

**3rd Place Winner of
2017 Essay Contest**

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Japanese Internment: Learning from Our Mistakes

December 7, 1941 will forever be known as the “day that lives in infamy”. The bombing of Pearl Harbor sparked a period of anti-Japanese sentiment that resulted in the mass detention of people of Japanese ancestry living in the West Coast. To prevent sabotage during World War II, President Franklin D. Roosevelt enacted Executive Order 9066, interning Japanese Americans and Japanese immigrants. The Judicial Branch’s role, then and now, is to protect individual civil liberties that may be violated in the interest of national security. This role is illustrated in the internment and subsequent release of the Japanese during WWII, specifically in the cases *Korematsu v. United States*, *Hirabayashi v. United States*, and *Ex parte Mitsuye Endo*, as well as in current efforts to fight terrorism.

All citizens are secured the right to “equal protection” as guaranteed by the Fifth Amendment. Due to the potential security risk, however, Japanese Americans were refused this right during World War II. As seen in *Korematsu v. United States*, Mr. Korematsu was forced into internment as an American citizen of Japanese descent living in the West Coast. After refusing to comply with the evacuation order, Mr. Korematsu was arrested and his case was granted *certiorari* to the Supreme Court. During the trial it was evident that Mr. Korematsu’s ethnicity was the only grounds for his evacuation, which violated his right to “equal protection.” During the war, citizens of other ancestries were tried on a case-by-case basis if their loyalty to the United States was questioned. As Justice Murphy asserted on the Fifth Amendment, “No adequate reason [was] given for the failure to treat these Japanese Americans on an individual basis... as was done in the case of persons of German and Italian ancestry” (*Korematsu v. United States*). The *Ex parte Mitsuye Endo* case further highlights unequal protection for Japanese Americans. When Mitsuye Endo was interned at the Tule Lake War Relocation Center, she

petitioned for the writ of *habeas corpus*, stating that no charge had been made against her and was therefore being unlawfully detained. Ms. Endo's case challenged the discriminatory incarceration of people of Japanese ancestry, although the United States was also at war with Germany and Italy. Justice Douglas delivered the Supreme Court ruling that Japanese internment was unconstitutional, as the rights of Japanese Americans must be upheld even in a time of war. He specifically addressed "equal protection," stating that, "In vindication of the very ideals for which we are fighting this war it is important to us to maintain a high standard of fair, considerate, and equal treatment for the people of this minority as of all other minorities" (*Ex parte Mitsuye Endo*). Both of these cases exhibited clear violations of constitutional rights to equal protection based solely on racial inheritance, and should be taken into consideration when determining current policy.

Another way the Constitution ensures fair treatment is through due process and *habeas corpus*, which is specifically granted to defend against arbitrary loss of life, liberty or property. As previously mentioned, Mitsuye Endo petitioned for the writ of *habeas corpus*, stating that she was a law abiding citizen whose only charge was her racial heritage. Along with 70,000 American citizens, she was interned without the benefit of sufficient legal process. This violation of due process was not uncommon, and was also debated in *Hirabayashi v. United States*. Mr. Hirabayashi was convicted of disregarding a Japanese-only curfew, a case which ultimately reached the Supreme Court. Regulatory action of particular groups based on racial distinction, such as the curfew placed on Japanese Americans, directly violates due process of law as defined in the Fifth Amendment. Describing this injustice, Justice Murphy states that "...there may not be discrimination of such an injurious character in the application of laws as to amount to a denial of due process of law as that term is used in the Fifth Amendment. I think that point is

dangerously approached when we have one law for the majority of our citizens and another for those of a particular racial heritage” (Hirabayashi v. United States). These two cases should set the precedent for future discussions regarding preserving individual rights during national conflict, as it is vital to ensure that an individual’s liberty is not taken away unfairly, especially based on ethnicity or religion.

When considering the constitutionality of a travel ban today, it is important to recognize potential infringements upon civil rights granted by the Constitution. The purpose of the ban would be to protect United States citizens from harm by restricting people from “high risk” nations from entering the United States. This ban targets Muslim-majority nations because of terrorism among radical Islamic fundamentalists. Similar to the Japanese internment, people living in these predominantly Muslim nations are being solely targeted based on the discriminatory idea that entire groups of people, classified by a race or religious background, pose a threat to national security. Individual disloyalty does not constitute group disloyalty, and individual rights must be protected. Furthermore, the urgent nature of this ban necessitates immediate implementation. Consequently, procedural due process would be forfeited because individual hearings could not be undertaken.

This constitutional conflict between equal protection and national security is evident today with the idea of a travel ban. In times of war, tensions rise between the Executive and Judicial Branches in balancing national security and preserving individual civil liberties of equal protection and due process. As seen with the internment of the Japanese, legal discrimination can occur when national security takes precedent over individual rights. Current efforts to restrict immigration in the form of a travel ban are strikingly reminiscent of Japanese internment. It is crucial that the Judicial Branch continues to consider the lessons of the Japanese internment to

ensure that individual rights are not taken away based on race, religious background, or other arbitrary distinctions.

Works Cited

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