Marginal Citizens: Interracial intimacies and the incarceration of Japanese Canadians, 1942–1949

Mary Anne Vallianatos*

Abstract

Following Japan's 1941 attacks on Hawai'i and Hong Kong, Canada relocated, detained, and exiled citizens and residents of Japanese ancestry. Many interracial families, however, were exempted from this racial project called the internment. The form of the exemption was an administrative permit granted to its holder on the basis of their marital or patrilineal proximity to whiteness. This article analyzes these permits relying on archival research and applying a critical race feminist lens to explore how law was constitutive of race at this moment in Canadian history. I argue that the permits recategorized interracial intimacies towards two racial ends: to differentiate the citizen from the "enemy alien"; and to regulate the interracial family according to patriarchal common law principles. This article nuances received narratives of law as an instrument of racial exclusion by documenting the way in which a new inclusive state measure sustained old exclusions.

Keywords: critical race theory, coverture, mixed race, exemption, the internment

Résumé

À la suite des attaques japonaises lancées sur Hawaï et Hong Kong en 1941, le Canada a transféré, emprisonné et exilé plusieurs citoyens et résidents d'ascendance japonaise. De nombreuses familles interraciales ont cependant été exemptées de ce projet racial appelé « internement ». La forme prise par cette exemption était un permis administratif accordé à son titulaire en raison de sa proximité matrimoniale ou patrilinéaire avec la blanchité. Sur la base de recherches archivistiques, cet article analyse ces permis en appliquant une perspective critique (*critical race feminist*) pour explorer comment le droit était constitutif de la race à ce moment de l'histoire canadienne. Je soutiens que les permis ont recatégorisé les intimités

* I thank Pooja Parmar and Jo-Anne Lee for their insights and advice on this project, and Hardeep Dhillon, Hana Maruyama, Desiree Valadares, Brittany Goud, Koji Lau-Ozawa, Erin Aoyama, two anonymous reviewers, and the editor for constructive comments. I gratefully acknowledge the Landscapes of Injustice Research Collective, Michael Abe, Jordan Stanger-Ross, Natsuki Abe, and Kaitlin Findlay, who helped me access historical records, and Alex Burdett, Michael Rheault, and Marisa Lousier, with the Priestly Law Library, for going above and beyond during the pandemic. I wish to acknowledge funding from the Social Sciences and Humanities Research Council.

Canadian Journal of Law and Society / Revue Canadienne Droit et Société, 2022, Volume 37, no. 1, pp. 49–67. doi:10.1017/cls.2021.18

© The Author(s), 2021. Published by Cambridge University Press on behalf of the Canadian Law and Society Association.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

interraciales vers deux fins raciales, soit de 1) différencier le citoyen de « l'étranger ennemi » et de 2) réglementer la famille interraciale selon les principes patriarcaux de la *common law*. Cet article nuance les récits sociaux répandus qui décrivent la loi comme un instrument d'exclusion raciale en documentant la façon dont une nouvelle mesure étatique à prétention inclusive a soutenu les anciennes exclusions.

Mots clés: théorie critique de la race, la théorie de la protection maritale, métissage, exemption, l'internement

Introduction

This article analyzes the legal treatment of Japanese Canadian interracial families beginning during the Second World War.[1] The racial project known as the internment[2] was an expansive administrative regime, authorized by federal laws, that forcibly relocated, detained, and exiled citizens and residents of Japanese ancestry. Many interracial families were exempted from these overlapping racial initiatives. Instead, they received permission to live on the Pacific coast within zones from which all Japanese were to be expelled.[3] The permission came in the form of a permit.[4] This permit, then, demarcated distinct racial categories amongst citizens of Japanese ancestry. Individuals belonging to the same racialized community were classed as "persons of the Japanese race,"[5] and yet a select group of

[1] In this article, Japanese Canadian refers to individuals of Japanese descent who were British subjects by birth or naturalization before 1947, and Canadian citizens after 1947. Unless expressly noted otherwise, I include in this term the minority of residents who were Japanese nationals. Doing so responds to the racialization of Japanese Canadians as foreign through their past disenfranchisement and the state-imposed limits to naturalization. On "Japanese Canadian" as a conjunction of race and nation see Roy Miki, *Redress: Inside the Japanese Canadian Call for Justice* (Vancouver: Raincoast Books, 2004), 14–15. In this article, I use "citizen" interchangeably with "British subject" when discussing individuals who possessed this formal legal status within the meaning of the 1914 *Naturalization Act*, RSC 1927, c 138. Canadian citizenship did not exist as an independent legal status until 1947. Up to this point Canadians were defined as British subjects: *An Act to Define Canadian Nationals and to Provide for the Renunciation of Canadian Nationality*, SC 1921, c 4; and *Canadian Citizenship Act*, SC 1946, c 15.

[2] My use of internment refers to the multiple and related state actions and processes to remove, incarcerate, relocate, dispossess, disperse, and exile Japanese Canadians from 1942 to 1949. Internment is an imprecise term. For a discussion on the issues associated with the term see Miki, *Redress*, 2.

[3] PC 1942-365 (January 16, 1942) authorized the creation of "protected areas;" PC 1942-1486 (February 24, 1942) excluded all persons of Japanese ancestry from protected areas [Exclusion Order]. Though executive orders in form, these instruments were deemed to be validly enacted laws: *War Measures Act*, RSC 1927, c 206, s 3(2), and *Continuation of Transitional Measures Act*, 1947, SC 1947, c 16; SC 1950, c 6, s 2.

[4] *Defence of Canada Regulations (Consolidation) 1942*, PC 1942-8862 (October 13, 1942), s 4(2)(b) [*Defence Regulations*]: "The Minister of Justice may […] prohibit any or all persons from entering, leaving or returning to such protected area except as permitted pursuant to such order"; e.g. *Japanese evacuated from Greater Vancouver, BC*, British Columbia Security Commission ("Commission"), Order No 45 (October 26, 1942): "No person of the Japanese race shall enter or remain in the said prohibited area without a written permit" (also called an exemption "certificate") from the Commission, Royal Canadian Mounted Police ("RCMP"), or Provincial police; and PC 1942-1074 (February 13, 1942).

[5] PC 1942-2483 (March 27, 1942) circularly defined persons of the Japanese race as those required to leave the protected areas because they were Japanese.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

individuals were also "Canadians in the full sense."[6] The difference marked by the permit stands as a historic instance of how law participated in the construction of race.

The interracial exemptions acted upon ideas of race in ways new and old. The policy, made for Japanese Canadians married to white subjects as well as their mixed race children, marked a shift from the existing laws that discriminated against Asians. At the same time, the new regulatory distinction applied patriarchal doctrines concerning marriage to interracial families. As such, this regulation of interracial intimacies allows us to examine how patriarchal investments in marriage intersected with the racial construction of alienage and citizenship. Jurists and administrators would fall back on the logic of coverture to fashion the conditions of interracial intimacies. Coverture, which had historically incapacitated married women by transferring their legal interests to their husbands,[7] meant in this case that the exemption policy applied differently to married Japanese Canadian men and women. Japanese Canadian women married to non-Japanese men were assured a permit, whereas intermarried Japanese Canadian men were not. These permits were not the only ones administered based on outmoded legal principles. The exemptions for mixed race individuals were not available to all children of white and Japanese subjects.[8] Ambivalence towards mixed race children in this regard aligned with historic notions of illegitimacy and reinforced the entitlement of white fathers to choose their rightful heirs.

This article offers a history of the exemption permits, relying on state records of correspondence and memoranda between men administering the permits within the Departments of Labour and Justice, as well as the contemporaneous letters written by impacted individuals.[9] The letters bring to light that, alongside the state produced materials, subjects themselves contradicted the policy's gendered and raced image of the mixed family. I draw on a body of critical race and postcolonial feminist scholarship to amplify the archive's own contradictions and to inform the lessons I take from this history of interracial regulation. I part ways with the portrayal of the permits as a "magic elixir"[10] that deracinated[11] Japanese women

---

[6] Department of Labour ("Department"), Commission, "Removal of Japanese from Protected Areas," March 4, 1942, to October 31, 1942, Vancouver, BC, Library and Archives Canada ("LAC"), Privy Council Office, RG2-B-2, Central registry, vol 26, file J-25-1 [Removal Report].

[7] See Constance Backhouse, "Married Women's Property Law in Nineteenth-Century Canada," *Law and History Review* 6, no. 2 (1988): 213; Karen Pearlston, "Male Violence, Marital Unity, and the History of the Interspousal Tort Immunity," *The Journal of Legal History* 36, no. 3 (2015): 260–98; and Danaya Wright, "Coverture and Women's Agency: Informal Modes of Resistance to Legal Patriarchy," in *Married Women and the Law: Coverture in England and the Common Law World*, ed. Tim Stretton and Krista Kesselring (Montreal: McGill-Queen's University Press, 2013), 240–63.

[8] Mona Oikawa, *Cartographies of Violence: Japanese Canadian Women, Memory, and the Subjects of the Internment* (Toronto: University of Toronto Press, 2012), 204.

[9] These records are from 1942 to 1949. All of the family letter writers I cite were white. I note that because my research objective was to ascertain state practices, I did not undertake a comprehensive recovery of the individual files of permit holders.

[10] Ken Adachi, *The Enemy that Never Was: A History of the Japanese Canadians* (Toronto: McClelland & Stewart, 1979), 235. Oikawa has questioned whether the permits actually functioned in this manner: *Cartographies*, 145.

[11] Passing for white was described as "deracinat[ing] oneself" in Richard Delgado and Jean Stefancic, *Critical Race Theory: An Introduction* (New York: New York University Press, 2017), 69.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

married to white men. State marriage laws have not ever been magic for women within patriarchal societies. Consequently, how marriage was understood in the enforcement of the exemptions warrants scrutiny. The literature on past state interventions concerning interracial relationships has persuasively illustrated that such exercises of state power reveal law's role in structuring the forces of race, gender, sexuality, and nation.[12] This was no less the case during the incarceration of Japanese Canadians. Law shaped the contours of racial classifications,[13] bringing ostensibly reasoned principles to legitimize the policies of exclusion and inclusion. The distinction made between the permit holder and the incarcerated contributed to race-making and was not simply the by-product of prejudiced statesmen.

As the majority of those incarcerated were British subjects, racializing Japanese Canadians as enemy aliens became complicated—to put it mildly. The *citizen* alien was a dizzying contradiction.[14] Lawmakers and state administrators turned to race to sustain the impossible construct. The regulatory framework would help to bring coherence to the figure of the enemy alien by exempting interracial subjects from its definitional bounds. The exemptions for Japanese Canadians with ties to white forbearers and spouses[15] aimed to resolve the tensions within the racial category of the enemy alien. In this way, the interracial exemptions were tied to the wider legal framework of the internment. State law, entangled within the intimate space of family life, would align the boundaries of race onto a fictional distinction between citizen and alien. Interracial subjects were ambiguously positioned on the margins of established racial categories, and it was their very marginality that served as a productive site from which racial understandings were consolidated.[16]

In the first part of this article, I ground my engagement with the interracial exemptions in the legal history of the internment.[17] I revisit the racial

---

12 Debra Thompson, "Racial Idea and Gendered Intimacies: The Regulation of Interracial Relationships in North America," *Social & Legal Studies* 18 (2009): 357; Enakshi Dua, "Exclusion through Inclusion: Female Asian Migration in the Making of Canada as a White Settler Nation," *Gender, Place & Culture* 14, no. 4 (2007): 449; and Leti Volpp, "Divesting Citizenship: On Asian American History and the Loss of Citizenship through Marriage," *UCLA Law Review* 53, no. 2 (2005): 405–84. See further Adele Perry, *On the Edge of Empire: Gender, Race, and the Making of British Columbia, 1849–1871* (Toronto: University of Toronto Press, 2001); and Durba Ghosh, *Sex and the Family in Colonial India: The Making of Empire* (Cambridge: Cambridge University Press, 2006).

13 Cheryl I. Harris, "Whiteness as Property," *Harvard Law Review* 106, no. 8 (1993): 1737; Brenna Bhandar, *Colonial Lives of Property: Law, Land, and Racial Regimes of Ownership, Colonial Lives of Property* (Durham: Duke University Press, 2018), 8; and Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900–1950* (Toronto: University of Toronto Press, 1999), 17.

14 The contradiction was finally resolved by denationalizing Japanese Canadians: Audrey Macklin, "Citizenship Revocation, the Privilege to Have Rights and the Production of the Alien," *Queen's Law Journal* 40, no. 1 (2014): 21.

15 That a permit holder had a white spouse or white parent was central to the scheme; however, Japanese Canadian women married to Chinese Canadian men would qualify for permits, as would some Japanese Canadian men married to white women: inf. note 41.

16 My analysis draws from Ghosh, *Sex and the Family*, 16.

17 A question for future study is how the internment's marriage regulation paralleled the loss of status under the *Indian Act* for Indigenous women who "married out" of their communities. Both schemes altered the basis for an intermarried woman's relationship to the state, making her dependent upon her husband's legal status. Beyond this, however, status rules under the *Indian Act* are unparalleled as a state project of "legislated elimination" against Indigenous peoples in Canada. See Pamela Palmater, "Genocide, Indian Policy, and Legislated Elimination of Indians in Canada," *aboriginal policy studies* 3, no. 3 (2014); *Descheneaux c Canada*, 2015 QCCS 3555 at paras 19–49 and 230; and Bhandar, *Colonial Lives*, 160–62.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

transformation of citizens into enemy aliens as state executive orders multiplied. In the second part, I analyze the exceptional path crafted for interracial Japanese Canadian families, which sought to take them out of the internment's carceral spaces. I document the policy for mixed marriages, in which administrators applied the law unevenly to exogamous Japanese Canadian men and women. I argue that the practices surrounding Japanese Canadian wives must be viewed through a racial analysis of coverture. I then discuss the variable ways that Eurasians navigated the permit scheme and the contradictory racial practices of the state. As interracial Japanese Canadians tested their "margins of eligibility,"[18] the exemption's criteria shifted. I explore the interactive process between racialized subjects and the state by considering the outlier cases of Japanese Canadian husbands of white women who managed to obtain permits. Their cases exemplified how state efforts to regulate race, and racial categories themselves, adapted when faced with the unexpected. I conclude by moving from the site of the family to return once more to the site of the stranger. I argue that the production of the enemy alien was connected to the regulation of interracial families, and that by drawing this connection we can understand the permits as part of the history of the internment.

I. Legal History

1. The Internment

In 1942, the federal government expelled 21,460 people of "the Japanese race" from Canada's Pacific coast.[19] Japanese Canadians were sent to carceral sites,[20] such as interior settlements, road construction camps, sugar beet farms, and prisoner of war camps. By 1949, the restrictions imposed under the *War Measures Act* had come to an end, leaving only 6,110 Japanese Canadians in British Columbia.[21] The rest resettled east of the Rockies or were exiled to post-war Japan.[22] It is undisputed that the legal structure of the internment was race-based. The words "persons of the Japanese race" were cited and recited by jurists deferring to the government's orders-in-council and bureaucrats tasked with administering those orders.[23] The official category, "Japanese race," was deployed alongside and interchangeably with "enemy alien."[24] Volumes of interlocking orders hinged upon enemy alien as a

[18] Ghosh, *Sex and the Family*, 218.
[19] Exclusion Order; and see Adachi, *The Enemy*, 214–224 and 415.
[20] Oikawa, *Cartographies*, 112–18.
[21] Adachi, *The Enemy*, 414.
[22] 3,964 individuals of Japanese ancestry were expatriated under orders upheld in *The Co-Operative Committee on Japanese Canadians v Attorney-General of Canada*, [1946] UKPC 48 [*Co-Operative Committee*]; Canada, Department, Notice for Dispersal East of the Rockies, March 12, 1945; and Ann Gomer Sunahara, *The Politics of Racism: The Uprooting of Japanese Canadians During the Second World War* (Toronto: Lorimer, 1981), 131–45.
[23] The courts upheld Cabinet's orders pertaining to deportation and property confiscation. On property loss see Eric Adams and Jordan Stanger-Ross, "Promises of Law: The Unlawful Dispossession of Japanese," *Osgoode Hall Law Journal* 54, no. 3 (2017): 687–740; and *Nakashima v Canada*, [1947] 4 DLR 487, [1947] Ex CR 486.
[24] The Exclusion Order provided for the removal of "persons of the Japanese race in the said protected area, whether enemy aliens or otherwise." On interchangeable usage, see William Conklin, "The Transformation of Meaning: Legal Discourse and Canadian Internment Camps," *Revue Internationale de Semiotique Juridique* 9, no. 3 (1996): 288, 231–33. See also Patricia E. Roy, *The Triumph of Citizenship: the Japanese and Chinese in Canada, 1941–67* (Vancouver: UBC Press, 2008), 34.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

racial construct. A wide-reaching designation, the enemy alien was not only a person possessing Japanese nationality but also a person with an enemy character or a person required to register as an enemy alien.[25] The *Defence Regulations* first authorized the removal of enemy aliens from the defence zones[26] and later expanded to apply to all people of Japanese origin. This process rendered Japanese Canadians *as if* they were enemy aliens. Their legal metamorphosis culminated in the 1946 decision *Co-operative Committee on Japanese Canadians v Canada.*[27] The Judicial Committee of the Privy Council upheld the government's exile program, stripping the deportees of citizenship.[28] The remarks of Justice Hudson at the Supreme Court of Canada clarified how the law could overcome the rights of citizens against expatriation. Setting aside the conditions of duress, the bench thought it significant that many Japanese Canadians had opted for government-sponsored resettlement in Japan, rather than the alternative of forced dispersal east of British Columbia.[29] Hudson reasoned that this choice made by the deportees proved that their "ties of race" were "stronger than the obligations of nationality."[30] In this way, citizens of Japanese ancestry had betrayed their "natural allegiance" to the Crown, which in turn extinguished their sovereign's reciprocal obligation to protect his citizens against exile.[31] This case is indicative of how perceptions of choice, and not merely genealogy, were central to the racialization of citizens as aliens. In other words, one could be a citizen on paper, but perhaps not at heart.

2. *Permits*

The state's program of race-based expulsions from the Pacific coast began with the creation of a state registry that tracked the legal status of every individual of Japanese racial origin.[32] The registry allowed state actors to sort individuals according to nationality and status, which enabled the government to structure

---

[25] *Defence Regulations*, Regulations 2(1)(c) (enemy alien was a non-British subject and national of a state at war with His Majesty), 26A(c) and 26B(d) (enemy alien provisions for arrest, detention, internment and registration applied to "all persons of the Japanese race" and non-exempted British subjects); PC 1939-2515 (1939), s 1(ii) (an enemy included a person "treated as an enemy" for the purposes of trade regulations); and George Johnston, "Canada's War and Emergency Legislation," *Law Library Journal* 35, no. 6 (1942): 474.

[26] *Defence Regulations*, Regulation 24.

[27] *Supra* note 22.

[28] *Co-operative Committee* at 590; see also *Reference to the Validity of Orders in Council in Relation to Persons of Japanese Race*, [1947] 1 DLR 577, 1946 CanLII 46 (SCC), Rinfret J at 274, Rand J at 288–290, Kellock J at 301–303, [1946] SCR 248 [*Co-operative Committee SCC*].

[29] 6,884 Japanese Canadians signed up for "repatriation." When wives and children were added to this group, the total number of deportees rose to 10,347. Prior to the court case, 4,527 of the 6,844 had tried to revoke their signatures. The government deportation orders were upheld in their entirety by the Privy Council. The Supreme Court of Canada would have upheld the orders for the most part, but a majority comprised of Rand, Estey, Hudson, and Kellock invalidated the deportation of wives and minor children with citizenship who had not signed "repatriation" forms. *Co-operative Committee SCC*, Hudson J at 280, Rand J at 291, and Estey J at 318–320; and Sunahara, *Politics of Racism*, 114–24.

[30] Ibid. at 281. Estey J similarly believed that Japanese Canadians had "expressed their disaffection for Canada" at 320.

[31] Ibid. at 281.

[32] PC 1941-117 (January 7, 1941); and PC 1941-9760 (December 16, 1941) [Registration Order] expanded registration to Japanese Canadians across Canada.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

the internment's registration rules, identification cards, and permits according to racialized notions of citizenship and alienage. Registered Japanese Canadians received an identification card for one of three categories: Canadian born, naturalized, or Japanese national. They were required to carry the cards with them at all times. An unnamed Japanese Canadian writer in 1941 described the card as being evocative of racial classes of citizenship, for the cards "came in three delicious colours: yellow for alien Japanese, salmon pink for naturalized British subjects, and white for the Canadian born."[33] Having registered as a Canadian born Japanese, he sardonically commented on the racial hierarchy of the scheme: "it makes me feel proud, for it's the first white card I've ever received."[34] This white card, issued to those with birthright citizenship, signified the closest one could get to being recognized as a full Canadian. The use of identity cards and a Japanese registry thus enabled the Department to categorize the community along a spectrum of national affiliation as it monitored the population within an increasingly securitized environment.

Under the orders of the *War Measures Act*, Japanese Canadians were banned from the Pacific coast. Any Japanese Canadians discovered in the coastal defence zone without a permit committed an offence under the *Defence Regulations*.[35] The permits, as with the identity cards that preceded them, concretized the racialized conditions of residency and mobility within the securitized space of the coast. Permits for travel, occupancy, and work were administered by the British Columbia Security Commission and later the Commissioner of Japanese Placement (collectively, the "Commission"). This federal agency existed within the Japanese Division of the Department of Labour to oversee the "care" of incarcerated Japanese Canadians and to coordinate their relocation.[36] The commissioners were also tasked with categorizing interracial Japanese Canadians for the purposes of granting or withholding exemption permits. Eurasians and Japanese Canadians married to non-Japanese spouses were exempted from the sweeping reach of the Exclusion Order. They were authorized to live on the coast, so long as they possessed a permit, which they were to receive based on their genealogical or marital ties to non-Japanese citizens.

The orders that authorized the exemptions were in fact silent on both marriage and interracial intimacies.[37] From this silence emerged a policy for Eurasians and

---

33 "Weekly whirligig," *New Canadian* (Vancouver), March 14, 1941.

34 Ibid.

35 *Defence Regulations*, Regulation 4; *Vancouver Daily Province*, "Wandering Jap Jailed" October 18, 1945 (Mr. Yoshiji was sentenced to one year at the Oakalla Prison Farm for travelling without a permit in violation of Regulation 4). Additional arrests and their impacts are discussed in Maryka Omatsu, *Bittersweet Passage: Redress and the Japanese Canadian Experience* (Toronto: Between the Lines, 1992), 35 and 112–14. Failing to register or possessing someone else's registration card were offences liable to fine or up to three months' imprisonment. Forged registration cards carried prison terms of six months to three years: Registration Order, ss 2, 3, 8, and 9.

36 PC 1942-1665 (March 4, 1942) (Security Commission), s 10(3); PC 1943-946 (February 5, 1943), s 6 (Commissioner for Japanese Placement). On the power of administrators during the internment see Jordan Stanger-Ross and Will Archibald, "The Unfaithful Custodian: Glenn McPherson and the Dispossession of Japanese Canadians," *Landscapes of Injustice: A New Perspective on the Internment and Dispossession of Japanese Canadians*, ed. Jordan Stanger-Ross (Montreal & Kingston: McGill-Queen's University Press, 2020), 162–63.

37 PC 1942-1074 and Commission, Order No 45, *supra* note 4.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

Japanese Canadian women with non-Japanese spouses. State authorities reported that the policy was a humane measure for the mixed families of white men.[38] As such, their policy choices would mimic Europe's past colonial practices in Asia regarding interracial families.[39] However, alongside their reports are the letters from interracial couples, which disrupt the orientalist narrative fashioned by these government men.[40] A diverse group of couples sought permits. Along with Japanese Canadian women married to white men, the wives of Chinese Canadian men applied for permits. Japanese Canadian men married to white women also requested permits, and a small number received them. The records further indicate that Eurasians with Japanese fathers and white mothers were not precluded from receiving permits.

By the spring of 1944, approximately seventy permits had been issued to mixed race individuals and Japanese Canadian spouses in mixed marriages. Nineteen of these went to the Japanese wives of white men; seven to the Japanese Canadian husbands of white women; five to the Japanese Canadian wives of Chinese men; and forty to Eurasians.[41] Additionally, fifty-two mixed race minor children were included within the exemptions issued to their parents.[42] The demographic breakdown of the permits suggests that even if the policy was intended for the families of white husbands and fathers, its application would evolve as interracial applicants caught the government's attention. In the following section, I sift through the administration's convoluted practices to articulate how the intersection of racialized citizenship and patriarchal views of marriage animated the exemption policy.

II. Interracial Intimacies

1. Mixed Marriages

The internment era policy concerning interracial marriages provided that carceral exemptions were available to the Japanese Canadian wives of non-Japanese men, but not to the Japanese Canadian husbands of non-Japanese women. The policy's different regard for intermarried women and men drew from the principle of

[38] According to the Commission, it alleviated the "plight" of the "Japanese women who were married to Occidentals and the children of such mixed marriages": Removal Report, 7. Permits were granted on "compassionate grounds": RCMP, October 3, 1945, LAC, Central Registry, Immigration Program, RG76-B, vol 86, file 9309 part 18, reel C-4752.

[39] See, for example, Ghosh, *Sex and the Family*; and Emma Teng, *Eurasian: Mixed Identities in the United States, China, and Hong Kong, 1842–1943* (Berkeley: University of California Press, 2013).

[40] For an analysis of orientalist constructions of gender and sexuality see Sandra Ka Hon Chu, "Reparation as Narrative Resistance: Displacing Orientalism and Recoding Harm for Chinese Women of the Exclusion Era," *Canadian Journal of Women and the Law* 18, no. 2 (2006): 412–19, 432.

[41] To ascertain the number of exemptions for 1944 to 1945, I cross-referenced: Parliament, "Return to an Order of the House of Commons," by A. MacNamara, *Sessional Papers* (unpublished), No 182A (1944) at 4–5 with "Japanese Situation in BC," RCMP, February 29, 1944, and "Registration of Japanese – Canada – (Eurasians, etc.)" May 20, 1944: LAC, Department, Japanese Division, RG27-O-1, vol. 655, file 23-1-11-1 pt 2, 194–197, 202–203, and 234–236 [JD]. Ascertaining the total numbers of interracial marriages with one Japanese spouse in and outside the exclusion zone and the number of rejected permit applications was beyond this article's scope. One source indicates there were 101 Japanese Canadian intermarriages: "Japanese Population in the Dominion of Canada as of October 31, 1945," LAC, Department, Japanese Division, RG 36/27 vol. 1, file 17, 93 [DR].

[42] Oikawa, *Cartographies*, 146.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

coverture. The common law doctrine of marital unity posited that a married woman was covered by her husband's legal person and thus lacked a singular personhood.[43] Wives were legally incapacitated in significant ways: they were unable to own personal property, enter into contracts, or act for themselves in legal proceedings, including against their husbands. Although legislative change in Canada would gradually render the doctrine of marital unity obsolete,[44] a number of laws perpetuated the underlying principle that women's legal interests were subordinated to, and dependent on, their husbands' during marriage. A particularly egregious example can be seen in the *Co-Operative Committee* case, in which the Judicial Committee for the Privy Council upheld the government order that the wives and children of Japanese Canadian men facing deportation would also be deported.[45] In such cases, the legal recourse against expatriation for married Japanese Canadian women would be divorce.

Thinking through the histories of coverture and race together brings into focus the power of marriage to constrain Japanese Canadian women's experiences of citizenship.[46] Below, I set out a racial analysis of coverture by examining how administrators understood marriage in relation to the orders of the *War Measures Act*. Relevant to this analysis is the statutory entrenchment of dependent nationality for married women under the *Naturalization Act* of 1914.[47] This statute followed the concept of marital unity in that it linked women's citizenship to marriage. It stipulated that a married woman retained her status by marrying a British subject and lost it by marrying an alien.[48] To be clear, the *Naturalization Act* itself did not apply to interracial marriages involving two citizens. Yet, the Act is relevant because it deemed that women belonged to the same nation as their husbands. In so doing, it sustained the belief that members of a family should hold the same national status and that this would follow the husband as head of the household.[49] The internment exemption policy shared in this belief. It extended the life of patriarchal principles to regulate interracial intimacies.

---

43 See *supra* note 7.

44 Backhouse, "Married Women's Property," 240–41.

45 *Co-Operative Committee* upheld PC 1945-7355 (December 15, 1945), s 2(4), providing that the Minister was authorized to include in a deportation order issued against a man, his wife and children; and see PC 1942-10773 (November 26, 1942), ss 1(b) and 2(b) authorizing the government to remove British status from married women whose husbands left Canada for an enemy territory or asserted allegiance to an enemy state. My thanks to Eric Adams, Jordan Stanger-Ross, and Maryka Omatsu, and Sally Ito for their discussion about this case. "Landscapes of Injustice: Re Persons of Japanese Race," (Zoom lecture and Q & A, The Federation of Asian Canadian Lawyers (British Columbia) Society, February 22, 2021).

46 Volpp, "Divesting Citizenship," 482.

47 Philip Girard, "'If two ride a horse, one must ride in front': Married Women's Nationality and the Law in Canada 1880–1950," *The Canadian Historical Review* 94, no. 1 (2013): 31; and Colleen Sheppard, "Women as Wives: Immigration Law and Domestic Violence," *Queen's Law Journal* 26, no. 1 (2000): 20. The Act provided, "The wife of a British subject shall be deemed to be a British subject, and the wife of an alien shall be deemed to be an alien": s 13. The Act made allowances for widowed British subjects and birthright subjects whose husbands belonged to enemy states to retain their status by application. In 1947, the *Canadian Citizenship Act* removed the automatic transfer of a husband's citizenship to his wife.

48 The Act itself did not flow from the common law: Girard, "Married Women's Nationality," 34.

49 Ibid., 38; and Helen Irving, *Citizenship, Alienage, and the Modern Constitutional State: A Gendered History* (Cambridge: Cambridge University Press, 2016), 18–21.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

In the summer of 1945, Commissioner Tom Pickersgill and Deputy Minister of Labour Arthur MacNamara discussed why Japanese Canadian men were not eligible for permits. Their exchange articulated the ways that race, marriage, and citizenship came together to inform their policy choices. Pickersgill wrote to MacNamara with his understanding of the rules at play:

> We can quite clearly see the logic of having the regulations lifted in the case of a Japanese woman marrying someone of non-Japanese origin as she would presumably assume the national status of her husband. Is it not different in the case of a Japanese man marrying someone of non-Japanese origin, where he would still retain the status of a person of Japanese origin?[50]

The Commissioner reasoned that a Japanese Canadian woman's "national status" would follow her husband's, and on this basis, she would qualify for a permit. MacNamara's assistant, A. H. Brown, responded in agreement: "in a case where a man of the Japanese race marries a woman of another race, it would be inconsistent to allow the Japanese to return to the Protected area at the coast on that account."[51] The men decided that the permits should only be conferred to women married to non-Japanese men. As for the marriages between Japanese men and women of "another race," Brown implied that in such cases exemptions would be "inconsistent" with the principle that a woman's status was subsumed within her husband's nationality.

"National status" as used by Pickersgill could not possibly have meant the formal status of citizenship. State administrators were fully aware that many Asians had attained citizenship by birthright or naturalization.[52] Even so, in this example, they failed to differentiate race from citizenship. In this context, "nationality" fused together racial origin and citizenship to racialize British subjects by emphasizing their foreign ties.[53] Pickersgill already had at his disposal legislative provisions to designate individuals as "of the Japanese race,"[54] but this was not the language on which he relied. Instead, he emphasized the "national status" of spouses. This focus on status allows us to look behind the signifier of "Japanese race." Importantly, we see that the rules about the transfer of legal status from husband to wife were imported into the Department's racial policy. As the administrators discussed how to carry out their duties, their reasoning mirrored the existing citizenship rules on marriages between alien husbands and citizen wives (even when the marriages they dealt with concerned two British subjects). Carceral regulations were "lifted" in the

---

50 July 16, 1945, JD, 127.

51 July 17, 1945, JD, 125.

52 In 1943, when a group of second-generation Japanese Canadians tried to renounce their citizenship, officials rejected the requests on the basis that native-born British subjects could not unilaterally renounce: Greg Robinson, *A Tragedy of Democracy: Japanese Confinement in North America* (New York: Columbia University Press, 2009), 197. It must be noted that citizenship rights for Asians were circumscribed: Bruce Ryder, "Racism and the Constitution: The Constitutional Fate of British Columbia Anti-Asian Immigration Legislation, 1884–1909," *Osgoode Hall Law Journal* 29 (1991): 620; and see e.g. *Cunningham v Homma*, [1903] AC 151 (PC) (affirming the provincial authority to disenfranchise Asian and Indigenous peoples).

53 Rita Dhamoon and Yasmeen Abu-Laban, "Dangerous (Internal) Foreigners and Nation-Building: The Case of Canada," *International Political Science Review* 30, no. 2 (2009): 166–67.

54 *Supra* note 5.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

case of Japanese Canadian women married to non-Japanese men, but not in the case of Japanese Canadian men married to non-Japanese women. The policy's double standard hitched racial knowledge to the legal rule that husbands transferred their nationality to their wives. The gendered racialization of these relationships can be seen from the letters of Doris Fujikawa and Roy Codd, to which I turn next.

In August of 1945, Doris Fujikawa, a white woman, wrote to the Minister of Justice on behalf of her husband Thomas, who was Japanese Canadian. She described the composition of her multiracial family and asked for help reuniting with Thomas, who had been forcibly uprooted in 1942 from their home in the Fraser Valley:

> Now that the war is over, I would like my case taken up […] I have three children with my husband. You could not say they are Japanese as I am of Swedish parents and Canadian born and they are in the third generation so I see no reason why my husband can't remain here in Canada and return to our home in B.C. He has been loyal since evacuation from B.C., with one brother in the army.[55]

In highlighting one woman's separation from her husband, this letter makes clear that just as Japanese women and men experienced the government's discretion unevenly, so too, white wives and husbands fared differently under the policy. It also provides a glimpse into the rhetorical strategies deployed by mixed families in their dealings with the state. Doris Fujikawa described her own racial heritage as Swedish Canadian and attributed the same racial identification to her three children with Thomas. She described her mixed race children as belonging to a "third generation" of Canadians. In doing so, Doris positioned herself as a mother of citizens,[56] implying both that whiteness would transfer through matrilineal lines and that Canada was a nation capable of assimilating its racial subjects over time. By embedding her husband within this image of Canada, his race remained visible but muted. In addition to downplaying Thomas's Japaneseness, Doris refuted the trope of the fallen white woman by claiming that a mother's whiteness would pass to the next generation.[57] Far from transgressing her place as a white woman, her words conveyed a view of whiteness that would not degenerate but endure through hybridization.[58]

I doubt the men who received this letter shared my reading of it. MacNamara advised the government's lawyers that he was against granting a permit to Thomas because "the person of Japanese ancestry seeking a permit is in this case a man."[59]

---

55 August 26, 1945, JD, 113.

56 Ann L. Stoler, *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule* (Berkeley: University of California Press, 2010), 100.

57 Canadian white women were disciplined against forming interracial intimacies: Dua, "Exclusion," 459; and see Backhouse, *Colour-Coded*, 132–72, on Saskatchewan's white women's labour law and anti-miscegenation rhetoric concerning Asian men and white women.

58 Within this counter-discourse, racial mixing was still deployed to confirm the originary and pure nature of the white race: Naomi Zack, "The Fluid Symbol of Mixed Race," *Hypatia* 25, no. 4 (2010): 881–83.

59 September 12, 1945, JD, 108. Doris, unable to secure a divorce from her first husband, had been in a common law relationship with Thomas. MacNamara, however, did not comment on this fact at all, instead basing his recommendation on Thomas's gender.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

The couple's circumstances did not warrant deviating from the Department's policy on interracial marriages, which required a white spouse to be male. In a marriage between two British subjects in which the husband was Japanese and the wife was white, the husband was ineligible for a permit and could not return to the Pacific coast. This couple's experience of separation is illustrative of how coverture functioned along racial lines to discourage relationships between white women and Asian men.

As for intermarried Japanese Canadian women, their ability to reside in coastal British Columbia was contingent on their relationships with non-Japanese men. In 1942, the Commissioners reported that Japanese wives of "Occidental" men would have their race "disregarded," as they were "Canadian in the full sense."[60] The report articulated that one aim of the exemption policy was to protect the Japanese wives of white men from the carceral dimensions of the internment. These claims must be regarded skeptically. For the permit holder, the ability to remain in the defence zone was contingent on the discretion of state administrators.[61] More than this, the permit was premised upon one's marital status and not one's status as a British subject. The privileges attached to the permits were fundamentally different from the legal rights of a white male British subject.[62] The legal basis for the relationship between the permit holder and the state was one of exemption. In effect, the wives became guests within the defence zone at the pleasure of the Department. To be sure, many interracial subjects, in contrast to the majority of Japanese Canadians, had not been permanently displaced nor were they uprooted or confined.[63] The contingent status for racialized spouses, nonetheless, warrants attention. This racialized contrivance was created for Asian women to make their non-incarceration dependent on their role as wives and on their white husbands.

For the Japanese Canadian wives who received an exemption, their permits were a marker of spousal dependency[64] and a racial expression of coverture. The uncertainty created by this dynamic was described by Roy Codd, a white Canadian, who wrote to the federal government from a military hospital:

> [M]y wife is Canadian born Japanese, what has happened to her family in the last three years leaves much to be decried, to put it mildly. In fairness and justice, an end must soon be put to the present situation, this is not what I visualized when I volunteered for the Army. The U.S. Government has allowed these people to return to their former homes. The war is now over, what possible reason can this Government have to continue to ban my wifes parents from this area. […] I am afraid there would never be any security here for my wife and children, particularly *if I were not living.*[65]

---

60 Removal Report, 7.

61 *Regulations*, Regulation 57(3) stated that a permit could be "revoked at any time by the authority or person empowered to grant it."

62 White Canadians were not subject to the Registration Order, for example.

63 Not all interracial subjects received permits; in 1944, seven intermarried Japanese were recorded at B.C. carceral sites: "Japanese Population in the Dominion of Canada as of December 31st, 1944," DR, 133. Additionally, several individuals who received permits had first been incarcerated: see inf. notes 96 and 100.

64 Volpp, "Divesting Citizenship," 456.

65 September 12, 1945, JD, 105 [*sic*] (emphasis added). The letter characterizes the exclusion order as a ban on citizens of Japanese racial background. The Codds lived in *Paueru-gai* (Powell town) and would have witnessed the neighbourhood's dramatic change as Japanese Canadians were uprooted.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

Roy questioned what would happen to his family if he were to die. He perceived that they would be vulnerable to the state violence of removal without his whiteness. His letter captured the contingency of familial entanglements of race within multiracial intimacies. It turns out that Roy's concern for his mixed race children was well placed. Eurasians without white fathers were not assured permits—an issue I discuss in the next section. As for Toshiko Codd, Roy's "Canadian born Japanese" wife, the letter gestured towards a future in which she became a widowed single mother and was forced to leave Vancouver. This scenario draws our attention to the normative and heteronormative requirements of the Department's policy. That only specific family forms were sanctioned by the exemptions provides another indication that the administrators were not in the business of delivering humane relief. Instead, they were careful to restrict the reach of the exemptions.

In the words of the Deputy Minister of Justice, the permit functioned to "exclude the person whose exclusion is recommended" from the *Defence Regulations*.[66] His inelegant framing—that the permits *excluded* interracial persons *from exclusion*—is instructive. In this formula, the first exclusion preserved the second. This is, of course, the structure of an exemption. In this specific historical context, the exemption granted a person leave from detention while simultaneously holding onto the authority to exclude them. This framework ensured that the race-based ban[67] under the Exclusion Order remained undisturbed. Without their permits, Japanese Canadian spouses of non-Japanese subjects would be expelled from the coastal defence zone.[68] The permit scheme, then, continued to racialize its recipients as they were conditionally admitted to the coastal defence area.

In the next section, I address the Eurasian exemptions. Already foreshadowed by Roy Codd's letter, it will be seen that patrilineal genealogies figured centrally in the regulation of mixed race subjects. Notions of illegitimacy and inheritance played a prominent role in the Commission's efforts to contain multiracial subjects.

2. *Mixed Race*

As a general matter, the history of racial taxonomies contains no mixed race.[69] The census, for instance, prescribed that "the children begotten" of white and "yellow races" would be classed as "Mongolian."[70] In 1942, however, state records categorized individuals of white and Japanese forbearers not as Mongolian, but

---

66 Varcoe, January 11, 1944: JD, 241.

67 Codd's letter called the ongoing post-war exclusion of Japanese Canadians from the coast a "ban," *supra* note 65. On bans generally, see Sherene Razack, "A Site/Sight We Cannot Bear: The Racial/Spatial Politics of Banning the Muslim Woman's Niqab," *Canadian Journal of Women and the Law* 30 (2018): 180–82.

68 See also *supra* note 35.

69 Zack, "Fluid Symbol," 879.

70 Debra Thompson, *The Schematic State: Race, Transnationalism, and the Politics of the Census* (Cambridge, United Kingdom: Cambridge University Press, 2016), 90; and see Dominion Bureau of Statistics, *Eight Census of Canada, 1941, Instructions to Commissioners and Enumerators* (Ottawa: King's Printer, 1941), s 100(2)(c), which kept the same rule. A separate racial classification of "Half-Breed" applied to persons of mixed Indigenous ancestry: s 100(2)(a).

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

as Eurasian.[71] This term, in these records, seemed to depart from the orthodox racialization of Asians as foreign and unassimilable.[72] Rather than the invocation of difference through continental distance, "Eurasian" merged Europe and Asia. This embodiment of geographic proximity displaced "half-caste," which connoted a tragic figure caught between two cultures—a warning to whites of the dangers of "mongrelization."[73] The shift in racial classification would carry forward old notions of fatherhood. Both "Eurasian" and "half-caste" were tied to patriarchal legal principles concerning inheritance of race and property. The potential risks posed by mixed race progeny to the norms of inheritance were managed by rules that protected men's estates and legacies. The internment's exemptions for Eurasians underscores how ideas of mixed raceness were inextricable from the archaic legal construction of illegitimate children. To make this point, I focus on the case of four girls in the care of Victoria's Oriental Home, an orphanage for Chinese and Japanese children.

The Commission determined that these mixed race girls living in the missionary-run home, together with fifteen Japanese Canadian children, would be removed from Victoria.[74] In other words, the four girls were not given permits to remain in the defence zone. Their removal was documented by Mona Oikawa, who observed that the Women's Missionary Society argued that sending the orphaned children to a camp was "unthinkable"; instead, church officials worked with the Commission to resettle the children to Saskatchewan.[75] The careful arrangements made to remove nineteen orphans from Victoria stands as an example of the thoroughness of the bureaucratic efforts to carry out the Exclusion Order. Importantly, the case also shows that not all children of white and Japanese parents would be rendered as

[71] According to the Department, a Eurasian was a child of a parent of "Japanese" racial origin and a white parent. The term originated in British colonial India to refer to the children of white fathers and Indian mothers. As it moved through the empire, it would equally refer to other Asian–white ethnicities: Teng, *Eurasian*, 6.

[72] Devon Carbado, "Yellow by Law," *California Law Review* 97, no. 3 (2009): 634.

[73] Sir John A. Macdonald described the risk that Chinese settlement specifically, and oriental immigration generally, would produce a "mongrel race" in Canada: *House of Commons Debates*, 6-1, No 2 (31 May 1887) at 642–43. The depiction of half-castes as tragic stemmed from the intellectual discourse that racial degeneration resulted from hybridization. In essence, a child of two races would fail to inherit the desirable traits of either parent, thus proving that racial integration was impossible. See Teng, *Eurasian*, 282; and Li Chen, "A Mixed-Race Child's Fate under the Chinese Exclusion Act: Lawrence Kentwell's Fight for Inclusion in Local Politics and Legal Profession," *Asian Pacific American Law Journal* 23, no. 1 (2019): 1–18. "Orientals" in early- and mid-twentieth-century Canada referred to peoples from the "Orient"—a western construct of Asia and North Africa—in spite of the heterogeneous cultural, national, linguistic, and colonial histories associated with the regions. By the 1940s, a specific racial construction of Japanese orientals was tied to militarism and imperialist expansion. This period also saw the legitimation of sociological theories of racial assimilation. Peter Ward, *White Canada Forever: Popular Attitudes and Public Policy Toward Orientals in British Columbia* (Montreal: McGill-Queen's University Press, 2002), 100–17; and Jennifer Ho, "From Enemy Alien to Assimilating American: Yoshiko deLeon and the Mixed-Marriage Policy of the Japanese American Incarceration," in *Racial Ambiguity in Asian American Culture* (New Brunswick: Rutgers University Press, 2015), 30.

[74] Oikawa, *Cartographies*, 204–6. The home was run by the Women's Missionary Society of the Methodist Church of Canada. The removal decision was made by the Commission's advisory board.

[75] Ibid., 205.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

Eurasian.[76] The outcome for these girls indicates that the exemption policy would not extend to children unclaimed by a white parent, especially those abandoned by a white father.[77] The girls, being under the church's care, lacked legible ties to white family and were racialized as Japanese enough. Race in this instance became as much about a child's inheritance of status as it was about perceived racial genealogy.

The patriarchal formulations of family life analyzed in the preceding section on mixed marriages expressed themselves again in the case of mixed race children. The social mores against interracial unions led to the assumption that mixed race children were illegitimate. Principles such as *filius nullius* (a child of nobody) help to explain the intersection of law and mixed race categorization.[78] At common law, illegitimate children would not inherit their father's estate. The law transparently protected the property interests of men by empowering them to preserve family wealth by choosing their lineage.[79] This residue of the common law continued to inflect the racialization of Eurasians in 1940s Canada by using the construct of illegitimacy to ascertain a mixed child's race.

By situating the Commission within this socio-legal context, its scattered decisions to grant or withhold permits from people of shared racial ancestry do not appear random. The commissioners' choices varied depending on whether they perceived the child to be a legitimate descendant of a white father or not. The four girls who had been removed from Victoria were presumptively illegitimate in light of their environment and the circumstances of their care. Perceptions of the Oriental Home would have influenced the administrators' impressions of the white racial inheritance of the girls. As orphans, the children were unclaimed by white family who could raise them in a sufficiently "Caucasian" environment.[80] Lacking a white male head of the household, it appeared unlikely that the girls would acculturate to a Canadian way of life. The status of an orphaned child, then, aligned more with the trope of the ill-fated half-caste than with the Eurasian, which was a figure assimilated through education, dress, and attainment of the symbols of a Canadian national milieu.[81]

---

[76] It is possible that the girls themselves wished to leave with the group destined for Saskatchewan; but Oikawa observes that several of the children at the orphanage had a living parent whom they were separated from as a result of their relocation: ibid., 204.

[77] Rose Cuison Villazor, "The Other Loving: Uncovering the Federal Government's Racial Regulation of Marriage," *New York University Law Review* 86, no. 5 (2011): 1434–35.

[78] Indrani Chatterjee, "Colouring Subalternity: Slaves, Concubines and Social Orphans in Early Colonial India," in *Subaltern Studies: Writings on South Asian History and Society Vol. 10*, ed. Gautam Bhadra, Gyan Prakash, and Susie Tharu (New Delhi: Oxford University Press, 1999), 77; *In Re Stone*, [1924] SCR 682 at 689.

[79] Mary Shanley, "Unwed Fathers' Rights, Adoption, and Sex Equality: Gender-Neutrality and the Perpetuation of Patriarchy," *Columbia Law Review* 95, no. 1 (1995): 68–69: a man could claim legitimate heirs and avoid squandering his estate supporting other children. See further Lois Harder, "Does Sperm Have a Flag?: On Biological Relationship and National Membership," *Canadian Journal of Law and Society* 30, no. 1 (2015): 109–25.

[80] Whereas environment was implicit in the Canadian context, the American policy regarding mixed Japanese marriages explicitly relied on the criterion of a "Caucasian environment." See Ho, *Racial Ambiguity*, 22–43.

[81] See Stoler, *Carnal Knowledge*, 97; and Sui Sin Far, "Leaves from the Mental Portfolio of an Eurasian," in *Mrs. Spring Fragrance: Edith Maude Eaton/Sui Sin Far*, ed. Hsuan L. Hsu (Broadview 2011), 221–33.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

Cases involving mixed race Japanese Canadians who received permits, like those who did not receive them, equally relied on the discernable signs of national belonging rather than a biological concept of race. In one such case, a young Eurasian man altered his racial legibility by taking an Anglo-European surname. Specific "forms of legibility," which enabled the Department to identify minority citizens unambiguously,[82] were foundational to the internment as a state racial project.[83] Citizens who deviated from expected naming practices would frustrate state administrators by limiting the efficacy of standardized modes of identification that traced racial affiliation and paternity.[84] Gene was nineteen years old, married, had an infant daughter, and had been separated from both his parents. His naturalized Japanese Canadian father was confined at the Tashme site, and his white American mother was deported to the United States.[85] Gene changed his surname to adopt his mother's family name.[86] His choice defied patriarchal naming practices and obscured his paternal genealogy.[87] If it was expected that mixed race children carried their father's names, then this young man's name change made it appear as if his father were not Japanese. Changes like this alert us to the ways that Eurasians negotiated the ambivalent rules for mixed families by discerning and adapting to pervasive structures of racism.

The prospect of assimilability would have marked Eurasians as threatening to existing social hierarchies premised on strict racial divisions.[88] Indeed, the RCMP guarded against such a risk by registering and monitoring Eurasian individuals. The officers traced the Japanese lineage of mixed race people, absent a legal mandate to do so.[89] Registration enabled state authorities to prevent race passing. For this reason, the RCMP did not register the children of Japanese mothers and Chinese fathers,[90] who would not have threatened British Columbia's colour line as Eurasians did. Although white society worried about Eurasians passing for white, the legal regime indicated that, generally, mixed race individuals remained as racialized subjects. The clearest example of this is that Eurasians lacked the

[82] James C. Scott, John Tehranian, and Jeremy Mathias, "The Production of Legal Identities Proper to States: The Case of the Permanent Family Surname," *Comparative Studies in Society and History* 44, no. 1 (2002): 10–17.

[83] *Supra* note 32.

[84] Scott et al., "Production of Legal Identities," 10.

[85] "Real Property Summary," E. Robertson, June 24, 1949, LAC, Custodian of Enemy Property ("Custodian"), RG117-C3, Loras Kuzuhara, file 13626, 6–7.

[86] Ibid.

[87] For Japanese men, these efforts might be coupled with efforts to protect family property by placing land titles in their wives' names.

[88] Cultural products around this time described Eurasians as desirable and threatening: e.g., Belle Burns Gromer, "Stormy Love," *Daily Colonist* (Victoria), September 28, 1935 (a white male protagonist discovers his fiancé has fraudulently been passing as white). The perceived social mobility of white-like mixed race populations threatened hierarchies and, in the case of mixed race Indigenous individuals, would undermine settler territorial claims premised on racial entitlements: Renisa Mawani, *Colonial Proximities: Crossracial Encounters and Juridical Truths in British Columbia, 1871–1921* (Vancouver: UBC Press, 2010), 168.

[89] Registration Order, s 14(4), did not generally require the registration of people "not wholly of the Japanese race"; Varcoe, May 23, 1944: JD, 192.

[90] The racial origin of at least one of these children was recorded as "Chinese": LAC, Custodian, RG117, Kitty Jay, file 14432, reel C-9428.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

freedoms held by white subjects.[91] In this context, the whiteness inherited by mixed race children was not a racial identity or property interest, but the inheritance of having "certain things in reach."[92] White fathers and husbands put within reach conditional exemptions for Eurasian children and Japanese Canadian wives. The contours of such entitlements could therefore shift if one's kin and racial ties were to change. For mixed race orphans, the Oriental Home obscured their ties from the Commission's view and put remaining on British Columbia's coast beyond reach.

3. *The Trouble With Exceptions*

Emergency regimes were plagued not only by exceptions to the rule of law, but by exceptions to those exceptions.[93] As a mode of racial regulation, the exemption for mixed marriages was a tool to preserve the main ambition of the internment's racial project—Japanese exclusion. Yet, as state practices moved away from uncomplicated forms of exclusion, the new permit system created a space of ambiguity in which racial designations were open to contestation. Faced with requests from Japanese Canadian men married to white women, Commissioner George Collins (Pickersgill's predecessor) authorized some of these men to return home to their wives. Despite the policy against granting permits to Japanese Canadian men, seven men received exemptions from the internment's regulations between 1943 and 1945.[94] State actors were forced to respond to the men's applications, and in so doing, their choices showcase how rules to define race fluctuated. It is not clear why these men and not others secured permits. Several of them satisfied ideals of social respectability as physicians and business owners, while others had served in the military—but of course, this was also the case with many Japanese Canadians who were incarcerated.[95] What can be said with certainty about this group is that they found a way to fit themselves within the space created by a system reliant on case-by-case decisions.[96]

The men's applications, however, would eventually force the Commission's hand. Reviewing the existing permits, Pickersgill, who had replaced Collins by 1945, determined that the Department needed to curtail its discretion in such cases. Exemptions, he explained, would henceforth only be issued to Japanese Canadian men in the specific case that they were veterans of "either the last war or this war" and married to "women of non-Japanese origin."[97] To give effect to vague Department policy, it seems the Commission turned to nationalism and the ideals of the

[91] See, for example, the analysis of the interracial dependency and exemption in Part II(1).
[92] Sara Ahmed, "Mixed Orientations," *Subjectivity* 7, no. 1 (2014): 100; see generally Harris, "Property," on the inheritance of whiteness as property.
[93] Yael Berda, *Living Emergency: Israel's Permit Regime in the Occupied West Bank* (Stanford: Stanford University Press, 2018), 112–14.
[94] "Male Japanese Married to Occidentals and Living Within the Protected Area," July 1945, JD, 124.
[95] Among the exemptions were two Canadian veterans, two doctors, a restaurant proprietor, a bookkeeper, and a retired farmer. Their ages ranged from 42 to 65, most were fathers, and all but one were British subjects.
[96] Other interracial intimacies also tested the policy. A Japanese woman married to a Chinese Canadian man required the help of a lawyer before she could leave the New Denver camp: "Mrs. Ming Mah," August 17, 1945: JD, 118–19.
[97] Brown, July 28, 1945, JD, 120.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

fraternal bonds of military service.[98] Service became a factor that would justify granting an exemption to a Japanese husband, and yet the signifiers of national fidelity and civic duty associated with one's service record mattered only if a man's wife was white.[99]

This was the case for Yoshizo Takeuchi, a Japanese Canadian man who had served during the First World War and received a permit to leave a Slocan camp. He joined his white wife in Steveston. Upon his return, his wife's employer sought to have him removed once more, writing that "the fishermen working at our Gulf of Georgia plant are loud in their protest and insist that this man be removed, and we agree that this is the only proper procedure."[100] The letter from the cannery provides a brief look at the racist climate exempted Japanese Canadian men faced. Takeuchi was racialized by the Commissioners as qualifying for an exemption (as an intermarried Canadian veteran), but to the men who worked with his wife, Alice, he was indistinguishable from "other Japanese."[101]

Following the archival trail of exemptions leads to these sites of simultaneous and divergent views of race and interraciality. Here, then, is an opportunity to witness not only how exemptions were used by the state but how they were contested by its subjects. Through this interaction, the exemption criteria changed. As government men searched for the signs of national allegiance, acceptable marital configurations, and legitimate children, they would come to settle on the content of racial definition. This meant that as subjects applied for exemptions, racial categories under the Department's policy were subject to a process of amendment and departed from the common sense of biological race.

Conclusion

Given the context of strong anti-Japanese and anti-miscegenation sentiments in the years leading to the mid-twentieth century,[102] how does one explain the system of exemption permits that emerged during the internment for mixed race Japanese Canadians and those with non-Japanese spouses? The exemptions did not amount to the social acceptance of interracial intimacies, nor signal a legal move to extend the rights and freedoms enjoyed by white citizens to interracial Japanese Canadians. To challenge the Commission's compassionate rhetoric, this article has relied on historical records to expose what lay beneath the exemption policy. Rather than focus solely on explaining why racism was exclusionary, this article outlined how a seemingly novel policy of racial inclusion was shaped by patriarchal doctrines that disinherited children and suspended married women's legal rights.

98 In 1931 Japanese Canadian men who had served in the First World War were enfranchised; their enlistment was viewed as having earned them fuller citizenship rights: "Bill 76, An Act to amend the 'Provincial Elections Act,'" 3rd reading, British Columbia, *Journals of the Legislative Assembly*, 21-5, vol 60 (March 31, 1931) at 151–52; and British Columbia, *Legislative Assembly Sessional Clippings*, "Japanese and Doukhobors" (April 2, 1931).

99 E.g., Kosho Matano, an unmarried veteran of the First World War, was deported: *House of Commons Debates*, 20-3rd, No 1 (12 August 1946) at 4639.

100 Canadian Fishing Company, March 18, 1944, LAC, Custodian, RG117-C3, Takeuchi, file 02538.

101 Ibid. As for Alice, she identified as English, but was described as Scottish or French-Canadian.

102 Backhouse, *Colour-Coded*, 132–72; and Ward, *White Canada*, 97–117.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press

Writing of a different racial colonial history, Ann Stoler observed that European laws and discourses regarding mixed marriages were concerned with "groups that straddled and disrupted cleanly marked social divides and whose diverse membership exposed the arbitrary logic by which the categories of control were made."[103] In the context of the internment, state modes for governing interracial citizens grappled with intimacies that destabilized a racial definition of nationality. The blurred colour line embodied by mixed marriages and mixed race citizens of Japanese ancestry challenged the definitional bounds of the enemy alien, which rested on an uncomplicated view of national status and racial origin. State administrators entered into this uncertain space and deployed the exemption policy. They regulated interracial families to sustain the state's racial classificatory system. By purportedly disregarding the race of Eurasians and of Japanese Canadians in mixed marriages, the permits reinforced the fiction that race distinguished the citizen from the enemy alien. Policy making with an air of improvisation would come to contain how nationality was conveyed from one generation to the next. The resulting exceptional path devised for multiracial families would enable the continued legitimacy of the "enemy alien" upon which the removal and confinement of Japanese Canadians depended. Out of the daily work of maintaining population registries and reviewing permit applications, we are left with the administrative details of how race was made. Attending to the nuance archived therein, it becomes clear that the regulation of interracial intimacies was not an aberrant occurrence separate from the internment's racial project. Rather this history was interwoven with the far-reaching state practices that endeavoured to recast citizens as racialized enemy aliens.

Mary Anne Vallianatos
Faculty of Law, University of Victoria
maryannev@uvic.ca

[103] Stoler, *Carnal Knowledge*, 110.

https://doi.org/10.1017/cls.2021.18 Published online by Cambridge University Press