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Thomas W. Joo
UC Davis School of Law

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URBAN RENEWAL AND SACRAMENTO'S LOST JAPANTOWN

THOMAS W. JOO*

I. INTRODUCTION

In the late 1950s, Sacramento, California demolished its Japantown in the name of “urban renewal.” Most of the neighborhood’s residents had been displaced to domestic concentration camps during World War II, and had returned just a few years earlier. By 1961, every resident of the neighborhood had been forced out again, and nearly every structure destroyed.¹ Like many other cities of the urban-renewal era, Sacramento used eminent domain, or the threat thereof, to take inner-city property and transfer it to private real estate developers. In addition to state, local, and federal funding, the costs of those transfers came from “vast, involuntary subsidies” from displaced residents.² Those residents tended to be poor people and people of color,³ leading James Baldwin to famously deride urban renewal as “Negro Removal.”⁴

Carol Rose has cited examples of government property takings where “denial of property is denial of membership in a community; it is a part of a radical othering.”⁵ Bernadette Atuahene has attempted to formalize this notion by introducing the concept of “dignity takings,” in which “the intentional or unintentional outcome is dehumanization or infantilization.”⁶

* Martin Luther King Jr. Professor of Law, UC Davis School of Law. I thank the participants at the Chicago-Kent Law Review’s 2016 Dignity Takings and Dignity Restoration symposium, the law review, and especially Bernadette Atuahene for her insightful comments. Thanks also to the UC Davis School of Law Intellectual Enrichment Committee, Ashutosh Bhagwat, Andrea Chandrasekher, Mark Hoffman, Brian Soucek, UC Davis Shields Library Special Collections, and the UC Davis Mabie Law Library staff (especially Rachael Smith and Aaron Dailey). I gratefully acknowledge the generous financial support of UC Davis and the UC Davis School of Law. This research would not have been possible without the remarkable archives and staff of the Center for Sacramento History, particularly Patricia Johnson, Dylan McDonald, and Rebecca Crowther.

1. SACRAMENTO REDEV. AGENCY, SACRAMENTO REDEVELOPMENT 8 (1961) [hereinafter SR 1961].

2. JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 5 (1961).

3. See, e.g., *Kelo v. City of New London, Conn.*, 545 U.S. 469, 522 (Thomas, J., dissenting).

4. Kenneth B. Clark, *A Conversation with James Baldwin*, in CONVERSATIONS WITH JAMES BALDWIN 38, 42 (Fred L. Standley & Louis H. Pratt eds., 1989).

5. Carol M. Rose, *Property and Expropriation: Themes and Variations in American Law*, 2000 UTAH L. REV. 1, 37 (2000).

6. Bernadette Atuahene, *Dignity Takings and Dignity Restoration: Creating a New Theoretical Framework for Understanding Involuntary Property Loss and the Remedies Required*, 41 LAW & SOC.



Atuahene's original case study focused on the South African apartheid regime's expropriation of real property from nonwhites. Unlike those persons, Japantown's displaced property owners received compensation through the same orderly legal process as others subjected to eminent domain. There appears to be no concrete evidence of racist motivation. The stated, plausible purposes of urban renewal in Japantown were increasing property values and thereby tax receipts, as well as civic beautification. The taking of Japantown property therefore seems to satisfy the requirements of the U.S. Constitution.

Many displaced residents, however, expressed the belief that their neighborhood had been singled out for unfair treatment because of their Japanese heritage. The takings were consistent with prior and contemporaneous anti-Japanese government actions, such restrictions on immigration, naturalization, property ownership, and, most egregiously, the incarceration of Japanese and Japanese Americans in concentration camps during World War II.⁷ In this context, unspoken or unconscious racism could have played a role in the decision to destroy Japantown despite community opposition. Moreover, regardless of the government's motivation, displaced residents, as well as the general public, could reasonably perceive the destruction of Japantown as manifesting official disregard for the human worth of Japanese and Japanese Americans. Thus, although the destruction of Japantown was probably constitutional, it nonetheless inflicted dignitary harm.

II. JAPANTOWN AND JAPANESE AMERICANS

A. Federal and Californian Anti-Japanese Law and Policy

Japanese laborers and farmers began immigrating to the U.S. in significant numbers in the late nineteenth century. Japan's rapid industrialization contributed to a surplus of unskilled farm labor while the U.S., having banned Chinese immigration in 1882, had a need for such labor.⁸ As in many cities, Sacramento's Japanese ethnic enclave developed in part as a defense mechanism against virulent racism.⁹ A 1911 report by the U.S.

INQUIRY 796, 812 (2016) [hereinafter Atuahene, *Dignity Takings and Dignity Restoration*]; see also Bernadette Atuahene, *Takings as a Sociolegal Concept: An Interdisciplinary Examination of Involuntary Property Loss*, 12 ANN. REV. L. & SOC. SCI. 171, 178 (2016).

7. The incarceration is commonly, and inaccurately, referred to as the "internment." "Internment" is a term of international law referring to the wartime detention of *enemy aliens*. During World War II, however, the U.S. also incarcerated non-criminal American citizens of Japanese descent with no proof of their disloyalty. See Yoshinori H.T. Himel, *Americans' Misuse of "Internment,"* 14 SEATTLE J. SOC. JUST. 797, 797-98 (2016).

8. KEVIN WILDIE, SACRAMENTO'S HISTORIC JAPANTOWN 15-16 (2013).

9. *Id.* at 38.

Immigration Commission noted that many Japanese immigrants were self-employed in small businesses due in part to “race prejudice.”¹⁰ Urban unions created California’s Asiatic Exclusion League, and a Sacramento chapter opened in 1908; the Japanese Exclusion League was founded in 1920.¹¹ V.S. McClatchy was an outspoken anti-Japanese activist who used his newspaper, the influential *Sacramento Bee*, as his mouthpiece. As the twentieth century progressed, nativists likened Japanese immigration to an “invasion” of America, foreshadowing the racial paranoia that led to mass incarceration during World War II.¹²

Like other Asians, Japanese immigrants were barred from American citizenship on the basis of their race until the mid-twentieth century. A 1790 statute permitted only “free white persons” to become naturalized citizens. After the Civil War, Congress considered lifting the racial qualification for naturalization. To prevent Native American and “Asiatic” naturalization, however, the statute was amended to include only white persons and “persons of African descent.”¹³ The Supreme Court later expressly held that this excluded Japanese aliens.¹⁴

The exclusion of Japanese from naturalization provided facially neutral euphemisms for racist state laws. State laws made citizenship a prerequisite for many occupations, including lawyers, accountants, physicians, and even funeral directors and barbers; a federal study attributed these laws to anti-Japanese discrimination.¹⁵ In the early twentieth century, several states, including California, also used the naturalization exclusion as the basis for statutes that forbade “aliens ineligible for citizenship” from owning agricultural land.¹⁶ All Asians were ineligible for naturalization, but Congress had already banned Chinese immigration in 1882; thus the “Alien Land Laws” mainly affected Japanese immigrants. The state attorney general who wrote California’s statute openly declared that it was intended to counter “race undesirability” by discouraging Japanese immigration and

10. *Id.* at 18.

11. *Id.* at 26–27.

12. Keith Aoki, *No Right to Own?: The Early Twentieth-Century “Alien Land Laws” as a Prelude to Internment*, 40 B.C. L. REV. 37, 48 (1998).

13. See IAN F. HANEY LÓPEZ, *WHITE BY LAW* 43–44 (2006).

14. *Ozawa v. United States*, 260 U.S. 178, 198 (1922).

15. U.S. DEP’T OF THE INTERIOR, *PEOPLE IN MOTION: THE POSTWAR ADJUSTMENT OF THE EVACUATED JAPANESE AMERICANS* 33 (1947), <https://ia802701.us.archive.org/4/items/peopleinmotionpo00unit/peopleinmotionpo00unit.pdf> [<https://perma.cc/BEN7-FRJ9>].

16. Aoki, *supra* note 12, at 55.

encouraging repatriation.¹⁷ The U.S. Supreme Court nonetheless rejected Equal Protection challenges to the statute in 1923 and 1924.¹⁸

Anti-Japanese sentiment in the early twentieth century, particularly on the West Coast, was so intense that it threatened the U.S. government's attempts to establish trade ties with Japan. Acting under a state law authorizing the segregation of "Mongolian" students, San Francisco established separate schools for Japanese children in 1906.¹⁹ This threatened to spark a diplomatic crisis. President Theodore Roosevelt brokered a deal with Republican politicians under which California would discourage segregation in exchange for federal restrictions on Japanese immigration. Roosevelt then negotiated the so-called "Gentleman's Agreement," under which Japan informally agreed to limit emigration to the U.S. The Gentlemen's Agreement was perceived as too lenient, however, and triggered a nativist backlash. Congress, adopting California's anti-Japanese euphemism, subsequently banned immigration by any "aliens ineligible for citizenship" in 1924.²⁰

During World War II, the U.S. government incarcerated persons of Japanese descent en masse, based on the notion that all persons of Japanese descent (including U.S.-born citizens) were foreign enemies. Disloyalty to the U.S. was not a matter of political identity, but an inherent racial characteristic.²¹ According to General John DeWitt, who oversaw the exclusion of Japanese Americans from the West Coast, "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."²² California Attorney General (and later Supreme Court Chief Justice) Earl Warren insisted that mass incarceration was necessary because it was impossible to make individual determinations about the loyalty of Japanese aliens or Japanese Americans.²³ Individual determinations could be made for persons of Italian or

17. Edwin E. Ferguson, *The California Alien Land Law and the Fourteenth Amendment*, 35 CAL. L. REV. 61, 68 n.46 (1947).

18. *Webb v. O'Brien*, 263 U.S. 313 (1923); *Porterfield v. Webb*, 263 U.S. 225 (1924).

19. Aoki, *supra* note 12, at 48.

20. ERIC YAMAMOTO ET AL., RACE, RIGHTS AND REPARATION 34–35 (2001).

21. See Thomas W. Joo, *Presumed Disloyal: Executive Power, Judicial Deference, and the Construction of Race Before and After September 11*, 34 COLUM. HUM. RTS. L. REV. 1, 19–22 (2002).

22. *Hohri v. United States*, 782 F. 2d 227, 231 (D.C. Cir. 1986), *vacated*, 482 U.S. 64 (1987).

23. LEO KATCHER, EARL WARREN: A POLITICAL BIOGRAPHY 144 (1967).

German descent, however, because they “are no different from anybody else.”²⁴

Many Japanese Americans returned to California after their release from the concentration camps.²⁵ They were met with a “wave of terrorism.”²⁶ One author claimed “seventy . . . instances of terrorism and nineteen shootings” took place in the first half of 1945; another cited “thirty-one major terrorist attacks.”²⁷ Violence was particularly severe in California’s Central Valley, the inland portion of the state that includes the Sacramento area.²⁸ Crimes included “nightrider incidents” and guns fired at homes. In 1945, while Sumio Doi was serving in France with the famed 442nd Infantry Regiment, someone attempted to dynamite a building on his parents’ ranch and fired a shotgun at the family’s home. A Sacramento court acquitted the two suspects as a crowd of about one hundred cheered.²⁹

During World War II, the naturalization privilege had been extended to immigrants from America’s Asian allies, China, India, and the Philippines. Japanese immigrants, however, remained excluded until the Immigration and Nationality Act of 1952. Until then, Alien Land laws still applied to Japanese immigrants in California and other states. California enforced its Alien Land Law less aggressively in the 1930s, but stepped up enforcement when internees began returning from the camps.³⁰ By spring 1946, approximately fifty enforcement actions were pending, all involving persons of Japanese descent.³¹

Racism also infected residential real estate. Racially restrictive covenants had become popular in Sacramento and other cities in the 1920s,³² limiting minority homeowners to the West End and other, older neighborhoods that lacked such covenants.³³ In Sacramento, a typical covenant prohibited ownership or occupancy by a “Negro, Japanese or Chinese, [or]

24. G. EDWARD WHITE, EARL WARREN: A PUBLIC LIFE 71 (1982). Some German and Italian aliens (not U.S. citizens) were interned, but only after individual loyalty hearings. See J. Gregory Sidak, *War, Liberty, and Enemy Aliens*, 67 N.Y.U. L. REV. 1402, 1416–17 (1992).

25. See WAYNE MAEDA, CHANGING DREAMS AND TREASURED MEMORIES 206 (2000); WILDIE *supra* note 8, at 128.

26. Ferguson, *supra* note 17, at 73.

27. See MAEDA *supra* note 25, at 204.

28. See *id.* at 202–04.

29. *Id.*

30. Ferguson, *supra* note 17, at 73.

31. *Id.*

32. *Id.* at 39–40.

33. WILLIAM BURG, SACRAMENTO RENAISSANCE: ART, MUSIC & ACTIVISM IN CALIFORNIA’S CAPITAL CITY 28 (2013); MAEDA, *supra* note 25, at 206.

person of African or Mongolian descent.”³⁴ Beginning in the 1930s, FHA loan approval guidelines restricted loans only to whites and required restrictive covenants as a condition of loan approval.³⁵ Racially restrictive covenants were legally enforceable until 1948,³⁶ more than long enough for them to influence the housing patterns in place at the time of urban renewal in the 1950s. Furthermore, even when the Court declared restrictive covenants unenforceable, it could not erase them from existing deeds.³⁷

Moreover, even after restrictive covenants became unenforceable, private housing discrimination remained lawful and pervasive. Many Sacramento-area landlords refused to rent to Japanese-Americans, and real estate agents steered them away from white neighborhoods.³⁸ Lenders in Sacramento appear to have followed the FHA’s racially discriminatory lending guidelines.³⁹ The FHA refused to insure integrated real estate projects until 1949, but even after that it continued to insure segregated projects as well.⁴⁰ In 1958, a Sacramento trial court found that “Negroes have been and are turned away from original sales of most tract homes in the area.”⁴¹ When a 1963 California statute banned housing discrimination, voters nullified it by approving a state constitutional amendment sponsored by the real estate and construction industries.⁴² The California Supreme Court then invalidated that amendment on Equal Protection grounds, and the U.S. Supreme Court finally agreed in 1967.⁴³

B. Sacramento’s Japantown

Sacramento’s first Japanese-owned businesses were a hotel and boarding houses opened in 1891 to house Japanese laborers (whom white-owned

34. See MAEDA, *supra* note 25, at 206.

35. See MARK I. GELFAND, *A NATION OF CITIES: THE FEDERAL GOVERNMENT AND URBAN AMERICA, 1933–1965*, at 41 (1975).

36. *Shelley v. Kraemer*, 334 U.S. 1, 20 (1948).

37. RICHARD R. W. BROOKS & CAROL M. ROSE, *SAVING THE NEIGHBORHOOD: RACIALLY RESTRICTIVE COVENANTS, LAW, AND SOCIAL NORMS* 3 (2013).

38. BURG, *supra* note 33, at 29; MAEDA, *supra* note 25, at 207.

39. Jesus Hernandez, *Race, Market Constraints, and the Housing Crisis: A Problem of Embeddedness*, KALFOU, Fall 2014, at 29, 41.

40. GELFAND, *supra* note 35, at 220–21.

41. See *Ming v. Horgan*, 3 Race Rel. L. Rep. 693 (Vanderbilt Univ. Sch. of Law) (Cal. Super. Ct. 1958). Although the defendants in *Ming* were private developers, the court found their discrimination was unconstitutional because the development had received FHA and Veterans Administration mortgage insurance, an unusual and controversial result at the time. See Anne W. Branscomb, *An Analysis of Attempts to Prohibit Racial Discrimination in the Sale and Rental of Publicly Assisted Private Housing*, 28 GEO. WASH. L. REV. 758, 765 (1958).

42. See CLARENCE Y.H. LO, *SMALL PROPERTY VERSUS BIG GOVERNMENT: SOCIAL ORIGINS OF THE PROPERTY TAX REVOLT* 122 (1990).

43. *Reitman v. Mulkey*, 387 U.S. 369, 378–79 (1967).

hotels would not accept).⁴⁴ By 1909, the city had over 200 Japanese-owned businesses.⁴⁵ According to a contemporaneous Japanese source, there were 471 such businesses in 1941.⁴⁶ The Japanese community of urban Sacramento was largely contained in and around the six-block Japantown neighborhood.⁴⁷ Most business owners lived in the same building as their business premises.⁴⁸ A Japanese residential neighborhood grew up around the commercial center of Japantown.⁴⁹ The diverse range of businesses in Japantown—stores, restaurants, pool halls, medical and dental practices, banks and newspapers—allowed the community to be largely self-sufficient, and many residents rarely left the immediate neighborhood.⁵⁰

Japantown was located in the city's so-called West End, the older part of the city that included its Gold Rush-era birthplace on the bank of the Sacramento River.⁵¹ The city's newer neighborhoods had grown to the east, away from the river. By the mid-twentieth century, the West End was a "highly integrated interracial area."⁵² A 1952 report analyzed businesses in a twelve-block portion of the West End, including two blocks of Japantown. About half the businesses in this zone were owned by whites, and half by "non-Caucasians and Mexicans."⁵³ When Japanese Americans were incarcerated during World War II, many black-owned businesses moved into the area. Club Zanzibar, a black-owned nightclub on Capitol Avenue, hosted world-class performers in the 1940s, including Dizzy Gillespie and Duke Ellington.⁵⁴ Nearby was a predominantly Mexican-American neighborhood⁵⁵ and a Spanish-speaking Catholic church.⁵⁶

Urban renewal completely dispersed the West End's diverse population and replaced small businesses and residences with large-scale commercial development. The census tract covering half of Sacramento's first urban renewal area and including most of Japantown⁵⁷ had 4467 residents

44. MAEDA, *supra* note 25, at 117.

45. *Id.* at 119; WILDIE *supra* note 8, at 32, 119.

46. MAEDA, *supra* note 25, at 137.

47. WILDIE, *supra* note 8, at 29.

48. *Id.* at 38.

49. MAEDA, *supra* note 25, at 135.

50. *Id.* at 118–33; WILDIE, *supra* note 8, at 31.

51. WILDIE, *supra* note 8, at 29.

52. HAROLD F. WISE, SACRAMENTO REDEV. AGENCY, SURVEY OF BUSINESS IN SACRAMENTO'S WEST END I (1951) (CCMR Box 122).

53. *Id.* at 6.

54. See William Burg, *Sacramento's Bourbon Street*, GOLDEN NUGGETS, Mar. 2012, at 3.

55. See WILDIE, *supra* note 8; BURG, *supra*, note 33, at 24.

56. BURG, *supra* note 33, at 24.

57. U.S. BUREAU OF THE CENSUS, BULL. P-D46, CENSUS OF POPULATION: 1950, CENSUS TRACT STATISTICS: SACRAMENTO CALIFORNIA AND ADJACENT AREA 7 tbl. 1 (1952) [hereinafter 1950 CENSUS

in 1950, 1299 in 1960, and a mere 377 in 1970.⁵⁸ Home to 58,000 people in 1950, central Sacramento had only 27,000 by 1970.⁵⁹

III. URBAN RENEWAL LAW

A. State Law

Although urban renewal is generally thought of as a federal program, it actually involved all levels of government: a federal statute provided funding for locally controlled redevelopment projects that were authorized by state statutes. This multilevel structure was envisioned by the National Association of Real Estate Boards (NAREB, the predecessor of today's National Association of Realtors).⁶⁰ In 1941, NAREB drafted a legislative proposal under which states would empower local agencies to acquire land by eminent domain, clear it of structures and install infrastructure, then resell it to private developers at a loss. The federal government would in turn partially subsidize those losses.⁶¹ NAREB argued that the redeveloped land would eventually appreciate in value, benefiting developers and increasing property-tax revenues for local governments.⁶²

The real-estate industry saw its locally controlled, public-private partnership model come into being over the next several years. State legislatures soon began passing laws establishing and empowering the required local agencies. California's 1945 Community Redevelopment Law (CRL)⁶³ was among the first such acts. Following the NAREB model, the CRL and many other state statutes gave quasi-governmental local agencies ("rede-

TRACTS]; U.S. BUREAU OF THE CENSUS, PHC(1)-129, CENSUS OF POPULATION AND HOUSING: 1960, CENSUS TRACTS: SACRAMENTO, CALIF. 13 (1962) [hereinafter 1960 CENSUS TRACTS]; U.S. BUREAU OF THE CENSUS, PHC(1)-178, CENSUS OF POPULATION AND HOUSING: 1970, CENSUS TRACTS: SACRAMENTO, CALIF., at VII tbl. A (1972) [hereinafter 1970 CENSUS TRACTS].

58. Population figures for Tracts 7 and 8 are from 1950 CENSUS TRACTS, *supra* note 57, at 7, 1960 CENSUS TRACTS, *supra* note 57 at 15, and 1970 CENSUS TRACTS, *supra* note 57, at P-6 and X.

59. William Burg, *Where Did the Downtown Population Go?*, SACRAMENTO PRESS (Jan. 2, 2013), <http://sacramentopress.com/2013/01/02/where-did-the-downtown-population-go/> [https://perma.cc/D693-BE4L].

60. *History of the National Association of Realtors*, NAT'L ASS'N OF REALTORS (Sept. 20, 2017), <http://www.realtor.org/field-guides/field-guide-to-the-history-of-the-national-association-of-realtors>. [https://perma.cc/6VPS-7A5Z].

61. See Jefferson B. Fordham, *Urban Redevelopment*, 10 OHIO ST. L. J. 414, 416 (1949); GELFAND, *supra* note 35, at 115-117.

62. See GELFAND, *supra* note 35, at 115-17.

63. More precisely, California passed the Community Redevelopment Act in 1945, see Stats. 1945, ch. 1326, p. 2478 (July 11, 1945), and codified it in 1951, as the Community Redevelopment Law, see Stats. 1951, ch. 710, p. 1923 (1951) (codified at Cal. Health & Safety Code §§ 33000-33855 (1951)) [hereinafter CRL]. For convenience, this Article will refer to the statute as the "California Redevelopment Law" and cite the codified version.



order to combat a vaguely-described scourge called “blight.” Rather than define “blight,” the CRL, like many other state statutes, gave a long list of factors that “characterized” blight, none of which were either necessary or sufficient.⁶⁵ The factors displayed a wide range of subjective notions about improper development and land use, such as “mixed character or shifting of uses,” “economic dislocation . . . or disuse, resulting from faulty planning,”⁶⁶ and lack of development due to being subdivided.⁶⁷ The list of factors clearly targeted low-value residences and small businesses by including “unproductive” land use, “depreciated values” and “tax receipts [that] are inadequate for the cost of public services rendered.”⁶⁸

The CRL gave local communities control over planning, provided only that they complied with formalistic procedural requirements, including drafting tentative plans, holding public hearings and filing final plans.⁶⁹ Both the tentative and final “plans” could be very general: they were not required to describe any particular proposed buildings or uses; nor were they required to include any particular types of structures or uses (such as housing, for instance).⁷⁰

The CRL did not require local RDAs to help displaced residents or businesses find new quarters. It merely required local governments to make a finding that comparable replacement accommodations “are or will be made available.”⁷¹ In practice, this permissive language was taken literally: in its plans to demolish Japantown, Sacramento simply made a pro forma declaration that housing was available elsewhere in the metropolitan area.⁷²

65. The CRL did not include an actual definition of “blight” until 1993. Stewart Black, *Redevelopment in California: Its Past, Present and Possible Future*, 6:4 CAL. J. POL. & POL’Y 471–506, 473 (2014).

Broad definitions remain an issue in many states’ redevelopment laws. See Colin Gordon, *Blighting the Way: Urban Renewal, Economic Development, and the Elusive Definition of Blight*, 31 FORDHAM URBAN L. J. 305, 315 (2004).

66. See CRL §§ 33040–33045.

67. See CRL § 33042.

68. See CRL § 33044.

69. See CRL § 33733.

70. *Id.* (“Every redevelopment plan shall show: (a) The amount of open space to be provided and street layout[;] (b) Limitations on type, size, height, number, and proposed use of buildings[;] (c) The number of dwelling units[;] (d) The property to be devoted to public purposes and the nature of such purposes[;] (e) Other covenants, conditions, and restrictions which the legislative body prescribes.”)

71. CRL § 33738. If any low-income tenants were to be displaced, a local government was required to “obtain and consider” (but not necessarily follow) recommendations from local housing authority concerning the availability of replacement housing. CRL § 33740.

72. See SACRAMENTO REDEV. AGENCY, PROJECT 2-A FINAL PLAN REPORT (1955) (on file with the Center for Sacramento History, City Council Minutes and Records, Box 161, Folder: 9/13/1955).

B. Federal Law: The Housing Act of 1949

A few years after the CRL, the Housing Act of 1949 introduced the federal subsidies NAREB had envisioned. By then, twenty-seven states had adopted redevelopment statutes.⁷³ With the introduction of federal aid, even more states passed such statutes and redevelopment activity began in earnest. The centerpiece of the Housing Act of 1949 was the authorization of funding for public housing for the first time since the New Deal era. The subsidies to RDAs in Title I of the Act were less noticed at the time. This part of the statute, entitled “Slum Clearance and Community Development and Redevelopment,” was renamed “Slum Clearance and Urban Renewal” in the 1954 version of the Act. Title I identified the elimination of “slums” and “blighted” areas as a policy goal,⁷⁴ but made no attempt to explain those terms.

Title I imposed no meaningful planning requirements on local agencies.⁷⁵ Nor did it give the federal government any significant role in planning. Local authorities had broad statutory discretion to designate an area for “redevelopment.”⁷⁶ Like the redevelopment statutes of California and other states, Title I did not define “redevelopment.”⁷⁷ Nor did it prescribe any substantive elements of redevelopment projects. Like the CRL, Title I required local agencies to hold a public hearing before acting, but did not require the agency to respond to any concerns raised at the hearing.⁷⁸ A local government had to formulate a “redevelopment plan,” but the statute required only that the plan “indicate its relationship to definite local objectives” and “indicate proposed land uses.”⁷⁹ In keeping with NAREB’s vision and the state statutory schemes, Title I limited the government role to taking property and subsidizing its transfer to the private sector. Title I expressly aimed to provide “maximum opportunity for the redevelopment of project areas by private enterprise.”⁸⁰

The statute nominally required local governments to have “a feasible method for the temporary relocation of families displaced from the project area” and to find that “decent, safe, and sanitary dwellings” were available

73. See Fordham, *supra* note 61, at 415.

74. Housing Act of 1949, Pub. L. No. 171, §§ 2, 101(a), 102(a), 110(c), 63 Stat. 413.

75. See Daniel R. Mandelker, *The Comprehensive Plan in Urban Renewal*, 116 U. PA. L. REV. 25, 75 (1967).

76. Housing Act of 1949 § 110(a).

77. The definitions section of Title I states only that “‘redevelopment’ . . . shall mean develop as well as redevelop.” *Id.* § 110(c).

78. *Id.* § 105(d).

79. *Id.* § 110(b).

80. *Id.* § 102(a).

for displaced families.⁸¹ As with the CRL's relocation provisions, however, these requirements had no enforcement or verification provisions and could apparently be satisfied by mere declarations that alternative housing existed.⁸² Cities that did prepare relocation plans often ignored them.⁸³

IV. URBAN RENEWAL IN SACRAMENTO

A. Redevelopment Area No. 1

Soon after the passage of Title I, Sacramento adopted an ordinance designating sixty-two blocks of the West End as "Redevelopment Area No. 1."⁸⁴ The area included all of Japantown. The redevelopment designation was based on "substandard dwelling units, depreciated land values . . . deterioration of buildings, unhealthful living conditions, [and] disproportionate expenditures for crime prevention and correction and for other protection of the public health and safety." While the city's Planning Commission had conducted studies before the passage of the ordinance, it filed no reports with the city council until several months later. Property owners thus challenged the ordinance in court, arguing that it had designated the Redevelopment Area without evidentiary basis. A state appeals court gave generous deference to the Sacramento City Council, however.⁸⁵ Although there was no proof that the council had reviewed the unfiled survey results before passing the ordinance, the court held "it may be reasonably assumed."⁸⁶

The commission did not state how it chose the boundaries of the sixty-two-block Redevelopment Area. The SRA later claimed that the Planning Commission had found Redevelopment Area No. 1 to be "the most blighted section of the city."⁸⁷ But the commission had not surveyed the entire city, and its reports focused on documenting "blight" in the West End, not

81. *Id.* § 105(c).

82. *See, e.g.,* SACRAMENTO REDEV. AGENCY, REPORT NO. 3, REDEVELOPMENT IN SACRAMENTO'S WEST END: REPORT OF TENTATIVE REDEVELOPMENT PLAN, PROJECT AREA NO. 1 (1953) [hereinafter PROJECT 1 TENTATIVE PLAN REPORT] (on file with the Center for Sacramento History, City Council Minutes and Records, Box 132, Folder: 4/30/1953).

83. GELFAND, *supra* note 35, at 211–12.

84. Sacramento, Cal., Ordinance 1480 (Feb. 3, 1950) (A searchable database of historical Sacramento ordinances is available online at <http://records.cityofsacramento.org/>).

85. *See generally* *Redev. Agency of City of Sacramento v. Modell*, 177 Cal. App. 2d 321 (1960).

86. *Id.* at 325.

87. Memorandum, Sacramento Redev. Agency, The Meaning of Redevelopment (c. 1954) [hereinafter The Meaning of Redevelopment] (on file with the Center for Sacramento History, City Council Minutes and Records, Box 141, Folder: 1/28/1954).

on comparing it to other parts of town.⁸⁸ According to the commission's own studies, the area to the northeast of Redevelopment Area No. 1, known as Alkali Flat,⁸⁹ had a greater prevalence of substandard housing, a similar rate of decline in property values, and a similar degree of mixed use.⁹⁰

The Redevelopment Area was a large and diverse area. Although it included some dilapidated buildings, it included a variety of neighborhoods and structures.⁹¹ One local real estate agent opined in 1954, "I don't think the Redevelopment Law was made for a city like Sacramento. I don't think we have slums here."⁹² According to a leading local historian, the West End was beginning to "regenerate" in the early 1950s, and "redevelopment reports ignored its true condition."⁹³ "Characterizations of the neighborhood as the worst slum in the western United States," he argues, "do not match the photographs or descriptions of the neighborhood."⁹⁴

B. Urban Renewal Begins: Project 2-A

In 1951, the Sacramento RDA (known as the SRA) informed the local chapter of the Japanese-American Citizens League (JACL) that it had begun making plans for Redevelopment Area No. 1.⁹⁵ JACL leaders offered to discuss planning with the SRA, but received no response.⁹⁶ In 1953, the SRA released plans for its first intended redevelopment project. It was located several blocks away from Japantown, suggesting that the neighborhood would be spared, at least for the time being.⁹⁷ In 1954, however, the SRA abandoned the original project without warning and announced its plans to begin urban renewal with the demolition of Japantown.⁹⁸ The new project covered a fifteen-block zone referred to as Project 2-A. It included most of Japantown and parts of the adjoining African-American and Mexican-American neighborhoods. Nearly two-thirds of area residents were

88. See RICHARD J. NEUTRA ET AL., REDEVELOPMENT FACTS AND RECOMMENDATIONS (1950), <https://catalog.hathitrust.org/Record/000343536> [<https://perma.cc/TPB3-2GXV>] [hereinafter MAY 1950 REPORT].

89. See BURG, *supra* note 33.

90. See MAY 1950 REPORT, *supra* note 88, at 17, 13, 19.

91. See BURG, *supra* note 33; see also *Hearings on Tentative Redevelopment Plan for Project 2-A*, pt. 1, at 63–64 (Sacramento, Cal. 1954) [hereinafter *Project 2-A Hearings*] (on file with the Center for Sacramento History, City Council Minutes and Records, Box 146, Folder: 6/29/1954) (comments of W. P. Wright, saying the area was a mix of "nice" houses and dilapidated ones).

92. *Project 2-A Hearings*, *supra* note 91, pt. 1, at 37 (comments of W. P. Wright).

93. See BURG, *supra* note 33, at 39–40.

94. See *id.*

95. See *Project 2-A Hearings*, *supra* note 91, pt. 2, at 79 (comments of Mamoru Sakuma).

96. See *id.*

97. See *id.*

98. See *id.*

people of color: of its 3883 residents, 1386 were classified as “White,” 800 as “Negro,” and 1697—a plurality—as members of “Other races.”⁹⁹ The announcement took the community by surprise. Local residents and merchants quickly formed the Japanese-American Redevelopment Study Association (JARSA). JARSA attempted to represent the neighborhood by electing area property owners, business owners and residents as its officers and board members.¹⁰⁰

As noted above, Redevelopment Area No. 1 was not necessarily the most deteriorated part of the city. Nor was Project 2-A the worst part of Area No. 1. An earlier SRA report had described a portion of Redevelopment Area No. 1, none of which included Japantown, as its “well-defined . . . slum area.”¹⁰¹ That twelve-block area extending inland from the riverbank had experienced the worst declines in property value and the worst rates of tuberculosis and crime in Redevelopment Area No. 1.¹⁰² Project 2-A included only three of those blocks, however. At the hearings, many residents and business owners argued that Japantown had been unfairly singled out, and was in no worse condition than other parts of town.¹⁰³ A local real estate agent insisted that “there’s just as good houses here as there is in . . . any other part of Sacramento.”¹⁰⁴ New construction was in progress and new businesses were opening in the neighborhood.¹⁰⁵

Even SRA director Jerome Lipp acknowledged that Project 2-A did not include the worst conditions in the redevelopment area.¹⁰⁶ He advanced the dubious explanation that starting redevelopment at the river and moving eastward would spread slums and blight into the central city, while starting inland and moving west would “drive it into the river.”¹⁰⁷ City and SRA officials used a different metaphor, claiming Project 2-A would create “a barrier”¹⁰⁸ to “seal off the blight of the West End.”¹⁰⁹

99. SACRAMENTO REDEV. AGENCY, PROPOSED PROJECT NO. 2-A: REPORT ON RESULT OF SURVEYS TO MEASURE CONDITIONS OF SLUM AND BLIGHT (1953) (on file with the Center for Sacramento History, City of Sacramento Planning Dep’t, Box: Final City Report 1929; West End Reports 1929–1959, Folder: 2009/008/002).

100. *Project 2-A Hearings*, *supra* note 91, pt. 1, at 11–12.

101. PROJECT 1 TENTATIVE PLAN REPORT, *supra* note 82, at 3.

102. MAY 1950 REPORT, *supra* note 88, at 13, 17.

103. *See, e.g., Project 2-A Hearings*, *supra* note 91, pt. 3, at 64–65 (testimony of Elsie Modell); *id.* at 71–72 (testimony of Toko Fujii).

104. *Project 2-A Hearings*, *supra* note 91, pt. 3, at 37–38 (testimony of W. P. Wright).

105. *Id.* at 36 (testimony of Felix Flowers); *id.* at 35 (testimony of Sal Gomez); WILDIE, *supra* note 8, at 127–32.

106. WILDIE, *supra* note 8, at 145 (quoting his interview with Lipp).

107. *Id.*

108. Sacramento City Council, Minutes, Special Meeting 343 (Sept. 11, 1952); SACRAMENTO CITY COUNCIL, REPORT NO. 3, at 11 (1953).

The decision to begin urban renewal with the destruction of Japantown, rather than focusing on more deteriorated areas, indicates the real priorities of urban renewal in the 1950s. Its goal was not to improve urban conditions *per se*, but to increase inner-city property values and tax receipts. Urban renewal thus destroyed many functioning neighborhoods whose central locations made them attractive to commercial redevelopment. More deteriorated areas often went untouched if they were unsuited for such redevelopment.¹¹⁰

Japantown was in the part of the West End furthest from the deteriorated river area. But it was also the part closest to valuable real estate: the existing central business district (CBD) and the state Capitol grounds.¹¹¹ Capitol Avenue, the city's central thoroughfare at the time, passes through the West End from the river to the state Capitol grounds. For decades, city leaders had lamented deteriorating conditions in the area and envisioned a grand approach to the Capitol that would inspire civic pride.¹¹² Detailed plans for a beautified Capitol Mall were proposed in the 1920s and 1930s, but were never realized due to lack of funds.¹¹³ According to a 1953 report, the CBD needed to expand in order to compete with suburban shopping centers; this would require "making over part of the area."¹¹⁴ By the late 1950s, Sacramento's "peak-value intersection" (the street corner with the highest land value) was located in the CBD just east of the Redevelopment Area. Over time, the peak-value location had been moving eastward—out of and away from the West End.¹¹⁵ According to the Planning Commission, redevelopment of the blocks west of the CBD would halt this trend.¹¹⁶ Urban renewal eventually replaced the modest homes and small businesses of the area with a Macy's department store and shopping center, a block-sized federal office building, and large private office buildings.¹¹⁷

109. SACRAMENTO CITY COUNCIL, *supra* note 108.

110. GELFAND, *supra* note 35, at 208.

111. *The Grand Approach: Sacramento's Capitol Mall*, PAR ENVTL. SERVS., <http://www.parenvironmental.com/assets/articles/The-Grand-Approach-Sacramentos-Capitol-Mall.pdf> [<https://perma.cc/2JTA-SMGF>]; STEVEN M. AVELLA, SACRAMENTO: INDOMITABLE CITY 128 (2003).

112. *The Grand Approach: Sacramento's Capitol Mall*, *supra* note 111.

113. *Id.*

114. HAROLD F. WISE, REPORT NO. 4, ANALYSIS OF POTENTIAL COMMERCIAL EXPANSION (1953) (on file with Center for Sacramento History, Box: Final City Report 1929; West End Reports 1929–1959, Folder: 2009/008/003).

115. SACRAMENTO CITY PLANNING COMM'N, A GENERAL PLAN FOR SACRAMENTO 12 (1959) (on file with Center for Sacramento History, Box: Final City Report 1929; West End Reports 1929–1959, Folder: 2009/008).

116. *Id.*

117. *See* SACRAMENTO HOUSING & REDEV. AGENCY, 1980 ANNUAL REPORT (1980) [hereinafter SHRA 1980].

The RDA filed plans for the redevelopment of Project 2-A, as required by the CRL. As permitted by the statute, however, both the so-called “Tentative” (i.e., initial) and later “Final” plans lacked specifics. They stated in general terms that the SRA planned to acquire the land, clear it, close some streets to car traffic, supply infrastructure and, finally, lease or sell the land. They did not specify which buildings would be torn down, or what or how many buildings would be constructed. They merely stated, in very broad terms, the proposed use patterns for each block or portion of a block. As attorney Mamoru Sakuma complained at the time, “the [T]entative [P]lan is no plan, because nothing is indicated. It is all . . . ‘the details will be worked out,’ but I don’t see any master plan at all.”¹¹⁸ The report on the Final Plan for the fifteen blocks of Project 2-A was similarly general. It designated 3 ½ blocks for “general commercial” use, 4 ½ blocks for “public buildings/special commercial,” 4 ¾ blocks for “multiple residential,” 1 ¼ blocks for “convenience shopping” and one block for parking.¹¹⁹ The plan specified no actual buildings and set no limits on the size or number of buildings.

The sketchiness of redevelopment plans followed from Title I’s design, under which redevelopment projects consisted of the government acquiring land, clearing it, and installing roads and basic infrastructure. Only after completion would developers decide whether to purchase the land and what to construct on it. Thus the so-called “plans” were really planners’ aspirations and did not represent construction proposals. Although the acquisition of land in Project 2-A began in 1956, the first reconstruction project did not commence until 1959.¹²⁰ Indeed, after the city approved a “Final Plan” in 1955, it remained unclear for years what would be built on the site. A 1961 report listed definite construction projects on only nine of the area’s fifteen blocks.¹²¹ The “convenience shopping” shown in the Final Plan never materialized.¹²² SRA reports promised a large hotel for years,¹²³ but none was ever built.¹²⁴

118. *Project 2-A Hearings*, *supra* note 91, pt. 2, at 75.

119. See Land Use Map, in PROJECT 2-A FINAL PLAN REPORT, *supra* note 72.

120. SR 1961, *supra* note 1, at 10; SHRA 1980, *supra* note 117, at 43; *First Pay Dirt is Struck in Sacramento West End*, SACRAMENTO BEE, July 22, 1959. The federal government leased the building from its private developers and later took ownership; it still serves as a federal office building today. See Edward H. Dickson, *Moss Pushes US Agency on Mall Building*, SACRAMENTO BEE, July 16, 1954 at 19; SR 1961, *supra* note 1, at 10–11.

121. See SR 1961, *supra* note 1; Land Use Map, *supra* note 119.

122. See JRP HISTORICAL CONSULTING, LLC, HISTORICAL RESOURCE INVENTORY AND EVALUATION REPORT 51–52.

123. See SR 1961, *supra* note 1; SACRAMENTO REDEV. AGENCY, SACRAMENTO REDEVELOPMENT, MAY 1959 (1959) (on file with the University of California at Davis, Shields Library Special Collections).

C. *Opposition and Impact on the Community*

Citizen involvement in urban renewal planning tended to be “ritualistic rather than substantive.”¹²⁵ The rights of owners to participate were limited to attending statutorily required public hearings, negotiating the sale (or condemnation) of their properties, and competing to purchase land at resale.¹²⁶ When Project 2-A was announced, Japanese Americans and other neighborhood residents attempted to participate more actively in the planning process. They were excluded from the initial planning, however, and their later concerns were largely ignored.

Although the statutorily-required public hearings did not affect the course of redevelopment, they show that community opposition was vociferous and organized, and that the city and the SRA were well aware of it when they chose to proceed as planned.

The City Council originally scheduled only one public hearing on the Project 2-A Tentative Plan, in June 1954.¹²⁷ Due to the large turnout at the first hearing, however, two additional sessions were added and the hearings extended into July.¹²⁸ Based on the transcripts, the “hearings” appear to have been relatively informal town-hall style meetings. Community members were well-informed and organized in their opposition. The majority of those speaking against the redevelopment plan were Japanese Americans.¹²⁹ Organized opposition also included thirty-two business and property owners. They retained the prominent African-American civil rights attorney Nathaniel Colley to represent them at the hearings.¹³⁰ Colley’s Japanese-American law partner, Mamoru Sakuma (who later became a state judge) also appeared.¹³¹

As a representative of the NAACP pointed out, at the hearings, the burden of redeveloping Project 2-A would fall on “certain ethnic groups.”¹³² Sixty-one percent of homes in Project 2-A were owned by

124. See SHRA 1980, *supra* note 117, at 43 (listing construction projects in Project 2-A).

125. GELFAND, *supra* note 35, at 210.

126. See, e.g., Housing Act of 1949, Pub. L. No. 171, § 105(d), 63 Stat. 413; CRL §, 33733; see also *Project 2-A Hearings*, *supra* note 91, pt. 2, at 87 (comments of SRA Executive Director Joseph T. Bill, stating that owners can bid to purchase cleared properties from the SRA, but “no one could guarantee the same property back to an owner.”).

127. See Sacramento City Council, Minutes, Special Meeting 236 (June 15, 1954).

128. Bert Vaughn, *Redevelopment Plan Hearing Is Put Over*, SACRAMENTO BEE, June 16, 1954 at A1; Sacramento City Council, Minutes, Special Meeting (June 29, 1954); Sacramento City Council, Minutes, Special Meeting (July 20, 1954).

129. Vaughn, *supra* note 128.

130. *Project 2-A Hearings*, *supra* note 91, pt. 3, at 22.

131. Faizah Alim, *Rising to Justice*, SACRAMENTO BEE, June 20, 1991.

132. *Project 2-A Hearings*, *supra* note 91, pt. 1, at 33.

Asians.¹³³ Residents who were displaced from rented homes or apartments were unlikely to receive any compensation for lost lease value.¹³⁴ Nathaniel Colley appeared before the City Council to ask that displaced residents be protected from discrimination.¹³⁵ The Sacramento chapter of the NAACP later presented the Council with a proposed ordinance that would have prohibited discrimination in ownership, use and occupancy of real estate anywhere in the city.¹³⁶ Instead, the council adopted a resolution prohibiting racial discrimination in use and occupancy only *in* redeveloped areas.¹³⁷ No such rules protected those displaced *from* redeveloped areas who sought new accommodations elsewhere. Very little housing was planned for Project 2-A itself, and in any event, it was limited to upscale apartments that would not be constructed for several years.

The SRA stated (correctly) that its only legal obligation with respect to rehousing displaced residents was to make a finding that other housing would be available.¹³⁸ Despite extensive and heated discussion of relocation at the hearings on the Tentative Plan, the 1955 report on the Final Plan devoted less than one page to relocation. It simply stated, without elaboration, that alternative housing for displaced residents was available.¹³⁹ In 1964, when clearance was complete and reconstruction was under way in Project 2-A, an SRA report stated that 499 families and 1529 individuals had been displaced.¹⁴⁰ According to the report, 92 percent of the families and 87 percent of the individuals had found new housing. The SRA acknowledged those rates were imperfect, but claimed they were “above the national average and should be a source of pride.”¹⁴¹

While the Final Plan for Project 2-A said little about the rehousing of residents, it did not even mention the relocation of businesses. Like its resi-

133. See Ken Lastufka, *Redevelopment of Sacramento’s West End, 1950–1970: A Historical Overview* 78 (1985) (unpublished M.A. Thesis, California State University) (on file with the Center for Sacramento History, City of Sacramento Coll., Box: Ken Lastufka MA Thesis, Folder: 2001/077/001).

134. See *infra* Part V.

135. Sacramento City Council, Minutes, Special Meeting 301 (July 20, 1954).

136. Sacramento City Council, Minutes 409 (Sept. 16, 1954).

137. Sacramento City Council, Minutes 468–70 (Oct. 28, 1954) (adopting Resolution 880).

138. PROJECT 1 TENTATIVE PLAN REPORT, *supra* note 82; see also CRL § 33738; Housing Act of 1949, Pub. L. No. 171, § 105(c) n.71, 63 Stat. 413.

139. PROJECT 2-A FINAL PLAN REPORT, *supra* note 72. Similarly, the SRA’s Project 1 report had simply declared that “the high volume of construction activity in the Sacramento area,” as well as public housing, would be sufficient to accommodate displaced persons. PROJECT 1 TENTATIVE PLAN REPORT, *supra* note 82. As noted above, the Project 1 report appears to have served as a model for subsequent reports.

140. SACRAMENTO REDEV. AGENCY, URBAN RENEWAL SACRAMENTO 8 (1964) [hereinafter URS 1964] (on file with the University of California at Davis, Shields Library Special Collections).

141. *Id.*

dents, all of Project 2-A's 350 businesses were removed by 1961.¹⁴² The 1964 report mentioned above, which claimed success in relocating residents, stated that 808 business had been removed, but did not state how many had found new locations.¹⁴³ The SRA repeatedly pointed out elsewhere that it had no legal obligation to assist businesses with relocation.¹⁴⁴

Small businesses displaced from the redevelopment area were theoretically eligible to bid on the land once it had been cleared, but they were unlikely to have the required capital, particularly if they were renting their business premises.¹⁴⁵ Federally subsidized loans were available to parties seeking to purchase cleared land, and the SRA suggested that this program would be useful to Japantown business owners.¹⁴⁶ However, the loans were only for purchasing real estate, and not for construction.¹⁴⁷ Moreover, they were aimed at very large projects: according to the SRA's director, they "would work better for a block or a good portion of a block rather than for just individual property owners."¹⁴⁸ Jerome Lipp explicitly stated that the point of redevelopment was to erect "big buildings" that occupied full blocks.¹⁴⁹ Thus redevelopment was effectively benefiting large outside capital interests at the expense of small, minority-owned local businesses. In the end, most of the projects completed in Project 2-A were large commercial buildings, such as a Macy's department store, IBM and Wells Fargo Bank offices, and Capitol Towers, with estimated market values of well over one million dollars each.¹⁵⁰ There were only a handful of relatively small projects.¹⁵¹

Despite the extended hearings and strenuous and organized resistance, the fate of the Tentative Plan was never in serious doubt. The Council met immediately after the last session of hearings ended on July 20, 1954. The Council President read a prepared statement declaring "it is imperative that the Tentative Plan be approved and that the final plan be started."¹⁵² The members present voted unanimously to approve the Tentative Plan without

142. SR 1961, *supra* note 1, at 8.

143. URS 1964, *supra* note 140.

144. *See, e.g.*, PROJECT 1 TENTATIVE PLAN REPORT, *supra* note 82, at 9; The Meaning of Redevelopment, *supra* note 87.

145. *Project 2-A Hearings*, *supra* note 91, pt. 1, at 18 (comments of Dean Itano).

146. *Loans Would Aid West End Rebuilding*, SACRAMENTO BEE, June 25, 1954, at A1.

147. *See id.*

148. *Id.*

149. WILDIE, *supra* note 8, at 146.

150. *See SHRA 1980*, *supra* note 117, at 43.

151. *See id.* (listing a gas station (estimated value \$159,000), the Showcase Theatre (\$200,000), and the Taketa office building (\$156,000)).

152. Sacramento City Council, Minutes, Special Meeting 301 (July 20, 1954).

changes.¹⁵³ The meeting took one hour.¹⁵⁴ By the end of the 1950s, almost every existing structure in the Project 2-A area had been demolished.¹⁵⁵ Subsequent urban renewal projects destroyed Japantown's remaining blocks and much of the West End.

V. CONSTITUTIONAL TAKINGS ANALYSIS

The urban renewal of Japantown involved the direct taking of property by the state from private owners. All levels of government—federal, state, and local—took part. A state statute (the CRL) created a quasi-governmental local agency (the SRA) and empowered it to exercise eminent domain. The agency's actions were approved by the city council and reviewed and funded by the federal government. Using this authority and funding, the SRA acquired almost every parcel in Project 2-A (and, later, in surrounding neighborhoods).¹⁵⁶

According to the "Takings Clause" of the Fifth Amendment to the U.S. Constitution, the government may take private property only for "public use," and may do so only with "just compensation" to the owner.¹⁵⁷ In practice, however, the Takings Clause does little to restrict government expropriation of property, because "public use" has been defined very broadly and "just compensation" very narrowly. As will be argued below, constitutional doctrine was, and remains, unable to address the harm inflicted by the Japantown takings.

A. "Public purpose"

Despite the nominal requirement of "public use," case law gives courts no real authority to review whether a taking satisfies this requirement. Reviewing courts must defer to government determinations in this regard. As noted above, urban renewal was ostensibly intended to increase tax receipts and beautify the city by subsidizing private real estate developers. The city placed these priorities above the property rights of Japantown residents and ignored their insistence that the neighborhood was in fine condition. No lawsuit ever challenged whether Project 2-A satisfied the public use requirement, but decisions on similar projects established a per-

153. *Id.* at 302.

154. *Id.* at 301–02.

155. See SR 1961, *supra* note 1; *The Changing Face of the City's West End*, SACRAMENTO BEE, Jan. 1, 1959 (on file with the Center for Sacramento History, Photo Collection, Cat. No. 85/24/726).

156. URS 1964, *supra* note 140, at 6.

157. Atuahene, *Dignity Takings and Dignity Restoration*, *supra* note 6, at 798 (many other countries have similar constitutional provisions).

missive judicial attitude toward urban renewal. In January 1954, a California appellate court granted significant judicial deference to the CRL and to the San Francisco Redevelopment Agency's implementation of the statute.¹⁵⁸ The California supreme court declined to review the decision.¹⁵⁹ The JACL's national newspaper interpreted this as the final green light for Project 2-A.¹⁶⁰ By the late 1950s, redevelopment statutes had been adopted in forty states and the District of Columbia.¹⁶¹ Many of these statutes had faced challenge in state and federal courts, and the vast majority had been upheld.¹⁶²

Furthermore, at the end of 1954, the Supreme Court followed suit. In *Berman v. Parker*, the Court upheld takings under the redevelopment statute for the District of Columbia, which closely resembled the CRL.¹⁶³ Under the statute's authority, the D.C. Planning Commission used eminent domain to acquire a department store in a "blighted" area with the intent of transferring it to private real estate developers. The store itself was not considered blighted. The owner unsuccessfully argued that taking property for the benefit of other private parties did not serve a "public use" as required by the Fifth Amendment.

The Court disagreed, holding that a taking need not literally make property available for use by the public; it may be justified by a "public purpose." But rather than examining whether D.C.'s economic redevelopment was such a purpose, the Court stated that a legislature had discretion to choose what constituted a public purpose. A legislature could decide, for example, that "the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."¹⁶⁴ A court should not only defer to the government's choice of purpose, but also limit itself to an "extremely narrow" role in reviewing whether a taking

158. See *Redev. Agency of San Francisco v. Hayes*, 122 Cal. App. 2d 777, 793, 797-99, 802, 806 (1954).

159. See *id.* at 777 (headnote).

160. *Sac'to Nipponmachi Doomed by Capitol Redevelopment*, PAC. CITIZEN, April 23, 1954, at 2 (on file with author).

161. See Eugene B. Jacobs & Jack G. Levine, *Redevelopment: Making Misused and Disused Land Available and Usable*, 8 HAST. L.J. 241, 242 (1957); for examples see Note, *Public Use as a Limitation on Eminent Domain in Urban Renewal*, 68 HARV. L. REV. 1422, 1436 (1955).

162. See *Hayes*, 122 Cal. App. 2d at 787-88 (citing 13 cases upholding redevelopment statutes and two cases invalidating them); see also Note, *supra* note 161, at 1425. In some states, judicial invalidation of statutes prompted state constitutional amendments. *Id.*; Jacobs & Levine, *supra* note 161, at 242, 267-68.

163. 348 U.S. 26, 34 (1954). By the time of *Berman*, similar statutes had been upheld against takings challenges in many states, including California, where the state supreme court had declined to review an appellate court ruling upholding the CRL. See *Hayes*, 122 Cal. App. 2d at 787-88 (citing 13 cases upholding redevelopment statutes and two cases invalidating them).

164. *Berman*, 348 U.S. at 33.

serves that purpose. A court should further defer to the government's chosen *means* of achieving that purpose, including (as in D.C., Sacramento, and elsewhere) "taking from one businessman for the benefit of another businessman."¹⁶⁵ In short, *Berman's* "public purpose" doctrine made judicial review so deferential that "public use" imposes no meaningful limitation on takings.¹⁶⁶ In a notorious 1995 opinion, *Kelo v. City of New London*,¹⁶⁷ the Court upheld a redevelopment agency's condemnation of property in order to make it available to private developers. Justice O'Connor, dissenting, called it a radical expansion of constitutional takings authority.¹⁶⁸ Prominent commentators agreed.¹⁶⁹ The result was, however, merely a straightforward application of *Berman*.

Judicial deference does not extend to racial discrimination, of course. A claim under the Equal Protection Clause of the Fourteenth Amendment, however, requires proof of discriminatory intent by the government.¹⁷⁰ There appears to be none in the Japantown case. In theory, extreme disparate impact might suffice as evidence of intent, but only in "rare" cases where a "clear pattern . . . [is] unexplainable on grounds other than race."¹⁷¹ Project 2-A, however, could be explained on economic and esthetic grounds.

B. "Just compensation"

According to the Supreme Court, fair market value at the time of the taking suffices as "just compensation" under the Takings Clause.¹⁷² The SRA's stated objective was to compensate property owners with the fair market value of their properties, and it obtained two independent appraisals before doing so.¹⁷³ Japantown property owners believed the SRA attempted to purchase property at unfairly low prices until one owner demanded a

165. *Id.*

166. See *Kelo v. City of New London, Conn.*, 545 U.S. 469, 517 (2005) (Thomas, J., dissenting) ("[T]here is no justification for the almost complete deference [the Court] grants to legislatures as to what satisfies [public use].").

167. *Id.* at 488–89.

168. See *id.* at 501 (O'Connor, J., dissenting).

169. See e.g., Richard Epstein, *Kelo: An American Original*, 8 GREEN BAG 2D 355, 361 (2005).

170. *Vill. Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977).

171. *Id.* at 266. Some antidiscrimination statutes, such as Title VII and the Fair Housing Act, however, do not require discriminatory intent and permit liability based on "disparate impact" alone. See Samuel Bagenstos, *Disparate Impact and the Role of Classification and Motivation in Equal Protection Law After Inclusive Communities*, 101 CORNELL L. REV. 1115, 1121, 1127 (2016). But no such statute existed at the time of urban renewal in the 1950s.

172. See *Olson v. United States*, 292 U.S. 246, 255 (1934).

173. SR 1961, *supra* note 1, at 7; URS 1964, *supra* note 140 at 6.

court proceeding to determine fair value.¹⁷⁴ But even when compensation satisfies doctrinal notions of “fair market value,” it is insufficient to compensate many displaced persons. The Court has defined “fair market value” to be “what a willing buyer would pay in cash to a willing seller.”¹⁷⁵ This formulation discounts the obvious fact that many owners displaced by government takings are not “willing sellers,” at market price or any other price.¹⁷⁶

Furthermore, the fact that fair market value is computed as of the time of the taking¹⁷⁷ was inherently unfair in the urban renewal context. Commentators noted as early as 1957 (shortly after the Japantown acquisitions began) that the designation of areas as “blighted” under the CRL would initiate a slide in property values. As the planning process dragged on, values would fall still further before local RDAs finally made appraisals and offers.¹⁷⁸ Sacramento’s Ordinance 1480 declared the entire West End “blighted” in 1950, but acquisition of Japantown parcels did not begin until 1956, and was not completed until 1960.¹⁷⁹ A Japantown property owner thus could have experienced a full decade of declining value before receiving an offer from the SRA.

In addition, the market-value doctrine entitles renters (whether residents or businesses) to little or no compensation. Seventy-five percent of nonwhites living in the West End in 1950 were renters.¹⁸⁰ While a displaced tenant is theoretically entitled to compensation for lost lease value,¹⁸¹ the market value of a lease is typically about the same as the rent due under the contract. Because displaced tenants no longer pay that rent, their damages are usually little or nothing.¹⁸² Furthermore, most leases in the Project 2-A area had clauses protecting landlords from liability to tenants in the event of government seizure of the property.¹⁸³

At the hearings, a JARSA representative pointed out that although alternative housing might exist, it might be unavailable to relocated Japan-

174. WILDIE, *supra* note 8.

175. *United States v. Miller*, 317 U.S. 369, 374 (1943).

176. *See Coniston v. Hoffman Estates*, 844 F.2d 461, 464 (7th Cir. 1988).

177. *See Olson*, 292 U.S. at 255.

178. *Jacobs & Levine*, *supra* note 161, at 266.

179. *See Lastufka*, *supra* note 133, at 38.

180. *Id.* at 73.

181. *United States v. Gen. Motors Corp.*, 323 U.S. 373, 377–78 (1945).

182. Victor P. Goldberg et al., *Bargaining in the Shadow of Eminent Domain*, 34 UCLA L. REV. 1083, 1088–89 (1987).

183. *See Tom Goff, City Promises Fair Deal in Mall Project*, SACRAMENTO BEE, July 16, 1954, at A1.

town residents for both economic and “social” reasons.¹⁸⁴ As noted above, private housing discrimination was legal at the time, and appears to have been practiced against Japanese Americans. Thus, many neighborhoods outside the West End were off-limits to displaced minority residents. Cost was a further barrier. According to a local real estate agent, receiving fair market value for homes in Project 2-A would not enable displaced owners to afford comparable homes elsewhere in the city.¹⁸⁵ The very presence of minority residents was known to depress property values, as NAREB admonished its members in the 1920s.¹⁸⁶ In Sacramento, for example, property values fell in the neighborhoods surrounding Japantown because white people did not want to live nearby.¹⁸⁷ As noted above, FHA loan guidelines excluded borrowers of color and required restrictive covenants. The FHA refused to insure home loans in older urban neighborhoods, making it difficult to finance improvements and contributing to further deterioration.¹⁸⁸

Displaced business owners experienced additional uncompensated harms. Thomas Mapel, a real estate appraiser who had conducted appraisals for the city in past eminent domain proceedings, testified at the Project 2-A hearings that only the value of real property was compensable; the lost value of a business on the property would not be compensated.¹⁸⁹ Like residential renters, business owners who rented their premises were unlikely to receive any compensation. According to Mapel, appraising the value of a business was overly speculative. Business losses related to displacement, such as selling inventory at a loss, would not be compensated. In response, a lawyer representing a business owner asked rhetorically, “Would you be willing to sell your property and all your business for the market value of your real property?”¹⁹⁰ SRA Chair Fred Grumm defended the limited compensation by pointing out that federal Title I funding could be used only for the purchase of real property.¹⁹¹ But no law prohibited Sacramento from using city money to compensate business losses. Accord-

184. *Project 2-A Hearings*, *supra* note 91, pt. 1, at 20.

185. *Id.* at 36 (comments of W. P. Wright).

186. Hernandez, *supra* note 39, at 39–40.

187. WILDIE, *supra* note 8, at 38.

188. GELFAND, *supra* note 35, at 59, 123.

189. *See Project 2-A Hearings*, *supra* note 91, pt. 2, at 13–14 (comments of Mr. Mapel); *see also id.* pt. 3, at 22–27 (comments of Nathaniel Colley).

190. *Project 2-A Hearings*, *supra* note 91, pt. 1, at 70 (comments of Thomas Hunt, lawyer for John Shelby, owner of Shelby Hardware).

191. *Id.* at 56. Shortly after the hearings, the federal government began providing \$100 toward moving expenses for residents and \$2500 for businesses; these amounts were increased to \$200 and \$3000 in 1959. *See* SR 1961, *supra* note 1, at 8. These payments were limited to moving expenses, however, and did not cover any other costs or losses. *See* GELFAND, *supra* note 35, at 216.

ing to Toko Fujii, however, federal officials had advised the city not to do so.¹⁹²

One Japantown business owner pointed out the obvious at the hearings: “You forget we are Japanese, and face discrimination.”¹⁹³ Even if displaced businesses could find new quarters outside of Japantown, they might be unable to establish a new customer base. In a letter to the SRA, the Latin-American Political and Welfare Committee stated, “Some people do not like to live next to Negroes, Japanese, Chinese, or Mexicans . . . Will these businessmen be able to open up shop in different surroundings regardless of race, creed or color?”¹⁹⁴ In addition to facing racism, small neighborhood businesses would have difficulty competing in new locations, especially against large, established businesses.¹⁹⁵ One of the SRA’s own reports noted that businesses in ethnic enclaves like Japantown relied on the ethnic makeup of the neighborhood for their customer base and might be unable to survive elsewhere.¹⁹⁶

Sacramento’s ethnic Japanese found homes and business premises were available in Japantown precisely *because* it was Japantown: as an ethnic enclave, it provided freedom from discrimination and harassment, as well as affordable real estate prices and rents. The enclave also provided unique cultural and social value that was lost by every denizen when the neighborhood was dispersed. The destruction of an ethnic neighborhood like Japantown destroys a “way of life centered on networked residences and community centers such as churches and shops. Thus, the loss to the individual is compounded . . . by the size and vitality of the community destroyed.”¹⁹⁷ The refusal of Japantown’s residents and businesses to sell at market value may have been idiosyncratic to members of that community, but for clear and understandable reasons. Limiting “just compensation” to market value denies the importance of these values.

The dispersal of a community can inflict uncompensated psychological harm. A 1947 study by the U.S. Department of the Interior found that wartime evacuation had caused the “uprooting” of Japantowns, interrupting “cultural practices which had stabilized the immigrant communities” and causing “a profound psychological shock which has carried over . . . to the

192. *Project 2-A Hearings*, *supra* note 91, pt. 3, at 67.

193. *Id.* at 79 (comments of I. Sugiyama).

194. *Id.* pt. 3, at 11.

195. *Id.* pt. 1, at 37 (comments of W. P. Wright).

196. *Id.* at 47 (testimony of Toko Fujii (citing SACRAMENTO REDEV. AGENCY, REPORT NO. 6, TENTATIVE PLAN AND REPORT FOR CAPITOL MALL AREA PROJECT NO. 2-A, at 12 (1954))).

197. J. Peter Byrne, *Condemnation of Low-Income Residential Communities Under the Takings Clause*, 23 UCLA J. ENVTL. L. & POL’Y 131, 163 (2005).

postwar adjustment period.”¹⁹⁸ According to the report, former internees’ “most notable characteristic . . . is a feeling of unsettledness, of having unanswered questions concerning location, economic activity and social adjustment.”¹⁹⁹ The dispersion and destruction of Japantown likely caused similar psychological harm: at the redevelopment hearings, many residents compared the plans to their wartime removal; former residents repeat that sentiment today.²⁰⁰ Indeed, psychological effects like those found in internees were also found in persons displaced by urban renewal in Washington, D.C. and Boston in the 1960s.²⁰¹ Many showed signs of depression and failed to make new social connections.²⁰²

VI. DIGNITY TAKINGS

A. Dignity Takings and Constitutional Takings

As the foregoing shows, the seizure and destruction of Japantown probably satisfied constitutional requirements. Constitutional takings doctrine fails to account for the harms to the Japantown community. The concept of “dignity takings” fills this gap. A dignity taking occurs when “the state directly or indirectly destroys or confiscates property rights from owners or occupiers and the intentional or unintentional outcome is dehumanization or infantilization.”²⁰³ Bernadette Atuahene developed this concept to describe South African apartheid regime’s policy of dispossessing native persons and moving them to segregated townships to separate them from whites.²⁰⁴ In the 1960s, the government began eliminating the townships and forcing Africans to move to designated “homelands.”²⁰⁵ The perceived inferiority of Africans and other nonwhites was central to the apartheid state: “the motivating ideology” behind dispossession was the belief that “Africans, like farm animals, did not belong in the city.”²⁰⁶ One government report from the 1920s argued that Africans should be allowed

198. U.S. DEP’T OF THE INTERIOR, *supra* note 15, at 1.

199. *Id.*

200. See generally REPLACING THE PAST: SACRAMENTO’S REDEVELOPMENT HISTORY (Center for Sacramento History 2016).

201. Byrne, *supra* note 197, at 136.

202. *Id.*

203. Atuahene, *Dignity Takings and Dignity Restoration*, *supra* note 6, at 817.

204. BERNADETTE ATUAHENE, WE WANT WHAT’S OURS: LEARNING FROM SOUTH AFRICA’S LAND RESTITUTION PROGRAM 1–2. (2016).

205. *Id.* at 11.

206. *Id.* at 8.

in cities only insofar as they were “willing . . . to minister to the needs of the white man.”²⁰⁷

The apartheid takings, the prototypical dignity takings, certainly fail to satisfy the requirements of the Takings Clause. They were completely uncompensated and their express purpose was intentional racial discrimination.²⁰⁸ Because the Takings Clause and similar constitutional provisions in other countries nominally require a public purpose and just compensation, Atuahene posits “constitutional takings” as justifiable expropriations that serve as the polar opposite of dignity takings.²⁰⁹ As the above discussion indicates, however, constitutional takings doctrine (at least in the U.S.) often fails to provide fair compensation and does not actually review whether a taking serves a “public purpose.” Thus government expropriations of private property, including Project 2-A, may constitute dignity takings even if they are constitutional.

B. Japantown and Dignity Takings

1. Government Intent and Indifference

While Project 2-A was not nearly as vicious or expressly racist as the expropriations under apartheid, it could nonetheless be seen as dehumanizing. If all human beings are created equal, singling out members of a subgroup for worse treatment suggests that they are considered less than human. The targeting of Japantown was consistent with a long history of overt and intentional discrimination, rendering intentional dehumanization a plausible motive. Moreover, anti-Japanese racism was so pervasive, particularly in Central California, that unconscious racism may have played a role. By the time of urban renewal, America had a long history of denying persons of Japanese descent, including U.S. citizens, many legal rights available to others, including members of other minority groups. Subordination of Asians in America has long taken the form of presuming they are unassimilable, permanent foreigners, and passing laws to reinforce their separateness. As noted above, federal law denied Japanese the naturalization and immigration privileges extended to persons of other races. California and other states denied noncitizen Japanese the right to purchase farmland and to hold certain occupations. During World War II, Japanese

207. *Id.* at 9.

208. *Id.* at 41.

209. *Id.*

aliens and U.S.-born Japanese-American citizens alike were incarcerated en masse based on the notion that disloyalty to America was a racial trait.²¹⁰

Many contemporary observers find it difficult to appreciate the prevalence of explicitly racist American laws as recently as the mid-twentieth century. When the Japantown redevelopment plans were released in 1954, the U.S. had only begun to reverse policies that expressly discriminated against Japanese and Japanese Americans. The last incarceration camps closed in 1945, but returnees faced resentment and even violence. The Immigration and Nationality Act had just ended the ban on Japanese naturalization in 1952; it permitted Japanese immigration, but only subject to strict quotas. Such reforms as occurred were due to judicial and Congressional action, not the government or voters of California or Sacramento. California's supreme court invalidated the Alien Land Law in 1952,²¹¹ but of course the lifting of the federal naturalization ban rendered the statute toothless anyway.

In addition, other racist laws remained in place. As noted above, private housing discrimination remained legal under state and federal law until 1967. The Supreme Court decisions upholding the wartime evacuation and curfew orders remained good law (and have still not been overturned). Indeed, even *Ex parte Endo*, the Court's opinion that helped close the camps, did not disturb the racist presumption of Japanese-American disloyalty: it held only that the U.S. could not detain citizens, like Mitsue Endo, once it had conceded their loyalty.²¹² The federal government did not apologize for the camps until 1988.

Despite the prevalence of discrimination, there appears to be no direct evidence that Project 2-A was intended to dehumanize Japanese Americans. However, government decision makers repeatedly dismissed concerns expressed by Japanese Americans, suggesting their values, opinions and community were less important than aesthetics and tax revenues. Urban renewal's disproportionate effect on Japantowns and other minority neighborhoods could not have come as a surprise to the state and federal legislators behind the CRL and Title I. The focus on replacing low-value properties obviously disadvantaged minority neighborhoods. Civil rights leaders had foreseen Title I's disproportionate effects even before its pas-

210. See *Hohri v. United States*, 782 F.2d 227, 231 (D.C. Cir. 1986), *vacated*, 482 U.S. 64 (1987) (quoting Lt. General John L. DeWitt). *But see* Alexandre Kedar, *Dignity Takings and Dispossession in Israel*, 41 LAW & SOC. INQUIRY 866, 883 (2016) (arguing that although Israeli law "delegitimized Arabs and conceived them as radical others, enemies or potential enemies," that was distinguishable from treating them as inferior).

211. *Sei Fujii v. State*, 242 P.2d 617, 617 (Cal. 1952).

212. *Ex parte Endo*, 323 U.S. 283, 297 (1944).

sage, and had lobbied—unsuccessfully—for antidiscrimination rules, as well as for giving displaced residents priority in returning to redeveloped areas.²¹³

One SRA member acknowledged that discrimination would be an obstacle to the relocation of Japantown residents, but disavowed responsibility for fighting it: “We’re going to encourage tolerance, but we cannot guarantee we can solve the problem . . . It is true there are practical bars but they are not what they used to be. Improvement is being made.”²¹⁴ Indeed, he seemed not to comprehend or believe the objections raised at the hearing, dismissively attributing them to a failure to understand the redevelopment plan.²¹⁵ Similarly, after the first session of hearings, the mayor told reporters, “we can’t let ourselves be made suckers through emotional appeals to us on one side or the other.”²¹⁶

2. Subjective Experience of Dehumanization

If a group is generally subordinated by society, each incidence of government mistreatment of its members may further imply or affirm their subordinate status, regardless of the actual intent.²¹⁷ Thus Atuahene suggests that both “top-down” evidence of government intent and “bottom-up” evidence of dispossessed persons’ subjective experience are relevant to determining whether dehumanization occurred.²¹⁸ Testimony at the Project 2-A hearings clearly, and sometime eloquently, evidences residents’ subjective perception of the plan as dehumanizing. In light of the long, recent, and ongoing history of invidious discrimination against them, their subjective experience of dignitary harm seems objectively reasonable.

Henry Taketa argued that Sacramento was valuing civic beautification more highly than its Japanese-American residents and unfairly concentrating the costs on the Japantown community.²¹⁹ He asked for “charity, humanity, and fair treatment.”²²⁰ Arthur Mitsutome of the Senator Lions Club insisted on “fair play” and decried the “utter disregard for the rights of individuals.”²²¹ Toko Fujii told voters to insist that city and SRA officials

213. GELFAND, *supra* note 35, at 212–13.

214. Tom Goff, *West End Gains Reassurance on New Locations*, SACRAMENTO BEE, May 22, 1954, at 16 (quoting H. Harold Leavey).

215. See *Project 2-A Hearings*, *supra* note 91, pt. 1, at 60.

216. *Loans Would Aid West End Rebuilding*, SACRAMENTO BEE, June 25, 1954, at A1.

217. See Atuahene, *Dignity Takings and Dignity Restoration*, *supra* note 6, at 799. *But see id.* (noting Carol Rose’s suggestion that a dignity taking requires intent to dehumanize or infantilize).

218. Atuahene, *Dignity Takings and Dignity Restoration*, *supra* note 6, at 811–12.

219. *Project 2-A Hearings*, *supra* note 91, pt. 1, at 14.

220. *Id.* at 21.

221. *Id.* at 73.

conduct redevelopment “with a touch of equity, fairness, and human kindness.”²²²

Witnesses linked this perception of unfairness to their historic experience of racist mistreatment. Fujii stated that because of their unjust treatment during the war, Japanese Americans sought fairness not just for themselves, but for everyone.²²³ Other residents specifically compared their threatened displacement to their evacuation and incarceration during the war. (Former residents continue to make this comparison.²²⁴) Henry Taketa of JARSA pointed out that Japanese Americans had been “forcibly kicked out” of the area before and had only recently reestablished Japantown; starting over yet again would be difficult and costly.²²⁵ One business owner pointed out that Japantown residents had had to “start life all over again” only eight years earlier.²²⁶ Removing Japantown residents again would “put salt on a deep wound just beginning to heal.”²²⁷ “What other people have had to take so much as the Japanese?” he asked.²²⁸ A Japanese-American priest referred to the “mental and spiritual hardship” of the wartime incarceration and asked the city not to repeat it.²²⁹ One elderly returnee from the camps pointed out that a second displacement would be especially hard on Japantown’s senior citizens, many of whom had become more frail since their first removal in 1942.²³⁰ A representative of the American Baptist Convention (who was apparently non-Japanese) said, directly addressing the mayor, “I am surprised . . . that you allow [the SRA] to come in here and pick on the Japanese a second time.”²³¹

Many residents testifying at the hearings argued that the treatment of their neighborhood made them feel less than fully *American*. They took pains to emphasize their American identity. The speakers included Japanese-American members of quintessentially American institutions like VFW posts and the Lions Club. Speaking on behalf the JAACL, Toko Fujii made sure to point out that it “is entirely composed of American citizens.” Henry Taketa declared that that Japanese-Americans are “one hundred

222. *Id.* at 47.

223. *Id.* at 47.

224. *See generally, e.g.,* REPLACING THE PAST: SACRAMENTO’S REDEVELOPMENT HISTORY, *supra* note 200.

225. *Project 2-A Hearings*, pt. 1, at 9–11.

226. *Id.* at 77 (comments of Sugiyama).

227. *Id.* at 79.

228. *Id.* at 78.

229. *Id.* at 74 (comments of S. Sasaki).

230. *Id.* at 75–76 (comments of Giichi Aoki).

231. *Id.* at 84.

percent citizens and residents.”²³² Frank Yoshimura, Commander of a Nisei VFW post, called it “undemocratic” and “un-American” to concentrate the costs of redevelopment on the Japantown community.²³³ Arthur Mitsutome said the conduct of redevelopment conflicted with “the American democratic way of life.”²³⁴ Another speaker pointed out that many Japanese immigrants had become naturalized citizens since the recent repeal of racial ineligibility in 1952, but now feared they would not “enjoy full rights as citizens of this country.”²³⁵ He argued that the destruction of Japantown ran afoul of the Constitution, and insisted, to applause, that “all men are created equal and enjoy equal rights.”²³⁶

Speakers at the hearings also alluded to discrimination against African-Americans and Mexican-Americans. Nathaniel Colley called for regulations preventing racial discrimination in the redeveloped neighborhood so that “blight” would not be replaced by “the blight of bigotry.”²³⁷ He noted that the Sacramento Real Estate Board had expressed support for such a rule, but also pointed out that the real estate industry had built many new homes elsewhere in the area, “none of which they have sold to us.”²³⁸ “Us” presumably refers to Black persons, since Colley pioneered housing discrimination litigation on behalf of Sacramento’s African American residents and was himself African-American.²³⁹ Colley also called for guarantees that relocation would not be racially segregated.²⁴⁰ The Reverend E.C. Regalada stated that Project 2-A included a significant Mexican-American population. He said that community did not oppose redevelopment, but doubted whether they would be treated with “justice” because of “the propaganda against this [sic] illegal aliens.”²⁴¹

VII. CONCLUSION

The Japantown residents and business owners displaced by urban renewal were organized and informed long-term residents, many of whom were U.S.-born citizens. They articulated their concerns through prescribed

232. *Id.* at 9.

233. *Id.* at 72.

234. *Id.* at 73.

235. *Id.* at 78.

236. *Id.* at 79.

237. *Project 2-A Hearings*, *supra* note 91, pt. 3, at 26.

238. *Id.* at 26–27.

239. Colley was the lead attorney in *Ming v. Horgan*, 3 Race Rel. L. Rep. 693 (Vanderbilt Univ. Sch. of Law) (Cal. Super. Ct. 1958).

240. *Project 2-A Hearings*, *supra* note 91, pt. 3, at 27.

241. *Id.* at 37–38.

democratic processes. Nonetheless, they found themselves ignored. There is no direct evidence that racial discrimination influenced local authorities' initial choice to destroy Japantown or their refusal to consider residents' objections. It is unfortunately common for governments to favor industry over communities and to ignore citizens' objections. But the national, state and local history of anti-Japanese racism makes unspoken or unconscious discrimination a plausible factor in the treatment of Japantown. Moreover, it makes the subjective perception of dehumanization an objectively reasonable reaction to the destruction of the community and the government's refusal to consider residents' objections.

Atuahene's original study examined South Africa's attempts to address the dignitary harms caused by egregiously illegitimate property takings. As dignity takings theory develops and attempts to identify less extreme examples, it will need standards for evaluating just compensation and legitimate public purpose, analyses that U.S. courts have reserved to political processes. The future analytical value of the model lies in its ability to expose the kinds of harms that existing takings protection, in the U.S. and elsewhere, fails to prevent or compensate. The urban renewal of Sacramento's Japantown provides examples of such harms.

Atuahene argues that dignity takings require more than market value compensation. Rather, they require "dignity restoration," in which dispossessed persons receive compensation "through processes that affirm their humanity and reinforce their agency."²⁴² Post-apartheid South Africa has attempted to do so (with mixed results) through its elaborate reconciliation processes. In 1988, decades after the closure of the camps, the U.S. issued monetary reparations to Japanese Americans who had been incarcerated. Moreover, the payments were accompanied by the government's formal apology.

Sacramento has never formally apologized for the destruction of Japantown, and the story has been largely forgotten. The only physical reminder of the lost community is a small outdoor display on an untrafficked downtown street. As Sacramento's aging urban-renewal era downtown undergoes another renewal, however, interest in Sacramento's redevelopment history has increased. A recent book, televised documentary, and museum display²⁴³ have examined the urban-renewal experience

242. Atuahene, *Dignity Takings and Dignity Restoration*, *supra* note 6, at 796.

243. See WILDIE, *supra* note 8; REPLACING THE PAST: SACRAMENTO'S REDEVELOPMENT HISTORY, *supra* note 200; see also Traci Rockefeller Cusack, *History Museum to Debut New "Making of Old Sacramento" Exhibit in February*, SACRAMENTO PRESS (Jan. 4, 2016), <https://sacramentopress.com/2016/01/04/history-museum-to-debut-new-making-of-old-sacramento-exhibit-in-february/> [<https://perma.cc/WRW8-H9P7>].

of Japantown and the West End's other lost neighborhoods. Such acknowledgment and reassessment are small but important first steps toward restoring the dignity of dispossessed persons.

