

The Japanese Internment Cases

On December 7, 1941, the Empire of Japan launched a surprise attack on the U.S. Pacific Fleet stationed at Pearl Harbor, Hawaii. More than 2,400 American service men were killed in the attack and almost 1,200 were wounded. 4 battleships, 3 destroyers, and 3 cruisers were sunk or damaged. The American people were outraged by the attack, and President Franklin Roosevelt called for a declaration of war against Japan. The U.S. Congress quickly obliged, and on December 8, 1941, the United States entered World War II against the Japanese Empire.

The Pacific War was a gruesome, barbarous confrontation that exposed the deep-seated racial prejudices present on both sides of the conflict. Even before Pearl Harbor, white Americans depicted the Japanese as “yellow monkeys” -- militaristic, irrational drones, who followed their “god-emperor” in mindless submission. The Japanese, on the other hand, depicted white Americans as flabby buffoons -- hedonistic, selfish slobs, who worshipped the almighty dollar. Racial tensions between the combatants led to atrocities both on and off the battlefield.

In the months after Pearl Harbor, American politicians and journalists began to suggest that persons of Japanese ancestry living in the United States might be saboteurs or spies, stationed in America to launch another “sneak attack” against the country. From this perspective, it was clear that no person of Japanese descent could be trusted. “Once a Jap, always a Jap,” said Congressman John Rankin of Mississippi. The special -- if imaginary -- threat posed by Japanese people in the United States led columnist Henry McLemore to call for the “immediate removal of every Japanese [person] on the West Coast to a point deep in the interior. Let ’em be pinched, hurt, hungry, and dead up against it,” he said. “I hate the Japanese and that goes for all of them” (*Sacramento Union*, January 30, 1942).

On February 19, 1942, at the urging of Attorney General Francis Biddle and other prominent Administration officials, President Roosevelt signed Executive Order 9066, which authorized the Secretary of War to exclude “any or all persons” from “military areas” within the United States.

Despite the order’s neutral-sounding language, it was intended to provide legal sanction for the internment of persons of Japanese ancestry living within the United States. Under Executive Order 9066, the War Department designated most of the West Coast as a military zone; it imposed curfews on people of Japanese descent; and, it ordered all persons of Japanese ancestry, citizens and non-citizens alike, to report for internment. Roughly 120,000 Japanese and Japanese Americans were sent to Relocation Centers during the war. These unfortunate people -- two-thirds of whom were American citizens -- lost their homes, their jobs, and their friends, not to mention millions of dollars in real estate and personal property. They then endured three years of prison-camp life, raising their children under armed guard for a crime they never committed.

***Hirabayashi v. United States* 320 U.S. 81 (1943)**

Argued: May 10, 1943

Decided: June 21, 1943

Vote: 9 to 0

Opinion of the Court: Harlan Fiske Stone Concurring Opinion: William O. Douglas | Frank Murphy | Wiley Rutledge

In May 1942, Gordon Kiyoshi Hirabayashi, an American-born Quaker of Japanese ancestry, refused to obey the internment directives established by the War Department. He rejected the internment process and was arrested for violating curfew and refusing to register for “evacuation.” As an American citizen and a student at the University of Washington, Hirabayashi argued that the curfew and the internment process were unconstitutional. In a statement, he wrote that his rights and the rights of thousands of others were being “denied on a wholesale scale without due process of law and civil liberties.”

Hirabayashi was held in Seattle Washington’s King County Jail for five months before his case went to trial on October 20, 1942. At that time Federal District Judge Lloyd Black made it clear that he felt no sympathy for Hirabayashi or the other Japanese Americans who were fighting internment. Since Pearl Harbor, Black said, the United States had “been engaged in a total war with enemies unbelievably treacherous and wholly ruthless, who intend to totally destroy this nation, its Constitution, our way of life, and trample all liberty and freedom everywhere from this earth.” Such an enemy deserved no quarter, Black believed. At trial, the Judge told jurors that the curfew and evacuation orders were “valid and enforceable,” and that they were to find Hirabayashi guilty if they believed he violated the orders. It took the jury less than 10 minutes to return a guilty verdict. Hirabayashi then appealed his decision to the Ninth Circuit Court of Appeals in San Francisco, which sent the case to the U.S. Supreme Court without decision. The Supreme Court heard the case on May 10, 1943.

Chief Justice Harlan Fiske Stone sought a unanimous decision in support of the government’s actions in the Hirabayashi case. Although Stone believed that the curfew and relocation orders challenged by Hirabayashi clearly discriminated against “a group of one national extraction,” he argued that “reasonably prudent men charged with the responsibility of our national defense had ample ground for concluding that they must face the danger of invasion, take measures against it, and in making the choice of measures consider our internal situation.”

Whatever views we may entertain regarding the loyalty to this country of the citizens of Japanese ancestry, we cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members of that population, whose number and strength could not be precisely and quickly ascertained. We cannot say that the war-making branches of the Government did not have ground for believing that in a critical hour such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety, which demanded that prompt and adequate measures be taken to guard against it.

In his decision, Stone focused on two principle issues -- whether the President and his military subordinates had the power to declare military zones within the United States and whether the military authorities could impose a curfew in such areas. The Chief Justice ignored the more complex and troubling evacuation orders altogether, leaving them for a future case. In the end he “conclude[d] that it was within the constitutional power of Congress and the executive arm of the Government to prescribe this curfew order for the period under consideration.” Military necessity required such action, and it was “not for any court to sit in review of the wisdom” of the President or the Congress on such issues.

There were three separate concurring opinions in the *Hirabayashi* case, one by William O. Douglas, one by Frank Murphy, and one by Wiley Rutledge. Collectively, the concurring opinions emphasize points made most eloquently by Justice Murphy. He wrote that “[d]istinctions based on color and ancestry are utterly inconsistent with our traditions and ideals.”

Except under conditions of great emergency a regulation of this kind applicable solely to citizens of a particular racial extraction would not be regarded as in accord with the requirement of due process of law contained in the Fifth Amendment.

In view, however, of the critical military situation which prevailed on the Pacific Coast area in the spring of 1942, and the urgent necessity of taking prompt and effective action to secure defense installations and military operations against the risk of sabotage and espionage, the military authorities should not be required to conform to standards of regulatory action appropriate to normal times.

***Korematsu v. United States* 323 U.S. 214 (1944)**

Argued: October 11 and 12, 1944 Decided: December 18, 1944

Vote: 6 to 3

Opinion of the Court: Hugo Black | Concurring: Felix Frankfurter | Dissenting: Owen J. Roberts | Frank Murphy | Robert H. Jackson

On May 30, 1942, Toyosaburo “Fred” Korematsu, a native-born American citizen of Japanese ancestry, was arrested for violating Civilian Exclusion Order 34, which barred all persons of Japanese descent from a broad military zone on the west coast. Korematsu challenged his arrest, claiming that the exclusion order was unconstitutional. He argued that it illegally forced thousands of persons of Japanese ancestry to leave their homes, report to an assembly center, and submit to relocation in a concentration camp outside the area. All this without criminal charges or due process protections of any kind. The entire program, Korematsu claimed, was a form of collective punishment based on a racist assumption -- that all persons of Japanese ancestry posed a threat to the United States.

Despite Korematsu’s impassioned arguments, he was convicted of violating Civilian Exclusion Order 34 in Federal District Court, and that conviction was affirmed by the Ninth Circuit Court of Appeals. Korematsu was then confined to the Topaz internment camp in Utah, while he appealed his case to the United States Supreme Court. The Supreme Court granted *certiorari* in the *Korematsu* case in 1944.

Chief Justice Harlan Fiske Stone sought a unanimous decision in support of Civilian Exclusion Order 34, like the decision he had secured for the government in the *Hirabayashi* case. This time, however, the issues were not so simple. In *Hirabayashi*, Stone had focused the Court’s attention on one question: did the U.S. Army have the right to impose a curfew for Japanese Americans in a military zone during a time of war. All members of the Court had been willing to defer to military leadership on this question, and the curfew was upheld. In *Korematsu*, however, the question was more complex: was Civilian Exclusion Order 34 a constitutional use of governmental power? Or, to put it another way, did the U.S. Army have the right to exclude persons of Japanese ancestry from a military area during a time of war, and if so, could the Army also forcibly remove those residing in the area and place them in relocation camps for an indeterminate period of time?

In the Court’s majority opinion, Justice Hugo Black deferred to the nation’s military leaders, who enacted and defended Civilian Exclusion Order 34. “Korematsu was not excluded from the Military Area because of hostility to him or his race,” Black wrote. “He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, [and] because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily.” Black did not believe that racism had been a deciding factor in the promulgation of Civilian Exclusion Order 34, nor did he believe it was prudent for the Court to reject the military’s security measures while the nation remained at war.

Justice Black’s decision sparked three fiery dissenting opinions, one by Owen Roberts, one by Frank Murphy, and one by Robert Jackson. Although the dissenters differed in tone and argument, all agreed that Exclusion Order 34 represented an unconstitutional exercise of governmental power. Justice Roberts argued that “exclusion was but a part of an over-all plan for forceable detention,” what he called “a cleverly devised trap . . . to lock [Korematsu and others] up in a concentration camp.”

Justice Murphy, for his part, conceded that the military situation in 1942 was dire. Fears of sabotage and espionage were real, and the military was justified in taking actions to prevent such dangers. In hindsight, when judging the constitutionality of military actions, Murphy said, “it is necessary only that the action have some reasonable relation to the removal of the dangers of invasion sabotage and espionage.” But the exclusion, either temporarily or permanently, of all persons with Japanese blood in their veins has no such reasonable relation.” Murphy believed it was an act of racism plain and simple.

I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States.

Justice Jackson shared Murphy’s concerns. He wrote that Civilian Exclusion Order 34 violated one of the “fundamental assumption(s)” of the America constitutional system: that “guilt is personal and not inheritable.” The exclusion order attempted to make an “innocent act” -- residing in a particular area on the Pacific coast -- “a crime merely because this prisoner is the son of parents to whom he had no choice, and belongs to a race from which there is no way to resign.” Such a law was not only unconstitutional, Jackson wrote, but the Court’s decision in this case was inherently dangerous. “A military commander may overstep the bounds of constitutionality, and it is an incident,” Jackson wrote. “But if we review and approve, that passing incident becomes the doctrine of the Constitution.”

***Ex parte Mitsuye Endo* 323 U.S. 283 (1944)**

Argued: October 12, 1944 Decided: December 18, 1944

Vote: 9 to 0

Opinion of the Court: William O. Douglas

Concurring Opinion: Owen J. Roberts

Concurring Opinion: Frank Murphy

In May 1942, Mitsuye Endo, an American-born citizen of Japanese ancestry, reported to a California Assembly Center for temporary confinement and subsequent internment as directed by the U.S. Army. Ms. Endo challenged her internment in July 1942, filing a petition for a writ of habeas corpus in Federal District Court. In her petition, Endo claimed that she was a loyal, law-abiding American citizen. She was raised in the Methodist church; she worked for the California Department of Motor Vehicles; and, she had a brother serving in the U.S. Army. Despite these facts, Endo's petition was denied, and she was forced to appeal to the Ninth Circuit Court of Appeals. Judges there sent her case to the U.S. Supreme Court for direction, and the Supreme Court decided the case on December 18, 1944, the same day it issued its decision in *Korematsu v. United States*.

In his unanimous decision for the Court, Justice William O. Douglas wrote that "Mitsuye Endo should be given her liberty." She was recognized by all the parties involved in the case -- including the Department of Justice and the War Relocation Authority -- as a law-abiding American citizen, who was not even suspected of disloyalty. "A citizen who is concededly loyal presents no problem of espionage or sabotage," Douglas wrote.

Loyalty is a matter of the heart and mind not of race, creed, or color. He who is loyal is by definition not a spy or a saboteur. When the power to detain is derived from the power to protect the war effort against espionage and sabotage, detention which has no relationship to that objective is unauthorized.

Thus, Douglas said, "Mitsuye Endo is entitled to an unconditional release by the War Relocation Authority." Two weeks after this decision, the federal government began to close the Relocation camps, bringing to a close one of the greatest travesties of justice in American history.