1985

Moving for Redress

Philip Tajitsu Nash

Follow this and additional works at: http://digitalcommons.law.yale.edu/ylj

Recommended Citation
Available at: http://digitalcommons.law.yale.edu/ylj/vol94/iss3/7
Moving for Redress


Philip Tajitsu Nash†

Over 120,000 Americans of Japanese ancestry were forcibly removed from their west coast homes in 1941 and early 1942, suffering extensive property, income, and psychological damage as a result. Despite reports to the contrary by staff members of the F.B.I. and Office of Naval Intelligence, military leaders argued that persons of Japanese ancestry posed special dangers of espionage and sabotage which justified first curfews and travel restrictions, and eventually removal and incarceration of all Japanese Americans. President Roosevelt issued Executive Order 9066 on February 19, 1942, giving military commanders the power to remove any and all persons from so-called military areas and then provide for the persons so excluded. Men, women, and children, citizens and aliens alike, were then imprisoned without indictment or inquiry as to loyalty, simply because the military felt that time pressures precluded individual loyalty in-

* National Redress Director, Japanese American Citizens' League, Los Angeles, California.
† Charles H. Revson Urban Legal Fellow, Max E. and Filomen M. Greenberg Center for Legal Education and Urban Policy, City College of New York, and Staff Attorney, Asian American Legal Defense and Education Fund, New York.
1. See P. Irons, Justice at War 280-81 (1983) (discussing FBI report); id. at 202-03 (discussing Office of Naval Intelligence report).
2. Euphemisms used by some wartime officials obscured what was done to Japanese Americans. "Incarceration," a term that includes "forced removal" and subsequent "detention," provides a more accurate description than the neutral, even beneficent, "relocation."
3. P. Irons, supra note 1, at 63. This power was used against the entire Japanese community of the west coast. Criminal sanctions were imposed for violations of Exec. Order 9066. Pub. L. No. 77-503, 56 Stat. 173 (1942). See P. Irons, supra note 1, at 64-68.
vestigations. No comparable time pressures were asserted by the military on the east coast. Italian and German Americans there were given individual loyalty hearings, not incarcerated en masse. The Supreme Court accepted these fallacious arguments of "military necessity" in Hirabayashi v. United States, Yasui v. United States, and Korematsu v. United States, decisions that effectively allowed the ordeal of incarceration to continue even beyond the end of World War II. Victims were kept behind barbed wire for an average of thirty months.

Scores of books and articles have been written to document the wartime incarceration. For the first time, however, John Tateishi’s And Justice for All: An Oral History of the Japanese American Detention Camps brings the ordeal to life in the words of a representative cross-section of the victims. Tateishi was himself incarcerated in a concentration camp and has been active most recently as the National Redress Director of the Japanese American Citizens’ League (JACL). After a brief introduction, he records the words of twelve women and eighteen men, who hailed from cities all over the western United States and ranged in age from twelve to thirty-eight when taken to the camps in 1942.

Even for those familiar with the overall story, each page brings forth new insight: the massive pre-war F.B.I. surveillance; the heartbreak of leaving the only home some had ever known; the exploitation by neighbors when household items had to be sold on less than a week’s notice; the barbed wire, guard towers, and armed sentries found in every camp; the harsh living conditions; the intrafamily disputes caused by the recruitment of U.S. army combat troops from within the camps; the heroic European Theatre exploits of the Japanese American soldiers in the 442nd Regimental Combat Team and the 100th Battalion, who served despite the irony of fighting for a freedom which their families did not enjoy; and the

5. 320 U.S. 81 (1943).
10. In seven major European campaigns, the 442nd Regimental Combat Team, which included men who volunteered from behind barbed wire, suffered 9486 casualties, or more than 300 percent of its original infantry strength. Other Japanese Americans served the United States in the Office of Strategic Services, the Office of War Information, and the Women’s Army Corps. COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED 257-59 (1982) [hereinafter cited as REPORT].
tragedy of families forced to rebuild their lives, often from scratch, after leaving the camps.

Consider the irony of this imprisonment for the two-thirds who were American citizens by birth:

I was born in San Diego. I went to Calexico Elementary School, Calexico Junior High School, and graduated valedictorian from Calexico High School; and then I went to UCLA. I went out to UCLA, but I couldn't get in any of the dorms. They didn't allow Orientals in any of the dorms at UCLA, and so I ended up staying at the YWCA in Boyle Heights and commuted back and forth all those years. I got married in April 1939, graduated from UCLA in June, and then I looked for a job.

First I worked in a market as a cashier and then I took a civil service exam for the city. I passed it and got a job with the city in the Fingerprint and Identification Bureau. I had been working there for a short time when Pearl Harbor was attacked and they said it wasn't convenient to have Japanese working in that division, so I got transferred to the Jefferson Branch Library for six weeks and then I was terminated. They didn't give me a reason for it but I knew why. It was because I was Japanese.

It was really sort of unbelievable. You know, when you go to college you have very high ideals of democracy, and when you have your rights taken away, it is really a shock. I kept saying all along, we're American citizens and the government couldn't possibly put us into camps. I really didn't believe it would happen until it did.\(^\text{1}\)

Listen to a pregnant mother, forced to live in a horse stall:

Before the war I lived in Fresno, California. When evacuation came I was married and had two children, seven and five years old. I was also pregnant three months. The day of the order was just about two weeks after my operation for a tumor. The doctor tried to have my internment delayed for a while and so asked the provost marshal, but it was not allowed. So I closed the bookshop, closed the home with my two children, carried whatever we were allowed to carry, and left for the camp, which was Fresno Assembly Center.

And you know what the summer is like in Fresno—110 degrees—and we were living under a low, tar-paper roof. The floors were built right on top of the racetrack. And there was the manure, and there were cracks in the floor, so that every bit of summer heat, every minute of the day when you're in the barracks, pushed the smell up.

Then there was the food poisoning. I was the first to succumb. We

\(^\text{1}\) Pp. 108-09 (statement of Mabel Ota).
usually had to wait something like an hour or an hour and a half to be served any food. The line was so long, and things were so disorganized that they didn’t have a system that let a sick woman or an older person or pregnant woman go first. They never did that. So if you wanted to eat something, you stayed in line in that hot sun for an hour, sometimes two hours, and by the time you got your food and took it back to your barracks to eat, the food was spoiled. The first time I got food poisoning I thought I would lose the baby, and I was confined to the hospital, which had no roof, no windows, hardly anything. I was there for about a week and barely sustained the baby’s life. When I was released to the barracks, I was under the doctor’s care for about a month. But all during that pregnancy, I hemorrhaged, and so the doctor thought that if the baby was to be born, it might not be normal.  

Even as the incarceration of Japanese Americans was taking place, however, it was recognized as both a direct violation of the victims’ constitutional rights and a serious threat to the freedom of every American. For example, in 1945, Eugene V. Rostow, professor and later Dean of the Yale Law School, wrote a seminal article, both insightful and prescient, asserting that “[a]ll in all, the internment of the West Coast Japanese is the worst blow our liberties have sustained in many years.” Rostow identified five propositions necessarily underlying the program of Japanese incarceration: (1) protective custody is a permissible form of imprisonment; (2) political opinions may justify such imprisonment; (3) members of a given ethnic group, citizens and resident aliens alike, may be presumed to possess ideas sufficiently dangerous to justify their imprisonment; (4) in times of war or national emergency, the military may decide, independently, what political ideas justify imprisonment and which ethnic groups can be presumed to possess them; and (5) such a determination by the military can be executed without regard to the protections of the Bill of Rights, including the rights to indictment, trial by jury, confrontation of witnesses, defense counsel, and the privilege against self-incrimination. Acceptance of these propositions posed the “utmost potential menace” to the concept that punishment should be meted out only for individual behavior—a concept embodied in American, and indeed all, constitutional law.

Rostow concluded his condemnation of the incarceration by advocating three forms of reparation, to ensure both compensation of actual victims and prevention of similar violations in future years. To protect the civil

14. Id. at 532.
15. Id.
Moving for Redress

effects of Japanese Americans upon leaving the camps, Rostow argued, the
federal government was obliged to prosecute vigilantes and other bigots
under the authority of the Civil Rights Act of 1870.16 Second, Rostow
maintained that the government should provide financial indemnity for
the enormous property losses suffered by victims as a result of their forced
removal.27 And finally, Rostow urged the Supreme Court to reverse
Hirabayashi, Yasui, and Korematsu, as it had reversed earlier benighted
decisions, so as to reaffirm the constitutional rights abandoned in those
wartime opinions.18

Professor Rostow and others joined with Japanese Americans to pro-
cure financial redress, and in 1948, Congress enacted a sincere but inade-
quate program.19 The full measure of Rostow’s prophetic arguments,
however, has come to life only in the past few years, in the form of a
comprehensive movement on three fronts to gain more complete redress
for the victims. Both legislative activity20 and a class action lawsuit21 seek
a more equitable, if still token, compensation for losses suffered. On the
third front, three related but distinct coram nobis22 lawsuits have already
resulted in two victories—federal district court vacations of the wartime
criminal convictions of exclusion-order resister Fred Korematsu and
curfew-order resister Minoru Yasui.

It is in the context of this redress movement that And Justice for All
makes its most tangible contribution. Social justice movements, like good
lawsuits, require not only coherent theories and adequate documentation,
but compelling fact patterns as well. Precedents and documents sing
through the voices of victims. In bringing to life the personal dimension of
this major American tragedy, And Justice for All serves more than its
intended historical purpose. With empathy comes greater vaccination of a
new generation of Americans against the dangers of a recurrence. More-
over, a presentation of the personal losses suffered improves the case for
individualized compensation. Whether that compensation comes through

16. Id. at 533.
17. Id.
18. Id.
right to claim from the government any real and personal property losses—but not loss of income or
losses due to pain and suffering—which occurred as a consequence of governmental action. The Act
required an elaborate proof of loss, however, which was virtually impossible for claimants to provide,
given the frantic “evacuation sales” held in the few days between notice of the move and the move
itself. The Act thus resulted in awards of only $37 million. This amount is far below what would
have been full and fair compensation for actual economic losses. COMMISSION ON WARTIME RELOCATION
AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED, PART 2: RECOMMENDATIONS 7
(1983) [hereinafter cited as RECOMMENDATIONS].
22. See infra pp. 751-52.
legislation for direct compensation or a judicial opinion awarding compensatory damages, the oral histories will play an important role.

Discussion of the redress concept, public since the late 1960's, resulted in several piecemeal successes in the 1970's: a successful nationwide campaign to repeal Title II of the Internal Security Act of 1950, which had allowed the establishment of camps to detain individuals purely on the basis of suspicion of disloyalty; a 1972 amendment to the Social Security Act which deemed Japanese Americans to have earned and contributed to the Social Security system while so detained; and a 1978 amendment to the federal civil service retirement provisions, allowing Japanese Americans credit for time spent in detention after the age of eighteen. Autonomous state and local campaigns to procure token amounts of compensation for former government employees who were dismissed or forced to resign during World War II because of their Japanese ethnicity succeeded in California, Washington State, Los Angeles County, and San Francisco.

The national legislative campaign for direct financial redress reached Congress in the summer of 1979. With the backing of Japanese American and other organizations, prominent members of Congress, including House Majority Leader James Wright (D.-Tex.) and Senator Daniel Inouye (D.-Hawaii), introduced H.R. 5499 and S. 1647. These bills proposed a commission to determine whether any wrong was committed against those American citizens and permanent resident aliens affected by President Franklin D. Roosevelt's Executive Order 9066.

Some members of the Japanese American community who felt the government's wartime wrongs to be self-evident saw the two Commission bills as unnecessary and dilatory. Instead they proposed a direct compensation bill, H.R. 5977, which was introduced on their behalf by Representative Michael Lowry (D.-Wash.) in November of 1979.

After Congressional hearings, the Commission bills were passed on

29. This determination was to be made by a federal commission, which would then make recommendations to Congress as to an appropriate remedy. See Carter Sent Commission Redress Bill, Pacific Citizen, Aug. 1-8, 1980, at 1, col. 1.
30. H.R. 5977, 96th Cong., 1st Sess., 125 Cong. Rec. 33,966 (1979). Titled the "World War II Japanese American Human Rights Violation Redress Act," this bill directed the Justice Department to locate all internees, determine how long they had been interned, and then pay each $15,000 plus $15 per day of internment.
July 31, 1980.\textsuperscript{31} The new law established a commission that ultimately included nine distinguished public figures, including former Supreme Court Justice Arthur Goldberg and several former congresspersons. After hearing the testimony of over 750 persons in twenty days of nationwide hearings, the Commission issued its report, \textit{Personal Justice Denied},\textsuperscript{32} on February 24, 1983. The report’s independent assessment of economic losses and its recommendations for direct monetary redress payments to surviving Japanese Americans and Aleut\textsuperscript{33} victims, as well as other remedies, were published on June 16, 1983.\textsuperscript{34}

The Commission’s conclusions were similar to those of Professor Rostow:

The promulgation of Executive Order 9066 was not justified by military necessity, and the decisions which followed from it—detention, ending detention and ending exclusion—were not driven by analysis of military conditions. The broad historical causes which shaped these decisions were race prejudice, war hysteria and a failure of political leadership.\textsuperscript{35}

Flowing from these conclusions, the following recommendations for redress were sent to Congress: first, passage of a joint congressional resolution recognizing the grave injustice of the incarceration and offering a national apology to its victims; second, presidential pardon of persons convicted of either curfew violations or refusal to accept discriminatory treatment; third, liberal review by executive agencies of applications by Japanese Americans for restitution of positions, status, or entitlements lost as a consequence of events between December 1941 and 1945; fourth, establishment of a special foundation to sponsor research and educational activities designed to illuminate the causes of, specifically, the incarceration of Japanese Americans and, more generally, similar abuses of civil liberties by governmental action in times of national stress; and fifth, appropriation of $1.5 billion to provide per capita compensatory payments of $20,000 to each surviving victim, as well as to fund the research and educational activities just described.\textsuperscript{36}

Soon after the Commission released its findings and recommendations

---

33. The Aleuts were removed from their island homes to camps with “deplorable” conditions. Of 876 persons removed, an estimated 10% died from epidemics and inadequate health care and sanitation facilities. \textit{Id.} at 18–23.
34. \textit{Recommendations}, supra note 19.
in 1983, five bills were introduced to implement some or all of these recommendations. The two that most closely conformed to the Commission's recommendations were eventually co-sponsored in the 98th Congress by 106 representatives and twenty senators. Although Congress failed to act on this legislation in 1984, the sponsors plan to resubmit these bills when the 99th Congress convenes in early 1985. Whether the bills not directly conforming to the Commission's recommendations will be reintroduced in the 99th Congress remains to be seen.

In the second major arena of action for redress, in March of 1983 nineteen named Japanese American plaintiffs filed suit in *Hohri v. United States* on behalf of a potential class of 120,000 victims. For each class member, the complaint demanded $10,000 for each of twenty-two causes of action. Without addressing the issue of class certification, Judge Louis Oberdorfer dismissed the suit on May 17, 1984, holding that the case was barred by the six-year statute of limitations for actions against the United States. Diligent plaintiffs could have brought suit in the 1950's, Judge Oberdorfer reasoned, because circumstantial evidence that the internment was not justified by governmental claims of "military necessity" was available as early as 1949. Plaintiffs need not have waited for the documents and information revealed in the 1983 Commission Report, *Personal Justice Denied.*

Criticizing Judge Oberdorfer's decision, named plaintiff William Hohri observed:

We had just come out from behind barbed wire and had been intimidated by losing four major cases in the Supreme Court based on

---


38. H.R. 4110, supra note 37; S. 2116, supra note 37.


40. *Id.* It is noteworthy that, forty years later, there are four Japanese-American members of Congress who are helping to support the redress legislation. They are Representatives Robert Matsui (D-Cal.) and Norman Mineta (D-Cal.), and Senators Daniel Inouye (D-Hawaii) and Spark Matsunaga (D-Hawaii).

41. H.R. 4322, supra note 37; H.R. 3387, supra note 37; S. 1520, supra note 37.


43. *Id.*


46. *Ex parte Endo,* 323 U.S. 283 (1944) (a victory of sorts, holding that no concededly loyal
what we now recognize as fraudulent evidence of "military necessity." Given those problems, the political climate of the early 1950's, and the need to start rebuilding our broken lives, how could we have been expected to mount a major lawsuit of this kind?47

The National Council for Japanese American Redress, the organizational sponsor of the lawsuit, subsequently voted to file an appeal on which oral argument is expected in the early spring of 1985.48

The third major development in the redress movement involves the use of coram nobis, the common law writ of error, to reopen the Korematsu,49 Yasui,50 and Hirabayashi51 convictions. This writ, which federal courts can grant under 28 U.S.C. § 1651(a),52 allows one who has served time for a criminal conviction to petition the court, no matter how long after the conviction, for a vacation of that conviction. Such vacation will be granted if there is evidence of prosecutorial impropriety, or if there are "exceptional circumstances" or errors that "result in a complete miscarriage of justice."53

On January 19, 1983, after extensive research into recently declassified government documents showing such impropriety, Fred Korematsu filed a coram nobis petition. Minoru Yasui and Gordon Hirabayashi followed his action shortly thereafter in separate but related cases. After hearing arguments, Judge Marilyn Hall Patel of the Northern District of California vacated Korematsu's conviction on grounds of prosecutorial misconduct, including "deliberately omit[ting] relevant information and provid[ing] misleading information in papers before the [Supreme] Court."54 The information was "critical to the Court's determination"55 because it dealt with the military necessity justification for the forced removal and incarceration. Because the common law writ can be used only to correct errors of fact, however, Judge Patel did not reach any errors of law. Meanwhile, Judge Robert C. Belloni of the District of Oregon vacated the wartime
curfew violation of Minoru Yasui. Nevertheless, because Judge Belloni refused to examine the merits of Yasui’s petition and to address the issue of governmental misconduct, Yasui filed an appeal with the Ninth Circuit on October 31, 1984, arguing that the court has a duty to address the merits of the case. His appeal will be heard in the spring of 1985. Finally, without addressing the merits of the Hirabayashi case, Judge Donald Voorhees in the Western District of Washington has ruled that an evidentiary hearing shall be held. Thus the Supreme Court may yet, as Professor Rostow and others had hoped, have a chance formally to overturn its wartime camp decisions.

Although groups ranging from the American Bar Association to the United Methodist Church, and from the American Legion to the American Friends Service Committee have already taken positions supporting various facets of the current redress movement, much more public education will be needed, on the grassroots level and in the halls of Congress, until the redress movement’s goals are reached. By sensitively and accurately recreating the human dimension of the Japanese American incarceration, And Justice for All fills a gap in the existing redress literature, and in so doing, helps to advance both of these important goals: individualized compensation for each victim and the sensitizing of a new generation to the dangers of a recurrence.

And Justice for All is not without its shortcomings, however. First, the stories are not placed in any thematic categories that would help the public, and especially a new generation of legislators and judges, to conceptualize the enormity of the losses suffered and to formulate strategies for monetary redress. For example, if the Bill of Rights had been used as an outline, personal stories would substantiate allegations of deprivations of due process, through the lack of personal loyalty hearings; denials of equal protection, through the fact that a similar en masse roundup of German- or Italian-Americans did not take place; the denial of just compensation for property losses directly attributable to the government’s removal orders; the denial of the right of freedom of religion, through discriminatory constraints on the practice of Buddhism; the denial of freedom of speech and press, through restrictions on the right to meet and commu-

57. Yasui v. United States, appeal docketed, No. 84-3730 (9th Cir. Oct. 31, 1984).
58. See Nash, supra note 47.
60. See $7500 to NCJAR From Church Body, The New York Nichibei, Mar. 5, 1981, at 1, col. 5.
Moving for Redress

cicate in the camps; and so forth. Alternatively, the stories could have been grouped by legal causes of action, including alleged violations of the right to privacy, due to restrictions on family and interspousal behavior imposed by the confines of life in the barracks; of the right to freedom from assault and battery, due to the physical abuse—and even death—and even death—caused by camp guards; and of the right to protection from involuntary servitude, because work done by Japanese Americans in the camps was grossly undercompensated, given prevailing wartime wages. While any one victim’s experience certainly involves a combination of these violations, leaving them uncategorized overwhelms rather than activates the reader.

The second shortcoming, related to the literary genre, is more serious. Excerpted lives, by definition, lack depth. Such excerpts frequently sensationalize by emphasizing experiences outside the norm and give no hard data to reinforce the conclusions of victims, many of whom did not comprehend what was happening to them at the time. Because it lacks explanatory footnotes, adequate visual aids, reproductions of government documents, and a postscript on the current redress movement, the book does not provide the context necessary to a meaningful understanding of such a collection of excerpts.

What overview the introduction does provide is too short and too superficial, especially in the wake of the findings in *Personal Justice Denied*. Tateishi places the blame for the government’s incarceration policy squarely where it belongs: with President Roosevelt, who signed Executive Order 9066. Nevertheless, Tateishi misses the opportunity to provide scholarly evidence to support his tacit conclusions, instead simply echoing the Commission’s statement that “race prejudice, war hysteria and a failure of political leadership” inspired the promulgation of this order and other governmental actions.

The introduction also omits any mention of key events illustrating how

63. See Report, supra note 10, at 179.
64. *Id.* at 165-69. The Hohri complaint incorporates these and other innovative causes of action, Complaint at 35-39, Hohri v. United States, 586 F. Supp. 769 (D.D.C. 1984), appeal docketed, No. 83-0750 (D.C. Cir. Aug. 15, 1984). Many have been discussed and developed over the years by Asian American attorneys and legal groups, including the Asian Law Caucus in Oakland, California, the Asian American Legal Defense and Education Fund in New York, the Bay Area Attorneys for Redress in San Francisco, the Asian Law Association in Seattle, and the Asian/Pacific Bar Association of California. Major community organizations that have participated in these and other redress discussions include the Japanese American Citizens’ League, based in San Francisco; the National Coalition on Redress/ Reparations, based in Los Angeles; the National Council for Japanese American Redress, based in Chicago; and the Washington Coalition on Redress, based in Seattle. Space limitations prevent the recognition of each individual whose volunteer efforts made this movement possible.
65. There is only one map (showing locations of the camps), p. 2, and one contemporary photograph (of newspaper headlines announcing the impending incarceration), following p. 132.
67. *Id.* at 18.
The mass incarceration program profoundly violated American values of justice and individual liberty. For example, President Roosevelt had received reports in November of 1941 from a State Department investigator, Curtis B. Munson, confirming F.B.I. and Office of Naval Intelligence reports that, because of a "remarkable degree of loyalty to the United States among Japanese Americans," there was no Japanese "problem" on the west coast. Even assuming there had been a "military necessity" for the forced removal in 1942, top War Department officials privately acknowledged as early as May of 1943, nineteen months before the December 1944 announcement that the camps were to be closed, that such necessity no longer existed. Both the original incarceration and the continued imprisonment ran completely counter to our fundamental values of justice and individual liberty.

Another example of how these values were undermined is the plan to use Japanese Americans, including United States citizens, as "hostages" to be "bartered" to Japan in return for Caucasian P.O.W.'s, and the equally nefarious plan to uproot and transport certain Japanese nationals from Central and South American countries to the United States. These two plans, discussed at the highest levels of government, were first publicly described nine years ago in Michi Weglyn's pathbreaking book, Years of Infamy. A discussion of the extent to which the treatment of Japanese Americans so completely ignored personal liberties and individual rights would have strengthened the impact of these individual stories immensely. The context of these histories is crucial to our understanding that they are unique, yet representative. Each is one individual's story, yet it illustrates treatment of the class; and although a group was punished, it is individuals who suffered.

Despite the book's shortcomings, the movement for Japanese American redress can only be aided by And Justice for All and the heroic stories of its thirty protagonists. Read in tandem with more factual and analytical works, it will go far towards vaccinating a new generation against a recurrence and laying the foundation for an individualized compensation program—whether judicial or legislative. The extraordinary power of the human voice, as captured by And Justice for All, makes real the threat

---

69.  See REPORT, supra note 10, at 235 (discussing Proclamation No. 21, Dec. 17, 1944).
70.  Id. at 223, 419 n.33 (quoting memorandum from Colonel Karl R. Bendetsen to Lieutenant General John L. DeWitt (May 3, 1943)).
71.  M. WEGLYN, supra note 8, at 54–66.
Moving for Redress

posed by the Japanese American internment experience to the civil liberties and property rights of every American.

One can only hope that, with those voices ringing in our ears, we as a nation will move swiftly to correct the injustices recognized forty years ago and vindicate those rights through the classic legal remedy, money damages. And, with the individual hardships better understood, the necessity of an individualized rather than a class-based remedy will become even clearer. To provide otherwise would be to replicate the class-based nature of the original injustice.