, Roosevelt noted that “Japanese soldiers and sailors have shown themselves equal in combat to any of whom history makes note. She has produced great generals and mighty admirals; her fighting men, afloat and ashore.”⁸⁶⁾ Roosevelt praised “the heroic courage, the unquestioning, unfaltering loyalty, the splendid indifference to hardship and death” of Japanese sailors and soldiers.⁸⁷⁾

In addition to his growing admiration for the Japanese – and his respect for their military prowess – Roosevelt correctly saw immigration policy as belonging to the national government and not something the states should interfere with. He saw the California attacks on the Japanese as particularly problematic, not only because the state seemed to be usurping the plenary power of the national government to regulate immigration, but also because California’s actions threatened the nation’s foreign policy and ultimately its security.

A letter to his longtime ally and friend Henry Cabot Lodge in May 1905 revealed the problematic nature of the California anti-Japanese movement. First, Roosevelt noted that the Japanese had “come around” to Roosevelt’s position on how to end the Russo-Japanese War.⁸⁸⁾ Fresh from bringing the Japanese to the peace table by convincing them that he was a fair broker, Roosevelt now faced the problem that California would undermine his foreign policy. He told Lodge “I am utterly disgusted at the manifestations which have begun to appear on the Pacific slope in favor of excluding the Japanese exactly as the Chinese are excluded. The California State Legislature and various other bodies have acted in the worst possible taste and in the most offensive manner to Japan.”⁸⁹⁾

Roosevelt also found it particularly ironic that the Congressional delegations from California and other states hostile to the Japanese were also “lukewarm” about supporting his proposals for a stronger Navy. Roosevelt felt “disgust” towards those politicians who “justify by their actions any feeling the Japanese might have against

us, while at the same time refusing to take steps to defend themselves against the formidable foe whom they are ready with such careless insolence to antagonize.”⁹⁰⁾ The President could not understand how politicians could risk antagonizing the Japanese while they were in the process of defeating Russia.

In other correspondence, Roosevelt complained about the “foolish offensiveness” by the “idiots” in California who insulted the Japanese when the whole nation would bear the costs of a war.⁹¹⁾ In March 1905, the California legislature passed a resolution asking Congress to prohibit the immigration of “immoral, intemperate, quarrelsome men bound to labor for a pittance.”⁹²⁾ This resolution was directly aimed at Japanese immigration, and its language seemed designed to infuriate the Japanese. Roosevelt complained that the “idiots of the California legislature” were doing “exactly the reverse of what I have made the cardinal doctrine of my foreign policy. That is to say, they talk offensively to foreign powers and yet decline ever to make ready for war.”⁹³⁾ Roosevelt believed one should “speak softly and carry a big stick,” while the California legislature and the California delegation in Congress insisted on aggressive rhetoric without supporting the expansion of the Navy that Roosevelt believed was necessary to protect the nation and prevent a war with Japan. Roosevelt did not expect a war with Japan, if we “keep our navy so strong and so efficient that we shall be able to handle Japan if the need ever arises.”⁹⁴⁾

During this crisis Roosevelt told the American ambassador to Japan to reaffirm to the Japanese government that neither the Roosevelt administration nor the American people had “the slightest sympathy with the outrageous agitation against the Japanese.”⁹⁵⁾ He assured Japanese officials that he would do everything in his power to “protect the rights of the Japanese” in the United States.⁹⁶⁾

The nature of American federalism complicated Roosevelt’s foreign policy. He could not control California or prevent that state from passing laws and ordinances which violated the treaty with Japan. At best, he could take actions in the courts – which eventually he did – to challenge California’s actions. He told Baron Kaneko, Japan’s Minister of Justice, that one of the “disadvantages” of the American system was “in dealing with movements like this,” but that he had already directed the Department of Justice “to see if we cannot remedy the matter thru the courts.”⁹⁷⁾

The flip side of federalism, however, was that Roosevelt was free to publicly and privately criticize the authorities in California. Thus, in his letter to Baron Kaneko he compared the actions of “these people in California” to “pirates.”⁹⁸⁾ In public, Roosevelt chastised authorities in California for their segregation policies, calling them a “wicked absurdity” noting that “there are no first-class colleges and

universities in the land, including the universities and colleges of California, which do not gladly welcome Japanese students and on which Japanese students do not reflect credit.”⁹⁹⁾ In private, he was furious, writing his son Kermit, a student at Harvard at the time: “I am being horribly bothered about the Japanese business. The infernal fools in California, especially in San Francisco, insult the Japanese recklessly, and in the event of war it will be the Nation as a whole which will pay the consequences.”¹⁰⁰⁾ Eventually Roosevelt convinced leaders in California to rescind the rule segregating Japanese students, but by then the rupture of Japanese-American relations was clear.

The State Department, following Roosevelt’s lead, did everything it could to shore up relations with Japan. On October 23, 1906, Secretary of State Elihu Root told the American ambassador in Tokyo to communicate to the Japanese government that “the United States will not for a moment entertain the idea of any treatment of the Japanese people other than that accorded to the people of the most friendly European nations.”¹⁰¹⁾

Roosevelt’s response was more than just verbal. He dispatched Secretary of Commerce and Labor Victor Metcalf, a native of California, to San Francisco to investigate three things: “first, the exclusion of Japanese children from the San Francisco schools; second the boycotting of Japanese restaurants, and, third, acts of violence committed against the Japanese.”¹⁰²⁾ The Metcalf report detailed violence against Japanese immigrants and citizens, including Japanese scientists who had come to California to help the state in the wake of the 1906 earthquake. Metcalf’s report noted that there were very few Japanese children in the public schools and they posed no threat to any non-Japanese children in the city. Roosevelt told the Senate that his administration had already instituted legal action to prevent the segregation of Japanese children in the schools. Ever the politician and reflecting his motto to “speak softly,” Roosevelt asserted that California authorities “assured Secretary Metcalf that everything possible would be done to protect the Japanese in the city,”¹⁰³⁾ but reflecting the other part of his motto, Roosevelt let California authorities know that he was also prepared to “carry a big stick.” Thus the report noted that:

I authorized Secretary Metcalf to state that if there was failure to protect persons and property, then the entire power of the Federal Government within the limits of the Constitution would be used promptly and vigorously to enforce the observance of our treaty, the supreme law of the land, which treaty guaranteed to Japanese residents everywhere in the Union full and perfect protection for

their persons and property, and all the forces of the United States, both civil and military, which I could lawful employ, would be employed.¹⁰⁴⁾

To this end Roosevelt directed the Senate to the final sentence of Metcalf's report, "[a]ll considerations which may move a nation, every consideration of duty in the preservation of our treaty obligations, every consideration prompted by fifty years or more of close friendship with the Empire of Japan, would unite in demanding, it seems to me, of the United States Government and all its people, the fullest protection and the highest consideration of its subjects."¹⁰⁵⁾ Indeed, Secretary Metcalf suggested that the United States send troops to San Francisco to protect Japanese immigrants.¹⁰⁶⁾

III: Restriction and Exclusion

In his annual message of 1906 President Roosevelt urged Congress to pass laws allowing the naturalization of Japanese immigrants.¹⁰⁷⁾ Under existing law only people who were "white" or of African ancestry could be naturalized.¹⁰⁸⁾ However, this did not happen. Despite his claims of support of the Japanese, his disgust at the behavior of the Californians, and his fear that insulting Japan would undermine international relations, in the end, Roosevelt acquiesced to the "idiots" in California¹⁰⁹⁾ who insulted the Japanese and more importantly, the Japanese nation.¹¹⁰⁾ Instead of pushing for citizenship for Japanese immigrants, Roosevelt signed the Immigration Act of 1907,¹¹¹⁾ which authorized him to prohibit immigrants from coming to the United States indirectly when such immigration would work "to the detriment of labor conditions" in the United States.¹¹²⁾ This law also allowed the president to prohibit immigrants initially destined for any "insular possession of the United States" from entering the continental United States.¹¹³⁾ The law did not *require* that such immigrants be banned, but instead gave the president full discretion to implement these measures. These provisions of the law were aimed at Japanese who moved first to Mexico, Canada, or Hawaii (an "insular possession of the United States") and then migrated to the United States.

After this, Roosevelt pushed for negotiations to dramatically limit Japanese immigration into the United States. Despite his high regard for the Japanese, Roosevelt concluded that he needed to curb Japanese immigration to keep the peace in California. He was concerned that the level of Japanese immigration was growing despite earlier agreements by Japan to reduce immigration.¹¹⁴⁾ Thus, Roosevelt's administration negotiated the final Gentlemen's Agreement.

Under the agreement, Japan agreed to limit the visas issued to its citizens

coming to the United States. These limitations included denying visas to “laborers, skilled or unskilled” unless they had previously lived in the United States or were the “parents, wives, or children under 20 years of age” of such laborers.¹¹⁵ The agreement allowed for tourists, students, and merchants to come to the United States. The agreement also allowed for family reunification, which meant wives and children could move to the United States to be reunited with a husband or a parent. This led to what was later termed “picture brides,” women who married husbands while in Japan through a proxy system and then were given an exit visa by the Japanese government to enter the United States.¹¹⁶

The agreement allowed Japan to appear to be an equal partner in the development of American immigration policy. By agreeing to voluntarily restrict emigration to the United States, the agreement did not appear to be forced on the Japanese. But, this was a face-saving device. With the exception of China, no other nation in the world had been forced to limit the number of its citizens who could move to the United States. Caving in to the racism of the “idiots” in California, the United States effectively browbeat Japan into voluntarily accepting its status as a second-class nation whose citizens were unworthy of moving to the United States.

IV: Epilogue

Theodore Roosevelt began his presidency with a strong sense of what might be called fairness in immigration, tainted by common racist notions of the age. Thus, he endorsed restrictions on Chinese immigrants and others “who are ignorant, vicious, and with low standards of life and comfort.”¹¹⁷ At the same time, early in his presidency, he supported Japanese immigration and at one point urged Congress to allow for the naturalization of Japanese aliens. These sentiments are in part tied to Roosevelt’s respect for the Japanese that came from his friendship with Baron Kaneko. Roosevelt and Kaneko had been classmates at Harvard, although they had not met at that time. But, by the time he became president, Roosevelt knew and respected Kaneko and thus understood that the Japanese could be the “right sort”¹¹⁸ of immigrant. He also gained great respect for the Japanese during the Boxer Rebellion and the Russo-Japanese War. During his negotiations to end the Russo-Japanese War he told a confidant that “I thoroughly admire and believe in the Japanese. They have always told me the truth, and the Russians have not.”¹¹⁹ His respect for Japan was tied to his fear that poor relations between the two nations might lead to war. He, in part, admired the Japanese because “they have the kind of fighting stock I like.”¹²⁰ Thus, his immediate response to the anti-Japanese agitation in California was anger and frustration at the “foolish offensiveness” of

the “idiots” and the “infernally fools” in California.¹²¹⁾

By the end of his presidency and in his post presidential years, Roosevelt’s ideology began to shift away from seeking cooperation and peace toward displaying his “big stick” in an attempt to cow the Japanese. The first such attempt was when he sent the Great White Fleet across the Pacific to impress the Japanese with America’s military power. At the same time he aggressively pushed for a “Gentlemen’s Agreement” that was neither gentlemanly nor much of an agreement. In 1905-06 he instinctively understood that insulting the Japanese and increasing tensions between the two nations was not in America’s best interest. Indeed, as one scholar has noted, the school segregation crisis would “leave such ugly memories on both sides of the Pacific that the cordiality that had characterized previous relations could never be fully recovered.”¹²²⁾

But part of the reason for this ultimate result was the failure or inability of the national government to adequately respond to the racism in California. Federalism, political considerations, and Roosevelt’s unwillingness to use all of his power to confront California left him unable to recover the high level of friendship and cooperation that he had built while negotiating an end to the Russo-Japanese War. Secretary of State Root believed that California’s actions “clearly violated the treaty of 1894”¹²³⁾ and thus under the Supremacy Clause of the Constitution, the federal government had a legal duty, a moral right, and a constitutional obligation to intervene to protect Japanese rights. But, racism, the Supreme Court’s jurisprudence on segregation, and Roosevelt’s own political values took him elsewhere.

Roosevelt initially told the Japanese he would do everything necessary to protect their rights, and the Japanese responded warmly. After Roosevelt’s 1906 message to Congress suggesting that the naturalization laws be extended to Japanese immigration Baron Kaneko told the President that Japanese editorials “showered upon you all the praises they have in store.”¹²⁴⁾ But, within a year Roosevelt had squandered this international good will by caving in to the racist demands of California to end Japanese immigration. Moreover, he no longer seemed to care about getting along with Japan because, as he told his secretary of state, “we have the navy in good shape.”¹²⁵⁾

By 1913, in the wake of his unsuccessful attempt to regain the presidency,¹²⁶⁾ Roosevelt had also abandoned his previous respect for the Japanese and no longer recognized the differences between Japanese immigrants and those from China. He noted the “strong feeling in California against the immigration of Asiatic laborers,” and agreed this was “fundamentally a sound and proper attitude, an attitude which

must be insisted on.”¹²⁷⁾ He still argued that this policy should be carried out with a “sense of mutual fairness and reciprocal obligation and respect as not to give any just cause of offense to Asiatic peoples,”¹²⁸⁾ even though he surely knew that the policies he had developed in his last few years in office would certainly lead to “offense.” Two years later he extolled the virtue of “[t]ravellers, scholars, men engaged in international business, all sojourners for health, pleasure, and study” being “heartily welcomed in both countries,” but had now thoroughly rejected immigration, arguing that “[f]rom neither country should there be any kind of emigration of workers of any kind to, or any settlement in mass in, the other country.”¹²⁹⁾

It would be too much to blame the subsequent total deterioration of Japanese-American relations on the Gentlemen’s Agreements. Later immigration policies surely were even more important not only in international affairs but also in the domestic sphere. In 1922, in *Ozawa v. United States*, the Supreme Court held that a Japanese immigrant could not be naturalized because he was not “white,” as required by the 1870 Naturalization Act.¹³⁰⁾ The Immigration Act of 1924 constituted a unilateral abrogation of the Gentlemen’s Agreement because “persons ineligible for citizenship” – Japanese and Chinese – were unable to enter the nation under the new quota system.¹³¹⁾ The Japanese government was furious over this unilateral rejection of existing diplomatic relations.¹³²⁾ The Japanese understood that Congress and the President had deeply insulted them by, in effect, saying they were unfit to migrate to the United States.

The ultimate collapse of United States-Japanese relations was of course also a function of Japanese imperial designs in China and the Pacific. However, if the United States had treated Japan as an equal in the world by implementing a less racist foreign policy, it might have diminished Japanese fears, reduced the aggressive and imperialistic policies of Japan, and could have even improved relations to the point where war between the two nations was less likely to occur. On the other hand, while the American immigration policy was deeply insulting to the Japanese, it surely did not justify Japan’s imperial moves in the 1930s and the attack on Pearl Harbor in 1941. But, a different American policy might have set the stage for a less aggressive Japan and enabled the two nations to peacefully negotiate their differences. By the 1930s, more than two decades of racist policies pursued by various presidents, Congresses, and many state legislatures – and approved by the Supreme Court – made any understanding between the two nations difficult. Leadership from the executive branch and different legislation in Congress would have gone a long way towards redirecting Japanese-American

relations, but federalism made it impossible for the national government to totally reign in the states.

A different jurisprudence by the Supreme Court might also have altered the trajectory of Japanese-American relations. The Courts interpreted the immigration acts to exclude naturalization of Asians on the ground of their not being “white.” This of course was a highly subjective categorization. From his skin color Ozawa looked “white,” and surely had lighter skin than Mexicans or some Middle Easterners who the courts did consider “white.” A different jurisprudence on race would have altered the politics of the immigration laws and certainly would have been more respectful of the Japanese. Similarly, the Court’s support of segregation at the state level only encouraged the racists in the California legislature to increase their attacks on Japanese immigrants and their children. Significantly perhaps, William Howard Taft – who had been Secretary of War when the Gentlemen’s Agreement was negotiated – was the Chief Justice when the Supreme Court unanimously ruled against Japanese naturalization in *Ozawa*.

A more enlightened American immigration policy in 1908 and 1924 might have led to very different relations between the two nations. The Gentlemen’s Agreement was insulting to the Japanese, who were essentially told that they were not “good enough” to move to the United States. The unilateral abrogation of the Agreement in the 1924 Immigration Act was a direct, and unnecessary, assault on Japanese pride. Under the 1924 Act many nations received the minimum quota of 100 immigrants per year. Had Japan received this quota there would have been no perception of insult. But Japan was denied any immigrants under the quota system, through the façade of giving no quota for aliens “ineligible to citizenship.”¹³³⁾

It is also possible that if the United States had developed a different immigration policy before 1908, Japan itself might have been fundamentally changed. Instead of viewing the United States as a hostile rival, the Japanese might have seen America as a good friend, welcoming Japan into the world community as a full and equal partner. This in turn might have altered the way Japan viewed the United States and the rest of the world.

In addition to the immigration policy, the racism of California and other states also exacerbated tensions in international relations. Following the Gentlemen’s Agreement, California and other states passed laws to restrict Japanese land ownership.¹³⁴⁾ Reflecting the views of most easterners, the *Hartford Times* recognized that such actions were detrimental to the entire nation. The *Times* quipped that “of the two, it might be cheaper to go to war with California than with Japan.”¹³⁵⁾ In addition to restricting land ownership, the western states found other

ways to limit the ability of the Japanese to participate in regulated economic activities.¹³⁶⁾ These laws clearly undermined the nation's ability to work with Japan in the international setting.

The decline in Japanese immigration after 1908 also had adverse long-term consequences for the Japanese-American community. The arbitrary limitation on Japanese immigration slowed the growth of the Japanese-American community and made it less able to resist the discriminatory legislation after 1908. In the long run, these immigration policies also left the Japanese community on the West Coast unable to fend off the internment of 1942. Had Theodore Roosevelt, the Congress, and the Supreme Court stood up to the bigots in California it is likely that the Japanese-American population would have been much greater in 1942 and better integrated into the society. This might have prevented the wholesale incarceration of the Japanese-Americans on the West Coast, and instead any interment program would have resembled the targeted and selected policy carried out on the mainland against those Germans and German-Americans who were legitimately seen as threats to the nation's security.

However, in 1941-42 Japanese-Americans were politically weak and economically vulnerable. When the war began, California's leaders defended the loyalty of the much larger Italian-American community in California and elsewhere, and successfully opposed interning Italian nationals – such as the parents of Joe DiMaggio who lived in San Francisco but had never bothered to learn much English or become citizens. Similarly, no one considered incarcerating the Italian-American mayor of New York, Fiorello LaGuardia, or his counterpart in San Francisco, Angelo J. Rossi.¹³⁷⁾ Nor did anyone imagine the government should monitor such German-Americans as General Dwight D. Eisenhower or Admiral Chester A. Nimitz. But, reaching back to a long tradition of hostility to the Japanese in California, the Congressional delegation from that state was able to push through legislation that led to the internment of some 120,000 elderly Japanese aliens and their American born children, who were citizens of the nation.¹³⁸⁾

Without the Agreement of 1908, the path that ultimately led to Pearl Harbor and the devastation that followed might have led to a different destination. In 1900, as the Japanese intellectual Inazo Nitobe noted, even the peasants in Japan “were aware that ... America was a friend.”¹³⁹⁾ The diplomat Viscount Tadasu Hayashi “declared fulsomely that Japan regarded America as its benefactor.”¹⁴⁰⁾ But, the school segregation crisis and the treatment of Japanese immigrants as a pariah race – at a time when millions of less educated Europeans were pouring into the United States – set the two nations on a course for conflict. A different legal resolution to

both issues might have fundamentally altered Japanese-American relations and internal Japanese attitudes toward the United States, discouraging anti-American Japanese militarism and imperialism in the 1920s and 1930s and leading to peaceful resolutions of conflicts between the two nations.

Even if conflict between Japan and the United States had eventually taken place, a different immigration and naturalization policy might have led to a better outcome on the home front. A larger, more integrated, and more politically successful Japanese-American community would have been less vulnerable to the racism leading to the internment. Thus, with a different policy in 1908 and beyond it is likely that Japanese-Americans, and the whole American nation, might have fared better after Pearl Harbor. Ironically, when Franklin D. Roosevelt issued Executive Order 9066¹⁴¹⁾ interning almost all Japanese-Americans, he was following a path created by his distant cousin who had pushed for the Gentlemen's Agreement in 1907-08. The circumstances of the internment – the Japanese attack on Pearl Harbor and the war that followed – are also rooted in these events of the early twentieth century.

Notes

- 1) Oddly there was no official published text of the agreements. Raymond Leslie Buell, *The Development of the Anti-Japanese Agitation in the United States, Part I*, 37 POL. SCI. Q. 631 (1922). The best early statement of it can be found in Ambassador Masanao Hanihara to Secretary of State Charles Evans Hughes, Apr. 10, 1924, in 65 Cong. Rec. 6073 (1924). In 1939 the state department published 80 pages of documents on United States-Japanese relations from 1924 that included most of the memoranda that constituted the agreement of 1908. DEPARTMENT OF STATE, FOREIGN RELATIONS OF THE UNITED STATES, 1924, RESTRICTION OF JAPANESE IMMIGRATION BY ACT OF CONGRESS AND ABROGATION OF THE GENTLEMEN'S AGREEMENT (1939). The best place to start, in the study of the issue is ROGER DANIELS, *THE POLITICS OF PREJUDICE: THE ANTI-JAPANESE MOVEMENT IN CALIFORNIA AND THE STRUGGLE FOR JAPANESE EXCLUSION* 31-45 (1962).
- 2) RAYMOND A. ESTHUS, *THEODORE ROOSEVELT AND JAPAN* 129, 150 (1967). In 1900, just over 12,600 Japanese arrived, this dipped to 5,269 in 1901 when the first Gentlemen's Agreement went into effect, but then rose to 14,270 in 1902. From 1903 to 1909 over 100,000 Japanese immigrated to the United States. 1 HISTORICAL STATISTICS OF THE UNITED STATES: EARLIEST TIMES TO THE PRESENT 567 (Millennial Edition, 2006) [hereinafter HISTORICAL STATISTICS].
- 3) An Act to Regulate the Immigration of Aliens into the United States, Act of Feb. 20, 1907, ch. 1134, 34 Stat. 898, § 1.
- 4) The most conspicuous hostility to Japanese immigration was in California, but other western states, including Oregon, Washington, and Idaho passed similar laws. See note 134 *infra* for subsequent statutes limiting the rights of Japanese in other states. Treaty on Commerce and Navigation, U.S.-Japan, Nov. 22, 1894, 29 Stat. 848. The full title of the treaty is: *Treaty Between the United States of America and the Empire of Japan. Commerce and Navigation.*

- Concluded at Washington, Nov. 22, 1894; Ratification Advised by the Senate Feb. 5, 1895; Ratified by the President, Feb. 15, 1895; Ratified by the Emperor Feb. 27, 1895; Ratifications Exchanged at Washington Mar. 21, 1895; Proclaimed Mar. 21, 1895.*
- 5) Roosevelt to Cecil Arthur Spring Rice, Mar. 19, 1904 reprinted in 4 THE LETTERS OF THEODORE ROOSEVELT 759-61 (Elting F. Morison ed., 1952) [hereinafter LETTERS].
 - 6) 1 HISTORICAL STATISTICS, *supra* note 2, at 567. A number of scholars overstate the impact of the Gentlemen's Agreement on total immigration. For example, MARILYN LAKE & HENRY REYNOLDS, DRAWING THE GLOBAL COLOUR LINE: WHITE MEN'S COUNTRIES AND THE INTERNATIONAL CHALLENGE OF RACIAL EQUALITY 177 (2008), argue that the "provisions came into immediate effect. Japanese migration into California peaked in 1907 and then began a long decline." It is true that immigration peaked in 1907 with over 30,000 and it bottomed out in 1910 at 2,720. But thereafter Japanese immigration into the United States rose, passing 6,000 in 1912, passing 8,000 in 1913, and passing 10,000 in 1918. Indeed, Japanese immigration in 1918 and 1919 was greater than in all but seven pre-Gentlemen's Agreement years. This contrasts, for example, with Chinese immigration, which dropped from 39,579 in 1882, on the eve of the Chinese Exclusion Act, to 279 in 1884, when the act was fully implemented, and remained below 5,000 a year until 1924. After the Gentlemen's Agreement Japanese immigration dramatically surpassed Chinese in every year from 1900 to 1924. 1 HISTORICAL STATISTICS, *supra* note 2, at 567.
 - 7) Act to Limit the Immigration of Aliens into the United States, and for Other Purposes, [Immigration Act of 1924], Act of May 26, 1924, ch. 190, 43 Stat. 153. On the Japanese protest see Ambassador Masanao Hanihara to Secretary of State Charles Evans Hughes, Apr. 10, 1924, in 65 Cong. Rec. 6073 (1924). The 1924 law provided for a quota for general immigration from every nation in the world. However, the law barred the immigration under the quota system of persons who were "ineligible for citizenship." 43 Stat. 153, 162, 168, Sec. 13(c), 28(c). Because American law did not allow the naturalization of most Asians, Japanese and Chinese could not come into the United States under the quota. The law did allow wives, children, and parents of American residents and citizens to enter the country. From 1924 until 1941 a total of about 6,300 Japanese entered the United States. Contrast this with the 8,800 who entered just in the year 1924 (before the quota system went into effect) or the 30,000 who entered the year before the Gentlemen's Agreement went into effect. 1 HISTORICAL STATISTICS, *supra* note 2, at 567-68.
 - 8) LAKE & REYNOLDS, *supra* note 6, at 175.
 - 9) See Gabriel J. Chin, *Segregation's Last Stronghold: Race Discrimination and the Constitutional Law of Immigration*, 46 UCLA L. REV. 1 (1998); Kevin R. Johnson, *Immigration, Civil Rights, and Coalitions for Social Justice*, 1 HASTINGS RACE & POVERTY J. 181 (2003).
 - 10) Treaty on Commerce and Navigation, U.S.-Japan, Nov. 22, 1894, 29 Stat. 848. The full title of the treaty is: *Treaty Between the United States of America and the Empire of Japan. Commerce and Navigation. Concluded at Washington, Nov. 22, 1894; Ratification Advised by the Senate Feb. 5, 1895; Ratified by the President, Feb. 15, 1895; Ratified by the Emperor Feb. 27, 1895; Ratifications Exchanged at Washington Mar. 21, 1895; Proclaimed Mar. 21, 1895.*
 - 11) Theodore Roosevelt to Baron Kentaro Kaneko, Oct. 26, 1906 reprinted in 5 LETTERS, *supra* note 5, at 473. See also ESTHUS, *supra* note 2 at 139-47, 167-68.
 - 12) AKIRA IRIYE, FROM NATIONALISM TO INTERNATIONALISM 201 (1977). See also Buell, *supra* note

- 1, at 631.
- 13) *See* *Medellin v. Texas*, 128 S. Ct. 1346 (2008) (discussing the state of Texas refusing to follow United States treaty obligations to inform the Mexican embassy when a Mexican national was arrested by state authorities).
 - 14) Table 2, Region of Birth of the Foreign-Born Population: 1850 to 1930 and 1960 to 1990, <http://www.census.gov/population/www/documentation/twps0029/tab02.html> [hereinafter Table 2].
 - 15) Between 1861 and 1882 only 350 Japanese migrated to the United States. In the same period fewer than 450 people immigrated from *all* of the rest of Asia (other than from the Ottoman Empire). Most (about 440) came from India. 1 HISTORICAL STATISTICS, *supra* note 2, at 567-68.
 - 16) California's Law on Testimony in Court, Act of Apr. 16, 1850, ch. 99, 14, 1850 Cal. Stat. 229, 230, provided that "[n]o black or mulatto person, or Indian, shall be permitted to give evidence in favor of, or against, a white person." In *People v. Hall*, 4 Cal. 399 (1854), the California Supreme Court held that this statute prohibited Chinese from testifying against whites. During the Civil War the legislature modified this law to allow black testimony, while explicitly prohibiting Chinese testimony against whites with this language: "[n]o Indian, or person having one half or more of Indian blood, or Mongolian, or Chinese, shall be permitted to give evidence in favor or against any white person." Act of Mar. 16, 1863, ch. 68, § 1, 1863 Cal. Stats. 60 *amending* ch. 70, § 14, 1851 Cal. Stat. 114; Amendment to § 14 of the Crimes Act of 1850, ch.70, § 1, 1863 Cal. Stat. 69. *See* J.A.C. Grant, *Testimonial Exclusion Because of Race: A Chapter in the History of Intolerance in California*, 17 UCLA L. REV. 192 (1969).
 - 17) *People v. Washington*, 36 Cal. 658 (1869) (holding that Chinese could not testify against blacks).
 - 18) *Oregon v. Ah Lee*, 8 Or. 214, 218 (1880) (holding that a dying declaration of a Chinese man was admissible in Court, even if he had followed the "heathenish religion of his race").
 - 19) *State v. Mah Jim*, 13 Or. 235, 236 (1886) (ordering a new trial to allow for more extensive cross examination of a Chinese witness in the murder prosecution of another Chinese).
 - 20) Act to Establish A Uniform Rule of Naturalization, ch. 3, § 1, 1 Stat. 103 (1790); An Act to Amend the Naturalization Acts, ch. 254, § 7, 16 Stat. 256 (1870). *See* Title XXX, Naturalization, 1 Rev. Stat. 378, 380 (1878), § 2169 ("The provisions of this Title shall apply to aliens [being free white persons, and to aliens] of African nativity and to persons of African descent").
 - 21) U.S. CONST. amend. XIV ("All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside").
 - 22) An Act to Execute Certain Treaty Stipulations Relating to the Chinese, Act of May 6, 1882, ch. 126, 22 Stat. 58, *repealed by* Act of Dec. 17, 1943, ch. 344, 57 Stat. 600. *See generally*, LUCY E. SALYER, *LAWS HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW* (1995); CHARLES J. McCLAIN, *IN SEARCH OF EQUALITY: THE CHINESE STRUGGLE AGAINST DISCRIMINATION IN NINETEENTH CENTURY AMERICA* (1994).
 - 23) Census figures are not wholly accurate as many people did not list any country origin and many Chinese immigrants avoided being counted by any government agent. Table 2, *supra* note 14.
 - 24) From 1884 (the year the Act was fully implemented) until 1902 Chinese immigration into

- the Country averaged 2,000 people a year. In the twenty years from 1863 to 1882 (the last year of open migration from China) about 11,000 Chinese a year (more than 220,000 over all) came to the United States. 1 HISTORICAL STATISTICS, *supra* note 2, at 567-68.
- 25) An Act to Amend an Act Entitled “An Act...”, ch. 220, 23 Stat. 115 (1884); An Act to Prohibit the Coming of Chinese Laborers to the United States, ch. 1015, 25 Stat. 476 (1888); An Act to Prohibit the Coming of Chinese Persons into the United States, ch. 60, 27 Stat. 25 (1892).
 - 26) *Chae Chan Ping v. United States* (also known as the Chinese Exclusion Case), 130 U.S. 581 (1889). *See also* *Fong Yue Ting v. United States*, 149 U.S. 698 (1893) (upholding the power of Congress to deport aliens who were of an “undesirable” race.) *See generally* Chin, *supra* note 9.
 - 27) *Chew Heong v. United States* (also known as the Chinese Exclusion Case), 112 U.S. 536 (1884).
 - 28) There were only 148 Japanese nationals in the United States in 1880, 86 of whom were in California. Most were students. DANIELS, *supra* note 1, at 1.
 - 29) Akira Iriye, *Japan as a Competitor*, in *MUTUAL IMAGES: ESSAYS IN AMERICAN-JAPANESE RELATIONS* 76 (Akira Iriye ed., 1975) (placing total Japanese immigration into the United States at 35,000 in 1899).
 - 30) DANIELS, *supra* note 1, at 1.
 - 31) An Act to Prohibit the Coming into and to Regulate the Residence Within the United States, its Territories, and all Territory Under its Jurisdiction, and the District of Columbia, of Chinese Persons and Persons of Chinese Descent, ch. 641, 32 Stat. 176 (1902) [hereinafter *An Act To Prohibit the Coming*]; Chin, *supra* note 9, at 36-37.
 - 32) An Act To Prohibit the Coming, ch. 641, 32 Stat. 176.
 - 33) Statements of Rep. Mondell, Rep. Clark, Rep. Kahn, Rep. Napphen, and Rep. Otjen *quoted in* Chin, *supra* note 9, at 37-38.
 - 34) *Id.* at 38.
 - 35) Iriye, *supra* note 29, at 76.
 - 36) Buell, *supra* note 1, at 609.
 - 37) *Id.*
 - 38) *Id.* at 613-14.
 - 39) Nativists were Americans, almost exclusively Protestants and usually of British ancestry, who opposed the immigration of non-Protestants, Asians, and even Protestants who were not from Britain or at least northern Europe. *See generally*, JOHN HIGHAM, *STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860-1925* (revised and corrected edition, 1985).
 - 40) Treaty on Commerce and Navigation, U.S.-Japan, Nov. 22, 1894, 29 Stat. 848. Immigration officials could still exclude Japanese Immigrants who were “paupers or persons likely to become a public charge,” under the Immigration Act of Mar. 3, 1891, 26 Stat. 1085, c. 551. The Supreme Court upheld the application of the 1891 law regulating immigrants in *Ekui v. United States*, 142 U.S. 651 (1892), allowing the government to exclude Nishimura Ekiu because she arrived with just \$22, her passport falsely claimed she was “in company with her husband” and she had no destination other than “some hotel” where she was to wait “until her husband calls for her.” 142 U.S. at 651-52. The Court reaffirmed this application of the 1891 law to Japanese immigrants after the 1894 treaty in *Yamataya v. Fisher*, 189 U.S. 86 (1903).
 - 41) See for example complaints about racist attitudes toward the Japanese in Baron Kentaro

- Kaneko, *Japan's Position in the Far East*, 26 ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI. 77 (1905). For a fascinating discussion of the startled response of the western world to Japan's victory over a European nation, and Japanese shock at continued racist responses to them, see LAKE AND REYNOLDS, *supra* note 6, at 166-72. A young scholar at Oxford, for example, called the result of the war "the most important historical event which has happened, or is likely to happen, in our lifetime, the victory of a non-white people over a white people." *Id.* at 166.
- 42) Root to Melcalf *quoted in* Iriye, *supra* note 29, at 79.
 - 43) Iriye, *supra* note 29, at 85.
 - 44) Roosevelt to Root, July 13, 1907 *reprinted in* 5 LETTERS, *supra* note 5, at 717.
 - 45) *Id.*
 - 46) *Id.*
 - 47) Buell, *supra* note 1, at 606; 1 HISTORICAL STATISTICS, *supra* note 2, at 567.
 - 48) DANIELS, *supra* note 1, at 21.
 - 49) ORGANIZED LABOR, Mar. 17, 1900 *quoted in* JACOBUS TEN BROEK, ET AL., PREJUDICE, WAR AND THE CONSTITUTION: CAUSES AND CONSEQUENCES OF THE EVACUATION OF THE JAPANESE AMERICANS IN WORLD WAR II 24 (1954).
 - 50) SAN FRANCISCO CHRONICLE, 1910 *quoted in* HARRY H.L. KITANO, JAPANESE AMERICANS: THE EVOLUTION OF A SUBCULTURE 16 (1969).
 - 51) *Id.*
 - 52) 15 UNITED STATES INDUSTRIAL COMMISSION, REPORTS ON IMMIGRATION 754 (1901).
 - 53) *Id.*
 - 54) ORGANIZED LABOR, *supra* note 49.
 - 55) The best summary of anti-Japanese sentiment in this period is DANIELS, *supra* note 1, at 1-30.
 - 56) 5 LETTERS, *supra* note 5, at 473 n.1.
 - 57) Ironically, Japanese citizens and the Japanese government sent about \$245,000 in earthquake relief to the city of San Francisco just before the school segregation rules were implemented. This constituted more than half of all foreign relief money sent to the San Francisco. Japanese earthquake experts also came to California to consult with authorities and help them prepare for future earthquakes. Some of them were attacked by anti-Japanese thugs in the city. DANIELS, *supra* note 1, at 33. *See also* ROY HIDEMICHI AKAGI, JAPAN'S FOREIGN RELATIONS, 1542-1936: A SHORT HISTORY 433 (1936).
 - 58) *See* Keith Aoki, *No Right to Own? The Early Twentieth-Century "Alien Land Laws" as A Prelude to Internment*, 40 B.C. L. REV. 37 (1998).
 - 59) Treaty on Commerce and Navigation, U.S.-Japan, Nov. 22, 1894, 29 Stat. 848, at art. 1.
 - 60) *Id.*
 - 61) Paul Finkelman, *Civil Rights in Historical Context: In Defense of Brown*, 118 HARV. L. REV. 973, 973-1027 (2005).
 - 62) 163 U.S. 537 (1896).
 - 63) In *Berea College v. Kentucky*, the same year as the Gentlemen's Agreement, the Court would uphold a Kentucky law which required a private college to terminate its policy of integrated education. 211 U.S. 45 (1908).
 - 64) Paul Finkelman, *The Radicalism of Brown*, 66 U. PITT. L. REV. 35-56 (2004).
 - 65) 109 U.S. 3 (1883).
 - 66) Finkelman, *supra* note 61, at 979-91.
 - 67) U.S. CONST. art. VI. ("This Constitution, and the Laws of the United States which shall be

made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding”).

- 68) Theodore Roosevelt *quoted in* MICHAEL J. KLARMAN, *FROM JIM CROW TO CIVIL RIGHTS: THE SUPREME COURT AND THE STRUGGLE FOR RACIAL EQUALITY* 24 (2004).
- 69) Finkelman, *supra* note 61, at 999.
- 70) Theodore Roosevelt, *Sixth Annual Message*, Dec. 3, 1906, *reprinted in* 15 JAMES D. RICHARDSON, *A COMPILATION OF THE MESSAGES AND PAPERS OF THE PRESIDENTS* 7055 (1920).
- 71) Theodore Roosevelt *in* Review of Reviews (Jan. 1897) *reprinted in* ALBERT BUSHNELL HART & HERBERT RONALD FERLEGER, *THEODORE ROOSEVELT CYCLOPEDIA* 244 (Rev. 2nd ed., 1989) [hereinafter ROOSEVELT CYCLOPEDIA].
- 72) Theodore Roosevelt, *First Annual Message*, Dec. 3, 1901, *reprinted in* 14 RICHARDSON, *supra* note 70, at 6650, 6651.
- 73) Theodore Roosevelt, *Fifth Annual Message*, Dec. 5, 1905, *reprinted in* 15 RICHARDSON, *supra* note 70, at 7007.
- 74) *Id.* at 7008.
- 75) *Id.*
- 76) *Id.*
- 77) *Id.* at 7008-09.
- 78) *Id.*
- 79) Roosevelt to Cecil Arthur Spring Rice, Mar. 19, 1904 *reprinted in* 4 LETTERS, *supra* note 5, at 759-61.
- 80) Roosevelt to Henry Cabot Lodge, June 16, 1905, *reprinted in* 4 LETTERS, *supra* note 5, at 1221, at 1231.
- 81) *Id.*
- 82) Theodore Roosevelt, *Sixth Annual Message*, Dec. 3, 1906 *reprinted in* 15 RICHARDSON, *supra* note 70, at 7053.
- 83) *Id.*
- 84) *Id.* at 7054.
- 85) *Id.*
- 86) *Id.*
- 87) *Id.*
- 88) Theodore Roosevelt to Henry Cabot Lodge, May 15, 1905 *reprinted in* 2 SELECTIONS FROM THE CORRESPONDENCE OF THEODORE ROOSEVELT AND HENRY CABOT LODGE, 1884-1918, 121 (1925) [hereinafter SELECTIONS].
- 89) Theodore Roosevelt to Henry Cabot Lodge, May 15, 1905 *reprinted in* 2 SELECTIONS, *supra* note 88, at 122.
- 90) *Id.*
- 91) Theodore Roosevelt to George Kennan, May 6 1905 *reprinted in* 4 LETTERS, *supra* note 5, at 1168-69.
- 92) *Id.* at 1169 n.2.
- 93) *Id.* at 1169.
- 94) *Id.*
- 95) Roosevelt to Lloyd C. Griscom, July 1, 1905 *reprinted in* *Id.* at 1274-75.
- 96) Roosevelt to Baron Kentaro Kaneko, Oct. 26, 1906 *reprinted in* 5 LETTERS, *supra* note 5, at

473. Kaneko had met Roosevelt in 1889 and both had been involved in the negotiations to end the Russo-Japanese War. After 1906 he was a member of Japan's Privy Council. Roosevelt and Kaneko had been students at Harvard University in the 1870s at the same time, but had not known each other at that time. *See generally* MARIUS B. JENSEN, *THE MAKING OF MODERN JAPAN* (2002); MASAYOSHI MATSUMURA, *NICHI-RO SENSO TO KANEKO KENTARO: KOHO GAIKO NO KENKYU* (1996).
- 97) Roosevelt to Baron Kentaro Kaneko, Oct. 26, 1906 *reprinted in* 5 *LETTERS*, *supra* note 5, at 473.
- 98) *Id.*
- 99) Theodore Roosevelt, *Sixth Annual Message*, Dec. 3, 1906 *reprinted in* 16 *RICHARDSON*, *supra* note 70, at 7054.
- 100) Roosevelt to Kermit Roosevelt, Oct. 27, 1906 *reprinted in* 5 *LETTERS*, *supra* note 5, at 475-76.
- 101) Elihu Root *quoted in* AKAGI, *supra* note 57, at 433-34.
- 102) *JAPANESE IN THE CITY OF SAN FRANCISCO, CAL., MESSAGE FROM THE PRESIDENT OF THE UNITED STATES, TRANSMITTING THE FINAL REPORT OF SECRETARY METCALF ON THE SITUATION AFFECTING THE JAPANESE IN THE CITY OF SAN FRANCISCO* 1. Senate Doc. 147, Dec. 18, 1906, 59th Cong. 2d Sess. [hereinafter *METCALF REPORT*]. In December 1906 Roosevelt moved Metcalf to a new position in his cabinet, making him Secretary of the Navy.
- 103) *METCALF REPORT*, *supra* note 101, at 2.
- 104) *Id.*
- 105) *Id.* at 17.
- 106) *Id.*
- 107) Theodore Roosevelt, *Sixth Annual Message*, Dec. 3, 1906 *reprinted in* *RICHARDSON*, *supra* note 70, at 7053.
- 108) AKAGI, *supra* note 57, at 434. Some Courts ruled that Middle Easterners – Syrians, Lebanese, Armenians – were white, while others ruled the other way. Courts generally held that people from India were not. Nor were Japanese, whatever their actual skin color might appear to be. *See* *United States v. Bhagat Singh Thind*, 261 U.S. 204 (1923) (holding that someone from India could not be naturalized); *Ozawa v. United States*, 260 U.S. 178 (1922) (holding that someone from Japan, whose skin was “light” was not white under the law); *Toyota v. United States*, 268 U.S. 402 (1925) (denying naturalization for a Japanese immigrant who had served in the United States Navy in World War I). *See generally* IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* (1996), especially usefully are tables in Appendix A, 203-08.
- 109) Theodore Roosevelt to George Kennan, May 6 1905 *reprinted in* 4 *LETTERS*, *supra* note 5, at 1168-69.
- 110) *Id.*
- 111) An Act to Regulate the Immigration of Aliens into the United States, Act of Feb. 20, 1907, ch. 1134, 34 Stat. 898, Sec. 1.
- 112) *Id.*
- 113) *Id.*
- 114) *See* ESTHUS, *supra* note 2, at 105.
- 115) Ambassador Masanao Hanihara to Secretary of State Charles Evans Hughes, Apr. 10, 1924, in 65 Cong. Rec. 6073 (1924). *See also* Kiyō Sue Inui, *The Gentlemen's Agreement: How it Has Functioned*, 122 *ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI.* 188 (1925).

- 116) *Id.*
- 117) ROOSEVELT CYCLOPEDIA, *supra* note 71, at 244.
- 118) Theodore Roosevelt, *Fifth Annual Message*, Dec. 5, 1905 *reprinted in* 15 RICHARDSON, *supra* note 70, at 7007.
- 119) Roosevelt to George Kennan, 1905 *reprinted in* ROOSEVELT CYCLOPEDIA, *supra* note 71, at 273.
- 120) *Id.*
- 121) Theodore Roosevelt of George Kennan, May 6 1905 *reprinted in* 4 LETTERS, *supra* note 5, 1168-69; Roosevelt to Kermit Roosevelt, Oct. 27, 1906 *reprinted in* 5 LETTERS, *supra* note 5, at 475-76.
- 122) ESTHUS, *supra* note 2, at 118.
- 123) *Id.* at 139.
- 124) Kaneko to Roosevelt, December 1, 1906, *quoted in* ESTHUS, *supra* note 2, at 147.
- 125) Roosevelt to Root, July 13, 190 *reprinted in* 5 LETTERS, *supra* note 5, at 717.
- 126) Roosevelt did not run for reelection in 1908, and instead supported Secretary of War William Howard Taft. But, in 1912 Roosevelt opposed Taft for the nomination and after losing ran as a third party candidate on the Progressive Party, more commonly known as the Bull Moose Party. His running mate was Hiram Johnson of California, who supported the anti-Japanese movement in California. Roosevelt ran second in the popular vote and the electoral vote, with the incumbent President Taft running third. 2 JAMES T. HAVEL, U.S. PRESIDENTIAL CANDIDATES AND THE ELECTIONS: A BIOGRAPHICAL AND HISTORICAL GUIDE 99 (1996)
- 127) ROOSEVELT CYCLOPEDIA, *supra* note 71, at 244.
- 128) *Id.*
- 129) Originally published in *The Metropolitan* (Mar. 1915) *reprinted in* ROOSEVELT CYCLOPEDIA, *supra* note 71, at 273.
- 130) *See* *Ozawa v. United States*, 260 U.S. 178 (1922) (holding that Japanese were not “white” and thus could never be naturalized citizens even though Ozawa was “well qualified by character and education” to become and American citizen). *See also* Yuji Ichioka, *The Early Japanese Immigrant Quest for Citizenship: The Background of the 1922 Ozawa Case*, *reprinted in* 2 ASIAN AMERICANS AND THE LAW 397 (Charles McClain, ed., 1994).
- 131) An Act to Limit the Immigration of Aliens into the United States, and for other Purposes, Act of May 26, 1924, 43 Stat. 153, 162, 168, Sec. 13(c) and 28(c).
- 132) On Japanese reaction *see* Ambassador Masanao Hanihara to Sec. of State Charles Evans Hughes, Apr. 10, 1924, *in* 65 Cong. Rec. 6073 (1924). *See also* Inui, *supra* note 115, at 188.
- 133) An Act to Limit the Immigration of Aliens into the United States, and for Other Purposes, Act of May 26, 1924, 43 Stat. 153 (1924) at sec. 13 (c), 28 (c); 43 Stat. 162, 168.
- 134) 1913 Alien Land Law Act (Cal.), ch. 113, 1913 Cal. Stat. 206, 206-08; 1917 Alien Land Law Act (Ariz.), ch. 43, 1917 Ariz. Sess. Laws 56, 56-58; 1921 Alien Land Law Act (Wash.), ch. 50, 1921 Wash. Sess. Laws 156, 156-60; 1921 Alien Land Law Act (La.); 1922 Alien Land Law Act (N.M.), ch. 117-116, 1922 N.M. Laws 1473, 1473; 1923 Alien Land Law Act (Idaho), ch. 122, 1923 Idaho Sess. Laws 160, 160-65; 1923 Alien Land Law Act (Mo.); 1923 Alien Land Law Act (Or.), ch. 98, 1923 Or. Laws 145, 145-50; *Porterfield v. Webb*, 263 U.S. 225 (1923). *See also* *Frick v. Webb*, 263 U.S. 326, 333-34 (1923) (forbidding aliens ineligible for citizenship from owning stocks in corporations formed for

- farming). *See also* Aoki, *supra* note 58; Buell, *supra* note 1. These laws were struck down in *Omaya v. California*, 332 U.S. 633 (1948). *See generally*, Dudley O. McGoveney, *The Anti-Japanese Land Laws of California and Ten Other States*, 35 CAL. L. REV. 7 (1947).
- 135) HARTFORD TIMES *quoted in* ALLAN R. BOSWORTH, AMERICA'S CONCENTRATION CAMPS 29 (1967).
- 136) *In re* the Application of Takuji Yamashita for Admission to the Bar, 30 Wash. 234 (1902) (denying otherwise qualified applicant the right to practice law in Washington State on the grounds that Japanese born immigrants could not be citizens of the United States, and the State of Washington made citizenship a prerequisite for admission to the bar. Not all states had such a requirement). *See also In re* Hong Yen Chang, 84 Cal. 163 (1890) (stating that California would not admit a Chinese immigrant even though he had been admitted to practice in New York). In 1943, California also prohibited Japanese immigrants from obtaining commercial fishing licenses. *See Takahashi v. Fish & Game Commission*, 334 U.S. 410 (1948) (overturning California law denying commercial fishing licenses to "persons ineligible for citizenship," which applied almost entirely to Japanese born aliens). The State of Washington prohibited aliens who had not declared their intention to become citizens – which meant Asians who could not become citizens – from owning firearms, getting hunting licenses, becoming public school teachers, or engaging in commercial fishing. *See* PAULI MURRAY, STATES' LAW ON RACE AND COLOR 491-81 (1951) (Davison M. Douglas ed., 1997).
- 137) ROGER DANIELS, THE DECISION TO RELOCATE THE JAPANESE AMERICANS 51, 122-23 (1975); *see* ROGER DANIELS, CONCENTRATION CAMPS U.S.A.: JAPANESE-AMERICANS AND WORLD WAR II 75 (1972) for a discussion of the DiMaggio family *see* RICHARD BEN CRAMER, JOE DiMAGGIO: THE HERO'S LIFE 16-25, 33-34 (2000).
- 138) Act of Mar. 21, 1942, ch. 191, 56 Stat. 173.
- 139) Inazo Nitobe *quoted in* LAKE & REYNOLDS, *supra* note 6, at 175.
- 140) *Id.* at 176.
- 141) Exec. Order No. 9066, 7 Fed. Reg. 1407 (Feb. 19, 1942).