

## Northwest History Consortium

# Japanese Internment: Did the Supreme Court Err in Korematsu?

**Henry Shaw**  
**11<sup>th</sup> Grade**

### National Standard

**Era 10: Contemporary United States (1968 to the present) / Standard 1**

*Standard 1: Recent developments in foreign and domestic politics*

### **BACKGROUND**

As you know Fred Korematsu sued the US Federal Government for his forced incarceration during WWII.

“Most internees suffered significant financial and property losses. To compensate these losses, the US Congress, on July 2, 1948 passed the "American Japanese Claims Act," stating that all claims for war losses not presented within 18 months "shall be forever barred." Approximately \$147 million in claims were submitted and 26,568 settlements to family groups totaling more than \$38 million were disbursed.

“Beginning in the 1960s, a younger generation of Japanese Americans who felt energized by the Civil Rights movement began what is known as the "Redress Movement,” an effort to obtain an official apology and reparations [compensation] from the federal government for interning their parents and grandparents during the war. The movement's first success was in 1976, when President Gerald Ford proclaimed that the evacuation was ‘wrong.’”

In 1980, President Carter set up a congressional commission to investigate Japanese internment during World War II. Specifically, the Commission on Wartime Relocation and Internment of Civilians was directed to review the facts and circumstances surrounding Executive Order 9066 and the impact of the order on American citizens and permanent resident aliens. In addition, the Commission was to recommend appropriate remedies for the government’s actions at the time.

The Commission held 20 days of hearings in 1981, listening to testimony from more than 750 witnesses including evacuees, government officials, historians, and other professionals. The Commission also reviewed the records of government action, contemporary writings (writings written during the time of the internment camps), and historical analysis.

“On February 24, 1983, the Commission issued a report entitled Personal Justice Denied, condemning the internment as ‘unjust and motivated by racism rather than real military necessity.’”

As a result of these conclusions President Ronald Reagan signed the Civil Liberties Act of 1988, which provided a \$20,000 apology check for each surviving detainee, totaling \$1.2 billion dollars. In 1992, the Amendment of the Civil Liberties Act of 1988 was passed by President H. W. Bush. It provided an additional \$400 million in benefits. H. W. Bush also issued another formal apology from the U.S. government.

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In 1988, Congress officially apologized for Japanese internment in the Civil Liberties Act. Furthermore, President Bill Clinton sent a formal letter of apology to survivors of Japanese internment in 1993 with reparations.

But these actions were taken at a time when the United States did not face a threat on its territory. Since the events of September 11, 2001, debate over the Korematsu decision has once again ignited as the United States attempts to deal with the threat of terrorism. In 1998, before this terrorism threat fully surfaced, Chief Justice William Rehnquist wrote a book titled “All the Laws But One: Civil Liberties in Wartime” where he discussed the balance that past governments have negotiated between security and civil liberties. In a speech given in 2000, Justice Rehnquist sums up a position supported by many that the courts may need to give greater leeway to other branches of government in time of war.

Forty years after his conviction, Fred Korematsu once again decided to challenge it. Korematsu's conviction was overturned by the United States District Court for the Northern District of California, the same court that had originally convicted him. The case was heard as a coram nobis case. A writ of coram nobis is a remedy used only in special circumstances to correct errors in a criminal conviction.

The courts ruled that newly uncovered evidence revealed the existence of a manifest injustice which, had it been known at the time, would likely have changed the Supreme Court's decision. The decision rested on a series of documents recovered from the National Archives showing that the US Government had withheld important and relevant information from the Supreme Court that demonstrated that the Army had altered evidence to make it appear that Japanese Americans posed a greater threat of spying and disloyalty.

It is important to note that the coram nobis decision overturned Korematsu's conviction based on the faulty evidence, but it did not overturn the constitutionality of the Supreme Court's decision. Although Korematsu has not been followed as precedent, it remains good law to this day.

#### PROBLEM

Did the Supreme Court make a mistake in their decision in *Korematsu v. the United States*?

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#### SCENARIO

This assignment asks you to be a law clerk for a Supreme Court justice. In that role you are to write a recommendation to the Justice on whether or not the Court made the right decision in the case of *Korematsu v. the US Government*.

Given what you have learned about the *Korematsu* case, do you think that the Supreme Court erred in its 1944 decision? In other words, did the Supreme Court make a mistake in upholding the US Government's position?

#### TASK

##### Essay

Include:

- An explanation of the opposing position. Give at least two clear reasons to support the other argument.
- Three supporting reasons.
- Personal liberty versus collective security. Include an explanation of how your position on the issue of where the US Government should draw the line between personal freedoms and national (collective) security is reflected in your essay position. In other words, explain how your position on the *Korematsu* case suggests where you stand on the liberty v. security issue.

##### Organization

##### **1<sup>st</sup> paragraph:**

Give an explanation of the opposing position and at least two clear reasons to support the other argument. End this paragraph with your thesis.

##### **2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> paragraphs:**

Develop one supporting reason/argument for each paragraph. In each paragraph include a short quote that comes from your "Classifying Arguments for Each Side of the Case" worksheet or from the majority/minority decision.

##### **5<sup>th</sup> paragraph:**

The focus of this paragraph is to explain how your position on the *Korematsu* case shapes your position on the broader issue of where the US Government should draw the line between personal freedoms and national (collective) security. By this last paragraph you have spent three paragraphs arguing your position. In this last paragraph use your position on the *Korematsu* case

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to state your position on which is more important for the US Government to value: individual liberties or common security? End your essay by explaining why the issue is especially important today in our post 9-11 world.

#### RESOURCES

You may use any valid sources to address the question; however, everyone should read each of the three following documents to complete the assignment.

- Classifying Arguments for Each Side of the Case
- Key Excerpts from the Dissenting Opinion
- Key Excerpts from the Majority Opinion

#### *Key Excerpts from the Majority Opinion*

*The decision was 6-3, and 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 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.*

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*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-*

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*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, we sustained a conviction obtained for violation of the curfew order. . . . 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 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.*

*...Here, as in the Hirabayashi case, ". . . we cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members of that population, whose number and strength could not be precisely and quickly ascertained. We cannot say that the war-making branches of the Government did not have ground for believing that in a critical hour such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety, which demanded that prompt and adequate measures be taken to guard against it."*

*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. In the instant case, temporary exclusion of the entire group was rested by*

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*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.*

*We uphold the exclusion order as of the time it was made and when the petitioner violated it. 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.*

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*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*

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*considered that the need for 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.*

### ***Korematsu v. United States***

#### ***Key Excerpts from the Dissenting Opinion***

##### ***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.*

*In dealing with matters relating to the prosecution and progress of a war, we must accord great respect and consideration to the judgments of the military authorities who are on the scene and who have full knowledge of the military facts... At the same time, however, it is essential that there be definite limits to military discretion, especially where martial law has not been declared. Individuals must not be left impoverished of their constitutional rights on a plea of military necessity that has neither substance nor support...*

*...Being an obvious racial discrimination, the 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.*

*... 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*

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*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. A military judgment 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.*

*...No one denies, of course, that there were some disloyal persons of Japanese descent on the Pacific Coast who did all in their power to aid their ancestral land. Similar disloyal activities have been engaged in by many persons of German, Italian and even more pioneer stock in our country. But to infer that examples of individual disloyalty prove group disloyalty and justify discriminatory action against the entire group is to deny that under our system of law individual guilt is the sole basis for deprivation of rights. Moreover, this inference, which is at the very heart of the evacuation orders, has been used in support of the abhorrent and despicable treatment of minority groups by the dictatorial tyrannies which this nation is now pledged to destroy. To give constitutional sanction to that inference in this case, however well-intentioned may have been the military command on the Pacific Coast, is to adopt one of the cruelest of the rationales used by our enemies to destroy the dignity of the individual and to encourage and open the door to discriminatory actions against other minority groups in the passions of tomorrow.*

*No adequate reason is given for the failure to treat these Japanese Americans on an individual basis by holding investigations and hearings to separate the loyal from the disloyal, as was done in the case of persons of German and Italian ancestry... 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.*

#### **Classifying Arguments for Each Side of the Case**

*The following is a list of arguments in the Korematsu v. United States court case. Read through each argument and decide whether it supports Korematsu's side against internment (K), the United States' side in favor of internment (US), both sides (BOTH), or neither side (N). Place the corresponding letter in the box to the left of each argument.*



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- *The Fifth Amendment of the Constitution states:*

*No person shall...be deprived of life, liberty, or property, without due process of law....*

*By subjecting Japanese and Japanese Americans to internment as a group, the United States has denied them due process of law. Proper due process would require proof of guilt through individual, established procedures.*

- *The Fourteenth Amendment states*

*No State shall...deny to any person within its jurisdiction the equal protection of the laws.*

*Though the Fourteenth Amendment refers to states, it also applies (through the Fifth Amendment) to the federal government. The government is obliged to provide equal rights; if the rights of a particular racial group are taken away, the reason for doing so must pass the highest scrutiny possible.*

- *We may not be able to confine military actions to the boundaries of the Constitution, but that does not mean that the Constitution should be distorted to approve of all the military deems expedient.*
- *If the Supreme Court issues a ruling supporting racial discrimination in this case, it becomes a principle for supporting racial discrimination in any case where an urgent need is claimed.*
- *Under the Alien Enemy Act of 1798, which remains in effect today, the U.S. may apprehend, intern and otherwise restrict the freedom of “alien enemies” upon declaration of war or actual, attempted or threatened invasion by a foreign nation.*

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### ASSESSMENT

### Japanese Internment Scoring Guide

<b>Paragraph 1</b>	Gives clear explanation of the opposing position. Has at least two clear and logical reasons to support the other argument. Well-written thesis clearly indicates your position.  <b>8</b>	Gives clear explanation of the opposing position. Has at least two mostly clear and logical reasons to support the other argument. Thesis clearly indicates your position.  <b>6</b>	Explanation of opposing position indicates lack of understanding or is unclear. Fewer than two quality supporting arguments. Thesis is present, but lame.  <b>4</b>	Explanation of opposing position indicates a profound lack of understanding or is unclear. Fewer than two quality supporting arguments. Missing thesis.  <b>2</b>
<b>Paragraph 2</b>	Logical and well-reasoned supporting argument. Quote directly and convincingly supports the argument.  <b>8</b>	Logical and well-reasoned supporting argument. Quote reasonably supports the argument.  <b>6</b>	Primitive or unclear supporting argument. Quote is missing or is unrelated to argument.  <b>4</b>	Illogical, unreasonable, or missing supporting argument. Quote is missing or unrelated to argument.  <b>2</b>
<b>Paragraph 3</b>	Logical and well-reasoned supporting argument. Quote directly and convincingly supports the argument.  <b>8</b>	Logical and well-reasoned supporting argument. Quote reasonably supports the argument.  <b>6</b>	Primitive or unclear supporting argument. Quote is missing or is unrelated to argument.  <b>4</b>	Illogical, unreasonable, or missing supporting argument. Quote is missing or unrelated to argument.  <b>2</b>
<b>Paragraph 4</b>	Logical and well-reasoned supporting argument. Quote directly and convincingly supports the argument.  <b>8</b>	Logical and well-reasoned supporting argument. Quote reasonably supports the argument.  <b>6</b>	Primitive or unclear supporting argument. Quote is missing or is unrelated to argument.  <b>4</b>	Illogical, unreasonable, or missing supporting argument. Quote is missing or unrelated to argument.  <b>2</b>

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<b>Paragraph 5</b>	Demonstrates deep understanding of the issues related to liberty/security particularly as they apply to Korematsu and modern America.	Demonstrates some understanding of the issues related to liberty/security particularly as they apply to Korematsu and modern America. Limited connection to Korematsu OR modern America.	Demonstrates limited understanding of the issues related to liberty/security particularly as they apply to Korematsu and modern America. Failed to make connections to Korematsu OR modern America.	Demonstrates very limited or no understanding of the issues related to liberty/security particularly as they apply to Korematsu or modern America. Failed to make connections to Korematsu and modern America.
	<b>8</b>	<b>6</b>	<b>4</b>	<b>2</b>
<b>Mechanics</b>	No errors in spelling, grammar, or word choice.	Few errors in spelling, grammar, or word choice.	Numerous errors in spelling, grammar, or word choice.	Errors in spelling, grammar, or word choice were so significant that reading was difficult.
	<b>4</b>	<b>3</b>	<b>2</b>	<b>1</b>
<b>TOTAL</b>				

**50 point total**

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### REFERENCES/CITATIONS

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