



Curriculum Units by Fellows of the Yale-New Haven Teachers Institute
1982 Volume III: The Constitution in American History

When Military Necessity Overrides Constitutional Guarantees: The Treatment of Japanese Americans During World War II

Curriculum Unit 82.03.01
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“You may think that the Constitution is your security—it is nothing but a piece of paper. You may think that the statutes are your security—they are nothing but words in a book. You may think that elaborate mechanism of government is your security—it is nothing at all, unless you have sound and uncorrupted public opinion to give life to your Constitution, to give vitality to your statutes, to make efficient your government machinery.”

—Charles Evan Hughes

Chief Justice U.S.

Supreme Court, 1930-1941

Introduction and Objectives

While the United States engaged in a global struggle, during World War II, to safeguard democracy and the Four Freedoms, a critical test of constitutional democracy was being conducted on the homefront. A test that would become as infamous as December 7, 1941, “A Day of Infamy.”

At the time of the Japanese attack on Pearl Harbor approximately 112,000 persons of Japanese descent were living in California, Arizona, and the coastal areas of Oregon and Washington. One third of them had come to the United States as immigrants before the Immigration Act of 1924 restricted Oriental immigration. Acceptance, of the Issei, first generation Japanese immigrants, at first as cheap labor, by the citizenry, changed over the years to resentment, racial hatred, mistrust and discrimination.

They had come to America in the latter part of the Nineteenth Century to work the mines; to help develop our nation’s railroad system; to be fishermen, farmers and migrant agricultural laborers. Although they contributed greatly to the economic development of the United States they inherited the stereotype and distrust that West Coasters had previously directed against immigrants from China who also greatly contributed to our nation’s economic development.

As Japanese immigration increased the transfer of the yellow peril stereotype from the Chinese to the Japanese accelerated and fears of Oriental inundation on the West Coast were revived.

Japanese victories in the Russo-Japanese War reinforced the belief that the Western World was facing a yellow peril. For two decades, after the Russo-Japanese War many Americans believed that a United States war with Japan was inevitable.

The image of the yellow peril was mirrored for Americans by the writings of various authors, newspaper editors, columnists, and movies in which Orientals were portrayed as sinister villains engaged in activities of vengeance and treachery.

Confronted by anti-Oriental public opinion, and the demand by organized labor to exclude the Japanese, West Coast politicians reacted accordingly. Prior to 1870 only those individuals who were “free, white and twenty-one” were able to become American citizens. In 1870 Americans of African nativity gained the right to citizenship. Individuals of Oriental Heritage were the only aliens ineligible for citizenship. In 1913, California passed the Alien Land Law barring aliens ineligible for Citizenship from ownership of land in California. Political parties in California adopted platforms which encompassed anti-Japanese declarations and the American Legion established a committee to promote alien land laws and to work for the removal of Japanese from competitive ventures.

Despite the prejudice and racial discrimination and although ineligible for citizenship the Issei stayed contributing to the growth of the West Coast and raised their own families. By 1941 the descendants, Nisei and Sansei, American citizens by birth comprised two thirds of areas population of Japanese descent. But the past had set a foundation for a program that would cost the American taxpayers nearly a quarter of a billion dollars. A program that was never necessary or adequately justified by our government. A program, of forced relocation, that would deprive American citizens of their livelihood, their land, their freedom and the basic guarantees of the United States’ Constitution. It was a program which eventually would bring dishonor to America and the Supreme Court, but would in the long run give impetus to the entire constitutional question regarding racial discrimination.

It is the intent of this unit to give insight into the overall treatment of the Japanese Americans and to what led our government to place citizens into prison or concentration camps and the legal ramifications of the relocation program.

The unit is designed to be incorporated into the Social Studies curriculum in the eighth grade or above in courses of American History dealing with the period covered or in law related courses. No time limitations are set for this component as each educator may desire to add or delete materials suitable for the grade level of his or her class.

HISTORICAL BACKGROUND: ATTITUDE TOWARDS ORIENTALS

In 1848 with the agricultural industry of the West Coast and Hawaii facing a severe labor shortage the United States government pressured the government of Japan to relax their restrictions on Japanese laborers migrating to the United States. By 1900 approximately 85,000 Japanese laborers were working the fields in Hawaii and California.

Prior to the migration of the Japanese the largest non-white ethnic group in the West Coast and Hawaii had been the Chinese who during the 1849 Gold Rush came to California as miners. The reaction of English

speaking Americans to the Chinese miners would set the pattern and attitude towards all Orientals for years to come.

The Chinese miners were forced out of the mine fields through acts of terror and arson committed by the “native” miners who resented the intrusion of non Americans. In 1850, with the achievement of statehood, California passed a number of laws officially discriminating against the Chinese population.

California cities were empowered to expel or restrict the Chinese to segregated areas. Public agencies as well as corporations were prohibited from employing Chinese. In addition other federal, state or local laws or court decisions at various times prohibited the Chinese from; becoming citizens or voting, testifying in court against a white person, engaging in licensed business and professions, attending school with whites, and marrying whites. Chinese persons alone were required to pay special taxes, and a major source of revenue for many cities, counties and the state of California came from these assessments against the Chinese. ¹

Although business recruited Chinese workers for menial tasks labor unions demonstrated and petitioned local elected officials to remove all individuals of Chinese heritage from California. Reacting to extreme pressure from various California lobby groups the United States Congress, beginning in 1882, enacted a series of Chinese Exclusion Acts and thus eliminated for a time, what West Coasters considered the “yellow peril”.

With severe labor shortage in the agricultural industry in 1884 and the arrival of Japanese workers the “yellow peril” stereotype was transferred to the Japanese workers. The transfer resulted at first from popular confusion of the two nationalities and was accelerated by the increasing Japanese immigration which revived fears of Oriental inundation. ²

Although their skills and hard labor in the agricultural fields were welcomed the Japanese, as soon as they showed any signs of initiative or a desire to better their economic conditions, were seen as a threat to the white population. Led by the Hearts newspaper chain, after the Russo-Japanese War, other publications including the *New York Times* saw the prosperity of California threatened and a conflict between the United States and Japan as inevitable.

By 1913 labor unions fearing that the Japanese workers would undermine union progress pressured California legislators and finally, in 1924, the Federal Government to pass various Anti-Japanese legislation.

At no time during this period did any of the media-radio, the press or motion pictures, remind the general public that many of those with Japanese ancestry were American citizens.

During the few years that followed the passage of exclusion legislation and land laws political agitation against the Japanese vanished. The outbreak of the depression, coupled with the aggression of the Japanese Government in China and Manchuria, led once again to resentment against Japanese living in America.

In 1935, 1937, and 1939, anti-Japanese measures once more appeared in California’s legislature, as public opinion generally began to turn against Japan and Japanese Americans. But the attention of the politicians, as of the public, focused primarily upon the domestic problems of the depression and beyond the revival of the familiar stereotypes, no large scale movement developed against the Japanese until the “Dastardly and unprovoked attack” by Japan at Pearl Harbor on the morning of December 7, 1941. ³

Responding to pressure from West Coast political leaders and the media as well as the Western Defense Command to evacuate Japanese from coastal areas President Franklin Roosevelt, on February 19, 1942,

issued Executive Order 9066. Roosevelt signed the order without asking for justification of the evacuation program and without discussing it with his cabinet.

“Why did Roosevelt do it? No historian can ever answer, definitively, this kind of question. Nothing anyone can say in explanation, however, can expiate it; no doctrine of historical relativism can absolve Franklin Roosevelt of the responsibility for giving the army the right to treat American citizens of Japanese ancestry as it wished.”

⁴ Along with most Americans, as Daniels points out, Roosevelt harbored all thoughts of racist prejudice against Asians. ⁵

The Executive Order was a sweeping and unprecedented, delegation of presidential power to an appointed subordinate. Although its authority was used only against Japanese Americans it was an instrument that could have affected any American. Executive Order 9066, designed by the army, could have been applied against any group anywhere in the country. No geographical areas were specified, no ethnic groups mentioned, and no distinction made between citizens and aliens. ⁶

EXECUTIVE ORDER 9066

NOW, THEREFORE, by the virtue of the authority vested in me as President of the United States, and Commander-in-Chief of the Army and Navy, I hereby authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commanders may impose in his discretion . . .

-Franklin D. Roosevelt

The White House

February 19, 1942

Prior to the issuing of Executive Order 9066 general restriction had limited enemy aliens travel to within five miles of homes and curfews had been established. The Executive Order gave the Secretary of War and Military Commanders authority to exclude any person from a designated area. At first Japanese Americans were asked to leave the West Coast voluntarily but when the inland states objected to receiving the refugees the voluntary evacuation was halted and compulsory evacuation was instituted.

With the establishment of compulsory evacuation all persons of Japanese descent, irregardless of their citizenship, were first taken to temporary assembly centers often established at fairgrounds or racetracks and then moved inland to ten isolated relocation centers.

The evacuees were limited to taking with them only items they could carry with no provisions made by the authorities for the shipping of household goods.

Merchants and business men were forced to sell their businesses with most suffering losses. Farm property, under Farms Security Administration was transferred to Caucasian tenants and Corporations. ⁷

To arouse fear and suspicion, upon the Japanese Americans, the press and radio slanted the news with a Hearst columnist urging that “the Japanese Americans in California should be under armed guard to the last man and woman . . . and to hell with habeas corpus until the danger is over.”⁸

Faced with a hostile press and the apparent hostility of the public many Japanese Americans were convinced that the evacuation was primarily motivated, not by military necessity, but by racial prejudice. General DeWitt of the Western Defense Command, reinforced this feeling by explaining, as quoted by the *Los Angeles Times*, on April 14, 1943, that “A Jap’s a Jap . . . It makes no difference whether he is an American citizen or not . . . I don’t want any of them . . . They are a dangerous element . . . There is no way to determine their loyalty.”

Americans had spent a century learning to hate and fear the Japanese, and after the catastrophe of Pearl Harbor they lashed out—half in habit and half in frustration at the only available enemy. John Hughes, a radio commentator, was the first to demand evacuation of the Japanese Americans from the Pacific Coast early in January 1942. Spurred by the fear of imminent invasion, and convinced that Japanese Americans would assist as fifth columnists, the public clamored for action, just as quickly the government complied.⁹

Secretary of the Navy Frank Knox became the most vehement proponent of anti-Japanese American measures in Roosevelt’s cabinet,¹⁰ while Attorney General Francis Biddle as he states in his memoirs, “was determined to avoid mass internment, and the prosecution of aliens that had characterized the First World War.”¹¹

The bank accounts of all enemy aliens were frozen by the Treasury Department thus denying most adult Japanese residents access to their own money. This was slightly modified to allow Japanese Americans to withdraw a maximum of \$100 a month from their bank if they had no other source of income.

Less than seventy two hours after the attack on Pearl Harbor the military proposed a mass evacuation of all Japanese from the West Coast. This plan was aborted on the advise of the Federal Bureau of Investigation.

Nine days later General DeWitt officially recommended that “action be initiated at the earliest practicable date to collect all alien subject fourteen years of age or over, of enemy nations and remove them” to the interior of the United States and hold them “under restraint after removal.”¹²

Although the proposal was not, at the time, acted upon it exemplified the thinking and the direction the military desired to be taken. Supporting the DeWitt proposal was the Army’s chief law enforcement officer, Major General Allen W. Gullion, the army’s Provost Marshall General and Major Karl R. Bendetsen, a lawyer who directed the Aliens Division of the Provost Marshall Office. Bendetsen was to become, in matters pertaining to the Japanese, the army’s chief spokesman and planner.

Many politicians used the psychological fears of the West Coasters against the Japanese Americans to gain political stature among the voters. Among them was Earl Warren, who would eventually be elevated to the Supreme Court and become its Chief Justice, but in 1942 Warren was the Attorney General of California preparing to campaign, successfully, for the governor ship. In testimony before the Tolan Committee, a House Committee that was charged with examining the problems of evacuation, Warren said, in 1942, that “the consensus of opinion among the law-enforcement officers of this State is that there is more potential danger among the group of Japanese who are born in this country than from the alien Japanese who were born in Japan. We believe that when we are dealing with the Caucasian race we have methods that will test the loyalty of them, and we believe that we can, in dealing with the Germans and Italians, arrive at some fairly sound conclusions because of our knowledge of the way they live in the community and have lived for many

years. But when we deal with the Japanese we are in an entirely different field and we can not form any opinion that we believe to be sound.”¹³

When questioned about the civil rights of the Japanese Americans Warren stated that he believed that in time of war every citizen must give up some of his normal rights.

Two months before Pearl Harbor the United States State Department sent a special investigator, Curtis B. Munson, to report on the disposition of the Japanese American communities on the West Coast and Hawaii. Munson’s final confidential report to the President and the Secretary of State remained a secret until 1946. According to Munson Japanese Americans possessed an extraordinary degree of loyalty to the United States and immigrant Japanese were of no danger to our nation. Munson’s findings were corroborated by the FBI and Navy Intelligence who had kept the Japanese American population under secret surveillance for a number of years. These reports were all kept secret from the American public. The public had been psychologically conditioned to hate and mistrust, and we did.

Although racial prejudice played a major role in determining how we would treat the Japanese Americans other factors, primarily economic, helped foster the discriminatory action our nation would take against this group.

Despite the fact that the Japanese comprised only one percent of California’s population they controlled almost fifty percent of that state’s commercial truck crops. Their agricultural skills had enabled them to produce an improved farm product and to bring down the price of farm goods. Much of the fertile and rich growing farm acreage of California, although held in the names of citizen Nisei, belonged to the noncitizen Japanese immigrants. Denied the right to become American citizens and unable to purchase land in their own name the Japanese immigrants purchased the land in the names of their citizen offsprings. They were able to purchase, before Pearl Harbor, low priced land that the Caucasian population considered worthless—usually swampland and desert areas. Utilizing their agricultural skills the Japanese immigrants were able to turn this land, which in many cases bordered dams, railroad tracks and high-tension electric wire lines, into fertile high producing agricultural fields.

The success of the Japanese in turning barren land into productive fields was met by accusations by the population of “unfair competition” and that “the Japs had taken over the best land.” As general economic conditions on the West Coast declined, coupled with the prejudicial attitudes developed over the years and the attack on Pearl Harbor, West Coasters concluded that the Japanese were a threat to the security of the United States. It was also felt that they would become fifth columnists and spies for the Emperor of Japan. Thus the stage had been set for what would become a betrayal of the constitutional guarantees of not depriving any person of life, liberty, or property, without due process of law.

From May 1942 to November 1942 the Japanese Americans were evacuated from the West Coast to relocation centers administered by a civilian agency—the War Relocation Authority. Most of the relocation centers were established in undeveloped and isolated areas. Varying in size from 6,000 acres to 72,000 and in capacity from 8,000 detainees to 16,000 the ten centers utilized were:

Manzanar and Tule Lake in California;

Poston and Gila River in Arizona;

Rohwer and Jerome in Arkansas;

Minidoka in Arizona;

Heart Mountain in Wyoming;

Granada in Colorado; and

Topaz located in Utah.

Over one hundred thousand men, women and children were imprisoned in these relocation centers with approximately seventy thousand of them citizens of the United States. “They were imprisoned without indictment or the proffer of charges pending inquiry into their ‘loyalty.’ They were taken into custody as a military measure on the grounds that espionage and sabotage were especially to be feared from persons of Japanese blood. They were removed from the West Coast area because the military thought it would take too long to conduct individual loyalty investigations on the ground. They were arrested in an area where the courts were open, and freely functioning. They were held under prison conditions in uncomfortable camps, far from their homes, and for lengthy periods—several years in many cases. If found ‘disloyal’ in administrative proceedings they were confined indefinitely, although no statute makes ‘disloyal’ a crime.”¹⁴

SUPREME COURT CASES

While the majority of Japanese Americans complied with the military orders as a means of demonstrating their loyalty to the United States, there were many equally patriotic individuals who decided to challenge the discriminatory orders on constitutional grounds. As a means of testing the orders in court, over 100 Japanese Americans deliberately violated one or more of the orders and invited arrest. But the government was apprehensive about a judicial review and declined to prosecute most of these violators.¹⁵

Three Japanese Americans, who did not appear to have the backing of any Japanese American civic organization were selected by the government for prosecution. All three—Minoru Yasui, Gordon Hirabayashi and Fred Korematsu—were convicted in the Federal Courts for disobeying military orders and sentenced to prison terms under Public Law 77-503. The legal issues were slightly different in each case and after an appeal to the United States Court of Appeals their cases were ultimately heard by the Supreme Court.

A fourth case involving Mitsuye Endo, an American citizen also of Japanese ancestry, was also heard by the Supreme Court. In this case Miss Endo, interned in one of the Relocation Centers, filed a petition for a writ of habeas corpus, asking that she be released from the Center and her liberty restored.

In each case the government conceded that the individuals were loyal citizens who had committed no crime other than to challenge the validity of the military orders. The four Japanese Americans argued that the military orders were unconstitutional when applied to citizen civilians.

Regretfully, judges and even justices of the Supreme Court, were not immune from the prejudices of the times and the judicial system failed in its constitutional responsibility to protect citizens against abuses by the executive and legislative branches.¹⁶

HIRABAYASHI v U.S. YASUI U.S.

320 U.S. 81 (1943) 320 U.S. 115

Gordon Hirabayashi, a senior at the University of Washington, and Minoru Yasui, a Portland, Oregon, attorney, both challenged the military evacuation orders.

Hirabayashi was arrested, convicted and jailed for violating the evacuation orders and the curfew. Yasui was also found guilty, fined \$5,000, and sentenced to one year in jail for violating the curfew.

In refusing to obey the evacuation orders Hirabayashi wrote:

The violation of human personality is the violation of the most sacred thing which man owns. This order for the mass evacuation of all persons of Japanese descent denies them the right to live. It forces thousands of energetic, law-abiding individuals to exist in miserable psychological conditions and a horrible physical atmosphere . . . If I were to register and cooperate..I would be giving helpless consent to the denial of practically all of the things which give me incentive to live. I must maintain my Christian principles. I consider it my duty to maintain the democratic standards for which this nation lives. Therefore I must refuse this order of evacuation. ¹⁷

In its majority decision the Supreme Court, on June 21, 1943, stated that “because persons of Japanese ancestry have been faced with many restrictions while residing in the United States, they may have become more isolated from the rest of the population and more attached to Japan and Japanese institutions.

“The Executive Order permitted establishment of military areas for the purpose of protecting national defense resources from sabotage and espionage. The Act of Congress ratified the Executive Order. Both were an exercise of constitutional power to wage war. Once the Executive and Congress have the power, they also have the freedom to use their own judgment in determining what the threat is and how it can be resisted. A court should not decide whether the Executive and/or Congress did the right thing nor should a court substitute its own judgment for that of the Executive or Congress.

“Measures adopted by the Government may point out that a group of one nationality is more dangerous to the country’s safety than any other group. This is not entirely beyond the limits of the Constitution and should not be condemned just because racial differences are usually irrelevant.

“Appellant, however, insists that the exercise of the power is inappropriate and unconstitutional because it discriminates against citizens of Japanese ancestry, in violation of the Fifth Amendment.

“Distinction between citizens solely because of their ancestry are hateful to a free people whose institution are founded upon equality. For that reason, discrimination based on race alone has often been considered a denial of equal protection. These considerations would be in effect here were it not for the fact that the danger of espionage and sabotage makes it necessary for the military authorities to look into every fact having to do with the loyalty of populations in the danger areas.”

In rendering its decision the Court asserted that the war power is the power to wage war successfully and that the government must have the widest latitude in defending itself. The curfew imposed according to the Chief Justice was a protective measure necessary to meet the threat of sabotage and espionage and that “residents having ethnic affiliations with an invading enemy may be of a greater source of danger than those of different ancestry.” ¹⁸

Justices Roberts and Murphy dissented with Murphy stating that distinctions based on color and ancestry are utterly inconsistent with our traditions and ideals. They are at variance with the principles for which we are

now waging a war. To say that any group cannot be assimilated is to admit that the great American experiment has failed, that our way of life has failed when confronted with the normal attachment of certain groups to the land of their forefathers. Today, Murphy concluded, is the first time, so far as I am aware that we have sustained a substantial restriction of the personal liberty of citizens of the United States based upon the accident of race or ancestry.

In *Minoru Yasui's* case the Supreme Court upheld the military authority to enforce curfews upon citizens without a declaration of martial law.

Thus the Court avoided the risk of overruling the Government on an issue of War policy. But it weakened society's control over military authority—one of the polarizing forces on which the organization of our society depends. And it solemnly accepted and gave the prestige of its support to dangerous racial myths about a minority group in arguments which can be applied to any other minority in our society. ¹⁹

KOREMATSU v U.S.

323 U.S. 214 (1944)

Perhaps, according to Bernard Schwartz, the greatest failure of American law during World War II may be illustrated by the case of Fred Toyosaburo Korematsu. As graphically described in 1944 by a member of the bench, his case is one that is unique in our system:

Korematsu was born on our soil, of parents born in Japan. The Constitution makes him a citizen of the United States by nativity and a citizen of California by residence. No claim is made that he is not loyal to this country. There is no suggestion that apart from the matter involved here he is not law-abiding and well disposed. Korematsu, however, has been convicted of an act not commonly a crime. It consists merely of being present in the state whereof he is a citizen, near the place where he was born, and where all his life he has lived.

Korematsu had been charged with failure to report for evacuation and detention.

Had Korematsu been of Italian, German or English ancestry, his act would not have been a crime. His presence in California was made a crime solely because his parents were of Japanese birth. The difference between innocence and crime, so far as he was concerned, resulted not from anything he did, said, or even thought, but only from his particular racial stock. For Korematsu was a victim of what a *Harper's* article was to term "America's Greatest Wartime Mistake," namely, the evacuation of those of Japanese ancestry from the West Coast shortly after the Pearl Harbor attack. ²⁰

In a 6-3 majority decision the Supreme Court, on December 18, 1944, rendered its opinion which affirmed the right of the military to move people about on the basis of race in time of war. The Court decided that one group of citizens may be singled out and expelled from their homes, and imprisoned for several years without trial based solely on ancestry. The Supreme Court refused to question military judgment or the validity of military orders applied to civilians without a declaration of martial law.

Hardships are part of war and war is a collection of hardships. All citizens whether they be in or out of uniform feel the impact of war. Citizenship has its responsibilities as well as its privileges, and in time of war, the burden is always heavier.

It is said that Korematsu has been imprisoned in a concentration camp solely because of his ancestry, without any

evidence to show his loyalty or disloyalty towards the United States. First of all, we do not think it is justifiable to call them concentration camps, with all the ugly pictures that term brings to mind. Secondly, regardless of the true nature of the assembly and relocation centers, we are dealing specifically with nothing but the exclusion order. To bring in the issue of racial prejudice, without reference to the real military dangers which existed, merely confuses the issue.

Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire . . . The military urgency of the situation required that all citizens of Japanese ancestry be segregated from the West Coast temporarily. Congress put their confidence in our military leaders and decided that they should have the power to carry out the necessary measures. There was evidence of disloyalty on the part of some so the military authorities felt that the need for action was great. The fact that we can look back and see things more calmly does not allow us to say that at the time these actions were unjustified. ²¹

In dissenting Justice Owen Roberts felt the facts presented exhibited a clear violation of Constitutional rights. It is he stated “not a case of keeping people off the streets at night, nor a case of temporary exclusion from an area for safety reasons . . . It is the case of convicting a citizen as a punishment to not going into imprisonment in a concentration camp. In addition, if a citizen were forced to obey two laws and obedience to one of them would violate the other, to punish him for violation of either law would be unfair. It would be to deny him due process of law.

“Distinctions between citizens solely because of their ancestry are hateful to a free people whose institutions are founded upon equality. For that reason, discrimination based on race alone has often been considered a denial of equal protection.”

Justice Frank Murphy, in his dissenting opinion, called the decision “a legalization of racism” while Justice Robert Jackson, also dissenting, deplored the validation of “the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of urgent need.”

To Justice Murphy “Racial discrimination in any form and in any degree has no justifiable part whatsoever in our democratic way of life. It is unattractive in any setting but is utterly revolting among free people who have embraced the principles set forth in the Constitution of the United States. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must accordingly be treated at all times as the heirs of the American experiment and as entitled to all the rights and freedoms guaranteed by the Constitution.”

So wrote Judge Murphy, who in the strongest dissent in the Korematsu case, stated that the exclusion order applicable to “all persons of Japanese ancestry” seemed to him “an obvious racial discrimination” and thus a denial of equal protection, Murphy’s statement in essence that the equal protection guarantee is part of the due process assurance of the Fifth Amendment was reaffirmed in 1954 when in a companion case to *Brown v Board of Education*, *Bolling v Sharpe*. Chief Justice Earl Warren held public schools in the District of Columbia violative of the equal protection clause because of racial segregation. The same Earl Warren who used the anti Japanese feelings of West Coasters to help his political campaign for Governor of California during the war years.

EX PARTE ENDO

323 U.S. 283 (1944)

Although Mitsuye Endo cooperated with the military order she was detained against her will without charges. In July 1942 she sought a writ of habeas corpus which is supposed to be adjudged promptly. However her case was not heard for a full year by the Federal District Court which denied her petition. Her appeal to the Court of Appeals was not forwarded to the Supreme Court for another year.

On December 18, 1944, one day after the exclusion and detention orders had been rescinded, the Supreme Court granted Endo an unconditional release from confinement. But in doing so the Court stated that the original expulsion from the West Coast and the detention for three years without charges or trial were legitimate exercises of presidential and military power during an emergency.

The Court bypassed constitutional issues and only ruled that Executive Order 9066 did not authorize the indefinite detention of citizens who the government conceded were loyal, nor did it authorize the imposition of parole conditions on citizens once removed from the West Coast.

Although joining the majority decision Justice Frank Murphy was of the opinion “that detention in Relocation Centers of persons of Japanese ancestry regardless of loyalty is not only unauthorized by Congress or the Executive but is another example of the unconstitutional resort to racism inherent in the entire evacuation program. As stated more fully in my dissenting opinion in *Fred Toyosaburo Korematsu v United States*, racial discrimination of this nature bears no reasonable relation to military necessity and is utterly foreign to the ideals and traditions of the American people.”

CONCLUSIONS

By the time the Japanese-American cases reached the Supreme Court the crisis which was supposed to justify the government’s action had passed. The Court, according to Rostow, faced two issues: should it automatically accept the judgment of the military as to the need for the relocation program, or should it require a judicial investigation of the question? Was there factual support for the military judgment that the course of war required the exclusion and confinement of the Japanese American population of the West Coast? Clearly, Rostow points out, if such steps were not necessary to the prosecution of the war, they invaded rights protected by the Third Article of the Constitution and the Fifth and Sixth Amendments.²²

By its action the court upheld the main parts of the program and converted a war-time doctrine into a permanent part of the law. What the Supreme Court did in these cases, and especially in *Korematsu v. U.S.* was to increase the strength of the military in relation to civil government and for the first time in American legal history seriously weakened the protection of our basic civil right, the writ of habeas corpus.²³

Notes

1. National Committee For Redress, *The Japanese American Incarceration: A Case For Redress* (San Francisco: Japanese American Citizen League, 1980), p. 5.

2. J. tenBroek, E.N. Barnhart and F.W. Matson, *Prejudice, War and The Constitution: Causes and Consequences of the Evacuation of the Japanese Americans in World War II* (Berkeley University of California Press, 1954), p . 25.
3. *Ibid* , p. 43.
4. Roger Daniels, *The Decision to Relocate the Japanese Americans* (New York: J.B. Lippincott Co., 1975), p. 44.
5. *Ibid*.
6. *Ibid* , pp. 49-50.
7. Dorothy S. Thomas and Richard S. Nishimoto, *The Spoilage* (Berkeley: University of California Press, 1946), p. 18.
8. *Ibid* , p. 19.
9. Maisis and Richard Conrat, *Executive Order 9066: The Internment of 110,000 Japanese Americans* (San Francisco, California Historical Society, 1972), pp. 21-22.
10. Roger Daniels, *op. cit.* , p. 8.
11. *Ibid* , p. 10.
12. *Ibid* , p. 15.
13. Lewis H. Carlson and George A. Colburn, *In Their Place: White America Defines Her Minorities 1850-1950* (New York, J. Wiley and Sons, 1972) , p. 243.
14. Eugene V. Rostow, "The Japanese American Cases—A Disaster," *The Yale Law Journal* , Volume 54, Number 3, June 1945, p . 489.
15. National Committee For Redress, *op. cit.* , pp. 18-19.
16. *Ibid* , p. 19.
17. Anne R. Fisher, *Exile of a Race* (Seattle, F and T Publishers, 1965) p. 103.
18. Rostow, *op. cit* , p. 505.
19. *Ibid* , pp. 503-504.
20. Bernard Schwartz, *The Reins of Power, A Constitutional History of the United States* (New York: Hill and Wang, 1963), p. 182.
21. 323 U.S. 214: 65 Supreme Court 193: 89L Ed 194.
22. Rostow, *op. cit* , pp. 490-491.
23. *Ibid* , p. 491.

Course Outline

I Introductory Activities

- a. General background information on Asiatic immigration.
- b. First Japanese immigrants and their role in the development of America.
- c. Filmstrip: *The Japanese Americans: Prejudice in America* :
Part I: Asian Western Relations
Part II: Experience of first Asian immigrants.
- d. Reading Assignment:
Justice Denied pp. 5-22.
- e. Test

II: *Prejudice Against Japanese*

- a. General background information on Anti-Japanese Campaigns: political, economic and social.
- b. Russo-Japanese War
- c. The Gentlemen's Agreement
- d. The Exclusion Movement
- e. Alien land laws
- f. Japan attacks China
- g. Reading Assignment: *Justice Denied* pp. 23-40, pp. 47-52.
- h. Filmstrip: *The Japanese Americans: Prejudice in America*
Part 3: *Institutionalized Discrimination*
- i. Test

III: *Pearl Harbor and its Aftermath*

A. Pearl Harbor

1. Record, Side A. Band i (included in Japanese American Relocation, 1942, media kit)
2. Picture Cards 1-1, 1-2, 1-3, 1-4 (included in Japanese American Relocation, 1942, media kit)
3. Reading Assignment: *Justice Denied*. pp. 53-68.

B. Enemy Aliens:

1. Reading Assignment: *Justice Denied*. pp. 59-58.
2. Filmstrip: *The Japanese Americans*

Part 4: Events that led to evacuation

C. Executive Order 9066

1. Reading Assignment: *Justice Denied* . p. 69-76.
2. Distribute Evidence 1-5 (included in Japanese American Relocation, 1942, media kit)
3. We Might As Well be Honest, record (included in Japanese American Relocation, 1942, media kit)

D. Evacuation and Relocation

1. Reading Assignment: *Justice Denied* . pp. 77-86.
2. Evacuation Order: distribute handouts (included in Japanese American Relocation, 1942, media kit)
3. Filmstrip: *Japanese American Relocation 1942*

E. Camp Life

1. Reading Assignment: *Justice Denied* . p. 87-104

2. Filmstrip: *Japanese American Relocation 1942*

Part 2: Relocation Centers

F. Test

Part IV: The Supreme Court

A. *Hirabayashi v U.S. B.*

B. *Korematsu v U.S.*

C. *Ex Parte Endo*

D. *Brown v Tupeka Board of Education*

E. Reading Assignment: *Justice Denied* pp. 117-122 and material in media kit

Part V: Unit Test

Sample Lessons

I. Discussion questions

The following questions, to be used during the course of this unit, are designed to stimulate class discussions and student interaction.

To what extent can national security considerations overcome basic notions of fairness?

If a large percentage of Japanese-Americans had been organizing a pro-Japan party would that have justified the action of our government?

Would the relocation orders have been more defensible if they involved all enemy aliens?

Would the relocation orders have been more defensible if they involved all persons of German, Italian and Japanese descent?

What are civil liberties? Can civil liberties be allowed in wartime?

What motivated individuals and groups to demand the evacuation and to ignore constitutional guarantees?

Do you think that there was racial prejudice involved in placing only persons of Japanese ancestry in camps?

What constitutional principle may have been violated during the evacuation?

What effects do you think that the Korematsu decision had upon persons of Japanese American ancestry and other racial ethnic groups and to the principles of democracy as set forth in our constitution?

II. Filmstrip

Japanese American Relocation , 1942: a case study in prejudice and discrimination

Through the use of the filmstrips, record, picture cards, spirit masters and readings, students will be able to identify the causes and effects of prejudice and discrimination in general.

III. Role Playing

Role playing is used to assist the students in understanding the emotional and psychological problems that individuals faced during relocation.

Students will be asked to act out the role assigned them and answer the question: What would you have done? Would you have followed orders?

Partial roles to be assigned:

Japanese American, believer in passive resistance; Japanese American, believer in physical resistance; Japanese American who believes the government knows what is best; Japanese American teenagers; Black soldier assigned to carry out the orders; White soldier assigned to carry out the orders.

IV. Comparison Report

Students will be assigned two Supreme Court cases: *Korematsu v. U.S.* and *Brown v. Topeka Board of Education*. In a written report they will compare the cases and discuss why the Court reached a different decision in each case.

V. Suggested Unit Reports

To aid students in understanding the overall unit, the following written assignments are suggested:

1. Write a justification for Executive Order 9066 using the Constitution of the United States.
2. As an evacuee, write a letter to the Supreme Court outlining your objections to the relocation of Japanese Americans.
3. Trace the history of the relations between Japanese immigrants and West Coast citizens from 1869 to 1924.

READING LISTS

A: TEACHERS

Conrat, Maisie and Richard. *Executive Order 9066*. San Francisco, California Historical Society, 1972. Photo essay, with appropriate text, of American concentration camp life. Excellent for discussions.

Cushman, Robert F. *Leading Constitutional Decisions*. New York, Appleton-Century-Crofts, 1971. Summary of landmark decisions of Supreme Court.

Daniels, Roger. *The Politics of Prejudice*. Gloucester, Mass: Peter Smith, 1966. California's anti-Japanese movement traced from its beginning in the late 19th century.

———. *Concentration Camps U.S.A.: Japanese Americans and World War II*. New York, Holt, Rinehart, Winston, 1972.

A study of the conditions and personalities that led to internment, camp life and postwar aftermath.

———. *The Decision to Relocate the Japanese Americans*. New York, J.B. Lipincott Co., 1975. Through official documents and letters traces the decision making process leading to relocation.

Hosokawa, Bill. *The Quiet Americans*. New York, William Morrow and Company Inc., 1959. History of the Japanese in America from immigration through the 1960's.

Kitano, Harry H.L. *Japanese Americans: The Evolution of a Subculture*. Englewood Cliffs, N.J. Prentice-Hall Inc., 1959. A social-psychological study of the Japanese Americans.

Rostow, Eugene V. "The Japanese American Cases—A Disaster." *Yale Law Journal*. 54, Number 3, June 1945. Presents a legal and constitutional view of the evacuation of the Japanese Americans from the West Coast.

tenBroek, Jacobus, Edward N. Barnhart and Floyd Matson. *Prejudice , War and the Constitution*. Berkeley, University of California Press, 1954. Focuses on the forces which produced and allowed the internment of Japanese Americans.

Thomas, Dorothy S. and Richard Nishimoto. *The Spoilage*. Berkeley, University of California Press, 1946. Focus is on the detention of Japanese Americans.

B: STUDENTS

Bosworth, Allen R. *American Concentration Camps* . W.W. Norton, 1967. An easy to read narrative of life in the concentration camps during World War II.

Cross, Jennifer. *Justice Denied , A History of the Japanese in the U.S.* Scholastic Book Service, 1972. Excellent basic reading text for all levels.

Houston, James and Jeanne W. *Farewell to Manzanar*. Houghton Mifflin, 1973, paperback. The personal story of Jeanne Houston's family and life in the Manzanar camp.

Kikuchi, Charles. *Kikuchi Diary* . University of Illinois Press, 1973. Life in the Tanforan camp.

Okubo, Mine. *Citizen 13660*. Arno Press 1946. Camp life as seen by an inmate through narrative and art.

Sone, Monica. *Nissei Daughter* . University of Washington Press, 1953. The story of a Northwest Japanese American girl.

Uchida, Yoshiko. *Journey to Topaz* . Charles Scribner's Sons. Low level book showing the hardships of one family.

MATERIALS FOR CLASSROOM USE

FILMSTRIPS

Japanese American Relocation 1942: a case study in Prejudice and discrimination. Olcott Forward Inc. an excellent multi media production utilizing 2 filmstrips, records, duplicating masters, learning game, documents and readings on relocation.

The Japanese Americans: Prejudice in America , Social Studies School Service or Multimedia Productions. 4 color filmstrips and two cassettes, examines the American dream as seen by the Japanese immigrants and their descendants.

Books and Pamphlets

Japanese Americans and World War II , Don and Nadine Hata Forum Press 1974. Good classroom supplement.

Concentration Camp USA Regulations, JACP reproduction of camp regulations.

Evacuation Notices, 17 X 22 inch poster, JACP 1942 Japanese American Concentration Camp Photos , JACP, set of 15 11 X 14 documentary photo aids. *Wartime Hysteria: the Role of the Press* , JACP collection of 1942 news articles—excellent tool for teaching about propaganda.

Resources

Inexpensive materials are available on the experience of the Japanese Americans and other Asian groups from the following:

Japanese American Citizen League

National Headquarters

1765 Sutter Street

San Francisco, California 94115

JACP Incorporated.

414 East Third Avenue

San Mateo, California 94401

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