

# THE RELOCATION AND INTERNMENT OF PEOPLE OF JAPANESE DESCENT IN THE US DURING WWII

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**Abstract:** *Following Japan's attack on the United States during World War II, the US government of the time decided to relocate and intern people of Japanese descent – both citizen and resident alien - away from militarily sensitive and strategically important areas. The US government cited military necessity for these relocation and internment policies. Several American citizens of Japanese descent objected to such policies, and their cases were heard at the US Supreme Court – which ultimately affirmed the government's policies. Years later, information surfaced that the military necessity cited by the government was not based on facts. This revelation brought with it a series of apologies, overturning of convictions and restitutions. This article examines various aspects of this relocation and internment as outlined above: the background, the content, and consequences of these policies; the US Supreme Court cases; and the developments after World War II. This article will also briefly compare these policies with the relocation policy carried out by the Ottoman government against Armenian people during World War I, and explain why the two cases are fundamentally different from each other.*

**Keywords:** *relocation, internment, people of Japanese descent, the United States, World War II*

## İKİNCİ DÜNYA SAVAŞI SIRASINDA ABD'DE JAPON KÖKENLİ İNSANLARIN YERİNİN DEĞİŞTİRİLMESİ VE ENTERNE EDİLMESİ

**Öz:** *İkinci Dünya Savaşı sırasında Japonya'nın Amerika Birleşik Devletleri'ne saldırmasının ardından o dönemin Amerikan hükümeti,*

*Amerikan vatandaşı olan veya yasal olarak ABD’de ikamet eden Japon kökenli kişileri askeri yönden hassas ve stratejik bölgelerden çıkartma ve onları mahkeme kararı olmadan çeşitli kamplarda enterne etme kararları aldı. Amerikan hükümeti kararların askeri gereklilikten alındığını belirtti. Birkaç Japon kökenli Amerikan vatandaşı bu kararlara karşı çıktı ve haklarındaki davalar Amerikan Yüksek Mahkemesi’nde görüldü, ancak Mahkeme hükümetin kararlarını onayladı. Seneler sonra, hükümetin o sırada ileri sürmüş olduğu askeri gerekliliğin gerçeklere dayalı olmadığı ortaya çıktı. Bunun ortaya çıkması beraberinde bir takım özür dilemeleri, mahkûmiyetlerin bozulmasını ve tazminatların ödenmesini getirdi. Bu makale yukarıda ana hatlarıyla açıklanan yer değiştirme ve enterne etme kararlarının arka planı, içeriği ve sonuçlarını, Amerikan Yüksek Mahkemesi’ndeki davaları ve İkinci Dünya Savaşı’ndan sonraki gelişmeleri çeşitli yönleriyle inceleyecektir. Makale aynı zamanda, bu kararları Osmanlı hükümetinin Birinci Dünya Savaşı sırasında Ermenileri sevk ve iskân etme kararı ile karşılaştıracak ve bu iki vakanın neden temelde birbirlerinden farklı olduğunu açıklayacaktır.*

**Anahtar Kelimeler:** *sevk etme, alıkoyma, Japon kökenli insanlar, Amerika Birleşik Devletleri, İkinci Dünya Savaşı*

## **1 - INTRODUCTION**

During the last three years of World War II, around 110.000 people of Japanese descent (hereafter shortened as “PJD”) in the United States were kept in relocation camps. Most of these people were also American citizens. These people did not commit a specific crime, nor were they tried in court. They were relocated and interned in camps by the order of the US government because they were deemed to be a possible security risk in the context of the war the US waged against Japan during WWII.

Japan’s surprise attack on the US naval fleet at Pearl Harbor in 1941, followed by the Ni’ihau Incident in the same year – in which three PJD aided a downed Japanese war plane pilot – created a sense of mistrust in the wider American public with regard to the PJD.

Having investigated the nature of the threat posed by PJD against the US, the government of the time came to the conclusion that PJD might aid Japan during a Japanese attack or even a possible invasion of the western coast of the US. The government also came to the conclusion that there was simply no way of determining - within a reasonable amount of time - whether a person of Japanese descent was loyal to the US or not. It was within this context that the US president of the time, Franklin D. Roosevelt, signed the “Executive Order No. 9066” – subsequently supported by the US Congress - which gave military authorities the authorization to set up military exclusion zones as they saw fit. Subsequently, US military authorities set up multiple of such zones in the western coast of the US. PJD, whether they were citizens or not, were required to stay in their homes, and later on were required to report to various relocation camps set up around the US. These people were forced to leave their homes and lives behind for the remainder of the WWII.

Several American citizens with Japanese descent contested the government’s decision to place curfew on them and to relocate them for the duration of the war by arguing that it was against the US constitution. Some of the legal cases filed by these people reached to the US Supreme Court, the highest court of the American legal system. However, the Supreme Court deemed the government’s decision to impose curfew and relocation on PJD to be within the limits of the Constitution within the context of war. With such decisions, the highest court of the US approved the conduct of the government with regard to the people of Japanese descent.

Decades later, in the 1980s, evidence surfaced that the US government had been erroneous in its assessment of PJD. The evidence uncovered pointed to the fact that PJD had posed no tangible threat to the US, and that the government's assessment of these people was based more on war hysteria and anti-Japanese sentiment (fueled by Japan's attacks) than credible facts. Furthermore, it was revealed that the government had purposefully withheld information from the Supreme Court that would have showcased the fact that PJD had posed no tangible threat to the US. PJD, wrongfully convicted in such a manner, sought exoneration and won legal cases at the federal court level. This was accompanied by apologies and the payment of restitutions at the governmental level.

Despite such developments and being among of the most controversial<sup>1</sup> and criticized<sup>2</sup> verdicts in the history of the Supreme Court, the Court has to this date failed to repudiate the verdicts it made regarding the relocation and internment of PJD. The Court's lack of action in this regard means that, despite the aforementioned evidence, the political apologies and the payment of restitutions; the Court's past verdicts regarding this issue remain as the law backed by the verdict of the highest court of the country.<sup>3</sup> This means that technically, from the legal point of view of the US as a state, the actions that were taken against PJD were acceptable and necessary within the context of the urgency and perceived sense of threat imposed by World War II. This also means that, barring any repudiation by the Court on this issue, the US might in the future behave in a similar manner when faced with what it deems to be a dire situation.

This paper will give an overview of the relocation and internment of the people of Japanese descent. In this respect, the paper will explore several aspects of the relocation and internment of PJD. It will first elaborate on developments that led to the signing of the "Executive Order No. 9066" and explain why it was put into effect, how it was put into effect, and what kind of consequences it bore for people of Japanese descent.

This paper will then elaborate upon the legal cases brought before the US Supreme Court. Afterwards, this paper will go into the details of the

1 Lyle Denniston, "Constitution Check: Will the court repudiate decisions from the World War II era?" *Constitution Daily*, <http://blog.constitutioncenter.org/2013/04/constitution-check-will-the-court-repudiate-decisions-from-the-era-of-world-war-ii/> (accessed on 02.02.2015).

2 A. Wallace Tashima, "Play it again, Uncle Sam", *Law and Contemporary Problems*, vol. 68, no. 2 (Spring, 2005), p. 9.

3 Tashima, "Play it again...", p. 9.

admissions, apologies, overturning of convictions, and restitutions given by the US government, and the Supreme Court's lack of action in this regard.

As concluding remarks, this paper will draw some comparisons between the relocation and internment of people of Japanese descent, and the events of 1915, during which the Ottoman government relocated Armenian people out of military necessity. This section is included because just like the relocation and internment of PJD, the relocation of Armenian people is also subject to heated debate. A comparison will serve to highlight important points for the reader.

## 2 - EXECUTIVE ORDER NO. 9066

### 2.1 - The Reasoning behind Executive Order No. 9066

Although Executive Order No. 9066 was issued by President Franklin D. Roosevelt on 19 February 1942, the idea of excluding people of Japanese descent (PJD) from the western coast of the United States did not originate from him. He was instead the final phase in a discussion that took place between American military and civil officials who were engaged in the happenings on the western coast of the US during World War II, who were in turn influenced by the public opinion of this region.<sup>4</sup> President Roosevelt, though, was crucial in the sense that he gave his “go-ahead” and thus his presidential approval (which facilitated the US Congress' approval) to the idea of relocating PJD from the western coast.

During World War II, the vast majority of people of Japanese descent were concentrated in the western coast of the US and in the overseas territory of Hawaii. There were about 150,000 PJD in Hawaii, making up about a third of the total population of the said territory.<sup>5</sup> There were about 112,000 PJD living in the western coast (88.5% of the total PJD population in mainland US).<sup>6</sup> PJD began to arrive in continental US in

4 Stetson Conn, “The Decision to Evacuate the Japanese from the Pacific Coast”, in *Command Decisions*, edited by Kent Roberts Greenfield (Washington D.C.: Center of Military History United States Army, 1987), pp. 132-133. Also see; Roger Daniels, “Incarceration of the Japanese Americans: A Sixty-Year Perspective”, *The History Teacher*, vol. 35, no. 3 (May, 2002), p. 302.

5 Daniels, “Incarceration of the Japanese Americans”, p. 299. Also see; “Japanese-American Internment Camps”, <http://www.bookmice.net/darkchilde/japan/camp.html> (accessed on 02.02.2015).

6 John L. DeWitt, *Final Report: Japanese Evacuation from the West Coast, 1942* (Washington D.C: United States Government Printing Office, 1943), p. 79.

the second half of the 19<sup>th</sup> century to make better living, and began to grow in number afterwards due to subsequent population movements.<sup>7</sup> By the time World War II started, PJD (also known as the *Nikkei*) could be divided into different groups based on where and at what time they were born.<sup>8</sup> The *Issei* were the people of Japanese descent born in Japan but settled in the US. They were ineligible to receive American citizenship, and thus they were considered resident aliens. The *Nisei* were the children of *Issei*, and being born in the US, they were automatically considered citizens. In turn, the *Sansei* were the children of *Nisei*, and being the children of American citizens, they too were naturally considered citizens. The *Nisei* and the *Sansei* were obviously much more integrated with American society than their elders, the *Issei*. There was also a special category, the *Kibei*, PJD born in the US, but who went to Japan to receive their education and then came back to the US. PJD were seen as a distinct group of people in the western coast, with cultural and linguistic ties to Japan. Racial tension between the majority “white Americans” (those with European descent) and the PJD was known to exist during this time period.<sup>9</sup> Immigration from Japan was completely blocked in 1924 due to public pressure.<sup>10</sup> Meanwhile limitations were placed on prospects of citizenship for PJD, leaving many of them as resident aliens.<sup>11</sup> At the same time, however, PJD were generally known to be hard working and many of them were also members of the US military stationed in the western coast of the US.

Even before Imperial Japan attacked the US in 1941 (the attack on Pearl Harbor) and thus led to the American involvement in World War II, the US government had already deemed Japan to be a possible threat to it in the Pacific Ocean region. With the beginning of World War II, the US government prepared lists of harmful and potentially harmful aliens residing in the US.<sup>12</sup> These aliens consisted of the citizens of the Axis Powers of Germany, Italy and Japan (the *Issei*). On the day Japan attacked the US (7 December 1941), President Roosevelt ordered the US military and the Federal Bureau of Investigation to apprehend harmful resident aliens, whose detention would be handled by the Department of Justice. The mandate given to these authorities in investigating these

7 “S.F. Clear of All but 6 Sick Japs”, *San Francisco Chronicle*, 21 May 1942.

8 DeWitt, *Final Report*, pp. 514-515. Also see; “Japanese-American Internment Camps”.

9 Conn, “The Decision to Evacuate...”, p. 126.

10 Greg Robinson, *By the Order of the President: FDR and the Internment of Japanese Americans* (London: Harvard University Press, 2001), p. 4.

11 Robinson, *By the Order of the President*, p. 4.

12 Daniels, “Incarceration of the Japanese Americans”, pp. 299-300.

resident aliens and searching their premises was later on expanded. These resident aliens living the western coast were required to hand over weapons, ammunition, communication equipment (such as radios) and certain photography machines to the authorities. Such items were considered contraband in terms of these resident aliens. The investigations and searches kick-offed by the order of the president resulted in to the detention of about 11,000 resident aliens, of which 8000 were of Japanese descent.<sup>13</sup>

The US government originally contemplated removing from the western coast all the resident aliens who were the citizens of the Axis Powers. This would entail removing about 120,000 aliens; of which 58,000 were Italian, 22,000 were German, and 41,000 were Japanese.<sup>14</sup> But such an all-encompassing removal was eventually scrapped. Furthermore, there was no an initial determination to remove all people of Japanese descent from the western coast (there were calls from public about it though). Even General John L. DeWitt (who would eventually be authorized by Executive Order No. 9066 take security measures against PJD) initially was opposed to this idea,<sup>15</sup> primarily due to the fact that such a policy would be a drastic move against American citizens and would risk antagonizing loyal people of Japanese descent.<sup>16</sup> On this issue, DeWitt is reported to have said: “An American citizen, after all, is an American citizen. And while they all may not be loyal, I think we can weed the disloyal out of the loyal and lock them up if necessary.”<sup>17</sup>

A number of factors led the US government to eventually adopt the policy of relocating and interning all people of Japanese descent. Japan’s sudden initial attack on the US (without a prior declaration of war), its rapid military advances and conquests in the Pacific theater of the war,<sup>18</sup> the attacks and harassments carried out by Japanese submarines and warplanes against American ships and against certain installations in the mainland of the US all constituted one of the factors.<sup>19</sup> This created a

13 Daniels, “Incarceration of the Japanese Americans”, p. 300.

14 Conn, “The Decision to Evacuate...”, p. 125-126.

15 Conn, “The Decision to Evacuate...”, p. 137.

16 Conn, “The Decision to Evacuate...”, pp. 127-128.

17 Conn, “The Decision to Evacuate...”, p. 128.

18 Conn, “The Decision to Evacuate...”, p. 132.

19 “Chronology of 1940-1941 San Francisco War Events”, *The Virtual Museum of the City of San Francisco*, <http://www.sfmuseum.org/war/40-41.html> (accessed on 02.02.2015). Also see; “Chronology of 1942 San Francisco War Events”, *The Virtual Museum of the City of San Francisco*, <http://www.sfmuseum.org/war/42.html> (accessed on 02.02.2015).



sense of urgency for the US government, which deemed the western coast as a theater for the American war effort,<sup>20</sup> a region that was under the imminent threat of a massive Japanese invasion.

Another factor was due to the shock created by the Pearl Harbor and also the Ni'ihau Incident in the same year – in which three PJD aided a downed Japanese war plane pilot. This created a sense of mistrust in the wider American public against PJD<sup>21</sup> due to their cultural and linguistic ties to an enemy country perceived capable of invading mainland US. The government received news and reports about people ready to take matters to their own hands against the PJD whom they viewed as a threat.<sup>22</sup> As such, for the US government, this raised the need to prevent infighting amongst the population while the country was in the midst of a world war.

A factor of much concern for the US government was the official reports it received about the activities of Japanese civil associations in the US, and also the reports it received about unidentified ship-to-shore (and vice-versa) signaling and lights going on and off around various places in the western coast (where PJD lived). Similar happenings were reported prior to the surprise attack on Pearl Harbor. The government was firm in its conviction that various Japanese associations had ties with Japan, that such associations were supporting Japanese war effort both verbally and financially. This was accompanied by reports of reverence ceremonies done in the name of the Japanese emperor and also of the propaganda carried out by Japanese consuls and Buddhist priests.<sup>23</sup> Reports of signaling between ships and the shore, of lights going on and off were seen as clandestine communication with enemy forces. This led the US government to conclude that there were an unidentified number of PJD who were actively collaborating with enemy Japan, and who would be willing to support it by carrying out subversive activities against the US. The fact that there were many Japan-educated *Kibei* amongst the PJD and the fact that Japan was implementing dual-citizenship with regards to PJD born in the US only heightened the US government's concerns.<sup>24</sup>

Finally, another factor of concern for the US government was the

20 "Chronology of 1940-1941 San Francisco War Events".

21 Command Decisions, pp. 132-133.

22 DeWitt, *Final Report*, pp. 8-9.

23 DeWitt, *Final Report*, pp. 10, 12-13.

24 DeWitt, *Final Report*, pp. 13-15, 85.



distribution of PJD in the western coast. When the government studies where PJD were mostly concentrated, it was alarmed to find out that they were mostly concentrated around key military or civilian installations or strategically valuable sites. Furthermore, the government found out that there were nearby places with equally fertile land or opportune environments which were nevertheless absent of PJD. Although not seen as a proof of a conspiracy, this situation was nevertheless deemed to be suspicious by the government and led it to infer that PJD was ideally situated to harm the country's defense and fighting capability if some of them desired to do so. For the government, this was a risk that could not be ignored.

Taking all these factors into account, high ranking officials such as Major General Allen W. Gullion (Department of War's Provost Marshal General), Lieutenant General John L. DeWitt (Army commander on the Pacific coast, commanding general of the Fourth Army and Western Defense Command, commander of the Western Theater of Operations) and Henry L. Stimson (Secretary of War) exchanged ideas about the best course of action. Factoring in a possible Japanese invasion, the risk of subversive activities that could be carried out by PJD located around critical areas of the western coast, and also the rising animosity and distrust the general population had against PJD; such officials came to the conclusion that the moving of PJD away from the western coast was a matter of military necessity within the context of an ongoing war. The western coast would be deemed a military exclusion zone for the PDJ (already enforced against enemy aliens), these people were to be relocated to the inner parts of the US, thereby removing the risk potentially posed by and to these people. The rationale behind applying relocation to all people of Japanese descent was as follows; during an ongoing world war in which an invasion was possible, time was of the essence, and there was simply no way of determining - within a reasonable amount of time - whether a person of Japanese descent was loyal to the US or not.

In the *Final Report: Japanese Evacuation from the West Coast, 1942* (a very detailed 600 page government report that was not made available to the public at that time, it contained information related to the relocation and internment of PJD), General DeWitt explains the government's rationale behind relocation as follows:

“The continued presence of a large, unassimilated, tightly knit racial group, bound to an enemy nation [Japan] by

strong ties of race, culture, custom and religion along a frontier vulnerable to attack constituted a menace which had to be dealt with. [PJD's] loyalties were unknown and time was of the essence. The evident aspirations of the enemy emboldened by his recent successes made it worse than folly to have left any stone unturned in the building up of our defenses. It is better to have had this protection and not to have needed it than to have needed it and not to have had it—as we have learned to our sorrow [he is referring to the Pearl Harbor attack].”<sup>25</sup>

The carrying out of such a plan of relocation required the approval of the president and the Congress. Among other things, the president was asked the following questions:

“(1) Is the President willing to authorize us [Department of War] to move Japanese citizens as well as aliens from restricted areas?

(2) Should we undertake withdrawal from the entire strip [western coast] DeWitt originally recommended, which involves a number of over 100,000 people, if we included both aliens and Japanese citizens?”<sup>26</sup>

President Roosevelt affirmed these requests by stating that the Department of War should do “whatever was necessary,” but that it should be “be as reasonable as” possible when handling the relocation.<sup>27</sup> Executive Order No. 9066 issued by the president on 19 February 1942 was a result of this governmental deliberation that has been outlined so far. The essential parts of the Order are as follows:

“Whereas the successful prosecution of the war requires every possible protection against espionage and against sabotage to national-defense material, national-defense premises, and national-defense utilities ...;

Now, therefore, ... I hereby authorize and direct the Secretary of War, and the Military Commanders whom he may from time to time designate, whenever he or any

25 DeWitt, *Final Report*, p. vii.

26 Conn, “The Decision to Evacuate...”, p. 142.

27 Daniels, “Incarceration of the Japanese Americans”, p. 302.

designated Commander deems such action necessary or desirable, to prescribe military areas in such places and of such extent as he or the appropriate Military Commander may determine, from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion. The Secretary of War is hereby authorized to provide for residents of any such area who are excluded therefrom, such transportation, food, shelter, and other accommodations as may be necessary...

I hereby further authorize and direct the Secretary of War and the said Military Commanders to take such other steps as he or the appropriate Military Commander may deem advisable to enforce compliance with the restrictions applicable to each Military area hereinabove authorized to be designated, including the use of Federal troops and other Federal Agencies, with authority to accept assistance of state and local agencies.

I hereby further authorize and direct all Executive Departments, independent establishments and other Federal Agencies, to assist the Secretary of War or the said Military Commanders in carrying out this Executive Order, including the furnishing of medical aid, hospitalization, food, clothing, transportation, use of land, shelter, and other supplies, equipment, utilities, facilities, and services..."<sup>28</sup>

President's Executive Order was subsequently supported by the US Congress on 21 March 1942 when it passed an act making "disobeying an order issued by a military commander without martial law being declared" (which fit the case of the relocation to be carried out) a federal crime. This act was passed by both houses of the Congress without a single dissenting vote.<sup>29</sup> Three days later, on 24 March 1942, General DeWitt issued a Public Proclamation which imposed a curfew on Japanese, Italian, and German aliens, and also on people of Japanese descent living in the areas deemed by the military authorities to be under

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28 Text of the Executive Order No. 9066 can be found at; DeWitt, *Final Report*, pp. 26-27.

29 Daniels, "Incarceration of the Japanese Americans", p. 303.

threat. The curfew meant that these people were not allowed to leave their homes between 8 p.m. to 6 a.m.<sup>30</sup>

Before going into some details about the actual relocation, it is interesting to note that the Japanese American community, barring a few exceptions, did not show resistance or voice opposition to the government's orders, many holding the conviction that it was necessary for the war effort.<sup>31</sup> In fact, in the *Final Report: Japanese Evacuation from the West Coast, 1942*, General DeWitt extends his thanks to the people of Japanese descent for their compliance with the relocation orders.<sup>32</sup>

## 2.2 - The Outcome of Executive Order No. 9066

Zones PJD were to be excluded from included all of the state of California, half of the states of Oregon and Washington, and some part of the state of Arizona.<sup>33</sup> In order to not divert the attention of military personal from the war effort, a civilian government agency called the War Relocation Authority (WRA) was set up on 18 March 1942 to direct the relocation process of PJD. Initially, it was hoped that PJD would relocate themselves voluntarily out of the exclusion zones. Around 8000 PJD did so, but it soon became apparent that PJD were facing uncertainty about where exactly to go and were facing hostility from locals of the inner parts of the US who did not want a mass flow of PJD into their locale.<sup>34</sup> Voluntary relocation was therefore discarded in favor of organized and controlled relocation under the direction of the Western Defense Command (under General DeWitt) and the War Relocation Authority. The process of relocation started after April 1942 and was

30 DeWitt, *Final Report*, p. 298.

31 Daniels, "Incarceration of the Japanese Americans", p. 303. Also see; DeWitt, *Final Report*, p. 101.

32 DeWitt, *Final Report*, p. ix.

33 "Relocation of Japanese Americans", War Relocation Authority, Washington D.C., May 1943. Note: No action was taken against PJD living in the territory of Hawaii for a number of reasons. One reason was that PJD constituted about a third of the total population of Hawaii, relocating would cause Hawaii's economy to collapse. Another reason was that it simply not feasible to relocate so many people away from the islands of Hawaii in an orderly fashion. Lastly, Hawaii did not experience the racial tension that existed in mainland US. For reference, please see: Daniels, "Incarceration of the Japanese Americans", pp. 301-302; "Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians", The Commission on Wartime Relocation and Internment of Civilians, Washington D.C., December 1982, p. 16; "Japanese-American Internment Camps".

34 "Relocation of Japanese Americans".

finished by the end of the summer of the same year. Within that time period, the US government managed to relocate 110,442 (the exact number) PJD without any major incident.<sup>35</sup> This was due not only to the compliance shown by PJD, but also due to the very detailed plans made by the relocation authorities. It must also be noted that, barring a few exceptions, all personnel of Japanese descent of the US military serving in the western coast were diverted to other parts of the country.<sup>36</sup>

There were a number of principles that the relocating authorities were committed to uphold during the relocation process:<sup>37</sup>

Relocation would take place according to a particular area's military importance for the US government, with the most important areas being subject to relocation first.

Unless it was somehow unavoidable, families were to be kept together during the relocation. Attempts were to be made to keep communities together as well. Breaking up families had the adverse effect of destroying the economic and resource support a family provides to its members, which in turn led to disruption of the family and to social dependency.

Relocation was to be done in way that would cause minimal material and financial loss for those to be relocated. For this, advice and assistance would be provided to those to be relocated.

Relocation was to be done to sites where those to be relocated could support themselves for the duration of their stay.

Relocation was to be carried out step by step without attempting to do things simultaneously, and ideally by breaking those to be relocating into groups of about a 1000 people (about 250 families). This was seen as the best way to carry out the relocation in orderly and efficient manner.

Based on the plans (step by step relocation) made by the War Relocation Authority, PJD were first required to report to Civil Control Stations

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35 DeWitt, *Final Report*, p. viii. Also see; Daniels, "Incarceration of the Japanese Americans", p. 303.

36 "Chronology of 1942 San Francisco War Events".

37 DeWitt, *Final Report*, pp. 77-78, 86-87.

located within the zones of exclusion. These control stations registered PJD who reported themselves, provided services in preparation for relocation, and directed PJD out of the exclusion zones.<sup>38</sup> Of critical importance here were the properties, both moveable and unmovable, of the PJD.<sup>39</sup> Many storage houses were rented or appropriated by the government for the storage of the many properties of PJD. Commercial and agricultural properties belonging to PJD were maintained and used by government until their owners' return. The services of the Federal Reserve Bank of San Francisco and the Farm Security Administration, both a part of the US government, were enlisted to minimize the material and financial losses of PJD. Despite the measures outlined, however, PJD suffered heavy financial losses due to being forced to quickly dispose of properties with unfavorable prices. It is estimated that they left behind a total of 2.7 billion dollars (200 million dollars in terms of its value in 1943) worth of property. This basically meant that "the vast majority of [PJD] lost all of their property."<sup>40</sup>

Directed from the Civil Control Stations, PJD were then moved to Assembly Centers which were located at or near where PJD originally lived. These Assembly Centers provided shelter and facilities for the PJD. Such centers bought time for the relocation effort since not all relocation centers (the final destination of the PJD) were completed yet. Assembly Centers not only provided a place to wait for PJD still trying to finish up property or family matters, but were also meant to accustom PJD to life in relocation centers.<sup>41</sup>

Lastly, PJD were moved to one of the ten Relocation Centers in the inner parts of the US. These Relocation Centers were the final destination for the PJD. They were meant to remain in these centers until the end of the hostilities in World War II, which they did. The War Relocation Authority did not consider these centers to be internment camps.<sup>42</sup> It also drew a distinction between the residents of these centers on the one hand and the supporters of Japan and the detained harmful aliens on the other. According to the WRA, all evidence available to it pointed to the fact that "the great majority of [PJD were] completely loyal to the United

38 DeWitt, *Final Report*, pp. 96, 115.

39 DeWitt, *Final Report*, p. 128. Also see; "Relocation of Japanese Americans".

40 Robinson, *By the Order of the President*, p. 5.

41 DeWitt, *Final Report*, p. 78.

42 "Relocation of Japanese Americans".

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States”, and that they were in these centers due to the circumstances of war.<sup>43</sup> The WRA stated that the purpose of such centers was:

“(1) To provide communities where evacuees [they referred to PDJ as evacuees] might live and contribute, through their work, to their own support pending their gradual reabsorption into private employment and normal American life; and (2) to serve as wartime homes for those evacuees who might be unable or unfit to relocate in ordinary American communities.”<sup>44</sup>

As for the conditions in the relocation centers themselves, based War Relocation Authority’s own admission, these centers were never able to provide living standards above “the bare subsistence level.” WRA further went on to state that: “In spite of the leave privileges, the movement of evacuees while they reside at the centers is necessarily somewhat restricted and a certain feeling of isolation and confinement is almost inevitable.”<sup>45</sup>

The Relocation Centers provided several facilities and services to the interned PJD:<sup>46</sup>

Simple construction barracks were provided as housing to accommodate both the resident families and single people. These barracks did not have plumbing or cooking facilities.

Food was provided by the US government, but prepared by the residents themselves and distributed through cafeterias. The government spent 6.6 dollars per person every day for meals (0.48 cents in terms of its value in 1943).

Free medical care, including infant care and simple treatment for teeth and eye ailments, was provided for the residents. The centers had hospitals mostly manned by doctors, nurses etc. from the resident population.

Beyond regular services such as these provided by the government, services such as stores, markets, barbershops were owned, sustained and operated by the residents themselves.

43 “Relocation of Japanese Americans”.

44 “Relocation of Japanese Americans”.

45 “Relocation of Japanese Americans”.

46 “Relocation of Japanese Americans”.



Religion was freely practiced in the centers, while leisure activities were planned and organized mostly by the residents themselves.

Work opportunities were provided for those residents who wished to earn money in the daily operations of the centers.

Education for resident children was provided all the way through high school. Vocational training was provided as a part of this education. People wishing to pursue higher education were granted leave to do so.

Security within the centers was maintained mostly by police composed mostly of able-bodied residents, under the direction of a non-resident chief and supported by non-resident assistants.

A degree of self-government was practiced in all relocation centers. In some centers, this resembled governance practiced in similarly sized municipalities. In others, interested and prominent residents gathered together with the center directors to make decisions affecting all the residents.

Residents wishing to leave the relocation centers to settle and work outside were required to showcase good behavior and a definite plan of where to live and where to work. In this respect, the relocation centers acted as intermediaries between the residents wishing leave and the local communities that might accept them. In this respect, residents were carefully screen based whether or not they exhibited descent conduct, and whether local communities were receptive or hostile to the resident wishing to leave. Residents wishing to indefinitely leave the relocation centers were nevertheless required to report any change in address or job to the WRA. It has been reported that a couple of thousand residents were able to leave the relocation centers in this way.<sup>47</sup>

Various terms have been used by the government, and the courts and researchers to describe the government policies implemented against people of Japanese descent.<sup>48</sup> This includes such terms as relocation, evacuation, detainment, detention, internment, confinement, incarceration, and imprisonment. Various terms have also been used to describe the sites in which PJD were kept in during the war:

47 "Chronology of 1943 San Francisco War Events", *The Virtual Museum of the City of San Francisco*, <http://www.sfmuseum.org/war/43.html> (accessed on 02.02.2015).

48 Robinson, *By the Order of the President*, pp. 260-261. Also see; "What term to use?", <http://www.bookmice.net/darkchilde/japan/whatterm.html> (accessed on 02.02.2015).

Concentration Camp, Internment Camp, Prison Camp, Relocation Center, Segregation Center, and Isolation Center.<sup>49</sup>

I have chosen to use “relocation” because the word corresponds to exactly what the government did; it moved PJD away from their homes into designated sites outside the western coast of the US. I have chosen to use “relocation center”, because that was the official name used to refer to places where PJD were kept.

I have chosen to use “internment” to refer to the act of keeping PJD in the relocation centers since limits were placed on PJD on where they could not go and what they could not do. Furthermore, they were for the most part confined to specific places without trial due mostly to their profile as a people and the war circumstances beyond their control. Based on this reasoning, it would be appropriate to alternatively refer to relocation centers as “internment camps”.

“Imprisonment” and “prison camp” are terms that stretch the truth too much, since PJD as a whole were never convicted of any wrong-doing, nor were they treated as inmates of an actual prison. The PJD were confined, yes, but their conditions were different from that of an inmate. Also, although few people used it, PJD had the chance to leave the government designated sites.

After World War II and the full uncovering of the deplorable practices of the Nazi regime in Germany, the term “concentration camp” is especially wrong in the context of the policy the US government carried out against PJD.<sup>50</sup> The ultimate purpose of concentration camps were to mass exterminate its residents.<sup>51</sup> The sites in which PJD stayed, however, had no such purpose. The ultimate purpose of such sites was to keep PJD away from the western coast for the duration of the war, after which they would be allowed go back.

The exclusion against PJD from the western coast was lifted by 1945, by which time PJD began to leave their relocation centers in increasing numbers. Some centers, however, remained open until 1946 - even after

49 Robinson, *By the Order of the President*, pp. 260-261. Also see; “What term to use?”

50 Robinson, *By the Order of the President*, p. 261.

51 Daniels, “Incarceration of the Japanese Americans”, p. 303. Also see; “What term to use?”. It should be noted that American officials, even President Roosevelt himself, used the term “concentration camp” on certain occasions, but later on abandoned its use due its negative connotations in the aftermath of the War. For reference, please see; Robinson, *By the Order of the President*, p. 2.

the war ended – because some PJD refused to leave in fear of being attacked by hostile locals or were at a loss of where to go (or had no place to go to).<sup>52</sup>

### 3 - THE SUPREME COURT CASES

As mentioned in the beginning, some people of Japanese descent challenged the curfew and the relocation to which they were subjected to. There are four Supreme Court cases that will be mentioned here: *Hirabayashi v. United States* (1943), *Yasui v. United States* (1943), *Korematsu v. United States* (1944), and *ex parte Endo* (1944). All of these cases were about PJD who were American citizens. Also, all of these cases challenged the legality of the policies carried out by the US government regarding PJD. Two of these cases, the *Hirabayashi* and the *Yasui* cases, were directly related to the curfew. The other two cases, the *Korematsu* and the *Endo* cases, were about the exclusion (or removal) and relocation.

#### 3.1 - *Kiyoshi Hirabayashi v. United States*, 320 U.S. 81 (1943)<sup>53</sup>

Gordon Kiyoshi Hirabayashi was an American citizen educated completely in American schools. He had never been to Japan and - according to his statement- had never borne any allegiance to it. He disregarded the curfew that ordered all PJD (along with resident aliens located in the military exclusion zone) to remain in their homes between 8 p.m. to 6 a.m. Furthermore, he failed to report to the nearby Civil Control Station, from where he would be transferred to an Assembly Center. During his trial in the lower courts, he explained that he was fully aware of the fact that he had defied a military order and the Congress act (the one adopted on 21 March 1942) that made it a crime to defy the military orders. Hirabayashi explained that he defied this order because the military order entailed an unconstitutional delegation of power from the Congress to military authorities, and that the restrictions placed upon him by the order entailed an unconstitutional discrimination against him due simply to his Japanese descent (violation of the Fifth Amendment of the Constitution). Based on such factors, Hirabayashi argued that the charges against him be dismissed.

<sup>52</sup> Robinson, *By the Order of the President*, pp. 5, 250.

<sup>53</sup> Supreme Court of the United States, “*Kiyoshi Hirabayashi v. United States*”, 320 U.S. 81 (1943), case verdict. The text of the case verdict can be accessed from: <http://laws.findlaw.com/us/320/81.html> (accessed on 29.01.2015).

The Supreme Court conceded that racial discrimination or discrimination based on descent was completely against the legal system of the US that was based on the equality of the citizens. However, upon the analysis put forth by the government, the Court concluded that there was a credible threat of espionage and sabotage that could be carried out by an undetermined number of PJD. The Court took into account the conduct of Japan against the US (the surprise Pearl Harbor without prior declaration of war, which took place even as Japan and the US were negotiating for a peaceful settlement of differences), Japan's rapid military advancement in the Pacific theater of the war, troubling government reports of PJD activities and their residence near key strategic areas in the western coast. The Court stated that a successful war effort required not only fighting back and pushing against enemy forces, but that it also required the safeguarding of the homeland from any subversive activity that could provide assistance to a possible invasion and damage war-making capacity. In such a context, the government acted reasonably when enacting its curfew policy regarding PJD. Furthermore, the Court deemed that the Executive Order, the Congress act and the military orders were all part of the same procedure based on the necessities of war. According to the Court, the Congress' delegation of power to the military authorities, in congruence with the Executive Order, were valid under the Constitution. Furthermore, the Court stressed that the Fifth Amendment of the Constitution did not prescribe equal protection under the law, but instead prohibited discrimination that would deny someone's right to access their legal rights. As such, Hirabayashi's argument about the military order being a violation of the Fifth Amendment was not valid. The following paragraph does well in summing up the reasoning of the Court in this case:

“Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality. For that reason, legislative classification or discrimination based on race alone has often been held to be a denial of equal protection. ... We may assume that these considerations would be controlling here were it not for the fact that the danger of espionage and sabotage, in time of war and of threatened invasion, calls upon the military authorities to scrutinize every relevant fact bearing on the loyalty of populations in the danger areas. Because racial discriminations are in most circumstances irrelevant

and therefore prohibited, it by no means follows that, in dealing with the perils of war, Congress and the Executive are wholly precluded from taking into account those facts and circumstances which are relevant to measures for our national defense and for the successful prosecution of the war, and which may in fact place citizens of one ancestry in a different category from others. ... The adoption by Government, in the crisis of war and of threatened invasion, of measures for the public safety, based upon the recognition of facts and circumstances which indicate that a group of one national extraction may menace that safety more than others, is not wholly beyond the limits of the Constitution and is not to be condemned merely because in other and in most circumstances racial distinctions are irrelevant.”<sup>54</sup>

Based on the reasoning outlined above, the Court affirmed Hirabayashi’s conviction for defying the military orders. A number of justices offered concurring opinions that provided additional important comments.

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**Justice Douglas concurred**, but indicated that the military order of curfew was only narrowly constitutional based on a wartime situation. He stated that peacetime procedures are not suitable during wartime, that military officials do not have the luxury of hindsight and therefore cannot be required to wait until espionage or sabotage occurs to take precautions that would be unacceptable in peacetime. He implied that the curfew was not based specifically on descent, but actually on a reasonable cause. He added, however, that although individuals must adhere to the order given to them (such as the curfew), they should have the right to be stand trial and demand being exempted from that order once they are shown to be loyal.

**Justice Murphy concurred**, but indicated that the military order of curfew was at the very limit of what was allowable by the Constitution. He stated that making distinctions based on people’s descent was utterly inconsistent with American values and ideals, and that PJD’s situation bore an unpleasant resemblance to the treatment that Jewish people suffered at the hands of Nazi Germany. He also stated that the Court’s verdict was the first time in its history that distinction based on descent was affirmed to be constitutional. He continued that such a distinction

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<sup>54</sup> Supreme Court of the United States, “Kiyoshi Hirabayashi v. United States”.

was only allowable within the context of the great emergency presented by the war. He added that none of this meant that military authorities under wartime circumstances got to enjoy unlimited authority to do as they deemed necessary. He stated that even in such circumstances, military authorities were subject to constitutional limitations. He concluded by adding that people (like PJD) should be free to move about outside of the military exclusion zones, and that restrictions placed on them should be immediately lifted once the threat posed by war dissipates.

**Justice Rutledge concurred**, and added that although military authorities must have wide discretionary power in times of war, such power was still subject to limitation and the courts did have the power to step in to protect citizens' rights.

### 3.2 - *Minoru Yasui v. United States*, 320 U.S. 115 (1943)<sup>55</sup>

The verdict of the Yasui case was delivered on the same day as the Hirabayashi case. Due to handling an almost identical situation to that of the Hirabayashi case, this case was considered to be a companion case to the one about Hirabayashi. Its verdict, therefore, is rather short and almost the same (with some minor variance) as the Hirabayashi case.

Minoru Yasui was an American citizen who attended school in the US and earned his law degree from an American university. He had, however, as a child spent one summer in Japan and attended a Japanese language school for three years. He was not only a member of the bar association of the state of Oregon (where he grew up), but he had in the past served as a personnel for the US military. He had worked for the Japanese consulate in Chicago as well, but resigned the day after the Pearl Harbor attack, and immediately offered his services to American military authorities. After consulting with an Federal Bureau of Investigation (FBI) agent about whether or not he should test the constitutional grounds of the curfew order imposed on PJD, Yasui purposely violated the curfew order and requested to be arrested for doing so.

Just as in the case of Hirabayashi, Yasui was convicted by a lower court

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55 Supreme Court of the United States, "*Minoru Yasui v. United States*", 320 U.S. 115 (1943), case verdict. The text of the case verdict can be accessed from: <http://laws.findlaw.com/us/320/115.html> (accessed on 29.01.2015).

of violating the curfew order. The way he was convicted, however, was different. The lower court deemed that the curfew order imposed on American citizens was unconstitutional, but that because of his previous employment in the Japanese consulate, Yasui had renounced his American citizenship and was thus subject to the curfew as a non-citizen.

Citing the Hirabayashi verdict, the Supreme Court sustained Yasui's conviction for violating the curfew order, because the curfew order had been determined to be constitutional by the Court. However, the Court noted Yasui's statement that he had not renounced his citizenship and that a renunciation of citizenship was not relevant in the context of the curfew order imposed by the US government and the military authorities. The lower court's verdict about the renunciation of citizenship was thus annulled. Although sustaining Yasui's conviction for violating the curfew, the Court remanded the case to the lower court for the resentencing of Yasui within the legal framework prescribed by the Court.

### 3.3 - Toyosaburo Korematsu v. United States, 323 U.S. 214 (1944)<sup>56</sup>

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Fred Toyosaburo Korematsu was an American citizen whose loyalty to his country was never put to doubt by the courts. He was convicted in a lower court of failing to leave his area of residence as was required by the exclusion order issued by military authorities (the establishment of the military exclusion zones outlined above). Korematsu challenged assumptions made by the Supreme Court during the Hirabayashi case, argued that the exclusion order was without basis since the threat of an invasion by Japan had passed by the time the order was issued, and added that he received conflicting orders from military authorities which instructed him to not leave and at the same time to leave his area of residence situated in the designated military zones.

The Court began by stating:

“... 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.

<sup>56</sup> Supreme Court of the United States, “Toyosaburo Korematsu v. United States”, 323 U.S. 214 (1944), court verdict. The text of the case verdict can be accessed from: <http://laws.findlaw.com/us/323/214.html> (accessed on 29.01.2015).



Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can.”<sup>57</sup>

The Court continued by reiterating their Hirabayashi case verdict and their reasoning for it. The curfew, at the time of its implementation was done for a pressing need - the threat of espionage and sabotage – and was constitutionally valid. The exclusion was clearly an extension of the measures taken against the threat of espionage and sabotage. The court admitted that the exclusion order was a step beyond in terms of severity to what the curfew called for, but argued that it was taken on the same pressing need as the curfew. The court rejected Korematsu’s argument that the threat of an invasion had passed by the time the exclusion order was issued. It maintained its acknowledgment of the findings the government supplied to the Court about the potential security risk posed by people of Japanese descent. It added that about five thousand Japanese Americans had refused to swear unconditional allegiances to the US and to renounce allegiance to the Emperor of Japan, and that several thousand PJD who had been relocated had requested to be repatriated to Japan. The Court therefore, just like it had done for the curfew, deemed that the exclusion was constitutional and valid when Korematsu had chosen to violate it.

The Court, however, also admitted that it was aware of the hardship being imposed on a large number of American citizens. It stated that war was an aggregation of various hardships that placed burden on all citizens, whether they be military personnel or civilian. The Court added the following statement:

“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.”<sup>58</sup>

The Court also rejected Korematsu’s claim that he was issued conflicting orders about staying at his place of residence and to leave it at the same

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57 Supreme Court of the United States, “Toyosaburo Korematsu v. United States”.

58 Supreme Court of the United States, “Toyosaburo Korematsu v. United States”.

time. The Court stated that order to remain in his area of residence was issued on 27 March 1942 with the explicit message that it was valid until further notice and until another order was issued. On 3 May 1942, a new order about exclusion was issued and it explicitly warned that any violation of it would be punishable under the Congress act of 21 March 1942. As such, after 3 May 1942, the only military order valid was the one issued on 3 May. When Korematsu was still in his area of residence on 30 May, he was violating only this exclusion order and it was for this violation that he was convicted in the lower court.

The Court stated that the order to leave one's area of residence (exclusion), and the order to report to Civil Control Stations (the relocation) were parts of the same mechanism the government took as a security measures. They were, however, separate parts based on separate orders which entailed separate punishment in case of a violation. Being separate, the legal validity of one order did not necessarily determine the legal validity of the other order. The Court pointed out to the Endo case (to be explained below) to indicate the difference between the validity of an exclusion order and the validity of order to subject oneself to relocation. It stated that Korematsu was convicted only of violating the exclusion order, and thus in the case present before it, the Court could only deliver a verdict on the exclusion order. The exclusion order was not a simple case racial prejudice directed against citizens, but rather a matter of necessity posed by real dangers. Although not delivering a verdict on the relocation order, the Court nevertheless expressed an opinion on it by rejecting the use of the term "concentration camp" to refer to the relocation centers due to the negative connotations the former term implied.

Korematsu's conviction was thus affirmed by the Court.

While one justice offered a short concurring opinion, three justices offered strongly worded dissenting opinions.

**Justice Frankfurter concurred**, but added that the exclusion prescribed the leaving of the designated military zones specifically by reporting to the Assembly Centers. Frankfurter stated that the exclusion order was worded clearly and was not contradictory.

**Justice Roberts dissented** by stating that Korematsu's case presented a situation in which there was a clear violation of an individual's constitutionally guaranteed rights. Roberts stated that the exclusion order

in question was a not a simple case of ordering people to stay home at certain hours or to temporarily leave an area so as to minimize risk. According to Roberts, the exclusion order was an inseparable part of the relocation process, the defiance to which was punishable under the Congress act. A citizen, without looking into his loyalty and solely because of his descent, was being convicted and punished for failing to submit himself to illegal imprisonment in a concentration camp. Roberts added that with this verdict, a “new doctrine of constitutional law” was being established by which citizens were required to follow contradictory military orders that they knew to be unlawful, that they must submit to disgraceful imprisonment and only then could they request the right to stand trial to prove the wrongdoing committed against them.

**Justice Murphy dissented**, stating that the exclusion order targeting PJD without even the declaration of martial law was beyond the limit of what was allowable by the Constitution, and that the order amounted to a legalization of racism. Murphy conceded that great deference must be attributed to the judgments of military officials and that individuals not well versed in military affairs (like justices) should not easily cast aside such judgments. Yet, there must be limits to the scope of military judgments, especially when no martial law has been declared. According to Murphy, any sweeping deprivation of a constitutionally guaranteed rights (such as the exclusion order) should be justified on the basis of an “immediate, imminent, and impending” public danger that affords no delay or deliberation. Yet, according to Murphy, the justification given for denying people’s right to receive equal legal protection, to access legal procedures to have their case heard, to prevent them from living, working and moving about as they saw fit was not adequately shown in terms of the exclusion order. Murphy contended that circumstantial evidence, vague descriptions and unverified reports were used to explain that PJD were required to be excluded from the western coast to prevent espionage and sabotage. Murphy also specifically commented about General DeWitt’s words in his *Final Report*, saying that DeWitt used unsubstantiated generalizations about people of Japanese descent, casting them all as being potential suspects of wrongdoing. Murphy stated that individual cases of disloyalty did not in any way prove the disloyalty of an entire group. He added that not one single PJD was accused or convicted of espionage or sabotage after the Pearl Harbor attack. Murphy also questioned the government’s argument about the urgency of the situation regarding PJD. Murphy observed that no martial law had been declared, that the government waited 4 months to issue

the first exclusion order and 8 months to issue the last. According the Murphy, the government's action was defined more by deliberation than urgency. Based on such factors, Murphy concluded that the exclusion order was fueled by more by racism than anything else. The following quote highlights Murhpy's reasoning:

“The reasons appear, instead, to be largely an accumulation of much of the misinformation, half-truths and 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.”<sup>59</sup>

**Justice Jackson dissented**, he too considered the exclusion order to be a form of racial discrimination. He stated that for Korematsu – besides his conviction present before the court – there was no contrary information to the fact that he was a loyal, law-abiding and well-disposed citizen. Yet, he was given contradicting orders to stay and then leave the place where he had been born and raised, to submit to “custody, examination, and transportation out of [his area of residence], to be followed by indeterminate confinement in detention camps”. With the threat of punishment for failing to do so, he was ordered to leave due not to his actions or thoughts, but due solely to his descent. Jackson pointed out that this was against one of the fundamental assumptions of the American legal system; that “guilt is personal and not inheritable”. Jackson conceded that courts were ill-equipped by their nature to properly determine whether or not military orders are reasonable in terms of assuring security. Yet he felt it necessary to question the reports that formed the justifications of the exclusion order:

“How does the Court know that these orders have a reasonable basis in necessity? No evidence whatever on that subject has been taken by this or any other court. There is sharp controversy as to the credibility of the DeWitt report. So the Court, having no real evidence before it, has no choice but to accept General DeWitt's own unsworn, self-serving statement, untested by any cross-examination,

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59 Supreme Court of the United States, “Toyosaburo Korematsu v. United States”.

that what he did was reasonable. And thus it will always be when courts try to look into the reasonableness of a military order.”<sup>60</sup>

Jackson stated that military orders might be deemed to be good ones based on their security outcome, but that such orders may not translate well into constitutional law. Although the relocation of people based purely on their Japanese descent was a blow to liberty by itself, Jackson expressed that for a court to affirm such a military order as constitutional was a subtle and far more dangerous blow to liberty. Jackson expressed that unlawful military orders may come and go with the passing of war emergencies, but that faulty court verdicts endure and pose the danger of becoming norms that may give opportunities for people to commit abuse again in the future. Jackson concluded that in the *Hirabayashi* case, the Court had affirmed “mild and temporary deprivation of liberty” based on people’s descent (the curfew order). Yet, according to Jackson, this former affirmation did not oblige the Court to affirm harsh and indeterminate deprivation of liberty that entailed people to completely leave their homes and live in detention camps (the exclusion order).

### 3.4 - *Ex parte Mitsuye Endo*, 323 U.S. 283 (1944)<sup>61</sup>

Mitsuye Endo was an American citizen who was excluded from the military exclusion zones of the western coast and relocated to one of the relocation centers run by the War Relocation Authority. During her internment in the relocation center, Endo requested to stand trial and be released from relocation center. She argued that she was a loyal and law-abiding American citizen for whom no charge was made. She argued that she was being detained in the relocation center unlawfully and against her will by armed guards. Her request was denied by a lower court. Afterwards, she filed an application to her relocation center to be granted leave (which was granted), but did not make an application to be granted indefinite leave. Procedures for being granted leave and indefinite leave by the relocation center have been explained above, and were also explained by the Court in its verdict of the case. Endo’s request to stand trial reached a higher court, and eventually the Supreme Court itself.

<sup>60</sup> Supreme Court of the United States, “*Toyosaburo Korematsu v. United States*”.

<sup>61</sup> Supreme Court of the United States, “*Ex parte Mitsuye Endo*”, 323 U.S. 283 (1944), court verdict. The text of the case verdict can be accessed from: <http://laws.findlaw.com/us/323/283.html> (accessed on 29.01.2015).

The Court noted that both the Department of Justice and the WRA conceded that Endo was indeed a loyal and law-abiding citizen to whom no charges were made. The Court also noted that both the Department and the WRA conceded that they had no authority to detain citizens whose good-conduct was not put to question any more than necessary. Any more than necessary meant the time it took to separate the loyal individuals from the disloyal ones, and to provide proper guidance for the relocation. Both institutions maintained that an additional period of detention even after the granting of leave was an integral part of the relocation of PJD.

The Court analyzed the grounds for the exclusion and the relocation, and indicated that it was done in order to prevent any possible cases of espionage and sabotage by the disloyal members of PJD. The Court indicated that the encouragement for voluntary relocation was abandoned in favor of a regulated one after the authorities were confronted with the hostility of communities (east of the military exclusion zones) to any mass and uncontrolled inflow of PJD. However, the Court highlighted that detention of PJD in relocation centers was never a part of the original plan of the exclusion and the relocation. Neither the Executive Order nor the Congress act in any way mentioned or envisaged the detention of PJD in relocation centers. The Executive Order and the Congress act prescribed measures necessary for successful exclusion and relocation, not detention. According to the Court, the detention was added by the relevant authorities due to a concern that occurred only later on.

The Court conceded that a certain measure of detention was necessary during the relocation and when people were first placed the relocation centers. Yet this did not change the fact that detention was not specifically put into words in the Executive Order and the Congress act. Furthermore, the Constitution provides “procedural safeguards surrounding the arrest, detention and conviction of individuals”, that it prescribes that people can only be deprived of their liberty after being subjected to proper legal procedures, and as such, no one can be deprived of their right to stand trial.

Based on such factors, the Court decided that Endo was entitled to unconditional release from her relocation center. The Court stated that the WRA had no authority to subject citizens who were clearly loyal to the leave procedures of the relocation centers. It argued that, being clearly loyal, such citizens posed no threat in terms of espionage and

sabotage. The detention of such loyal citizens served no useful or convenient purpose for the relocation effort. To insist in further detaining such citizens would have meant that the Executive Order and the Congress act were taken not for the prevention of espionage and sabotage, but for reasons that targeted people purely for their descent.

Two justices offered concurring opinions.

**Justice Murphy concurred**, but went further than the verdict of the Court. He stated that the detention of PJD, regardless of their loyalty, was not authorized either by the executive or the legislative branch of the country. Referring to his dissenting opinion in the Korematsu case (explained above), Murphy expressed that the detention of PJD constituted a case of legalized racism. Furthermore, he added that the exclusion order was invalid when it was issued and was even more invalid now when – according to him – there was no longer any fears of espionage and sabotage. According Murphy, Endo’s unconditional release from the relocation center also entitled her to move about as she saw fit, including her original area of residence located in the military exclusion zones.

**Justice Roberts concurred**, but did not agree the way in which the Court reached its verdict. According to Roberts, just like it had done in the Korematsu case, the Court avoided a serious constitutional question in reaching its verdict. According to Roberts, despite the fact the Executive Order and the Congress act did not through their wording prescribe detention, the Congress was subsequently made very well aware and through its actions gave its approval to it. So this was not a simple case of subordinate officials stepping out of the bounds prescribed by the Executive Order and the Congress act. Roberts concluded that the constitutionally guaranteed rights – especially the right to be subjected to proper legal procedures – of a clearly loyal American citizen was violated, that she was deprived of the liberty to move about freely and do as she saw fit. It was on such grounds that she should have been unconditionally released from her relocation center.

#### **4 - ADMISSIONS, APOLOGIES, OVERTURNING OF CONVICTIONS, AND RESTITUTIONS**

When they began to be released from the relocation centers by the end of the war, the people of Japanese descent experienced difficulties in



terms of adjusting back to and rebuilding their normal lives and businesses. Not only were they psychologically strained from being interned without being subjected to adequate legal proceedings, but they also felt stigmatized from having been collectively branded as potential enemy spies and saboteurs.<sup>62</sup> They were initially forced to make due with living in poor-quality houses and making a living by taking menial jobs. Dysfunctional families and substance abuse became a reflection of their troubled lives.<sup>63</sup>

It was only a couple of years later that the US government began to take notice of the economic losses and psychological strain of the PJD that resulted from the relocation and internment. In 1948, President Harry S. Truman (who as a senator had quietly given consent to the relocation and internment) sent the Congress a civil rights message which, among other things, called for economic compensation for the property losses suffered by PJD. He also commented, “more than one hundred thousand Japanese-Americans were evacuated from their homes in the Pacific states solely because of their racial origin” without mentioning the military necessity that had been cited by the government as a justification for the relocation and internment.<sup>64</sup> Upon the passing of the relevant legislation by the Congress, President Truman signed on 2 July 1948 the Japanese-American Claims Act. It prescribed the payment of about 370 million dollars (38 million dollars in terms of its value in 1948) to settle all the property claims to be made by PJD. It took several years to go through all the property claims, and those who received compensation in this way were required to waive all future claims against the Government.<sup>65</sup> The amount that had been compensated in this way has been seen by many people as being nowhere near enough to cover the actual economic losses.<sup>66</sup> This was followed by the enactment of an immigration act in 1952 which removed many of the obstacles preventing many PJD from gaining citizenship. In 1959, the territory of Hawaii became state. Since about a third of its population was of Japanese descent, these people were able gain political influence through their members who became the senators and representatives of the Congress.<sup>67</sup>

62 Peter Irons, “Unfinished Business: The Case for Supreme Court Repudiation of the Japanese American Internment Cases”, *Earl Warren Bill of Rights Project*, University of California, San Diego, p. 28.

63 Robinson, *By the Order of the President*, p. 250.

64 Daniels, “Incarceration of the Japanese Americans”, pp. 305-306.

65 Robinson, *By the Order of the President*, p. 251.

66 Daniels, “Incarceration of the Japanese Americans”, p. 306.

67 Daniels, “Incarceration of the Japanese Americans”, p. 306.

In 1976, President Gerald R. Ford proclaimed that Roosevelt's Executive Order No. 9066 had been revoked. Praising the contributions that had been made by Japanese Americans to their country,<sup>68</sup> he also stated: "We now know what we should have known then - not only was [the] evacuation wrong, but Japanese-Americans were and are loyal Americans."<sup>69</sup>

Up until the 1970s, PJD had kept their silence about their relocation and the internment during World War II. For example, Fred Korematsu's daughter did not even find out about her father's Supreme Court case until she was in high school, and even then she initially found out about it not from her father but through her classmate's school presentation. However, the civil rights movement of African Americans and the widespread anti-war protests during the Vietnam War emboldened PJD to start a "redress and reparations" campaign. This campaign sought an apology from the government and the symbolic payments for the internment. The campaign eventually gained ground, and in 1980, this resulted in the Congress – supported by President Jimmy Carter – establishing the "Commission on Wartime Relocation and Internment of Civilians."<sup>70</sup> The Commission's duty was to:

- “1. review the facts and circumstances surrounding Executive Order Numbered 9066, issued February 19, 1942, and the impact of such Executive Order on American citizens and permanent resident aliens;
2. review directives of United States military forces requiring the relocation and, in some cases, detention in internment camps of American citizens ... and
3. recommend appropriate remedies.”<sup>71</sup>

The Commission held public hearings and reviewed evidence about the issue. After 18 months of work,<sup>72</sup> the Commission published its findings in a report titled *Personal Justice Denied*. In my article, I attempted to give an account of the relocation and internment as it was seen by the

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68 Robinson, *By the Order of the President*, p. 251.

69 Daniels, "Incarceration of the Japanese Americans", p. 306.

70 Irons, "Unfinished Business", pp. 28-29.

71 "Personal Justice Denied", p. 1.

72 Robinson, *By the Order of the President*, p. 251.

government at that time. The following parts from *Personal Justice Denied* instead help give an account of the way things were seen with the benefit of hindsight:

“This policy of exclusion, removal and detention was executed against 120,000 people without individual review, and exclusion was continued virtually without regard for their demonstrated loyalty to the United States. Congress was fully aware of and supported the policy of removal and detention...

All this was done despite the fact that not a single documented act of espionage, sabotage or fifth column activity was committed by an American citizen of Japanese ancestry or by a resident Japanese alien on the West Coast.

... Official actions against enemy aliens of other nationalities were much more individualized and selective than those imposed on the ethnic Japanese.

The exclusion, removal and detention inflicted tremendous human cost. There was the obvious cost of homes and businesses sold or abandoned under circumstances of great distress, as well as injury to careers and professional advancement. But, most important, there was the loss of liberty and the personal stigma of suspected disloyalty for thousands of people who knew themselves to be devoted to their country's cause and to its ideals but whose repeated protestations of loyalty were discounted—only to be demonstrated beyond any doubt by the record of Nisei soldiers, who returned from the battlefields of Europe as the most decorated and distinguished combat unit of World War II, and by the thousands of other Nisei who served against the enemy in the Pacific, mostly in military intelligence. ...

... the exclusion and removal were attacks on the ethnic Japanese which followed a long and ugly history of West Coast anti-Japanese agitation and legislation. Antipathy and hostility toward the ethnic Japanese was a major factor of the public life of the West Coast states for more than forty years before Pearl Harbor. ... Japanese immigrants were

barred from American citizenship, although their children born here were citizens by birth. California and the other western states prohibited Japanese immigrants from owning land. In part the hostility was economic, emerging in various white American groups who began to feel competition, particularly in agriculture, the principal occupation of the immigrants. The anti-Japanese agitation also fed on racial stereotypes and fears: the “yellow peril” of an unknown Asian culture achieving substantial influence on the Pacific Coast or of a Japanese population alleged to be growing far faster than the white population. This agitation and hostility persisted, even though the ethnic Japanese never exceeded three percent of the population of California, the state of greatest concentration.

The ethnic Japanese, small in number and with no political voice—the citizen generation was just reaching voting age in 1940—had become a convenient target for political demagogues, and over the years all the major parties indulged in anti-Japanese rhetoric and programs. Political bullying was supported by organized interest groups who adopted anti-Japanese agitation as a consistent part of their program...

... contrary to the facts, there was a widespread belief, supported by a statement by Frank Knox, Secretary of the Navy, that the Pearl Harbor attack had been aided by sabotage and fifth column activity by ethnic Japanese in Hawaii. Shortly after Pearl Harbor the government knew that this was not true, but took no effective measures to disabuse public belief that disloyalty had contributed to massive American losses on December 7, 1941. Thus the country was unfairly led to believe that both American citizens of Japanese descent and resident Japanese aliens threatened American security.

... as anti- took up the familiar anti-Japanese cry ... and pressed ... for stern measures to control the Japanese organizations began to speak out and rumors from Hawaii spread, West Coast politicians quickly ethnic Japanese—moving quickly from control of aliens to evacuation and removal of citizens.

The promulgation of Executive Order 9066 was not justified by military necessity, and the decisions which followed from it ... were not driven by analysis of military conditions. The broad historical causes which shaped these decisions were race prejudice, war hysteria and a failure of political leadership. Widespread ignorance of Japanese Americans contributed to a policy conceived in haste and executed in an atmosphere of fear and anger at Japan. A grave injustice was done to American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them, were excluded, removed and detained by the United States during World War II.”<sup>73</sup>

In essence, the Commission had reached the conclusion that the relocation and internment of PJD was not really about military necessity, but rather about racial prejudice against people of Japanese descent, animosity of the white Americans due to economic competition, war hysteria and fear that had gripped the country, and the failure of the country’s political leaders to calm down the public. The Commission recommended for the government to deliver an official apology and for the tax-free payment of 20,000 dollars to each survivor of the relocation and internment. Discussions about a legislation on based on the Commission’s recommendations took five years, since there were groups who opposed it, arguing that the relocation and internment were reasonable and humane, and that President Roosevelt was in no way motivated by racial prejudices when he issued his executive order.<sup>74</sup> A legislation was eventually passed, the Civil Liberties Act of 1988. With the act, the Congress stated:

“[the relocation and internment] were carried out without adequate security reasons and without any acts of espionage or sabotage documented by the Commission and were motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership. The excluded individuals of Japanese ancestry suffered enormous damages, both material and intangible, and there were incalculable losses in education and job training, all of which resulted in significant suffering for which

73 “Personal Justice Denied”, pp. 2-5, 18.

74 Robinson, *By the Order of the President*, p. 251.

## The Relocation and Internment of People of Japanese Descent in the US During WWII

appropriate compensation has not been made. For these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologizes on behalf of the Nation.”<sup>75</sup>

President Ronald Reagan signed the act on 10 August 1988. When he signed the act, he made the following statement:

“we gather here today to right a grave wrong. More than 40 years ago, shortly after the bombing of Pearl Harbor, 120,000 persons of Japanese ancestry living in the United States were forcibly removed from their homes and placed in makeshift internment camps. This action was taken without trial, without jury. It was based solely on race ... For here we admit a wrong; here we reaffirm our commitment as a nation to equal justice under the law.”<sup>76</sup>

Beginning in 1990 and ending in 1999, payments were made to 81,874 people for a total of about 3 billion dollars (1,639,480,000 dollars based on its value in 1990). Most Japanese Americans felt that these statements and payments brought a measure of closure to their war-time experiences.<sup>77</sup>

During the document review conducted by the Commission, one researcher came across government documents pointing to the government’s misconduct during the Supreme Court cases. Beginning with this researcher’s discovery, political scientist and attorney Peter Irons conducted his own research to find out more about this government misconduct.<sup>78</sup> Irons argues that further research revealed the following about government’s misconduct during the Supreme Court cases:

General DeWitt’s *Final Report* supplied to the Court was a revised version that removed and concealed “the purely racial motivation of General DeWitt that had prompted his decision to issue the military orders for the curfew and evacuation of Japanese Americans”, but which

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75 Irons, “Unfinished Business”, p. 29.

76 Irons, “Unfinished Business”, p. 29.

77 Daniels, “Incarceration of the Japanese Americans”, p. 306. Also see; Roger Daniels, “Japanese American Cases, 1942-2004: A Social History”, *Law and Contemporary Problems*, vol. 68, no. 2 (Spring, 2005), pp. 167-168.

78 Daniels, “Japanese American Cases...”, pp. 167-168.

retained “its false espionage allegations”.<sup>79</sup> Under DeWitt’s insistence, Department of War officials destroyed all copies of the original version (all except one, which was discovered by the researcher during the Committee’s document review<sup>80</sup>) in order to prevent the US Solicitor General (representing the government before the Court) and other officials from finding out about it and reporting it to the Court.<sup>81</sup> In order to further demonstrate DeWitt’s racist motivations, Iron supplies the following quote by DeWitt: “It makes no difference whether the Japanese is theoretically a citizen. There’s no such thing as a loyal Japanese. A Jap is a Jap.”<sup>82</sup>

In order to ascertain the extent of disloyalty PJD, naval intelligence officer Lieutenant Commander Kenneth D. Ringle (who spoke Japanese) had prepared a report titled *Report on Japanese Question* (also referred to as the “Ringle Report”). It was submitted to Chief of Naval Operations on 26 January 1942 and also made available to DeWitt and other military officials. The Report concluded that there only about 3500 Japanese Americans would potentially act as spies and saboteur for Japan. The Report indicated that these individuals could be quickly apprehended if deemed necessary, because they were already identified by the authorities. The Report concluded that: “In short, the entire ‘Japanese Problem’ has been magnified out of its true proportion, largely because of the physical characteristics of the people [and] should be handled on the basis of the individual, regardless of citizenship, and not on a racial basis.”<sup>83</sup> This report (undermining the government’s argument about military necessity) was discovered by Assistant Attorney General Edward Ennis before the Hirabayashi case, and he warned Solicitor General Charles Fahy that the Court had to be informed of this report, and saying that doing otherwise “might approximate the suppression of evidence”.<sup>84</sup> Fahy, however, ignored his assistant’s warning and did not mention Ringle’s report to the Court.

While preparing the Government’s position in the Korematsu case, Assistant Attorney General Ennis sought the help of FBI and the Federal Communications Commission (FCC) to a determine the veracity of DeWitt’s claims about Japanese were engaging in clandestine

79 Irons, “Unfinished Business”, pp. 7, 12.

80 Irons, “Unfinished Business”, p. 12.

81 Irons, “Unfinished Business”, p. 12.

82 Irons, “Unfinished Business”, p. 31.

83 Irons, “Unfinished Business”, p. 8.

84 Irons, “Unfinished Business”, p. 8.



communication with enemy forces on the western coast. FBI Director J. Edgar Hoover responded by indicating that, despite a detailed search of its records, FBI came across no such information that would support DeWitt's claims. Likewise, FCC Chairman James L. Fly indicated that, despite exhaustive investigations, the FCC found no evidence in support of DeWitt's claims. As such, Ennis informed his superiors of this lack of evidence and stated "it is highly unfair to this racial minority that these lies [DeWitt's claims], put out in an official publication, go uncorrected."<sup>85</sup> Solicitor General Charles Fahy, although receiving such information, again disregarded it. Instead, he told the Court that "he personally vouched for the veracity of 'every line, every word, and every syllable' in DeWitt's report."<sup>86</sup>

Armed with such knowledge about the Government's misconduct, Peter Irons along with a team of other attorneys (working for free)<sup>87</sup> filed petitions to federal courts in 1983 for the correction of the erroneous convictions of Gordon Hirabayashi, Minoru Yasui, and Fred Korematsu. The petitions all had the same wording and allegations: "Petitioner has recently discovered evidence that his prosecution was tainted, both at trial and during the appellate proceedings that followed, by numerous and related acts of governmental misconduct."<sup>88</sup> The petitions charged that the government had removed evidence of the racially prejudiced nature of the motivations underlying its war-time policies, had concealed evidence relating to the loyalty of Japanese Americans, and had failed to notify the Court of the lack of factual support for the claims of espionage. The petitions therefore charged that there was no basis for the government's argument about military necessity, which had formed the basis of the Court's verdicts. Based on these charges and the information supplied, federal courts overturned the convictions of Hirabayashi, Yasui, and Korematsu.<sup>89</sup>

The attorneys had hoped that at least one of these new cases might reach the Supreme Court, so that the Court would be able to once again look at this issue in light of new evidence, and repudiate its earlier verdicts. Yet this hope was not realized, because the Department of Justice under President Reagan's administration chose not to appeal the cases to the

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85 Irons, "Unfinished Business", pp. 8-9.

86 Irons, "Unfinished Business", p. 9.

87 Daniels, "Japanese American Cases...", p. 168.

88 Irons, "Unfinished Business", p. 6.

89 Robinson, *By the Order of the President*, p. 251.

Court. As such, the way for these new cases to reach the Court was blocked.<sup>90</sup>

Lastly; in 1998, Fred Korematsu received the Presidential Medal of Freedom – the highest civilian award – for his determination during his legal struggles against the Government’s war-time policy. In 2012, Gordon Hirabayashi posthumously received the same award for the same reason. Strangely, despite having done the exact same thing as Korematsu and Hirabayashi, Minoru Yasui has still not posthumously received this award.<sup>91</sup>

## 5 - SUPREME COURT’S LACK OF ACTION

Despite the overturning of the convictions of Hirabayashi, Yasui, and Korematsu in federal courts; and despite these cases being among the most controversial and criticized verdicts of the Supreme Court; the Court has yet to repudiate its past verdicts. As such, as Judge A. Wallace Tashima (who spent some of his childhood years in a relocation camp) put it, these verdicts of the highest court of the US remain as “good law”, as in, they are technically still valid, and are still a legal precedent.<sup>92</sup>

On 20 May 2011, Acting Solicitor General Neal Katyal issued a statement titled: “Confession of Error: The Solicitor General’s Mistakes during the Japanese-American Internment Cases”.<sup>93</sup> In the statement, Katyal made observations of the misconduct of Solicitor General Charles Fahy. He mentioned the Government’s cover up involving Ringle’s report, and FBI and FCC’s responses regarding DeWitt’s claims. This statement was one of the main reasons why Peter Irons published his article “Unfinished Business: The Case for Supreme Court Repudiation of the Japanese American Internment Cases” in early 2013.<sup>94</sup> In it, not only did he outline the findings of his previous research for the Supreme Court cases (as the reader can see from the footnotes I have given), he also called on the Supreme Court to publicly and

90 Daniels, “Japanese American Cases...”, p. 169. Also see; Irons, “Unfinished Business”, p. 4.

91 Irons, “Unfinished Business”, p. 30.

92 Tashima, “Play it again...”, p. 9.

93 Neal Katyal, “Confession of Error: The Solicitor General’s Mistakes during the Japanese-American Internment Cases”, *The United States Department of Justice* website, <http://www.justice.gov/opa/blog/confession-error-solicitor-generals-mistakes-during-japanese-american-internment-cases> (accessed on 02.02.2015).

94 Irons, “Unfinished Business”, p. 22.

explicitly repudiate or overrule its *Hirabayashi*, *Yasui*, and *Korematsu* case verdicts.<sup>95</sup> Pointing out to Katyal's admission, the uncovering of the erroneous basis of the previous verdicts, and the fact that the Court had already implicitly repudiated these previous verdicts with the comments justices made in two other Court cases; Irons argued that these served as compelling reasons why the Court should take action in this regards. He admitted that a public statement of this nature would be unprecedented (as it has never been done), and that the Court technically reviews legal issues only within the context of a new Court case. Nevertheless, Irons argued, the Court had the inherent power and judicial discretion to make such a statement.

The Supreme Court has so far not issued the kind of statement that Irons has called out for. One commentator's analysis of Iron's call helps explain why no such statement has so far been made:

“However wrong-headed, or even worse, a decision by the Supreme Court might be, either when issued or when assessed in later years, the Constitution simply does not give the justices the authority to issue public statements condemning such a past ruling [*Hirabayashi*, *Yasui*, and *Korematsu* case verdicts]. That is a political act, and it would be a direct contradiction of the limits of Article III for the court to indulge in such a public statement.

That is not to say that the court cannot show its profound disagreement with a prior ruling that it has made, but there is a way to do that without the court becoming a public critic of its own precedents. The way is to overrule an offending precedent when the occasion arises for such a decision to be tested anew.

Note that phrase: ‘when the occasion arises.’ That, constitutionally speaking, is limited to an opportunity for the court to rule on a new case that actually involves what the court often calls a ‘live case or controversy’ and the past ruling is claimed by one side or the other to affect or control the outcome.”<sup>96</sup>

95 Irons, “Unfinished Business”, pp. 3-4, 24-26.

96 “Constitution Check: Will the court repudiate decisions from the World War II era?”

A similar Court case that could involve the issues dealt with in Hirabayashi, Yasui, and Korematsu cases did not present itself until 2014. Filed in 2012, the *Hedges v. Obama* court case was about a group of journalists, authors, and political activists who challenged a section of the National Defense Authorization Act for Fiscal Year 2012 (NDAA). This act allows the US government to indefinitely detain anyone (including possibly its own citizens) it deems to be members of or supporters of terrorist groups such as al-Qaeda and the Taliban. During deliberations on the act, attention was brought to the wording of the act. It was worded in such a way that the Korematsu case verdict (and by association, the verdicts of the Hirabayashi and Yasui cases) might be shown to provide a precedent for the indefinite detention of American citizens and legal residents in the US.<sup>97</sup> Once the *Hedges v. Obama* court case was appealed to the Supreme Court, the attorneys who had worked on the new Hirabayashi, Yasui, and Korematsu cases sent a letter to the Solicitor General Donald B. Verilli (Jr.). Indicating that they were not taking a specific stand on the *Hedges v. Obama* case; but citing the near universal criticism the Hirabayashi, Yasui, and Korematsu case verdicts receive, and the admission that had been made by former Acting Solicitor General Katyal about government misconduct during World War II; the attorneys asked the for the Government to do the following for its response to the Supreme Court appeal:

“A request by [you] that the Court formally overrule the internment decisions would fulfill the duty of absolute candor that was sadly lacking in the government’s briefs and arguments in 1943 and 1944. Should you decide not to make such a request, however, we urge that [you] make clear in [your] response to the *Hedges* petition that the government does not consider the internment decisions as valid precedent for governmental or military detention of individuals or groups without due process of law....”<sup>98</sup>

Solicitor General Verilli of President Barack Obama’s administration, however, did not pay heed to this request. The Government’s response

97 Lyle Denniston, “A plea to cast aside *Korematsu*”, *Supreme Court of the United States Blog*, <http://www.scotusblog.com/2014/01/a-plea-to-cast-aside-korematsu/> (accessed on 02.02.2015). Also see; Damon Root, “Obama Administration Refuses Opportunity to Repudiate Japanese Internment Ruling”, *Reason.com*, <http://reason.com/blog/2014/04/01/obama-administration-refuses-opportunity> (accessed on 02.02.2015).

98 Dale Minami et al., “Letter to Solicitor General of the United States Donald B. Verilli (Jr.)” [no official title], <http://sblog.s3.amazonaws.com/wp-content/uploads/2014/01/Hedges-letter-re-Korematsu-1-13-14.pdf> (accessed on 02.02.2015).

to the Supreme Court appeal made no mention of the Hirabayashi, Yasui, and Korematsu case verdicts, and no explanation was given as to why no mention of the case verdicts was made.<sup>99</sup> Furthermore, the Supreme Court refused to hear the *Hedges v. Obama* case. As such, the lower court's verdict that the applicants of the case had no right to sue - because they failed to demonstrate that they could be targeted by NDAA - has remained standing.<sup>100</sup> The chance to achieve repudiation of the Hirabayashi, Yasui, and Korematsu case verdicts through the *Hedges v. Obama* case, therefore, has been lost.

Issues of indefinite internment without trial for citizens, legal residents, and enemy aliens have been brought up again and again during the US' struggle against international and domestic terrorism (often referred to as the "war on terror/terrorism"). In varying degrees, this has been the case for both the presidency of George W. Bush and Barack Obama.<sup>101</sup> The Obama administration's failure to address the repudiation of the Hirabayashi, Yasui, and Korematsu case verdicts could be construed as the refrain from any action that can potentially undermine the government's scope of power to take measures against terrorism.

Former Chief Justice William Rehnquist is reported to have stated that (as explained by Judge Tashima): "if the Supreme Court were to be faced with the same case today as it was in *Korematsu* in 1944, it would make the same decision because of the Court's historic deference the military and its reluctance to interfere with military decisions."<sup>102</sup> Perhaps this was one of the reasons why the Supreme Court refused to hear the *Hedges v. Obama* case, or make any statement explicitly repudiating the Hirabayashi, Yasui, and Korematsu case verdicts. In the war on terror with enemies that cannot be easily identified but can cause great harm, the Court could be deferring to the judgments of the government and its military.

I would like to conclude this section with a quote from longest serving (in the current lineup) Supreme Court Justice Antonin Scalia:

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99 "Obama Administration Refuses Opportunity to Repudiate Japanese Internment Ruling".

100 Lawrence Hurley, "Supreme Court rejects hearing on military detention case", *Reuters*, <http://www.reuters.com/article/2014/04/28/us-usa-court-security-idUSBREA3R0YH20140428> (accessed on 02.02.2015). Also see; "A plea to cast aside *Korematsu*".

101 Tashima, "Play it again...", p. 12-14. Also see; Daniels, "Japanese American Cases...", pp. 169-170.

102 Tashima, "Play it again...", p. 9.

“Well, of course, Korematsu [case verdict] was wrong. ... And I think we have repudiated it in a later case. But you are kidding yourself if you think the same thing will not happen again. ... [there was] panic about the war and the invasion of the Pacific and whatnot. That’s what happens. It was wrong, but I would not be surprised to see it happen again, in time of war. It’s no justification but it is the reality.”<sup>103</sup>

## 6 - COMPARISON WITH THE EVENTS OF 1915: REAL VS. FABRICATED “MILITARY NECESSITY”

The relocation and internment of people of Japanese descent by the US government during World War II, and the resettlement of Armenian people by the Ottoman government during World War I took place in two very different contexts. I will not go into much detail on the resettlement of Armenians since it is not the focus of this article. Once both cases are examined though, some key differences become evident.

Unlike the Japanese case, Armenians were not subject to internment by the Ottoman government. They were instead only moved out of the war regions to other parts of the empire.<sup>104</sup> Like in the Japanese case, however, the Ottoman government took measures to protect, feed and assist the Armenians during their resettlement process. The fact that Japanese relocation was much more successful in terms of near zero Japanese casualties, and the fact that there were many Armenian casualties during the Armenian resettlement has to do with their context.

The US, although attacked in Pearl Harbor by Japan, never suffered war in its mainland during World War II. It never faced an actual invasion by enemy forces, hence its survival was never actually threatened. Furthermore, with its economy and military capacity, it was already on its path to superpower status during the war. It experienced no internal turmoil and intercommunal fighting. Meanwhile, the Ottoman Empire suffered war directly on its mainland during World War I and it was subject to invasion attempts on all sides by the forces the United Kingdom and the Russian Empire for example. When defeated, the

103 Debra Cassens Weiss, “Scalia: Korematsu was wrong, but ‘you are kidding yourself’ if you think it won’t happen again”, *ABA Journal* website, [http://www.abajournal.com/news/article/scalia\\_korematsu\\_was\\_wrong\\_but\\_you\\_are\\_kidding\\_yourself\\_if\\_you\\_think\\_it\\_won](http://www.abajournal.com/news/article/scalia_korematsu_was_wrong_but_you_are_kidding_yourself_if_you_think_it_won) (accessed on 02.02.2015).

104 Serdar Palabiyık, “An Introduction to the Armenian Question until the Treaty of Lausanne”, in *The Armenian Question: Basic Knowledge and Documentation*, edited by Ömer Engin Lütem (Ankara: Terazi Publishing, 2009), p. 16.

Ottoman Empire was invaded on all sides by the victorious powers of the War. The Ottoman Empire was incomparably (vs. the US) lacking both in terms of its economy and military capacity. It was fighting a war of survival in poor conditions with meager resources, while both Armenian and Muslim groups within the Empire were engaging in banditry and mutual attack against each other's peoples.<sup>105</sup> The Ottoman government simply did not have the opportunity to conduct the Armenian resettlement in the orderly and safe fashion of the relocation done in the US.

The main controversy surrounding the Japanese case was the reasoning behind the military necessity argument put forth the US government. During World War II, especially right after the Pearl Harbor attack, the US government was fearful of a possible invasion by Japan and subversive actions of its population with Japanese descent. To prevent espionage and sabotage, the US government argued that it was a military necessity to place curfews on PJD, and to eventually relocate and intern them. Found out by the American public only later, however, the threat of subversive activity by PJD was without basis. The government had become aware of this during war-time, but chose to hide it from judicial scrutiny. The government had acted out of fear, racial prejudice and war hysteria. In essence, the military necessity the government put forth was a fabrication. PJD were subjected to relocation and internment, and incurred both psychological and economic damage due to a fabrication by the US government which the American public inevitably bought (since they did not know the truth).

The military necessity in the Armenian case, however, was no fabrication. The banditry and the revolutionary activities (against the Ottoman Empire) of various Armenian groups are well documented. The atrocities and mass killing committed by such groups is well documented as well, about 518,000 Muslims between 1914 and 1921 died as a direct result of these groups' aggression.<sup>106</sup> Also well documented is the fact that volunteer Armenians (including deserters of the Ottoman army) took up fighting against the Ottoman Empire on the side of the Russian Empire for example, and the Russians were shocked at the Armenian volunteers' cruel treatment of the Ottoman Muslim population.<sup>107</sup> That Ottoman Armenian officials and religious leaders

105 Palabıyık, "An Introduction to the Armenian Question...", p. 17.

106 Yusuf Sarınoy (ed.), *Ermeniler Tarafından Yapılan Katliam Belgeleri/Documents on the Massacre Perpetrated by Armenians – Vol. I (1914-1919) and Vol. II (1919-1921)*, (Ankara: Başbakanlık Devlet Arşivleri Genel Müdürlüğü, 2001), pp. 377, 1054.

107 Palabıyık, "An Introduction to the Armenian Question...", p. 15.



were a part of these subversive activities is also known. The Ottoman government explicitly warned both Armenian political representatives and religious leaders that drastic measures would be taken if the aggression and subversion carried out by Armenians did not stop. Unfortunately, it did not stop. As a result of this, on 24 April 1915, the Ottoman government closed down Armenian revolutionary groups and arrested 235 of such groups' leaders. On 27 May 1915, the Ottoman government ordered the resettlement of Armenians away from the war regions.<sup>108</sup> The resettlement was based on military necessity, to remove the support given by the Armenian population to the Armenian groups carrying out the subversions and aggressions.<sup>109</sup>

The fundamental difference therefore, between the Japanese case and the Armenian case, is about the nature of the military necessity put forth by both the US and the Ottoman government. While the military necessity put for by the US government was based on fabrication, the one put forth by the Ottoman government was based on reality. Had the military necessity put forth by the US government been based on reality, as in, had the PJD actually engaged in espionage and sabotage against the US, then the entire nature of the controversy concerning Japanese relocation and internment would have changed into something completely different.

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108 Palabıyık, "An Introduction to the Armenian Question...", p. 16.

109 Edward J. Erickson, *Ottomans and Armenians: A Study in Counterinsurgency* (New York: Palgrave Macmillan, 2013), p. 3. Erickson's book is entirely dedicated to analyzing the military necessity aspect of the Armenian relocation.

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