

320 – Scott & Korematsu – Two Cases That Show the Corruption of the Court



By Paul Engel

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- These two cases are examples of a persons rights being denied simply because of their heritage.
- These cases are examples of courts getting their decisions terribly wrong, with horrendous consequences.
- They should be a lesson to all Americans. If you place your trust in any branch of government, you may find your rights can disappear in the publishing of a bad opinion.

There are certain Supreme Court cases that are infamous, either for their import or their error. Miranda, Roe v. Wade, and Obergefell are just a few. Two of these cases are known simply as Dred Scott and Korematsu. These cases are not only examples of when the courts get things wrong, but of our nature to treat others as less than human.

In the Declaration of Independence, Thomas Jefferson gave us this iconic phrase:

We hold these truths to be self-evident, that all men are created equal

[Declaration of Independence](#)

Sadly, we have yet to live up to Jefferson's vision. We have a history in America of treating certain people as less than human. We hear a lot about the enslavement of blacks, and some about the treatment of the Indians, but little about how the Chinese, Irish, Italians, Jews and others have been treated. You would hope that, at least before the court, justice would remain blind. The two cases we are looking at today show that injustice before the bench is nothing new.

Dred Scott v. Sandford

Most American's have at least a passing familiarity with the Dred Scott case. Most of us were taught in school that this is the case where the court found that blacks were not citizens and had no rights.

A free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a "citizen" within the meaning of the Constitution of the United States.

Dred Scott v. Sandford

Are the rights protected by the Constitution limited to citizens of the United States?

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

U.S. Constitution, Article IV, Section 2, Clause 1

While there are privileges and immunities, such as voting, that are limited to citizens, other rights protected by the Constitution aren't.

No person shall ... be deprived of life, liberty, or property, without due process of law;

U.S. Constitution, Amendment V

The issue at hand did not rest solely on Mr. Scott's race, but

on his immigration status.

A State, by its laws passed since the adoption of the Constitution, may put a foreigner or any other description of persons upon a footing with its own citizens as to all the rights and privileges enjoyed by them within its dominion and by its laws. But that will not make him a citizen of the United States, nor entitle him to sue in its courts, nor to any of the privileges and immunities of a citizen in another State.

Dred Scott v. Sandford

Remember, this was 1856, before the 13th and 14th amendments. When Mr. Scott's ancestors were imported as slaves, they were not granted citizenship. As such, Mr. Scott was not considered a citizen either. He was, however, a person, and should have had his liberty protected under the Fifth Amendment. That was not the case.

This precedent was overturned by the ratification of the Fourteenth Amendment:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

U.S. Constitution, Amendment XIV, Section 1

Korematsu v. United States

Most people I talked to don't recognize this case, even though they're aware of Japanese internment during World War II. It all started when President Roosevelt signed Executive Order 9066:

Now, therefore, by virtue of the authority vested in me as President of the United States, and Commander in Chief of the Army and Navy, 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 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.

Executive Order No, 9066

Let's start with the obvious. There is no authority vested in the President of the United States to designate "military areas" within the United States. Article I, Section 8, Clause 17 delegates to Congress legislative power over federal property, including places purchased by the consent of the state's legislature.

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings: . . .

U.S. Constitution, Article I, Section 8, Clause 17

Not only did this executive order claim powers not delegated to the United States, much less the President, it violated both the Fifth and Tenth Amendments to the Constitution.

No person shall ... be deprived of life, liberty, or property, without due process of law;

U.S. Constitution, Amendment V

The powers not delegated to the United States by the

Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[U.S. Constitution, Amendment X](#)

This means that Executive Order 9066 is not only invalid, but void.

There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void.

[Alexander Hamilton, Federalist Papers #78](#)

Yet, just like today, that did not stop those in government from treating this illegal order as valid law. In response to President Roosevelt's order, the Western Defense Command and Fourth Army issued the [Civilian Exclusion Order No. 34](#):

Pursuant to the provisions of Public Proclamations Nos. 1 and 2, this Headquarters, dated March 2, 1942, and March 16, 1942, respectively, it is hereby ordered that from and after 12 o'clock noon, P. W. T., of Saturday, May 9, 1942, all persons of Japanese ancestry, both alien and non-alien, be excluded from that portion of Military Area No. 1 described as follows:

[Civilian Exclusion Order No. 34](#)

Under the Uniform Code of Military Justice, members of the military are required to follow all lawful orders. Since the President does not have the authority to "designate" areas as under military control, he cannot legally order someone to do so. Furthermore, Lt. General J.I. DeWitt, commander of the Fourth Army, violated both his oath and the law by depriving people of their liberty and property by excluding people of Japanese ancestry from any area. Civilian Exclusion Order 34 also required a member of each family report to a Civil Control Station, again, in violation of the Constitution and laws of the United States.

A responsible member of each family, and each individual living alone, in the above described area will report between the hours of 8:00 A. M. and 5:00 P. M., Monday, May 4, 1942, or during the same hours on Tuesday, to the Civil Control Station located at 920.

"C" Street Hayward, California

Civilian Exclusion Order No. 34

Those who reported and their families would be relocated to internment camps for the duration of the war. Fred Korematsu ignored the order to relocate, was arrested and convicted of violating the order. He sued, arguing that the executive order infringed on his liberty without due process of law and therefore violated his rights protected under the Fifth Amendment. Sadly, the Supreme Court did not see it that way.

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.

Korematsu v. United States

According to the Supreme Court, you have no rights except the ones government allows you to keep. The court talks about the hardships of war, but seems to ignore the Constitution of the United States or the concept of unalienable rights. This case

is an example of the abuse of so called judicial review. The idea is that the courts can supersede your rights and the Constitution when there's sufficiently compelling government interest. If the government doesn't need to follow the supreme law of the land, then what good is it? What were those brave men fighting for, if not to protect the rights this government had denied to people based solely on their heritage? How can you expect your rights to be protected by such a so called 'justice system'?

Conclusion

What do these two famous, or rather infamous, cases have in common? They denied rights to human beings because of their ancestry. While the precedent set in Scott was overturned by the Fourteenth Amendment, nothing has overturned the opinion in Korematsu. Laws that violated the supreme law of the land were used in both cases, and courts endorsed these travesties of justice.

Santayana said "Those who cannot remember the past are condemned to repeat it." There is nothing we can do to change the past. However, by remembering the past we can learn from it and do whatever we can to prevent similar abuses from happening in the future. Yet here we are, watching while government officials pass repugnant laws and issue illegal executive orders to infringe on the rights of the American people. People are denied their liberty and property for not complying with an illegal government order. People are being denied their right to speak and to the press if they contradict the approved government narrative. Roosevelt's executive order led to exclusion and internment and Biden's orders have led to banishment from employment, public transportation, and healthcare. And let us not forget about the internment of those who challenged the validity of the 2020 elections. I wonder if future generations will look back at the laws and cases we're dealing with today with the same disdain with which we hold these two cases?

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