

UNDERSTANDING KOREMATSU V. U.S. (1944)

by Art Ward

Japanese people began immigrating to the United States at the end of the 19th Century because of political and social upheaval in their homeland. Moving from Hawaii to the Western states, they came in large numbers until a ban was put in place by the Immigration Act of 1924. The population of Japanese in the U.S. ballooned from 2,000 in 1890 to well over 100,000 at the time of the ban. A generation of Japanese-American children, born in the United States, were quite distinct from their immigrant parents – they spoke fluent English and were Americans by birth. Their communities – such as the largest, Little Tokyo in Los Angeles, California – thrived. Its sixty-square blocks housed some 40,000 people and included temples, schools, markets, and businesses.



The attack on Pearl Harbor, image courtesy Library of Congress Prints and Photographs Division (LC-USZ62-104778).

Attack on Pearl Harbor

Just after Japan attacked Pearl Harbor, Hawaii on Dec. 7, 1941, General John L. DeWitt of the Western Defense Command and others urged President Franklin Roosevelt to take action against the nearly 140,000 Japanese Americans living on the west coast of the United States. On February 14, 1942, Roosevelt issued Executive Order 9066 giving the military authority to forcibly remove and incarcerate anyone of Japanese descent living within 60 miles of the California, Oregon, and Washington coast – an area deemed critical to national defense and potentially vulnerable to espionage. One month later, Roosevelt issued Executive Order

9102 establishing the War Relocation Authority to carry out the internment. Congress subsequently passed legislation in support of the president's orders. On April 1, 1942, General DeWitt imposed a curfew on Japanese Americans which the Court upheld unanimously on June 21, 1943 in the case of *Hirabayashi v. United States*. DeWitt also ordered that they report to Assembly Centers, and 110,000 people were placed in relocation camps away from the coast. In Los Angeles, Little Tokyo vanished.

Fred Korematsu was an American citizen of Japanese ancestry born in San Francisco. Wanting to serve his country in the war effort, he tried to join the military but was denied for health reasons. Undeterred from doing his part, he got a job as a welder in the defense industry. He was engaged to an Italian-American woman and did not want to leave his job and fiancé when ordered to report to a relocation center. Instead, he moved

to a neighboring town and underwent plastic surgery to convince authorities that he was of Spanish-Hawaiian origin. In May 1942, Korematsu was arrested for violating Civilian Exclusion Order No. 34 of the U.S. Army. He was convicted, sentenced to five years in prison, paroled, and sent to the internment camp at Topaz, Utah. Korematsu challenged the wartime provisions, believing that the President and Congress had exceeded their war powers by implementing exclusion and restricting the rights of Americans of Japanese descent.



The entrance to Manzanar War Relocation Center, one of ten camps where Japanese-American citizens and resident Japanese aliens were interned during World War II. Image courtesy Library of Congress Prints and Photographs Division (LC-DIG-ppprs-00286).

Supreme Court Decision

The U.S. Supreme Court sided with the government and held that the need to protect against espionage outweighed Korematsu's rights. Justice Hugo Black wrote the 6-3 majority opinion and argued that compulsory exclusion, though constitutionally suspect, is justified during circumstances of emergency and peril. Black noted that all legal restrictions which curtail the civil rights of a single racial group are immediately suspect and should be judged under the most rigid scrutiny. This was the first time the Court applied strict scrutiny but upheld a racial classification. Black accepted the military's assertion that it was impossible to determine loyal from disloyal Japanese Americans and that their temporary exclusion was based on military judgment that an invasion of the West Coast by Japan was a real possibility.

The dissenters called the government's actions racist and said the relocation centers were concentration camps. Justice Frank Murphy said: "This exclusion goes over 'the very brink of constitutional power' and falls into the ugly abyss of racism.... I dissent from the legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. 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." Justice Robert Jackson also dissented and was particularly troubled that the Court had accepted the case in the first place and then, by ruling in favor of the government, had created a constitutional precedent for future action: "While an unconstitutional order will only last as long as the conflict, a judicial construction of the due process clause that will sustain this order is a far more subtle blow to liberty than the order itself.... 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."

Handed down the same day as *Korematsu*, the Court held in *Ex parte Endo* (1944) that citizens deemed "loyal" must be set free. The war ended in the fall of 1945, and all of the citizens interned at the camps were released. The 1948 Japanese-Americans Claims Act allowed camp detainees to receive compensation for their losses. The government received

\$131 million in claims, and paid \$38 million to settle them. Around 3,000 Japanese-Americans resettled in Little Tokyo, Los Angeles. Laws that had prevented ownership of land were lifted, but buildings remained empty, and what was once a vibrant, dynamic community more or less died. In 1970, Los Angeles officially designated a seven-block area as Little Tokyo in hopes of redeveloping the area. While Japanese Americans did not return in large numbers, some Japanese companies opened American offices there and other businesses continued to serve the community.

In the early 1980s, attorneys studying Korematsu's case uncovered archival evidence that the Solicitor General's office – which represented the United States in the lawsuit – had not reported to the Supreme Court evidence that Japanese American citizens actually posed no security risk. Fred Korematsu again challenged his conviction in the United States District Court for the Northern District of California. In 1983, using the newly discovered documentation, Judge Marilyn Patel cleared Korematsu's conviction, but this did not overturn the Supreme Court's decision that removal and internment of Japanese Americans was a constitutional war measure.

In 1988, President Ronald Reagan signed the Civil Liberties Act, which authorized \$20,000 in reparations to camp detainees and called for an apology for their loss of liberty and property. Three years later, the checks were issued and President George H.W. Bush signed a formal letter of apology. In 1998, President Bill Clinton awarded Fred Korematsu the Presidential Medal of Freedom. He died on March 30, 2005 at the age of 86.

Comprehension and Critical Thinking Questions

1. **According to Executive Order 9066, what authority did the military have?**
2. **What was the objective of Executive Order 9102?**
3. **On what grounds did Fred Korematsu challenge his detention?**
4. **How did the majority opinion explain the Court's decision in *Korematsu v. U.S.*?**
5. **What was the reasoning of the dissenters in Korematsu's case?**
6. **Why do you think the Solicitor General's Office did not report to the Supreme Court evidence that Japanese Americans actually posed no documented security risks?**
7. **Should the Constitution's meaning change during times of crisis?**