From Heart Mountain to Iraq:
Lieutenant Watada and a Long Line of Resistance

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The American people have to stand up…and if they are against what is happening…and they have to be willing to sacrifice to stop it. It is our country.¹

Prologue: History Repeats

A historic day. Two generations of Japanese Americans. Key players in political struggles, separated by sixty years, meeting virtually.

First Lieutenant Ehren Watada is a third-generation Japanese American who refused military orders to deploy to Iraq. He talks by video conference² with second generation Japanese Americans Frank Emi and Yosh Kuromiya, leaders of the World War II Japanese American internee draft resistance. Watada is traversing their path of solitary protest.

The setting is apt. The resisters speak from their homes, sharing a sense of family and cultural identity—bonds forged across time and space by race and moral conscience. An especially appropriate meeting. For Watada, these men guide and inspire. For Emi and Kuromiya, Watada recalls the power and pain of resistance.

In keeping with his 1940s leadership in the Heart Mountain, Wyoming internment camp, Emi guides the conversation. He counsels Watada about the stark difficulties of political resistance, as a father would counsel a son, sharing experiences, noting differences, yet finding common ground. They speak of two different wars in two dissimilar times. Yet the essence of the

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story is the same: stand up for what you strongly believe is right, even if you collide with overwhelming government power and even if your stand draws hard criticism from middle America and your peers; be willing to sacrifice.

The soft-spoken Kuromiya acknowledges pride for Watada’s commitment and willingness to face government punishment for his act of moral conscience:

[Y]ou were well aware of the possible consequences. . .and were willing to bear those consequences. Dishonorable discharge may be the most shameful prospect a military man could face. Nonetheless, your sacrifice is the most honorable and courageous act of your entire career.3

Watada smiles knowingly. He faces dishonorable discharge and imprisonment because of his stance that as an officer his duty to obey military orders coexists with his moral and legal duty to resist orders amounting to international crimes of war.

Over the last century the ever-evolving United States has witnessed a recurring pattern of executive branch abuses of American civil liberties in the name of national security.4 “History teaches that we tend to sacrifice civil liberties too quickly based on claims of. . .national security, only to discover later that those claims were overstated from the start.”5 For instance, in 1798, the Federalists enacted the Alien Friends Act, which authorized President John Adams unilaterally to deport any non-citizen that he deemed a threat to the U.S., and the Sedition Act, which prohibited criticism of the government.6 During the Civil War, President Abraham Lincoln suspended the writ of habeas corpus, resulting in the imprisonment of about 13,000 civilians without judicial review.7 The Espionage Act of 1917 was Congress’ response to dissenters against World War I and its military draft. It became a “blanket prohibition of seditious utterance” leading to the prosecution of more than 2,000 war dissenters.8 In 1919 to 1920, during the “Red Scare,” Attorney General A. Mitchell Palmer deployed propaganda about Communism to violently quell domestic labor strikes.9 In addition, the government detained over 5,000 workers on mere suspicion of radicalism.10 And later, Congress enacted the Communist Control Act, punishing subversives for their speech.11

After the attack on Pearl Harbor on December 7, 1941, responding to public fears, President Franklin Delano Roosevelt authorized detention of over 120,000 innocent Japanese Americans in internment camps without charges or trial,12 effectively
branding them all disloyal on account of race. Recently, in response to the September 11, 2001 attacks, the Bush Administration not only declared war against Afghanistan and Iraq, it also initiated the screening and secret detention of Arab Americans, accelerated the selective and hidden enforcement of immigration laws against Arab immigrants and Muslims, and triggered the far-reaching subversion of American civil liberties—including warrantless domestic surveillance of political dissidents and indefinite incarceration of American “enemy combatants.” The President’s racially tinged curtailment of civil liberties under the mantle of national security shows that history repeats, albeit in differing forms. America’s past haunts its present.


Ehren Watada

Concerned in 2006 that his “participation would make [him] party to war crimes,” Hawai’i native Lieutenant Watada took a solitary stand against President Bush and military leadership. He publicly refused to obey military orders deploying him to Iraq.

In response to 9/11, Watada had volunteered to join the army “out of a desire to protect our country,” paying $800 for a medical test to prove he qualified despite childhood asthma. He had served honorably as an officer for over four years, including a full tour in Korea. He had trained with Stryker vehicle combat teams and volunteered to fight in Afghanistan. And he had believed George W. Bush when the President said that a pre-emptive war against Iraq was necessary because Iraq supported the 9/11 attacks and because Saddam Hussein controlled weapons of mass destruction.

As the truth emerged, Watada’s desire to protect the country remained. But his motivation changed. He learned that the President’s administration lied about the justification for what turned out to be an unprovoked war of aggression—a war that made the U.S. a target for retaliation. Watada also learned that he could be held accountable for an illegal war that led to the deaths of innocent civilians.

His education came at a steep price. For Watada’s stand against the Iraq war, the military charged him with conduct unbecoming an officer and missing troop movement. He faces up to six years in military prison. His first court-martial ended in a mistrial in February 2007. Later in 2007, a federal court issued a preliminary injunction halting any further military court-
martial proceedings against Watada until the court resolved his claim that a retrial would violate his constitutional right against double jeopardy.\textsuperscript{21}

Watada has chosen a path far less traveled. Among the few before him were Japanese Americans during World War II who protested the abuse of U.S. government power in its conscription of men it imprisoned indefinitely on account of their race. During the Japanese American internment, these U.S. citizen internees, the Heart Mountain draft resisters, proclaimed loyalty towards the United States but refused the U.S. draft call to fight a war while the American government discriminatorily incarcerated an entire race of people on the West Coast.\textsuperscript{22} They paid a harsh price for their resistance—federal criminal prosecution and imprisonment.

In important ways, Watada walks their walk. That is why in 2007 Watada speaks to Heart Mountain resisters Emi (age ninety) and Kuromiya (age eighty-four). For these three resisters, history repeats: a few risking much to protect the rights of many; strong Japanese American voices advocating that one’s duty to America sometimes entails fighting government officials when they harm the U.S. by transgressing domestic and international laws.\textsuperscript{23}

\textbf{Frank Emi, Yosh Kuromiya, and the Heart Mountain Resisters}

While interned, second generation Japanese American Frank Emi refused to sign a government loyalty document renouncing allegiance to Japan. He never had an allegiance to Japan, so how could he renounce such an allegiance? The U.S. government, he remarked, asked “a very stupid question.”\textsuperscript{24} The U.S. government had forced the Southern California-raised Emi to sell his family’s business for six percent of its value and had imprisoned him at Heart Mountain.\textsuperscript{25} There, his wife bore a son into a world without the rights Emi once possessed as a U.S. citizen.\textsuperscript{26}

As a married man with children, Emi was not eligible for the military draft. He nevertheless stepped forward to help form the Fair Play Committee (FPC) at the Heart Mountain internment camp and to spearhead the resistance against the draft of male internees.\textsuperscript{27} The FPC professed loyalty to the U.S. in part by supporting the restoration of Japanese American civil rights. It fought the military draft because “it was unfair, unjust, immoral and legally questionable.”\textsuperscript{28} The group’s circulars revealed the harsh deprivation of the American civil liberties and roused internees’ support.\textsuperscript{29} To stop the spreading protests, Wyoming’s
U.S. Attorney indicted Emi and six others for conspiring to counsel, aid, and abet Heart Mountain’s draft-age Japanese Americans in evading the draft.\textsuperscript{30} These defendant-resisters argued that they did not engage in a “guileful and stealthy avoidance of the duty to serve.”\textsuperscript{31} Instead, they encouraged interned young men to test the legality of applying selective service laws to people incarcerated based on race.\textsuperscript{32} They viewed their acts as patriotic efforts to uphold the U.S. Constitution—to establish Japanese Americans’ right to equal treatment as U.S. citizens.\textsuperscript{33} Federal Judge Eugene Rice convicted the FPC leaders and sentenced them to four years in federal prison. After one-and-a-half years of incarceration, the Tenth Circuit Court of Appeals overturned the resisters’ convictions because the judge’s jury instructions “prevented the jury from considering whether the FPC ever urged Heart Mountain’s Nisei to ‘evade the draft. . .as opposed to refusing it out of a good-faith belief that the draft law was unconstitutional as applied to people illegally confined on account of their race.”\textsuperscript{34}

Yosh Kuromiya also fought the draft while imprisoned at Heart Mountain. The internment wrenched him away from art studies at Pasadena Junior College. His dreams of becoming a graphic illustrator turned into a fight to regain rights as a U.S. citizen. Kuromiya joined the FPC at age twenty-one to reclaim the rights of ordinary “citizens enjoying the freedoms denied us.”\textsuperscript{35} If he acceded to the military draft, he would be complicit in the government’s denial of due process and equal protection. “A citizen who will accept bad government without protest is not a good citizen,” he explained.\textsuperscript{36}

The U.S. attorney indicted Kuromiya and sixty-two other internees for resisting the draft itself. From the outset, Judge T. Blake Kennedy voiced antipathy toward Kuromiya and the others. The resisters found Judge Kennedy to be a self-professed racist who set the tone for the trial by addressing the resisters as, “You Jap boys.”\textsuperscript{37} Additionally, Kennedy presumed the internees’ loyalty to Japan:\textsuperscript{38} “[i]f they are truly loyal American citizens they should. . .embrace the opportunity to discharge. . .duties of citizens by offering themselves in the cause of our national defense.”\textsuperscript{39} At trial,\textsuperscript{40} the resisters attempted to argue the illegality of the internment itself.\textsuperscript{41} But the judge denied them the chance.\textsuperscript{42}

Judge Kennedy found the sixty-three resisters guilty of draft evasion.\textsuperscript{43} The Court of Appeals tersely affirmed, stating that the
defendant-resisters “owed the same military service to [their] country that any other citizen did” and that confinement in internment camps did not “cancel this debt.”\textsuperscript{44} The government then incarcerated Kuromiya and the others until 1946—long after the end of the war.\textsuperscript{45}

A Common Path Less Traveled

Watada now traverses their path. He knows that the Heart Mountain resisters faced “ostracization and imprisonment, but it was shown many years later that they were correct.” What “I’m doing is no different.”\textsuperscript{46}

Watada refused to board the transport plane to Iraq with his peers because he—a long with many Americans—had learned the hidden truth about the war: the government’s initiation and conduct of the war likely violated both domestic and international laws.\textsuperscript{47} Yet harsh criticism followed. Critics pointed to Watada’s deliberate choice to join the army post-9/11 and accused him of dereliction of duty. A founder of Military Families Voice of Victory called him a “coward” and a “traitor.” His actions will “only serve to get his fellow soldiers killed so that he can save himself and become famous.”\textsuperscript{48} According to the head of the Japanese American Korean War Veterans, “We went to Korea, and we didn’t know what the hell we were there for. . .But nobody refused to go.”\textsuperscript{49} Nine other Japanese American veterans groups also criticized Watada for disrespecting “a legacy of military service by Japanese American soldiers dating back to World War II.”\textsuperscript{50}

The Heart Mountain resisters, too, had faced fierce criticism—by Japanese Americans as well as others. The national office of the Japanese American Citizens League (JACL), which supported Japanese American acquiescence to the internment, branded them “agitators” and “troublemakers.”\textsuperscript{51} Echoing the JACL’s national office, a JACL member warned, “If you defy the government, the government retaliates and not only against the active people but against the whole group. . .[The resisters] not only risked their own lives, but they risked the welfare of the Japanese people.”\textsuperscript{52}

That same JACL had earlier harshly criticized Fred Korematsu, Gordon Hirabayashi, and Minoru Yasui,\textsuperscript{53} another set of solitary resisters, for their challenge to the constitutionality of the World War II Japanese American curfew and exclusion.\textsuperscript{54} In \textit{Korematsu v. United States},\textsuperscript{55} Fred Korematsu asserted that the President, Congress, and military violated Due Process and
Equal Protection constitutional guarantees by interning 120,000 innocent Japanese Americans without charges or trial. A divided Supreme Court sided with the government, ruling that the exclusion order leading to the internment was justified by military necessity and therefore did not violate the constitution. In *Hirabayashi v. United States*, Gordon Hirabayashi submitted to arrest to test the constitutionality of the racially designated military curfew. The Court affirmed his curfew violation, finding that the curfew was an appropriate defense measure for safeguarding America from disloyal American citizens of Japanese ancestry. In *Yasui v. United States*, Minoru Yasui, who had volunteered for the U.S. military and was later discharged on account of race, purposely violated the curfew order to test its constitutionality. The Supreme Court affirmed his conviction. Significantly, forty years after the fact, federal courts vacated the convictions of Korematsu, Hirabayashi, and Yasui, finding a “manifest injustice” because the U.S. War and Justice Departments had defrauded the court in their cases by destroying and fabricating key evidence—there had been no genuine military necessity.

In counterbalance to the recent criticism, many rallied behind Watada. The JACL Honolulu Chapter voiced vigorous support. So did his father, Robert Watada, an early Vietnam War opponent, and mother, Carolyn Ho, who traveled the country to lobby for her son. The Asian American Vietnam Veterans Organization, American Civil Liberties Union, Iraq Veterans against the War, and Veterans for Peace also backed Watada for his anti-war stance.

Amidst the swirling rhetoric about Watada’s patriotism, two things emerged. First, in important respects, Watada’s position is broadly consistent with the patriotic stance of many Japanese American veterans during World War II—a willingness to stand for the principles of American democracy under trying circumstances. The Asian American Vietnam Veterans Organization support Watada for this reason. While the veterans on the frontlines risked their lives—the ultimate sacrifice—Watada, too, risked matters of special value—his liberty and lifetime reputation.

Second, as an officer of the U.S. Army, Watada consistently desired to serve his country.

Even up into . . .2005, I had doubts about what was going on. I knew about Abu Ghraib, and I knew about no WMD. I was still convinced of the mission and willing to go earlier than the unit I was currently with.
New knowledge about the Bush Administration’s wide-ranging dissembling of the justification for the war and its conduct, however, altered the way he acted upon that desire.

It was only when I started to...educate myself, as it was my responsibility as a leader, I became aware of what was really happening as opposed to what I was simply told or perceived. And that was deeply shocking and disturbing, and that’s why I started to think about...what I was being ordered to do...[I]n hindsight, people have learned there was deception not only in the inception of this war but through its conduct.66

Responding to criticism that he should have known better from the start, Watada observed, “We don’t pick and choose when we realize the truth.”67 And further responding to the challenge that as a military officer he owed a blind duty of obedience68 to military orders, Watada cited Nuremberg.

I certainly believe [Nuremberg] applies, and it applies to every soldier out there. Just simply going along with whatever we are told and saying that, “Well, we’re not part of American foreign policy,” that’s no excuse. Especially when you see the devastation we have wrought upon the Iraqi people and around the world.69

In this respect Watada and the Heart Mountain resisters are similar in that their struggles against the government have been grounded in moral conscience and a belief that the U.S. acted unlawfully. Their situations differ, however, in that Watada is a military officer by choice (hence the applicability of Nuremberg principles), while the Heart Mountain resisters, as civilians, were resisting involuntary military service as a matter of constitutional principle.

An Officer’s “Duty to Disobey Unlawful Orders”
Watada grounds his stance in his belief that America’s initiation and continued fighting of the Iraq war contravenes international and domestic law.70 He cites Nuremberg—the post-World War II human rights principles that established an officer’s duty to refuse military orders he considers violative of human rights.

Nuremberg Principles
The Nuremberg Charter emerged from the horror of the Nazi’s anti-Semitic mass extermination of five million Jews during World War II.71 The Holocaust atrocities shocked the world’s
conscience, and nations everywhere sought answers and assurances. Who should be held responsible for these war crimes? How could they be prevented in the future? The Nuremberg Charter and prosecutions, though viewed by some critics as “victor’s justice,” emerged as a pathbreaking response.

Robert H. Jackson, Associate Justice of the U.S. Supreme Court, served as chief prosecutor for the Nuremberg Tribunal’s trial of Nazi military officers. His approach to the tribunal reflected emerging human rights principles. Those principles coalesced into international recognition of three basic crimes: crimes against peace, war crimes, and crimes against humanity. Jackson grounded charges against Nazi officials in the precept of personal accountability—that individuals are responsible for their actions, even when following superior orders. Jackson aimed to end “the ultimate anachronism,” where domestic defendants suffer severe punishment for murders, while countries’ officials who initiate or condone similar crimes on a massive scale during war go unpunished. Jackson advocated, and the world has since come to accept, that domestic law authorization cannot justify crimes under international law.

To hold these individuals accountable for gross violations of human rights, Jackson successfully shredded the defense of “superior orders.” Nazi military and political leaders attempted to undermine criminal charges against them by claiming that Hitler commanded them to commit the horrific crimes—they were just following orders. If validated, this defense, combined with the defense of sovereign immunity, would leave no one accountable—both the heads of state and the subordinates who carried out their orders would get away with murder—literally. Jackson argued cogently that “[s]ociety as modernly organized cannot tolerate so broad an area of official irresponsibility.” Through the Tribunal’s conviction of Nazi officials, Jackson entombed the superior orders defense. In doing so, the Nuremberg Tribunal “pierced the veil of sovereignty of the nation” and, for the first time, directly linked personal accountability to human rights.

This linkage undergirded the conviction of U.S. Army Lieutenant William Calley for the massacre of hundreds of civilians during the Vietnam War. American soldiers shot 500 innocent villagers—mostly women, children, infants, and elderly. The soldiers also gangraped Vietnamese women. Calley defended these atrocities as a response to superior orders. Drawing upon Nuremberg principles, however, the military judge instructed
the court-martial jury that if it determined that Calley actually knew that the orders were illegal, “superior orders” would fail as a defense. The Court of Military Review agreed, finding that the jury properly rejected Calley’s superior orders defense and affirming his life sentence.

Indeed, the United States endorses Nuremberg principles set forth generally in the United Nations Charter and Geneva Conventions. The U.S. Army Field Manual embraces these principles in more specifically articulating an officer’s duty to disobey unlawful orders. Following superior orders is not a defense to committing war crimes, unless the accused “did not know and could not reasonably have been expected to know that the act ordered was unlawful.”

**Watada in Light of Nuremberg**

These Nuremberg principles are key to Watada’s stance.

The United States government violated its own principles and its own laws. We in the military take an oath to defend the constitution, and we have a government that violates its own treaties and [international] laws that it has incorporated into the constitution, and then it forces soldiers to condone and enable that behavior.

The U.N. Charter bars crimes against the peace and wars of aggression. More specifically, the Charter permits the use of armed force against another country only in self-defense or when authorized by the U.N. Security Council. Iraq had not invaded and did not constitute an imminent threat to the U.S. Weapons inspectors from the U.N. were midway through their inspection and had found no weapons of mass destruction when the U.S. invaded Iraq. The Security Council never sanctioned the war. Several observers therefore suggest that the Bush administration committed a crime of aggression under international law.

Cast in this light, Watada joins others in asserting that in initiating an “Iraq war of aggression,” the United States committed a crime against peace. This is “not a WWII fight against German or Japanese aggression,” Watada says. “In this war we the Americans are the aggressors.” In torturing captives and incarcerating them in secret prisons abroad, the U.S. is engaging in war crimes and crimes against humanity. This was confirmed by Gen. Antonio Taguba’s official investigation into the Abu Ghraib torture of Iraqi prisoners. By direct order, Taguba investigated only lower level military and “not those above in the chain of command.”
He nevertheless determined that senior officers forgot values of “duty, honor, integrity” and that “we violated the laws of land warfare in Abu Ghraib. We violated tenets of the Geneva Convention. We violated our own principles and . . . our [core] military values.”

For Watada, as crimes against peace and humanity, the Iraq war is illegal under international law, and Nuremberg principles therefore mandate that he refuse to obey military orders to fight that war (he is willing to fight in Afghanistan). In Watada’s court-martial, however, the military judge blocked his Nuremberg human rights defense. Judge John Head, echoing Judge Kennedy’s refusal sixty years ago to allow the Heart Mountain resisters to prove the reasonableness of their belief in the internment’s illegality, barred Watada from showing the reasonableness of his belief in the illegality of the Iraq war and therefore the propriety of his refusal to deploy—notwithstanding the Army Field Manual and the Uniform Code of Military Justice. For Watada’s attorney, Eric Seitz, this ruling “cuts out the heart of Lieutenant Watada’s defense.”

In the past, “[t]he government tried in artificial ways to prevent defendants from explaining in court . . . why they did what they did,” Seitz said. “But there is a contradiction, because they are the core issues of what led the defendant from being there in the first place.”

Judge Head’s ruling thus also raised the broader procedural question: “How, then, can a[n officer] say no to an illegal war?” For Colonel Daniel Baggio, Army’s chief media relations officer, the answer is “he can’t.” The military “can’t have people saying, ‘Well, I’ll fight in this campaign but not in that campaign’. . .Those are political-type decisions.” But refusing to deploy for Nuremberg reasons far outside the theater of action differs greatly from a soldier’s refusal to follow combat orders in the field of conflict. According to Richard Falk, a leading expert on international laws of warfare, many scholars are “in agreement that the war in Iraq is illegal. . .And so if Lt. Watada . . .reasonably believes that the war is illegal, then it certainly would seem plausible for him to refuse to participate” at the stage of deployment.

Epilogue: A Long Line of Resistance Against Injustice
Like the Heart Mountain draft resisters before him, Lieutenant Watada struggles to do what he believes is “right and just” in the face of harsh punishment.
Physically they can lock me up, throw away the key, leave me to rot and contemplate my “crimes.” For a long time I was in turmoil. I felt compelled to fulfill the terms of my contract despite what I knew to be utterly wrong. Only when I realized that I served not men and institutions but the people of this country, did I believe there was another answer. That choice was to do what is right and just.\textsuperscript{104}

For this reason Watada inspires others.

Forty-one-year-old chief master sergeant Jeff Slocum lifts up Lieutenant Watada as the military role model for his decision to leave the U.S. Air Force.\textsuperscript{105} Slocum believes that even lower-level military officers have a duty to object to manifestly illegal orders. “To protect the men and women fighting this war, you have to speak. There is no courage or honor in silence.” Slocum maintains that the U.S. employs the language of patriotism “to subdue people, to convince them to not exercise their rights.”\textsuperscript{106}

Like the Heart Mountain resisters, Watada refuses to be subdued or silenced.\textsuperscript{107} Like Emi and Kuromiya, he gains strength by speaking truth to injustice. And like all resisters, he struggles with the personal pain of his public actions.

There was a long time when I went through a depression because I told myself I didn’t have a choice...that I joined the military. ...and that [I] was to obey what I was told regardless of how I felt inside. ...I imprisoned myself by telling by myself I didn’t have a choice. It didn’t matter that I might be sent to prison; I was already in prison. My freedom was already gone.

Yet, simultaneously, he embraces the freedom of acts of conscience.

I have a choice to do what is morally right, what is in my conscience and what I can live with for the rest of my life, and even though that comes with consequences I do have that choice. \textit{And when I realized. ...I chose what was right for me, I became free again.}\textsuperscript{108}

“Exactly,” says Kuromiya. As the intergenerational colloquy closes, he and Emi assure Watada that “you’re coming from a long line of a kind of tradition that perhaps our group set way back in 1944... You are not alone.”\textsuperscript{109} Watada concurs.

Indeed Captain Bruce Yamashita is another historic resister of military injustice. He successfully challenged the Marine Officer Training School’s history of racially discriminatory treatment of
officer candidates. Despite immense personal hardship and attacks by the military, over several years in the 1990s he achieved a settlement that approved his military rank as captain and also compelled the training school to implement non-discriminatory policies and practices.\textsuperscript{110}

With all of this in mind, Watada concludes the exchange:

I’ve always believed that what I’m doing is not unique. It’s been done all throughout our history. . .There are people who have always stood up regardless of the sacrifice. . .because they strongly believe that they can only do the right thing. And that’s the same thing with the Japanese Americans who resisted internment and the draft—they did what was right. And they. . .were vindicated years after that. . .

In important ways, history repeats.

We can only learn from the past, and certainly it helped me in the decision that I made and knowing that even if I did come out and there was no one that supported me—which fortunately there is—at least I would’ve known that I came from a long line of resistance towards injustice.\textsuperscript{111}

Notes

1. Curtis Choy, \textit{Watada, Resister} (Clips from the 2007 film are available at \url{http://www.resisters.com/index_conscience.htm}).


3. Ibid.


5. “Amicus Brief of Korematsu,” 615.


10. See *House Committee on Rules, Attorney General A. Mitchell Palmer on Charges Made Against Department of Justice by Louis F. Post and Others*, 66th Cong. 27, 1920.


case, the federal judge found that Watada was likely to prevail on the merits of his double jeopardy claim and would suffer irreparable harm if the second court martial proceeded. Watada v. Head, 2007 WL 2916545, W.D. Wash., Nov. 8, 2007 (No. Co2-5549BH5).


23. See the section “An Officer’s “Duty to Disobey Unlawful Orders” of this article for further discussion.

24. Nikkei for Civil Rights and Redress, “University of Wyoming Hosts Draft Resisters,” Nikkei for Civil Rights and Redress, Nikkei for Civil Rights and Redress http://www.ncrr-la.org/news/7_6_03/1.html The War Relocation Authority and War Department created the “Application for Leave Clearance,” a questionnaire ostensibly intended to separate disloyal from loyal internees to facilitate the reintegration of loyal internees into society. These questionnaires raised many issues for the internees. The questions were often ambiguous. Question 28 on loyalty was particularly problematic; it offered Issei a chance to renounce their Japanese nationality, although they were still legally barred from becoming U.S. citizens. Some saw this as a trick question; “forswearing” their allegiance to Japan required admitting that such an allegiance indeed existed. Many internees did not know how to answer for fear of separation from family members who answered differently. The documents were also worded to reinforce the negative stigma of and the Japanese American connection to the Japanese race. Harry K. Honda, “If Suitcases (of Internees) Could Talk,” Japanese American Museum of San Jose, http://www.jamsj.org/articles.htm.


26. Ibid.


29. James Omura, a non-internee journalist, highlighted the FPC’s efforts in his widely read editorials. The day before the Wyoming court convicted the FPC steering committee, it acquitted Omura as a party to the alleged conspiracy. See Eric Muller, “The Japanese American Cases—A Bigger Disaster Than We Realized,” Howard Law Journal 49 (2006).


32. Ibid.

33. Ibid.


37. Kuromiya, “The Trial of the 63.”

38. Ibid. Kennedy cited the dual citizenship of Japanese nationals’ children.

39. Ibid.


41. Ibid., 930. See also Abe, Conscience and the Constitution.

42. U.S. v. Fujii, 148 F.2d at 931. See Abe, Conscience and the Constitution.

43. Twenty-two more Heart Mountain internees followed Kuromiya and the others in the months following their trial. According to Kuromiya, they had “no hopes of winning, of course, but acted on principle and as a symbolic gesture of unity in defiance of Judge Kennedy’s court as an insult to the U.S. Constitution.” See Kuromiya, “The Trial of the 63.”

44. U.S. v. Fujii, 148 F.2d 298, 299 (10th Cir. 1945).

45. Bittner, “‘Loyalty. . . is a Covenant’: Japanese American Internees and the Selective Service Act, Conscience and the Constitution.”

46. Abe, Conscience and the Constitution.

47. This topic is discussed in greater detail in the section “An Officer’s Duty to Disobey Unlawful Orders” of this article.


52. Martha Nakagawa, “Reconciliation Coming Slowly for Draft Resisters,”


59. See United States Commission on Wartime Relocation and Interment of Civilians, Personal Justice Denied: Report of the Congressional Commission on the Wartime Relocation and Internment of Civilians, 18 (1982). (Congressional investigative commission found that the causes of the internment were not military necessity but rather “war hysteria, a failure of political leadership and race prejudice”).

60. The JACL Hawai`i, Honolulu Chapter supported Watada’s “thoughtful and deliberate act of conscience.” By supporting Lieutenant Watada, JACL Hawai`i “honors our legacy of preserving the lessons of the World War II internment of Japanese Americans to ensure that such mistakes are never repeated nor revisited upon any other minority, and reaffirms our principled efforts to protect the Hawai`i Constitution. Lieutenant Watada takes a similar stand of principle, striving to uphold the Constitution as he was sworn to do.” JACL Hawai`i, Honolulu Chapter, JACL Hawai`i, “Honolulu Chapter Statement in Support of Lt. Ehren Watada’s Decision of Conscience,” July 17, 2006 (from Chapter President David Forman, on file with author). In August 2007, the national JACL board strengthened its initially tepid support for Watada, calling for a fair and impartial trial and protection of his right against double jeopardy. See Caroline Aoyagi-Stom, “National JACL Board Strengthens Support for Watada,” Pacific Citizen, September 7-20, 2007, 1. See also Abe, Conscience and the Constitution.


64. Ibid.
Beginning in 2004, numerous accounts of abuse and torture of prisoners in the Abu Ghraib prison came to public attention.

Choy, Watada, Resister.


Choy, Watada, Resister.

Ibid. See notes 91 and 94.


Supporters of Nuremberg counter these assessments, describing the development of the Nuremberg Charter as “simply a search for a pragmatic, New Deal-style middle way that could support a conception of the progressive development of international law while avoiding the pitfalls of the past.” Ibid., 429.

“Planning, preparing, and implementing wars of aggression and wars in violation of treaties” constitute crimes against the peace. See King, Legacy of Nuremberg, 337.

Ibid. “Violation of laws or customs of war,” such as torture of prisoners, constitute war crimes.

Ibid. “Crimes committed in the course of aggressive war, including atroci-
ties or other inhumane acts committed against civilian populations and persecutions of civilians for racial, religious, and political reasons” are crimes against humanity.

77. Ibid., 335
80. Report to the President.
81. Ibid.
82. King, The Legacy of Nuremberg, 338.
84. Ibid., 324.
85. Ibid.
86. The U.N. Charter is an international treaty ratified by the U.S. Congress in 1945. Upon ratification, the U.S. incorporated the Charter into U.S. law through Article 6 of the U.S. Constitution.
87. Grave breaches of the Geneva Conventions, for example willful killing, torture, and inhumane treatment, constitute “war crimes.” “Crimes against humanity” include the targeting of and failure to protect civilians, comprise crimes against humanity and violate the Fourth Geneva Convention. These crimes are punishable under the U.S. War Crimes Act of 1996, see 118 U.S. Constitution section 2441 (1996). See also notes 88-89.
88. The Uniform Code of Military Justice defines “lawful commands” pursuant to Article 92: “A general order or regulation is lawful unless it is contrary to the Constitution, the law of the United States.” 47 U.S. Constitution section 892 (1951). The Army Field Manual provides that members of the armed forces are bound to obey only lawful orders. “The fact that the law of war has been violated pursuant to an order of a superior authority...does not deprive the act...of its character of a war crime, nor does it constitute a defense...unless [the violator] did not know and could not reasonably have been expected to know that the act ordered was unlawful.” A military court must weigh this against “[t]he fact that obedience to lawful military orders is the duty of every member of the armed forces...” Army Field Manual 27-10, section 509.
89. Ibid.
90. Choy, Watada, Resister.
91. See U.N. Charter art. 33, para.1; art. 39, para. 1
92. See U.N. Charter art. 51 para. 1.
93. See Marjorie Cohn, “Aggressive War: Supreme International Crime, Truthout, November 9, 2004, http://www.truthout.org/docs_04/110904A.shtml. Benjamin Ferencz, a prosecutor of Nazi war crimes at Nuremberg has said George W. Bush should be tried for war crimes for starting “ag-

On the other hand, neoconservative William Kristol of The Weekly Standard and Project for the New American Century early on found no legal problems with the Bush administration’s “admirable commitment to ‘lead the world to victory’ in the war against terrorism” and supported a “pre-emptive” war even in the absence of actual provocation. “We agree...that U.S. policy must aim not only at finding the people responsible for this incident, but must also target those ‘other groups out there that mean us no good’ and ‘that have conducted attacks previously against U.S. personnel, U.S. interests and our allies.’” See William Kristol, “Letter from William Kristol, et al, to President George W. Bush,” Project for the New American Century, September 20, 2001, http://www.newamericancentury.org/Bushletter.htm.


98. Ibid. All members of the armed forces take an oath to protect and defend the Constitution. See “Oaths of Enlistment and Oaths of Office,” U.S. Army Center of Military History, July 27, 2004, http://www.army.mil/CMH/faq/oaths.htm. This oath subjects members of the military to the Uniform Code of Military Justice (UCMJ), which mandates compliance only with “lawful orders.”


101. Ibid One speculative question not directly relevant to Watada’s defense is whether Watada would have been prosecuted if he had obeyed the order to deploy to Iraq. If Watada had complied with the order, in theory, he faced possible prosecution in an international tribunal under international law principles. This would entail creation of an international Iraq war crimes tribunal—something not presently contemplated. See Kevin R. Chaney, “Pitfalls and Imperatives: Applying the Lessons of Nuremberg,” Dickinson Journal of International Law 14(1995). It is unlikely that the U.S. would have prosecuted Watada in an American military court for following a general order to deploy. See Gary D. Solis, “Obedience of Orders and the Law of War: Judicial Application in American Forums,” American University International Law Review 15(1999), citing Unger v. Ziemeniak, 27 M.J. 349 (C.M. 1989).


103. See “Dean Paton, Watada: What’s a (Thoughtful) Lieutenant to Do? Catch 22 for the 21st Century,” Seattle Post-Intelligencer, Oct. 7, 2007, http://seattlepi.nwsource.com/opinion/334449_Watada07.html. (“Lest anyone think this quintet of experts is a squad of knee-jerk, one-note liberals. . .all five [scholars including Falk] also agreed that the war in Afghanistan indeed met the criteria for a ‘legal war,’ even if some isolated actions might have later violated the laws of peace and warfare.”)

104. Aoyai-Stom, “Exclusive: One on One With 1st Lt. Ehren Watada.”


106. History also demonstrates the stark consequences of resistance. For instance, in Croatia in 1995, Bosnian Serb army officers ordered twenty-three-year-old Drazen Erdemovic and his unit to slaughter over a thousand Muslim men seized during a Serb invasion. See Dr. Matthew R. Lippman, “Article on the Law of War: Humanitarian Law: The Development and Scope of the Superior Orders Defense,” Pennsylvania State International Law Review, 20(2001). Erdemovic refused. His superiors threatened, “If you don’t wish to do it, stand in the line. . .and give others your rifle so they can shoot you. Ibid., 235. Intimidated and confused, he participated in the execution of 1,200 civilians. With time for reflection, Erdemovic later resisted a second order to kill 500 additional Muslims and subsequently became a target for assassination. In his trial before the International Criminal Tribunal for the former Yugoslavia for crimes against humanity, the tribunal found that despite his later resistance, Erdemovic had earlier complied with manifestly illegal superior orders and violated his duty to disobey. The tribunal sentenced him to ten years in prison. Ibid., 236.

107. Free speech, as guaranteed by the First Amendment, U.S. Constitution, does exist in the military in limited form. The Uniform Code of Military Justice (UCMJ), Department of Defense regulations, and the Constitution do not
prohibit members of the military from speaking publicly. Military curbs on free expression are only partially restrictive. See generally Major Felix F. Moran, "Free Speech, the Military, and the National Interest," *Air University Review*, May-June 1980, http://www.airpower.au.af.mil/airchronicles/au-review/1980/may-jun/moran.htm. In short, military personnel may not make “contemptuous remarks” about members of their chain of command; speak out while in uniform or while on duty; or pretend to represent the views of the Armed Forces. Watada was charged with conduct unbecoming an officer for making “disrespectful and disgraceful” comments. His supporters labeled the charges “clearly selective and vindictive prosecution” given the government’s mild response to recent harsh public criticisms by retired military officers. See “Talking Points—How to Respond & Educate,” Thank You Lt. Watada, http://www.thankyoult.org/content/view/1039/74/ (accessed Feb. 28, 2007). Several retired generals (who are subject to the UCMJ while collecting pensions) publicly opposed the U.S. conduct of the Iraq war and disparaged Secretary of Defense Donald Rumsfeld’s leadership. The Defense Secretary and military sought to pressure dissident generals into silence. But no charges were filed against these officers for making “disrespectful and disgraceful” comments. See Tom Vanden Brook, “List Of Defense Secretary’s Critics Get Longer,” *USA Today*, April 15, 2007, http://www.usatoday.com/news/washington/2006-04-13-rumsfeld-generals_x.htm/.