## The Uprooting of Japanese Canadians and Japanese Americans during the 1940s:

# SECURITY OF WHOM?

**ABSTRACT**

Following the Japanese attack on Pearl Harbour, Japanese Canadians and Americans were uprooted from their homes, incarcerated and exiled. This article examines the larger context of human rights and racism. Although the legal protection of citizenship made significant differences, the overriding context of racism went beyond the law. Audrey Kobayashi argues that until the legal system is framed in a way that addresses racism, the law will be inadequate protection.

On 7 December 1941, Japan bombed a military base at Pearl Harbor, Hawai'i, initiating the Pacific War. In the following days, more than 130,000 Canadians and Americans of Japanese descent embarked upon a journey of horror.

On February 19, 1942, President Franklin D. Roosevelt signed Executive Order 9066, which required the "evacuation" of Japanese Americans from military. 110,000 Issei and Nisei were shipped from "assembly centers" along the Pacific coast to concentration camps in the interior states. Despite their location in the Pacific theatre, Japanese Americans in Hawai'i were not uprooted, although selected individuals were interned. By 1943 several thousand Nisei men had joined the military, and formed the 442nd Regimental Combat Team. Also in 1943, the U.S. Army and the War Relocation Authority initiated procedures for "Loyalty Registration." Men who refused to sign the form (known as the "no-no" boys) were sent to federal penitentiaries. In three court cases, the Supreme Court upheld the government's exclusion and imprisonment of a group of citizens based solely on their "race." (See Hirabayashi v. U.S., 320 U.S. 81 1943; Yasui v. U.S., 320 U.S. 81 1943; and Korematsu v. U.S., 323 U.S. 214 1944). Over this time period, eight prisoners were shot to death by guards and a number wounded. In December 1944, Public Proclamation No. 21 allowed those interned to return home and the Supreme Court ruled that "loyal" citizens could not be interned because of their "race" (Endo, Ex Parte 323 U.S. 283 1944). The camps were closed.

In 1981, following intensive lobbying by Japanese Americans, including a group of federal politicians, the U.S. government set up a "Commission on Wartime Relocation and Internment of Civilians," which recommended redress for internees. In 1984, Fred Korematsu's conviction for being unlawfully in a place where Japanese Americans were not allowed was vacated. Yasui's conviction was overturned in 1985, and Gordon Hirabayashi's in 1987, citing evidence that the government knew that there was no military justification for the forced removal but withheld the information from the Supreme Court (Korematsu v. U.S. 584 F.Supp. 1406 N.D. Cal. 1984; Yasui v. U.S. 772 F.2d. 1496 9th Cir. 1985; Hirabayashi v. U.S. F.2d 592 9th Cir. 1987). On 10 August 1988, President Ronald Reagan signed H.R. 442, the Civil Liberties Act, issuing an acknowledgement of injustice and an apology and authorizing symbolic redress payments of $25,000, as well as a public education fund. The first payments were made by President George Bush in 1990.

On 24 February 1942, Prime Minister Mackenzie King passed Order-in-Council P.C. 1486 using the power of the War Measures Act to authorize compulsory removal of Japanese Canadians from the Pacific Coast. On 26 February, Justice Minister Louis St. Laurent issued a ministerial, "Notice to all persons of Japanese Racial Origin" initiating the uprooting and incarceration in "protective custody" of more than 21,000 Canadians of Japanese ancestry through the British Columbia Securities Commission. As citizens were rounded up and channelled through a holding facility, the livestock buildings at Hastings Park in Vancouver, the Custodian of Enemy Property began a forced liquidation of material assets, thus physically destroying the communities that had been established in British Columbia since the late 19th Century. Those uprooted were placed in internment camps in the interior or sent as labourers on sugar beet farms in the prairie provinces. In September 1945, a second uprooting required those in the camps to re-locate east of the Rocky Mountains or undergo "repatriation" to Japan. Of 10,000 initially slated for expulsion, more than 4,000 (of whom more than half were Canadian-born) were sent to Japan. On 2 December 1945 the Privy Council upheld a Supreme Court decision that the actions under the War Measures Act on the basis of racial background were within federal government jurisdiction., including the right to deport its own citizens (Cooperative Committee on Japanese Canadians et al. v. Attorney General of Canada et. al.) In late 1945, the government used the National Emergency Transitional Powers Act (Bill 15) to extend the conditions imposed by the War Measures Act, which would have expired on 1 January 1946. On 27 January 1947, after significant public lobbying, the Order-in-Council authorizing deportation of Canadian citizens was revoked. On 31 March 1949, all restrictions on Japanese Canadian citizens were removed.

On 21 July 1988, revocation of the War Measures Act came into effect. On 22 September 1988, after a decade of negotiation, Prime Minister Brian Mulroney and Art Miki, President of the National Association of Japanese Canadians, signed the Redress Agreement, which was approved by Order-in-Council and announced in parliament. The settlement included an acknowledgement of injustice, payment of $21,000 to all living individuals who had been affected by the War Measures Act, establishment of a fund for community re-building, a purge of criminal records of those convicted under the War Measures Act, restitution of citizenship to those exiled, and the creation of the Canadian Race Relations Foundation, established in 1997.

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These outlines of the institutional processes through which Canadian and American Nikkei (people of Japanese ancestry) were uprooted from their homes, stripped of their human and civil rights, incarcerated, and exiled can hardly do justice to the personal and family stories of lives disrupted, families separated, and freedom violated. Those stories are well chronicled in both countries.[1] My concern in this short paper is with the larger context of human rights and racism in which the two stories occurred. Racism was nothing new for either group. It had defined their communities since the first immigrants arrived in the 1870s. But after the bombing of Pearl Harbor, they were redefined as Canadian and American citizens and racism erupted into a full blown denial of their rights to citizenship. Comparing their experiences shows that the legal protections of citizenship made significant differences, but that the overriding context of racism went beyond the law.

The chronicles have much in common. The wording of official documents, including such euphemisms as "evacuation" and "protected zone" was similar, and reflected a similar public discourse over the "threat" posed by Japanese Canadians and Americans. The Canadian government generally followed the American by a few days at each stage in the uprooting and dispersal, indicating that there was discussion between the two governments. Even the redress settlements in 1988 occurred a month apart.

Japanese Canadians generally believe that conditions were much harsher for them than for their American counterparts. The government followed a deliberate policy of splitting families, men sent to labour or prisoner-of-war camps and women, children, and the elderly to internment camps. About 4,000 took the option of labour on sugar beet farms because it was presented as the only means of moving as a family group. In the U.S., families were kept intact but there was not, as in the Canadian case, a "choice" of destinations. Everyone went to concentration camps surrounded by barbed wire and armed guards. In Canada, the government liquidated all property, except the two items of luggage allowed to each individual. In 1948, they received settlements of a tiny fraction of the value. The majority of properties were taken over by the department of Veteran's Affairs and designated for distribution to returning white veterans. In the U.S., property was held in trust by the Federal Reserve Bank, although many had sold their land at very low prices in the days before internment. The U.S. also took responsibility to provide food and housing, while the Canadian government—in contravention of what would be the Geneva Convention—required Japanese Canadians to pay their own costs, deducted if necessary from the sale of confiscated property. Most significantly, the Japanese Americans were released following the Endo decision in 1944, while Japanese Canadians were subject to a second relocation east of the Rocky Mountains. The provisions of the War Measures Act were extended for four years after the end of the Pacific War until 1949, at which time there was still a small number of families living in the camps. The government had no legal obligation to rescind the measures, but public opinion was by then turning in support of Japanese Canadians.

Some of these contrasts are rooted in differences between the two legal systems. The War Measures Act (1914) invested the Canadian government with tremendous power, allowing the "Governor in Council" to act without consulting Parliament in the event of a "real or apprehended" emergency. Ironically, the redress agreement of 1988 was also ratified by an Order-in-Council and only subsequently announced to Parliament and the Canadian public. In contrast, although the initial uprooting was authorized by executive order of President Roosevelt and the Commander-in-Chief of the Army and Navy, subsequent American actions depended much more strongly on the authority of Congress and the Supreme Court. Nonetheless, as Supreme Court Justice Tom C. Clark stated many years later, "Despite the unequivocal language of the Constitution of the United States that the writ of habeas corpus shall not be suspended, and despite the Fifth Amendment's command that no person shall be deprived of life, liberty or property without due process of law, both of these constitutional safeguards were denied by military action under Executive Order 9066" (Clark 1992). In both countries, the highest courts, the Supreme Court in the United States and the Privy Council in Canada,[2] however, confirmed the authority of the governments to take action on the basis of racial background. The Endo case, while it prevented the incarceration beyond 1944 of loyal citizens, did not vacate the findings of other decisions that sanctioned government actions. It was not until after World War II that both countries began to promote legal and legislative reforms to prevent the abrogation of civil rights on the basis of "race."

U.S. legal scholars have argued that protection against arbitrary government actions on the basis of race has still not been achieved. The Civil Rights Act (1964) and related legal cases provide protection against public discrimination to individuals and guarantee equal rights,[3] but scholars have argued recently, especially in cases over affirmative action, that there is a significant difference between a specification of individual rights and a prohibition against racist practices. The three Nikkei cases vacated during the 1980s turned on the government's failure to provide full disclosure over the question of loyalty, not on whether the government was racist (Oh and Wu 1996). Furthermore, the redress settlement to Japanese Americans, while administered through an act of Congress, was based upon a political rather than a legal imperative (Tang 1988). Had the government not felt that the action would be well received politically, they were under no obligation to act.

As the Japanese Canadian redress campaign progressed, there was considerable discussion of prospects for suing the federal government.[4] The Charter of Rights and Freedoms, which specifies both the right to equality and the legitimacy of affirmative action, had recently come into effect. The protection of the Charter, combined with the abolition of the War Measures Act (and several other pieces of legislation), should have given protection to Japanese Canadians against the actions of the 1940s had they occurred four decades later. We were advised, however, that a suit on the grounds of federal jurisdiction would likely fail.[5] Instead, like the Americans, we pursued a political route to justice, relying on public mores and a concept of human rights much different than the prevailing views of the 1940s. We were ever mindful that whereas in the U.S. it was the constitution (in the Endo case) that ended internment in 1944,

in Canada, it was public opinion that pushed the government to rescind the measures against Japanese Canadians, notwithstanding their jurisdictional power.

In both countries, public opinion supported redress and regarded the Nikkei experience as a "black mark" in their social history. But racism still frames attitudes to a significant degree, and racism has trumped the legal context, despite any restrictions on discriminatory acts that may retrospectively be read into the U.S. constitution or Canadian law. This brief review is not meant to provide a detailed analysis of the complex legal differences between the two countries but only to highlight the fact that racism occurs within, without, and in spite of the law. We need a legal system framed in a human rights context that addresses racism, rather than only individual rights and freedoms. Until that shift in thinking occurs, the law will be inadequate protection. The U.S. constitution provided individual rights for Japanese Americans that resulted in their release in 1994, while Japanese Canadians lived under the conditions of the War Measures Act until 1949. But Americans were also shot with impunity while incarcerated. It was the failure to value and respect the lives of Nikkei citizens that led to their treatment, and to date we have not come up with a law that guarantees value and respect.

That is why in both countries post-Redress activities have emphasized anti-racist education, along with legal reform, as the most enduring means of ensuring that the Nikkei experience cannot recur, to citizens of African, Muslim, Asian, or Aboriginal heritage, when international events redefine them and place them under the intensified scrutiny of a racist lens. As long as racism remains a significant part of both societies, therefore, we need to question the capacity of governments to infringe upon human rights in the name of security, always asking, "Security for whom?"

## Notes

[1] There is a considerable literature in both countries chronicling the experiences of the 1940s. For Canada, see Takashima (1971), Adachi (1976), Kitagawa (1985), Miki (2005), Omatsu (1992), and Joy Kogawa's (1981) novel, *Obasan.* For the U.S., see Daniels (1977), Ichioka (1989), and Takaki (1998) and John Okada's novel, *No-No Boy.* For legal histories see Chuman (1976), Sunahara (1981), Irons (1989) and Randall (nd). For general information see Kobayashi and Ayukawa (2002) and Azuma (2002), and for web resources see the Japanese American National Museum and the Japanese Canadian National Museum.

[2] The British Privy Council was the highest court in Canada until 1949, when appeals to the Privy Council were abolished and ultimate authority given to the Supreme Court of Canada.

[3] The classic case is Brown v. Board of Education 347 U.S. 483 (1954), which held that the segregation and black and white students in public schools denied equal rights protection.

[4] The author was a member of the six-person committee that negotiated the Redress Agreement with the federal government; these comments are based on personal participation.

[5] In an interview with the author (Kobayashi et al. 1987) prior to the redress settlement, Irwin Cotler, now Minister of Justice, opined that the government broke four of the five principles of the rule of law during the 1940s: legitimacy, equality, due process, and remedy. He also pointed out, as have others, that notwithstanding the rule of law, the Charter of Rights and Freedoms contains several weaknesses, especially Section 33, a non-obstantive clause that allows the government to opt out of the guarantee of equality under certain conditions.

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