

# ***Ozawa v. United States, Japanese Immigration, and William Elliot Griffis***

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**Abstract:** *This article examines the role that William Elliot Griffis’s work played in Ozawa v. United States, in which the U.S. Supreme Court ruled in 1922 that Japanese immigrants were not “white persons” and therefore were ineligible to naturalized citizenship. Griffis, a prominent authority on Japan, had spent decades arguing that the Japanese were white. While Ozawa is an important case study in U.S.-Japanese relations and critical race theory, Griffis’s previously unrecognized part in it further demonstrates the durability of racial thought even in the mind of an individual who sought to partially reshape such ideas.*

**Keywords:** *U.S.-Japanese relations, Takao Ozawa, critical race theory, naturalization, whiteness*

William Elliot Griffis (1843–1928) worked for nearly six decades to cultivate American respect for Japan. A widely published and colorful writer, he praised not only its traditions but also its efforts to develop into a modern nation that would convince the United States to treat it as a sovereign equal. In the early twentieth century when friction arose between the two nations over the matter of Japanese immigrants, Griffis used his pen to

advocate for their right to naturalized U.S. citizenship. Attempting to convince his readers that the United States and Japan had much in common, he grounded this effort on his claim that the Japanese were a white race and thus eligible to naturalization as “free white persons,” a racial prerequisite in U.S. law since 1790. The U.S. Supreme Court in 1922, however, decided otherwise in *Takao Ozawa v. United States*, in which it ruled unanimously that Japanese immigrants were not white and therefore not entitled to naturalized citizenship.

Ozawa (1875–1936) had immigrated to the United States from Japan in 1894 and filed a petition to naturalize in October 1914, which the U.S. District Court for the Territory of Hawaii denied in March 1916. After Ozawa filed an appeal, the Supreme Court eventually heard the case and issued its decision six years later. While the Supreme Court justices did not mention Griffis in their ruling, District Court Judge Charles F. Clemons (1871–1925) summarized in his 1916 decision the findings of several authorities regarding racial characteristics of the Japanese. Clemons cited Griffis as an expert, but misrepresented his writing to reach a conclusion that was wholly at odds with his claims and intent. Griffis had spent many years constructing his argument that the Japanese were a white race and hence immigrants from Japan were legally entitled to U.S. citizenship. Clemons, however, manipulated Griffis’s claim that the Japanese were white rather than Mongolian into a

judicial ruling that they were Mongolian rather than white (In re Ozawa 1916).

Historians and legal scholars today have highlighted *Ozawa* to demonstrate how race has been socially constructed and embedded in the U.S. legal system, a central point of critical race theory. (For studies of *Ozawa*, see Ichioka 1977; Yamashita and Park 1985; Ichioka 1988: 210-26; Tehranian 2000: 821-32; Carbado 2009; Geiger 2011: 150-60. For studies of critical race theory and citizenship cases, see Chang 1993; Haney López 2006, Carbado 2009). From 1878 to 1952, U.S. state and federal courts heard fifty-two racial prerequisite cases. In the first, *In re Ah Yup*, the U.S. Ninth Circuit Court in California ruled that Chinese immigrants were Mongolian rather than white and accordingly ineligible to naturalization (In re Ah Yup 1878). In subsequent cases, courts rejected applications for citizenship by immigrants from countries including Japan, Korea, India, Syria, and the Philippines because they were not deemed “white” (Haney López 2006: 3, 163-67). Of these fifty-two cases, only two reached the Supreme Court: *Ozawa* was the first.

Scholars have also shown that U.S. courts cited both science and common knowledge in their consideration of these racial prerequisite cases (Lesser 1985; Braman 1998; Tehranian 2000; Haney López 2006). As law professor Ian Haney López writes, “the courts were responsible for deciding not only who was White, but *why* someone was White” (2006: 2, italics in the original). In rejecting Takao Ozawa’s bid for citizenship, judges employed science and common knowledge to conclude not only that the Japanese were yellow and Mongolian, but why they were so. (For histories of the construction of “yellow” and “Mongolian” as racial categories, see Keevak 2011; Demel 2013; Kowner 2014.)

Although previous scholars have analyzed the significance of *Ozawa* in critical race theory,

they have overlooked the role that Griffis’s work played in the case. This article focuses on *Ozawa* to highlight the ongoing development of scientific and legal definitions of whiteness and the judicial enforcement of the racial boundaries of citizenship in the late-nineteenth and early-twentieth centuries. It includes two sections: the first analyzes Griffis’s efforts to classify the Japanese as white; the second traces the misrepresentation of his work in *Ozawa*. As Griffis attempted to racially reclassify Japanese immigrants, he implicitly accepted the racial prerequisite that limited naturalization to “white persons.” Examining his unexpected role in *Ozawa* illuminates the tenacious hold that social and legal constructions of race had on the minds of white Americans, even those who were ostensibly sympathetic to reshaping such constructions.

In the years surrounding *Ozawa*, other momentous events in U.S.-Japanese relations included the Gentlemen’s Agreement of 1907, California’s Alien Land Laws of 1913 and 1920, and the Immigration Act of 1924. Griffis worked hard in this environment to placate American concerns about Japanese immigrants and Japan’s rise to power in the Pacific. With the *Ozawa* decision, his many years of advocacy not only failed, they also backfired in the first and only racial prerequisite case on Japanese immigration considered by the Supreme Court.

### “Our Kinship to the Japanese”

Hired in 1870 to teach science, William Elliot Griffis worked in the remote Japanese city of Fukui for nearly one year in 1871-72 before moving to Tokyo, where he taught at the Daigaku Nankō (a forerunner of Tokyo University) until his return to the United States in 1874. During these years in Japan, he began a prolific writing career that he continued throughout the rest of his life. While Griffis did not serve as a missionary, he was a devout Christian and entered the ministry in 1877,

dedicating himself simultaneously to publishing and to his duties at successive pastorates in upstate New York and Boston. Upon his retirement from the clergy in 1903, he shifted his attention to writing and lecturing full-time. Described by the *Nation* and the *New York Evening Post* in 1908 as “our veteran authority upon Japan,” he carefully cultivated and sustained this reputation through his many books, essays, and public lectures (Nation 1908: 404; *New York Evening Post* 1908; Henning 2021). Although he returned to Japan only once for a tour in 1926-27, he maintained regular correspondence with many Japanese leaders and foreign residents of Japan and was decorated by the imperial government in 1908 and 1926 for his contributions to U.S.-Japanese relations. Griffis’s assertion that the Japanese were white was a component of his long campaign to encourage American recognition of Japanese achievements.

Beginning in some of his first newspaper and magazine articles in the early 1870s, Griffis highlighted Japan’s aspirations and accomplishments (1873a; 1873b). His influential first book, *The Mikado’s Empire* (1876), reached even wider audiences and remained in print through twelve editions until 1913. During his career as a clergyman from 1877 to 1903, Griffis balanced his pastoral work with his publishing career. When he retired from the pulpit, he did so to return to the public lecture circuit and to provide more time to write. He told his congregation that he hoped to live another ten years to do so, but was still writing and publishing at the time of his death twenty-five years later (1903, 271).



**Figure 1. William Elliot Griffis (1843-1928). Courtesy William Elliot Griffis Papers, Special Collections and University Archives, Rutgers University Libraries.**

Griffis’s departure from the ministry came on the eve of the Russo-Japanese War (1904-5) and the emergence of an anti-Japanese movement on the U.S. Pacific coast. Many Americans viewed Japan’s victory over Russia with concern and came to fear that Japanese immigrants posed a unique threat to the United States. Echoing rhetoric from the campaign against Chinese immigrants that had culminated in the Chinese Exclusion Act of 1882, the movement depicted Japanese immigrants as racially unassimilable. Anti-Japanese activists distinguished between China and Japan, however, by warning that Japanese immigrants were subjects of an expanding

empire whose strategic interests in the Pacific did not coincide with those of the United States. In 1906, the San Francisco Board of Education's order to segregate Japanese and Korean students in its public schools coincided with a series of war scares between the United States and Japan. President Theodore Roosevelt worked to reduce the tension by announcing his support of legislation to allow Japanese immigrants to naturalize—which Congress did not pass—and by successfully pressuring San Francisco to rescind the segregation order. In return, Japan pledged in the Gentlemen's Agreement of 1907 to restrict the flow of immigrant laborers to the United States. Despite these efforts, anti-Japanese agitation continued. In 1913 and 1920, for example, California's Alien Land Laws targeted Japanese immigrants by prohibiting aliens ineligible to citizenship from purchasing agricultural land (Neu 1967: 47–62, 80–82; Daniels 1977; Masuda 2009; Cullinane 2014; Yuill 2015; Merida 2020).

In response, Griffis argued that Japanese immigrants were indeed eligible for naturalized citizenship because they were white. His single most important work in this endeavor was his 1907 book, *The Japanese Nation in Evolution: Steps in the Progress of a Great People*. Even earlier, however, he had begun to develop elements of this argument in *The Mikado's Empire*. In his books, magazine and newspaper articles, and letters to newspaper editors, Griffis offered three primary claims regarding Japanese racial characteristics: (1) the Japanese were a “composite” race, a fundamental element of which came from Japan's indigenous Ainu; (2) because the Ainu were a white people who spoke an Aryan language, the Japanese also were white; and (3) the Japanese were “un-Mongolian.” While Griffis first began to develop these claims based on his experiences in Japan, where he interacted with several of its leaders, he augmented his firsthand observations by repeatedly employing evidence from such

scholars as Tokyo Imperial University professors Basil Hall Chamberlain and Koganei Yoshikiyo, American naturalist Albert S. Bickmore, and Anglican missionary John Batchelor. Some of Griffis's assertions also echoed the ideas of anthropologist Tsuboi Shōgorō, statesman Ōkuma Shigenobu, and historian and economist Taguchi Ukichi. In making these claims, Griffis used racial classifications to separate the Japanese from the Chinese. Concurrently, he sought to encourage closer ties between Japanese and white Americans by convincing the latter that the former could easily assimilate and become loyal U.S. citizens. This section examines each of his three claims.

Although Griffis had a specific objective after the emergence of the anti-Japanese movement, he began these efforts in *The Mikado's Empire*, in which he introduced the first of these claims. He wrote that in prehistory a “welding of races—the Ainō, Malay, Nigrito, Corean, and Yamato—into one ethnic composite—the Japanese” had produced “a people distinct from the Chinese, ethnologically, physically, and morally” (1876: 86).<sup>1</sup> In subsequent years, he revised this list, sometimes adding “Aryan,” “Mongolian,” “Semitic,” and “Tartar” (1907: 394; 1913c: 724; 1915: 16). Griffis's characterization of the Japanese people as a mixture of various races was consistent with that of other nineteenth-century Western scholars (Kowner 2000: 120–25). Yet in declaring that all of the world's “great nations” were composites of various stocks, Griffis also reminded many white Americans of the migrations of “our Teutonic fathers” and the amalgamation of tribes in Britain, a parallel that Tsuboi and Ōkuma drew in their writing too (Griffis 1915: 16–19; Griffis 1913b: 596; Oguma 2002: 55–58; Ōkuma 1909: 16, 53).

Furthermore, Griffis wrote, Japanese and Americans not only were composite races, they also were composite cultures. In *The Japanese Nation in Evolution*, he presented this as

another point of contrast between China and Japan. While the Chinese had invented and “never changed” their culture, Japanese and Americans had adopted and adapted from others. He emphasized this as “the abysmal difference between the Chinese and the Japanese or ourselves,” stating that “nearly all that is fundamental in our civilization, religion, law, letters, figures, has been borrowed. Like the Japanese, we are debtors to past ages, races, and civilizations” (1907: 395-96). By characterizing the Japanese as a composite race of cultural borrowers, Griffis drew a line separating Japan from China and encouraged white Americans to recognize these traits as characteristics that they shared with the Japanese.

To advance this claim further, he highlighted the Ainu component of the Japanese composite. Citing the work of two Tokyo Imperial University professors—Chamberlain, a British scholar of the Japanese language; and Koganei, an anatomist and anthropologist—Griffis wrote that the survival of Ainu geographic place names throughout Japan’s main islands proved that in prehistory the Ainu had inhabited all of Japan (Chamberlain 1887: 67, 74; Chamberlain 1890: 17-18; Griffis 1907: 1-7, 13-14; Griffis 1913c: 724-26).<sup>2</sup> According to Griffis, after the ancestors of the “Yamato” Japanese first landed in Kyushu, they conquered the Ainu as they pushed northward. Then through intermarriage, they absorbed rather than eliminated the Ainu (1876: 27-28; 1907: 25-29, 90-100, 180-87; 1913c: 725). While noting that the contemporary Ainu in Hokkaido were descendants of those who had not intermarried, Griffis began arguing in 1876 that “the mass of the Japanese people to-day are substantially of Ainō stock,” which he explained was the cause behind differences in the psychologies of the Japanese and Chinese (1876: 10, 28, 34-35). He continued to promote this claim in the following decades and expressed confidence in what he depicted as accumulating evidence produced by “scholars, archaeologists, [and]

ethnologists” (1913a).

This racial inheritance was particularly significant, Griffis argued in his second claim, because the Ainu were a white people who spoke an Aryan language. Since the sixteenth century, European writers had described the Ainu as white and hairy; in the nineteenth-century, many who classified them as white prioritized describing them as primitive savages (Kreiner 1993; Siddle 1997: 136-42; Low 1999: 217-24; Refsing 2000a; Kowner 2014: 97-100, 220-22). Griffis, however, cut against this grain: he depicted the Ainu as primitive but focused on the significance of their whiteness. Based on his observations of the Ainu whom he had seen in Tokyo, he suggested that India was their ancestral home and characterized their skin color as that of “genuine white men” (1876: 10, 30-31; 1907: 4, 10). Later, in a letter to the editor of the *New York Times*, he supported his view by referring to the scientific expertise of Bickmore, a student of Harvard University’s Louis Agassiz and a founder of New York City’s American Museum of Natural History. After a visit to Hokkaido and Sakhalin in 1867, Bickmore had reported that the Ainu physically resembled Russians and concluded that their eyes and hair indicated that they were a branch of the Aryan family (Griffis 1913a; Bickmore 1868a: 359-61; Bickmore 1868b: 373-74). Griffis, who identified “the six great Aryan peoples” as “Latin and Greek, Teuton and Celt, Slav and Hindu,” agreed that the Ainu were Aryan. Hence because the “basic stock” of the Japanese was Ainu, he wrote, “Aryan features in the Japanese body and mind are plainly discernible” (1907: 5, 26). Using “Aryan” and “white” interchangeably, Griffis declared that “the Japanese at base are a ‘white’ race” (1913a; 1913c: 723). This claim enabled Griffis to draw another link between Japanese and white Americans.

For additional evidence, Griffis turned to the Ainu language and identified it as a member of

the Aryan language family.<sup>3</sup> Again Griffis referred to another authority: Batchelor, an Anglican missionary who lived and worked among the Ainu in Hokkaido for six decades. Although Batchelor had no linguistic training, he compiled an Ainu-English-Japanese dictionary and a guide to Ainu grammar, which led him to assert that the language “belongs as much to the Aryan tongue as Latin, French, Greek, and English do” (Refsing 2000b; Batchelor 1905: 2, 76). While Griffis wholeheartedly endorsed Batchelor’s finding, he selectively ignored the divergent opinions of Chamberlain and Bickmore. Griffis did not acknowledge Chamberlain’s skepticism that the Ainu and their language were Aryan; nor did he recognize that Bickmore described the Ainu as an Aryan people speaking a non-Aryan language (Griffis 1907: 3-5, 25; Griffis 1913c: 723-25; Chamberlain 1887: 10-11; Bickmore 1868b: 376). Instead, by insisting without doubt that the Ainu were white and spoke an Aryan language, Griffis was able to proclaim also that ancestors of Japanese and white Americans were “near relatives. Thus history, linguistics, and archæology reveal our kinship to the Japanese” (1913b: 596; 1907: 25). Underscoring these additional connections led him to his third claim.

In the summer of 1907, immediately following the Gentlemen’s Agreement, Griffis was reviewing the page proofs for *The Japanese Nation in Evolution* when his local newspaper interviewed him. Under a headline that quoted him saying “Japan will not be degraded by even Uncle Sam,” he contrasted Japanese immigrants with “the Chinese who come to America and herd together.” The former, he wrote, were “desirable citizens” who educated their children in American schools, bought land, built houses, and paid taxes (Ithaca [NY] Daily Journal 1907). His efforts to distinguish the Japanese from the Chinese continued in the book itself. On its title page, he paraphrased nineteenth-century British statesman Benjamin Disraeli in an epigraph that succinctly set the

stage for its contents: “Race is the key to history” (Griffis 1907: iii, 5; Disraeli 1880: 251). The book’s introduction and conclusion distilled Griffis’s two claims about the Japanese as a composite, white race and advanced his third claim: “the Japanese are not ‘Mongolian,’” he wrote, and “justly refuse to be classed as such.” Unlike the Chinese, he argued, they deserved social and political equality with Americans (1907: 1, 400). In *North American Review* essays in 1913 and 1914, he continued to praise Japanese immigrants as assimilable because physically, mentally, and socially they were “radically un-Mongolian” (1914: 573; 1913c: 731). Although Griffis did not cite Taguchi, he echoed the Japanese historian’s turn-of-the-century writings that identified the Japanese and their language as Aryan and differentiated them from the “yellow” Chinese (Oguma 2002: 145-47; Wijeyeratne 2020: 13). Finally, Griffis summarized his argument by declaring that “it is the disgrace of the United States that the Japanese cannot as yet obtain citizenship” (1913c: 732).

Griffis was not alone in reaching this conclusion. John H. Wigmore, a former professor at Keio University and later dean of Northwestern University Law School, also served as an advocate for the aspirations of Japanese immigrants and publicly criticized the *In re Saito* decision of the U.S. First Circuit Court in Massachusetts in 1894. In this first racial prerequisite case involving a Japanese immigrant, the court ruled that the Japanese, like the Chinese, were Mongolian and ineligible to citizenship (*In re Saito* 1894). In the *American Law Review*, Wigmore countered that “the Japanese nation *has racially nothing to do with the Chinese people as far back as history can take us*” (1894: 824, italics in the original). Writing that the Japanese had “greater affinities with us in culture and progress” than they did with their Asian neighbors, he argued that they were entitled to naturalized citizenship (827). While Wigmore focused closely on the *Saito* decision, Griffis spent

decades developing and promoting his claims regarding Japanese racial characteristics. A more broadly recognized American authority on Japan than Wigmore, Griffis and his book *The Japanese Nation in Evolution* eventually attracted the attention of U.S. District Court Judge Charles F. Clemons, who in 1915 began presiding over the case *In the Matter of Takao Ozawa, a Petitioner for Naturalization* (In re Ozawa 1916).

### **“He Recognizes the Mongolic Element Constantly”**

The U.S. Congress first established a racial prerequisite for naturalized citizenship by limiting eligibility to “any alien, being a free white person” in the Naturalization Act of 1790 (U.S. Congress 1790: 103). During Reconstruction and after the passage of the Fourteenth Amendment, which addresses citizenship rights, Congress extended eligibility to “aliens of African nativity and to persons of African descent” in the Naturalization Act of 1870 (U.S. Congress 1870: 256). When Congress revised and consolidated U.S. statutes four years later, however, it inadvertently omitted the phrase “free white person” from Section 2169 of Title XXX on naturalization (U.S. Congress 1874: 382). In 1875, Congress amended this section in the Revised Statutes by inserting “free white persons” (U.S. Congress 1875: 318).

Yet the boundaries of citizenship remained somewhat permeable. Japanese immigrants who had gained citizenship in the Kingdom of Hawaii became U.S. citizens after it was annexed by the United States in 1898 (U.S. Bureau of the Census 1914: 10–11; Coulson 2017: 10). Also, some local, state, and lower federal courts had approved the naturalization of individual Japanese immigrants, though without issuing any written opinions: the U.S. Census of 1910 counted 420 adult male Japanese immigrants as naturalized citizens

(U.S. Bureau of the Census 1914: 10–11; In re Ozawa 1916: 679; Malcolm 1921: 79). To tighten these boundaries, Congress restricted jurisdiction over citizenship primarily to federal courts in the Naturalization Act of 1906, which standardized naturalization procedures but did not rescind Section 2169 (U.S. Congress 1906: 596). This section’s reference to “free white persons” became the main ground on which U.S. courts considered Takao Ozawa’s petition for naturalization.

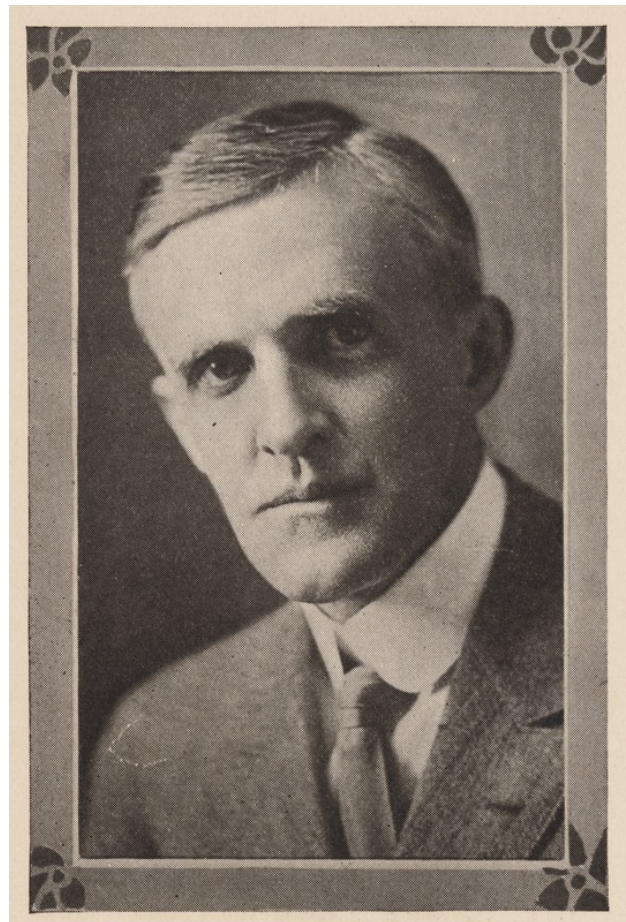
Ozawa, who was born in Kanagawa Prefecture in 1875, immigrated to San Francisco in 1894, graduated from Berkeley High School in 1903, and studied for three years at the University of California. After the San Francisco earthquake of April 1906, he moved to Honolulu, where he worked as a sales clerk at a sugar company. As historian Yuji Ichioka described him, “Ozawa was a paragon of an assimilated Japanese immigrant . . . He could speak, read, and write English; he sent his children to American institutions and spoke English with them; he had no ties to the Japanese community and Japanese government; he married an American-educated woman; and his character was beyond reproach” (Ichioka 1977: 11). In Ozawa’s petition to naturalize in 1914, which he drafted without benefit of legal counsel, he emphasized these facts as evidence of his assimilation. He argued also that Congress in 1790 had used the term “white” only to exclude Black people. Because Japanese were not Black, Ozawa contended, he was a white person entitled to naturalized citizenship. Despite Griffis’s long-standing prominence, Ozawa seems to have been unfamiliar with his work and did not refer to it in the petition (Ozawa 1914; In re Ozawa 1916; Ozawa 1922; Carbado 2009: 647–63).



**Figure 2. Takao Ozawa (1875-1936).**  
**Courtesy Japanese American National**  
**Museum (Gift of the Takeya Family,**  
**99.208.1).**

Because Ozawa did not cite Griffis, Judge Clemons had free rein to do so. A native of Vermont and graduate of Yale College and the National University School of Law in Washington, DC, Clemons had moved to Honolulu in 1902 and in 1911-17 served on the U.S. District Court for the Territory of Hawaii, which held hearings on Ozawa’s petition in 1915-16.<sup>4</sup> The U.S. district attorney conceded that Ozawa met the statutory qualifications that required five years’ continuous residence in the United States, “good moral character, . . . attachment to the principles of the

Constitution,” and the ability to speak English (In re Ozawa 1916: 672; U.S. Congress 1906: 598-99). The government, however, opposed his petition on the ground that as “a person of the Japanese race and born in Japan,” Ozawa was not white and thus ineligible for naturalization under Section 2169 of the Revised Statutes. Clemons, in the opening paragraph of his written decision, recognized Ozawa’s “ample proof of his qualifications of education and character,” but then moved quickly to the question of the racial prerequisite and whether the Japanese were white (In re Ozawa 1916: 671-72).



**Figure 3. Charles F. Clemons (1871-1925).**  
**Source: John William Siddall, ed., *Men of***  
***Hawaii*, vol. 1 (Honolulu: Honolulu Star-**  
**Bulletin, 1917), 70. Courtesy General**



### Research Division, The New York Public Library.

He began by interweaving legal precedents from previous court decisions with evidence from scientific authorities. Among the cases that he cited were *In re Ah Yup*, the first racial prerequisite case decided by a federal court, and *In re Saito*, the first involving a Japanese immigrant. In *Ah Yup* in 1878, Judge Lorenzo Sawyer for the U.S. Ninth Circuit Court in California had ruled that Chinese immigrants were Mongolian, not white, and ineligible for citizenship (In re Ah Yup 1878). Clemons quoted at length from the decision, which referred to entries on race in Noah Webster's *American Dictionary of the English Language* and on ethnology in *The New American Cyclopædia*. These featured summaries of racial classifications that were devised by eighteenth and nineteenth-century European naturalists Carl Linnaeus, Comte de Buffon, Georges Cuvier, and Johann Friedrich Blumenbach, none of whom categorized Mongolians as white. To indicate the American public's familiarity with and acceptance of these racial categories, Clemons observed that in the United States it was likely that only the Bible was more widely circulated than Webster's *Dictionary* (In re Ozawa 1916: 676-77, 680; In re Ah Yup 1878: 223-24; Webster, Goodrich, and Porter 1865: 1079; Ripley and Dana 1864: 306-11). For further evidence from "this unobstructed current of authority" on race, he also referred to the work of British anthropologist Edward B. Tylor and the *Encyclopædia Britannica*, both of which specifically identified the Japanese as "Mongoloid" or "Mongolic" (In re Ozawa 1916: 680-81; Tylor 1881: 63-64, 96-98; *Encyclopædia Britannica* 1910: 851; *Encyclopædia Britannica* 1911: 165).

In addition, Clemons quoted four paragraphs from *In re Saito*, citing it too as a precedent. In

that 1894 racial prerequisite case regarding Japanese immigrant Shebata Saito, Judge LeBaron Colt of the U.S. First Circuit Court in Massachusetts also had referred to Blumenbach and Cuvier as representatives of the "scientific point of view," which, he wrote, coincided with the "common, popular standpoint" that races were distinguished by skin color. Colt had concluded that the Japanese were Mongolian and yellow, and denied Saito's application to naturalize (In re Ozawa 1916: 675, 678-79; In re Saito 1894: 127-28). Clemons, by including multiple references to *Ah Yup* and *Saito* in his *Ozawa* decision, attempted to build a foundation comprised of legal precedent and scientific expertise.

Although he also prominently featured Griffis's book *The Japanese Nation in Evolution* in the decision, he characterized one aspect of it as unscientific. Noting Griffis's earlier residence in Japan and decades of familiarity with its people, he reprinted Griffis's statement that any perceived difference between yellow and white, the Japanese and the Yankee, was "the notion of tradition, not the fact of science" (In re Ozawa 1916: 675; Griffis 1907: 24). Yet Clemons quoted Griffis only to refute him by pointing to the science of race that purportedly had established such difference as empirical fact. Griffis failed, Clemons wrote, to "justify the setting aside of an interpretation well-established," namely that the yellow and white races "have always under accepted classifications been regarded as ethnologically distinct." From a scientific perspective, according to Clemons, Griffis was incorrect (In re Ozawa 1916: 673, 675). Therefore, Clemons ruled, the courts, "whose peculiar duty it was to determine the meaning of this word 'white,'" were correct to utilize the "prevailing race classifications" of Blumenbach and others to find that the Japanese were yellow Mongolians and not white (In re Ozawa 1916: 674, 677, 680).

When Clemons referred to *The Japanese Nation in Evolution* a second time, he did so to draw a meandering line that seemingly connected Griffis to scholars who identified the Japanese as Mongolian. In a sentence from the book listing other authorities on Japan, Griffis had included Francis Brinkley, a former military advisor to the Japanese government and the editor of the *Japan Mail*, an English-language newspaper in Yokohama (Griffis 1907: 20). Clemons cited Griffis's endorsement of Brinkley, and then quoted a passage from Brinkley's 1914 book, *A History of the Japanese People*, in which he had described the physical characteristics of East Asians. In doing so, Brinkley noted the work of Erwin Baelz, a German professor of medicine at Tokyo Imperial University who had concluded that the Japanese, Chinese, and Koreans belonged to a single race (In re Ozawa 1916: 680-81; Brinkley and Kikuchi 1914: 54-60; Baelz 1906: 523-24). Clemons thus twisted Griffis's recognition of Brinkley's general expertise on Japan into a confirmation of the specific claim that the Japanese were racially identical to their Asian neighbors, a conclusion wholly at odds with Griffis's argument.

Later in his decision, Clemons again referred to Brinkley when addressing the question of the Ainu element in the Japanese composite. Quoting Brinkley's depiction of the "steady extermination" of the Ainu people, Clemons misleadingly presented it instead as a description of the extermination of the "Ainu element" in the racial background of the Japanese. While Clemons conceded that Brinkley recognized some white or Caucasian elements in the Japanese, he emphasized Brinkley and Baelz's observation that the Ainu, though they seemed European, had "left so little trace in the Japanese nation" (In re Ozawa 1916: 681-83; Brinkley and Kikuchi 1914: 34-36, 54-56, 58; Baelz 1906: 525-26). By asserting that any Ainu contribution to the Japanese composite was negligible, Clemons attempted to add additional scholarly evidence

to support his identification of the Japanese as Mongolian. From his perspective, Griffis had indirectly verified the conclusions of Brinkley and Baelz on the question of the racial classification of the Japanese. In this manner, Clemons manipulated Griffis's stature as an expert on Japan to circuitously recognize and certify views that Griffis had long contested. Clemons concluded that the Ainu component had long since faded away and had not made the Japanese white: accordingly, the Japanese belonged to the same Mongolian race as the Chinese and Koreans.

Clemons underscored this point by mischaracterizing the second chapter of *The Japanese Nation in Evolution*, which was titled "The Malay Element in Japan." In its introduction, Griffis wrote that "in the Nippon composite the Malay strain predominates" over the Mongol and Aryan (1907: 30). His purpose throughout the chapter was to highlight similarities in physique, traditional architecture, and material culture between the Malay and Japanese peoples, not to identify enduring racial traits. Indeed, in subsequent chapters, Griffis turned completely away from the Malay element to emphasize the emergence of the Yamato Japanese and their conquest and absorption of the Ainu. Nevertheless, Clemons paired Griffis's statement that "the Malay strain predominates" with the *Encyclopædia Britannica's* classification of Malay peoples as "Mongolic" (In re Ozawa 1916: 683; Griffis 1907: 30; *Encyclopædia Britannica* 1910: 851). By selectively quoting from *The Japanese Nation in Evolution*, Clemons again turned Griffis's own words against him to produce evidence that the Japanese were Mongolian.

Clemons further contended that Griffis, in claiming that the Japanese were not Mongolian, was actually referring to "the later development of the Japanese away from all that is narrow in the sense of 'Mongolic' or 'Oriental' . . . in competition, or rather comparison, with the most progressive and

enlightened peoples of the world” (In re Ozawa 1916: 682). In Clemons’s misrepresentation of Griffis’s work, the Japanese were Mongolians by race but were now developing the social characteristics of “progressive and enlightened” white peoples. This allowed Clemons to argue that Ozawa, in his education and character, was “in every way eminently qualified under the statutes to become an American citizen” except for the requirements of section 2169, which limited naturalization to “white persons” (In re Ozawa 1916: 686).

Finally, Clemons attempted to reverse the meaning and intent of *The Japanese Nation in Evolution* in their entirety, an effort that Griffis’s inconsistent phrasing unintentionally facilitated. In the first paragraph of the book’s first chapter, “The White Race and the First Inhabitants,” Griffis had summarized his argument that the first Japanese were “white men, belonging to the great Aryan family and speaking a language akin to the Indo-Germanic tongues.” Hence, he wrote, the Japanese today “are a composite, and not a pure ‘Mongolian’ race” whose “blood and temperament” had roots in Europe and Asia. In the book’s final paragraph four hundred pages later, Griffis sharpened his thesis by announcing plainly that “the Japanese are not ‘Mongolian’” (1907: 1, 400). In his *Ozawa* decision, however, Clemons inverted this conclusion by substituting in its place Griffis’s introductory statement that the Japanese were “not a pure ‘Mongolian’ race” and his reference to the significance of the “Malay strain,” which Clemons identified as “Mongolic.” Together, Clemons argued, these phrases demonstrated that Griffis had conceded that the Japanese in fact were Mongolian, whether “pure” or not. Of Griffis and his book, Clemons falsely proclaimed that “he recognizes the Mongolic element constantly” (In re Ozawa 1916: 682–83). As Clemons marshaled legal precedent and scholarly evidence to support his decision, he distorted Griffis’s work.

Why did he do so? When Clemons died by suicide due to ill health in 1925, he bequeathed his set of the *Yale Law Journal* to his alma mater but did not leave behind a collection of his papers (Yale University 1926: 167). As a result, it is difficult for historians to identify his motive or rationale. Although he had the option of simply ignoring Griffis and relying entirely on legal precedent and racial “science,” he chose to highlight Griffis as a prominent authority on Japan. Ozawa, in not citing Griffis’s work, had inadvertently provided Clemons with an opportunity expropriate it. It is unlikely that Clemons misread or misunderstood *The Japanese Nation in Evolution*, whose introduction and conclusion clearly featured its thesis. In his first reference to the book, Clemons cited European naturalists to rebut Griffis’s statement that racial differences were based on tradition rather than science. Clemons could have used the same tactic in responding to Griffis’s classification of the Japanese as white. Instead, he negated this portion of Griffis’s argument by inverting it. In doing so, Clemons bolstered his conclusion that the Japanese were Mongolian by taking advantage of Griffis’s public status as an expert on Japan: according to Clemons, even such an authority as Griffis “recognizes the Mongolic element” in the Japanese. In his Honolulu courtroom on 25 March 1916, Clemons issued his written decision accompanied by remarks from the bench in which he ruled that people of the Japanese race were not “free white persons” under Section 2169 of the Revised Statutes. He therefore denied Ozawa’s petition to naturalize (In re Ozawa 1916: 686; Honolulu Star-Bulletin 1916).

In retirement in Ithaca, New York, Griffis seems to have been unaware of the improbable role that he had involuntarily played in the case. A lengthy front-page story in the 25 March afternoon edition of the *Honolulu Star-Bulletin* featured lengthy excerpts from the ruling but included only Clemons’s first

reference to Griffis and not his reversal of Griffis's thesis (Honolulu Star-Bulletin 1916). The case attracted less detailed attention in the rest of the country, where press accounts summarized the decision with no mention of Griffis's place in it (New York Times 1916; Christian Science Monitor 1916). Not until after the Supreme Court rendered its decision in *Ozawa v. United States* six years later, did Griffis publish anything about the case.

When Clemons and the district court denied Ozawa's petition, he appealed to the U.S. Court of Appeals for the Ninth Circuit in San Francisco, which referred the case to the Supreme Court in May 1917. The Department of Justice, however, delayed it in response to concerns at the Department of State that the case could complicate relations with Japan during World War I, when it was an ally of the Entente powers. After the war ended, the U.S. solicitor general postponed the case again to avoid hindering disarmament talks between the United States, Japan, and other nations at the Washington Naval Conference of 1921–22 (Carrott 1983: 126–27; Ichioka 1988: 224–25). The Supreme Court finally heard arguments in *Ozawa v. United States* on 3–4 October 1922.

Like Ozawa, his attorneys, who first began working with him on his appeal, seem to have been unfamiliar with *The Japanese Nation in Evolution*. In their briefs to the appeals court and to the Supreme Court, they failed to correct Clemons's misrepresentation of Griffis. Instead, they cited two lesser-known scholars: Neil Gordon Munro, a Scottish physician and amateur archaeologist who had lived in Japan since 1891 and had studied the Ainu; and Marion M. Scott, an American educator who had taught in Tokyo and Honolulu. As did Griffis, Munro and Scott also argued that the Japanese were a composite race, had European traits, and could not be classified as Mongolian (Wilkinson 1994; Withington and Lightfoot 1917: 70–77, 83–85; Withington 1918: 42–43, 45–47, 50–51). Basing their argument on that

evidence, Ozawa's attorneys identified the Japanese as "'white persons,' speaking an Aryan tongue and having Caucasian root stocks; a superior class, fit for citizenship." Ozawa, they concluded, was therefore entitled to naturalize (Withington 1918: 51; Takao Ozawa v. United States 1922: 185).

Yet Griffis made a repeat appearance in the case when California's attorney general, Ulysses S. Webb, filed an *amicus curiae* brief with the Supreme Court and quoted extensively from Clemons's decision, including his distortion of Griffis's work. Webb closed by asserting that the popularity of the term "little brown men" bespoke the "understanding of our American people and of the civilized world that the Japanese are not of the white race" (Takao Ozawa v. United States 1922: 189; Webb and English 1922: 53–55, 101). The U.S. solicitor general, James M. Beck, in his brief quoted neither Clemons nor Griffis, but echoed Webb's argument by claiming that even though the details of ethnology had sometimes changed, "the classification of the Japanese as members of the yellow race is practically the unanimous view." The Japanese, Beck argued on behalf of the United States, had never been regarded as white (Takao Ozawa v. United States 1922: 189).

Associate Justice George Sutherland, who had just joined the Supreme Court on 2 October, delivered its unanimous decision on 13 November and did not mention Griffis. The court refuted Ozawa's argument that Congress had intended the phrase "free white persons" to exclude only Blacks. Rather, the court found, the phrase was meant to include only white persons (Takao Ozawa v. United States 1922: 195). In then defining who was white, the court deliberately chose not to delve into "the science of ethnology," as Clemons had. Beginning with *In re Ah Yup* in 1878, the justices noted, state and federal courts had "held that the words 'white person' were meant to indicate only a person of what is popularly

known as the Caucasian race” (197). Thus avoiding ethnological arguments altogether, the court implicitly acknowledged that race was socially constructed by common knowledge rather than a biological category clearly identifiable by science. Sutherland concluded the court’s opinion, which resulted in front-page newspaper stories across the United States, by stating that Ozawa “is clearly of a race which is not Caucasian” and therefore was not a white person eligible to naturalized citizenship (198).<sup>5</sup> As a result, Ozawa never became a U.S. citizen.

The Supreme Court’s ruling had other long-term effects as well. Excluded from citizenship, “Japanese immigrants stood outside the American body politic,” wrote historian Yuji Ichioka, and were “political pariahs who had no power of their own to exercise” (Ichioka 1988: 1-2). Two years after *Ozawa* in the Immigration Act of 1924, Congress extended the racial prerequisite when it prohibited the immigration of any person ineligible to citizenship, thereby excluding Japanese and any other peoples not considered to be “white persons” (U.S. Congress 1924). Two decades later during World War II, the *Ozawa* decision facilitated the U.S. government’s internment of at least 120,000 Japanese immigrants and Japanese Americans, a policy that the Supreme Court upheld as constitutional in a 1944 case (Haney López 2006: 61; Carbado 2009: 682; Toyosaburo Korematsu v. United States 1944). Congress finally eliminated racial prerequisites for citizenship in the Immigration and Nationality Act of 1952, and ended national origin quotas and racial restrictions on immigration in the Immigration and Nationality Act of 1965 (U.S. Congress 1952; U.S. Congress 1965).

## Conclusion

Griffis celebrated his eighty-first birthday in 1924, four months after Congress passed the

Immigration Act. His last book on Japan, *The Mikado: Institution and Person*, had appeared nine years earlier, and the pace of his once frequent contributions to magazines and newspapers had slowed significantly. The one exception was the *Christian Intelligencer and Mission Field*, a weekly published by the Reformed Church in America, to which he contributed regularly on religious topics and church history. More than fifty years earlier, some of his first published articles describing his experiences in Japan had appeared in the *Christian Intelligencer* (1871a; 1871b). *Ozawa* and the Immigration Act, however, spurred him to raise his voice again.

After decades of serving as an American advocate for Japan and the Japanese, Griffis was frustrated and embittered by the Supreme Court and Congress. He registered his opposition to the *Ozawa* decision in a letter to the editor of the *New York Herald*, in which he summarized his claims that the Japanese had “a white inheritance going back to unrecorded time.” He concluded by declaring that “very few scholars accept as settled the deliverance of the United States Supreme Court that the Japanese are ‘Mongolians’” (1924a). Shortly after the passage of the Immigration Act, he wrote in the *Ithaca (NY) Journal-News* of his “profound contempt” for Congress in delivering a “deliberate insult to the most progressive people in Asia” (1924b). In his column in the *Christian Intelligencer*, he characterized the legislation as an “un-Christian act” to which Japanese Christians had responded only with “brotherhood and loyalty” toward American missionaries in Japan (1924c). And when Griffis returned there for a valedictory tour in 1926-27, he apologized in public speeches to Japanese audiences for Congress’s action (Japan Times 1926; Pieres 1927).

From the perspective of Japanese immigrants, Griffis’s efforts on their behalf were commendable. He invested significant effort in advocating for their access to naturalized

citizenship. Yet by marshaling evidence to prove that the Japanese were white and deserving of citizenship, he distinguished them from the “Mongolian” Chinese. Hence, he deliberately reinforced racial stereotypes of the Chinese as undesirable in his attempts to convince Americans that Japanese immigrants were assimilable. He did not challenge the restriction of naturalization to “white persons,” and so sought to change only a racial classification and not the racial prerequisite itself. He exercised his broad sympathy for Japanese immigrants within a constrained vision of race. Legal and social constructions of race were so entrenched in the lives of white Americans that most either accepted or defended them. In his writing, Griffis attempted only to amend rather than uproot these constructions. While *In re Ozawa* and *Ozawa v. United States* are important case studies for critical race theory, Griffis’s part in them demonstrates further the durability of racial thought even in the mind of an individual who sought to partially reshape such ideas. The prominence of his campaign to expand the scientific and legal definitions of whiteness to encompass the Japanese led improbably to his unintended role in *Ozawa*. Ultimately Griffis and his claims not only fell short of his objective, they also were manipulated to oppose it.

Much as Clemons distorted Griffis’s work to wield against Ozawa’s petition for citizenship, some conservative activists today have repurposed the *Ozawa* case itself. In November 2022, on the occasion of the centennial of the Supreme Court’s ruling, Nicole Yeatman of the libertarian Pacific Legal Foundation (PLF) used it to argue against affirmative action programs in university admissions (Yeatman 2022). Earlier in the year, the PLF had filed an *amicus curiae* brief in the *Students for Fair Admissions* case and urged the Supreme Court to overturn district court and appeals court decisions that had ruled in favor of such programs at Harvard College and the University of North Carolina

(*Students for Fair Admissions v. Harvard College* 2023: 190).<sup>6</sup> Writing in the opinion section of *The Hill*, Yeatman cited both *Ozawa* and affirmative action as examples of racial discrimination against Asians, despite evidence that clear majorities of Asian American voters support affirmative action programs (Yeatman 2022; AAPI Data 2020; Lee 2021; Yam 2022). In June 2023, the Supreme Court ruled 6-3 against Harvard and North Carolina. Justice Sonia Sotomayor pointed out in her dissent that Asian American student enrollment has actually increased at universities with affirmative action policies while it has decreased in states that prohibit race-conscious admissions. Sotomayor, who majored in history at Princeton University, condemned the court majority’s “superficial neutrality that promotes indifference to inequality” (*Students for Fair Admissions v. Harvard College* 2023: 375). The anti-affirmative action group Students for Fair Admissions has now filed suits challenging programs at the U.S. Military Academy and the U.S. Naval Academy.

U.S. courts in 1916 and 1922 were not neutral in their enforcement of the inequalities enshrined in naturalization law. Ironically in *Ozawa*, the judicial system turned Griffis’s support of Japanese immigrants against them. In 2023, the Supreme Court has cloaked itself in the guise of racial neutrality to rule that universities must regard as irrelevant the ongoing and pernicious role of race in the lives of Americans. In the current court’s version of a colorblind society, we should turn a blind eye to the historical legacies of racism. Consequently, the *Ozawa* case today continues to serve the cause of preventing action against racial inequities that persist in U.S. law and society.

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## Notes

<sup>1</sup> According to anthropologist Hanihara Kazurō's widely accepted "dual structure model," first published in 1991, the prehistoric ancestors of Japan's Jōmon people came from southeast Asia and arrived in the Japanese archipelago in the Paleolithic period; the agricultural Yayoi came from northeast Asia in the Neolithic period. Recent genetic studies continue to modify and refine the dual structure model (Hanihara 1991; Hudson 1999; Lee and Hasegawa 2013; Nakazawa 2017; Hudson, Nakagome, and Whitman 2020; Cooke et al 2021; Osada and Kawai 2021).

<sup>2</sup> Geneticists, anthropologists, and linguists today paint a more complex picture regarding the Ainu in prehistoric Japan. They conclude that genetically and culturally the ancestors of the modern Ainu emerged from an admixture of the Satsumon, who descended from the Jōmon, with the Okhotsk, who migrated from Siberia to Hokkaido 900-1600 years ago (Hudson 1999; Sato et al 2007; Jinam et al 2012; Low 2012; Lee and Hasegawa 2013; Jeong, Nakagome, and Di Rienzo 2016; Adachi et al 2018; Fukuzawa 2022; Hudson 2022).

<sup>3</sup> Nineteenth-century scholars used the term "Aryan" to refer to early Indo-European languages. Although efforts to identify the Ainu language as Indo-European stretched well into the twentieth century, linguists now classify it as a language isolate with no proven relationship to other known language families (Shibatani 1990: 1-10; Vovin 1993; Refsing 1996: 1-35; Refsing 1998: 1-56; Hudson 1999: 97-102; Lee and Hasegawa 2013).

<sup>4</sup> Judge Sanford B. Dole, Clemons's colleague on the district court, initially presided over the case. Dole had served as president of the Republic of Hawaii after the overthrow of Queen Lili'uokalani in 1893 and helped to secure its annexation by the United States in 1898. He served as a U.S. District Court judge from 1903-16.

<sup>5</sup> In its next term, the Supreme Court reinforced its reliance on common rather than scientific knowledge in *United States v. Bhagat Singh Thind*, the second of the two racial prerequisite cases that it decided. The court ruled unanimously that the terms "free white persons" and "Caucasian" were "to be interpreted in accordance with the understanding of the common man," thus denying naturalized citizenship to Thind, an Indian immigrant (*U.S. v. Bhagat Singh Thind* 1923: 214; Lesser 1985; Braman 1998; Ngai 1999; Haney López 2006: 61-65; Carbado 2009).

<sup>6</sup> The PLF also filed an *amicus curiae* in *Shelby v. Holder* in 2013, urging the Supreme Court to rule that sections of the Voting Rights Act of 1965 were unconstitutional (*Shelby County v. Eric Holder, Jr.* 2013: 534).