

Korematsu and Hamdi

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Nature of Law

Outline

- 1 Korematsu
 - Decision
 - Dissent
 - Interpretations

- 2 Hamdi
 - Background
 - Decision

Facts

- Fred Korematsu was born in Oakland, CA and lived in San Leandro.
- On March 27, 1942 an order prohibited any people of Japanese descent from leaving the area. This also established curfews.
 - ✦ The constitutionality of the curfews was established in *Hirabayashi* decided earlier.
- On May 3, 1942 an order required all people of Japanese ancestry leave the area and report to “Assembly Centers” to be relocated to internment camps.
- Korematsu remained, was arrested, and convicted of a crime.
- Korematsu is challenging the constitutionality of the exclusion order under which he was convicted.

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Strict scrutiny

- Of course, the forced removal of a group of citizens violates their constitutional rights.
- The question is if it serves a compelling state interest, and if it does so in the least restrictive manner.
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Why *all* Japanese?

Justice Black

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 who 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 curfew order as applying to the whole group... temporary exclusion of the entire group was rested by the military on the same ground.

“Could not reject”

- The court is incredibly vague about the way it determined whether there was a need.
- “...we cannot reject as unfounded the judgment of military authorities...”
 - We looked at the evidence and it appears to support the military.
 - The military has the say-so about these matters and we defer to them.
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Justice Murphy

- Who gets to decide what's counts as a military necessity?
 - The majority says, the military.
 - Murphy says, the military in most cases, but sometimes the courts.
- When should the courts?
 - When the military system doesn't and will exclude them.
 - When the military system is not working.
 - When the government is acting unconstitutionally.
- The court should decide this is unnecessary.

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 - In the case of the habeas corpus claim.
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I do not suggest that the court should have attempted to interfere with the Army in carrying out its task. But I do not think they may be asked to execute a military experiment that has no place in law under the Constitutions. I would reverse the judgment and discharge the prisoner.

- The military has broad authority to do as it wants.
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The Interpretations

- All agree this law should be subject to strict scrutiny, and all agree that winning a war is a compelling state interest.
- The majority says that the military gets to decide what counts as serving this compelling state interest in all cases.
- Murphy says that military gets to decide what counts as serving this interest except when the military is basing their decision on facts outside their expertise.
- Jackson says that the military can do whatever it wants, on its own, but it cannot rely on the courts to enforce its decisions.
- The underlying question is how much judicial oversight of military decisions should be allowed during wartime. Any interpretation must draw the line somewhere.

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More recent outcomes

- *Ex parte Endo* ruled that interment camps were unconstitutional when there is no question as to the loyalty of the detainee.
- It was later discovered that the government hid evidence that Japanese Americans posed no significant threat.
- As a result, Korematsu's conviction was vacated in 1983.
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A few other cases

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- *Youngstown Sheet & Tube Co. v. Sawyer* - Limited the authority of the president to seize private property during “wartime”.

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Facts

- Yasar Hamdi, an American citizen, traveled to Afghanistan sometime before November 2001.
- He was captured by Northern Alliance fighting the Taliban.
- He was turned over to American troops and moved to Guantanamo.
- Upon finding out he was a citizen, he was moved to U.S. territory.
- His father filed for Habeas Corpus, arguing his son was entitled to a trial.
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 - Court says, yes.
- Who gets to decide who is an enemy combatants?
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Ways of deciding

- “Some evidence” standard.
 - Rejected because this completely eviscerates the due process rights of citizens.
 - Quoting Milligan, O’Connor suggests this can lead to a dangerous situation.
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- Similarities to civil trial:

- The accused must receive notice of the evidence against her.
- She must have the opportunity to argue her case.
- She must have access to counsel.

- Differences:

- No right to confront witnesses.
- Presumption shifts toward the government.

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