A Racial Trust: The Japanese YWCA and the Alien Land Law

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A RACIAL TRUST: 
THE JAPANESE YWCA AND THE ALIEN LAND LAW

Brant T. Lee
ARTICLES

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ABSTRACT

When a dispute arose over the old Japanese Young Women's Christian Association ("YWCA") building in San Francisco's Japantown neighborhood, it seemed yet another example of a community institution inevitably ceding to the demands of the modern market economy. Instead, what has resulted has been an exercise in legal archaeology, a refreshing insight into the collective memory of the Japanese American community, and a legal theory that brings to light several central episodes in Asian American legal history and puts them to practical use in a contemporary property dispute.

In 1996, the San Francisco YWCA decided it could no longer afford to maintain the old Japanese YWCA building at 1830 Sutter Street and wanted to put it up for sale in San Francisco's hot real estate market. Members of the Japanese American community were distressed to hear of the YWCA's plans. They wanted to preserve the historic building as a community asset, but their efforts to persuade the YWCA to change its mind failed. When it became clear that no one in the community could come up with the $1.65 million the YWCA wanted for the building, it seemed as though the preservation effort was doomed.

In an effort to save the YWCA building, a lawsuit was filed in 1997 by representatives of the Japanese American community. The lawsuit is striking in originality. The plaintiff presents not only a moral claim to the property but also a legal property interest. In this Article, Professor Brant Lee explores how this single, extraordinary, contemporary case brings to light several of the most significant episodes in the last century of Asian American legal history. First, the plaintiff's legal theory is based on California's version of the Alien Land Laws which were intended to prohibit the ownership of property by Japanese immigrants. The Alien Land Laws were themselves dependent on the racially discriminatory federal naturalization law that was in place from 1790 through the first half of the twentieth century. Second, the cause of action relies in part on an aspect of the wartime internment of ethnic Japanese that has received little attention: the post-war return of camp residents to the coasts and the internal and external forces that prevented the reestablishment of vibrant Japanese neighborhoods and communities. Finally, this case is a good example of a situation in which the law should recognize a property interest based on the vulnerability of the Japanese American community in the early twentieth century and the reliance by Japanese Americans on the goodwill of white individuals and institutions which the law necessitated, even if the traditional formal prerequisites for a legal trust cannot be established. Lee argues

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that the case suggests a possible resolution of difficult questions regarding race-conscious trusts. Specifically, the case suggests an argument for judicial approval of race-consciousness in a particular circumstance: where a private act favoring a racial minority group is intended to evade specific historical legal discrimination against that racial minority group.

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I. INTRODUCTION: SOKO BUKAI v. YWCA OF SAN FRANCISCO

In 1996, the San Francisco YWCA decided to sell a building that it owned, it believed, in fee simple. Almost sixty years ago, the building had been the site of the so-called “Japanese Branch” of the YWCA. Currently, the building houses a daycare center that primarily serves the Japanese American community. Other community service organizations provide programs in the building as well, and not all of the programs serve the Japanese American community. These organizations lease space on the property from the San Francisco YWCA. The building is located in an area that was, prior to World War II, a thriving residential community called Japantown.

The Japanese YWCA was originally established in 1912 by Japanese Christian women in the community. In 1919, the Japanese YWCA became affiliated with the International Institute, which itself became a branch of the San Francisco YWCA. The property in question, at 1830 Sutter Street, was purchased in 1921 for the purpose of housing the Japanese YWCA. Title was in the name of the San Francisco YWCA. The original building was razed, and a new building was erected in 1932. The Japanese YWCA and its independent Board of Directors occupied and managed the property until the Japanese YWCA was dissolved in 1942, following the onset of World War II. The San Francisco YWCA has managed the property ever since. Apparently, the San Francisco YWCA could not afford to maintain all of its real

2. Petitioner’s Brief at 11, Soko Bukai (No. 269330).
3. The 1932 building was designed by the noted California architect Julia Morgan.
estate assets and, in 1996, gave notice to the building tenants that it intended to sell the building.

The Japantown area of San Francisco is no longer primarily an ethnic residential neighborhood. However, many organizations and institutions that are important to the Japanese American community are located there, including churches, a senior center, restaurants, grocery stores, and community organizations serving the Japanese American community. Geographically dispersed Japanese Americans throughout the San Francisco Bay Area come back to Japantown for cultural events.

A community building like the old Japanese YWCA building is an important asset to this kind of community. Thus, when word spread that the San Francisco YWCA wanted to sell the building, various members of the community wanted to see what they could do to keep the building as a resource. During 1996 and 1997, relations between the community groups and the San Francisco YWCA deteriorated. In September 1997, one of the community groups, the Soko Bukai, agreed to be the named plaintiff in a lawsuit to enjoin the sale and to have control of the property transferred from the San Francisco YWCA.

The legal theory pursued by the Japanese American community was the product of recovered collective memory. In negotiating to purchase the building, there was a sense among some in the community that Japanese Americans had raised money for the property. It was like folklore: Many of the Sansei, third-generation Japanese, just had the impression that their Issei, or immigrant grandparents, had been involved in raising money for the Japanese “Y.” The churches in particular had an inkling that they had played a part in raising funds for the property. When asked, the Nisei women, or second-generation Japanese, remembered their mothers holding fundraisers to support the Japanese YWCA. Community members began to research the minutes of the San Francisco YWCA, thinking that there might be some moral argument for an offset against the purchase price if they could find out how much money had been raised.

The college student intern who reviewed the minutes came back with questions about certain language that he discovered in YWCA documents: “This property to be held in trust for the Japanese YWCA.” Another document stated: “No decision is to be made about the uses of this property without consultation with the Japanese YWCA Board.” Yet another document stated: “If this property is sold or any income derived from it other than Japanese YWCA uses, the funds shall be applied to Christian work for Japanese women and girls in San Francisco after consultation with the Japanese YWCA Board or their successors.”

The story that emerged is that of a Japanese immigrant community of Issei women who, despite considerable hardship and oppression in 1921, managed to play an active role in building their community by raising the money to purchase and establish a community center. Out of this story came a legal theory—that in order to accomplish this goal in the face of racially restrictive land ownership laws, they were required to place their emotional and legal trust in a charitable organization run by white people.

5. Petitioner’s Brief at 4-6, Soko Bukai (No. 269330).
II. The Trust Theory

A legal trust is an arrangement in which one party, the trustee, holds legal title to property for the benefit of another. It is primarily an estate and tax planning device, but can also be used to carry out charitable purposes. The very origin of the legal trust or "use" is thought to arise in part from a situation in which certain entities were prohibited from acquiring property. Following the Norman Conquest of England in 1066, the alienation of land to religious corporations was prohibited by statute. Moreover, the laws of some religious orders, which included vows of poverty, prevented individuals and communities in those orders from owning property in their own names. However, by conveying the land to an individual to be held "for the use of" the religious order, the religious body could have the benefit of the land. In the thirteenth century, these religious entities are thought to have been the first to employ the "use" extensively.6

The theory of the case is that the San Francisco YWCA holds legal title to the property in trust for the Japanese YWCA, or for the charitable work of the Japanese YWCA for Japanese women and girls.

Explicit trust language in the deed is not necessary to establish the existence of a trust under trust doctrine. For instance, a court will declare a property owner a trustee, because it finds either an implied intent to that effect or a presumption of intent.7 In particular, where one party pays the consideration for a transfer of real property, but title is taken in the name of another, it is presumed or inferred that the payor intended the grantee to be a trustee for the payor.8 This is known as a purchase money resulting trust. The presumption may be confirmed by evidence that the parties expressly agreed that the payor should have an equitable interest.9 Moreover, the consideration need not be delivered to the grantor by the payor.10 If money is lent to the payor by the grantee before or at the time of the deed transfer, a resulting trust is presumed for the payor.11 The obligation to pay must be incurred by the alleged beneficiary at the time of the conveyance.12 Resulting trusts are exempted from the Statute of Frauds in every state.13

Here, the Soko Bukai is the coordinating body for the Japanese Christian churches in San Francisco that founded the Japanese YWCA. There is evidence that, in part through the efforts of the churches, the Japanese YWCA raised $3,000 of the $6,500 purchase price at the time of the purchase in 1921. Subsequent payments were made to the San Francisco YWCA on the mortgage until the loan was paid off. Japanese YWCA records show that it "completed the payments for the full amount

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8. See Cal. Civ. Code § 853 (West 1982); "When a transfer of real property is made to one person, and the consideration therefore is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made." The presumption of trust intent is rebuttable by proof that the payor of the consideration intended a gift to the grantee, either of part or all of the property.
10. Breitenbucher v. Oppenheim, 160 Cal. 98 (1911); Bogert & Bogert, supra note 6, § 455, at 261.
of the purchase” in 1931. When the building on the property was razed and rebuilt in 1932, the Japanese YWCA again raised the funds for the new building and made payments for the costs in excess of the amount raised. Thus, the argument can be made that the purchase price, nominally paid by the San Francisco YWCA, was in fact paid by the Japanese YWCA, with some amount of the money in the form of a loan from the San Francisco YWCA. The trust language from the minutes could be considered evidence of an express agreement between the parties that the Japanese YWCA holds an equitable interest.

Finally, a trust agreement may be inferred by the conduct of the parties after the time of the conveyance, as well as by proof of the relationship between the parties. When, as here, the payor (the Japanese YWCA) occupied and enjoyed the property subsequent to the purchase, the inference that a trust was intended is strengthened.

The Soko Bukai may also argue that the arrangement is a charitable trust. Charitable trusts may be created by public collections for community causes. In determining whether or not there was an intent to create a charitable trust, the absence of explicit words of trusteeship in the conveyance, while important, is not necessarily determinative. However, it can be difficult to determine whether the intent of donors to a charitable organization is to have the organization act as trustee or own the property outright. There are no general rules for solving this question. The words of trusteeship will generally be conclusive. The settlor’s expression of an expectation that the property will be used by the charitable corporation for one or more charitable purposes may be held to show merely a motive for an absolute gift. It may also be construed as giving the corporation an estate on condition subsequent or a determinable fee, so that failure to apply the property for charity will give the settlor the power of termination, or forfeiture will cause the property to revert to the settlor.

Clear expression of a trust intent is required for the creation of a private or charitable trust. Similarly, clear and convincing evidence is required in order to declare a resulting trust. By themselves, the scattered sentence fragments bearing trust language may not be sufficient to constitute such proof. Moreover, the San Francisco YWCA points out quite reasonably that whenever a large institutional charity like the YWCA opens a new branch, they raise money in the community intended to be served. The missing element for a viable, resulting trust theory is motive. The references in the recorded minutes were ambiguous and indirect regarding the existence of a trust. Why would the Japanese American community, in establishing a YWCA, need to have another party hold legal title to the property in question? Why would an organization have relied on an informal trust relationship, with no written trust document? Why did the Japanese YWCA not simply hold title in its own name?

15. Bogert & Bogert, supra note 6, § 454, at 257.
17. Bogert & Bogert, supra note 6, § 324, at 375 (citing First Universalist Soc. of Bath v. Swett, 148 Me. 142 (1952); In re Mott’s Will, 171 N.Y.S.2d 403 (1958)).
18. See Bogert & Bogert, supra note 6, at 379 (citing Zabel v. Stewart, 153 Kan. 272 (1941)) (bequest to church; no words of trust use); Rohlf v. German Old People’s Home, 143 Neb. 636 (1943).
19. See Bogert & Bogert, supra note 6, at 392-93.
The proposed answer requires an introduction to the Alien Land Laws. The naturalization laws of the United States from 1790 until 1952 restricted naturalization to “free white persons” and, after the Civil War, to persons of African descent. This language was interpreted in a series of court cases starting in 1878 and culminating with decisions from the U.S. Supreme Court in 1922 and 1923 that excluded immigrants in racial categories now considered to be Asian from becoming citizens. This left Japanese immigrants subject to legislation that discriminated on the basis of alienage.

The momentum of anti-Chinese sentiment in the western states beginning in the latter half of the nineteenth century transferred itself racially into an anti-Japanese movement at the beginning of the twentieth century. It produced the Alien Land Laws, which prohibited Japanese immigrants, as aliens not eligible for citizenship, from owning certain kinds of property.

Thus, the theory developed by the Soko Bukai was that, in 1921, the Japanese immigrant community in San Francisco might reasonably have believed that a legal trust was necessary for them to securely hold a property interest in the Japanese YWCA building.

III. ELIGIBILITY FOR CITIZENSHIP

The Alien Land Laws were intended to prohibit Japanese immigrants from owning property. The prohibition was accomplished by placing a restriction on aliens who were not eligible for citizenship. Thus, the strategy of the laws against Japanese land ownership depended on Japanese immigrants not being eligible for citizenship. While the U.S. Supreme Court would not definitively establish this until 1922, a review of the history of the naturalization laws shows that there was little hope for Japanese immigrants to evade the Alien Land Laws in 1921.

The first federal naturalization statute of 1790 was racially restrictive from the outset, limiting naturalization to “any alien, being a free white person.” After the Civil War, persons of African nativity or descent were added to the category of those who could be naturalized. A series of cases followed in which people of varying national backgrounds claimed that they should be allowed the benefits of citizenship, usually by arguing that they should be deemed white. One by one, the courts ruled that each of these ethnic groups were ineligible for citizenship. The

24. See infra text accompanying notes 45-54.
25. See Christopher Ford, Administering Identity: The Determination of “Race” in Race-Conscious Law, 82 CAL. L. REV. 1231, 1272-76 (1994); Neil Gotanda, A Critique of “Our Constitution is Color-Blind,” 44 STAN. L. REV. 1, 26-32 (1991); Peter Wallenstein, Law and the Boundaries of Place and Race in Interracial Marriage: Interstate Comity, Racial Identity, and Miscegenation Laws in North Carolina, South Carolina, and Virginia, 32 AKRON L. REV. 557 (1999). Here, in the rare circumstance where whiteness conferred a benefit, one drop was not enough. One might reasonably conclude that although both whites and blacks could become naturalized citizens, a person who was both partially white and partially black would meet neither prerequisite rather than both. Note that American Indians were treated separately and granted citizenship by the Act of June 6, 1924, 43 Stat. 253. See also In re Camille, 6 Fed. 256 (C.C.D. Or. 1880) (denying naturalization to petitioner who was half Indian and half white). See generally Ian F. Haney Lopez, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE (1996); RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 208, 299, 367 (1989). In In re Cruz, 23 F. Supp. 774 (E.D.N.Y. 1938), the petitioner, who was three-fourths Native American and one-fourth African, sought naturalization by claiming to be African. The court ruled that, just as partial whiteness was not sufficient to establish whiteness for the purposes of naturalization, partial blackness was not sufficient to establish eligibility for citizenship. Id. at 775. This stands in stark contrast to the one-drop rule, or the rule of hypodescent, which has generally
Chinese, Burmese, Japanese, Hawaiians, Filipinos, and Koreans were each deemed not to be white, and were thus ineligible for citizenship, no matter how pale, thoroughly assimilated, or middle class. Armenians originating in a country east of the Caucasus Mountains were held to be white, ruling out geographical origin in Europe as the basis for the determination. Asian Indians, although classified by racial taxonomers as Caucasian, were ultimately held not to be white, ruling out science and biology as the determining factor.

Professor Haney Lopez has examined these cases by showing how the courts came to legally construct a definition of whiteness based on shifting rationales of scientific evidence, congressional intent, and common knowledge. Lopez concludes that racial categorization in the prerequisite cases is based on social practices, and that law rather than science or biological difference creates race and gives whiteness its privileged status.

A shift in focus shows that the same courts also came to classify all those who were neither black nor white into a category of those ineligible for citizenship. Almost all of these groups fell into the current racial category of Asian Pacific Americans. Nothing demonstrates better the contested and ambiguous nature of Asian American racial identity than its legal construction by omission.

This does not mean that the omission was unconscious or unintentional. The anti-Chinese movement on the West Coast during the latter half of the nineteenth century focused specifically on the unassimilability of Chinese immigrants and on preventing their enfranchisement. For instance, during the debates to ratify the Fifteenth Amendment to give former slaves the right to vote, the anti-Chinese sentiment was the prevailing issue on the West Coast. California and Oregon refused to ratify the amendment for fear that it would enfranchise Chinese immigrants. Necharacterized the determination of blackness in the United States for the purposes of enforcing racially discriminatory laws.

26. In re Ah Yup, 1 F. Cas. 223 (D. Cal. 1878).
27. In re Po, 28 N.Y.S. 383 (1894).
29. In re Kanaka Nian, 21 P. 993 (1889).
32. See discussion regarding Ozawa, infra notes 76-79 and accompanying text. But cf United States v. Balsara, 180 F. 694 (2d. Cir. 1910), where an earlier court ruled that the Parsees of India, "intelligent and well-to-do persons, principally engaged in commerce," and "as distinct from the Hindus as are the English who dwell in India," were members of the Caucasian race and eligible for citizenship.
34. In re Thind, 261 U.S. 204 (1923).
35. Lopez, supra note 25.
vada ratified the amendment only after state Republicans were assured that the amendment would not affect Chinese suffrage. The movement resulted not only in the passage of the Chinese Exclusion Act in 1882, which excluded would-be immigrants on the basis of race, but specified that Chinese immigrants could not naturalize.

The naturalization law was amended following the Civil War in response to a concern by congressional Republicans of fraudulent practices in the naturalization process. In the process of debating the amendment, Congress considered a proposal by Radical Republican Senator Charles Sumner of Massachusetts to remove the word “white” from the naturalization laws. The proposal was unacceptable to western Republicans because they presumed it would allow Chinese immigrants to become naturalized citizens where previously they could not. The resulting “bitter contest” split the Republican party.

In the course of the debate, the relative merits of the Chinese and blacks’ claims to suffrage and citizenship were debated and, as a result, an amendment was approved to extend the right to naturalize to “aliens of African nativity, and to persons of African descent.” Although the amendment could later prove attractive and useful to immigrants from the West Indies and Africa, it was primarily a symbolic gesture at the time, as senators were assured that few Africans would come to America. A proposal also to include “persons born in the Chinese Empire” failed, as did ultimately, Sumner’s proposal. Throughout this episode, the senators referred to “the Chinese” specifically and not to Asians generally.

When the federal laws were later codified in 1874, the codifiers left the phrase “being a free white person” out of the statute. During consideration of legislation to make technical corrections in the revised statutes, Representative Wesley Willard of Vermont took the opportunity to suggest that the whiteness prerequisite be left out, “unless the House is thoroughly satisfied that the law as it now stands, with the word ‘white’ stricken out, is not a wise statute. . . . I think it is a good time now, inasmuch as we have it out of the law, to let it remain out.”

Again, the naturaliza-

40. Act of May 6, 1882, 22 Stat. 58. See Andrew Gyory, Closing the Gate: Race, Politics, and the Chinese Exclusion Act (1998). Gyory argues that the Exclusion Act was not the result of regional racism, but rather the Chinese were the scapegoat for national politicians eager to avoid ideological class conflict.
43. Letter from Frederick Douglass to Charles Sumner, Rochester (July 6, 1870); 3 Life and Writings of Frederick Douglass, cited in Wang, supra note 39.
44. Wang, supra note 39, at 1039-45.
45. The amendment was approved by a bare majority of twenty-one to twenty in the Senate, with thirty-one not voting.
47. The amendment was not necessary as to African American former slaves, because their citizenship was guaranteed by the Fifteenth Amendment.
tion of Chinese immigrants was the primary issue in the debate, although this time broader reference was made to "Asiatics." After a brief debate, Representative Willard withdrew his amendment, and the racial prerequisite language was promptly restored as a technical correction.

Thus, the exclusion by omission of Asians, and specifically Chinese immigrants, from the right to naturalize was explicitly and directly considered and maintained by Congress. A Chinese petitioner, Ah Yup, had been the first Asian to test the racial prerequisite to naturalization in the courts in 1878. There the court explicitly relied on the legislative history from the debate over the Sumner amendment and the subsequent technical correction to conclude that Congress had specifically intended that the Chinese be excluded from naturalization. In the Chinese Exclusion Act of 1882, Congress declared Chinese immigrants specifically inadmissible to citizenship.

Yet, there remained some ambiguity as to whether Japanese immigrants were similarly excluded from naturalization. Neither the legislative history relied on in Ah Yup nor the Chinese Exclusion Act said anything about people of Japanese descent. Accordingly, some federal courts issued naturalization papers to Japanese immigrants. As early as 1850, a shipwrecked fisherman from Japan named Hikozo arrived in San Francisco and became a citizen. Yuji Ichioka reports of one Kaneko Shinsei of Riverside, California, who received preliminary naturalization papers in 1892, final papers in 1896, and proceeded to vote, serve as a juror, and travel abroad under an American passport. According to the census of 1910, 420 Japanese immigrants were naturalized American citizens at that time.

In 1894, Shabata Saito was the first Japanese immigrant to be denied naturalization and seek judicial redress. In In re Saito, the federal district court for Massachusetts construed the references to Chinese immigrants in the 1870 congressional debate over the Sumner amendment to be applicable to Japanese immigrants, and then confirmed its argument by pointing to the specific references to "Asiatics" in the very brief debate over the 1875 technical corrections statute. The court con-

52. Id.
53. Id.
55. With regard to Chinese citizenship specifically, Congress was more explicit. Language in the later Chinese Exclusion Act of 1882 and the Burlingame Treaty of 1868 specifically disclaimed any intent to grant the right to naturalize Chinese immigrants.
56. In re Ah Yup, 1 F. Cas. 223 (D. Cal. 1878).
57. Id. at 224.
58. Act of May 6, 1882, 22 Stat. 61. See In re Hong Yen Chang, 84 Cal. 163, 164 (1890) (relying on the Chinese Exclusion Act to rule that a certificate of naturalization issued to a Chinese person was void and would not support the admission of Hong Yen Chang to practice law in California).
59. Takaki, supra note 25, at 520 n.59. There were sixty known instances of ships that were diverted from Japan to North America between 1617 and 1871. Three unfortunate Japanese fishermen who landed on the Olympic Peninsula in Washington in 1834 were enslaved by the Makah, a seafaring group of Native Americans. See also Donald Tejuco Hata, Jr., "Undesirables": Early Immigrants and the Anti-Japanese Movement in San Francisco, 1892-1893; Prelude to Exclusion 17 (1978); Evelyn Iritani, An Ocean Between Us 25-33 (1994).
61. Id.
63. Saito, 62 F. at 127. I do not mean to suggest that the passing reference to "Asiatics" in the debate over a technical correction in 1875 resulted in Japanese being denied naturalization. Clearly the court was
cluded that Congress, by extension, clearly intended to exclude from naturalization "the Mongolian race."\(^{64}\)

In 1906, the U.S. Attorney General ordered the federal courts to deny naturalization to Japanese aliens. However, the issue was not clearly settled. In 1905, Japanese immigrant leaders began to push the Japanese government to negotiate naturalization rights.\(^{65}\) In the spring of 1906, Japanese Consul Uchida Sadatsuchi noted in a letter to Japanese Foreign Minister Hayashi Tadasu that only lower courts and administrative interpretations, and not the U.S. Supreme Court, were barring Japanese immigrants from naturalization.\(^{66}\)

In the midst of the San Francisco school segregation crisis, President Theodore Roosevelt in his annual message to Congress on December 3, 1906, recommended legislation to allow Japanese immigrants to become naturalized citizens.\(^{68}\) During negotiations over the school issue in late 1906 and early 1907, the Japanese Foreign Ministry offered to negotiate the curtailment of Japanese immigration in exchange for naturalization. Despite Roosevelt’s speech, the American side adamantly refused to discuss the issue, and naturalization was not an issue in either the negotiation of the Gentlemen’s Agreement of 1907-1908 or the conclusion of the 1911 United States-Japan Treaty of Commerce and Navigation.\(^{69}\)

Prior to the latter negotiations, the United States anticipated that naturalization would be an issue raised by Japan.\(^{70}\) For its part, the Japanese government was conflicted. Although on the one hand, Japan wanted the same rights of naturalization for its subjects as Europeans, it was on the other hand inconsistent with loyalty to Japan to encourage expatriation. Because naturalization was likely to be unpopular in the United States and therefore a stumbling block in the negotiations, Japan chose not to raise the issue at that time.\(^{71}\)

When the California Alien Land Law was enacted in 1913, Japanese immigrants again focused on naturalization rights. The Japanese Association of America held an emergency conference in April 1913, just prior to the enactment of the Alien Land Law.\(^{72}\) The conferees decided to explore naturalization as a counter to the land act and to form a broader national organization. In 1914, the Pacific Coast Japanese Association Deliberative Council was formed specifically to address the issue of naturalization in response to the passage of the Alien Land Law. The Council was a coordinating body of Japanese associations and their local affiliates.\(^{73}\) Having

\(^{64}\) Saito, supra note 62, at 727.

\(^{65}\) Ichioka, supra note 60, at 213.

\(^{66}\) Id. at 212.

\(^{67}\) See discussion infra Parts IV.A.2.

\(^{68}\) Takaki, supra note 25, at 207. See also Ichioka, supra note 60, at 212. Ichioka suggests that Roosevelt’s laudatory comments regarding the Japanese were intended to placate the Japanese government and public opinion in Japan, and that he probably never intended to follow through on the recommended legislation.

\(^{69}\) Ichioka, supra note 60, at 212.


\(^{71}\) Id. at 49-50.

\(^{72}\) Ichioka, supra note 60, at 216.

\(^{73}\) Id. at 218.
exhausted legislative and diplomatic efforts, the Council resolved to pursue a test case in the courts. They found the appeal of Takao Ozawa waiting for them.

Takao Ozawa immigrated to San Francisco in 1894. After graduating from Berkeley High School and attending the University of California for three years, he discontinued his studies in 1906 and settled in Hawaii. Yuji Ichioka writes:

Ozawa was a paragon of an assimilated Japanese immigrant, a living refutation of the allegation of Japanese unassimilability. He could speak, read, and write English; he sent his children to American institutions and spoke English with them at home; he had no ties to the Japanese community and Japanese government; he was married to an American-educated woman; and his character was beyond reproach.

Acting independently, Ozawa filed for naturalization in 1914. When his petition was rejected, he sued in federal district court and then appealed an unfavorable ruling to the Ninth Circuit in 1916. Up until this point, Ozawa acted on his own, without the support of any organized Japanese immigrant group. Ironically, despite Ozawa's efforts to distance himself from the Japanese community, the community associated itself with him. With the Alien Land Law looming, Japanese immigrant leaders were looking for a good test case. Ozawa's case drew their attention. When the Ninth Circuit referred the case to the U.S. Supreme Court without deciding it on May 31, 1917, the immigrant press covered the case widely, initially urging strong support for Ozawa. The Pacific Coast Japanese Association Deliberative Council voted unanimously to support Ozawa in July 1917 and, in 1918, it retained former U.S. Attorney General George Wickersham to represent him.

The United States postponed the Supreme Court's hearing of the case for several years. First, the case was postponed until the termination of World War I in light of Japan's contribution to the Allied war effort and participation in the 1919 Versailles Peace Conference. In the fall of 1921, the case was postponed again because of the Washington Conference on Arms Limitation in the winter of 1921-1922, which had been convened by the United States and Great Britain to persuade Japan to limit its naval forces in the Pacific. Both times, the federal government was concerned that the Japanese government would be unnecessarily provoked during the course of sensitive negotiations.

Thus, in 1921, the Issei women founders of the proposed YWCA were without any definitive guidance from the courts regarding the final outcome of the eligibility for citizenship issue. The prospects for Ozawa were not good, and a debate had

74. Id. at 216-18.
75. Id. at 219-20. In Ozawa's own legal briefs, he wrote:

In name, General Benedict Arnold was an American, but at heart he was a traitor. In name, I am not an American, but at heart I am a true American. I set forth the following facts that will sufficiently prove this. (1) I did not report my name, my marriage, or the names of my children to the Japanese Consulate in Honolulu; notwithstanding all Japanese subjects are requested to do so. These matters were reported to the American government. (2) I do not have any connection with any Japanese churches or schools, or any Japanese organizations here or elsewhere. (3) I am sending my children to an American church and American school in place of a Japanese one. (4) Most of the time I use the American (English) language at home, so that my children cannot speak the Japanese language. (5) I educated myself in American schools for nearly eleven years by supporting myself. (6) I have lived continuously within the United States for over twenty-eight years. (7) I chose as my wife one educated in American schools . . . instead of one educated in Japan. (8) I have steadfastly prepared to return the kindness which our Uncle Sam has extended to me . . . so it is my honest hope to do something good to the United States before I bid a farewell to this world.

76. Id. at 220-22.
77. Id. at 224-25.
broken out in the immigrant press regarding the wisdom of pursuing a case that some felt was a sure loss.\(^7^8\) In 1922, the Supreme Court finally confirmed in *Ozawa v. United States*\(^7^9\) that a Japanese immigrant was racially ineligible for citizenship, belatedly endorsing the principle at the foundation of the Alien Land Laws.

### IV. THE CALIFORNIA ALIEN LAND LAW

The story of the California Alien Land Law begins at least as far back as the anti-Chinese movement in the West during the latter half of the nineteenth century.

#### A. Prelude to the 1913 Enactment

1. **Chinese Exclusion**

   Following the explicit consideration and denial of the right of the Chinese to naturalize in 1870, Congress passed the Page Law in 1875. This law prohibited the importation of women for the purposes of prostitution, and specifically required that the immigration of "any subject of China, Japan, or any Oriental country" not be for "lewd and immoral purposes."\(^8^0\) Overzealous enforcement of the statute effectively barred Chinese women from immigrating.\(^8^1\)

   Agitation against Chinese immigrants continued to escalate and, in 1882, Congress passed the Chinese Exclusion Act, which prohibited immigration by any Chinese laborers for a period of ten years.\(^8^2\) The Chinese Exclusion Act reiterated that state and federal courts were prohibited from admitting Chinese residents to citizenship.\(^8^3\) The initial ten-year period was extended by a series of progressively more stringent restrictions\(^8^4\) until the exclusion was extended indefinitely in 1904.\(^8^5\)

   Unsurprisingly, Chinese immigration declined precipitously from over 39,000 in 1882 to 10 in 1888.\(^8^6\) Moreover, the 1882 Act was interpreted to define virtually all Chinese women as excluded laborers. By 1890, the 1875 Act and the 1882 Act together resulted in an extreme gender disproportion of almost 27 to 1.\(^8^7\) Furthermore, the California anti-miscegenation law enacted in 1880 prevented Chinese

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78. Id. at 223-24.
82. Act of May 6, 1882, ch. 126, § 14, 18 Stat. 58, 61.
83. Id. at 60.
84. Act of Oct. 1, 1888, 25 Stats. 504. The Scott Act of 1888 prohibited the entry of all Chinese laborers, including those who had left the United States temporarily with valid return certificates. The constitutionality of the Scott Act was upheld in the Chinese Exclusion case of 1889. See Chae Chan Ping v. United States, 130 U.S. 581 (1889). See also HING, MAKING ASIAN AMERICA, supra note 81, at 25; Act of May 5, 1892, 27 Stats. 25. The Geary Act of 1892 extended the exclusion laws for another ten years and required all Chinese laborers to register with immigration officials, on the theory that Chinese names and faces were all alike.
85. Act of Apr. 27, 1906, 33 Stat. 428. See generally HING, MAKING ASIAN AMERICA, supra note 81, at 23-26. Small quotas of students, teachers, and merchants were allowed. In 1924, Congress excluded all aliens ineligible for citizenship, thus completing the exclusion of all Asians through the interpretation of the racial prerequisite in the naturalization act.
86. HING, MAKING ASIAN AMERICA, supra note 81, at 47. Would-be Chinese immigrants did not give up easily, and many entered the United States through illicit means despite the exclusion laws. Id. at 74.
87. Id. at 46. The initial wave of immigrants was almost completely comprised of male laborers who intended to return home. By the 1880s, an increasing number of Chinese immigrants intended to stay permanently and would have sent for their families to join them had the exclusion laws not gone into effect.
men from marrying white women. In combination, these policies resulted in a Chinese American population of male laborers who were isolated, unwelcomed, and unable to marry and have children. The Chinese population therefore peaked in 1900 at less than 120,000 and was on the decline.

2. The Anti-Japanese Movement

In contrast to the declining number of Chinese immigrants following the Chinese Exclusion Act, the number of Japanese immigrants sharply accelerated after 1900. This was in part a direct consequence of Chinese exclusion, as Japanese workers were in demand as replacements for Chinese workers. Japanese immigrants began settling in California in the 1890s, at the height of the Chinese exclusion movement. By 1900, Japanese immigration to California had increased to more than ten times that of 1890. The number of Japanese immigrants to the United States per decade rose from 2,270 in the 1880s, to 25,942 in the 1890s, and to 129,797 in the 1900s. The increase after 1900 was due in part to Japanese laborers in Hawaii coming to the mainland in search of higher wages after the annexation of Hawaii in 1898.

Popular and political backlash soon followed. In 1899, the California Assembly passed a resolution complaining of increased Japanese immigration and the importation of Japanese females for allegedly lewd purposes. At a mass meeting in San Francisco in 1900, white workers demanded the renewal of the Chinese Exclusion Act, and called for the exclusion of Japanese immigrants as well. In 1901, the state legislature passed a resolution condemning the "growing and threatened invasion of our State by Japanese immigrants." Following the San Francisco fire and earthquake of 1906, the San Francisco Board of Education ("Board") directed school principals to send "all Chinese, Japanese and Korean children to the Oriental School."

The Japanese government protested strongly to President Theodore Roosevelt, claiming that the segregation policy violated a treaty provision guaranteeing equal opportunity to Japanese immigrants. In light of the rise of Japanese military power and the defeat of Russia in the Russo-Japanese War of 1905, Roosevelt intervened directly. He invited the mayor of San Francisco and the members of the
school board to the White House and suggested that the Board was risking war with Japan.\textsuperscript{102}

In exchange for the Board rescinding its segregation order, “excepting in so far as it applied to Chinese and Korean children,” Roosevelt issued an executive order prohibiting the migration of Japanese immigrants from Hawaii to the mainland and promised to work to reach a negotiated agreement with Japan to restrict Japanese immigration to the United States.\textsuperscript{103} Under the terms of the resulting 1908 Gentle

men’s Agreement, Roosevelt reached an understanding with Japan that Japan would unilaterally prevent the immigration of laborers to the United States so long as express written discrimination against Japanese nationals was avoided.

The arrangement was intended to deflect the anti-immigration movement without the affront to Japanese pride that legislative exclusion would have instigated. However, rather than mollify anti-Japanese sentiments, the school board controversy intensified anti-Japanese hatred and violence.\textsuperscript{104} The first bill proposing restrictions on Japanese land ownership was introduced in 1907. Congress would ultimately cut off all immigration from Asian countries in 1924, Japanese sensibilities notwithstanding.\textsuperscript{105}

\section*{B. \textit{Enactment of the 1913 Alien Land Law}}

California’s first constitution, adopted in 1849, guaranteed to foreigners who were “bona fide residents” the same rights in land enjoyed by native-born citizens.\textsuperscript{106} These rights were made statutory as part of the Civil Code in 1872.\textsuperscript{107} “When the constitution was rewritten in 1879, Chinese immigrants were seemingly disabled by new language which extended land rights to foreigners of the ‘white race or of African descent’ who were eligible to become United States citizens.”\textsuperscript{108} However, the Civil Code of 1872 remained in effect as a grant of rights beyond those minimum rights guaranteed in the state constitution.\textsuperscript{109}

\subsection*{1. \textit{The Treaty of 1911}}

When the federal government renegotiated its treaty with Japan in 1911, land ownership rights were expressly at issue.\textsuperscript{110} Japan, having rapidly risen in international status after its victories in the Sino-Japanese War of 1894-1895 and the Russo-Japanese War of 1904-1905, was anxious to revise its commercial treaties with other countries. Specifically, Japan wanted the same land ownership rights for its nationals as those of the “most favored nation.”\textsuperscript{111}

Article I of the penultimate American draft of the treaty granted subjects of each of the parties the right “to hire and occupy houses and warehouses,” and the

\begin{tabular}{l}
102. \textit{Id.} at 202. \\
103. Castleman, \textit{supra} note 94, at 27. \\
104. \textit{Takaki, supra} note 25, at 203. \\
105. See \textit{Id.} at 50. The treaty between Japan and Great Britain contained the following language: “In all that relates to the acquisition, holding and disposal of land the subjects or citizens of each of the High Contracting Parties shall enjoy in the territories of the other the treatment of the most favored nation.” \textit{Id.} \\
108. Lazarus, \textit{supra} note 106, at 216. \textit{See also} \textit{Cali. Const.} of 1879, art. I, \S\ 17 (repealed 1974). \\
109. Sullivan, \textit{supra} note 107, at 25. \\
110. \textit{Kachi, supra} note 70, at 44. \\
111. \textit{Id.} at 50. The treaty between Japan and Great Britain contained the following language: “In all that relates to the acquisition, holding and disposal of land the subjects or citizens of each of the High Contracting Parties shall enjoy in the territories of the other the treatment of the most favored nation.” \textit{Id.}
\end{tabular}
right "to lease land for residential and commercial purposes." Japanese Foreign Minister Jutaro Komura proposed that this language be expanded to include the right "to own or hire and occupy houses, manufactories, warehouses and shops," and the right "to lease land for lawful purposes." The final language included the right "to own or lease and occupy houses, manufactories, warehouses and shops," but the limited right "to lease land for residential and commercial purposes" remained.

California Attorney General Ulysses Webb later argued that the express refusal to expand the right to lease land indicated an intent that the scope was considered "commercial," and therefore protection under the treaty should be narrowed. In rejecting this argument, the Supreme Court of California noted that the apparent purpose for keeping the restriction on leasing land "for residential and commercial purposes" only was to allow for restrictions on leasing agricultural land. Webb later brought the same argument before the U.S. Supreme Court, which concurred with the state court's conclusion. Thus, the language of the 1911 treaty laid the groundwork for the assault on agricultural land use rights by the California legislature.

Just as the California agricultural labor market attracted Japanese immigrants, southern and eastern European immigrants were also coming to California. In 1913, in sharp contrast to the growing anti-Japanese agitation, the plight of these European immigrants in squalid rural labor camps and urban slums resulted in the creation of the Commission on Immigration and Housing. This agency would become a pioneer in immigrant housing, education, and labor camp inspection.

In 1913, out of a total population in California of about 2,500,000, the Japanese numbered about 50,000. So long as the Japanese immigrants remained wage laborers, agitation against them came primarily from non-farm labor groups claiming to decry "cheap labor." Farmer-employers, on the other hand, welcomed this source of mobile, cheap labor. Of approximately 27 million acres of land in the state, Japanese farmers owned 12,726 acres. As Japanese farmers began to acquire and employ other Japanese immigrants as workers, they incurred the animus of white growers. Rather than merely a source of cheap labor, Japanese farmers became competitors for farm labor, farm land, and agricultural markets.

By 1913, one estimate was that some 300,000 acres of agricultural property in California were owned or farmed by Japanese farmers. In this period, they had advanced from contract laborers to sharecroppers, tenant farmers, and, in some in-
stances, to independent landowners. The great majority of these farmers were immigrants, as opposed to second-generation Americans. There is some evidence that their property was the most valuable and productive property, and thus, they were accused of monopolizing prime agricultural real estate. There is also evidence that the Japanese farmers were willing to work on and pay higher rent on property that nobody else wanted, and turned it into productive agricultural property.

Their very success caused resentment on the part of white farmers, whose complaints about unfair competition eventually led to the passage of the Alien Land Law.

The first California Alien Land Bill was introduced in January 1907, in the midst of negotiations with Japan that resulted in the Gentleman's Agreement. The bill passed the California Assembly but languished in the Senate committee for the duration of the session. In the 1909 session, seventeen anti-Japanese measures were introduced, including an anti-alien land bill. Only two passed, a resolution in favor of Japanese exclusion and an appropriation of $10,000 for an investigation of the Japanese in relation to agriculture. The land bill provided that any alien may own land in California, but if after five years the alien had not become a citizen, the land would be disposed of by county authorities. The bill was defeated through the influence of Governor James N. Gillett and Speaker Phil Stanton.

In 1911, twenty-one anti-Japanese bills were introduced, including six anti-alien land bills. Incoming Governor Hiram Johnson was informed by President Howard Taft of the ongoing treaty negotiations with Japan. With the Congressional decision on the site for the Panama Pacific Exposition pending, Taft pressured Johnson to prevent anti-Japanese demonstrations until the treaty could be ratified, on pain of losing the Exposition. The Japanese Consul-General in San Francisco was told to understand that the President of the Senate and the Speaker of the Assembly were taking great care with the membership of the committees which would deal with anti-Japanese bills.

The 1911 anti-Japanese bills were, therefore, mostly buried in committees or withdrawn. The alien land bills survived, however, and became the focus of anti-Japanese agitation during the 1911 legislative session. The specific language of those bills used two methods of targeting Japanese immigrants. Most of them imposed

125. Ichioka, supra note 60, at 150-53; Kachi, supra note 70, at 168.
126. O'Brien & Fugita, supra note 92, at 21-22. Takaki, supra note 25, at 191. Later, the location of this initially undesirable property near railroads, under power lines, and near electronic transmission stations, would be manipulated by then Attorney General Earl Warren as evidence of a strategic intent by Japanese farmers to control points of military significance.
128. Kachi, supra note 70, at 177.
129. Id. The resulting report was produced by state Labor Commissioner J.D. Mackenzie and submitted to the governor on May 29, 1910. The report lauded Japanese farmers: The Japanese landowners are of the best class. They are steady and industrious, and from their earnings purchase land of low value and poor quality. The care lavished upon this land is remarkable, and frequently its acreage value has increased several hundred percent in a year's time. Most of the proprietors indicate an intention to make the section in which they have located a permanent home, and adopt American customs and manners.
130. Id. at 183-84.
131. Id. at 178.
132. Id. at n.1, 181, 188.
133. Id. at 181.
134. Id. at 179.
land ownership restrictions on aliens who were ineligible for citizenship. Alternatively, restrictions were also placed on persons who were not citizens or had not lawfully declared their intention of becoming citizens.\footnote{135}

In correspondence with Governor Johnson over the precise parameters of an unobjectionable alien land bill early in 1911, Secretary of State Philander Knox noted that treaty rights had to be preserved. The treaty of 1911 was not yet approved, but Article II of the treaty of 1894 gave reciprocal rights to lease land for residential and commercial purposes. Knox cited a 1909 letter from President Roosevelt to Governor Gillett and agreed with Roosevelt’s opinion that this treaty language did not protect the right to lease or own agricultural land. Knox further noted that the phrase, “No alien who is not eligible to citizenship,” was subject to the charge of discrimination.

Recognizing the strong sentiment for some kind of anti-Japanese land act, Johnson and Knox agreed that if efforts to restrain the legislature failed and such an act had to be adopted, an act that was general in character and preserved treaty rights would be preferable.\footnote{136} A land bill targeting aliens ineligible for citizenship was nonetheless approved by the Senate in March 1911. After the Japanese ambassador prompted the Taft administration to pressure Californians, the Assembly leadership tried to bottle up the measure in committee until adjournment. Despite their efforts, the anti-Japanese fervor forced the measure onto the floor, where only through last-minute parliamentary maneuvers were the Progressive Republicans able to prevent a vote on the measure in the Assembly on the last day of the legislative session.\footnote{137}

Thirty-four anti-Japanese bills were introduced in early 1913.\footnote{138} On April 15, 1913, the Assembly passed a bill placing severe restrictions on the ownership of land by all aliens, which included corporations controlled by aliens ineligible for citizenship.\footnote{139} As the Senate began to consider a similar measure, foreign investors from other countries protested to the Senate and to their diplomatic representatives in Washington. As the financial consequences of passing legislation affecting all aliens were made clear, a poll of the Senate demonstrated that such a bill would not pass.\footnote{140} Only a targeted, discriminatory, anti-Japanese bill would pass.

The newly-installed Wilson administration could not intervene as strongly as the Roosevelt and Taft administrations had. In addition, the Democratic party was the historic proponent of states rights. Its 1912 platform included an unusually strong plank denouncing the heavy-handed federal intervention of the Republican administrations. Similar methods exercised by Democrats would have been embarrassing. Moreover, Republicans Roosevelt and Taft had been able to prevail upon Republican legislatures. The new legislature, dominated by Progressive Republicans, had nothing to lose by making things difficult for the Wilson administration.\footnote{141}
Thus, when Secretary of State William Jennings Bryan telegraphed Governor Johnson respectfully asking the legislature to consider the international character of the problem, the Senate responded by amending its bill to discriminate against corporations owned by persons of Japanese descent, just as the assembly bill had. In the following days, Wilson proposed and the California legislature agreed that Bryan would come to Sacramento in an attempt to persuade the legislature to avoid giving offense to Japan. While the legislature designed to receive Bryan, his mission was doomed.

Hence, the first California Alien Land Law was enacted in 1913. There was an explicit exception that allowed agricultural leases for less than three years. This was a nod to California farmers who profited from the high rents paid by Japanese farmers. Generally however, it provided that all aliens eligible for citizenship could acquire, possess, enjoy, transmit, or inherit land to the same extent as citizens. Then it stated that all other aliens—those not eligible for citizenship—could acquire property to the extent provided by treaty, “and not otherwise.” It was the “and not otherwise” that made the prohibition work.

C. Effect of the 1913 Alien Land Law

Based on the racial prerequisite cases, the federal naturalization law, and the Alien Land Law, Asian immigrants in general and Japanese immigrants specifically were allowed to acquire property only to the extent provided for by treaty. The 1911 Treaty of Commerce and Navigation between Japan and the United States gave Japanese nationals the right to own or lease and occupy “houses, manufactories, warehouses, and shops” and to lease land for only “residential or commercial purposes.” The statute was aimed at Japanese farmers. Agriculture was generally deemed not to have a residential or commercial purpose.

Although the law was aimed at Japanese immigrants, it applied to other Asian immigrants as well. Historian Bruce Castleman reports that the first action to enforce the Alien Land Law in 1916 was in fact against a Chinese owner of a half

142. The resolution passed by the legislature to indicate its acceptance of the proposal to have Bryan visit included the insistence that “this Senate [Assembly] respectfully maintains the right of the Legislature . . . to legislate on the subject of land ownership.” Id. at 41.

143. By “Alien Land Law,” I refer not to general restrictions on property ownership based on citizenship, but to the statutes which specifically targeted Japanese and other Asian immigrants by leveraging the racial prerequisite for naturalization, as described below. Features of the English common law inherited by the colonies put aliens at a disability regarding the ownership of land. See Lazarus, supra note 106, at 198. See also Sullivan, supra note 107, at 15. These obviously predated the widespread anti-Asian antagonism in the western states that motivated the Alien Land Laws. Various other forms of restrictions on ownership based on alienage persist which are less explicitly targeted at particular racial or ethnic groups. Although these modern statutes do not rely on racial categories, images of Asians as the enemy often motivate their enactment.

144. Act of May 15, 1913, ch. 113.

145. Although American Indians were ineligible for citizenship until they were statutorily granted citizenship in 1924, there is no indication that the Alien Land Law was aimed at or used against them. See supra note 34 and accompanying text.

146. See KACH, supra note 70.

interest in residential property, one Gin Fook Bin. Because no treaty with China existed allowing Bin to acquire any type of property, Bin lost all of his property. But the immigrant Chinese population was dwindling by that time, and the law was not retroactive, meaning that it did not divest anyone of any property they already owned prior to passage. Moreover, Chinese residents more often settled in urban rather than in agricultural areas.

The primary targets were clearly Japanese immigrants. The first case against a Japanese property owner was against Jukichi Harada of Riverside, California, who had purchased a residence in “one of the city’s best residential districts” in 1915. Title was held in the name of Jukichi’s citizen children—Mine, Sumi, and Yoshizo. In 1918, California Attorney General Ulysses S. Webb traveled down to Riverside to try the case personally. The court held that because citizens had the right to own property, and minor children often held title to property, Harada’s payment of the purchase price could not be construed as an attempt to evade the Alien Land Law. The court apparently did not address the issue of Harada’s right to own residential property under the 1911 treaty.

By some accounts, the law initially had little impact. From 1913 to 1920, the amount of agricultural land owned by Japanese in California increased by 150 percent, and the total amount of land farmed by Japanese, either by ownership, lease, or contract, grew from under 300,000 acres to over 450,000 acres. Japanese farmers during this period managed to exploit the loose wording of the statute. The most popular method was for the Issei, or immigrant Japanese, to purchase property in the name of their American-born minor children, or Nisei. They would then be appointed the trustee or guardian for their children’s property and thereby retain control. Another method was to find an adult American citizen who was willing to lend his or her name to be put on a deed. Finally, they could form a landholding corporation in which two Nisei children and a white American attorney would be the majority shareholders and the Issei parents minority shareholders.

D. The 1920 Initiative

In 1920, Californians by initiative, adopted a new Alien Land Law intended to close the loopholes. Aliens ineligible for citizenship were now not allowed to acquire shares in corporations that owned any interest in land. They were not allowed to be appointed guardian if their minor children owned property. Property which would otherwise pass by inheritance to an ineligible alien was to be sold. Agricultural leases were no longer permitted. Conveyances made with the intent to avoid the prohibition were void. Property taken in the name of a citizen but paid for by an ineligible alien was presumed to be intended to evade the prohibition.

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148. Castleman, supra note 94, at 35.
149. See O’Brien & Fugita, supra note 92.
150. Castleman, supra note 94, at 35-36. The case had been brought to the attorney general’s attention by a letter from Mr. Noble, asking whether “Jap children” could own land. Noble was the real estate agent who handled the sale to the Haradas. Webb replied that citizen children could own land, but pursued the case subsequently nonetheless. Webb was assisted at trial by state Senator Miguel Estudillo (R-Riverside). Id.
152. Id. at § 3.
153. Id. at § 4.
154. After the 1920 Act, only the rights guaranteed by treaty remained, and the right to make cropping contracts. In 1923, the act was further amended to prohibit even such contracts. Konvitz, supra note 37, at 160.
Thus, when the Japanese YWCA was being established in 1921, the state had just enacted a broad-ranging amendment by an overwhelming popular vote that was intended to close loopholes in the Alien Land Law. The focus of the law was still on agricultural property. However, the disability was not defined to include only agricultural property, but to exclude commercial and residential property. A building owned by a nonprofit organization for charitable community purposes might arguably not constitute ownership of "houses, manufactories, warehouses, or shops" which would have been protected by treaty. Moreover, the Attorney General had already shown his willingness to try a case against a Japanese immigrant involving residential property,155 which was clearly protected by treaty.

The Attorney General eventually represented the state in legal actions against other non-agricultural property, including a health resort156 and a hospital.157 In other cases, private parties pressed legal claims to non-agricultural property based on the statute.158 Some of these were eventually held to be commercial uses protected by treaty,159 but that outcome was not certain in 1921 when the Japanese YWCA was being contemplated. The two cases that had been tried up until then had both involved only residential property.160 Even the commercial use cases that were eventually upheld as being protected for ownership by Japanese under the 1911 treaty were deemed commercial in part because they were presumed to operate for profit,161 as opposed to the nonprofit use intended for the Japanese YWCA.

If the organizers of the proposed community center had decided to acquire property in contravention of the Alien Land Law, and the law had been enforced against them, the consequences would have been drastic. Under the statute, the property would escheat to the state. The 1920 law also added criminal penalties. Conspiracy to violate the Alien Land Law was a felony.

There are contemporaneous examples of other Japanese immigrants interested in purchasing property using the trust device to get around the prohibitions of the Alien Land Law. For example, the transaction at issue in People v. Cockrill62 involved a contract for the sale of real estate to W.A. Cockrill, who was the attorney for Akada, an Issei farmer. Cockrill was acting as trustee for Akada's American-born children.163 The contract was entered into on August 26, 1921,164 at almost the exact same time that the Japanese YWCA property was purchased.

On November 6, 1920, the Sutter County Superior Court issued an order denying guardianship to the parent of a native-born minor citizen to whom property title to agricultural property had been conveyed.165 Although the California Supreme Court eventually ruled that a minor citizen was entitled to take title of property and to have his or her parent as guardian,166 the founders of the Japanese

155. See supra note 150 and accompanying text.
158. Shiba v. Chikuda, 214 Cal. 786 (1932) (city lot). See also Palermo v. Stockton Theatres, Inc., 172 P.2d 103 (1946) (movie theater). The Palermo case was brought after the 1911 treaty was abrogated in 1940. Id. at 104.
159. See Tagami, 195 Cal. at 522.
160. See Castleman, supra note 94, at 35 (the Gin Fook Bin and Harada cases).
161. Tagami, 195 Cal. at 531.
163. Id. at 26.
164. Id. at 25.
166. Id. at 658-59.
YWCA at the time had reason to believe that even title held in the name of citizens of Japanese descent would be questioned.

To summarize the situation at the beginning of 1921: (1) although Ozawa was still pending before the U.S. Supreme Court, the prospects for naturalization were dim; (2) although the Alien Land Law was aimed at agricultural property, there was good reason to believe that the state would prosecute other acquisitions of property that were not clearly residential or commercial; (3) the alternative of holding property in the name of minor citizens, although ultimately ruled legal, did not appear successful in courts at the time; (4) the use of legal maneuvers to evade the land laws was widespread prior to 1920; (5) the community was organized around this issue, so that word of potential legal strategies was undoubtedly widely shared; (6) there were contemporaneous examples of the use of trust relationships to evade the law; (7) but due to the 1920 amendments regarding conspiracy to evade, any explicit trust document would have been evidence of a felony. Therefore, the founders of the Japanese YWCA had every reason to believe that they would not be allowed to own property directly, and that if they tried and were challenged, all of their property might escheat to the state. This historical context combined with the language in the YWCA minutes provide an argument that the community groups that raised the funds intended the creation of a charitable resulting trust for the benefit of the Japanese YWCA.

V. THE POST-WAR PERIOD

On their motion for summary judgment, the San Francisco YWCA raised two issues. The first was whether there is any evidence of intent to form a trust. As described above, the history of the California Alien Land Law, founded on the racial prerequisite in the federal naturalization statute, might provide a rationale for why there would be a trust intent.

The second issue is essentially laches or the argument that the plaintiff has waited too long to fairly assert his or her claim. There has been no Japanese YWCA for fifty-seven years. It might seem that the time has long since passed for there to be a challenge of the administration of a trust whose nominal beneficiary no longer exists. The story of what happened to the Japanese YWCA comes in three parts. The first part is the now familiar internment of all Japanese Americans during World War II. The entire Board of Directors of the Japanese YWCA was presumably evacuated from San Francisco. This was the de facto end of the organization. Second, the forced removal of Japanese Americans to internment camps during World War II required them to give up possession and management of the building. The environment to which Japanese American internees returned in San Francisco following the war was in the process of being reshaped by urban renewal and strongly assimilationist ideologies. As a result, the pursuit of any trust interest was delayed for over fifty years. Here, the Japanese YWCA case introduces the third part of the story of what happened when the Japanese Americans came back from the camps. Many of their assets had been stolen, lost, sold at a fraction of their value, or otherwise dissipated. The Japanese Americans were subjected to racial harassment and discrimination. The War Relocation Authority ("WRA"), which administered the

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camps, pursued a strong assimilation policy, explicitly discouraging Japanese Americans from returning to ethnic enclaves on the West Coast. Japanese Americans who had just experienced four years of captivity at the hands of their own government were internally conflicted about an appropriate response, and many of the Nisei in particular adopted a strong assimilationist position themselves. The YWCA organization itself adopted an assimilation policy and discouraged the reestablishment of ethnicity-specific branches.

Moreover, when the San Francisco YWCA took over direct management of the building following the evacuation and internment of the directors, managers, employees, and patrons of the Japanese YWCA, they leased it to the Quakers for community programs. The Quakers had been some of the Japanese American community’s strongest supporters throughout the wartime experience.

For all of these reasons, the evacuees returning to San Francisco in 1945 were ill-prepared to devote scarce resources to rebuilding a community organization. They were struggling to survive and keep their families together. They were coming to terms with the traumatic experience of being racially victimized by the same government which was celebrating the victory of democracy over tyranny. They were being pressed to avoid forming a community. Even if someone had been prepared to work to revive the Japanese YWCA, they would have been deterred by the fact that they would have had to evict some of their only supporters, who were putting the building to good use.

A. Assimilation

After the threat of direct attack by Japan on the United States receded after the Battle of Midway in June of 1942, the government began to release internees from the camps. Following a loyalty review, Japanese Americans were allowed to leave. Although still excluded from the West Coast, those who left the camps tried to resettle in various eastern and midwestern cities. Predictably, the former internees faced considerable discrimination and hostility. Chicago was the only resettlement community from which there was no mass exodus back to the West Coast when the exclusion ended.169

After the exclusion ended in December 1944,170 evacuees returned to the West Coast from the camps and from the interior states where they had been resettled. For some, the prospect of leaving the segregated camps to reintegrate with a possibly hostile white population and starting all over again at an older age was daunting.171 Each person was given an allowance of twenty-five dollars. Few returned to post-war property holdings. For example, only about twenty-five percent of pre-war farmers retained property.172

The returning evacuees faced continuing hardship. Stored possessions had been lost or stolen. Taxes had not been paid. Moreover, harassment and violence were relatively common.173 There were some thirty documented acts of terrorism against early resettlers.174 Shots were fired into the homes of Japanese Americans.

170. Id. at 235.
171. Id. at 241.
172. Id.
173. Id.
174. O’BRIEN & FUGITA, supra note 92, at 91.
Signs announcing, “No Japs allowed, no Japs welcome,” were widespread. Employment discrimination was rampant. Families who had been separated, with younger, employable members resettling on the East Coast, were now in the process of reuniting and resettling a second time. The Issei, who might otherwise have been contemplating retirement, were instead in the position of having to work hard to rebuild their lives. Ultimately, about one-third of the resettlers chose to relocate to the Midwest or East.

Small business owners who had been located in Japanese districts and had depended on ethnic Japanese customers faced particularly challenging problems. The Japanese districts never regained their pre-war vitality, in large part because the returning Japanese were no longer as geographically concentrated. Many Japanese Americans ceased to patronize ethnic institutions, in fervent pursuit of assimilation. Others were resentful about returning to communities from which they had been expelled.

The reestablishment of ethnic neighborhoods and institutions was one of the most contentious issues in the Japanese American community at the time. The Issei favored rebuilding many of the ethnic institutions they had controlled before the war, partially in order to reestablish authority over their Nisei children. Many Nisei, on the other hand, saw this as an opportunity to assimilate into the larger society.

Assimilation was the reigning ideology of the WRA. WRA Director Dillon Meyer personally thought it was important not to have ethnic enclaves, and encouraging the Japanese not to return to the West Coast would hasten assimilation. Meyer would go on to supervise the Federal Bureau of Indian Affairs efforts in the 1950s to terminate the tribal governments as quickly as possible by removing Indian children from their families and sending them to boarding schools away from the reservations to hasten the breakdown of tribal affiliations.

Thus, the WRA actively encouraged the internees to disperse geographically. This was in part to minimize hostility, but also because the WRA felt that recreating Japantowns would slow the group’s entry into mainstream society. The WRA advised former internees not to congregate in public, and prescribed the maximum number of Japanese Americans who should walk on the street together (three) or eat together in a restaurant (five). Families were advised not to live next door to another Japanese American family. These admonitions were internalized by the Japanese American community. Many of the American-born Nisei reacted to the wartime experience by identifying with the aggressor and proclaiming ignorance of Japan, its language and its culture.

For example, native Californian Ben Takeshita, who was sent to the internment camp at Tule Lake, California, when he was eleven years old, describes his personal strategy after his return to San Mateo, California:

175. Personal Justice Denied, supra note 169, at 242.
177. Id. at 300.
178. Id. at 91.
179. Id.
182. Personal Justice Denied, supra note 169, at 299-300.
183. Id.
So when I got into high school, I made sure they weren’t going to mistake me for an enemy again. I made sure that I joined the A Capella Choir, which no Japanese American participated in. I joined the band. I joined the Junior Statesmen. . . . I would always make sure to greet [other Japanese Americans], but I would eat with the other people, the Hakujins [whites], and try to assimilate. That was how I spent my full four years. My family was Buddhist, but I didn’t want to go to a Buddhist church, because it was too Japanesey.184

Others accepted the WRA strategy and dispersed. They did not return to the Japantowns of the urban West. Theresa Takayoshi, interned at Minidoka, Idaho, recalls:

How did I recover from all of it? I think the biggest help was not coming back to Seattle right away. During the twenty-five years we spent in Indiana, we met many, many nice people. They were all Caucasians and they all accepted us as if we were just one of them. And not one of them knew about the evacuation, not one. When I would tell them about it, they were aghast. I think because we lived out there for that long, had almost no contact with Japanese people and were more or less accepted, the bitterness kind of went away.185

Moreover, it was not only pursuit of acceptance that kept the Japanese American community from regaining its cohesion. The stress of the internment experience on group identity introduced deep rifts within the community. With their freedom at stake, Japanese Americans in the camps were faced with the choice of protesting their shockingly unfair treatment at the hands of the government and/or trying to prove their loyalty to America.186 Each side blamed the other for worsening the situation of the group, and the enmities created by this bitter choice lingered for decades.187 Thus, the Japanese American internees who returned were not necessarily predisposed to focus their energies on reorganizing Japanese community institutions.

The YWCA adopted the assimilation model as well. Any members of the Japanese American community who returned to San Francisco with hopes of reviving the Japanese YWCA and reclaiming the building discovered that the organization had changed its philosophy and resisted any efforts to revive a designated Japanese YWCA. Rather, the YWCA tried to integrate its services to the Japanese American community with its general programs in other branches.

B. Urban Redevelopment

When the internees returned from the camps after the war, urban redevelopment was underway in San Francisco. The stated purpose was to prevent the former Japantown, with many buildings now vacant, from becoming a slum.188 However, there was clearly a desire at least on the part of some members of the local business community to exploit the property left vacant and defenseless by the Japanese American internees.189 Much of the Japantown area was razed in a controversial action

185. Id. at 220-21. Takayoshi’s father was Japanese and her mother Irish. After her mother went to see the Catholic bishop and Takayoshi was sent to see an Italian lieutenant, Takayoshi and her two brothers were given permission to stay. However, because Takayoshi had married a Japanese American man, her two children, ages two and six, were sent to the camps. Takayoshi chose to go with them. Id. at 213-14.
187. Id. at 301.
189. Id.
which introduced an eight-lane boulevard and a large commercial center where there had been residences. As a result, Japantown itself became less of a residential community.

The building was leased to programs operated by the American Friends Service Committee, which had long supported and defended the Japanese American community, and was engaged in providing resettlement services to returning internees.190 Thus, any incentive that might have existed on the part of the Japanese who did return and did maintain an interest in the area to reclaim the building in the years immediately following the war were mitigated by feelings of loyalty and gratitude to the new tenants.

Over the years, the building has been leased to a mix of tenants providing nonprofit community services. The principal tenant is a day care center. Another program housed in the building provides counseling to pregnant teens. Thus, the post-internment history suggests both that any delay in enforcement of the trust was excusable and that the San Francisco YWCA was not in breach of its fiduciary duty to hold the property in trust for the community so long as the building was being used for purposes beneficial to the community.

VI. TRUST

I would like to suggest some implications for the theory that the Japanese YWCA case raises. Joe Singer has written eloquently with regard to plant closings that, under certain circumstances, the reliance and interdependence that develops among the nominal factory owners, the plant workers, and local communities should mature into a recognized property right, which he calls the reliance interest in property.191 Drawing on a wide variety of examples, Singer demonstrates that with such doctrines as adverse possession, public trust, and the division of marital property, legal rules already recognize and reward the rights of vulnerable parties who reasonably rely on a relationship with an owner of property.192 Singer notes that legitimate expectations arise out of relationships even where no explicit promise is made.193

The Japanese YWCA case provides another instance in which the law should recognize a legitimate reliance interest. Here, although the historical legal context is compelling, there is no explicit trust document detailing with great specificity the promises or duties to which the San Francisco YWCA is bound. Yet, rather than search in vain for a formal transfer of "title" from the "true owner,"194 courts should recognize that the Japanese American community's extremely vulnerable legal position, their valuable contributions and efforts to the property, and their reasonable reliance and faith in the goodwill of a charitable religious organization, have long since matured into a cognizable property interest. The San Francisco YWCA is, in essence, suddenly filing for divorce after almost eighty years and is hoping to take all of the marital property with it.

190. See Toru Matsumoto, Beyond Prejudice: A Story of the Church and Japanese Americans 70-87, 145 (1978). Matsumoto describes the operation of church-sponsored resettlement hostels, and lists the "Japanese American Sub-Committee of Friends Service Committee of San Francisco" as operating such a hostel in San Francisco in 1945.
192. Id. at 663-98.
193. Id. at 700.
194. See id. at 637, for a discussion and criticism of the free market model implicit in the search for the "owner."
The Soko Bukai are requesting the court to recognize the existence of the trust, to remove the San Francisco YWCA as trustee for refusing to perform its fiduciary duties, and to name itself trustee.\textsuperscript{195}

This remedy raises a final issue. The alleged trust is a race-conscious trust. If a court were to recognize and validate this trust, it could be seen as a violation of the equal protection clause because the beneficiaries of the trust are defined in race-conscious terms. In the present lawsuit, the Soko Bukai are not particularly concerned about this aspect—they are perfectly willing to manage the property to carry out a more general charitable purpose in the community, which includes a large number of African Americans.

The literature on race-conscious trusts consists primarily of critiques on the role of courts in enforcing private discriminatory trusts.\textsuperscript{196} These articles generally discuss the various means under the equal protection doctrine or the common law regarding trusts that courts have used, with varying degrees of success, to invalidate such discriminatory trusts. Discriminatory trust language may be stricken as being contrary to public policy or modified by state courts to preserve the trust from failing, upon finding a general charitable intent rather than a specific discriminatory one.\textsuperscript{197} Constitutional challenges to discriminatory charitable trusts are sometimes founded on the state action requirement where the trust document or state common law provides a reversion or a gift if the discriminatory condition cannot be met.\textsuperscript{198}

It is not the purpose of this Article to provide a full discussion of the problem of discriminatory trusts. I merely suggest that not all race-conscious trusts are the same. Steven Swanson recognized this point when he proposed a “Charitable Trusts Anti-Discrimination Statute” which includes the following provision: “The provisions of this Act do not apply to charitable trusts that serve to remedy past racial or sexual discrimination, so long as the effects of that discrimination continue to exist.”\textsuperscript{199} Similarly, David Brennen argues that the U.S. Treasury’s public policy power to revoke the tax-exempt charitable status of charities that engage in racial discrimination, if it is appropriate at all, should be limited to instances in which the discrimination is against blacks or other non-whites and not applied to entities that exercise policies favoring nonwhites.\textsuperscript{200}

To whom does the building at 1830 Sutter Street belong? In 1921, when the property was purchased, Japanese Americans constituted a distinct racial group, targeted and victimized by racist social, political, and legal means. In part as a response to the treatment they received, Japanese American group identity became institutionalized through individual perspectives and external organizations. These

\textsuperscript{195} Petition to Enforce Charitable Trust and to Remove Trustee and Appoint Successor Trustee (on file with author).


\textsuperscript{197} See generally Swanson, supra note 196.


\textsuperscript{199} See Swanson, supra note 196.

groups acted affirmatively to advance positive community interests in the acquisition of private property.

The Japanese YWCA case suggests a provisional, limited argument for race consciousness, for a kind of affirmative action in the judicial treatment of race-conscious trusts. First, the origin of this trust is grounded in a specific, racially discriminatory statute. If not for the Alien Land Laws, the Japanese YWCA might have simply owned the property outright from the beginning. Second, any adverse impact on whites or on the general population is extremely diffuse. Perhaps, in theory, there are fewer resources available to non-race-specific causes if this trust is enforced. Moreover, the converse is not a problem — there is no indication that there is an unhealthy accumulation of resources in the Japanese American community as opposed to the population at large. Finally, this case involves the original purchasers of private property. It ought to carry with it all of the court’s modern predilection for protecting property interests. Even if one thinks that a discriminatory trust preserving property for the use of whites should not be enforced, one might nonetheless argue that the court could enforce this trust and deliver the Japanese YWCA to the Japanese American community.

VII. Epilogue: Unfinished Business

The racial prerequisite for citizenship was legislatively repealed in 1952. However, it was never ruled unconstitutional. Although it may seem like there is little doubt that a racial prerequisite would withstand scrutiny today, others have noted that the plenary power doctrine giving Congress wide latitude in immigration matters is still adhered to, notwithstanding its origin in the racially repugnant Chinese cases.

The Chinese Exclusion Act was upheld. Congress’ plenary power over immigration matters remains to this day. Exclusionary immigration laws were legislatively replaced by a quota system and ultimately by a relatively neutral system in 1965.

In 1923, the U.S. Supreme Court decided four cases upholding the Alien Land Laws in every respect. The reasoning was basically that these were not racial distinctions but citizenship distinctions established by Congress. There is a certain logic to the idea that certain important resources like agricultural property ought to be controlled by those more likely to have an interest in the welfare of a state, and the state might decide that those ineligible for citizenship — a decision made not by the state but by the federal government — should not be able to control that resource. It is cruel logic, however, when this is applied against people prohibited by

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204. See Chae Chan Ping, 130 U.S. at 581.
205. See Chin, supra note 203.
law from becoming citizens based on a racial prerequisite. Unfortunately, it is logic that foreshadows the Japanese American internment cases.\(^{208}\) In this context, it is perhaps easier to see how the Court could later be convinced that a determination based on military intelligence and racial suspicions regarding the loyalty of aliens ineligible for citizenship was appropriate.

It was not until 1948, after World War II, that the U.S. Supreme Court ruled on narrow grounds that the rights of American citizen children of Japanese immigrants were violated by the Alien Land Laws when their ownership was presumed invalid based on the national origin of their parents.\(^{209}\) The Court suggested in dicta that the entire act might be invalid. The California Supreme Court took the hint and overturned the law as unconstitutional and the legislature ultimately repealed it.\(^{210}\) Nevertheless, the U.S. Supreme Court technically never found the laws unconstitutional.

California State Assemblyman Mike Honda, a third-generation Japanese American elected to the California Assembly in 1998, introduced Assembly Concurrent Resolution ("ACR") 32 on March 23, 1999. ACR 32 reads, in part, as follows:

WHEREAS, The California Alien Land Law was enacted in 1913 in an atmosphere of racial prejudice and barred Japanese immigrants and their charitable and religious organizations from owning real property; and

WHEREAS, In response to the California Alien Land Law, Japanese Americans legally entered into trust agreements with non-Japanese to hold their property in another’s name so they might establish their roots in this country and build a stable and lasting community; and

WHEREAS, Japanese immigrant women of the Soko Bukai, an association of Japanese Christian churches in San Francisco, established a Japanese YWCA in that city in 1912 to work with Japanese women and girls; and...

WHEREAS, In 1920-21, the Japanese YWCA raised the funds to purchase the building and property, with the San Francisco YWCA Board agreeing to hold this property in trust for the permanent use of the Japanese YWCA; and...

WHEREAS, Programs and services of the Japanese YWCA were abruptly ended in 1942 when Executive Order Number 9066 forcibly removed all Japanese Americans from the West Coast to inland concentration camps; and...

WHEREAS, The Soko Bukai, whose Issei women members founded the Japanese YWCA, today reasserts the Japanese American community’s claim to the Japanese YWCA building; and...

WHEREAS, The San Francisco YWCA’s refusal to honor the trust agreement and fulfill its duties as trustee allows the YWCA to profit from the racism of the California Alien Land Law; now, therefore be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, that the Legislature of the State of California declares that it shall be the policy of the state to eradicate any vestiges of the racism of the California Alien Land Law and to take steps to ensure the enforcement of charitable trusts created in response to that law; and...

Resolved that the Legislature pays tribute to the contributions, tenacity, and vision of the Issei women pioneers of the State of California. . . .\(^{211}\)

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\(^{208}\) 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).


\(^{210}\) Sei Fujii v. State, 38 Cal. 2d 718 (1952).

ACR 32 passed unanimously in both the Assembly and the Senate, with every Assembly member present signing on as co-authors. It became law in early May 1999, almost exactly eighty-six years after the passage of the Alien Land Law.

The San Francisco YWCA currently claims that it is using the 1830 Sutter Street building as its headquarters. They are also claiming that the Soko Bukai will not assure that the African American community in the vicinity of the building is served, reminiscent of the racial triangulation invoked over a century ago in the debates over Asian naturalization and suffrage. While the YWCA has entered into settlement discussions with members of the Japanese American community, the parties have not been able to reach an agreement. Trial is currently scheduled for July of 2001.