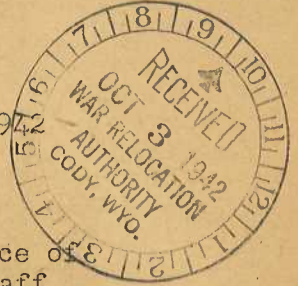


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RELOCATION AND THE CONSTITUTION

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When Uncle Sam last March ordered 112,000 people of Japanese ancestry to pack up and move out of military areas on the Pacific coast his action generated a storm of discussion and raised some legal questions of fundamental importance to the American people.

It was the first time in the history of the United States that anything like that had ever been done. True, the military dictators of Europe could have taken such action with no questions asked, but in a democracy -- well, that was a different matter.

In the first place, two-thirds of the Japanese people in this country were born here and are therefore citizens -- with the same rights as any of the rest of us. Where, then, did the Federal Government get its legal authority to uproot a whole people and transplant them? What basis could be found in the Constitution for such action? Did it mean that the Bill of Rights was also to be scrapped for the duration?

There is no pat answer for these questions nor can they be considered from the standpoint of what would have been right and just ten years ago, or even one year ago when this country was not at war. They must be considered against the backdrop of total war, and from the standpoint of a nation fighting for its existence.

The legal issues involved in this mass movement of the people of Japanese ancestry really divide themselves into two separate and distinct parts. The first has to do with the evacuation -- the legal right of the President in authorizing the military to order the removal of a group of people and their exclusion from certain designated areas along the Pacific coast. The second has to do with their relocation -- the legal right of the Federal Government to detain the Japanese people in isolated communities established for them in the interior.

The authority for evacuating the Japanese from the west coast was contained in an Executive Order of the President issued February 19, 1942, authorizing military authorities "to prescribe military areas.....from which any or all persons may be excluded..." (Note particularly that the order does not specifically designate the Japanese people, and that "any or all persons" may be so excluded, citizens and aliens alike.)

Whether the President had the power to issue such an order has not yet been tested in the courts. There is, however, little doubt that as Chief Executive and Commander-in-Chief of the Army and Navy he does have this power in the light of the existing military emergency. On March 2, 1942, Congress passed a law which ratified, by implication, his action; this law provided penalties for violation of the restrictions imposed under terms of the Executive Order. The statute provides a \$5,000 fine and a year in jail or both, for anyone who "shall enter, remain in, or leave....a military area....contrary to restrictions."

In their relationship to the Federal Government, individuals fall into three major groups: (a) citizens; (b) alien friends; (c) alien enemies.

In dealing with enemy aliens there is no question whatever as to the President's powers -- they are practically unlimited. Under the Enemy Alien Act, he has absolute authority during war-time to order them deported, or put behind barbed-wire or to direct their activities in any other way that he may deem necessary. Therefore, since Japanese aliens are enemy aliens, the legal right of the Federal Government to order their detention at relocation centers is clear. (About one-third of the evacuated Japanese are aliens.)

The status of alien friends (citizens or subjects of friendly or allied nations) is entirely different. They are entitled to all the safeguards of the Federal Constitution and are protected against war-time restraints to substantially the same degree as are citizens of the United States.

The main constitutional problem centers around detaining American citizens of Japanese ancestry. Under sweeping war-time powers, the Federal Government can order the detention, or place other restriction upon ANY citizen -- so long as such restrictions are justified, reasonable and necessary in the protection of national safety and in the preservation of national existence. That does not mean, however, that the Government can set aside the Bill of Rights to suit its convenience. Every citizen still has redress to the courts. Every citizen still retains the rights guaranteed him by the Bill of Rights---but those rights may be curtailed in time of war to protect the national safety.

So the constitutional question simmers down to this: Can it be shown that the detention of citizen-Japanese at relocation centers is a reasonable and necessary step for the protection of national safety?

How the courts will answer that question is as yet undetermined, but here, in broad outline, are the defense positions the Federal Government will take in the event the legality of its evacuation and relocation program is challenged:

The action taken with respect to Japanese in this country is justifiable on the grounds of military necessity for several reasons.

1. All Japanese look very much alike to a white person -- it is hard for us to distinguish between them. It would be hard to tell a Japanese soldier in disguise from a resident Japanese. The danger of infiltration by Japanese parachutists, soldiers, etc. is, therefore, reduced and the chances of detecting any attempt at infiltration are increased.

2. The Japanese Government has always tried to maintain close ties with and control over Japanese people in this country with the result that many of them have never really been absorbed into American life and culture. Many Japanese-Americans have been educated in Japan. Many, believers in Shintoism, worship the Emperor and regard his orders as superior to any loyalty they may owe the United States. Therefore, the action has reduced the danger of successful invasion by removing an element of the population which had never been assimilated and which might not successfully withstand the strong emotional impulse to change loyalties or give way to their true feelings in the event that Japanese troops should land on our shores.

3. Evacuation and limited detention of the Japanese is justified as a measure in the prevention of sabotage and fifth-column activities. We know that there is a Japanese fifth-column in this country but nobody knows who is in it or how large it is. Some members of it have been caught and, after a hearing, interned. Since it is impossible for us to distinguish between the loyal and the disloyal Japanese, we may avoid the danger of fifth-column activity, sabotage and espionage by removing all Japanese from the danger zones and detaining them in other places.

4. In time of war the judgment of the military authorities is entitled to great weight and should not be lightly pushed aside. Since they have decided that evacuation and detention of the Japanese is a necessary precaution in fighting this war their judgment should stand unless it is proved wrong.

5. The action taken was reasonable and necessary for the protection of the Japanese themselves. It minimized the dangers of mob violence and local disorders growing out of war hysteria and racial discrimination. Through lessening the possibility of harsh treatment of Japanese in this country (incidents which would have been exploited promptly by Axis propagandists who wish to make it appear to be a race war) it took away an excuse for even harsher retaliatory treatment of American prisoners by Japan.

Since its creation by Executive Order of the President on March 18, 1942, as the agency charged with the responsibility of relocating the Japanese after their evacuation, the War Relocation Authority has taken steps to strengthen its position on the constitutional question by the adoption of administrative procedures to relax regulations and permit citizen-Japanese to leave relocation centers to accept employment under certain specified conditions. These procedures will change an absolute detention into a qualified detention and will therefore strengthen the reasonableness of the action.

It is of course impossible, in the light of present-day circumstances, to appraise the reaction of the courts to the specific questions raised by the evacuation and the relocation program, and this summary is intended only to point out and call attention to some of the legal problems involved.

At least one case is being tried in the courts, in which an American citizen of Japanese ancestry is suing for a writ of habeas corpus, on the ground that she is being illegally detained against her will in a relocation center. The decision of the courts in this case undoubtedly will have a significant effect on the future of the WRA program and on the lives of the citizens now living in the relocation centers.