Japanese-American Internment:
Suppressing Freedom in the Name of National Security

NEW YORK STATE SOCIAL STUDIES CORE CURRICULUM, GRADE 11:
UNIT 6  The United States in an Age of Global Crisis:
Responsibility and Cooperation Peace and Peril 1933-1950
I. Peace In Peril: 1933 – 1950
5. The War’s Impact on Minorities
   a. Incarceration of West Coast Japanese-Americans; Executive Order 9066;
      Korematsu v. United States (1944)

This lesson has two parts:

PART 1  Japanese Internment Camps
PART 2  Supreme Court Decision Korematsu v. United States (1944)

PART 1

OBJECTIVES
• Student will interpret images to understand the condition of the Japanese internment camps
• Students will understand the impact of internment on the lives of the Japanese
• Students will use analysis of documents to assume the role of Japanese women and
  reflect on their experience
• Students will review and react to Congressional findings on the wartime internment
  of the Japanese
• Students will gain an historical understanding of why Japanese-Americans were interned
  as a group, but German-Americans or Italian-Americans were not

ACTIVITIES
I. Opening activity – group activity
   A. Have students read an overview of the interment such as
      http://www.landmarkcases.org/korematsu/background3.html
   B. Divide class into groups.
   C. Distribute documents and guided questions.
      Have students review documents and draw conclusions based on their findings.

II. Discuss the opening activity
    Review findings with students. What conclusions can be drawn from the students’
    findings? Students should write one concluding statement or generalization of
    Japanese-American internment.
III. Reflection and review
Have students pick a person in a photo or document and write diary entries describing their experiences before and during their internment.

IV. Concluding assignment or homework
Have students read The New York Times article of February 25, 1983, by Judith Miller, “Wartime Internment of Japanese was ‘Grave Injustice,’ Panel Says.” and answer the questions about it provided on the handout.

V. Extension activities
View “Come See the Paradise”, directed by Alan Parker, starring Dennis Quaid and Tamlyn Tomita, The CBS/Fox Company © 1991.

DISCOVERING HISTORY IN TODAY’S NEW YORK TIMES

1. Throughout history, internment has been a method used to confine individuals and sometimes entire populations that were considered to be a threat to a country. Find an article in The New York Times that discusses a similar type of confinement today, and write an editorial that compares and contrasts what you understand to be the situation in the article and what you know about the internment of Japanese-Americans during World War II.

2. Find a photograph in The New York Times of someone who is imprisoned, either literally or figuratively (such as someone trapped in a personal situation that seems impossible to get out of or remedy). Read the related article so that you can best understand his or her situation. Then, write a first-person journal entry from his or her perspective, including why this situation is so confining and what efforts have been made to change it.

3. Find an article in The New York Times about a situation in today’s news that you feel are “grave injustices” to a person or a group of people. Create a “5 W’s and H” chart, explaining: who is experiencing the injustice and at the hands of whom, what is unjust about the situation, where and when this is occurring, why the injustice is being “allowed” by those who know about it, and how the person or persons have attempted to (or have succeeded in) finding justice.
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The New York Times article of February 25, 1983, by Judith Miller,
“Wartime Internment of Japanese was ‘Grave Injustice,’ Panel Says.”

Wartime Internment of Japanese Was ‘Grave Injustice,’ Panel Says
By JUDITH MILLER Special to The New York Times
pg A1

WASHINGTON, Feb. 24 — A Congressional commission concluded today that the relocation and internment of 120,000 Japanese-American citizens and resident aliens in World War II was a “grave injustice.”

It said the move was motivated by “racial prejudice, war hysteria and failure of political leadership,” and not by military considerations.

“The record does not permit the conclusion that military necessity war-

ted the exclusion of ethnic Japanese from the West Coast,” the Commission on Wartime Relocation and Internment of Civilians said in a 467-page report released today.

The commission called the exclusion, relocation and detention programs “unique in our history.” It criticized Congress, the Supreme Court, the press and others for advocating or permitting the “grave injustice” to Japanese-Americans.

But it placed particular blame on President Roosevelt. Among the conclusions of the report, entitled “Personal Justice Denied,” the commission said Roosevelt delayed the release of Japanese-Americans from internment camps until after the 1944 Presidential elections for political reasons.

The report’s findings were unanimously endorsed today by the nine commission members. Established by Congress in 1980, the commission spent $1.3 million conducting its study of the factors that led to the internment.

In 1948, Congress authorized some modest compensation for property losses suffered by some of the Japane-

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LESSON IV, PART 1

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1940's Internment Is Condemned

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was "very pleased" by the report's criticism of American political leaders and institutions of that era.

Others expressed indignation. John J. McCloy, a lawyer in New York who served as Assistant Secretary of War under Roosevelt, called the report "a shocking outrage."

"The reputations of many honorable men responsible for the nation's security during the war, many of whom are dead and cannot defend themselves, have been assailed," he said. "The report's conclusions are well and good in hindsight, but none of us had that at the time."

In its report, the commission maintains that in February 1942, 10 weeks after Japan's surprise attack on Pearl Harbor, Roosevelt signed an executive order authorizing the exclusion of Japanese-Americans from California "without any careful or thorough review of the situation." Roosevelt and other senior Government officials remained silent, it said, when Navy Secretary Frank Knox, contrary to the facts, asserted that the Pearl Harbor attack had been aided by sabotage and espionage by ethnic Japanese in Hawaii.

"All of this was done despite the fact that not a single documented act of espionage, sabotage or fifth column activity was committed by an American citizen of Japanese ancestry or by a resident Japanese alien on the West Coast. Indeed, the report said, senior Government officials "ignored" reports by the Federal Bureau of Investigation and members of naval intelligence who concluded that nothing beyond careful watching of suspicious people or individual reviews of loyalty was called for.

The head of the commission is Joan Z. Bernstein, an attorney with Wald, Harkrader & Ross and a former general counsel for the Department of Health, Education and Welfare. Other commission members are Representative Dan Lungren, Republican of California; former Senator Edward W. Brooke of Massachusetts; former Representative Robert F. Drinan of Massachusetts; Arthur S. Fleming, a former Secretary of Education; former Associate Justice Arthur J. Goldberg; the Rev. I.V. Gromoff, Judge William M. Marutani, and former Senator Hugh B. Mitchell of Washington.

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DOCUMENT
Wartime Internment


Respond to the following questions about this article:

1. Why did the Congressional Commission conclude that “the relocation and internment of 120,000 Japanese-American citizens and resident aliens in World War II was a ‘grave injustice’”?

2. Whom did the Congressional Commission blame for the internment of the Japanese?

3. Do you agree or disagree with the comments made by John J. McCloy? Explain why you agree or disagree.

4. Do you feel that reparations were justified? Explain your answer.

5. Do reparations set a problematic precedent when dealing with other groups who suffered from past injustices, i.e., Native American Indians, African Americans, Latino American?
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QUESTIONS FOR ALL DOCUMENTS
1. What is your reaction to this document?
2. What questions do you have after examining this? (Regarding the source, perspective, purpose, related history, etc.)
3. How does this document influence your view of internment? How would this document lead you to complete the following statement?
   “The internment of Japanese-Americans was . . . ”

QUESTIONS FOR SPECIFIC DOCUMENTS

Document #1 – What were the Japanese-Americans instructed to do? What could they bring? Why did the U.S. government not want to take responsibility for stored items?

Document #2 – What was Lt. Gen. J.L. DeWitt’s justification for the relocation of Japanese-Americans? What other groups might these justifications have applied to?

Document #3 – How do you think the store owner felt about his store being closed? What is ironic about his sign, “I Am an American”?

Document #4 – What is in the background of the picture? Why do you think people are lined up?

Document #5 – Describe the living conditions apparent in the photo. Imagine what it would be like for a family of five to live in these conditions on a day-to-day basis.

Document #6 – What is Mrs. Hirano holding in her hand? What do you think happened to the youth in the photo? What does this photo say about this family’s relationship to the United States?

Document #7 – What did Gene Oishi’s experience during his internment? Put yourself in his shoes; do you think his fears related to being Japanese were justified?
Japanese-American Internment: Suppressing Freedom in the Name of National Security

Western Defense Command and Fourth Army — Wartime Civil Control Administration —
Presidio of San Francisco, California, May 3, 1942

Instructions
To All Persons of Japanese Ancestry

Pursuant to the provisions of Civilian Exclusion Order No. 33, this Headquarters, dated May 3, 1942, all persons of Japanese ancestry, both alien and non-alien, will be evacuated from the above area by 12 o’clock noon, P. W. T., Saturday, May 9, 1942.

No Japanese person living in the above area will be permitted to change residence after 12 o’clock noon, P. W. T., Sunday, May 3, 1942, without obtaining special permission from the representative of the Commanding General, Southern California Sector, at the Civil Control Station...

The Following Instructions Must Be Observed:

1. A responsible member of each family, preferably the head of the family, or the person in whose name most of the property is held, and each individual living alone, will report to the Civil Control Station to receive further instructions. This must be done between 8:00 A. M. and 5:00 P. M. on Monday, May 4, 1942, or between 8:00 A. M. and 5:00 P. M. on Tuesday, May 5, 1942.

2. Evacuees must carry with them on departure for the Assembly Center, the following property:
   (a) Bedding and linens (no mattress) for each member of the family;
   (b) Toilet articles for each member of the family;
   (c) Extra clothing for each member of the family;
   (d) Sufficient knives, forks, spoons, plates, bowls and cups for each member of the family;
   (e) Essential personal effects for each member of the family.

   All items carried will be securely packaged, tied and plainly marked with the name of the owner and numbered in accordance with instructions obtained at the Civil Control Station. The size and number of packages is limited to that which can be carried by the individual or family group.

3. No pets of any kind will be permitted.

4. No personal items and no household goods will be shipped to the Assembly Center.

5. The United States Government through its agencies will provide for the storage, at the sole risk of the owner, of the more substantial household items, such as iceboxes, washing machines, pianos and other heavy furniture. Cooking utensils and other small items will be accepted for storage if crated, packed and plainly marked with the name and address of the owner. Only one name and address will be used by a given family.

6. Each family, and individual living alone will be furnished transportation to the Assembly Center or will be authorized to travel by private automobile in a supervised group. All instructions pertaining to the movement will be obtained at the Civil Control Station.

J. L. De Witt, Lieutenant General, U. S. Army Commanding
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Japanese-American Internment:
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1. I transmit herewith my final report on the evacuation of Japanese from the Pacific Coast.

2. The evacuation was impelled by military necessity. The security of the Pacific Coast continues to require the exclusion of Japanese from the area now prohibited to them and will so continue as long as that military necessity exists. The surprise attack at Pearl Harbor by the enemy crippled a major portion of the Pacific Fleet and exposed the West Coast to an attack which could not have been substantially impeded by defensive fleet operations. More than 115,000 persons of Japanese ancestry resided along the coast and were significantly concentrated near many highly sensitive installations essential to the war effort. Intelligence services records reflected the existence of hundreds of Japanese organizations in California, Washington, Oregon and Arizona which, prior to December 7, 1941, were actively engaged in advancing Japanese war aims. These records also disclosed that thousands of American-born Japanese had gone to Japan to receive their education and indoctrination there and had become rabidly pro-Japanese and then had returned to the United States. Emperor-worshipping ceremonies were commonly held and millions of dollars had flowed into the Japanese imperial war chest from the contributions freely made by Japanese here. The continued presence of a large, unassimilated, tightly knit and racial group, bound to an enemy nation by strong ties of race, culture, custom and religion along a frontier vulnerable to attack constituted a menace which had to be dealt with. Their loyalties were unknown and time was of the essence. The evident aspirations of the enemy emboldened by his recent successes made it worse than folly to have left any stone unturned in the building up of our defenses. It is better to have had this protection and not to have needed it than to have needed it and not to have had it – as we have learned to our sorrow.
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Japanese-American store closed

“Following evacuation orders, this store was closed. The owner, a University of California graduate of Japanese descent, placed the “I AM AN AMERICAN” sign on the store front the day after Pearl Harbor.” Oakland, California, April 1942.

Dorothea Lange, National Archives and Records Administration
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Japanese-American internment center

“This assembly center has been open for two days. Only one mess hall was operating today. Photograph shows line-up of newly arrived evacuees outside of this mess hall at noon.”
Tanforan Assembly Center. San Bruno, California, April 29, 1942.

Dorothea Lange, National Archives and Records Administration
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Japanese-American internment center

“A close-up of an entrance of a family apartment (converted horse stall). Five people occupy two small rooms, the inner one of which is without outside door or windows.” Tanforan Assembly Center. San Bruno, CA, June 16, 1942.

Dorothea Lange, National Archives and Records Administration
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The Hirano family Colorado River Relocation Center

The Hirano family, left to right: George, Hisa and Yasbei. Colorado River Relocation Center, Poston, Arizona.

National Archives and Records Administration
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Excerpt: “The Anxiety of Being a Japanese-American,” by Gene Oishi,
New York Times, Apr. 28, 1985

The first camp we were sent to was an “assembly center” built at the county fairgrounds in Tulare, Calif. My memories are of heat, dust and a pervasive, sickening smell of the tar paper with which the barracks were covered. There were two barbed-wire fences surrounding the camp. This was not simply an “assembly center”; it was a prison. Soldiers with fixed bayonets patrolled the area between the two fences, and if you had any further doubts about what this camp was, there were guard towers along the perimeter, each equipped with a machine gun and searchlight.

Tulare was a hateful place, and I suppose anyone who spent time there would find his own reasons for finding it so. Mine never had any coherent pattern. First of all, my mother got sick and I had the feeling that she had deserted me. The food tasted tinny, maybe because it was served on metal trays. Juices from the canned vegetables, canned frankfurters and melting Jell-O flowed together to form a tepid, mildly sweet soup. The latrines were dirty and smelly and swarmed with flies. I still have unpleasant dreams about toilets filled and smeared with human feces. The barracks were crowded and noisy. Our family of six was assigned one small compartment that was barely large enough to hold our coats. The couple in the next compartment were always quarreling, and you could hear every word, even those they whispered.

During the day, I roamed with a band of children who resembled a pack of domestic dogs gone wild. We tried to make friends with the soldiers patrolling the camp, but they were sullen, even a little hostile, so we gave up. I don’t know about the other children, but I never held it against the soldiers. Instead, I began to resent the Japanese they were guarding.

The first camp in Arizona had no fence. None was needed, situated as we were in the middle of the wilderness. I recall being inordinately afraid of rattlesnakes. I was afraid to go out of the barracks at night for fear that one would come slithering out of the crawl space under the building. It is only in recent years that I have begun to realize that the state of panic in which I lived during the first few months in Arizona was in some way connected with being a Japanese. At the weekly movie, an American war film played that ended with the sinking of a Japanese battleship. As American bombs began exploding on the deck of the ship, Japanese sailors began to panic and leap into the sea. The children and young adults in the audience began to giggle, and as the battleship sank they broke into cheers and applause. I cheered and applauded, too, knowing full well that my parents in the crowd were deeply proued that their children were turning against Japan and perhaps even against them. By late 1943, those who had pledged their loyalty to the United States were allowed to leave. Most of those who remained were children—or older folk who had been born in Japan and who, under the law, were not allowed to become citizens. They knitted, sewed, cut brushwood, grow morning glories, built rock gardens, or sat in the shade, fanning themselves and squinting against the heat. Life remained pretty much that way until the war ended and we were told to leave.

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PART 2

Supreme Court Decision Korematsu v. United States (1944)

KEY QUESTIONS

- When, if ever, is it acceptable to curtail the constitutional rights of American citizens?
- How and why were the rights of Japanese-Americans restricted during World War II?
  The first part applies to the first lesson while the second applies to both.
- How was the constitutionality of the evacuation, relocation and internment of Japanese-Americans challenged and what were the results?
- What rights were affected by the ruling in Korematsu v. United States?
- Was the Japanese internment constitutional? Was it justified?

ACTIVITIES

I. Opening activity
   A. Respond to the following in writing: Do you believe based on what you have learned, that Japanese internment in the United States during World War II was justified?
   B. Briefly review facts of Japanese relocation and internment:
      - 1942, President Roosevelt issues Executive Order 9066: Japanese-Americans are removed from military zones, 110,000 relocated to internment camps in the interior of the United States.
      - 17,000 Japanese-Americans serve in the armed forces during World War II.
   C. Discuss responses to the opening activity. Possible questions to raise during the discussion: What is meant by justifiable? Is there a difference between what is legally justifiable versus what is morally justifiable? What is the purpose of the U.S. Supreme Court? What guides and influences its decisions?
   D. Give students the background to the case without the decision. The last two paragraphs from http://www.landmarkcases.org/korematsu/background3.html work well. The basic question of the case, as stated in “Facts of the Case” in the oyez.org site, was “Did the President and Congress go beyond their war powers by implementing exclusion and restricting the rights of Americans of Japanese descent?” So, should Korematsu’s be overturned or sustained based on the constitutionality of the actions of the President and Congress?
   F. Read the text of Executive Order No. 9066 together in class.
      Go to: http://historymatters.gmu.edu/d/5154 for the text of the order.
II. Group activity
A. Break students into groups and give each group one of three excerpts from an opinion for the case. (Justice Hugo Black for the majority and the dissents of Justices Frank Murphy and Robert Jackson.) Students are to carefully read the excerpted passages and determine:
1. What rights of citizens are being restricted according to the plaintiff?
2. What portions of the Constitution of the United States of America and other documents or orders are involved in this case?
3. What does the opinion say about the constitutionality of the government’s actions?
4. What does the opinion give as the reason(s) for the internment?
5. Do you agree or disagree with the opinion and why?
6. What questions do you have after reading the opinion?
B. Share group findings and answer key questions:
1. How was the constitutionality of the evacuation, relocation and internment of Japanese-Americans challenged and what were the results?
2. What rights were affected by the ruling in Korematsu v. United States?
3. Was the internment of Japanese-Americans constitutional? Was it justified?

CONCLUDING ASSIGNMENT OR HOMEWORK:
1. Why do you think the findings of the 1983 Congressional commission were so different from the majority decision of the U.S. Supreme Court in the case Korematsu v. United States?
2. Do you think that similar treatment of a particular group of people in the United States could occur today? Under what circumstances? (What would it require for it to happen and what would it require to keep it from happening?)
3. What similarities or differences can you find between the internment of Japanese-Americans and the Korematsu decision and earlier events in United States history such as the Alien and Sedition Acts of 1798 and the Removal of the Cherokee and the Supreme Court decision Worcester v. Georgia?
4. What happened to Japanese nationals and Japanese-Americans on the Hawaiian Islands during World War II? What do you think led to the outcome?
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Supreme Court Decision Korematsu v. United States (1944)

Majority Decision of Justice Hugo Black

323 U.S. 214

Korematsu v. United States

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 22 Argued: October 11, 12, 1944 --- Decided: December 18, 1944

MR. JUSTICE BLACK delivered the opinion of the Court.

The petitioner, an American citizen of Japanese descent, was convicted in a federal district court for remaining in San Leandro, California, a "Military Area," contrary to Civilian Exclusion Order No. 34 of the Commanding General [p216] of the Western Command, U.S. Army, which directed that, after May 9, 1942, all persons of Japanese ancestry should be excluded from that area. No question was raised as to petitioner’s loyalty to the United States. The Circuit Court of Appeals affirmed, and the importance of the constitutional question involved caused us to grant certiorari.

It should be noted, to begin with, that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.

In the instant case, prosecution of the petitioner was begun by information charging violation of an Act of Congress, of March 21, 1942, 56 Stat. 173, which provides that

. . . whoever shall enter, remain in, leave, or commit any act in any military area or military zone prescribed, under the authority of an Executive order of the President, by the Secretary of War, or by any military commander designated by the Secretary of War, contrary to the restrictions applicable to any such area or zone or contrary to the order of the Secretary of War or any such military commander, shall, if it appears that he knew or should have known of the existence and extent of the restrictions or order and that his act was in violation thereof, be guilty of a misdemeanor and upon conviction shall be liable to a fine of not to exceed $5,000 or to imprisonment for not more than one year, or both, for each offense.
Exclusion Order No. 34, which the petitioner knowingly and admittedly violated, was one of a number of military orders and proclamations, all of which were substantially based upon Executive Order No. 9066, 7 Fed.Reg. 1407. That order, issued after we were at war with Japan, declared that

the successful prosecution of the war requires every possible protection against espionage and against sabotage to national defense material, national defense premises, and national defense utilities. . . .

One of the series of orders and proclamations, a curfew order, which, like the exclusion order here, was promulgated pursuant to Executive Order 9066, subjected all persons of Japanese ancestry in prescribed West Coast military areas to remain in their residences from 8 p.m. to 6 a.m. As is the case with the exclusion order here, that prior curfew order was designed as a “protection against espionage and against sabotage.” In Hirabayashi v. United States, 320 U.S. 81, we sustained a conviction obtained for violation of the curfew order. The Hirabayashi conviction and this one thus rest on the same 1942 Congressional Act and the same basic executive and military orders, all of which orders were aimed at the twin dangers of espionage and sabotage.

The 1942 Act was attacked in the Hirabayashi case as an unconstitutional delegation of power; it was contended that the curfew order and other orders on which it rested were beyond the war powers of the Congress, the military authorities, and of the President, as Commander in Chief of the Army, and, finally, that to apply the curfew order against none but citizens of Japanese ancestry amounted to a constitutionally prohibited discrimination solely on account of race. To these questions, we gave the serious consideration which their importance justified. We upheld the curfew order as an exercise of the power of the government to take steps necessary to prevent espionage and sabotage in an area threatened by Japanese attack.

In the light of the principles we announced in the Hirabayashi case, we are unable to conclude that it was beyond the war power of Congress and the Executive to exclude [p218] those of Japanese ancestry from the West Coast war area at the time they did. True, exclusion from the area in which one’s home is located is a far greater deprivation than constant confinement to the home from 8 p.m. to 6 a.m. Nothing short of apprehension by the proper military authorities of the gravest imminent danger to the public safety can constitutionally justify either. But exclusion from a threatened area, no less than curfew, has a definite and close relationship to the prevention of espionage and sabotage. The military authorities, charged with the primary responsibility of defending our shores, concluded that curfew provided inadequate protection and ordered exclusion. They did so, as pointed out in our Hirabayashi opinion, in accordance with Congressional authority to the military to say who should, and who should not, remain in the threatened areas. . .
LIKE CURFEW, EXCLUSION OF THOSE OF JAPANESE ORIGIN WAS DEEMED NECESSARY BECAUSE OF THE PRESENCE OF AN UNASCERTAINED NUMBER OF DISLOYAL MEMBERS OF THE GROUP, MOST OF [P219] WHOM WE HAVE NO DOUBT WERE LOYAL TO THIS COUNTRY. IT WAS BECAUSE WE COULD NOT REJECT THE FINDING OF THE MILITARY AUTHORITIES THAT IT WAS IMPOSSIBLE TO BRING ABOUT AN IMMEDIATE SEPARATION OF THE DISLOYAL FROM THE LOYAL THAT WE SUSTAINED THE VALIDITY OF THE CURFEW ORDER AS APPLYING TO THE WHOLE GROUP. IN THE INSTANT CASE, TEMPORARY EXCLUSION OF THE ENTIRE GROUP WAS RESTED BY THE MILITARY ON THE SAME GROUND. THE JUDGMENT THAT EXCLUSION OF THE WHOLE GROUP WAS, FOR THE SAME REASON, A MILITARY IMPERATIVE ANSWERS THE CONTENTION THAT THE EXCLUSION WAS IN THE NATURE OF GROUP PUNISHMENT BASED ON ANTAGONISM TO THOSE OF JAPANESE ORIGIN. THAT THERE WERE MEMBERS OF THE GROUP WHO RETAINED LOYALTIES TO JAPAN HAS BEEN CONFIRMED BY INVESTIGATIONS MADE SUBSEQUENT TO THE EXCLUSION. APPROXIMATELY FIVE THOUSAND AMERICAN CITIZENS OF JAPANESE ANCESTRY REFUSED TO SWEAR UNQUALIFIED ALLEGIANCE TO THE UNITED STATES AND TO RENOUNCE ALLEGIANCE TO THE JAPANESE EMPEROR, AND SEVERAL THOUSAND EVACUEES REQUESTED REPATRIATION TO JAPAN. [N2] . . .

IT IS SAID THAT WE ARE DEALING HERE WITH THE CASE OF IMPRISONMENT OF A CITIZEN IN A CONCENTRATION CAMP SOLELY BECAUSE OF HIS ANCESTRY, WITHOUT EVIDENCE OR INQUIRY CONCERNING HIS LOYALTY AND GOOD DISPOSITION TOWARDS THE UNITED STATES. OUR TASK WOULD BE SIMPLE, OUR DUTY CLEAR, WERE THIS A CASE INVOLVING THE IMPRISONMENT OF A LOYAL CITIZEN IN A CONCENTRATION CAMP BECAUSE OF RACIAL PREJUDICE. REGARDLESS OF THE TRUE NATURE OF THE ASSEMBLY AND RELOCATION CENTERS -- AND WE DEEM IT UNJUSTIFIABLE TO CALL THEM CONCENTRATION CAMPS, WITH ALL THE Ugly CONNOTATIONS THAT TERM IMPLIES -- WE ARE DEALING SPECIFICALLY WITH NOTHING BUT AN EXCLUSION ORDER. TO CAST THIS CASE INTO OUTLINES OF RACIAL PREJUDICE, WITHOUT REFERENCE TO THE REAL MILITARY DANGERS WHICH WERE PRESENTED, MERELY CONFUSES THE ISSUE. KOREMATSU WAS NOT EXCLUDED FROM THE MILITARY AREA BECAUSE OF HOSTILITY TO HIM OR HIS RACE. 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, BECAUSE THEY DECIDED THAT THE MILITARY URGENCY OF THE SITUATION DEMANDED THAT ALL CITIZENS OF JAPANESE ANCESTRY BE SEGREGATED FROM THE WEST COAST TEMPORARILY, AND, FINALLY, BECAUSE CONGRESS, REPOSING ITS CONFIDENCE IN THIS TIME OF WAR IN OUR MILITARY LEADERS -- AS INEVITABLY IT MUST -- DETERMINED THAT THEY SHOULD HAVE THE POWER TO DO JUST THIS. THERE WAS EVIDENCE OF DISLOYALTY ON THE PART OF SOME, THE MILITARY AUTHORITIES CONSIDERED THAT THE NEED FOR [P224] ACTION WAS GREAT, AND TIME WAS SHORT. WE CANNOT -- BY AVAILING OURSELVES OF THE CALM PERSPECTIVE OF HINDSIGHT -- NOW SAY THAT, AT THAT TIME, THESE ACTIONS WERE UNJUSTIFIED.

AFFIRMED.

LET FREEDOM RING

Supreme Court Decision Korematsu v. United States (1944)

Dissent of Justice Robert Jackson

Korematsu v. United States

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 22 Argued: October 11, 12, 1944 --- Decided: December 18, 1944

MR. JUSTICE JACKSON, dissenting.

Korematsu was born on our soil, of parents born in Japan. The Constitution makes him a citizen of the United States by nativity, and a citizen of California by [p243] residence. No claim is made that he is not loyal to this country. There is no suggestion that, apart from the matter involved here, he is not law-abiding and well disposed. Korematsu, however, has been convicted of an act not commonly a crime. It consists merely of being present in the state whereof he is a citizen, near the place where he was born, and where all his life he has lived.

Even more unusual is the series of military orders which made this conduct a crime. They forbid such a one to remain, and they also forbid him to leave. They were so drawn that the only way Korematsu could avoid violation was to give himself up to the military authority. This meant submission to custody, examination, and transportation out of the territory, to be followed by indeterminate confinement in detention camps.

A citizen’s presence in the locality, however, was made a crime only if his parents were of Japanese birth. Had Korematsu been one of four -- the others being, say, a German alien enemy, an Italian alien enemy, and a citizen of American-born ancestors, convicted of treason but out on parole -- only Korematsu’s presence would have violated the order. The difference between their innocence and his crime would result, not from anything he did, said, or thought, different than they, but only in that he was born of different racial stock.

Now, if any fundamental assumption underlies our system, it is that guilt is personal and not inheritable. Even if all of one’s antecedents had been convicted of treason, the Constitution forbids its penalties to be visited upon him, for it provides that “no attainer of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.” But here is an attempt to make an otherwise innocent act a crime merely because this prisoner is the son of parents as to whom he had no choice, and belongs to a race from which there is no way to resign. If Congress, in peacetime legislation, should [p244] enact such a criminal law, I should suppose this Court would refuse to enforce it. . .
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Much is said of the danger to liberty from the Army program for deporting and detaining these citizens of Japanese extraction. But a judicial construction of the due process clause that will sustain this order is a far more [p246] subtle blow to liberty than the promulgation of the order itself. A military order, however unconstitutional, is not apt to last longer than the military emergency. Even during that period, a succeeding commander may revoke it all. But once a judicial opinion rationalizes such an order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes. All who observe the work of courts are familiar with what Judge Cardozo described as “the tendency of a principle to expand itself to the limit of its logic.” A military commander may overstep the bounds of constitutionality, and it is an incident. But if we review and approve, that passing incident becomes the doctrine of the Constitution. There it has a generative power of its own, and all that it creates will be in its own image. Nothing better illustrates this danger than does the Court’s opinion in this case. . .

Of course, the existence of a military power resting on force, so vagrant, so centralized, so necessarily heedless of the individual, is an inherent threat to liberty. But I would not lead people to rely on this Court for a review that seems to me wholly delusive. The military reasonableness of these orders can only be determined by military superiors. If the people ever let command of the war power fall into irresponsible and unscrupulous hands, the courts wield no power equal to its restraint. The chief restraint upon those who command the physical forces of the country, in the future as in the past, must be their responsibility to the political judgments of their contemporaries and to the moral judgments of history. . .

My duties as a justice, as I see them, do not require me to make a military judgment as to whether General DeWitt’s evacuation and detention program was a reasonable military necessity. I do not suggest that the courts should have attempted to interfere with the Army in carrying out its task. But I do not think they may be asked to execute a military expedient that has no place in law under the Constitution. I would reverse the judgment and discharge the prisoner.

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Supreme Court Decision Korematsu v. United States (1944)

Dissent of Justice Robert Jackson

323 U.S. 214

Korematsu v. United States

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 22 Argued: October 11, 12, 1944 --- Decided: December 18, 1944

MR. JUSTICE MURPHY, dissenting.

This exclusion of “all persons of Japanese ancestry, both alien and non-alien,” from the Pacific Coast area on a plea of military necessity in the absence of martial law ought not to be approved. Such exclusion goes over “the very brink of constitutional power,” and falls into the ugly abyss of racism. . .

The judicial test of whether the Government, on a plea of military necessity, can validly deprive an individual of any of his constitutional rights is whether the deprivation is reasonably related to a public danger that is so “immediate, imminent, and impending” as not to admit of delay and not to permit the intervention of ordinary constitutional processes to alleviate the danger. United States v. Russell, 13 Wall. 623, 627-628; Mitchell v. Harmony, 13 How. 115, 134-135; Raymond v. Thomas, 91 U.S. 712, 716.

Civilian Exclusion Order No. 34, banishing from a prescribed area of the Pacific Coast “all persons of Japanese ancestry, both alien and non-alien,” clearly does not meet that test. Being an obvious racial discrimination, the [p235] order deprives all those within its scope of the equal protection of the laws as guaranteed by the Fifth Amendment. It further deprives these individuals of their constitutional rights to live and work where they will, to establish a home where they choose and to move about freely. In excommunicating them without benefit of hearings, this order also deprives them of all their constitutional rights to procedural due process. Yet no reasonable relation to an “immediate, imminent, and impending” public danger is evident to support this racial restriction, which is one of the most sweeping and complete deprivations of constitutional rights in the history of this nation in the absence of martial law.

That this forced exclusion was the result in good measure of this erroneous assumption of racial guilt, rather than [p236] bona fide military necessity is evidenced by the Commanding General’s Final Report on the evacuation from the Pacific Coast area. In it, he refers to all individuals of Japanese descent as “subversive,” as belonging to “an enemy race” whose “racial strains are undiluted,” and as constituting “over 112,000 potential enemies
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... at large today along the Pacific Coast. In support of this blanket condemnation of all persons of Japanese descent, however, no reliable evidence is cited to show that such individuals were generally disloyal, or had generally so conducted themselves in this area as to constitute a special menace to defense installations or war industries, or had otherwise, by their behavior, furnished reasonable ground for their exclusion as a group.

Justification for the exclusion is sought, instead, mainly upon questionable racial and sociological grounds not [p237] ordinarily within the realm of expert military judgment, supplemented by certain semi-military conclusions drawn from an unwarranted use of circumstantial evidence. Individuals of Japanese ancestry are condemned because they are said to be "a large, unassimilated, tightly knit racial group, bound to an enemy nation by strong ties of race, culture, custom and religion." They are claimed to be given to "emperor worshipping ceremonies," and to "dual citizenship." Japanese language schools and allegedly pro-Japanese organizations are cited as evidence of possible group disloyalty, together with facts as to [p238] certain persons being educated and residing at length in Japan. It is intimated that many of these individuals deliberately resided "adjacent to strategic points," thus enabling them
to carry into execution a tremendous program of sabotage on a mass scale should any considerable number of them have been inclined to do so. [99]

The need for protective custody is also asserted. The report refers, without identity, to "numerous incidents of violence," as well as to other admittedly unverified or cumulative incidents. From this, plus certain other events not shown to have been connected with the Japanese Americans, it is concluded that the "situation was fraught with danger to the Japanese population itself," and that the general public "was ready to take matters into its own hands." Finally, it is intimated, though not directly [p239] charged or proved, that persons of Japanese ancestry were responsible for three minor isolated shellings and bombings of the Pacific Coast area, as well as for unidentified radio transmissions and night signaling.

The main reasons relied upon by those responsible for the forced evacuation, therefore, do not prove a reasonable relation between the group characteristics of Japanese Americans and the dangers of invasion, sabotage and espionage. The reasons appear, instead, to be largely an accumulation of much of the misinformation, half-truths and insinuations that for years have been directed against Japanese Americans by people with racial and economic prejudices -- the same people who have been among the foremost advocates of the evacuation. [112] A military judgment [p240] based upon such racial and sociological considerations is not entitled to the great weight ordinarily given the judgments based upon strictly military considerations. Especially is this so when every charge relative to race, religion, culture, geographical location, and legal and economic status has been substantially discredited by independent studies made by experts in these matters.
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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. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must, accordingly, be treated at all times as the heirs of the American experiment, and as entitled to all the rights and freedoms guaranteed by the Constitution.


SELECTED FOOTNOTES

9Final Report, p. 10; see also pp. vii, 9, 15-17. This insinuation, based purely upon speculation and circumstantial evidence, completely overlooks the fact that the main geographic pattern of Japanese population was fixed many years ago with reference to economic, social and soil conditions. Limited occupational outlets and social pressures encouraged their concentration near their initial points of entry on the Pacific Coast. That these points may now be near certain strategic military and industrial areas is no proof of a diabolical purpose on the part of Japanese Americans. See McWilliams, Prejudice, 119-121 (1944); House Report No. 2124 (77th Cong., 2d Sess.), 59-93.

12Special interest groups were extremely active in applying pressure for mass evacuation. See House Report No. 2124 (77th Cong., 2d Sess.) 154-6; McWilliams, Prejudice, 128 (1944). Mr. Austin E. Anson, managing secretary of the Salinas Vegetable Grower-Shipper Association, has frankly admitted that

We're charged with wanting to get rid of the Japs for selfish reasons . . . . We do. It's a question of whether the white man lives on the Pacific Coast or the brown men. They came into this valley to work, and they stayed to take over . . . . They undersell the white man in the markets . . . . They work their women and children while the white farmer has to pay wages for his help. If all the Japs were removed tomorrow, we'd never miss them in two weeks, because the white farmers can take over and produce everything the Jap grows. And we don't want them back when the war ends, either.