

Individuals rejoice when health is restored—not when they start a sickness.

Nations rejoice when peace is declared—not when they begin a war.

We must study the mistakes that have caused wars, if we are to prevent the spread of war and our involvement. No one nation ever has a monopoly on mistakes. Every nation lives in a glass house. At some time or other every nation has played the role of traitor to Christianity and the cause of peace. . . .

In conclusion I believe that we should proceed cautiously. . . .

I would feel that I would be untrue to myself, the laws of my country, and my country, were I to support this bill as written.

#### For Further Reading

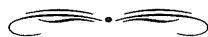
Wayne S. Cole, *Roosevelt and the Isolationists, 1932–1945*. Lincoln: University of Nebraska Press, 1983.

Robert Dallek, *Franklin D. Roosevelt and American Foreign Policy*. New York: Oxford University Press, 1979.

Warren F. Kimball, *The Most Unsordid Act: Lend-Lease, 1939–1941*. Baltimore: Johns Hopkins University Press, 1969.

Bruce Russett, *No Clear and Present Danger*. New York: Harper & Row, 1972.

John E. Wiltz, *From Isolation to War, 1931–1941*. New York: Crowell, 1968.



## VIEWPOINT 29A

### The Internment of Japanese-Americans Was Justified (1944)

Hugo Black (1886–1971)

Following the Japanese attack on Pearl Harbor, Hawaii, the United States declared war on Japan on December 8, 1941. At that time approximately 110,000 Japanese-Americans, two-thirds of them American citizens, resided on the West Coast of the United States. They quickly became objects of fear and suspicion. Officials and other citizens worried that they would sabotage America's military effort and assist a possible Japanese invasion. In 1942, under authority of an executive order by President Franklin D. Roosevelt, the U.S. military declared the entire West Coast a vital military area and forcibly evacuated all Japanese-American residents from their homes. They detained these people in barbed wire-enclosed "relocation centers" constructed in California, Montana, and other states, holding them for the duration of the war.

The relocation program received several legal challenges during World War II that reached the

From the majority opinion of the U.S. Supreme Court in *Korematsu v. United States*, 319 U.S. 624 (1944).

Supreme Court. One such case involved Fred Korematsu, a shipyard worker who was arrested and convicted for refusing to obey an evacuation order to leave his home in San Leandro, California. He appealed his conviction, eventually reaching the Supreme Court, which in a 6–3 vote ruled against him in 1944. Writing for the majority was Hugo Black, an associate justice from 1937 to 1971, who is remembered today as a staunch defender of the Bill of Rights. Citing a 1943 case, *Hirabayashi v. United States*, in which the Supreme Court upheld a curfew regulation on Japanese-Americans as a necessary war measure, Black defends the evacuation program of the U.S. government. While declaring that civil rights restrictions on the basis of race were "immediately suspect," he ultimately upholds the military evacuation measures as justifiable because of national security concerns.

How does war affect civil liberties, according to Black? How does he defend the actions taken against Japanese-Americans against the charge of racism?

The petitioner, an American citizen of Japanese descent, was convicted in a federal district court for remaining in San Leandro, California, a "Military Area," contrary to Civilian Exclusion Order No. 34 of the Commanding General of the Western Command, U.S. Army, which directed that after May 9, 1942, all persons of Japanese ancestry should be excluded from that area. No question was raised as to petitioner's loyalty to the United States. The Circuit Court of Appeals affirmed, and the importance of the constitutional question involved caused us to grant certiorari.

It should be noted, to begin with, that 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. Pressing public necessity may sometimes justify the existence of such restrictions; racial antagonism never can. . . .

#### War Powers

The 1942 Act was attacked in the *Hirabayashi* case as an unconstitutional delegation of power; it was contended that the curfew order and other orders on which it rested were beyond the war powers of the Congress, the military authorities and of the President, as Commander in Chief of the Army; and finally that to apply the curfew order against none but citizens of Japanese ancestry amounted to a constitutionally prohibited discrimination solely on account of race. To these questions, we gave the serious consideration which their importance justified. We

upheld the curfew order as an exercise of the power of the government to take steps necessary to prevent espionage and sabotage in an area threatened by Japanese attack.

In the light of the principles we announced in the *Hirabayashi* case, we are unable to conclude that it was beyond the war power of Congress and the Executive to exclude those of Japanese ancestry from the West Coast war area at the time they did. True, exclusion from the area in which one's home is located is a far greater deprivation than constant confinement to the home from 8 p.m. to 6 a.m. Nothing short of apprehension by the proper military authorities of the gravest imminent danger to the public safety can constitutionally justify either. But exclusion from a threatened area, no less than curfew, has a definite and close relationship to the prevention of espionage and sabotage. The military authorities, charged with the primary responsibility of defending our shores, concluded that curfew provided inadequate protection and ordered exclusion. They did so, as pointed out in our *Hirabayashi* opinion, in accordance with Congressional authority to the military to say who should, and who should not, remain in the threatened areas.

In this case the petitioner challenges the assumptions upon which we rested our conclusions in the *Hirabayashi* case. He also urges that by May 1942, when Order No. 34 was promulgated, all danger of Japanese invasion of the West Coast had disappeared. After careful consideration of these contentions we are compelled to reject them.

•

*"When under conditions of modern warfare our shores are threatened by hostile forces, the power to protect must be commensurate with the threatened danger."*

•

Here, as in the *Hirabayashi* case, *supra*, p. 99, "... we cannot reject as unfounded the judgment of the military authorities and of Congress that there were disloyal members of that population, whose number and strength could not be precisely and quickly ascertained. We cannot say that the war-making branches of the Government did not have ground for believing that in a critical hour such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety, which demanded that prompt and adequate measures be taken to guard against it."

Like curfew, exclusion of those of Japanese origin was deemed necessary because of the presence of an

unascertained number of disloyal members of the group, most of whom we have no doubt were loyal to this country. It was because we could not reject the finding of the military authorities that it was impossible to bring about an immediate segregation of the disloyal from the loyal that we sustained the validity of the curfew order as applying to the whole group. In the instant case, temporary exclusion of the entire group was rested by the military on the same ground. The judgment that exclusion of the whole group was for the same reason a military imperative answers the contention that the exclusion was in the nature of group punishment based on antagonism to those of Japanese origin. That there were members of the group who retained loyalties to Japan has been confirmed by investigations made subsequent to the exclusion. Approximately five thousand American citizens of Japanese ancestry refused to swear unqualified allegiance to the United States and to renounce allegiance to the Japanese Emperor, and several thousand evacuees requested repatriation to Japan.

### The Burdens of Citizenship

We uphold the exclusion order as of the time it was made and when the petitioner violated it. . . . In doing so, we are not unmindful of the hardships imposed by it upon a large group of American citizens. . . . But hardships are part of war and war is an aggregation of hardships. All citizens alike, both in and out of uniform, feel the impact of war in greater or lesser measure. Citizenship has its responsibilities as well as its privileges, and in time of war the burden is always heavier. 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. . . .

### Racial Prejudice Not an Issue

It is said that we are dealing here with the case of imprisonment of a citizen in a concentration camp solely because of his ancestry, without evidence or inquiry concerning his loyalty and good disposition towards the United States. Our task would be simple, our duty clear, were this a case involving the imprisonment of a loyal citizen in a concentration camp because of racial prejudice. Regardless of the true nature of the assembly and relocation centers—and we deem it unjustifiable to call them concentration camps with all the ugly connotations that term implies—we are dealing specifically with nothing but an exclusion order. To cast this case into outlines of racial prejudice, without reference to the real mili-

tary dangers which were presented, merely confuses the issue. Korematsu was not excluded from the Military Area because of hostility to him or his race. He was excluded because we are at war with the Japanese Empire, because the properly constituted military authorities feared an invasion of our West Coast and felt constrained to take proper security measures, because they decided that the military urgency of the situation demanded that all citizens of Japanese ancestry be segregated from the West Coast temporarily, and finally, because Congress, reposing its confidence in this time of war in our military leaders—as inevitably it must—determined that they should have the power to do just this. There was evidence of disloyalty on the part of some, the military authorities considered that the need for action was great, and time was short. We cannot—by availing ourselves of the calm perspective of hindsight—now say that at that time these actions were unjustified.

---

### VIEWPOINT 29B

---

## The Internment of Japanese-Americans Was Not Justified (1944)

Frank Murphy (1890–1949)

During World War II the United States forcibly moved thousands of Japanese-Americans from their homes on the West Coast and detained them in barbed wire–enclosed detention centers. The evacuations provoked sharp debate as to whether such curtailment of civil liberties that are normally protected under the Bill of Rights was justified in time of war. The following viewpoint is taken from a dissenting opinion in the 1944 Supreme Court case *Korematsu v. United States*, in which shipyard worker Fred Korematsu challenged his evacuation from his California home. The majority of the Supreme Court voted to uphold the evacuation as a legitimate war measure. One of the dissenters was Frank Murphy, an associate justice of the Supreme Court from 1940 to 1949. As a Michigan governor, a U.S. attorney general who established the first civil liberties unit in the Justice Department, and a Supreme Court justice, Murphy gained a reputation as a strong advocate and defender of civil liberties.

What deference should be shown to the judgment of military authorities, according to Murphy? Which constitutional rights does he say were being violated in the internment program? What arguments does he make in implicating racism as the reason behind the detentions?

From the dissenting opinion in *Korematsu v. United States*, 319 U.S. 624 (1944).

This exclusion of “all persons of Japanese ancestry, both alien and non-alien,” from the Pacific Coast area on a plea of military necessity in the absence of martial law ought not to be approved. Such exclusion goes over “the very brink of constitutional power” and falls into the ugly abyss of racism.

In dealing with matters relating to the prosecution and progress of a war, we must accord great respect and consideration to the judgments of the military authorities who are on the scene and who have full knowledge of the military facts. The scope of their discretion must, as a matter of necessity and common sense, be wide. And their judgments ought not to be overruled lightly by those whose training and duties ill-equip them to deal intelligently with matters so vital to the physical security of the nation.

At the same time, however, it is essential that there be definite limits to military discretion, especially where martial law has not been declared. Individuals must not be left impoverished of their constitutional rights on a plea of military necessity that has neither substance nor support. Thus, like other claims conflicting with the asserted constitutional rights of the individual, the military claim must subject itself to the judicial process of having its reasonableness determined and its conflicts with other interests reconciled. “What are the allowable limits of military discretion, and whether or not they have been overstepped in a particular case, are judicial questions.”

### Violating Constitutional Rights

The judicial test of whether the Government, on a plea of military necessity, can validly deprive an individual of any of his constitutional rights is whether the deprivation is reasonably related to a public danger that is so “immediate, imminent, and impending” as not to admit of delay and not to permit the intervention of ordinary constitutional processes to alleviate the danger. . . . Civilian Exclusion Order No. 34, banishing from a prescribed area of the Pacific Coast “all persons of Japanese ancestry, both alien and non-alien,” clearly does not meet that test. Being an obvious racial discrimination, the order deprives all those within its scope of the equal protection of the laws as guaranteed by the Fifth Amendment. It further deprives these individuals of their constitutional rights to live and work where they will, to establish a home where they choose and to move about freely. In excommunicating them without benefit of hearings, this order also deprives them of all their constitutional rights to procedural due process. Yet no reasonable relation to an “immediate, imminent, and impending” public danger is evident to support this racial restriction which is one of the most sweeping and

complete deprivations of constitutional rights in the history of this nation in the absence of martial law.

It must be conceded that the military and naval situation in the spring of 1942 was such as to generate a very real fear of invasion of the Pacific Coast, accompanied by fears of sabotage and espionage in that area. The military command was therefore justified in adopting all reasonable means necessary to combat these dangers. In adjudging the military action taken in light of the then apparent dangers, we must not erect too high or too meticulous standards; it is necessary only that the action have some reasonable relation to the removal of the dangers of invasion, sabotage and espionage. But the exclusion, either temporarily or permanently, of all persons with Japanese blood in their veins has no such reasonable relation. And that relation is lacking because the exclusion order necessarily must rely for its reasonableness upon the assumption that all persons of Japanese ancestry may have a dangerous tendency to commit sabotage and espionage and to aid our Japanese enemy in other ways. It is difficult to believe that reason, logic or experience could be marshalled in support of such an assumption.

That this forced exclusion was the result in good measure of this erroneous assumption of racial guilt rather than bona fide military necessity is evidenced by the Commanding General's Final Report on the evacuation from the Pacific Coast area. In it he refers to all individuals of Japanese descent as "subversive," as belonging to "an enemy race" whose "racial strains are undiluted," and as constituting "over 112,000 potential enemies . . . at large today" along the Pacific Coast. In support of this blanket condemnation of all persons of Japanese descent, however, no reliable evidence is cited to show that such individuals were generally disloyal, or had generally so conducted themselves in this area as to constitute a special menace to defense installations or war industries, or had otherwise by their behavior furnished reasonable ground for their exclusion as a group.

### Racial Prejudice

Justification for the exclusion is sought, instead, mainly upon questionable racial and sociological grounds not ordinarily within the realm of expert military judgment, supplemented by certain semi-military conclusions drawn from an unwarranted use of circumstantial evidence. Individuals of Japanese ancestry are condemned because they are said to be "a large, unassimilated, tightly knit racial group, bound to an enemy nation by strong ties of race, culture, custom and religion." They are claimed to be given to "emperor worshipping ceremonies" and to "dual citizenship." Japanese language schools and allegedly pro-Japanese organizations are cited as evi-

dence of possible group disloyalty, together with facts as to certain persons being educated and residing at length in Japan. It is intimated that many of these individuals deliberately resided "adjacent to strategic points," thus enabling them "to carry into execution a tremendous program of sabotage on a mass scale should any considerable number of them have been inclined to do so." . . . Finally, it is intimated, though not directly charged or proved, that persons of Japanese ancestry were responsible for three minor isolated shellings and bombings of the Pacific Coast area, as well as for unidentified radio transmissions and night signalling.

The main reasons relied upon by those responsible for the forced evacuation, therefore, do not prove a reasonable relation between the group characteristics of Japanese Americans and the dangers of invasion, sabotage and espionage. 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. Especially is this so when every charge relative to race, religion, culture, geographical location, and legal and economic status has been substantially discredited by independent studies made by experts in these matters.

•

*"This racial restriction . . . is one of the most sweeping and complete deprivations of constitutional rights in the history of this nation in the absence of martial law."*

•

The military necessity which is essential to the validity of the evacuation order thus resolves itself into a few intimations that certain individuals actively aided the enemy, from which it is inferred that the entire group of Japanese Americans could not be trusted to be or remain loyal to the United States. No one denies, of course, that there were some disloyal persons of Japanese descent on the Pacific Coast who did all in their power to aid their ancestral land. Similar disloyal activities have been engaged in by many persons of German, Italian and even more pioneer stock in our country. But to infer that examples of individual disloyalty prove group disloyalty and justify discriminatory action against the entire group

is to deny that under our system of law individual guilt is the sole basis for deprivation of rights. Moreover, this inference, which is at the very heart of the evacuation orders, has been used in support of the abhorrent and despicable treatment of minority groups by the dictatorial tyrannies which this nation is now pledged to destroy. To give constitutional sanction to that inference in this case, however well-intentioned may have been the military command on the Pacific Coast, is to adopt one of the cruelest of the rationales used by our enemies to destroy the dignity of the individual and to encourage and open the door to discriminatory actions against other minority groups in the passions of tomorrow.

No adequate reason is given for the failure to treat these Japanese Americans on an individual basis by holding investigations and hearings to separate the loyal from the disloyal, as was done in the case of persons of German and Italian ancestry. . . . It is asserted merely that the loyalties of this group "were unknown and time was of the essence." Yet nearly four months elapsed after Pearl Harbor before the first exclusion order was issued; nearly eight months went by until the last order was issued; and the last of these "subversive" persons was not actually removed until almost eleven months had elapsed. Leisure and deliberation seem to have been more of the essence than speed. And the fact that conditions were not such as to warrant a declaration of martial law adds strength to the belief that the factors of time and military necessity were not as urgent as they have been represented to be.

Moreover, there was no adequate proof that the Federal Bureau of Investigation and the military and naval intelligence services did not have the espionage and sabotage situation well in hand during this long period. Nor is there any denial of the fact that not one person of Japanese ancestry was accused or convicted of espionage or sabotage after Pearl Harbor while they were still free, a fact which is some evidence of the loyalty of the vast majority of these individuals and of the effectiveness of the established methods of combatting these evils. It seems incredible that under these circumstances it would have been impossible to hold loyalty hearings for the mere 112,000 persons involved—or at least for the 70,000 American citizens—especially when a large part of this number represented children and elderly men and women. Any inconvenience that may have accompanied an attempt to conform to procedural due process cannot be said to justify violations of constitutional rights of individuals.

### All Americans Have Equal Rights

I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree

has no justifiable part whatever in our democratic way of life. It is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States. All residents of this nation are kin in some way by blood or culture to a foreign land. Yet they are primarily and necessarily a part of the new and distinct civilization of the United States. They must accordingly be treated at all times as the heirs of the American experiment and as entitled to all the rights and freedoms guaranteed by the Constitution.

#### For Further Reading

- John W. Dower, *War Without Mercy: Race and Power in the Pacific War*. New York: Pantheon Books, 1986.
- Sidney Fine, *Frank Murphy*. Ann Arbor: University of Michigan Press, 1984.
- Peter Irons, *Justice at War*. New York: Oxford University Press, 1983.
- John Tateishi, *And Justice for All: An Oral History of the Japanese-American Detention Camps*. New York: Random House, 1984.
- Michi Weglyn, *The Untold Story of America's Concentration Camps*. New York: Morrow, 1976.
- Tinsley E. Yarborough, *Mister Justice Black and His Critics*. Durham, NC: Duke University Press, 1988.



## VIEWPOINT 30A

### The United States Should Not Drop the Atomic Bomb on Japan (1945)

The Franck Committee

In 1942 the United States undertook a secret research effort—the Manhattan Project—to develop a new kind of weapon powered by the splitting of the atom. The original impetus for the Manhattan Project was the fear of Germany's developing such a weapon. Following Germany's surrender in May 1945, however, discussion within the U.S. government and military focused on using the bomb against America's other main World War II enemy, Japan.

Many of the scientists who were part of the massive effort to invent the atom bomb were troubled about the ethical and political questions regarding the bomb's use. In 1944 and early 1945, Manhattan Project scientists based at the Metallurgical Laboratory (Met Lab) at the University of Chicago held seminars, circulated petitions, and in general raised concerns about the future implications of their research. One of these scientists was James Franck (1882–1964), an eminent German physicist who had been forced to leave Germany in 1933, and who had

Excerpted from *The Franck Report*, June 11, 1945.