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KOREMATSU V. THE UNITED STATES AND JAPANESE CIVIL RIGHTS IN AMERICA

Sam Sedaei

February 19, 1942 is considered one of the darkest days of Japanese civil liberties in the United States. Following the attack on Pearl Harbor, President Roosevelt ordered the mass evacuation of all individuals of Japanese descent from the West Coast and their relocation in internment camps. However, while many in the U.S. government failed to see the violation of the balance between civil liberties and national security, few individuals were in the front line of sparking dialogue on civil liberties. One of these individuals was a young Japanese-American named Fred Korematsu, whose lawsuit against the president's executive order was heard before the Supreme Court. However, what has been considered the most significant aspect of *Korematsu v. The United States* is its demonstration of the U.S. governmental institutions' inclination to sacrifice the civil liberties of the minority in order to protect the security of the majority at the time.

In order to understand the significance of *Korematsu* case, it is important to first analyze some of the main events that gradually affected the growing anti-Japanese climate in the United States and led up to the internment camps.

The surprise attack on Pearl Harbor was the main important factor in sparking the anti-Japanese climate in the United States.¹ On December 7, 1941, Japan launched a surprise attack on Pearl Harbor, shocking and enraging Americans. One of the main effects that this attack had in the United States was to shift public opinion from isolationism and neutrality to international participation and intervention. But the attack also had internal effects inside the United States. One of these effects was a great fear of further enemy attacks, and more specifically in the West Coast, panic and anger mixed with anti-Asian and anti-Japanese racism. Such racism infiltrated all aspects of life, including the media. An example of such infiltration appeared in a *San Francisco Examiner* column titled "Why Treat Japs Well Here?" This specific article was also very significant in relation to the events that led to the internment camps and *Korematsu v. The United States* because it has been alleged to have been the place where the idea of Japanese relocation camps was indirectly introduced for the first time.² An excerpt of this article reads as follows:

"What does the Government do about the tens of thousands of Japanese in California? Nothing. The only Japanese apprehended have been the ones the FBI actually had something on. The rest of them, so help me, are free as birds.... There isn't an airport in California that isn't flanked by Japanese farms. They clerk in stores. They clip lawns. They are here, there and everywhere. You walk up and down the streets and you bump into Japanese in every block. They take the parking positions. They get ahead of you in the stamp line at the post office. They have their share of seats on the bus and streetcar lines.... I know this is the melting pot of the world and all men are created equal and there must be no such thing as race or creed hatred, but do those things go when a country is fighting for its life? Not in my book. Personally, I hate the Japanese. And

¹ *America responds to terrorism: Wartime and the Bill of Rights: The Korematsu Case, The constitutional rights foundation.* <http://www.crf-usa.org/terror/korematsu.htm>.

² Hanson, David C. 2000. *Korematsu v. U.S. Virginia Western Community College.* <http://www.vw.vccs.edu/vwhansd/HIS122/Korematsu.html>.

that goes for all of them. Let's quit worrying about hurting the enemy's feelings and start doing it.”

Several segments of this excerpt represent major aspects of the anti-Japanese climate, which led to the justification of internment camps. In the first few lines of the excerpt, the author questions the freedom of those Japanese-Americans who have not committed any crime. In the immediate aftermath of the attack on Pearl Harbor, this columnist and a vast majority of Americans felt panic and expressed grave concerns about individuals of Japanese descent in the United States enjoying the same freedoms that Americans did. But even a more tragic aspect of the anti-Japanese climate in America at the time was the propositions by individuals such as the writer of the above excerpt that the U.S. government must *act* on those prevalent anti-Japanese sentiments through race-based policies. In the latter section of the excerpt, the author declares that the idea of U.S. being the “melting pot of the world and all men are created equal and there must be no such thing as race or creed hatred” does not apply to the times of war. This segment is an indication of the intensity of some Americans’ willingness at the time to violate the most basic equality rights and civil liberties of Japanese-Americans – including those such as Fred Korematsu who were innocent of any crime – in order to bring security to other Americans. Similar sentiments spread in the U.S. government when politicians from the West Coast began to demand that “something be done” about the Issei and Nisei living on the coast. Such sentiments among Americans, elected representatives and senators in Washington created a sense of national urgency to deal with the “Japanese threat.”

On February 19, 1942, under pressure from politicians, President Roosevelt issued Executive Order No. 9066 to mass evacuate Japanese Americans from the West Coast and other military areas and relocate them in internment camps.³ This order applied to approximately 120,000 citizens and non-citizens of Japanese origin.⁴ The stated justification of this order was to protect the United States “against espionage and against sabotage to national defense material, national defense premises, and national defense utilities.” Congress affirmed this order by making it a crime to refuse the order of evacuation. This Executive Order was the beginning point of Fred Korematsu’s fight for civil liberties.

Born of Japanese immigrant parents, Fred Korematsu was an American citizen living in Oakland, California.⁵ He was twenty-two years old when, along with other Japanese-Americans, he and his family were ordered to report to assembly centers. The Korematsu family reported to an assembly center, at which point, they were taken to Tanforan, a former racetrack in southern San Francisco, for processing. Fred, however, was in love with his Italian-American girlfriend and decided to stay in his home in Oakland. Following his refusal to report for internment, he changed his name and even underwent eye surgery to appear less Japanese. Nonetheless, the government found and arrested Korematsu on May 30, 1942.⁶ After a federal court handed down Korematsu’s

³ Agrast, Mark David. 2005. Remembering Fred Korematsu (1919-2005). *Center for American Progress*. <http://www.americanprogress.org/site/pp.asp?c=biJRJ8OVF&b=489061>.

⁴ America Responds to Terrorism: Wartime and the Bill of Right. *Constitutional Rights Foundation*. <http://www.crf-usa.org/terror/korematsu.htm>.

⁵ Agrast, Mark David. 2005. Remembering Fred Korematsu (1919-2005). *Center for American Progress*. <http://www.americanprogress.org/site/pp.asp?c=biJRJ8OVF&b=489061>.

⁶ Agrast, Mark David. 2005. Remembering Fred Korematsu (1919-2005). *Center for American Progress*. <http://www.americanprogress.org/site/pp.asp?c=biJRJ8OVF&b=489061>.

conviction, the judge sentenced him to five years in probation. The military, however, took him into immediate custody and sent him to the relocation camp in Topaz, Utah. While in custody, the American Civil Liberties Union (ACLU) initiated contact with Korematsu and convinced him to appeal his case. Korematsu appealed the district court's decision to the U.S. Circuit Court, but no change in his conviction was sustained. He continued to be held in custody in Utah while he appealed his case to the United States Supreme Court, which the court agreed to hear.

As the events that led to *Korematsu v. United States* demonstrate, prejudice against citizens of Japanese ancestry became extremely prevalent not just among the majority of citizens, but also in both the executive and legislative branches of the U.S. government. Although no one would know whether public officials in government supported such far-reaching and race-based internment due to their anti-Japanese sentiments or because of their honest desire to protect national security, it could certainly be asserted that both the president and congress used the state of war as a justification to violate the constitutional civil liberties of innocent citizens. When the framer of the constitution created the U.S. government, they based it on a system of checks and balances. One of the aspects of this system was the establishment of a judicial body to check the constitutionality of the actions and laws made and signed by the other two branches. Hence, they sought the institution of the U.S. Supreme Court, which would consist of life-time appointed judges to take on the task of judicial check. The framers sought the Supreme Court judges to be unelected in order to protect the independence of the court so that it could make rulings based on the constitution and not public sentiment. Therefore, it is reasonable for one to assume that the Supreme Court would judge Korematsu based on the merits of the case and make a ruling that would result in the protection of basic rights guaranteed to all in the constitution. However, the opinion of the majority on this case demonstrated the harsh reality that, under certain circumstances, even the Supreme Court is willing to sacrifice the civil liberties of the minority for the sake of protecting the security of the majority. Therefore, it is imperative to review the court majority's opinion delivered Justice Black in order to understand the defects in a 6-3 ruling that upheld President Roosevelt's Executive Order.

One of the segments of Justice Black's opinion that shows the court's willingness at the time to uphold the governmental actions that were in flat violation of basic and well-established civil liberties is the part concerning restrictions on individuals' rights based on their race. Towards the beginning of the opinion, Justice Black states:

“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... Pressing public necessity may sometimes justify the existence of such restrictions.”⁷

In this segment, the court declares that under certain circumstances, restrictions which curtail the civil rights of individuals solely based on their race *can* be constitutional. However, such stance was inconsistent with the citizens' rights enumerated in the constitution or the court's own opinions with regards to this matter. The constitution guarantees every individual the right to a trial by jury before being convicted of a crime,

⁷ Black, J. 1944. *Korematsu v. United States*. *Cornell Law School: Supreme Court Collection*. http://www.law.cornell.edu/supct/html/historics/USSC_CR_0323_0214_ZO.html.

and punishment cannot be imposed without conviction. The court's statement that such race-based restrictions could be constitutional under certain circumstances is a clear indication of the court's willingness at the time to depart from the most basic interpretations of the constitution and uphold even race-based procedures to accommodate security policies of the executive and legislative branches.

Another method which Justice Black used to justify the violation of Japanese-Americans' civil liberties was to understate the nature of internment camps. He did so by likening president's internment order to a simple curfew. Referring to a case decided by the court two years earlier, Justice Black notes, "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." He continues by writing, "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. ... But exclusion from a threatened area, no less than curfew, has a definite and close relationship to the prevention of espionage and sabotage."⁸ Justice Black acknowledges the difference between a simple curfew and internment. Nonetheless, he justifies Japanese internment camps by indicating the similarity between a curfew and internment in that they were both actions taken by the government to prevent sabotage. The court's analysis in this part is illogical because it sets precedent for the government to take any unchecked action as long as it can prove the result of that action will result in protection from espionage and sabotage. The court failed to emphasize that along protection of security, government also has an equal responsibility to protect citizens' civil liberties, even in times of war. In likening internments to a curfew, Justice Black continued his opinion by indicating that internments were the only possible method to employ;

"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 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 segregation of the disloyal from the loyal that we sustained the validity of the curfew order as applying to the whole group."⁹

He asserts that the president issued the order for evacuation of all Japanese-Americans because it was impossible to bring a rapid segregation of the loyal from the disloyal. However, there are two main problems with this analysis. The first problem is the fact that Justice Black is making this assumption based on the information given by the military. However, the military is under the command of the executive, which was being challenged in court. Therefore, the military authorities had a strong incentive to present information regarding the logistics of their operations in a way that would help defend their actions. But even a more significant flaw in this analysis is the conclusion reached from the information that was provided for the court by military authorities. Assuming that there was no method by which the military could have separated the loyal Japanese from the disloyal, the court never explains why the best decision was to immediately

⁸ Black, J. 1944. *Korematsu v. United States*. *Cornell Law School: Supreme Court Collection*. http://www.law.cornell.edu/supct/html/historics/USSC_CR_0323_0214_ZO.html.

⁹ Black, J. 1944. *Korematsu v. United States*. *Cornell Law School: Supreme Court Collection*. http://www.law.cornell.edu/supct/html/historics/USSC_CR_0323_0214_ZO.html.

apply the restrictions to all persons of Japanese descent rather than taking more time and making sure no innocent citizen was being arrested. In fact, the second choice was more reasonable for the court to make considering that “Korematsu’s attorneys showed that during the nearly four months between Pearl Harbor and General DeWitt’s first evacuation order, not one person of Japanese descent had been convicted of espionage or sabotage.”¹⁰ The court’s reliance on the information given by one side of the lawsuit, as well as a conclusion reached based on that information but out of context with the realities on the activities of Japanese-Americans at the time are two more important indications of the court’s failure to use sound legal judgment to protect the rights of innocent citizens.

Finally, the court used the “state of war” to justify the creation of Japanese internment camps. Having stated that the court was to uphold the Executive Order N. 9066, Justice Black explained the implications of the ruling:

“In doing so, we are not unmindful of the hardships imposed by it upon a large group of American citizens. But hardships are part of war, and war is an aggregation of hardships. All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its responsibilities, as well as its privileges, and, in time of war, the burden is always heavier. Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direst emergency and peril, is inconsistent with our basic governmental institutions. But when, under conditions of modern warfare, our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger.”¹¹

This segment of the court’s opinion is a clear indication of the fact that the justices reached the ruling that was based on the fact that the country was war. This shows that had the United States not been at war, the court would have reached a different ruling. Furthermore, Justice Black explains that internment camps were acceptable because during the times of war, “all” citizens were to feel the impact. However, he fails to recognize that in this case, all citizens were *not* feeling the impact; rather, the government had imposed a race-based policy that deprived a narrow racial group of their constitutional civil rights in order to protect the safety of the majority. In addition, towards the end of this excerpt, Justice Black admits that such compulsory relocation of innocent citizens to internment camps was “inconsistent with our basic government institutions.” However, he continues by explaining that in times of “modern warfare,” such inconsistent policies were acceptable. This segment is an evidence of the court’s willingness to disturb the balance between civil liberties and national security while in a state of war. Black emphasizes this tendency toward the end of the court’s opinion when he explains in clear terms why Fred Korematsu was ordered to evacuate:

“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

¹⁰ *America responds to terrorism: Wartime and the Bill of Rights: The Korematsu Case, The constitutional rights foundation.* <http://www.crf-usa.org/terror/korematsu.htm>.

¹¹ Black, J. 1944. *Korematsu v. United States. Cornell Law School: Supreme Court Collection.* http://www.law.cornell.edu/supct/html/historics/USSC_CR_0323_0214_ZO.html.

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."¹²

There are two important points with regards to this excerpt. First, the court clearly admits that the only reason Korematsu was arrested was because the country was at war with Japan. But even a more disturbing aspect of this excerpt is the court's deference to the executive branch and executive's judgment on maintaining the proper balance between civil liberties and national security. Justice Black explains that because military authorities decided that the military urgency of the situation demanded internment, or that the congress affirmed this policy, this executive order could be upheld. Such deference is inconsistent with what the framers intended the role of the Supreme Court to be. The framers intended the Supreme Court to serve as an independent constitutional check on the legislative and executive branch. If the court is to defer heavily to the actions of the other two branches even when the constitutionality of those actions have been challenged, then the court is failing to fulfill the role that the framers intended the court to fulfill.

Justice Robert's dissenting opinion in this case confirms the fact that the majority in the court had interpreted the law in ways that would suit its end. As indicated before, although the president's executive order was far different than a curfew, the court failed to recognize the significant difference. Towards the beginning of his opinion, Roberts affirms this assertion by highlighting the major difference between the two cases:

"This is not a case of keeping people off the streets at night... nor a case of temporary exclusion of a citizen from an area for his own safety or that of the community, nor a case of offering him an opportunity to go temporarily out of an area where his presence might cause danger to himself or to his fellows. On the contrary, it is the case of convicting a citizen as a punishment for not submitting to imprisonment in a concentration camp, based on his ancestry, and solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States."¹³

In explaining the difference between the two cases, Roberts demonstrates the majority's failure to reach a judgment based on the merits of this case rather than relying on an irrelevant court precedent concerning curfews that was not applicable to *Korematsu v. United States*. Roberts also emphasizes the fact that Korematsu was imprisoned solely based on his ancestry, rather than his actions. These two points are another indication of the court's failure to defend Japanese-Americans' civil liberties in the aftermath of the attack on Pearl Harbor. As Justice Roberts noted in his dissenting opinion, "guilt is personal and not inheritable," a fact that the court failed to recognize in the case of *Korematsu*. This is the reason why Justice Murphy, another dissenting justice in the case, called the court's ruling "legalization of racism."

The U.S. government institutions' actions in the aftermath of *Korematsu* have been signs of these institutions' recognition that Japanese internment camps were unjust. Following the Supreme Court decision in *Korematsu*, the justices also decided another

¹² Black, J. 1944. *Korematsu v. United States*. *Cornell Law School: Supreme Court Collection*. http://www.law.cornell.edu/supct/html/historics/USSC_CR_0323_0214_ZO.html.

¹³ Roberts, J. 1944. *Korematsu v. United States*. *Cornell Law School: Supreme Court Collection*. http://www.law.cornell.edu/supct/html/historics/USSC_CR_0323_0214_ZO.html.

case that resulted in closing down the prison camps.¹⁴ “When the Japanese-Americans left the camps, the government granted them \$25 per person, or \$50 per family and train fare home.” In 1948, congress also took action by partially compensating those who were wrongly relocated for the loss of their businesses or property. Even over thirty years later in 1980, President Carter appointed a special commission to investigate the internment affair. This commission concluded that the decisions to remove those of Japanese ancestry from the West Coast into prison camps occurred because of “race prejudice, war hysteria, and a failure of political leadership.”¹⁵ In 1988, Congress officially apologized for supporting internment camps and granted personal compensation of \$20,000 to each surviving prisoner. Fred Korematsu also received his own personal recognition for his fight for civil liberties. Government researchers discovered that the government had withheld important facts relevant to the case at his trial. “Even in 1984, a federal judge agreed that Korematsu probably did not get a fair trial and set aside his conviction.”¹⁶ Finally, 1998, President Clinton awarded Fred Korematsu with a medal of freedom, while stating that to the distinguished list of civil right pioneers such as Plessy, Brown, Parks, “today we add the name of Fred Korematsu.”¹⁷ What all of these actions taken by the U.S. government in the aftermath of Korematsu signify is the fact that all three branches and institutions of the government that played an active role in creating, affirming and upholding Japanese internment camps recognized that in doing so, they had violated the civil liberties of innocent individuals in order to bring security to the majority.

Over the years, Korematsu found that the Bill of Rights commonly becomes less important to Americans than national security in times of war.¹⁸ Over sixty years after the Supreme Court heard Korematsu, the outcome of that ruling is used constantly to prevent similar rulings from being handed down again. In the aftermath of September 11, the government claimed the authority to detain both citizens and non-citizens, indefinitely without charging them with a crime, just by labeling them as "enemy combatants." In 2004, Korematsu filed an amicus curiae brief in the case of *Rumsfeld v. Padilla*, in which he warned the court that “by allowing the Executive Branch to decide unilaterally who to detain, and for how long, our country will repeat the same mistakes of the past.” His brief could be attributed as one of the reasons that the court defended the right of “enemy combatants” to challenge the government’s claims. Although Fred Korematsu passed away in 2005, this recent court case is a demonstration of the ever-lasting importance of his efforts as well as the necessity of his example today.

As one looks over the past few decades, there are hopeful signs that the U.S. government regrets the internment policy in the immediate aftermath of the attack on Pearl Harbor. However, as long as there are wars, there will be questions about the proper balance between civil liberties and national security. Therefore, the citizens and

¹⁴ *America responds to terrorism: Wartime and the Bill of Rights: The Korematsu Case, The constitutional rights foundation.* <http://www.crf-usa.org/terror/korematsu.htm>.

¹⁵ *America responds to terrorism: Wartime and the Bill of Rights: The Korematsu Case, The constitutional rights foundation.* <http://www.crf-usa.org/terror/korematsu.htm>.

¹⁶ *America responds to terrorism: Wartime and the Bill of Rights: The Korematsu Case, The constitutional rights foundation.* <http://www.crf-usa.org/terror/korematsu.htm>

¹⁷ Lewis, Neil A. 1998. President Names 15 for Nation’s Top Civilian Honor. *The New York Times*, January 9.

<http://select.nytimes.com/search/restricted/article?res=F70913F834540C7A8CDDA80894D0494D81>.

¹⁸ *America responds to terrorism: Wartime and the Bill of Rights: The Korematsu Case, The constitutional rights foundation.* <http://www.crf-usa.org/terror/korematsu.htm>.

government of this country shall constantly remember the example of the young Japanese-American, Fred Korematsu, who refused to accept a judgment that was based on his ancestry and illuminated the fact that although Americans are born into a system that protects their civil liberties, every citizen must perform his or her duties to defend those civil rights so that they could be preserved and passed on for generations to come.

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