

and the right to vote.

The *Constitution prohibits military control over citizens while the civil courts still function.* The civil liberties of American citizens still apply during time of war and the military may not violate them unless they meet the heavy burden of proving an immediate and impending danger. As discussed before, this burden was not met.

The Constitution also prohibits legislative acts which inflict punishment without trial. The government may not ignore the judicial system and procedural safeguards provided citizens by legislatively singling out a particular group for punishment. The government clearly circumvented the judicial process by incarcerating Japanese Americans without a judicial determination of criminal activity. □

APPROACHES TO REDRESS

There are three possible approaches currently being discussed with regard to redress:

- 1) direct litigation
- 2) direct appropriations by Congress
- 3) special legislation by Congress allowing individuals or groups to sue or make claims in court.

In taking a case directly to court for redress/reparations; the legal barriers of finality of previous judgment, time limits set by law to bring a law suit, and immunity of government action present difficult defenses to overcome.

It is possible for Congress to directly appropriate money (such as to individuals and/or to a community trust fund) or other forms of compensation to individuals or groups. However, the success of such a remedy is subject to the political climate of the times.

It is also possible for a combination of the above to occur. Congress may enact legislation which would recognize that the U.S. committed a wrong against certain persons or groups of persons and allow such persons to sue or make claims in court. In order for these claims to be made in court, Congress could waive certain legal barriers which might arise.



BAAR

Bay Area Attorneys for Redress (BAAR) is a group of attorneys, law students and volunteers based in the San Francisco Bay Area ; formed in the fall of 1980 to present arguments on the illegality of the expulsion and incarceration of persons of Japanese descent in 1942 to the Commission on Wartime Relocation and Internment of Civilians Hearings. This Commission was established to determine whether a wrong was committed against the Japanese American people and will recommend to Congress appropriate measures of relief. BAAR will conduct educational seminars on the legal issues to keep our community and the general public informed of its findings. BAAR will coordinate its activities with other groups concerned with redress by offering its support and resources.

BAAR is available to make presentations.
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BAAR

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THE LEGAL ISSUES

Racial Motivations Behind 1942 Actions

The 1942 orders and actions detaining and incarcerating 110,000 Japanese Americans were found to be *lawful* by the U.S. Supreme Court. The Court upheld each of these racially discriminatory invasions of individual rights in the *Hirabayashi*, *Korematsu* and *Endo* cases.

The 14th Amendment of the U.S. Constitution guarantees equal protection under the law. Where the government may inflict differential treatment on persons based on their race, it must prove that 1) such treatment is necessary to meet a compelling governmental interest and 2) there are no alternative means in meeting the interest that are less severe.

BAAR contends that these governmental actions violate the 5th Amendment and therefore constituted an illegal racial discrimination. BAAR believes that:

1) Japanese Americans were incarcerated without notice or an opportunity to be heard while enemy alien Germans and Italians were not incarcerated as a race and were given individual hearings if suspected of any enemy activity. Government and military leaders clearly stated their intent to discriminate against Japanese Americans as Lt. Gen. DeWitt explicitly stated, ". . . a Jap's a Jap. They are a dangerous element, whether loyal or not . . . you need'nt worry about Italians at all except in individual cases. But we must worry about the Japanese all the time until he is wiped off the map."

2) The government failed to produce evidence of potential espionage or sabotage in justifying "military necessity" as a compelling state interest. Less restrictive measures such as hearings, interviews and loyalty oaths were available to meet the stated purpose.



Fifth Amendment Violated

The Fifth Amendment guarantees that no individual shall be deprived of life, liberty, or property without due process of law. A fair decision-making process is required before the government may take action impairing a person's life, liberty or property.

The fundamental requirements are that individuals be given meaningful notice and an opportunity to be heard. Yet, neither of these procedural guarantees were afforded Japanese Americans.

Secondly, the clause protects individual freedom of action. Ensuring this protection requires the Court to review the underlying factual bases for the governmental action to see whether a compelling governmental purpose exists with no less restrictive alternative. The court *erroneously* accepted the government's justification of military necessity without inquiring into the factual basis of its claim.

Prior to the expulsion of Japanese Americans, evidence showed that:

- The government had compiled information identifying enemy aliens suspected of disloyalty, concluding that Japanese Americans posed no threat, and showing that a wholesale round-up was unnecessary.
- No concrete evidence of sabotage or impending sabotage was produced, even though the government had conducted searches and seizures before the expulsion.
- The expulsion could not be justified as an emergency measure, because the process took almost 11 months before completion and the government believed that the Japanese could not attack the West Coast even before the expulsion was completed. The justification for the exclusion applied with even greater force to the Japanese in Hawaii, but the government did not see that such action was necessary in Hawaii.
- The Court in *Korematsu* based its holding on statements without factual justification. In order to justify its actions, the government stated that instruments of espionage were found, signal lights were being sent by Japanese Americans, radio transmissions were being intercepted by Japanese Americans, nationalist propaganda was being spread by Japanese language schools and fascistic or militaristic organizations, connecting Japanese Americans with the Japanese government.

All of the above assumptions have been found to be baseless. In addition, the government was concerned about Japanese American occupation in areas near lines of communication, powerlines and utility lines; the dual citizenship system of the Japanese, the lack of assimilation of the Japanese, education of Kibei in Japan, and the results of the loyalty oath taken in camp. None of the assumptions provide substantive evidence of disloyalty. The government clearly had alternatives available to them to meet their purposes, including individual hearings, which were provided to all other enemy aliens.

Other Rights Violated



Government actions also violated certain rights guaranteed under the Bill of Rights.

- Japanese Americans were penalized for exercising their freedom of speech and freedom of religion by being subject to harsher punishment for involvement in community activities and opposing the expulsion.
- Freedom of association was totally denied Japanese Americans.
- In addition to First Amendment rights, the 4th Amendment Right to be secure in one's person, houses, persons and effects against unreasonable searches and seizures was also violated. No warrants were obtained to legally detain and search Japanese Americans and no probable cause existed for such searches and seizures.
- The Fifth Amendment requirement of indictment by Grand Jury was also not satisfied.
- The Sixth Amendment rights to speedy and public trial, right to jury, right to counsel, right to be confronted with witnesses in opposition and right to secure witnesses in support of Japanese Americans were also violated.
- The Eighth Amendment proscription against cruel and unusual punishment was also violated.

Several other rights, not specifically mentioned in the Constitution, but deriving their life from the Court's interpretation of the Constitution, were also violated. These include the right to personal privacy, the right to travel