White by Association

The Mixed Marriage Policy of Japanese American Internees

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Introduction

"One obvious thought occurs to me—that every Japanese citizen or non-citizen on the Island of Oahu who meets these Japanese ships or has any connection with their officers or men should be secretly but definitely identified and his or her name placed on a special list of those who would be the first to be placed in a concentration camp in the event of trouble.' – Franklin D. Roosevelt, President of the United States, 1936.[1]

The Japanese American imprisonment of World War II in U.S. concentration camps violated the constitutional rights of the imprisoned American citizens and residents denied citizenship. The same rights-violators who were responsible for this incarceration, were also the creators of the Mixed Marriage Policy, which allowed multiracial couples and individuals to return to their homes on the West Coast and avoid incarceration. I will be examining the contextual reasons why such a policy existed alongside an already in place racialized imprisonment system known as the internment of Japanese Americans.

The setting of 1930's America was a nation recovering from a major global economic depression and preparing for an inevitable war with Japan. As we see in the epigraph above, President Roosevelt was contemplating the concentration of Japanese Americans as early as 1936. This coming war and the already in place state of racial segregation and political discrimination set the tone for racial tensions between White Americans and Japanese Nikkei (immigrants and their children).

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[1] Greg Robinson, "FDR Hawaii Memo," *Densho Encyclopedia*, last modified October 10, 2016, https://encyclopedia.densho.org/FDR%20Hawaii%20Memo/.

The Second World War officially began for the United States with the bombing of Pe Harbor. While both nations' officials anticipated the war to come, the American people were shocked by the attack and thrown into a fit of hysteria. Much of their newly developed anger a fear that derived from the attack was then channeled toward those with the face of the enemy: Japanese Americans. This public racialized outcry combined with almost all branches of the government willing to side step the Constitution in times of war, led to the surprisingly vastly accepted use of concentration camps to incarcerate almost all Japanese Americans on the Wes Coast.

These camps today are widely identified as internment camps. As Rodger Daniels, an expert on Japanese American incarceration, points out in *Prisoner's Without Trial*, legal internment can only be imposed against non-citizens, and since nearly two thirds of those interned were U.S. citizens, this term is used incorrectly.[2] This imprisonment system is more comparable to concentration camps. This term, however, is heavily associated with Nazi concentration camps, causing many to seek alternative titles. Many members of the Japanese community today prefer the word incarceration, which truly represents the experience they and their families went through.

Nearly 120,000 individuals of Japanese descent were ripped from their homes, forced to give up their possessions, and sent away to remote areas of the United States for the duration of the war. These locations were deserts and wastelands, isolated from populations, much like mos federal prisons. For up to four years, Japanese Americans attempted to maintain normal lives

[2] Roger Daniels, *Prisoners without Trial: Japanese Americans in World War II* (New York: Hill and Wang, 2004), 27

while locked behind barbed wire and surrounded by armed gaurds meant to keep them in. The reason for this lock-up was none other than their race.

Most of the incarcerated Japanese Americans were second-generation or Nisei, meaning born in the United States to their first generation, Issei, immigrant parents. Hardly any Sansei, or members of the third generation, existed yet, although some were born in the camps. Expert on Asian American studies, Paul Spickard, discusses this dual generation dynamic as the Issei being more traditionally Japanese in language, culture, and home dynamics; whereas the Nisei openly sought spaces of assimilation within school and the work place.[3] While this did not lead to instant acceptance of Japanese Americans by White Americans, it did create a disconnect between Nisei and their parents, therein creating a new and close Japanese American community amongst the second generation.

Most internees were Nisei, a group of young adults (average age: eighteen), who were often cut off from their parents' cultural ways, and even more so from their connections to Japan. Most Nisei were unable to speak Japanese and had only known American customs.[4] When Pearl Harbor was attacked these Japanese Americans were just as shocked and afraid as the rest of America, but because of their ethnic ties to the Japanese nation, they were singled out as potential threats and spies of the Japanese government. With Executive Order 9066 signed by President Roosevelt on February 19, 1942, the U.S. Army was given complete authority over what they called, the evacuation of all Japanese persons from the western half of the United

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[3] Paul Spickard, *Mixed Blood: Intermarriage and Ethnic Identity in Twentieth-Century America* (Madison WI: The University of Wisconsin Press, 1989), 30-31.
[4] Daniels, *Prisoners without Trial*, 75.

States. New military and Justice Department branches were established in order to execute the process.

The Western Defense Command (WDC), established in 1941, was a section of the military created for the sole purpose of protecting the western half of the United States from a possible attack from Japan.[5] It therefore took on the responsibility of what they called evacuating (arresting) and relocating (imprisoning) all potential "threats" to the United States living on the West Coast. These so-called threats were almost all people of Japanese descent, with the exception of a small number of Germans, Italians, and other foreign born or ethnically foreign peoples considered potentially disloyal.[6] These people, most U.S. citizens, were forced from their homes and shipped off to isolated and concentrated locations, or as they came to be officially called, the Japanese internment camps. This operation was undertaken by the WDC of the War Department and the War Relocation Authority (WRA) of the Justice Department, with the support of the United States government and President Roosevelt.

The sudden imprisonment of almost 120,000 people was no easy task for the United States, on top of the fact that some within the government's Justice Department as well as the FBI early on opposed the action entirely. Regardless of their opposition, most departments, members of Congress, and the American people favored relocation – a nicer word for the forced dislocation of Japanese Americans from the West used often in government policy. As quickly as relocation and incarceration began however, exemptions were made almost immediately to certain Japanese Americans, allowing them to stay or return to the West Coast. This raises the question, why?

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[5] Ibid., 30
[6] Ibid., 51

Many factors contributed to the almost immediate effort of release and exemption for Japanese Americans loyal to the nation and considered to be of no threat, such as them being members of the military, attending college away from the West Coast, or being hospitalized or institutionalized. Determining who factored into these categories was decided by the WDC and written into multiple versions of policy. The most controversial was the Mixed Marriage Policy, which acted as the guideline for determining who could be exempt from relocation and the concentration camps based on the factors of mixed-race and Caucasian, or White American, lifestyle. To the lives of those who suffered years within the camps, this policy became one of their last hopes of returning home before the end of the war.

The Mixed Marriage Policy allowed for the release of Japanese Americans who fit the specific criterion of being multiracial or married to a non-Japanese, U.S. citizen. This policy while gendered and racist, allowed certain full blooded ethnically Japanese individuals to return to the West Coast as soon as a couple of months after the release of the exclusion act which banned all Japanese Americans from this area. This comes off as contradictory and bizarre, if the goal of the government was to protect national security from all Japanese descent individuals.

A fabricated justification for incarcerating Japanese Americans beyond just the national safety of the United States, was the War Department's claim to the intent to protect Japanese Americans from potential racism by White Americans, as well as to potentially assimilate said Japanese Americans to White American culture. This front became a useful tool as the threat of sabotage and internal conflict became more noticeably unlikely. The government agencies in charge of incarceration were attempting to balance the constant public push for Japanese expulsion, and the breaking of their constitutional rights. Finding social justification as well as a

way to circumvent the Constitution became the government's priority in continuing the massive and invasive operation of incarceration based on race.

Again, we ask the question, why the Mixed Marriage Policy? I have come to the conclusion that the reasoning behind the almost immediate creation and utilization of a policy allowing the exemption of specific types of Japanese Americans was not done out of some desire to preserve the Whiteness of these individuals and families, nor out of the kindness of the policy makers' hearts. Instead I argue that the Mixed Marriage Policy was concieved as an attempt by the Wester Defense Command, the War Relocation Authority, and the Executive branch to avoid potentially winnable cases against the constitutionality of the entire internment and relocation process. This is due to how the policy is implemented, meaning its reliance on a White male figure and shared children within the mixed marriage families to guarantee exemption.

I will support this argument by breaking down the Mixed Marriage Policy and how it was applied, analyzing the writers of the policy and their spoken worries of repressing the constitutional rights of Japanese Americans, comparing the use of mixed-race couples and children in order to resist racial oppression and those who attempted to suppress this tactic in the past, and laying out specific examples of individuals who should have, but did not benefit from the Mixed Marriage Policy due to their lack of authority in the eyes of the public and the law.

Only two known authors have discussed in detail and analyzed the Mixed Marriage Policy since its inception in 1942. The first being Paul Spickard, who published in 1986 his extensive research on the topic in his work, "Injustice Compounded: Amerasians and Non-Japanese Americans in World War II Concentration Camps." Spickard described the different details of the policy that led him to the conclusion that the Mixed Marriage Policy was implemented to release mixed race children in order to keep them from being influenced by a

Japanese environment within the camps.[7] He was the first to find and use the original copies of the Mixed Marriage Policy as evidence.

The second author, Jennifer Ann Ho, described her theory of why the Mixed Marriage Policy was created in her book *Racial Ambiguity in Asian American Culture*. She theorized that the policy's purpose was to separate the assimilated from the unassimilated by releasing those deemed assimilated enough to White American racial culture by the standards set by the Mixed Marriage Policy.[8] She also argued that the sexist nature of the policy was due the WDC's belief that women had zero affect on the racial and ethnic culture of their home, and all that was necessary was for the male head of household to be White in order for a family to assimilate to American culture.[9] Ho based her evidence on the foundation set by Paul Spickard nearly thirty years prior, personal accounts of those affected by the Mixed Marriage Policy, and her own review of the original documents.

Both Spickard and Ho argued that the purpose of the Mixed Marriage Policy was to protect assimilated mixed-race children who were raised in a White environment, from exposure to Japanese culture within the incarceration camps. While their arguments are strong, and created a basis for understanding this policy, I believe that its creation goes deeper than this. The assimilation argument was used on the surface by the policy makers themselves to hide their true intentions. I do not believe they cared whether a half Japanese child was exposed to non-White culture or not. The WDC and War Department cared more about maintaining the incarceration of Japanese Americans, without consequence to themselves. They released those in relation to

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[7] Paul Spickard, "Injustice Compounded: Amerasians and Non-Japanese Americans in World War II Concentration Camps," *Journal of American Ethnic History*, Vol. 5, No. 2 (Spring, 1986): 7-8.
[8] Jennifer Ann Ho, *Racial Ambiguity in Asian American* Culture, (New Brunswick, New Jersey, London: Rutgers University Press, 2015), 24
[9] Ibid., 34

White male Americans in order to prevent White male interference. The government was aware that imprisoning loyal citizens based on race alone was illegal, but only cared once it was realized that White Americans would also be affected. Hence, the Mixed Marriage Policy was born, and the worries over lawsuits and shutting down the program deceased until the end of the war.

Like Spickard and Ho, I also utilized the National Archives to obtain my primary sources. I was able to uncover hundreds of documents pertaining to the Mixed Marriage Policy, as well as multiple copies of the original and revised versions of the policy itself. While my work is based heavily on government documents, I was able to contact one family whose parents applied for but were denied exemption through the Mixed Marriage Policy. It is my hope that in the future I can obtain more personal accounts from those who lived in multiracial families and marriages and went through the traumatic experiences of not only losing their homes in exchange for imprisonment, but then made to offer up their racial backgrounds and household cultures for governmental speculation in order to re-obtain their freedom.

Part I: The Mixed Marriage Policy

"The Japanese race is an enemy race and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become 'Americanized,' the racial strains are undiluted." – General John L. Dewitt, Head of the Western Defense Command, 1943.[10]

In the National Archives at College Park, Maryland lies a detailed copy of the Mixed Marriage Policy. This small booklet, approximately twenty pages, consists of the entire policy outline as well as exemptee application forms and guidelines. This copy is dated September 24, 1943 and addressed to the Commanding General of the Western Defense Command, which at this time was transitioning from Lieutenant General John L. DeWitt to Lieutenant General Delos C. Emmons.[11] This was likely intended to update Emmons on the policy already in place. The original Mixed Marriage Policy began as a memorandum issued to all Evacuation Assembly Centers, the original place holders for evacuated Japanese Americans until the opening of the official internment camps. This memorandum was issued on July 12, 1942, by Major Herman P. Goebel, Jr., Cavalry Chief of Regulatory Section. In addition to the detailed regulation of all accepted requirements to qualify under the Mixed Marriage Policy, Goebel outlines the approach and procedure of assembly center personnel in charge of collecting information on all assembly center inhabitants who may have been eligible for exemption.[12]

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[10] John L. DeWitt, *Final Report: Japanese Evacuation from the West Coast, 1942* (Washington, DC: U.S. Government Printing Office, 1943), 34.

[11] Outline of the Mixed Marriage Policy by the Civil Affairs Division, General Staff, Western Defense Command, September 23, 1943, RG 499 Records of U.S. Army Defense Commands (World War II), Box 28, File 291.1 Mixed Marriage Policy, National Archives, Washington D.C. (henceforth MMP).

[12] Memorandum from Herman P. Goebel, Jr. to A. H. Cheney on the release of mixed marriage families, July 12, 1943, MMP.

These personnel were required to collect all information on all mixed marriage families and multiracial individuals. in order for the WDC, and ultimately General DeWitt, to make the decision of granting exemption or not.[13] In his memorandum, Goebel makes clear that, "in contacting the mixed marriage families and mixed blood individuals in reference to this program care should be taken not to promise said families or persons release from the centers. Every case will be carefully studied, and releases only authorized when the stated conditions have been met and it appears that the release will not in any way be detrimental to the safety and welfare of this nation."[14] Goebel is making clear two crucial points: A. Assembly center personnel must take the utmost caution in collecting this information and avoiding false hope and potential hysteria; and B. Even those who meet all necessary qualifications, are not guaranteed exemption.

Within a few months, assembly centers across the West Coast began sending in lists of those with potential to qualify. These lists included not only individual names, but the race. children and economic stability of each evacuee and their family. The Tanforan Assemble Center of San Bruno, California, responded to the memorandum's request on July 16, 1942, with their lists of evacuees seeking release. We see one of many examples in the Cruz family:

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[13] Ibid.
[14] Ibid.

Name	Relationship	Sex	Age	Height	Weight
Mildred Cruz	Mother	F	35	5' 1/2	115 lbs.
Theodore Cruz	Son	M	12	54 inches	79 1/2 "
Carmen Cruz	Daughter	F	10	51 "	77 "
Anna Cruz	"	F	9	49 "	69 "
Theresa Cruz	"	F	7	46 "	62 "
Kenneth Cruz	Son	M	5	43 "	53 "
Donald Cruz	"	M	3	42 "	41 "
Peter Cruz	"	M	1 1/2	33 1/2 "	32 "

The head of the above mentioned family is Alfonso Cruz, who is presently employed at the Richmond Shipyard No. 2, earning $1 per hour as a steamfitter's helper. Mr. Cruz is a caucasian, American citizen, and the environment of the family has always been caucasian.

Mrs. Cruz states that if she is granted a release for herself and family that they would reside with her husband at the home of his mother at 1332 Carolina Street, San Francisco, California. The plan for their support is Mr. Cruz's continued employment at the Richmond Shipyard.

The family states that they are able to provide transportation to San Francisco, and will require no assistance from this Administration.[15]

We see in further documents that the Cruz family was granted exemption and allowed to return to evacuated areas.[16] Countless other families were brought under the same scrutiny as the Cruz family and judged by racial and gendered guidelines in order to maintain their rights as United States citizens. The Mixed Marriage Policy left nearly no room for variance.

After gathering information on all potential exemptees, assembly centers then conducted their own interviews in order to determine who could qualify by the MMP and be sent home.

[15] Attachment to report from Tanforan Assembly Center manager Frank E. Davis to Operations Section Chief of the WDC Emil Sandquist regarding families of mixed marriages and mixed blood desiring release, July 16, 1942, MMP.
[16] Attachment to report from Major Ray Ashworth of the WDC to unnamed Special Agent in Charge of the FBI regarding a list of exemptions under the Mixed Marriage and/or Mixed Blood Policies, December 10, 1942, MMP.

Those not so lucky may have had a description of this process sent in an official letter to the WDC, such as the following two families from the Santa Anita Assembly Center:

> The families of Dorthy Mansfield and Sumi de Queiroz have been interviewed and declined release from the center.[17]

Other centers, such as the Tulare Assembly Center, provided more thorough details on their approval of exemption or not:

Name	USES	Situation	Attitude Toward Release
Yonemura, Jim	14006	Jim is a U.S. citizen and has a Swiss wife at Lompoc, but no children. Environment has been Caucasian.	Ineligible but desires release.[18]

While assembly centers could make initial judgment on who was eligible or not, final approval was determined by WDC officials. The qualifications needed for such approval will be analyzed bellow.

The alleged objective of the Mixed Marriage Policy is written clearly on the first page of the 1943 official outline, "to permit return to evacuated areas for bona fide residence of certain persons of Japanese ancestry, and persons of mixed-blood who fall within any of the classes hereinafter set forth"[19] The original memorandum however jumps straight into business listing its clear and precise qualifications. One, of course, must be skeptical of how this policy was applied

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[17] Report from public relations director L. W. Feader of the Santa Anita Assembly Center to Operations Section Chief of the WDC Emil Sandquist regarding mixed marriage families and mixed blood people, August 12, 1942, MMP.

[18] Report from Tulare Assembly Center manager Nils Aanonsen to operations section chief of the WDC Emil Sandquist regarding mixed marriage families, July 30, 1942, MMP.

[19] Outline of the Mixed Marriage Policy by the Civil Affairs Division, General Staff, Western Defense Command, September 23, 1943, MMP.

As you'll see shortly, many of the qualifications necessary are not as easily determined as the policy and the WDC would have liked the public to believe.

In all copies of the Mixed Marriage Policy, we are presented with strict classes of exemptible persons. However, over time new revisions were added to include more variants of potential exemptees. The original 1942 memorandum is clearest on who was exempt and to where they were allowed to return to:

> 1. Mixed marriage families composed of a Japanese husband, Caucasian wife and mixed blood children may be released from the Center and directed to leave the Western Defense Command area.
>
> 2. Families composed of a Caucasian husband who is a citizen of the United States, a Japanese wife and mixed blood children may be released from the Center and allowed to remain within the Western Defense Command area providing the environment of the family has been Caucasian. Otherwise the family must leave the Western Defense Command area.
>
> 3. Adult individuals of mixed blood who are citizens of the United States may leave the Center and stay within the Western Defense Command area if their environment has been Caucasian. Otherwise they must leave the Western Defense Command area.[20]

It is clear that all three of these requirements were gendered and geared toward protecting Caucasians. Those allowed to stay on the West Coast were married couples made up of White males and Japanese females with multiracial children, and multiracial individuals. In both situations, however, the families or individuals had to prove their environment to have been Caucasian. If one's family was made up of a White female and Japanese male with mixed children and had a Caucasian lifestyle, they could leave camp but had to move east. This policy

[20] Memorandum from Herman P. Goebel, Jr. to A. H. Cheney on the release of mixed marriage families, July 12, 1943, MMP.

from its creation was intended to protect not just partially White families and individuals but particularly favored White males.

The 1943 outline included adjusted sections of the original policy, and specifically changed the wording of qualifications from the previously used memorandum:

> II. Classes of persons entitled to return to evacuated areas for bona fide residence:
>
> a. Families which maintained bona fide residence in evacuated area immediately prior to evacuation or families whose unit was disrupted by voluntary evacuation of Japanese members of family where:
>
> (1) Environment of family has been Caucasian and head of family is United States citizen or citizen of friendly nation; and
>
> (a) Family consists of non-Japanese husband and full-blood Japanese wife.
>
> (b) Family consists of Caucasian mother, minor children sired by Japanese father who is dead, long since departed from family, is resident within War Relocation Authority Project or is resident outside of the evacuated area; or
>
> (c) Family consists of non-Japanese foster parents and adopted child or children of Japanese ancestry; or
>
> (d) Dependent full-blood Japanese mothers of exemptees.[21]

Right off the bat with one of the heading qualifiers, "Environment of family has been Caucasian," we're shown the nonsensical constitution of this racial policy. Racial definitions today are constantly argued and redefined, because race itself is a social fabrication. And while cultural and ethnic difference can be easier to define, we are still hit with constant variations even on the definition of ethnicity itself. What's most peculiar about this policy, however, is its willingness to treat race and nationality–"Caucasian" and "Japanese"–as interchangeable definitions.

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[21] Outline of the Mixed Marriage Policy by the Civil Affairs Division, General Staff, Western Defense Command, September 23, 1943, MMP.

If we think of the officially accepted racial categories of our United States Census today, i.e. White, Black, Asian, American Indian and Pacific Islander; Japanese Americans are being imprisoned because of their ancestral nationality, not their race. Other American citizens and immigrants of Asian descent whether Chinese, Korean, etc., were not incarcerated. So why is it then that the first and most important category for exemption is being Caucasian and not American? Remember that Caucasian includes Germans, Russians, Italians, and all of Europe, including those countries that America was fighting a war against. This is a complicated question with likely an even more complicated answer. Explanations could range from America's deep history of racial prejudice towards African Americans and all peoples of color, to officials not wanting to allow the release of Japanese Americans on solely the purpose of being natural born citizens of the United States. At this point in the United States racial definitions were still forming, especially around newer incomers such as Japanese Americans and other Asian ethnic groups. What we know for sure is that this document was worded this way purposely to emphasize the necessity of being Caucasian and that this feature continued through this and other documents regarding the Mixed Marriage Policy.

The question also arises how the "Caucasian-ness" was measured within each family. This was done through the initial interview process of those applying for exemption though the MMP. In some documents the results of these interviews are written in detail:

Ogawa, Fukuzo – 63 Years – Japanese Citizen
Ogawa, Nellie – 63 Years – British Subject

History:

Fukuzo Ogawa was born of Japanese parentage at Kanagawa, Japan, in 1879.

Mrs. Nellie Ogawa is of British descent born in England in 1882. She came to the United States in 1901, and applied for the first naturalization papers shortly after, but did not receive her final papers.

....

Environment:

Acquaintances – 70% Caucasian – 30% Japanese
Diet – 100% Caucasian
Customs – 90% Caucasian – 10% Japanese[22]

By examining the details of a family's diet, acquaintances, and customs, the WDC felt they could determine how White each family was, and from there make the decision if they were White enough to be released from the camps. The idea that race could be measured in percentages had long been accepted in U.S. policy up to this point, but in regard to blood. According to the army however, your racial allegiance could now be determined by your diet.

The Mixed Marriage Policy continues, listing the following qualifications on top of being sufficiently Caucasian. We see, as in the original memorandum, that the policy was not only racial, but gendered as well. This policy and the mid-1900's in general considered the husband and father of the family, or head of household, the ultimate authority and influence on his family. Thus, if the non-Japanese spouse was the husband, your chances of exemption were boosted, under the assumption that the woman of the household automatically adopted the culture of her

[22] Summary of mixed marriage families, page 9, date unknown, MMP.

husband, with her children following suit. This, however, is only one explanation for the gendered aspect of the policy, which will be explained more thoroughly later on.

It is also important to note that, in almost all cases, mixed-race couples not only had to be married, but were required to have unemancipated children. This rule was only ever negotiable if, "one of the spouses is serving in the armed forces of the United States," as with the case of Hanna McGrath, a Japanese-descent woman whose White husband was enlisted in the United States Army.[23] Some families presented more unique situations:

> It appears from reports submitted that Mrs. Piggott and Mrs. Kennedy are ineligible for release because they have no unemancipated children. However, in view of the fact that Mrs. Kennedy has a son in the United States Armed Forces, it has been determined that she may be released provided she leaves the Western Defense Command area.[24]

The requirement of an unemancipated child meant that said child had to be dependent on their parent(s). Therefore, in regard to Mrs. Kennedy, a Japanese-decent woman with an adult son no longer dependent, normally she, as other women in similar situations such as Mrs. Piggott, would not be permitted exemption. However, in Mrs. Kennedy's case the official decision gave her an exception due to her half-White son being enlisted in the army. Although, she was still required to leave the West Coast.

In the case of Matsuyo Regasa, a Japanese Hawaiian married to Hugo Regasa, a Filipino American, every requirement was met, and Mrs. Regasa was granted exemption. This exemption was questioned, however, in light of the news that their only daughter, "is contemplating

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[23] Report from Colonel Karl R. Bendetsen of the Unites States Army to Lieutenant General and Commander of the WDC John L. DeWitt regarding the release of certain mixed marriage families, August 7, 1942, MMP.
[24] Command by Operations Section Chief of the WDC Emil Sandquist to the Merced Assembly Center regarding the status of mixed marriage families resident at the Merced Assembly Center, August 2, 1942, MMP.

marriage and, as this will leave the family without unemancipated children, a question arises as to the right of Mrs. Regasa to remain within the excluded area."[25] Having a mixed-race child was almost crucial to these family's chances of release, but why? The WDC official Wilkie C. Courter, who wrote the letter on behalf of the Regasa family, answers this question by claiming that the initial motive of the Mixed Marriage Policy was to protect those of Caucasian descent and culture, therefore those who have raised their children in a Caucasian setting should not be excluded from exemption. He states, "In addition… by and large these families have lived in a Caucasian environment. To send them to a War Relocation Project at this time would not only expose them to infectious Japanese thought but would also compel them to live in an environment from which they have sought escape."[26] It seems as if Courter's perspective was that the goal of relocation was to protect not only White Americans but those of Japanese descent who had assimilated to Caucasian culture. He made a clear point that the policy needed to be updated to accommodate people in the Regasa family's situation, because such cases would become more frequent. Courter then lastly recommends the approval for Mrs. Regasa's release, but whether it was granted or not is unclear. Courter's argument about protecting Japanese assimilation is compelling in that it justifies not only incarceration, but MMP exemption. However, as I will lay out in a future section, this was not the real reason for the MMP's creation.

The next item on the 1943 re-write of the Mixed Marriage Policy is the second category of requirements that allowed release:

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[25] Memorandum from Wilkie C. Courter to Major Ray Ashworth regarding the emancipation of Japanese children, issue of mixed marriages, November 13, 1942, MMP.
[26] Ibid.

> II. Classes of persons entitled to return to evacuated areas for bona fide residence:
>
> ...
>
> b. Individuals of mixed-blood [1/2 Japanese or less], whether single or married, with or without children, provided such individuals maintained bona fide residence in prohibited areas prior to evacuation, and provided environment has been Caucasian.[27]

When compared to the original MMP's section on mixed-race people, we see significant differences:

> 3. Adult individuals of mixed blood who are citizens of the United States may leave the Center and stay within the Western Defense Command area if their environment has been Caucasian. Otherwise they must leave the Western Defense Command area.[28]

The 1943 version was updated to answer the likely numerous questions about who qualified as multiracial, what percentage of Japanese ancestry was allowed, and the life style necessary of these individuals to qualify for exemption. It is reasonable as well to assume that public backlash to the release of multiracial Japanese Americans had a role to play in the specificity of racial percentages. Note, however, that the necessity for a "Caucasian lifestyle" never changed.

Overall, multiracial individuals were not common within the Japanese American community. First of all, most of those incarcerated were either Issei (first generation immigrants) or Nisei (second generation American born). There frankly weren't enough generations going back within the United States for the amount of half-Japanese Americans incarcerated to be substantial. This was due to Japanese immigrants not entering the United States roughly until the

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[27] Outline of the Mixed Marriage Policy by the Civil Affairs Division, General Staff, Western Defense Command, September 23, 1943, MMP.

[28] Memorandum from Herman P. Goebel, Jr. to A. H. Cheney on the release of mixed marriage families, July 12, 1943, MMP.

1880s, only coming to work and later return home to Japan.[29] Japanese families did not begin to establish in the United States until the early 1900's, coming to a complete stop in 1924 when Japanese immigration was outlawed by Congress.[30] And second, most within the Japanese American community did not intermarry with others outside of Japanese ancestry, keeping anyone qualified as multiracial according to the Mixed Marriage Policy, at a severely low number. Mixed marriage amongst the Nisei generation, however, was more common than Issei, making most mixed-race individuals children at the time of incarceration with some even born in the camps.[31]

An example of a multiracial married couple during the Japanese internment was Herbert and Niki Funn. Herbert, a Chinese American male, advocated for the release of his wife Niki, a Japanese American female, in early 1943.[32] Since they had no children at this point, Niki was not permitted release, and spent the entirety of the war behind barbed wire; while her husband remained in LA to maintain his business. After her release, Niki and her husband Herbert, would go on the have four children together following the war: Julie, Jane, Christine, and Herb. The siblings remember little of what their mother had to say about her time in the camps, other than that the times she did speak were very painful experiences.[33]

When I asked the siblings more about their parents' marriage and how a Japanese American Nisei woman ended up married to a Chinese American husband, the youngest

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[29] Spickard, *Mixed* Blood, 26-27.
[30] Ibid., 29-30.
[31] Ibid., 47-53.
[32] Correspondence between Martha A. Chickering (by Elizabeth B. MacLatchie) and Lawerence C. Schreiber regarding the exemption of Niki Funn, February 1, 1943, *California State Archives Exhibits*, accessed March 15, 2019, http://exhibits.sos.ca.gov/items/show/10401
[33] Julie Funn, Jane Funn, Christine Masuzumi, Herb Nomura, email correspondence, October 9, 2018 – December 19, 2018.

Christine, had this to say, " It was my understanding that the reason our Mom and Dad got married was due to Mom losing her Dad and I thought, younger brother to TB[tuberculosis] when she was in her teens. At that time, it was 'taboo' for a Japanese to marry another Japanese whose family was 'tainted' by TB, so Mom married Herbert, since he couldn't afford to send away to China for a bride."[34] It is intriguing and enlightening to see the ways mixed couple relationships transpired during a time where miscegenation was not only unlikely and frowned upon by each individual race or cultural group, but also illegal in many states until 1968. Julie, the eldest, states, "China and Japan were at war when they married and they probably couldn't have gotten married if either of them had very many close relatives here."[35] The siblings add an interesting perspective of their unique family's situation as well as showing the harsh realities of the concentration on those in mixed marriages who were forced to separate due to one being incarcerated.

When focusing on those who were multiracial and should have been entitled to exemption, it becomes clear that the rules of the MMP didn't apply to all. Remember that the WDC could deny any individual on the basis that they could be a potential threat to the United States. While the women Ross Ereneta and Soterio Eusebio, both multiracial and fifty percent Japanese, were never required to evacuate,[36] the man James Oastler, a half-Japanese half-Scottish man, was not only evacuated but refused to even bother with applying for exemption.[37]

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[34] Christine Masuzumi, email correspondence with author, November 3, 2018.
[35] Julie Funn, email correspondence with author, November 3, 2018.
[36] Letter from Major Ray Ashworth to L. G. White regarding the investigation of Mrs. Ross Ereneta and Mrs. Soterio Eusebio, persons of Japanese ancestry, January 29, 1943, MMP.
[37] List of families at Tanforan Assembly Center which appear to be eligible for release under the policy letter of July 12, 1942, concerning mixed marriages but which have expressed a desire to remain in the center, February 18, 1943, MMP.

While these are only three instances to compare, questioning whether or not the gender of Ereneta and Eusebio played a role in their automatic immunity to evacuation is not unwarranted.

The policy document continues with more information for those who sought exemption and those enforcing and deciding the outcomes, including how to interview potential exemptees, and the paperwork required for them to fill out. As I stated before, Goebel in the last paragraph of the original memorandum clearly states that, "care must be taken not to promise said families or persons release from the centers." It's a final warning that the one beacon of hope for freedom for many of the incarcerated Japanese Americans, could be taken away at the discretion of the WDC.

As outlandish as this racial policy seems, it is unarguably common in United States history that even our Constitution wasn't exempt from the effects of racism. The foundation of our country was built on racism and exclusion, making the fact that in 1942 we imprisoned tens of thousands of people based solely on their race not very surprising. This policy is just a portion of the tale of injustices brought against Japanese Americans. But how did the United States government get to the point of a mass incarceration in the first place, and soon after the use of the Mixed Marriage Policy?

Part II: Breaking the Constitution

"If it is a question of safety of the country, or the Constitution of the United States, why the Constitution is just a scrap of paper to me." – John J. McCloy, Assistant Secretary of War, 1942.[38]

For years prior to the attack on Pearl Harbor, the possibility of war had circulated through the War Department's executives' minds. The threat of the potential use of concentration camps became a spoken possibility and fear, even by Nisei, as early as 1937.[39] But how does the plan to incarcerate an entire demographic group of people come to fruition? Most are aware of the cliché of large governmental policies being discussed in back rooms by powerful White men. This is however, true in the case of the Japanese American incarceration.

Franklin Delano Roosevelt signed and issued Executive Order 9066 February 19, 1942, but the creation of this document, spanning over the course of two months, was plagued by doubt, disagreement, public outcry, and the attempted and successful bending and breaking of Constitutional rights. Many powerful members of the United States government played a role in the order's construction, such as much of the War Department; while others in the Justice Department opposed its clear lack of necessity and broach of personal freedoms. Understanding the conception of American mass incarceration will help us to understand the mindsets and motivations of those who ran this operation and the eventual creation of the Mixed Marriage Policy.

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[38] Kai Bird, *The Chairman: John J. McCloy, the Making of the American Establishment*, (New York: Simon and Schuster, 1992), 149-150.
[39] Daniels, *Prisoners without* Trial, 23-24.

We're all aware of the massive and instant effect the bombing of Pearl Harbor had on the American people: panic, fear, finger pointing. However, within the government, especially in the War Department, one would expect a state of urgency and calm awareness in order to create as close to an objective solution as possible. This ideal was believed and practiced by some, while others fell into the trap of appeasing and inciting public discourse of dangerous racism. I will be examining, and to the best of my ability, analyzing these major players' roles and reasonings in the decision to incarcerate not only Japanese descent individuals, but American citizens, without an arguably justifiable cause.

Although FDR's name is signed to Executive Order 9066, he was not the creator or even a major contributor to the creation of this order. The men responsible were John J. McCloy, lawyer and the Assistant Secretary of War; Allen W. Gullion, Provost Marshal General (PMG) of the Army; and Francis Biddle, United States Attorney General and head of the Justice Department. Other important contributors included John L. Dewitt, Lieutenant General of the Army and head of the Western Defense Command (WDC), which was created as an immediate response to Pearl Harbor; Henry L. Stimson, Secretary of War; and Karl R. Bendetsen, Major and Chief of the Aliens Division of the PMG's office. These men not only played the largest roles in the incarceration of Japanese Americans, but each did so by means of different motivations and justifications which would influence many of their actions further into the internment, such as incorporating the Mixed Marriage Policy.

As quickly as incarceration was conceptualized, a line was immediately drawn between those for and those opposed. Generally speaking, it was the War Department in favor of mass evacuation and the Justice Department against. There were many factors that went into their reasonings.

The Justice Department, ran by Biddle, was vocally opposed to any total evacuation or use of concentration camps. They based their opinion on the statistical information obtained by multiple intelligence agencies including the FBI and Naval Intelligence. J. Edgar Hoover, head of the FBI, confirmed soon after December 7th that all suspected fifth column Japanese, or spies, had been rounded up and were no longer a threat to the United States.[40] Naval Lieutenant Commander Kenneth D. Ringle wrote, that the "entire 'Japanese Problem' has been magnified out of its true proportion," after estimating that any true threat from Japanese Americans could exceed no more than three percent of their entire population within the United States.[41]

Others argued that a mass evacuation and incarceration would violate constitutional rights. Biddle, alongside two other representatives of the Justice Department, Edward J. Ennis and James H. Rowe, Jr., all argued strongly against any type of forced evacuation, putting them directly at odds with the War Department. Hoover himself writes about the War Department's "hysteria and lack of judgement" in regard to their insistence on the need to evacuate.[42]

The opposing view of the War Department was not adopted by all right away. Even DeWitt, who became not only the biggest advocate for the camps because of blatantly racist reasons, but the most unyielding and reluctant to bend for any natural freedoms of Japanese Americans; was not convinced early on that a full-scale evacuation was the right option. The initial spear-header, was in fact the army's PMG Allen Gullion, who spent the crucial two months after Pearl Harbor convincing his colleagues within the army that this was the only way. He achieved this goal by fabricating information about the Japanese Americans as being far more

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[40] *Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians*, (Washington D.C.: Civil Liberties Public Education Fund, 1997), 55.
[41] Bird, *The Chairman*, 156.
[42] *Personal Justice Denied*, 64.

dangerous than they were, as well as planting the seeds of sabotage as an inevitable threat without any proper evidence to support his claims.[43] This approach worked in convincing many including DeWitt, Stimson, and McCloy.

Prior to Gullion's fear mongering, McCloy had been the toughest sell in the War Department. Coming from a background in law, he remained apprehensive to break it. This apprehension juxtaposed to his priority in national security led him to make the controversial but unsurprising for war time statement, "if it is a question of safety of the country, [or] the Constitution of the United States, why the Constitution is just a scrap of paper to me."[44] McCloy was ready to disregard the rights of Japanese Americans if it meant protecting the White ones.

He would later go on to manipulate his motivations by pretending he was protecting the Japanese Americans by imprisoning them. After spending a weekend with Japanese American Citizens League (JACL) members, and listening to their proclaimed loyalty to the United States and wishes to cooperate fully, McCloy had this to say in response, "We know that the great majority of citizens and aliens are loyal, and being appreciative of that, we are most anxious to see that you don't suffer any more than necessary the loss of property values .... We want to have conditions [in the camps] just as humane and comfortable as is possible to have them. Above all, we want to give you protection."[45] Through this statement, McCloy's biographer Kai Bird argues that McCloy, and soon other politicians, created an elaborate excuse for incarceration. Bird states, "implied was the idea that, if racism was involved, it was not the government's racism, but the government's desire to protect the Japanese Americans from the

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[43] Bird, *The Chairman*, 151.
[44] Ibid., 149-150.
[45] Ibid., 157.

racism of other citizens, that required an evacuation"[46] This however, was not the reason for mass evacuation and only mentioned after McCloy, and others, began to feel doubt and guilt for the entire internment process.

McCloy also attempted to right his wrongs by advocating for certain Japanese Americans he believed to be loyal to the U.S. The reason for McCloy's backtracking is likely the fact that he always played around the middle ground, making his true intentions difficult to analyze. Was he outwardly racist, or was he unaware of the implied racism of his actions? Did he truly believe he was protecting America by incarcerating thousands of people? We will see that it is not clear with McCloy, as it is with the others, and I will examine his actions further on.

Stepping back again to January of 1942, while Stimson was on board with Gullion's plan, he also saw potential obstacles.

> The second generation Japanese can only be evacuated either as part of a total evacuation, giving access to the areas only by permits, or by frankly trying to put them out on the ground that their racial characteristics are such that we cannot understand or trust even the citizen Japanese. This latter is the fact but I am afraid it will make a tremendous hole in our constitutional system to apply it.[47]

There was one perceivable way around what should have been an uncompromising document, and that was to obtain the approval of the President.

Up to this point all other bodies of government and the majority of White Americans were not just approving of, but demanding the evacuation of all Japanese Americans from the West Coast. Much of this had to do with media outlets predicting future attacks on the West Coast and portraying Japanese Americans as potential enemies of the state. The most widely

[46] Ibid., 158.
[47] Ibid., 151-152.

known and problematic of these outlets was the newspaper article by Walter Lippman, titled, "The Fifth Column on the Coast." Published on February 12, 1942, this article was the epitome of racialized fear against the Japanese in the States, as well likely the final push for the President, Congress, and American people to publicly agree to forcibly evict thousands from their homes.

In his infamous article, Lippman off the bat enticed the fear of the enemy on the home front:

> For while the striking powers of Japan from the sea and air might not in itself be overwhelming at any one point just now, Japan could strike a blow which might do irreparable damage if it were accomplished by the kind of organized sabotage to which this part of the country is specially[sic] vulnerable.[48]

Quick on his feet, Lippman also acknowledged the fact that no sabotage attacks had yet happened, or even been attempted:

> These are facts which we shall ignore or minimize at our peril. It is also a fact that since the outbreak of the Japanese war there has been no important sabotage on the Pacific Coast.
>
> From what we know about Hawaii and about the Fifth Column in Europe this is not, as some have liked to think, a sign that there is nothing to be feared. It is a sign that the blow is well-organized and that it is held back until it can be struck with maximum effort. [49]

Lippman's ability to justify the lack of danger as a sign of even greater danger is masterfully manipulative and frustratingly effective. This argument is believed to have been the final persuasion for many army officials, including John McCloy.[50] Throughout the article, Lippman

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[48] Walter Lippman, "The Fifth Column On The Coast," *Washington Post*, February 12, 1942.
[49] Ibid.
[50] Bird, *The Chairman*, 153.

did not name Japanese Americans as fifth columnists, but was still able to explain the use of drastic measures in time of war regardless of the constitution:

> The Pacific Coast is officially a combat zone. Some part of it may at any moment be a battlefield. Nobody's constitutional rights include the right to reside and do business on a battlefield.
>
> ....
>
> This is in substance the system of policing which necessarily prevails in a war zone.... Under this system all persons are in principal treated alike. As a matter of national policy there is no discrimination. But at the same time the authorities on the spot in the threatened region are able to act decisively, and let the explanations and the reparations come later. [51]

Lippman was again successful in stating, firstly, what one would assume as common law, that no one should be discriminated against through policy. However, he striped this right away by declaring it the right of the United States government to shoot first and ask (or answer) questions later, in order to maintain national security. Furthermore, his omission of naming who exactly would be affected by such policing was also a tactic used by Roosevelt and the writers of Order 9066. By attempting to hide the racialization of their policy, they were able to justify it in the eyes of the law.

When comparing the strategy of sidestepping basic constitutional rights through the careful writing and non-specific language of Executive Order 9066, to the Mixed Marriage Policy which clearly stated the racial mixes of Japanese American individuals and marriages that would be eligible for exemption, confusion arises from the inconsistencies between these two policies. What would make this change in jargon politically advantageous? We know that in order for mass incarceration to have been legal enough to happen, obscure language was necessary to prevent the Executive Branch from creating a clearly racially based segregation of

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51 Lippman, "Fifth Column."

Japanese Americans. Intelligent lawyers and department heads such as McCloy and Stimson were fully aware that, while the intentions of the government were clearly racist, the legal steps toward their goal had to circumvent strikingly racialized discourse, to become vague and ambiguous legalese.

Immediately following the Executive Order, the WDC began forcibly removing families from their homes, packing them into trains, and railing them off to hastily created "assembly centers," where they would remain in horrid conditions until moved somewhere more permanent. These permanent locations would be the ten, now relatively well known, concentration camps. These were managed by another, newly created by the President, organization, the War Relocation Authority (WRA). The WRA was created in order to manage what quickly became a difficult, time consuming, and morally objectionable project[52]

Interestingly, the first uses of the Mixed Marriage Policy were implemented not long after the process of relocation to assembly centers began. Pin-pointing the exact time and reason this policy was created is somewhat complicated, in that a precise paper trail is lacking. It's logical to assume that many families questioned their necessity to evacuate if in a mixed marriage. According to McCloy's biographer Kai Bird, "In the first week, dozens of Nisei married to Caucasian Americans requested individual exemptions from the evacuation orders."[53] Bird then makes the claim that as a result of so many people coming forward in circumstance of possibly justifiable exemption; such as members of the military, the elderly, the ill, and young orphans; McCloy then advocated for these exemptions to Bendetsen and DeWitt; who adamantly

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[52] Daniels, *Prisoners without Trial*, 55-56.
[53] Bird, *The Chairman*, 159.

up to this point denied all exemptions. Further, according to Bird, McCloy therefore had a direct impact on the decision to create the Mixed Marriage Policy.

Bird's argument stemmed from a conversation McCloy had with Bendetsen regarding a special scenario where McCloy felt a specific case deserved exemption. This case consisted of a Japanese male and pastor of an all-White Baptist church, who argued that his internment would be unconstitutional because it was based on his race.[54] McCloy, ironically, agreed with this man, Keizo Tsuji. I call this ironic because of McCloy's previous willingness to completely disregard the Constitution in favor of what he believed to be national security. Why the change? Many reasons are possible. McCloy could have been worried over potential lawsuits against the evacuation (which Bird seems to imply), that could win in the Supreme Court and derail the plans of the army. He also could have sympathized with the man due to his ties with an all-White Christian church. Less likely, but still possible, it may have been a good old-fashioned change of heart. Either way, McCloy spoke on behalf of this man, "I wonder whether as a matter of law and as a matter of policy it might not be well to include some exemptions of Japanese as well as Germans and Italians."[55] According to Bird, this conversation directly resulted in the Mixed Marriage Policy, which was written shortly after, by the Office of the Provost Marshal General (PMG), Allen Gullion.

McCloy's man was not exempted from relocation in the end, but Bird's insinuation is clear: because of McCloy's willingness to speak up for exemptions on the basis of Constitutional rights, the army decided to allow specific exemptions they deemed either worthy or necessary for individuals who could meet the strict criteria of the Mixed Marriage Policy. However nice this

[54] Ibid., 159.
[55] Ibid., 160.

explanation seems, it leaves many holes. Why would the Office of the PMG draw up a policy as a result of a man seeking exemption, when said policy would never exempt said man? I believe McCloy did have a strong say in this matter. His word was highly respected in all executive departments at this time. Yet, I also believe there is more to this story. In the next section, we will take a look at some of the ways McCloy attempted to cover his tracks, by attempting to change the Mixed Marriage Policy.

Part III: McCloy's Regrets

"The mixed-marriage policy has gone forward satisfactorily since its inception. Under present circumstances I deem it unwise to sugment[sic] it by the addition of new categories of eligibility." – John L. DeWitt, Head of the Western Defense Command, June 16, 1943.[56]

As I examined in the previous section, John J. McCloy in numerous instances expressed his doubts about the Japanese internment. He even advocated for the release of certain loyal individuals. And directly from this advocation followed the Mixed Marriage Policy. McCloy, apparently being unsatisfied with the limited exemptions allowed by the MMP, pushed for more. This was done through multiple correspondences with the head of the Western Defense Command, John L. DeWitt.

Regardless of McCloy's insistence, DeWitt was left to make the final decision while in charge of the WDC. This likely affected his attitude toward the entire incarceration, feeling the need to defend and uphold what he had so fervently defended, designed, and dictated. DeWitt's lack of flexibility may have been what led to his eventual removal from the WDC project, being replaced by Delos C. Emmons in June of 1943. As we'll see, McCloy did not relent in attempting to sway DeWitt in the following correspondence between the two.

Assistant Secretary of War John J. McCloy reached out to Lieutenant General John L. DeWitt on February 11, 1943 in a letter addressing the Mixed Marriage Policy and what McCloy saw as room for reformation. McCloy remained diplomatic, claiming he had, "no desire to… urge a revision of your [DeWitt's] policy on mixed marriages, I do feel the time and situation is

[56] Correspondence between Head of the WDC John L. DeWitt to Assistant Secretary of War John J. McCloy regarding proposed changes to the Mixed Marriage Policy, June 16, 1943, MMP.

such that a re-examination of policy can be made."[57] At this time DeWitt was the head of the Western Defense Command, the military authority of all of the western half of the U.S., while McCloy was Assistant Secretary of War in charge of civilian affairs. As we shall see, these two continuously butted heads on the handling of Japanese Internment. After reminding DeWitt that processes had already begun to incorporate released Japanese back into society with actions such as the creation of an American Japanese combat unit, McCloy has this to say:

> In the early days of the evacuation steps had to be taken which involved rough lines. However, at [the] present instead of denying spouses of mixed marriages residence in the military area solely on the arbitrary establishment of racial background, would it not be better to establish the loyalty or disloyalty of the individual as a guide to granting a clearance? It seems difficult to predicate the loyalty test of a Japanese spouse on the status of whether or not the union possessed unemancipated children, or as to whether or not a Japanese spouse is married to a civilian or a soldier.[58]

McCloy is not holding back. He not only calls into question the act incarceration all together: "rough lines;" but goes as far as to imply the racism of the entire operation: "the arbitrary establishment of racial background." McCloy's personal beliefs had to this point been unclear, seeing as he openly admitted to going against the Constitution in order to preserve national security, but quickly changed his stance and began working around and against DeWitt to eradicated total incarceration as diplomatically as possible. In the closing paragraph of his letter he states:

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[57] Correspondence between Assistant Secretary of War John J. McCloy to Head of the WDC John L. DeWitt regarding proposed changes to the Mixed Marriage Policy, February 11, 1943, MMP.
[58] Ibid.

> My concern in this matter is actuated by the influence your policies will have on the related War Department policy which recognizes the loyalty of individuals rather than assuming disloyalty to a group as a whole, and to the efforts of the War Department to assist in a general solution of the Japanese Problem.[59]

At this point McCloy has made it clear, that it is now the interests of the War Department vs. the WDC; the interests of McCloy vs. DeWitt. This is a total contradiction to the actions of the War Department a year prior, in early 1942, and likely represents the realization of McCloy that evacuation was never necessary to begin with.

DeWitt's response takes only four days. He starts off with an explanation on what he believed were the reasons for internment initially:

> At the time of evacuation, the Japanese were regarded with suspicion and mistrust by the average resident of the West Coast. To curtail mounting hysteria, rioting and public demonstrations, and for many other military reasons, the Japanese were evacuated under complete Federal supervision. Voluntary migration had to be abandoned because of danger to [the] Japanese. The situation with respect to the re-acceptance of the Japanese in the evacuated areas has not altered. Although certain individuals are prone to believe that persons of Japanese ancestry would be acceptable to the communities from which they were evacuated, I am convinced that this belief can be regarded only as wishful thinking.[60]

Firstly, DeWitt is admitting to the effects of the social and civilian outcry toward Japanese Americans directly following the Pearl Harbor attack. This initial shock, as he states, turned into mass hysteria fed by the media, and resulted in urges from Congress for Japanese forced evacuation. DeWitt lists "many other military reasons" last because, as members of the War Relocation Authority and federal officials such as J. Edgar Hoover have stated and provided

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[59] Ibid.

[60] Correspondence between Head of the WDC John L. DeWitt to Assistant Secretary of War John J. McCloy regarding proposed changes to the Mixed Marriage Policy, February 15, 1943, MMP.

proven evidence for, the majority if not all Japanese Americans were never a threat to national security.[61] DeWitt then confirms his belief that the majority of national White perspectives were still against accepting the return of Japanese Americans, and in a subtle jab, calls McCloy's ideas wishful thinking.

DeWitt's letter continues:

> If the present mixed-marriage policy is modified on the theory that loyalty can be determined and Japanese wives who are allegedly loyal be permitted to return to the evacuated area, there would be no real justification for not allowing any such Japanese to return. The proposal to extend the policy to include childless families is highly objectionable because it will pave the way for large numbers of Japanese women to return to the evacuated areas, and has no relation to the original objective of protecting mixed blood children and adults from a Japanese environment.
>
> It is unwise to initiate any policy which will lead to the return to the evacuated Pacific Coastal area of any persons of Japanese ancestry beyond those now being permitted to return.[62]

DeWitt held firm and made the point that if Japanese Americans were to be released based off of their measured loyalty to the United States, then any Japanese American could be allowed exemption. This thought process was not incorrect, and it raises the question of whether McCloy was also aware of these implications. Did he, and therefore the War Department, begin to want the release of most Japanese Americans who could prove loyalty, regardless of their racial ties to Caucasian-ness? It's possible that McCloy, from early on, was no longer able to excuse the clear broach of Constitutional rights caused by the use of concentration camps. As a lawyer and member of the Executive Branch, these worries must have arisen for McCloy, but then why would

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[61] Bird, *The Chairman*, 159.

[62] Correspondence between Head of the WDC John L. DeWitt to Assistant Secretary of War John J. McCloy regarding proposed changes to the Mixed Marriage Policy, February 15, 1943, MMP.

Dewitt allow for the creation of the MMP in the first place if loyalty and the Constitution were not of his concern? I will answer this question by examining the racial policies and overall national racism of the United States in the early to mid-twentieth century, which I believe are the key to discovering the motivations behind the Mixed Marriage Policy.

Part IV : Race as a Foundation for Constitutional Rights

"I pointed out that what these foolish leaders of the colored race are seeking is at the bottom social equality, and I pointed out the basic impossibility of social equality because of the impossibility of race mixture by marriage." Henry L. Stimson, Secretary of War, January 24, 1942.[63]

We know from the rules of the original Mixed Marriage Policy memorandum, that mixed couples consisting of a Japanese male and Caucasian female with multiracial children were allowed to leave the camps if they settled outside of the evacuated areas, or the West Coast. To remain within said areas, outside of incarceration however, the family had to consist of a White male and Japanese female with multiracial children. With the 1943 revision of the MMP we see that it completely excluded any form of exemption for couples outside of the White male, non-White female dynamic.

This specific requirement could be explained in multiple ways. If the government was attempting to maintain a White America, then believing that a White male run household would be more receptive to White culture was a reasonable assumption. But is there more to this than meets the eye?

Moving farther back in time nearly a hundred years to 1868, we see the case of Leah Foster. Alfred Foster, a White slave owner, emancipated Leah, his former Black slave, as well as their five multiracial children. After Alfred's death in 1867, his will left his estate to Leah and their children. "My farm, or plantation … together with all the appurtenances and improvements thereon to Leah a coloured woman formally owned by me but now free and her five children,

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[63] *Personal Justice Denied*, 46.

namely Fields, George, Isaac, Margaret and Monroe."[64] Further into his will, Alfred states, "it is my will that should the freedwoman Leah at any time after my Death marry she thereby relinquishes all her interest in my estate."[65]

Quickly after Alfred's death and Leah obtaining her inheritance, two White males, Benjamin Bonds and Elisha Ryon attempted and succeeded in seizing her land for themselves. In a bold attempt, in 1868 Leah took the men to court claiming her right to two/thirds of the estate as Alfred's widow. This battle seemed unwinnable; a Black woman in the south shortly after the Civil War, against two established White men claiming her property. The odds were stacked against her.

As Peggy Pascoe describes in her book, *What Comes Naturally*, Leah and her White male lawyers argued that because Alfred had made it clear in nearly every way that Leah was his wife, she was entitled to wifely rights after the death of her husband. And unexpectedly to all, the courts ruled in her favor. Pascoe states, "Alfred Foster's behavior in sleeping with Leah, emancipating her and the children, admitting paternity, and supporting them was enough to add up to the legal presumption of marriage."[66] Her reasoning was the Judge's inclination to honor the wishes of Alfred Foster, a White male. "This seemingly novel decision was quite traditional: it was rooted in the tendency to see every legal issue through the lens of the wills and rights of White male actors."[67]

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[64] Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America*, (Oxford: Oxford University Press, 2008), 18
[65] Ibid., 18.
[66] Ibid., 35
[67] Ibid., 39

Because a White male decided his Black former-slave was entitled to his land, Leah was granted it. It was no longer a debate of her race and entitlement, or her rights to the land, but instead the judge relied solely on the will and intentions of a White land-owning male citizen, the most powerful agent in the United States at this time, and arguably today. When one compares this situation to the mass internment of Japanese Americans, the resemblance between the two seems ambiguous. But if we think in regard to miscegenation, or interracial marriage, and the usage of the Mixed Marriage Policy to benefit families with a White male head of household, we can attempt to piece it together.

If a multiracial couple consisting of a White male and Japanese American female came forward to testify against the incarceration of Japanese Americans, pointing out its clear disregard for the constitutional rights of said Japanese Americans; their case, versus that of just Japanese American individuals, would not only have had a higher chance of being heard and obtaining public recognition, but a fair chance at winning – therefore proclaiming the entire operation of internment unconstitutional. This was the fear of the WDC and WRA. This is why the Mixed Marriage policy was drafted so quickly.

As I quoted previously, Secretary of War, Henry L. Stimson, wrote in his personal diary on February 10, 1942, regarding Japanese incarceration, "The second generation Japanese can only be evacuated either as part of a total evacuation, giving access to the areas only by permits, or by frankly trying to put them out on the ground that their racial characteristics are such that we cannot understand or trust even the citizen Japanese. This latter is the fact but I am afraid it will make a tremendous hole in our constitutional system to apply it."[68] Stimson, an open supporter

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[68] Bird, *The* Chairman, 151-153.

of concentration camps and one of the key writers of Executive Order 9066, was able at an early point, to recognize the unconstitutionality of the entire ordeal. Yet the order was still drawn and signed by February 19.

A month later in April, Assistant Secretary of War John J. McCloy makes an argument for a specific Japanese American's exemption, "I wonder whether as a matter of law and as a matter of policy it might not be well to include some exemptions of Japanese."[69] McCloy's biographer Kai Bird, in an attempt to analyze McCloy's reasoning behind this change of heart, states, "He [McCloy] reasoned that a few such exemptions could well give the government the evidence it might later need in the courts to prove that the evacuation was not administered strictly on the basis of race."[70] According to Bird, McCloy had predicted the judicial implications of internment and attempted, as well as Stimson, to circumvent them.

Immediately following McCloy's suggestion, was the writing and enforcement of the Mixed Marriage Policy. As I've stated before of McCloy's impact on the MMP, his wishes for specific loyal Japanese Americans to be exempted, did not match up with the Mixed Marriage Policy's requirements for exemption. But by examining Bird's analysis of McCloy's argument of avoiding future judiciary issues on the constitutionality of internment, it becomes clear why the Office of the Provost Mashall General, Allen Gullion, so quickly produced the MMP. The sole purpose of this policy was not to show mercy to those of Japanese descent who had assimilated to White culture, but to adhere to the wishes of White men who chose to create relationships and families with Japanese American women, therefore protecting the United States government

[69] Ibid., 160.
[70] Ibid., 160.

from said White men who could potentially fight in court for their rights to these choices, and the rights to their chosen families.

American White policy makers were no longer afraid of the claims to the constitution by Japanese Americans. The public was on their side. America was at war with the Japanese, therefore anything goes for the sake of national security. But when United States policy begins to infringe upon the rights of White American men, society and the courts are far less inclined to agree with it. This was the case for Leah and Alfred Foster, as well as countless others who challenged anti-miscegenation legislation as White male, non-White female couples.

One could argue that the 1968 *Loving v. Virginia* case that outlawed all anti-miscegenation law as unconstitutional, is another instance of upholding White male privilege and manipulating the courts against racist law through the lens of White male wishes. Richard Loving, a White man, and Mildred Loving, a lighter skinned Black woman, represented the perfect couple as the face of miscegenation and the rights of interracial couples. Their being chosen was no accident. It is strongly argued and supported that had the situation of the Loving's been reversed, with a Black male and White female dynamic, the outcome would not have been in their favor.

We've established the power of the White male, but the power of White skin in general can go beyond patriarchy. An example of this being the abolitionist movement of the 1860's and the use of enslaved and formerly enslaved children's photos. Three young children, Rosa, Rebecca, and Fanny Lawrence, all formerly enslaved, were photographed in the North to be used as propaganda against the use of slavery. This was due to their White appearance. Mary Niall Mitchell argues in her article "'Rosebloom and Pure White,' or so It Seemed" that, "because the girls looked white, their images appealed to Victorian sentiments about white rather than black

or 'colored' girlhood: … Furthermore, the pictures played upon fears that white people could become enslaved in the South."[71]

Mitchell's argument is clear: abolitionists used the Whiteness of these multiracial enslaved children to play on the sympathies and fear of White people. Sympathy for Black slaves, or Japanese internees, was not guaranteed nor likely. But when a White child or White male adult is the one suffering, the White community, and therefore White law makers, must listen. The power of the White voice in United States history is not only problematic, but extremely telling. The powers behind the Japanese incarceration were not naïve to this power and by implementing the Mixed Marriage Policy, made it unlikely for it to interfere. If White male families were excused from the atrocities of internment, then there would be no reason for them to speak out and challenge the WDC in court.

McCloy saw the problematic racism of Japanese incarceration and later took steps to fix them. When he pointed these issues out to the WDC, DeWitt, Bendetson and Gullion quickly found a way to prevent powerful players, i.e. White males, from challenging the internment's constitutionality. Thus, the Mixed Marriage Policy was born, and White male advocates against their Japanese families being incarcerated were appeased.

Some may still argue, as the policy makers did, that the goal of internment was assimilation, therefore those currently assimilated by White dominated households were entitled to exemption. The flaw in this argument lies within the cases of those who met the assimilation standards yet still remained behind barbed wire. Such as Dennis Tojo Bambauer, a half-White, half-Japanese American orphan imprisoned at Manzanar. Tojo states in an interview between

[71] Mary Niall Mitchell, "'Rosebloom and Pure White,' or so It Seemed," *American Quarterly* 54, no. 3 (2002): 373.

him and Reiko Katabami. that prior to the internment, he lived only with Caucasian children at the Children's Home Society in L.A."[72] He was then asked about his experiences there by Katabami, "Was there any racial conflict or physical or mental abuse there?" with Tojo responding, "No. I didn't know that I was Japanese. I thought I was Caucasian like all the other kids."[73] He went on to describe how his experiences at Manzanar contributed to his recognition of his Japanese heritage and culture.

Tojo states, "if I hadn't had the camp experience, I probably would never have known parts of the Japanese culture … I would have never been exposed to the Japanese because I would have been only exposed to the Caucasians."[74] By placing Tojo in the Manzanar concentration camp and exposing him to people of similar backgrounds, the opposite of assimilation took place, and an already self-proclaimed Caucasian was able to discover the other side of his ancestry. While a bittersweet realization for Tojo, this incident contradicts the government's apparent goal.

The gendered aspect of the MMP also furthered in contradicting this goal, as well as further supports my theory on the WDC's fear of White male retaliation. The original memorandum of the MMP stated that those couples involving a "Japanese husband and Caucasian wife and mixed blood children may be released from the center and directed to leave the Western Defense Command area."[75] This option however only existed at the assembly center level and was removed later on as internees were moved into permanent camps.

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[72] Catherine Irwin, *Twice Orphaned Voices from the Childrens Village of Manzonar*, (Fullerton: Center for Oral and Public History, California State University, 2008), 258.
[73] Ibid., 259.
[74] Ibid , 269.
[75] Memorandum from Herman P. Goebel, Jr. to A. H. Cheney on the release of mixed marriage families, July 12, 1943, MMP.

Therefore, for couples such as Estelle Ishigo, a White woman, and her husband Shigeharu Arthur Ishigo, a Japanese American, and Nisei man, they were not afforded the same privileges as other mixed couples. Because they had no children and the male head of household was of Japanese ethnicity, the two were sent to the concentration camp Heart Mountain in Wyoming, where they would spend three years. Estelle is now famous for her paintings of camp life published in the book entitled, *Lone Heart Mountain*, where she depicted this scene of early camp life.

> "We watched in fascinated wonder as fearful and bewildered hundreds poured into these strange camps each day for 'protective custody.' There were some with blond, brown or red hair – and eyes as blue as the sky. Some were related through marriage, some were their children and some from remote ancestors of both countries who for generations had known and loved no other country but America."[76]

Estelle's story told of many others like her, confined to the camps meant to imprison Japanese Americans, regardless of the fact that they themselves were not Japanese. If the army had never issued the Mixed Marriage Policy, then confining all those involved with Japanese Americans would make sense to their argument of "national security." But allowing those in relation to White males, or those of mixed blood with zero ties to Japanese males, was done to avoid the public and legal backlashes of incarcerating White males and their half-White children. As Secretary of War, Stimson, pointed out, the evacuation and incarceration was entirely based on race. And the MMP was an ancillary added on the cover up issues that would clearly arise from their complete disregard for the Constitution.

The gendered aspect of multiracial policy transcends that of the United States. Benjamin Frommer, of Northwestern University, has discovered a similar situation that took place in Nazi

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[76] Estelle Ishigo, *Lone Heart Mountain*, (Los Angeles, CA: Heart Mountain High School Class of 1947, 1989), 9.

Germany at nearly the exact same time as in the United States. While Japanese Americans were being moved to incarceration camps, Jewish Germans, Czechs, Poles and many others in the Germanic and Slavic regions, were being shipped off to work, concentration, and death camps by the Nazi regime of Germany until the end of WWII. This atrocity and genocide is widely known as the Holocaust. What most are unaware of however, is that many mixed marriages between Jews and non-Jews existed during the Holocaust. Just as policy arose in the American setting, we see the same occurrence for Nazi Germany, and Nazi occupied Bohemia and Moravia.[77]

In order to adjust to the mixed marriage situation, mixed married couples in Germany and German territories were categorized as privileged or unprivileged depending on the gendered dynamic of the mixed couple. A gentile husband (German "Aryan," Czech, or Non-Jew) and Jewish wife were labeled privileged, as well as gentile wives with Jewish husbands only if the two had mixed-race children who were not registered as Jewish. All other Jewish husband/gentile wife relationships were unprivileged.[78] This distinction meant that privileged families where the husband was German, could register their home as "Aryan," while all others had to register as "Jewish." This led many registered Jews to lose their property and jobs, which in turn, lead many of these couples to seek divorce in order to keep their homes and jobs. Frommer later explains that those Jews who did divorce their non-Jewish spouse, were far more likely to be sent to the concentration camps and lose their lives.[79]

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[77] Benjamin Frommer, "Privileged Victims: Intermarriage between Jews, Czechs and Germans in the Nazi Protectorate of Bohemia and Moravia," in *Intermarriage from Central Europe to Central Asia: Ethnic Mixing Under Nazism, Communism, and Beyond*, ed. Adrienne Edgar and Benjamin Frommer, (University of Nebraska Press, forthcoming).

[78] Ibid.

[79] Ibid.

Because Jewish wives married to gentile men could live off their husband's identity and not suffer from their husbands losing their jobs, as Jewish husband/gentile wives did, they were able to delay their transport to concentration camps until as late as 1945. Although, as Frommer describes, the Nazis did eventually attempt to separate these families, even going so far as to send gentile and Aryan husbands to work camps for not divorcing their wives. Frommer states that, "the deportation of the *Versippte*[gentile husbands to Jewish wives], however, was not carried out with nearly the thoroughness that the Nazis had exerted against the Jews because of the fear that intermarried gentile men might find the wherewithal to resist"[80] While this situation was life threatening, and one can truly not compare what those who suffered from the Holocaust went through to the American use of concentration camps; when we place together the Mixed Marriage Policy and the categorization of privileged and unprivileged Jews, the distinctions are clear. Jewish women married to non-Jewish men were able to use their intermarriages to their advantage long enough to survive mass genocide. And those committing the genocide catered to those fitting a certain criterion because they were afraid of German and gentile male retaliation to the loss of their Jewish wives.

Moving back to the question of racial dominance in a legal system, *Critical Race Theory* author, Derrick Bell, states early on in his chapter, that, "whites of widely varying socio-economic status employ white supremacy as a catalyst to negotiate policy differences, often through compromises that sacrifice the rights of blacks."[81] While Bell is speaking of the White and Black dynamic of the United States, most will agree that White supremacy affects all peoples of color, including Asian Americans. The main point to take from this excerpt however,

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[80] Ibid.

[81] Derrick Bell, "Property Rights in Whiteness-Their Legal Legacy, Their Economic Costs," in *Critical Race Theory: The Cutting Edge*, ed. Richard Delgado, (Philadelphia: Temple University Press, 2013), 75.

is when Bell labels White supremacy as a "catalyst to negotiate policy differences." We can apply this to the ability of the government to incarcerate Japanese Americans in the first place, as well as to the creation of the MMP as an attempt to avoid White interference.

We know that public opinion had a large say in Japanese American evacuation and internment, as McCloy pointed out himself in a diary entry about the pressures of the public: "Dangers too for the reason of yielding to local pressures which demand intelligent action, it is a problem but I'm afraid no easy solution or one which will not be criticized whatever way we move."[82] While the War Department was criticized by the Justice Department for the internment, most of the public was on board. In fact, it was the Mixed Marriage Policy that was instead publicly criticized, albeit gaining far less media attention as the entire incarceration.

On December 12, 1943, Washington State Congressman Warren G. Magnuson, wrote a strongly opiniated letter to Colonel Moffett of the Western Defense Command:

> Suggestion has come to us in congress that Civil Affairs Branch Western Defense Command has ordered or is considering [to] order that certain Japanese Americans in mixed marriage status be released from relocation centers and permits issued to allow them to return to prohibited areas. Vast majority coast residents violently opposed to this procedure and feel that all Japanese for security reasons should be barred from the West Coast Areas for the duration. Sentiment on [the] matter has not changed. To the contrary it is stronger than ever in consideration of the fact that the shifting of the war emphasis to the defeat of Japan will make it less desirable to have any Japanese in and around ports of embarkation in [the] West. Congress would appreciate information on this and we sincerely hope no such order is being contemplated."[83]

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[82] Bird, *The Chairman*, 153.

[83] Copy of a letter from Congressman Warren G. Magnuson to Colonel Moffett of the WDC regarding the return of Japanese Americans under the Mixed Marriage Policy, December 3, 1943, MMP.

The American people and their elected officials as a majority opposed the return of Japanese Americans to the West Coast. The Mixed Marriage Policy was unpopular, unwanted, and unsupported by White U.S. citizens. This further supports the reasoning behind its creation. While the American people may have opposed, the WDC was afraid that White males affected by internment who decided to testify in front of the Supreme Court had a significantly higher chance of gaining its sympathy. While the initial internment may have highly been influenced by public outcry against the Japanese, this outcry was not enough for the WDC to not cover their tracks and protect their own backs by creating a policy that attempted to filter out potential White male voices.

Conclusion: Legal Injustice

"Only two of this Court's modern cases have held the use of racial classifications to be constitutional. See Korematsu *v.* United States, *320 U.S. 81 (1943). Indeed, the failure of legislative action to survive strict scrutiny has led some to wonder whether our review of racial classifications has been strict in theory, but fatal in fact." – Justice Luis F. Powell, Associate Justice of the Supreme Court of the United States, 1980.*[84]

Fred Toyosaburo Korematsu was arrested May 30, 1942. This was essentially for being recognized as an ethnically Japanese male walking freely on the streets of a Northern California town after the exclusion order, forcing Japanese Americans into concentration camps, was already in place.[85] Fred had attempted to avoid the forced eviction, and for that was arrested and later convicted for his so-called crimes. He was one of the handful of American citizens of Japanese ethnicity to take their cases to court in hopes of challenging the constitutionality of Executive Order 9066. *Korematsu v. United States*, as well as most of the others to come forward, lost. Korematsu was found guilty by not abiding to the exclusion laws that required all racially Japanese American citizens and residents to report to assembly centers and allow their self-incarceration. The Supreme court however, ignored the question of whether this incarceration was constitutional or not.[86] The ruling against Korematsu was argued by Supreme Court Justice Hugo Black due to his belief that just exclusion on the basis of race and ethnicity was not unconstitutional, and because Korematsu was not challenging the actual imprisonment of Japanese Americans, he had no case.[87]

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[84] *Personal Justice Denied*, 239.
[85] Roger Daniels, *The Japanese American Cases*, (Lawrence, Kansas: University Press of Kansas, 2013), 34-35.
[86] *Personal Justice Denied*, 236.
[87] Daniels, *Japanese American Cases*, 73.

Justice's Blacks argument however, inadvertently supported the only case to win in the favor of Japanese Americans: *Ex parte Endo*. Mitsuye Endo, after spending the entirety of the war behind barbed wire in an American concentration camp, was granted release on the basis that a proven-loyal American citizen cannot be unlawfully imprisoned due solely to her race or ethnicity.[88] This decision was made in December 1944 and is seen by many to be the reason for the return of Japanese Americans to the West Coast.

While the *Endo* decision marked the public turn toward the release of Japanese Americans that would slowly be executed over the next year, as we are now aware, many had already returned years prior or never entered the camps at all. The Mixed Marriage Policy allowed for multiracial couples made up of a White husband and Japanese wife, and individuals no more than fifty percent ethnically Japanese, who were all able to prove their Caucasian lifestyles, to potentially be exempt from confinement in the concentration camps. This policy was a direct contradiction to the entire incarceration process, that purposely dislocated and imprisoned individuals based entirely on their racial ties to Japan.

The Mixed Marriage Policy was an attempt to prevent White male agents from challenging the constitutionality of the unlawful incarceration of Japanese Americans. More than half of those incarcerated were American citizens, therefore their imprisonment violated the 14th Amendment of the Constitution by denying them their rights to due process and equal protection of the law, based exclusively on their race. It took three years into the government mandated incarceration, for a Japanese American who challenged the process in court to win her case (Endo) and for the Supreme Court to officially declare incarceration of loyal American citizens

[88] Daniels, *Japanese American Cases*, 75-78.

unconstitutional. It took another year and a half after for the total closure of internment camps and release of the remaining Japanese Americans. If a White male had needed to challenge the governments actions sooner, due to his Japanese American wife, and half-White children being imprisoned unlawfully, this verdict would have come sooner, and redress (official recognition, apology, and compensation by the government to those incarcerated) would not have taken until 1988.

It is time for us all to recognize not only the terrible actions committed against the Japanese Americans incarcerated during World War II, but the fact this was not this first, nor last time a demographic group was imprisoned because of the color of their skin and where they, or their parents were from. The enslavement of African and African Americans, the imprisonment of innocent Black men, the incarceration of immigrant children at the Mexican border. These are all examples from our past and our present. We must acknowledge these atrocities and understand why they have happened and continue to happen. More often then not they arise from the racial hierarchy this country was built on nearly 250 years ago.

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