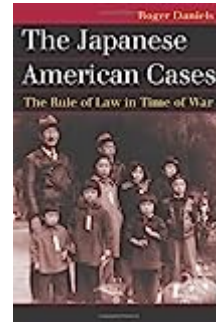


Roger Daniels. *The Japanese American Cases: The Rule of Law in Time of War.* Lawrence: University Press of Kansas, 2013. 232 pp. \$34.95 (cloth), ISBN 978-0-7006-1925-2; \$17.95 (paper), ISBN 978-0-7006-1926-9.



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Law and Race in Wartime America

There are four widely accepted historical theses about the American federal government's policy to remove and incarcerate some 120,000 Japanese Americans after Pearl Harbor: 1) that it was the blatantly racist, unnecessary, and unconstitutional policy of a panicked federal executive branch; 2) that in the face of adverse principle and precedent the legality of the internment program was persistently upheld by the Supreme Court; 3) that the program injured the lives and despoiled the holdings of its Japanese American victims; 4) that for decades after 1945 the federal government doggedly evaded its moral and legal responsibility for an unjust internment program. These preconceptions are not challenged in the book under review.

The Japanese American Cases decidedly is not a work of historical revisionism. In fact henceforth it should be regarded as the single most comprehensive and accessible (there are no footnotes or endnotes to distract the general reader) account of the orthodox view of its subject. But if the book breaks little new ground, nonspecialist readers will benefit from its tightly written (if some-

times excessively emotive) summaries not only of the litigation initiated to challenge the internment program but also of the broader social history of ethnic Japanese experience in mid twentieth-century America.

Daniels's first chapter provides a fine overview both of the genesis of the internment policy in Washington and of the test-case litigation that ensued. Here Daniels assumes as an unambiguous premise that the internment program was unjustified by military necessity. The contrary viewpoint (as evinced in 1942 by President Franklin Roosevelt and most of his civilian and military advisors) is dismissed out of hand. From Daniels's standpoint, for the design and implementation of the internment program federal officials are properly to be regarded as the perpetrators of a state-sanctioned race crime (p. 12). But, after all, this was America, a place where the victims of such crime were willing and, with the help of liberal lawyers and interest groups, able to fight back in the federal courts

Chapter 2 outlines the back stories of the young

Japanese American men—Fred Korematsu, Minoru Yasui, Mitsuye Endo, Gordon Hirabayashi—who lawyered up to contest the constitutionality of the internment policy. Chapter 3 moves the story forward into the Supreme Court. Here Daniels recounts, among other interesting facets of this litigation, the now familiar (but still disconcerting) evidence that Charles Fahy, the wartime federal solicitor-general, engaged (whether as a result of an overweening patriotism, careerism, or some other motive Daniels does not speculate) in professional misconduct in order for the federal government to prevail in the key Korematsu appeal (pp. 67-68). In this and other internment cases, Daniels generalizes, Fahy “stressed the war powers and waved the flag shamelessly” all the while relying on security data known to him to be unreliable at best, downright false at worst (p. 55).

Consistent with Daniels’s pronounced bias, his discussion of these episodes gives short shrift to the credibility of the federal government’s pleadings on the legal scope and appropriate use of presidential war powers. Astute readers also will search in vain for any explanation (beyond unadulterated racism) as to why, in case after internment case, clear majorities of Supreme Court justices upheld the constitutionality of the program. Only the dissenting opinions in the internment cases, in Daniels’s view incontestably the correct opinions, are fully canvassed and explicated.

The fourth chapter of the *Japanese American Cases* describes the persistence of the internment policy and program in the face of a growing body of compelling evidence that the internees posed little or no threat to national security. Once the program was implemented, so it would seem, there was no way to cause the federal government to change course. By 1943, governmental intransigence led directly to growing restiveness in the internment camps. Daniels neatly summarizes the several notorious episodes in which simmering anger and tension among internees boiled over into outright violence.

But even these sordid and, Daniels argues, wholly avoidable events still did not move the authorities to release the internees to their former homes.

The final two chapters of the book trace the less well-known story of the failures (both of government agencies and the courts) after the war to redress Japanese American losses. In the immediate postwar years bitter legal disputes over the possible deportation of those who had renounced their American citizenship gave way to prolonged and often bitter conflicts over compensation for lost, appropriated, or damaged property. As Daniels points out, moreover, after Japanese American claims legislation was passed by Congress in 1948, the Justice Department “contested claims vigorously” (p. 133). Reparations cases dragged on for years. When compensation was ultimately won by the most determined former internees it was for pennies on the dollar. Faced with prolonged litigation battles for scant compensation, most potential claimants simply turned their backs on the claims process.

This brings us to Daniels’s final ruminations on the Japanese American internment cases and what they might tell us about the United States and the subtitle of the book: “The Rule of Law in Time of War.” Once again, however, readers looking for a learned discussion of this fraught (but still highly topical) issue will be sorely disappointed. In the place of sustained analysis of what happened after Pearl Harbor and why, or more generally about how the liberal-democratic state is properly to respond after an attack on its home soil, Daniels provides further commentary, not on these weighty matters, but on the final efforts of Japanese Americans and their sympathizers to obtain official recognition of the wrongs done them by the wartime federal state. While this material brings closure to the final three chapters of the book, it adds little or nothing of analytical value to the profoundly important legal and political issues raised by the Japanese American internment episode.

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