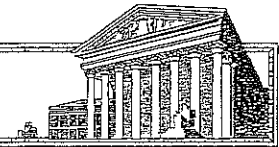


# Supreme Court Case Study 12



## The Rights of People of Suspect Ethnic Backgrounds

### *Korematsu v. United States*

#### \*\*\*\*\* Background of the Case \*\*\*\*\*

After the bombing of Pearl Harbor in December 1941 by Japanese planes, anti-Japanese sentiment on the West Coast rose to almost hysterical proportions. All people of Japanese ancestry, even citizens of the United States, were suspected of being pro-Japan, or worse—saboteurs and spies for Japan. Yielding to such sentiments, President Franklin D. Roosevelt issued an executive order that authorized the military to evacuate and relocate “all or any persons” in order to provide “protection against espionage and against sabotage to national defense. . . .” The military first set curfews on the West Coast for persons of Japanese ancestry. Later the military removed all persons of Japanese ancestry to war relocation centers. The order affected approximately 112,000 persons of Japanese ancestry, of whom about 70,000 were native-born American citizens. An act of Congress later reinforced the president’s order by providing penalties for violations.

Korematsu, a Japanese American citizen, refused to leave his home in California for a relocation camp. He was convicted in a federal court. His appeal to a United States circuit court failed, and he then brought the case before the United States Supreme Court.

#### *Constitutional Issue* \*\*\*\*\*

Since the president is commander in chief of the armed forces and Congress is given the power to declare war, was the executive order and its Congressional counterpart a constitutional exercise of the war power?

#### \*\*\*\*\* The Supreme Court’s Decision \*\*\*\*\*

The Court decided against Korematsu by a vote of 6 to 3. Justice Hugo Black wrote for the Court.

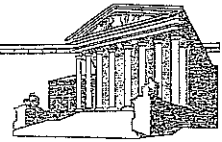
In 1943 the Court had upheld the government’s position in a similar case, *Hirabayashi v. United States*. That case concerned the legality of the West Coast curfew order. In *Hirabayashi*, as well as in *Korematsu*, the Court’s language pointed toward the necessity of giving the military the benefit of the doubt on the grounds of wartime necessity.

In the earlier case, the Court had held that “we cannot reject as unfounded the judgment of the military authorities and of Congress. . . .” Likewise, in the *Korematsu* case, the Court declared, “We are unable to conclude that it was beyond the war power of Congress and the Executive to exclude those of Japanese ancestry from the West Coast area at the time they did.”

Justice Black cited evidence that, following internment, “approximately five thousand 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.” Although the Court admitted awareness of the hardships internment imposed on American citizens, it stated “hardships are part of war. . . . Citizenship has its responsibilities as well as its privileges, and in time of war the burden is always heavier.”

(continued)

## Supreme Court Case Study 12 (continued)



The question of racial prejudice “merely confuses the issue,” said the Court. The true issues are related to determining “military dangers” and “military urgency.” These issues demanded that citizens of Japanese ancestry be relocated by the military authorities. Black observed, “Congress, reposing its confidence in this time of war in our military leaders. . . , determined that they should have the power to do just this. . . . The need for action was great, and the time was short. We cannot—by availing ourselves of the calm perspective of hindsight—now say that at that time these actions were unjustified.”

Dissenting Opinion

Justices Frank Murphy and Robert H. Jackson wrote separate dissents. Murphy called the Court's decision "legalization of racism." He objected particularly on the grounds that the Japanese Americans affected had been deprived of equal protection of the law as guaranteed by the Fifth Amendment. Further, Murphy wrote, as no provision had been made for hearings "this order also deprives them of all their constitutional rights to procedural due process." He saw no reason why the United States could not have done as Great Britain had done earlier in hearings during which about 74,000 German and Austrians residing in Britain were examined. Of these, only 2,000 had been interned.

In his dissent, Justice Jackson conceded that there might have been reasonable grounds for the internment orders. But, he wrote, "Even if they were permissible military procedures, I deny that it follows that they are constitutional. . . . 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."

After the war, many people realized the injustice of the Court's decision. Finally, in 1988, Congress issued a formal apology to all internees and voted to give every survivor of the camps \$20,000 in reparation.



## Questions

**DIRECTIONS:** Answer the following questions on a separate sheet of paper.

1. On what constitutional basis did the Supreme Court deny Korematsu's appeal?
2. If you had been a native-born Japanese American in 1942, what do you think would have been your reaction to the internment order?
3. Justice Black became known as one of the staunchest defenders of the rights provided in the first ten amendments. Is his decision in the *Korematsu* case in keeping with his reputation?
4. What was the constitutional basis of Justice Murphy's dissent?
5. The Court's decision in the *Korematsu* case has been described as involving "the most alarming use of military authority in our nation's history." Do you think this description of the case is justified?