

adequate tools of war and their transportation to the places where the military commanders find them most needed are indispensable elements to the prosecution of the war, comparable in importance to the conduct of technical operations solely military in nature.

The vast range of airplanes and the frightful stakes that turn upon such hazards as the explosion of torpedoes in a few aircraft carriers carry with them the potentiality of very sudden shifts in the position of actual combat operations. In three dimensional war a front drawn on a mercator projection can readily be hurdled.

The evacuation is not founded on racial discrimination

There is no reason to suggest that the Japanese can, <sup>legally</sup> be made the butts of racial discrimination while those of white descent cannot. There is no racial discrimination in this case in any relevant sense. The Constitution requires that whites and negroes be afforded equal facilities on railroad trains and a statute prohibiting the transportation of negroes upon trains would be invalid, because the differentiation between whites and negroes would be for the sole purpose of putting the negroes at a disadvantage as against the whites and making such action an end in itself. There is no Constitutional principal, however, that the fact of race or nationality, if relevant to the national safety, cannot be taken into consideration in determining the course of action to be taken as a part of the unquestioned power to wage war successfully. If Holland were presently one of the world's greatest military powers, and if it were one of our chief

enemies instead of a member of the United Nations, if the Dutch had lived unassimilated in communities clustered around military objectives in that portion of the United States most accessible to Holland, if the Dutch had been given an unprivileged position in this country by statutory and social discriminations, and if they were indulging in orgies of propaganda in keeping with totalitarian theories, a basis might appear for recognizing facts calling for a special treatment of American citizens of Dutch descent in this country. The facts that the Dutch are our allies and /that Americans of Dutch descent are so thoroughly assimilated in this country that these suppositions stretch the imagination merely goes to show the distinctive character of the situation affecting Japanese-Americans.

No mass evacuation program has been put into effect with refer-  
ence to citizens of German or Italian descent because there is no <sup>at present</sup> ~~is~~ <sup>1</sup>  
military advantage in such a program and, <sup>when</sup> ~~because~~ there is clearly no  
military advantage, there is no Constitutional power to take such a  
step. There is no constitutional power to interfere with the usual  
life of citizens simply because we have belligerent relations with  
the land of their origin. The situation of those citizens of German  
and Italian descent is different from those of Japanese descent, not  
merely because the former are so numerous in this country that their  
evacuation from strategic areas would disrupt the war effort. For-  
tunately, they have been so far assimilated that they do the war  
effort much more good than harm by remaining in their present

locations. If this were clearly the case with those of Japanese descent, their evacuation would be arbitrary and illegal. Because of the extent to which they have remained unassimilated and because of the strong pull from their culture to take sides against us in this war, the Japanese remain dangerous as a group. It does not follow from this fact that every reasonable effort should not be made to treat the Japanese individually. Actions taken by the Government subsequent to the offense charged here are no part of the record in this case, but the defendant has charged that the evacuation was for the purpose of placing the evacuees in concentration camps,

(p. 13.) If actions subsequent to the evacuation have any relevancy, the court may take judicial notice of the official acts of the President in establishing the War Relocation Authority, a civilian agency with the duty of relocating the Japanese, and that it has not only set up camps where the Japanese are kept pending their relocation, It has issued leave regulations which provide that evacuees are entitled to indefinite leave from the camps as a matter of right, where the applicant has made arrangement for employment or other means of support; where he agrees to keep the Authority advised of his employment and location; and where there is no reasonable ground to believe that he cannot successfully maintain employment and residence at the proposed destination and no reasonable ground to believe that the issuance of leave in a particular case will interfere with the war program or otherwise endanger the public peace and security. That

agency is further actively endeavoring to find employment for the Japanese and to promote their acceptance in communities which had been reluctant to receive them in the absence of Government action adopted to relieve anxiety about the character of the individuals released. It has been and is treating the <sup>those of</sup> Japanese <sup>descent</sup> in an individualized manner with a view to relocating as many as possible in normal economic and social situations. It would have been impossible, however, to have held hearings for each of the 112,000 evacuees before their evacuation.

The evacuation involved discrimination only in the legitimate sense that it is the duty of the Executive to exercise discrimination in administering civilian affairs in time of war in order to do no more damage to civilian interests and to impose no greater burdens on the war effort than necessary. Clearly the evacuation itself is costly and thus tends to be a burden on the war effort, but whether the advantages offset the disadvantages is a military or administrative question upon which considerable latitude must be allowed the Executive in time of total war.