

Korematsu v. United States (1944)

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Background:

-Following the attacks on Pearl Harbor there was strong fears of further Japanese attacks or invasion on the west coast. This was coupled with a great distrust of and prejudice for Japanese residents, both alien and naturalized.

-February 1942, Roosevelt signs an executive order allowing the war department to establish areas in the country where rules for entering, leaving, and remaining could be subject to commanded regulations.

-March 1942, Congress passes a statute making it a criminal offense to enter, leave, remain in, or commit a criminal act in any military zone contrary to the applicable restrictions.

-May 1942, General DeWitt issued Civilian Exclusion order No. 34, which stated by may 9th, all persons of Japanese ancestry were to be removed from military area No. 1 (west coast states) to detention camps.

-Fred Korematsu, native born, was convicted of disobeying the order and challenged its constitutionality.

-Conviction was upheld 6-3.

QUESTIONS:

- 1) Does this violate the 14th Amendment?
- 2) Do the President and/or Congress have the power to pass these types of laws?
- 3) Were fears of invasion and sabotage still valid this far into war?

BLACK

-"Pressing public necessity may sometimes justify the existence of such restrictions" (strict scrutiny)

-Hirabayashi v US, conviction was upheld when the defendant violated the curfew because the orders were "aimed at the twin dangers of espionage and sabotage". Because of these vested interests it was within the power of congress and the president to pass these statutes.

-5000 American citizens of Japanese descent refused to swear allegiance to the US and renounce allegiance to the Japanese Emperor. Several thousand requested repatriation to Japan.

-Korematsu was not excluded from the military area because of a hostility to his race, but rather because the nation is at war with Japan and there are serious security concerns and dangers to consider.

FRANKFURTER

-"The war power of the government is "the power to wage war successfully". Therefore, the validity of action under the war power must be judges wholly in the context of war".

-Actions shouldn't be considered lawless solely because they would be during peacetime.

-"To recognize that military orders are "reasonably expedient military precautions" in time of war and yet to deny them constitutional legitimacy makes the Constitution an instrument of dialectic subtleties".

-Counter to the intentions of the framers, most of whom had participated in war.

DISSENTS

ROBERTS:

-Imprisonment in a concentration camp is demanded based on ancestry alone, without any evidence or inquiry into his loyalty.

-"I need hardly labor the conclusion that constitutional rights have been violated".

MURPHY:

-"Plea of military necessity in the absence of material law ought not to be approved."

-Justification could be extended only if the public danger was "so immediate, imminent, and impending" as to not admit of delay".

-Order No. 34 deprives all within its scope of the equal protection of laws under the 5th amendment. Denies rights to live, work, and travel where one wants.

-Without even any hearings, the order also deprives them of due process.

-Assumption made that all persons of Japanese ancestry may have dangerous tendencies to commit sabotage and espionage.

-Racist undertones even in the commanding generals report.

-There probably were some Japanese disloyalty, but so have there been German and Italian instances too. You can't prove group disloyalty from individual guilt.

-References to the time issue (no way to determine loyalties in such little time) are ridiculous. 4 months elapsed before first exclusion order. 8 months before the last one was issued. And it took 11 months before the Japanese were fully interned.

-No evidence that the FBI, military, and naval intelligence didn't have the espionage and sabotage issues in hand.

-Not one person of Japanese ancestry was accused or convicted of espionage or sabotage after Pearl Harbor while they were still free.

-"I dissent, therefore, from this legalization of racism".

JACKSON:

-Korematsu is a citizen.

-"Guilt is personal and not inheritable"

-While you can't legislate on what military orders are necessary during war, you cant distort the constitution to approve all that the military deems expedient.

-"Even if they were permissible military procedures, I deny that it follows that they are constitutional...We may as well say that any military order will be constitutional and have done with it".

-Military orders aren't democratic. They are made on information that would often be inadmissible and on assumptions that cannot be proved.

-Courts have no choice but to accept military orders at face value.

-"A military order, however unconstitutional, is not apt to last longer than the military emergency...But once a judicial opinion rationalizes such an order to show that it conforms to the constitution, or rather rationalizes such an order 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."