

Topic: Internment of Japanese Americans in World War II: *Toyosaburo Korematsu v. United States*

Time:
2 class periods

Historical Period:
World War II

Core:
Utah 6100 - 0501
US II 6250 - 07

Objectives: Students will:

1. Understand the events that led to the internment of Japanese Americans during WWII.
2. Apply the guarantees of the Fourteenth Amendment to the facts of the Korematsu case.
3. Explain the issues and arguments involved in the Korematsu case.
4. Use reasoning, chronology, group process, and argumentation skills in a simulated court proceeding.

Procedure:

The internment of Japanese Americans during World War II is a highly controversial episode in American history. This simulation of the famous Korematsu case allows students to explore Executive Order No. 9066 in depth and to examine the historical circumstances that led to such a devastating curtailment of Fourteenth Amendment rights. This lesson can be used when studying World War II, in a study of the Fourteenth Amendment, or when considering whether curtailing any group's rights is appropriate during the "war on terrorism."

1. Read the following quotes to students and ask if they know to what event the quotations are referring. **Note:** All quotes are from *A Fence Away from Freedom: Japanese Americans and World War II*, edited by Ellen Levine (New York: Putnam's, 1995).
 - "I grew up with my father and mother not able to vote or own land. When the evacuation was announced, we sort of accepted that we were being treated as second class citizens." Mary Sakaguchi, age 21
 - "With the Germans and Italians, it was individual cases. We were aware of that. What an injustice! We were the 'enemies' and they just took us. Of course, we were obvious." Amy Hiraatzka, age 18
 - "People stood around waiting for you to leave. I was mad all the time. I can still see those vultures. We had a horse, tractors, truck, car, and like everybody else, we didn't have time to sell anything. When we left, they went right in to find something they wanted." Tetsuko Morita, age 13

Handouts/Worksheets:

1. *Toyosaburo Korematsu v. United States* (1944)
2. Chronology of Events
3. Arguments for Petitioner, Toyosaburo Korematsu
4. Arguments for Respondent, U. S. Government
5. Decision Sheet

Author: *Law in U. S. History*, Melinda Smith, Kenneth Rodriguez, & Mary Louise Williams

Procedure continued

Explain that the three speakers were young Japanese Americans at the time of World War II. They are referring to the forced relocation of Japanese Americans from the West coast in internment camps during the war years. Go over the quotes carefully to elicit other facts about the situation; Japanese immigrants could not become citizens or own land, although their children who were born in the United States were citizens; Americans of German and Italian ancestry were not interned; Japanese Americans lost their property, often to people who stole it, when the Japanese American families were forced to leave. Ask: Do you think this action was constitutional? What aspects of the Constitution might forced relocation and internment violate?

2. Pass out Handouts 1 and 2 and read them with the class. Use the case study method to review the chronology.
3. Explain that students will be put into groups of three. One student will play the attorney for Korematsu, one the role of the attorney for the U. S. government, and one the role of the judge. The attorneys will develop arguments for their sides and present them to the judge who will make a decision. Explain that the groups will conduct their simulations simultaneously. Assign roles and allow attorneys time to prepare arguments. Use Handouts 3 and 4 with students who require preparation.
4. While attorneys are preparing, meet with judges and instruct them to read over the case and prepare questions for the attorneys. Explain that they should conduct the simulation as follows:
 - a. Allow attorney for Korematsu five minutes to present his/her argument.
 - b. Allow attorney for U. S. government five minutes for argument.
 - c. Allow one minute rebuttal by Korematsu's attorney.
 - d. The judge will deliberate and deliver the decision.
 - e. The judge may interrupt during arguments to ask questions.
5. Conduct the simulations. Make sure groups are spaced, so they do not distract each other.
6. Call on each judge for his or her decision and reasoning. Record the decision on the board.
7. Distribute Handout 5 and read the decision with the class. Debrief the activity using questions such as the following:
 - a. For those students serving as judges in the simulation, what argument was most compelling in reaching their decisions?
 - b. Do you think there was sufficient threat to justify the relocation and internment of West Coast Japanese Americans?

Procedure continued

- c. Do you believe that the limitation of any civil liberty is justified during wartime? Speech? Press? Due Process? Freedom of movement?
 - d. In the 40 years since this case, demands by minority groups for equal protection and opportunity and the passage of state and federal anti-discrimination legislation have resulted in different public attitudes about discrimination. In light of contemporary standards, do you think the Supreme Court would rule the same way if it heard the Korematsu case today?
8. Tell students that the story of internment does not end with World War II. In 1980, Congress appointed a commission to study internment. The commission issued a report entitled *Personal Justice Denied*, which concluded that the internment was prompted by “race prejudice, war hysteria, and a failure of political leadership.” The commission recommended reparations. In 1988, Congress finally passed an act apologizing for the internment and granting \$20,000 to each survivor. Korematsu, in 1983, filed a *coram nobis*, a writ that asks the courts to correct errors. He argued that documents uncovered by his legal team showed that the government had suppressed evidence showing there were no known instances of espionage by Japanese Americans. Federal Judge Marilyn Patel ruled in Korematsu’s favor, vacating the conviction against him. In 1988, President Clinton gave Korematsu the Presidential Medal of Freedom, calling him a “man of bravery who worked patiently to ‘preserve the civil liberties we hold dear.’”

Extension:

1. Divide the class into ten groups and assign each group one chapter of *A fence Away from Freedom*. Groups are to read their chapter and design a display for a museum exhibit on the internment that will educate people about their particular topic. Students can actually construct the exhibits or simply create plans for the exhibit.
2. Ask students to research landmark Supreme Court cases related to equal protection. You may want them to identify significant cases related to race, gender, religion, and disability.

Sources:

Adapted from a lesson in *Law in U.S. History: A teacher Resource Manual*, by Melinda R. Smith, Kenneth Rodriguez, and Mary Louise Williams (Boulder CO: Social Science Education Consortium).

HANDOUT 1

TOYOSABURO KOREMATSU v. UNITED STATES (1944)

In early 1942, the United States was at war with Japan following the attack on Pearl Harbor. Many Americans feared that Japan might invade the West coast. At this time, 112,000 people of Japanese descent lived in the West coast. People feared that some Japanese Americans would become enemy agents.

Reacting to public pressure, President Roosevelt, with the approval of Congress, issued Executive Order No. 9066. This order authorized the military to declare regions of the West coast as military zones. The military could thus relocate inland all people of Japanese descent—both U. S. citizens and aliens alike. These people were to be taken to mass internment camps.

EXECUTIVE ORDER NO. 9066
(Issued by the President on February 9, 1942;
passed by Congress on March 21, 1942)

The successful prosecution of the war required every possible protection against espionage and against sabotage to national defense material, national defense premises, and national defense utilities. Military commanders may at their discretion prescribe military areas and define their extent. From these areas any and all persons may be excluded, and with respect to which, the right of any person to enter, remain, or leave shall be subject to whatever restrictions the military commander may impose at his discretion.

CIVIL EXCLUSION ORDER NO. 34
(Issued March 21, 1942)

Those of Japanese ancestry shall:

1. Depart from military Zone One.
2. Report to and temporarily remain at an assembly center.
3. Go under military control to a relocation center there to remain for an indeterminate period until conditionally or unconditionally released.

Violation of Exclusion Order NO. 34 shall be a misdemeanor punishable by \$5,000 fine or one year in jail, or both.

Fred Korematsu was a U. S. citizen of Japanese descent who had lived all his life in California. When he received an order to report to a center in preparation for relocation, he refused to go.

Korematsu was arrested by U. S. military police and was convicted of refusing to obey the evacuation order. He was given five years' probation and sent to an internment camp in Utah. Korematsu appealed his case to the U. S. Supreme Court. He argued that Executive Order #9066 was unconstitutional because it discriminated against Japanese Americans solely on the basis of ancestry and without any evidence of disloyalty. He also said he had been deprived of his Fifth Amendment rights of liberty and property "without due process of law."

Questions for Discussion:

1. Was there any evidence that Korematsu was disloyal or a threat to U. S. security? Should the loyalty of Japanese Americans have been a consideration in this case?
2. America was also at war with Italy and Germany. Why do you think German Americans and Italian Americans were not treated in the same manner as the Japanese Americans?
3. Should the government be able to exercise greater power or suspend the Bill of Rights during a time of war? Should it have greater power even when not at war if acting in the interest of national security?

HANDOUT 2

CHRONOLOGY OF EVENTS

December 8, 1941	U. S. declares war on Japan.
February 19, 1942	President issues Executive Order No. 9066.
February 20, 1942	Lt. General De Witt is appointed Commander of the Western Defense Command.
March 2, 1942	De Witt creates Military Zones One and Two on the West coast. Persons or classes of persons as the situation may require will be excluded from Military Zone One.
March 2, 1942	Mr. Korematsu is put on notice that his residence is in Zone One.
March 21, 1942	Congress enacts Executive Order No. 9066.
March 24, 1942	De Witt institutes in Zone One an 8 p.m. to 6 a.m. curfew for all persons of Japanese ancestry.
March 24, 1942	De Witt issues Exclusion Order No. 34.
March 27, 1942	De Witt orders that after March 29, no person of Japanese ancestry will be permitted to leave Military Zone One.
May 3, 1942	Exclusion Order No. 34 is put into effect. Persons of Japanese ancestry are ordered to report on May 8 to a designated assembly center for relocation to internment camps farther inland.

HANDOUT 3

ARGUMENTS FOR PETITIONER, TOYOSABURO KOREMATSU

1. The orders violated the due process rights guaranteed to U. S. citizens by the Fifth and Fourteenth Amendments. Japanese Americans had lost their liberty and their property without any kind of hearing or trial as required by the Constitution.
2. The order violated the Sixth Amendment procedural due process rights of citizens. There had been no charges against the Japanese Americans; they were unable to call witnesses on their behalf; they had no attorneys and no juries to hear the facts and determine their guilt or innocence.
3. The orders violated the Fourteenth Amendment “equal protection” clause. Japanese Americans had been treated as a class of citizens rather than as individuals. This action was an act of racial discrimination, which the Fourteenth Amendment was designed to prevent. All citizens of the United States enjoy the equal protection of the law. The order affected thousands of Japanese Americans who were not involved in sabotage. The government should have gone after those citizens it suspected of spying and not the entire group of Japanese American citizens. Further, no similar action was taken against German Americans or Italian Americans although the United States was at war with those countries also.
4. The emergency could not be as extreme as Executive Order No. 9066 would lead one to believe. In times of grave national emergency, the President may request a declaration of martial law and citizens may be temporarily curtailed. The President did not do this.
5. It took the government six months to take action to prevent sabotage by Japanese Americans. The national emergency could not have been as extreme as the government said if it took that long to respond to the “threat.”
6. The government failed to provide in any tribunal the disloyalty of Korematsu; therefore, the order is strictly discriminatory. The proper action of the government would have been to conduct loyalty hearings to screen individual Japanese Americans.

HANDOUT 4

ARGUMENTS FOR RESPONDENT U. S. GOVERNMENT

1. People of Japanese descent living in the western United States posed the gravest danger to public safety because the nation was at war with Japan. The government has the power to protect itself and that power must be equal to the danger it faces. The government must protect itself from espionage and sabotage.
2. The removal orders issued by the President were issued with the authority of Congress. Congress had enacted Executive Order No. 9066 into law. When Congress declared war on Japan, it gave the U. S. President power to wage war. When the United States wages war, it expects to wage war successfully.
3. The government could not easily or quickly determine who among the Japanese American population was disloyal to the United States. To hold a hearing for each individual would have been impossible; therefore, it was necessary to relocate the entire group.
4. The orders did not violate the Fourteenth Amendment. Precedent for this type of action had been set in a previous case, the *Hirabayashi* case. In *Hirabayashi*, the U. S. Supreme Court said imposing an evening curfew exclusively on Japanese Americans was not a violation of the equal protection clause.
5. The action of the government must be judged solely in the context of war. At any other time, such an action might well be illegal.

DECISION SHEET

All legal restrictions that curtail the civil rights of a single racial group are immediately suspect and must be rigidly scrutinized, though not all of them are necessarily unconstitutional. Pressing public necessity may sometimes justify restrictions on civil rights of a single racial group, but racial antagonism never can. Compulsory exclusion of large groups of citizens from their homes, except under circumstances of direct emergency and peril, is inconsistent with our basic governmental institutions. When, under conditions of modern warfare, our shores are threatened by hostile forces, power to protect must be commensurate with the threatened danger. Exclusion of persons of Japanese ancestry, including citizens whose loyalty was not questioned, from the West coast war area was within the war power of Congress and the executive as it related to the prevention of espionage and sabotage. The validity of this action under the war power must be judged wholly in the context of war. Like action in times of peace would be lawless.