

The Internment of Japanese-Americans during World War II:

A Constitutional Gray Area or Institutionalized Racism?

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Throughout history, the relationship between the United States' government and its people has often been challenged and redefined during periods of intense struggle or conflict. One such quintessential moment of emergency decision-making occurred in the 1940s after the Japanese attack on Pearl Harbor prompted the United States' entry into World War II. The challenge at hand concerned the issue of Japanese-American internment, a series of controversial actions initiated by the government to round up Japanese-Americans on the West Coast and remove them from their homes in the name of national security.¹

Following Pearl Harbor, a period of relocation and internment began after the signing of President Franklin Roosevelt's Executive Order 9066 on February 19, 1942, which created an exclusion zone spanning several West Coast states.² This was done with the support of the legislative branch, which ratified the order soon after and assigned additional punishments for failing to comply.³ The military was also heavily involved in physically instituting the exclusion zones and enforcing the curfews.⁴

To put it simply, these actions were motivated by the fear of Japanese invasion, coupled with the possibility that some individuals among the Japanese-American population could either be spies loyal to Japan and acting on its behalf, or at the very least, susceptible to its propaganda. In terms of constitutional justification, the exclusion zones were said to be designated for emergency national security reasons under threat of invasion, an argument derived from the Suspension Clause, Article I, Section IX of the Constitution.⁵ Furthermore, since it was deemed impossible to differentiate who among the Japanese-Americans posed a threat and who did not, it

¹ Chris Edelson, *Emergency Presidential Power: From the Drafting of the Constitution to the War on Terror* (Madison: The University of Wisconsin Press, 2013), 84.

² Ibid.

³ Ibid, 85.

⁴ Ibid.

⁵ U.S. Const. art. I, § 9, cl. 2.

was argued that it was reasonable to infringe upon people's civil liberties in order to prevent invasion and protect the country as a whole.

While Congress, the President, and the military were directly responsible for the decision and its execution, the judicial branch was also indirectly involved and complicit in the matter because of its flawed rulings on the constitutionality of these actions in *Hirabayashi v. United States* (1943) and *Korematsu v. United States* (1944).

Both cases concerned Japanese-Americans who had been arrested for refusing to follow the internment-era policies and then appealed to the Supreme Court. In *Hirabayashi*, the main issue was whether Congress and the President could set a curfew on only certain populations, mainly the Japanese-Americans. The opinion for the court decided that they could, and took a very broad view on the definition of war powers, expanding it to include internal affairs that were not explicitly part of war but which may contribute to an outcome.⁶ The decision then summarily rejected Gordon Hirabayashi's argument that the curfew deprived him of equal protection, on the basis of wartime necessity.⁷ To support this, it presents as evidence some cultural aspects of Japanese-American society that largely consisted of racial stereotypes and false ideas that were more a product of social isolation and stigma than a characteristic of the people themselves.⁸ Clearly, the decision was influenced by widespread racial biases of the time (which were especially prominent among the press, government officials, and even members of Congress⁹ who were particularly outspoken about the matter), as well as overwhelming public pressure to appear patriotic and avoid upsetting the status quo during wartime. The decision also

⁶ Chris Edelson, *Emergency Presidential Power*, 85-86.

⁷ *Ibid*, 87.

⁸ *Ibid*, 86.

⁹ *Ibid*, 84.

outright acknowledges that the curfew infringes upon civil liberties, and concurrent opinions point out that it is very close to violating the 5th Amendment.¹⁰

For context, in previous cases concerning issues of detention like *Ex Parte Merryman* (1861) and *Ex Parte Milligan* (1866), government prosecutors had argued that constitutional protections such as the writ of habeas corpus could be set aside in times of war or rebellion, consistent with the Suspension Clause.¹¹ However, the clause stipulates that this should only happen “when in Cases of Rebellion or Invasion the public Safety may require it.”¹² As far as habeas corpus is concerned, the issue of the constitutionality of the Japanese-American internments seems to rest on the question of whether or not it was truly an absolute necessity for the protection of national security. This therefore introduces nuance, as interpretations may differ based on perspective.

Indeed, in retrospect, it is easy for modern scholars to condemn the internment policies as an obvious violation of civil liberties. This is especially true given the outcome of the war and the fact that a more complete picture is now known of the terrible conditions in the camps. However, the country allowed it to happen because the context of the time period was very different in 1942, and the majority decision in *Hirabayashi* by Chief Justice Stone admits that this was a large part of judicial considerations in the case, arguing that lawmakers “had ample ground for concluding that they must face the danger of invasion, take measures against it, and, in making the choice of measures, consider our internal situation.”¹³ At the time, the war was going badly for the United States, and the surprise attack on Pearl Harbor, still fresh in people’s minds, presented a national tragedy that President Roosevelt deemed, “a date which will live in

¹⁰ Chris Edelson, *Emergency Presidential Power*, 87.

¹¹ *Ibid*, 34.

¹² U.S. Const. art. I, § 9, cl. 2.

¹³ *Hirabayashi v. United States*, 320 U.S. 81 (1943)

infamy.”¹⁴ Indeed, time has shown that no event in history leading up to the 21st century has scarred the national memory to the extent that Pearl Harbor did, and it is only natural for tensions to rise in such times of uncertainty. Considering that German saboteurs had previously been caught trying to infiltrate New York and Florida,¹⁵ it would not be a stretch of the imagination to fear that Japan, another Axis power, would try similar tactics. With all of that in mind, it is somewhat easier to understand how the country could rationalize such a decision.

Yet at the same time, many of those fears only became heightened to begin with due to forced social isolation and a tradition of stereotypes and racism against people of Japanese descent.¹⁶ It is one thing to fear a hostile nation that had just attacked one’s country; it is quite another to automatically apply these same suspicions to over 100,000 people, including American citizens born in the U.S.,¹⁷ simply by virtue of their ethnic background.

There were also severe issues with the methods used to carry out the exclusion order. It did not involve simply a suspension of the writ of habeas corpus for a select few individuals, but the placement of the masses into what were effectively concentration camps. Despite the dire situation, there is no excuse for the way it was carried out indiscriminately against all people of Japanese descent, both foreign nationals and American citizens, without any proof or method to determine the level of threat posed by individuals.¹⁸ As such, entire families and thousands of children were swept up in a net that was cast too widely to be even the least bit effective, thereby invalidating its purpose of protecting national security.

¹⁴ Franklin D. Roosevelt, “Infamy Speech” (Address to Congress, Washington D.C., 1941).

¹⁵ Chris Edelson, *Emergency Presidential Power*, 66.

¹⁶ *Ibid*, 83.

¹⁷ *Ibid*.

¹⁸ *Ibid*, 82.

All in all, *Hirabayashi* did not make the correct decision, as it was based on flawed logic and public pressure to rule a certain way, and it set a dangerous precedent in allowing the government to decide that it can ignore its own Constitution when convenient to do so.

In *Korematsu*, the court again had to rule on the issue of discriminatory internment policies, this time regarding a Japanese-American named Fred Korematsu, who had been arrested after refusing to leave the exclusion zone. He argued that since the war had shifted and the urgency had receded, there was no continued threat of invasion, and so the national security justification for the widespread internment of Japanese-Americans was no longer valid.¹⁹ In response, the court only doubled down on its original argument, and it pointed to misleading questionnaires asked of the interned Japanese-Americans concluding that “Approximately five thousand American citizens of Japanese ancestry refused to swear unqualified allegiance to the United States and to renounce allegiance to the Japanese Empire,”²⁰ as justification to confirm the government’s suspicions, when in reality, many of them just did not understand how to answer such questions.²¹

However, while the court ultimately decided against Korematsu, the case was decided 6-3, as opposed to the unanimous decision in *Hirabayashi*, showing that perhaps some progress had been made among the justices.²² Indeed, the dissenters such as Justice Murphy even recognized that the exclusion order exceeded constitutional power and entered into the territory of institutionalized racism, pointing out stereotypes present in the original decision and arguing

¹⁹ Chris Edelson, *Emergency Presidential Power*, 90.

²⁰ *Korematsu v. United States*, 323 U.S. 214, 1944.

²¹ Chris Edelson, *Emergency Presidential Power*, 90.

²² *Ibid.*

for limits on military discretion and the need to redefine the concept of immediate public danger.²³

Overall, the internment of Japanese-Americans during WWII presents a clear situation where all the branches of government (including the courts, as shown in *Hirabayashi* and *Korematsu*) may be united in support of an action involving emergency power, yet that action is not necessarily vindicated simply by virtue of the existence of a consensus on the matter. A mistaken consensus based on racism, societal pressure, and faulty judgement is still mistaken. If the situation had been handled differently, it could have possibly been justified as a proper response to an emergency. Had the government found any actual proof of wrongdoing, or isolated a select few individuals who had legitimately suspicious connections, an argument could be made for the necessity of the temporary suspension of habeas corpus in those specific cases. However, since the real version of events took place on a much larger scale, for a period of several years, with no evidence to support the claims of suspicion, and since the system largely existed solely as a way to discriminate against Japanese-Americans simply based on ethnicity (not even nationality), the mass internment cannot be justified as an appropriate response to the war.

²³ Chris Edelson, *Emergency Presidential Power*, 93-95.

Bibliography

Edelson, Chris. *Emergency Presidential Power: From the Drafting of the Constitution to the*

War on Terror. Madison: The University of Wisconsin Press, 2013.

Hirabayashi v. United States, 320 U.S. 81, 1943.

Korematsu v. United States, 323 U.S. 214, 1944.

Roosevelt, Franklin D. "Infamy Speech." Address to Congress, Washington D.C., 1941.

U.S. Const. art. I, § 9, cl. 2.