

Ethnic Status and American Image: A Re-examination into the Case of Korematsu versus the United States

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Abstract. Since the late 19th century, Japanese immigrants have been ostracized and legally restricted by American society, and have not been trusted by the U.S. government which was on guard against Japan. After the attack on Pearl Harbor in 1941, the Japanese residents on the west coast of the United States were forcibly relocated to inland camps. Fred Korematsu, a Japanese-American, was sued for his refusal to comply with the orders. But he insisted on defending himself and lost his case in a 6-3 decision by the Supreme Court in 1944. It not only involved wartime military necessity and minority civil rights, but also concerned American international image and citizenship identity linked to liberal values.

Keywords: Korematsu v. U.S, America, Japanese Immigrants, National Identity, World War II.

1. Introduction

After Pearl Harbor, about 120,000 Japanese in four western states were forcibly relocated to inland camps, for President Franklin Roosevelt issued Executive Order No. 9066, authorizing the military to demarcate military zones and control its personnel. Fred Korematsu, then a 23-year-old Japanese-American born and resident in California, was arrested for refusing to obey orders and then sent to an internment camp among these migrants. During that time, he pleaded not guilty to charges in federal court in San Francisco with the help of American civil rights organizations, but was convicted. In 1944, the United States Supreme Court accepted the case and upheld the original judgment, which caused great controversy over the constitutionality of wartime relocation and control of Japanese on the West Coast.

The case, *Korematsu v. United States*, provides a precedent for the conflict between national security and civil rights, which is often mentioned in the literature of American law. Throughout previous studies, historians have often placed the case in the context of forced migration and centralized control of Japanese Americans in the western United States during World War II. For example, in 1945, Eugene Rostow, a law professor, and Nanette Deitz, a Justice Department lawyer, published articles respectively criticizing the Supreme Court's decision on the basis of their analysis of the wartime American policy towards Japanese Americans. The discrimination and injustice suffered by Japanese Americans during World War II has been fully discussed in a series of works written by Roger Daniels. Peter Irons, a lawyer who helped overturn Korematsu's conviction in 1983, is the author of *Justice in War*, which disproved the case of Japanese-Americans during World War II by archives. In addition, ethnic history is a common research perspective in academic circles, and is often described in books as a stage of Japanese immigration in the United States.

In a word, most scholars argue that it was unreasonable for the United States policy towards Japanese Americans during World War II and the trial result of Korematsu case from the aspects of destroying people's freedom and reflecting racial discrimination, while a few scholars conclude that it is necessary to control Japanese Americans by analyzing military intelligence. On this basis, this paper intends to analyze the situation of Japan immigrants in the United States when Korematsu was born and the national image of the United States during the wartime, in order to have a more comprehensive understanding of the historical background of Korematsu case.

2. A Brief Account of Japanese Immigrants in the United States before the War

The first Japanese immigrants arrived in the United States in 1869, and by the end of the 19th century, there was a larger influx of Japanese into the western United States, mainly in Hawaii (which became an overseas territory in 1898) and California. There was an increasing demand for anti Japanese policies in the America. According to Dai Chaowu's research, the mode of exclusion can be divided into the agitation of public opinion, the accusation of labor organizations that immigrants take away American jobs, and the formulation and implementation of relevant policies by political circles. [1] In 1905, during the Russo-Japanese War, the argument of maintaining the purity of white society and restricting Japanese immigration lasted for nearly a year in the *San Francisco Chronicle*, with titles such as *The Japanese Invasion*, *The Problem of the Hour*, *The Yellow Peril-How Japanese Crowd out the White Race*. The California legislature quickly responded to the media outrage, passing unanimously in March 1905 and sending Congress a detailed memorandum on the exclusion of Japan. [2] Legally, anti-Japanese sentiment is mainly reflected in the following three forms:

First, restrict Japanese immigration. 6712 of the more than 80,000 immigrants from Japan from 1893 to 1910 were denied entry or deported, with more than a third in 1907 and 1908. [3] Related to this is an international incident triggered by local discrimination. In October 1906, the San Francisco Board of Education instructed school principals to send "all Chinese, Japanese and Korean children to the Oriental School". It was an intolerable move for the Japanese government, concerned about the treatment of its own immigrants and anxious to preserve national dignity, so they quickly protested to Washington. Under the mediation of President Theodore Roosevelt, the educational segregation against Japanese in San Francisco was abolished, and Roosevelt promised that the federal government would restrict Japanese immigration. [4].

From 1907 to 1908, six diplomatic notes were exchanged between the United States and Japan, culminating in the Gentlemen's Agreement, in which Japan stopped issuing passports to laborers traveling to America, but allowed "parents, wives and children of laborers already resident there" to immigrate there. [2] Since then, a large number of Japanese women have come to the United States as "Picture Brides", and the number of immigrants has not declined as expected. In 1924, the Congress passed the Immigration Act of 1924. It was calculated that Japan could only obtain a minimum annual quota of 100 immigrants. The act also prohibited "aliens not entitled to citizenship" from entering the United States as immigrants, and the naturalization law and judicial practice at the time banned Asian from naturalization, so Japan were also restricted. [5] This made it difficult for the number of Issei (the first generation of immigrants from Japan) to grow, while Nisei (the first generation of Japanese born in the United States) developed relatively.

Second, it prevents Japanese immigrants from becoming the United States citizens. The Naturalization Act of 1790 limited naturalization to "any Alien being a free white person, who shall have resided within the limits and under the jurisdiction of the United States for the term of two years". [6] In 1868, the Fourteenth Amendment to the United States Constitution was enacted, stipulating that all persons born in the United States and subject to its jurisdiction are U.S. citizens. In 1870, Congress amended the Naturalization Act to allow naturalization for "persons of African nativity or persons of African descent", [7] but refused to extend naturalization to Asian immigrants, who had to fight for citizenship through the courts. In 1898, the Supreme Court affirmed the "birthright citizenship" of Wong Kim Ark, an American-born Chinese, under the Fourteenth Amendment. [8] In 1922, Takao Ozawa, who had been educated in the United States and had lived there for decades, argued that the Japanese should be included as "free white person" because of their lighter skin color, but the Supreme Court rejected this argument and limited the "white person" used in the naturalization law to Caucasian, [9] blocking the naturalization for Asian immigrants who were not born in the United States.

Third, state and local laws often restrict Japanese in areas such as education, work, marriage, and property ownership based on lack of citizenship. In 1913, the California legislature voted overwhelmingly to pass the Alien Land Law, which prohibited foreigners who were not entitled to United States citizenship from owning land. The Japanese took advantage of the loophole to buy land

in the name of their American-born children or agents, or to set up readymade companies, which led to an increase in the area of land they operated. In response, California passed stricter laws in 1920, stipulating that Japanese could not act as guardians of minor children who owned or leased land. [1].

In this context, Fred Toyosaburo Korematsu was born on January 30, 1919, in Oakland, California. His parents were both Issei who ran a nursery business. As a Nisei, Korematsu was born as a United States citizen, acquired an American name in school, and recognized the American spirit of freedom and equality. He went to school like other boys, and most of his friends were white; but when he left his close circle of friends and went outside of the school, he became aware of society's hostility to Japanese Americans, and people seemed to only see the Asian features of his face. In the early 1940s, as war loomed, eager to serve the United States, he registered for military service and volunteered for a Navy radio job, both failed. He then trained as a welder and worked at a shipyard and then at the Golden Gate Steel Works, but was fired without cause after a while. [10]

Mr. Korematsu's experience is first and foremost the result of years of distrust of Japanese in American society. Japanese exclusion organizations have attacked the cultural model of Japanese Americans, claiming that Japanese would not be assimilated as "Americans", citing evidence of dual citizenship, [11] Shinto, Japanese schools and the return of many Japanese children to Japan for education. [12] Second, the United States is wary of the expansion of Japan militarism in the Asia-Pacific region, and relevant agencies have paid close attention to the potential dangers and want to alert the public. In September 1941, the United States Department of Defense sent a letter to Secretary of the Navy Frank Knox, asking him to help expose anti-American Japanese activities in Hawaii and the United States mainland, otherwise "ordinary Americans will not be able to evaluate the facts and factors." The letter mentioned that Japan had sent an official to the western United States to organize the Japanese Military Serviceman's League, a group of Japanese nationals and dual citizens who had applied for annual extension of their military service to retain their Japanese nationality and had sworn to die for Japan. [13] In October, a senator accused the Japanese consulate of helping organize this "powerful subversive organization", but the consulate denied all knowledge of its existence. In the eyes of United States government agencies, Japan attempted to conceal this to deceive U.S. officials and the public into believing that all Japanese-Americans were loyal to the United States. [14] These racial prejudices and political and military vigilance would be concentrated after Pearl Harbor.

3. The Situation of Japanese-Americans in the Wartime

On the morning of December 7, 1941, Korematsu and his girlfriend of Italian descent Ida Boitano were listening to a car radio on a hillside in Oakland, and he later recalled: "All of a sudden, the music stopped and they announced that Pearl Harbor was attacked by Japanese airplanes... At first, I thought it was a dream. People never did recognize us as Americans even though how much we tried to be American. So a thing like this, it made it twice as hard to prove you're more American than Japanese." [10] The next day, the United States declared war on Japan.

There was no warning before Japan's attack on Pearl Harbor and Japanese envoys were negotiating in Washington at the time, which sparked a flurry of accusations of treachery. The day after Pearl Harbor, the *Los Angeles Times* declared California as "a zone of danger", noting: "We have thousands of Japanese here... Some, perhaps many... are good Americans. What the rest may be we do not know, nor can we take a chance in the light of yesterday's demonstration that treachery and double-dealing are major Japanese weapons." [15] A series of Japan military victories at the start of the Pacific War fueled anti-Japanese sentiment in the United States, which attracted political and military leaders' participation. After inspecting the damage to Pearl Harbor, Frank Knox, Secretary of the Navy, claimed that it was caused by "the most effective Fifth Column work of the entire war" except Norway, that is, Japan spies. In California, the governor, the state attorney general, and various local officials expelled Japanese from public office, revoked their lawyers' and doctors' licenses, and preached that the best way for the Japanese to prove their loyalty is to voluntarily go to internment camps. In

Washington, congressional representatives pressed the War Department, the Justice Department, and the President to take drastic measures. [16]

On February 19, 1942, President Roosevelt signed Executive Order 9066, authorizing the Secretary of the Army and his designated military commanders to designate military zones and to restrict its personnel from entering into, staying in, or exiting from such zones when deemed necessary; they may also take appropriate measures to enforce compliance by persons in military zones. [17] Accordingly, Lieutenant General John DeWitt, commander of the Western Defence Command, issued several proclamations delineating Military Area No. 1 and No. 2 (including Washington, Oregon, western California and southern Arizona), clearly indicating the exclusion of Japanese, German and Italian enemy nationals and Japanese Americans in these zones, and issued curfews and “freezing orders” prohibiting Japanese in Military Area No. 1 from changing their residences without military instruction or approval. This was followed by a series of Civilian Exclusion Orders, in which Japanese with evacuation notices posted were required to send a representative from each family to register with the Civil Control Stations, be assigned a family number, and be directed to move to temporary Assembly Centers. [12].

Korematsu’s family was among those evacuated, as they were in San Leandro, Calif., which is located in Military Area No. 1. Like most Japanese-American families, they complied and rented out their nursery, but Korematsu had another plan: “I felt that I was an American citizen and I had as much rights as anyone else. I don’t even have ties with Japan nor have I ever been there. To be accused like this, I just thought it wasn’t fair. It was wrong.” Later, in order to stay inconspicuously in Oakland with his girlfriend Ida and raise money to leave, he went to San Francisco for plastic surgery and changed his name to Clyde Sarah on his draft card, thus finding a job in a trailer company. [10].

On May 3, 1942, DeWitt issued Civilian Exclusion Order No. 34, requiring all Japanese residents of southern Alameda County, California, including Korematsu, to report to the control station and banning Japanese from the area, except at assembly centers, from noon on May 9, 1942. [18] On May 8, Korematsu’s family went to register and was taken away as family 21538, but Korematsu chose to stay in Oakland against orders. On the 30th, he was arrested in San Leandro, and the report drew the attention of Ernest Besiger, a lawyer for the American Civil Liberties Union. Korematsu received a visit from Besiger in prison, offering to be a test case for challenging the exclusion orders. On June 12, the District Attorney for the Northern District of California charged Korematsu with violating the law by staying in Military Area No. 1 covered by Order No. 34. On the 18th, Korematsu was taken to the Assembly Center at Tanforan, where he was reunited with his family. As the internees were moved from these centers to more remote and permanent Relocation Centers, they were transported to camp at Topaz, Utah, on September 28th. After more than a year of short-term work, in January 1944, Korematsu’s application for indefinite leave was approved, but he was still prohibited from returning to the West Coast and placed under supervision. [10]

Korematsu’s struggle reflects his identification with United States citizenship, which is also a unique part of American nation-building—uniting different ethnic groups in the country with common ideas and the mission of “freedom defenders” and promoting freedom around the world. In World War II, the United States held high the banner of Four Freedoms and attacked the fascist autocracy. However, from the collective detention of Japanese Americans during the war, it can be seen that the attitude of the United States towards ethnic minorities is contradictory, which is often targeted by the enemy.

Japan, for example, took advantage of racial conflicts in the United States, declaring in Asia, according to Pearl Buck, that it was impossible for the colored people to expect justice from the white people who ruled the United States. Every lynching by the United States against its colored people and every racial riot would arouse Japan’s interest. [19] There are ample propaganda in the indefinite detention of Japanese in the United States found by Japanese broadcasters to prove that American society could not treat people of color fairly. [20] Many wartimes Japanese speeches and articles elaborated on the “barbarism” of Americans, such as a magazine that described the mistreatment of Japanese prisoners and other atrocities by American troops and explained the reason as racism, saying

that white Americans only treated colored people as animals or commodities. Thus, it argued, American liberalism and individualism were nothing more than a philosophy justifying the law of the jungle, materially advanced but lacking in moral piety, and that “the blood of the Divine Country’s three thousand years cannot allow these beasts to run rampant.” [21].

At the same time, the United States has to face the aggressive attitude and accusation of the Japanese government. In August 1942, Japan complained to the United States through the Spanish Embassy about the expulsion of Japanese nationals from military zones, claiming that the confiscation of their property and their forced labor in the interior wilderness with meager wages were “obviously contrary to the humanitarian principles applied by civilized Governments in the treatment of civilian nationals of belligerent countries.” [22] In October, the Japanese government lodged its “most emphatic protest” after receiving reports of Japanese subjects repatriated from the U.S., expressing its astonishment “at the most inhuman cruelty and insult inflicted upon them by the United States Authorities in the course of their arrest, examination, internment and transport.” [22].

In addition, the United States tends to shape its national image in contrast to the “other” and has a sense of linking it to racial issues. In the late 19th century, Americans regarded “race” as a biological differentiation in nature that could be measured scientifically. By the 1930s, the extreme racialization of Nazi Germany, especially the persecution of Jews, had made a new term, “racism”, popular in the United States and Americans increasingly recognized that racial hierarchy was controversial rather than acquiescing to natural facts. In the 1940s, Frank Murphy became the first justice to use the term “racism” in Supreme Court opinions. In the *Korematsu* case, the word appears twice in his pen. In addition, it appeared in four other cases that he tried from 1944 to 1948. [23] In part, this stemmed from Murphy’s wariness of Nazi-style racial violence and his desire to move the United States away from that image. In his opinion in *Hirabayashi* case, he wrote that the United States’ practice of placing Japanese under special bans and depriving them of their liberty on the basis of race “bears a melancholy resemblance to the treatment accorded to members of the Jewish race in Germany and in other parts of Europe.” [24].

Also out of concern for United States’ international standing and reputation after the war, Judge Denman of the Ninth Circuit Court of Appeals reminded in *Korematsu* that: “Americans are to face a peace table at which our prestige and power will rest upon the belief of a world questioning Caucasian sincerity, a world which includes a billion Asiatics. There no one will shut his eyes to the Postons, Manzanars and Tanforans. One of the questions will be what sort of judicial consideration do minority groups of American citizens receive from the courts of a claimed democracy.” [25] This is reflected in *Korematsu*’s legal defense.

4. The Defense of Korematsu and the Final Result of the Korematsu Case

On June 20, 1942, three weeks after *Korematsu*’s arrest, his lawyer filed a defense in federal court in San Francisco, arguing that the government violated the Fifth Amendment by depriving *Korematsu* of his freedom without a hearing or other due process and violated the right to equal protection of the law by excluding of Japanese-Americans. [26] *Korematsu* pleaded not guilty to the charges and testified that he was a loyal American citizen with no ties to Japan, but the judge found him guilty and sentenced him to five years of probation. On October 11, the lawyer filed a notice of appeal on behalf of *Korematsu*, and the case fell into procedural issues. The prosecution dismissed the appeal on the grounds that it had not reached a final verdict. On February 19, 1943, *Korematsu* was heard by the Ninth Circuit Court of Appeals, along with Minoru Yasui and Gordon Hirabayashi, two other Japanese Americans, and the court asked the Supreme Court whether *Korematsu*’s probation sentence could be appealed, as well as the issues in the other two cases. [27] On June 1, the Supreme Court granted the appeal. On December 2, the Ninth Circuit upheld *Korematsu*’s conviction, which relied heavily on the recent Supreme Court decision in the *Hirabayashi* case. [25] *Korematsu* filed a Petition for a Writ of *Certiorari* with the Supreme Court, which agreed to hear *Korematsu*’s case in March 1944, and the nine justices, after hearing arguments, upheld the decision 6 - 3 on December 18.

Justice Hugo Black wrote the majority opinion, in which Korematsu's loyalty to the United States was not in question, noting that "all legal restrictions which curtail the civil rights of a single racial group are immediately suspect" and subject to "the most rigid scrutiny" of the courts, but that "pressing public necessity may sometimes justify the existence of such restrictions". The court upheld the validity of the exclusion order, which applied to the entire community of Japanese Americans, on the grounds that the court cannot deny the military's conclusion that "there were disloyal members of that population" and that "it was impossible to bring about an immediate segregation of the disloyal from the loyal" and that Korematsu's exclusion was motivated by espionage and sabotage rather than hostility to him or his race. Justice Felix Frankfurter, concurring with the majority, further stated that it was not unconstitutional for Congress and the President to have the right to take such action in time of war. [28].

The three justices who voted against the original decision in the case were not shy in their dissent. Justice Owen Roberts chronicled the events, noting that Korematsu was prohibited from leaving the area where he lived by an order prior to the Civilian Exclusion Order No. 34 of 3 May 1942, which in turn prohibited him from being present in the area beyond a fixed date, except in the assembly centre, and that "the only way he could avoid punishment was to go to an Assembly Center and submit himself to military imprisonment". Thus, Roberts wrote, the exclusion of Japanese Americans was part of a mandatory internment program, not a government stopgap in emergency like the firebreaks and plague belts; Korematsu was convicted solely on the basis of his ancestry without evidence or investigation as to his loyalty, violating his constitutional rights. [28].

Justice Frank Murphy stressed that military discretion must be clearly limited and subject to judicial process; the judicial premise for the government to legally deprive individuals of their constitutional rights on the grounds of military necessity was that it was reasonably related to "immediate, imminent, and impending" public danger, and DeWitt's final report showed that the exclusion of Japanese-Americans was more the result of racial prejudice than military judgment, which "goes over the very brink of constitutional power, and falls into the ugly abyss of racism". He finally concluded from the perspective of United States national identity and democratic experiment that racial discrimination was utterly revolting among free people believing in the principles of the Constitution of the United States, and that "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." [28].

Justice Robert Jackson referred to the fact that the court "has no choice but to accept General DeWitt's own unsworn, self-serving statement" in the absence of real evidence, and that this judicial construction of the constitutionality of military orders is more anti-liberal and confirms the principle of racial discrimination than the order itself, which is "like a loaded weapon, ready for the hand of any authority that can bring forward a plausible claim of an urgent need." [28]

It can be seen that the differences between the justices in Korematsu have been related to the power structure and constitutional system of the United States, as well as its commitment to equality and freedom. "Race" was an issue for the justices at the time of the decision and a widely criticized challenge afterwards. In 1940, the total number of Japanese living in California, Oregon, and Washington on the Pacific coast was 112,353, accounting for 88.5% of the total Japanese in the United States, but only 1.2% of the total population in the region, and about two-thirds of them were American citizens. [29] By contrast, the Hawaiian Islands, which were directly attacked by Japan, had about 158,000 Japanese, or 37% of the island's population, but only a few suspected individuals were tortured, about 1,100 Japanese were transferred to relocation centers on the mainland, and 690,000 Italians and 314,000 Germans in United States mainland were not subject to mass detention or severe restrictions. The explanation for this is that the Japanese are the main labor force in Hawaii, and the local anti-Japanese sentiment is not very strong. German and Italian expatriates have spread across the United States and are connected to powerful constituencies. These realities made them

difficult to be controlled on a large scale, and the number of Japanese in the United States is not large, and the fact that most of the Nisei had just reached voting age in 1940 and had little political voice, provided the only possible expression of the hostility and panic of wartime American society. [20].

It was conceivable that Korematsu was disappointed with the Supreme Court's decision, as he later recalled, "When I found out that I lost my decision, I thought I lost my country." As the war drew to a close and the West Coast reopened to Japanese, his family returned to Oakland, while he chose to stay in Detroit, met his future wife, Katherine, and moved to the San Francisco Bay Area in 1949.

Korematsu's story was not over. In 1980, the Commission on Wartime Relocation and Internment of Civilians was established by an act of parliament. Its investigation report stated that the broad historical reasons for the decision to detain Japanese in wartime were "racial prejudice, war hysteria, and a failure of political leadership", and that the factual review and legal principle issues of the decision in the Korematsu case were widely questioned. [12] In 1983, scholars Peter Irons and Aiko Herzig-Yoshinaga studied the archives and found that the government had deliberately withheld intelligence documents from the Supreme Court that could question the legitimacy of its actions. On this basis, a pro bono team of lawyers filed a writ of *Coram Nobis* on behalf of Korematsu, which was granted by the District Court for the Northern District of California in San Francisco on April 19, 1984, thus overturning Korematsu's conviction, but the Supreme Court's 1944 decision remained in effect pending a similar case to challenge it. [30].

Korematsu has since been active for the passage of the 1988 Civil Liberties Act, which offered an apology and compensation to wartime detainees, and was awarded the Presidential Medal of Freedom in 1998. In 2018, Supreme Court Chief Justice John Roberts made it clear in *Trump v. Hawaii*: The Korematsu case was "gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—'has no place in law under the Constitution'." [31] It was officially overturned.

5. Conclusion

As an answer to the legality of the expulsion of Japanese during World War II, the case of Korematsu was influenced by multiple factors: historically, the voices of Japanese immigrants were drowned out by the clamor of a larger and more powerful crowd, and this suppression was confirmed by law, and then the suspicion and exclusion aggravated by Japan's challenge. During the war United States took Nazis as the enemy of freedom and paid attention to distinguishing its own image from them. Combined with constitutional considerations of mass regulation of a group in the name of military necessity, the case ended in a 6 - 3 Supreme Court decision in 1944.

Korematsu's story, in a broad sense, is about the belief of Japanese-American citizens in common American values and its commitment to freedom and equality, which is the main foundation of American national identity, the image of universal liberalism and the defender of human freedom, which can overcome the blood and cultural ties of different ethnic groups. Its far-reaching impact also lies in the awareness and amplification of minority identity, just as a Japanese newspaper reported a week before the verdict: "There is no doubt that the Korematsu and Endo cases are two of the most important civil rights cases in a generation, in fact since the Civil War. The citizenship status of the Nisei will be clarified to a great degree regardless of the way in which the justices decide." [32]

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