**Contention 1 Precedent**

**The Supreme Court has yet to repudiate the Korematsu decision**

**Mauro 13** (Tony, American journalist and author who has covered the United States Supreme Court since 1979, *Supreme Court Urged To Correct Korematsu Decision*, The National Law Journal, <http://www.law.stanford.edu/news/supreme-court-urged-to-correct-korematsu-decision>, April 17th 2013, JKE)

**Professor Deborah Rhode is listed in this National Law Journal article as one of several court scholars endorsing an effort by Supreme Court historian Peter Irons urging the Supreme Court to repudiate its decision from more than 70 years ago upholding the government's internment of Japanese-Americans during World War II. An effort was launched Wednesday urging the U.S. Supreme Court to repudiate the decisions it handed down nearly 70 years ago upholding the government's internment of Japanese-Americans during World War II.** Supreme Court historian Peter Irons, who represented Fred Korematsu and Gordon Hirabayashi in earlier efforts to overturn the rulings, is behind the new campaign. On Wednesday, he submitted to each Supreme Court justice a paper he has written titled Unfinished Business: The Case for Supreme Court Repudiation of the Japanese American Internment Cases.

**The Korematsu decision was based on racist policies – it has yet to be analyzed again by the higher courts**

**Green, 11**

(Craig, Professor of Law, Temple University Beasley School of Law, Northwestern University Law Review, “ENDING THE KOREMATSU ERA: AN EARLY VIEW FROM THE WAR ON TERROR CASES,” 2011, Vol. 105, No. 3, p.p. 993-995, http://www.law.northwestern.edu/lawreview/v105/n3/983/LR105n3Green.pdf)

1. Korematsu’s Doctrinal History.—Despite Korematsu’s notoriety, some of its history is known only by experts.30 My first project is to show that the Justices who decided Korematsu perceived that case differently than many modern observers do. In the 1940s, **although race was important for some members of the Court, claims of military necessity overwhelmed the majority’s hesitation, and even the dissenting Justices were less committed to modern equal protection than is commonly recognized**.31 This specific contextual evidence about Korematsu is an important starting point for reinterpreting the Korematsu era as a whole. After the devastation of Pearl Harbor in December 1941, fears spread about other attacks that might be supported by spies and saboteurs within the United States.32 President **Roosevelt responded** in February 1942 **by authorizing the creation of military areas “from which any or all persons may be excluded” and in which “the right of any person to enter, remain in, or leave shall be subject to whatever restrictions [designated officials] may impose**.”33 To implement this order, Lieutenant General **DeWitt split the entire Pacific Coast into military areas.**34 Congress then criminalized violations of any military-area regulations with a maximum punishment of $5000 and one year in prison.35 **Beginning on March 27, 1942, DeWitt ordered a “curfew” for** alien Germans and Italians, and for **all persons of Japanese ancestry throughout much of Arizona, California, Washington, and Oregon.**36 This was no ordinary curfew to keep people off the streets. **DeWitt’s order was closer to house arrest, for it required regulated persons to be home from 8:00 p.m. to 6:00 a.m. and to be in their workplace, within five miles of home, or traveling between work and home at all other times.**37 Not six months after Pearl Harbor, DeWitt began ordering persons of Japanese ancestry to “evacuate” military zones, though that word was a euphemism as well.38 Every family of Japanese ancestry had to report to Civil Control Stations or Assembly Centers, and appearance at such facilities was typically followed by indefinite confinement at Relocation Centers in Idaho, Utah, Arkansas, Wyoming, Arizona, Colorado, and remote parts of California.39 For the large population of Japanese-Americans on the Pacific Coast, **DeWitt’s orders must have seemed more like racially targeted imprisonment than evacuation**. The Supreme Court issued two decisions evaluating these governmental policies. **In 1943, Hirabayashi upheld a defendant’s conviction for violating DeWitt’s curfew, and Korematsu in 1944 upheld a defendant’s United States who could not be individually identified.**43 To meet such dire asserted threats, the military claimed it was necessary to subject a racially determined mass of potential suspects to curfews, reporting, and evacuation. The Court upheld such executive decisions, which Congress had approved ex ante, by a unanimous vote in Hirabayashi and by a six-vote majority in Korematsu. 44 To modern observers**, Hirabayashi and Korematsu seem astonishingly misguided. Both involved explicit racial discrimination, and the government had no credible argument that such discrimination was needed to secure the homeland.**45 Twenty-first-century doctrine and legal culture typically require very strong justifications to support racial classifications.46 **Because the policies in Hirabayashi and Korematsu lacked such support, their racial discrimination would be unconstitutional today**, and **some modern analysts have not looked much further into the Court’s analysis.**47

**The Korematsu decision was based solely on race**

**Chemerinsky, 11**

(Erwin, Professor of Constitutional Law at UC Irvine, “Korematsu v. United States: A Tragedy Hopefully

Never to Be Repeated,” Pepperdine Law Review, <http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1356&context=plr&sei-redir=1&referer=http%3A%2F%2Fscholar.google.com%2Fscholar%3Fq%3DDean%2BChemerinsky%2Bkorematsu%2B%26btnG%3D%26hl%3Den%26as_sdt%3D0%252C3%26as_ylo%3D2012#search=%22Dean%20Chemerinsky%20korematsu%22>, pp. 166-168)

Applying the criteria described above, **there is no doubt that Korematsu belongs on the list of the worst Supreme Court rulings.** First, **in terms of the social and human impact, 110,000 Japanese-Americans, aliens, and citizens—and 70,000 were citizens—were uprooted from their life-long homes and placed in what President Franklin Roosevelt called “concentration camps.”**18 For many, if not most of them, **their property was seized and taken without due process or compensation. They were incarcerated.** **The only determinate that was used in this process was race.** William Manchester, in a stunning history of the twentieth century, The Glory and the Dream, gives this description: Under Executive Order 9066, as interpreted by General De Witt, voluntary migration ended on March 27. **People of Japanese descent were given forty-eight hours to dispose of their homes, businesses, and furniture; during their period of resettlement they would be permitted to carry only personal belongings, in hand luggage.** All razors and liquor would be confiscated. Investments and bank accounts were forfeited. Denied the right to appeal, or even protest, the Issei thus lost seventy million dollars in farm acreage and equipment, thirty-five million in fruits and vegetables, nearly a half-billion in annual income, and savings, stocks, and bonds beyond reckoning.19 **Manchester describes what occurred: Beginning at dawn on Monday, March 30, copies of General De Witt’s Civilian Exclusion Order No. 20 affecting persons “of Japanese ancestry” were nailed to doors, like quarantine notices. It was a brisk Army operation; toddlers too young to speak were issued tags, like luggage, and presently truck convoys drew up. From the sidewalks soldiers shouted, “Out Japs!”—an order chillingly like [what] Anne Frank was hearing from German soldiers on Dutch pavements. The trucks took the internees to fifteen assembly areas, among them a Yakima, Washington, brewery, Pasadena’s Rose Bowl, and racetracks in Santa Anita and Tanforan. The tracks were the worst; there, families were housed in horse stalls. . . . . The President never visited these bleak garrisons, but he once referred to them as “concentration camps.” That is precisely what they were. The average family of six or seven members was allowed an “apartment” measuring twenty by twenty-five feet. None had a stove or running water.** Each block of barracks shared a community laundry, mess hall, latrines, and open shower stalls, where women had to bathe in full view of the sentries.20 **The human impact of the actions of the United States government towards Japanese-Americans during World War II cannot be overstated**. **It is almost beyond comprehension that our government could imprison 110,000 people solely because of their race.** **In terms of the judicial reasoning, Korematsu was also a terrible decision.** Interestingly, **Korematsu is the first case where the Supreme Court used the language of “suspect” classifications.**21 **The Court did not use the phrasing of “strict scrutiny,” which came later, but the Court certainly was implying that racial classifications warrant what later came to be referred to as strict scrutiny**.22 **Strict scrutiny**, of course, **means that a government action will be upheld only if it is necessary to achieve a compelling government interest**.23

**The decision represents generations of anti-Asian racism**

**Snyder, 8**

(Fritz, Professor of Law, University of Montana School of Law, “OVERREACTION THEN (KOREMATSU) AND NOW (THE DETAINEE CASES),” The Critui, Vol. 2, Issue 1, p. 101-102, 2008, <http://thecritui.com/wp-content/uploads/2011/02/Snyder.pdf>)

**What happened to people of Japanese ancestry in the aftermath of Roosevelt’s Executive Order 9066 was the conclusion of almost 75 years of anti-Asian racism** on the West Coast, particularly in California.188 **The exclusion and incarceration of these people accomplished what local pressure groups had been unable to do for half a century: “the complete removal of the entire ethnic Japanese population from the coastal states. It was an act of racism and had nothing to do with establishing security measures . . . . ”**189 “**Race alone was used to determine who would be uprooted and who would remain free.”**190 **The West Coast anti-Japanese program had four phases: “(1) a discriminatory curfew against Japanese persons; (2) their exclusion from the West Coast; (3) their confinement pending investigation of their loyalty; and (4) the indefinite confinement of those persons found to be disloyal.”**191 “The official argument to justify the mass evacuation . . . was the theory of protective custody.”192 **This was all at the very time the U.S. was fighting Hitler’s racism in Europe. Basically, the notion was that “reinforcing racial stereotyping was legitimate in the interest of national security.”**193 It was as if the war was not directed at the Japanese state, but at the Japanese race. Thus, **all people of Japanese ancestry were enemies**.194 **Justice Murphy** in his Korematsu dissent noted that the exclusion of “all persons of Japanese ancestry . . . falls into the ugly abyss of racism.”195 And he **added: “I dissent . . . from this legalization of racism.”**196 We need to remember that during World War II people of German and Italian ancestry who were considered suspect were given individual hearings before being interned.197 Moreover, “**the exclusion program was undertaken not because the Japanese were too numerous to be examined individually, but because they were a small enough group to be punished by confinement.”1**98 **Our war-time treatment of Japanese aliens and citizens of Japanese descent on the West Coast [was] hasty, unnecessary and mistaken.** The course of action which we took was in no way required or justified by the circumstances of war. **It was calculated to produce both individual injustice and deep-seated maladjustments of a cumulative and sinister kind**.199

**Nativist rhetoric and the perception of physical and cultural difference surrounding Asian Americans and other races in the United States justifies racist and hierarchal violence**

**Alcoff 3** (Linda Martin, Philosopher at the City University of New York and Hunter College, Former professor of Philosophy at Syracuse University and President of the American Philosophical Association Eastern Division, *Latino/As, Asian Americans, and the Black-White Binary*, The Journal of Ethics, Volume 7, Issue 1, pgs. 5-27, accessed via ProQuest, 2003, JKE)

**Racial oppression works on multiple axes**, I would argue, **with color being the most dominant and currently most pernicious.** But **color is not exhaustive of all the forms racial oppression can take. The most pejorative terms used against Asian Americans often have a racial connotation but without a color connotation** – “Chinks,” “slant-eyes,” and for the Vietnamese, “gooks.” **These terms denigrate a whole people, not a particular set of customs or a specific history, and thus parallel the essentializing move of racist discourse that universalizes negative value across a group that is demarcated on the basis of visible features.** The two most pejorative terms widely used against Latino/as in this country have been the terms “spic” – whose genealogy references people who were heard by Anglos as saying “no spic English” – and “wetback.” The first invokes the denigration of language, the second denigrates both where people came from and how they got here: from Mexico across the Rio Grande. Mexican Americans were also called “greasers” which connoted the condition of their hair, not their skin color. Thus, **these terms demonstrate the possibility of a racialization and racism that works through constructing and then denigrating other racialized features and characteristics besides color. We might think of these as two independent axes of racialization that operate through physical features other than color, and through genealogies of cultural origin.** There is, then, the color axis, the physical characteristics other than color axis, and the cultural origin axis. **The discrimination against Asian Americans and Latino/as has also operated very strongly on a fourth axis of “nativism.” Nativism is a prejudice against immigrants**; thus it is distinct, though often related to, xenophobia or the rejection of foreigners. Rodolfo Acuña explains that historical nativism is also distinct from anthropological nativism, which refers to a “revival of indigenous culture,” because historical nativism refers to the belief of some Anglo-Americans that they are “the true Americans, excluding even the Indian” because they represent in their cultural heritage the “idea” of “America.”31 **On this view, the problem with Asian Americans and Latino/as is not just that they are seen as foreign; they are seen as ineluctably foreign, from inferior cultures** (morally and politically if not intellectually), **incapable of and unmotivated toward assimilation to the superior mainstream white Anglo culture. They want to keep their languages, demand instruction in public schools in their primary languages, and they often maintain their own holidays, cuisines, religions, and living areas** (the latter sometimes by choice). Despite the fact that Mexican Americans have been living within the current U.S. borders for longer than most Anglo-Americans, they are all too often seen as squatters on U.S. soil, interlopers who “belong” elsewhere. **This “xenophobia directed within” has been especially virulent at specific times in U.S. history, during and after both world wars for example, and is enjoying a resurgence now with the war fever and hysteria against Arabs or anyone wearing a turban, the serious erosion of civil liberties for racially profiled groups**, the political rhetoric of Pat Buchanan, the right wing disc-jockeys who make jokes about beating up illegal immigrants, and the “scholarly” best-selling books like Alien Nation that warn “Americans” that their loose immigration laws will forever alter the racial make-up of the U.S. if left unchecked, and that altering our racial identity will have the dire consequences of undermining the basic cultural and democratic values that make the U.S. what it is. **Another feature of nativism is its use to justify claims of differential rights for various minority groups.** In my view, there is no question that African Americans together with American Indians have a moral claim on this country larger than any group, and that the redress made thus far is completely inadequate toward repairing the present inequities that persist as a legacy of past state-organized mass atrocities. Some may believe that a kind of nativist argument would provide further justification for these legitimate claims to redress, on the grounds that these groups’ forbears were here longer and/or their labor and ingenuity contributed a great deal to the wealth of this country. More recent immigrants, it may be thought, “deserve” less by way of protected opportunities or government assistance. **The issue of nativism is thus important to address in relation to the differences and potential conflicts among communities of color, since many Asian Americans and Latino/as are post-1965 immigrants** (when the restrictions on immigration based on geography were lifted). One might well ask, what is wrong with nativist arguments, and is the critique of nativism based ultimately on group self-interest? There are both consequentialist and non-consequentialist arguments one can make against nativism. **The principle consequentialist argument against using nativism to justify differential rights is that it will produce (or in reality, merely maintain) a hierarchy of first and second class citizens. This is both undemocratic and undesirable as the kind of community many would want to live in. Nativist rhetoric has already justified state orchestrated murders and other horrors at the U.S.–Mexican border**, a border that the current U.S. President announced he would arm even further (using the Texas Rangers, who were disarmed in the 1920s after it came to light that they had lynched hundreds and perhaps thousands of Mexican Americans without trial).32 **Nativist arguments might well tend to encourage people to turn a blind eye to what happens at the border.** And moreover, **such enforced hierarchies of status within a society must surely share responsibility for creating the problems of crime and social insecurity that adversely affect everyone.** These provide consequentialist arguments against nativism based on its subsequent effects on the U.S., but one might also make nonconsequentialist arguments against nativism. **The logic of nativism is based on the idea that those native to this country “deserve” more, not just because they have been here longer** (in which case all land claims by Native American groups would have to be immediately settled in their favor), **but because they or their relatives contributed the labor and ingenuity that made the U.S. wealthy.** There are several arguments one could make against this view. **One might first want to point out that there are numerous groups within the U.S. that contributed labor and ingenuity toward the country’s wealth and that have not received any approximation of fair compensation.** But **one could also argue that the wealth of the U.S. has been the product in no small part of neo-colonial and imperial global relations that ensured the extraction of natural resources at a price U.S. companies determined, as well as super-exploitation of labor** (i.e., a much larger extraction of surplus value) **that produced the capital brought back here.** The building of the Panama Canal gives just one small but clear example. The U.S. contributed capital and some of the engineers for the project, helped to plan a coup to separate the country off from Colombia, who would have been a much more powerful negotiating adversary, and manufactured a treaty which no Panamanian signed that guaranteed that the entire profits from the canal would go to the U.S. “in perpetuity.” Not only did the treaty guarantee capital flight, it gave the U.S. complete political autonomy over the canal zone, cutting right through the heart of Panama and thus splitting it in half. The U.S. was also given the right to intervene with military force whenever it unilaterally determined that canal security was at stake, a proviso that had major negative effects on the political developments in the country and in particular in the development of social justice movements. The people who actually labored to build the canal, enticed from the West Indies and Asia as well as local people, were paid 10 cents a day and died from yellow fever in tens of thousands.33 Nonetheless, anti-treaty rhetoric in the U.S. persist in calling it “our canal.”

**And, you have a moral obligation to not condone racism in policy analysis**

**Memmi 2K** (Albert, Professor Emeritus of Sociology @ U of Paris, Naiteire, Racism, Translated by Steve Martinot, p. 163-165)

**The struggle against racism will be long, difficult, without intermission, without remission, probably never achieved. Yet, for this very reason, it is a struggle to be undertaken without surcease and without concessions. One cannot be indulgent toward racism**; one must not even let the monster in the house, especially not in a mask**. To give it merely a foothold means to augment the bestial part in us and in other people, which is to diminish what is human.** **To accept the racist universe to the slightest degree is to endorse fear, injustice, and violence.** It is to accept the persistence of the dark history in which we still largely live. it is to agree that the outsider will always be a possible victim (and which man is not himself an outsider relative to someone else?. **Racism illustrates**, in sum, **the inevitable negativity of** the condition of the dominated that is, it illuminates in a certain sense **the entire human condition**. The anti-racist struggle, difficult though it is, and always in question, is nevertheless one of the prologues to the ultimate passage from animosity to humanity. In that sense**, we cannot fail to rise to the racist challenge. However, it remains true that one’s moral conduit only emerges from a choice: one has to want it.** It is a choice among other choices, and always debatable in its foundations and its consequences. Let us say, broadly speaking, that the choice to conduct oneself morally is the condition for the establishment of a human order, for which racism is the very negation. This is almost a redundancy. **One cannot found a moral order, let alone a legislative order, on racism, because racism signifies the exclusion of the other, and his or her subjection to violence and domination.** From an ethical point of view, if one can deploy a little religious language, **racism is ‘the truly capital sin.** It is not an accident that almost all of humanity’s spiritual traditions counsels respect for the weak, for orphans, widows, or strangers. It is not just a question of theoretical morality and disinterested commandments. Such unanimity in the safeguarding of the other suggests the real utility of such sentiments. All things considered, **we have an interest in banishing injustice, because injustice engenders violence and death.** Of course, this is debatable. There are those who think that if one is strong enough, the assault on and oppression of others is permissible. Bur no one is ever sure of remaining the strongest. One day, perhaps, the roles will be reversed. **All unjust society contains within itself the seeds of its own death.** It is probably smarter to treat others with respect so that they treat you with respect. “Recall.” says the Bible, “that you were once a stranger in Egypt,” which means both that you ought to respect the stranger because you were a stranger yourself and that you risk becoming one again someday. It is an ethical and a practical appeal—indeed, it is a contract, however implicit it might be. **In short, the refusal of racism is the condition for all theoretical and practical morality because, in the end, the ethical choice commands the political choice, a just society must be a society accepted by all. If this contractual principle is not accepted, then only conflict, violence, and destruction will be our lot. If it is accepted, we can hope someday to live in peace**. True, it is a wager, but **the stakes are irresistible.**

**Even if we should evaluate consequences, there should be absolute side constraints on deliberately harming innocent people through racist policies—rejecting instances of racism is a decision rule**

**Fried, 94**

(Charles, Professor of Law at Harvard, “Absolutism and its Consequentialist Critics, ed. Haber,” p. 74)

The opposing conception of right and wrong, **the conception that there are some things we must not do no matter what good we hope to accomplish, has always stood as a provocation and a scandal to consequentialism.** If a state of the world is the best possible state and we bring it about at the least possible cost, what else can matter? Yet **the opposing conception (the deontological) holds that how one achieves one's goals has a moral significance which is not subsumed in¶ the importance and magnitude of the goals.** **Whether we get to the¶ desired end state by deliberately hurting innocent people, by violating their rights, by lies and violence, is intensely important**. And yet **the deontologist does not deny that states of the world are sources of value and even agrees that the good inherent in states of the world (including¶ our own states of mind) is the only good.** If a happy state of the world existed that had been brought about through wrong and violation of right, and **if those wrongs could no longer be righted, there is nothing that says that this happiness would not count as real happiness and should not be enjoyed; still, if this happiness had been ours to choose only by wrongful means, we would have had to wave it away.** **We would have to wave it away because right and wrong are the foundations of our moral personality.** We choose our goods, but if what we choose is to have value as a good, then the entity doing the choosing must have value, and **the process of choice must be such that what¶ comes out of it has value.** In the view I shall elaborate, **right and wrong have an independent and overriding status because they establish our basic position as freely choosing entities**. That is why nothing we choose can be more important than the ground'—right and wrong—for our choosing. **Right and wrong are the expressions of respect for persons—respect for others and self-respect**.

**The aff is a prerequisite to policymaking--without correcting the past more racist policies are inevitable**

**Griffen, 99**

(Wendell L., Judge for the Arkansas Court of Appeals, “RACE, LAW, AND CULTURE: A CALL TO NEW THINKING, LEADERSHIP, AND ACTION,” University of Arkansas at Little Rock Law Review, 21 U. Ark. Little Rock L. Rev. 901, 1999, Lexis)

We have yet to admit the racism that resulted in Chinese exclusion laws in the West and acknowledge the fact that similar treatment was not applied to immigrants from Europe. **Somehow our obsession with power and notion of manifest destiny made us oblivious to** the **blatant racism** practiced against the Mexican people of Texas, New Mexico, Colorado, and Arizona during the last century that resulted in the loss of millions of acres of land that had been owned for generations. **We forcibly removed American citizens of Japanese ancestry from their homes, communities, work, and businesses during World War II and interned them like prisoners of war solely because of their ancestry. The United States Supreme Court sanctioned that blatant act of institutional racism in Korematsu v. United States,** n3 just as it had sanctioned the institutional racism of slavery in Dred Scott v. Sanford, n4 and racial segregation in Plessy v. Ferguson. n5 Had the same reasoning been applied to American citizens of Italian and German ancestry, Joe DiMaggio and Dwight D. Eisenhower would have been interned. **There was never a serious discussion about a threat to national security** posed by having a person of German ancestry commanding Allied forces against the Third Reich, let alone being elected president within a decade of that war. **Unless and until we admit that racism produced these and countless other stubborn, stupid, and sick results we will not create a different society in the 21st Century. American law, history, economics, religion, social life, and culture have been so permeated by racism and racist thought for such a long time that nothing short of new thinking about that racism and its effects on our national life bodes real chance for producing racial equity in the new century. Until American thinking about racism and racial justice is defined from the perspective of the historical victims of racism and racial injustice rather than from the perspective of the historical beneficiaries, we are doomed to** [\*905] **continue the sorry legacy of racism.** **We must shift our thinking about racism and racial justice from focusing on the benefits and comforts that have been enjoyed and may be reduced by racism's historical white beneficiaries to focusing on the costs, burdens, and consequences that have been suffered and will be endured by racism's historical non-white victims.** We should admit that the new thinking is not likely to come from the same mindset that has produced so much of what we deem legitimate about American law and culture. **The prevailing thought in American law and culture regarding racism and racial injustice follows the ages-old presumption of white superiority over non-white people and what one social ethicist termed a belief in "the rightness of whiteness."** n6 Thus, **the very mindset** that produced the theft of Native American land, enslavement of Africans, discrimination against people of Asian ancestry, and belittling of the Hispanic culture (including the Spanish language) **has driven and continues to dominate American thinking about religion, government, law, economics, education, and societal life in general**.

**Plan**

**Thus the plan: The Supreme Court of the United States should overturn its decision in Korematsu v. the United States.**

**Solvency**

**Interrogating the Korematsu decision is K2 problematizing abuses of war powers**

**Green, 11**

(Craig, Professor of Law, Temple University Beasley School of Law, Northwestern University Law Review, “ENDING THE KOREMATSU ERA: AN EARLY VIEW FROM THE WAR ON TERROR CASES,” 2011, Vol. 105, No. 3, p.p. 1038-1039, <http://www.law.northwestern.edu/lawreview/v105/n3/983/LR105n3Green.pdf>)

**Iconic war powers precedents offer special interpretive challenges because such cases arise only infrequently from clustered factual circumstances that differ greatly from any other group of cases.** **The result is an uncommon risk that each generation of lawyers may forget or misread the wisdoms and follies of the past. This is what happened before 9/11. Lawyers, judges, scholars, and commentators had not adequately appreciated the Court’s unfortunate history surrounding World War II.** As old issues resurfaced concerning detention and military commissions, **executive lawyers and federal courts of appeals used Korematsu-era precedents** (though not Korematsu itself) **as “positive” precedents instead of “negative” ones. This was a mistake, as the modern Court has repeatedly held.** This Article seeks to bolster safeguards against presidential abuse and, at long last, to limit the Korematsu era’s influence. But like everything else, such scholarship operates in a world of contingent circumstances where pens and ideas are only sometimes mightier than swords and the politics of war.**316 If my thesis is correct that the modern GWOT cases have undermined the Korematsu era’s institutional assumptions, the episodic nature of war powers cases creates pressure to solidify that interpretation quickly.** Elections have delivered a President with an arguably different view of presidential power.317 And several new Justices now occupy the high bench— with the especially notable departures of Justice Stevens, who personally witnessed the Korematsu era as a young man,318 and Justice Souter, whose Hamdi concurrence showed exceptional insight in analyzing past examples of war powers. **Our current cluster of wartime decisions might soon draw to a close, and if that happens, issues of executive detention and military commissions may once again drift out of focus.** All too soon, **it may be hard to remember the political pressures heaped on the Court in 2004, when it said “no” for the first time to a popular, selfdeclared wartime President**. **As memories fade, the modern Court’s remarkable steps in rejecting Korematsu-era deference might be similarly forgotten or misconstrued.** Rasul might become a case “just” about federal habeas statutes, Hamdi “just” a set of divided opinions about enemy combatants, Hamdan “just” an interpretation of the UCMJ, and Boumediene “just” a constitutional decision about Guantánamo Bay. For anyone who wishes to celebrate the Korematsu era’s end, the time to determine the recent war powers cases’ meaning is now. Otherwise, **the Court’s subtle language and narrow holdings may allow future executive lawyers to deflect recent precedents and revive Korematsu-era principles that the 9/11 era has firmly and quietly laid to rest**.

**Court action is key—repudiation solves perception and legitimacy of the court**

**Irons, 13**

(Peter, Civil Rights Attorney, and professor emeritus of political science, “UNFINISHED BUSINESS: THE CASE FOR SUPREME COURT REPUDIATION OF THE JAPANESE AMERICAN INTERNMENT CASES,” 2013, <http://lawprofessors.typepad.com/files/case-for-repudiation-1.pdf>)

Although this essay is directed to a general, and hopefully wide readership, it is primarily aimed at an audience of nine: **the current justices of the Supreme Court, who have the inherent power to erase this stain on its record and to restore the Court’s integrity**. Admittedly, **a public repudiation of the Japanese American internment cases would be unprecedented**, considering that the cases are technically moot, since the Solicitor General of the United States at the time, Charles Fried, did not ask the Court to review the decisions of the federal judges who vacated the convictions, pursuant to writs of error coram nobis [5] that were filed in all three cases in 1983 and decided in opinions issued in 1984, 1986, and 1987. The government’s decision to forego appeals to the Supreme Court left the victorious coram nobis petitioners in a classic Catch-22 situation: **hoping to persuade the Supreme Court to finally and unequivocally reverse and repudiate the decisions in their cases, they were unable—as prevailing parties in the lower courts—to bring appeals to the Court. The evidence of the government’s misconduct in these cases is clear and compelling, and rests on the government’s own records.** It reveals that high government officials, including the Solicitor General, knowingly presented the Supreme Court with false and fabricated records, both in briefs and oral arguments, that misled the Court and resulted in decisions that deprived the petitioners in these cases of their rights to fair hearings of their challenges to military orders that were based, not on legitimate fears that they—and all Japanese Americans—posed a danger of espionage and sabotage on the West Coast, but rather reflected the racism of the general who promulgated the orders. **As a result of the government’s misconduct in these cases, the integrity of the Supreme Court was compromised. With a full record of the government’s misconduct in these cases now before it, the Supreme Court has both the inherent power and duty to correct its tainted records through a public repudiation of the wartime decisions**.

**Overturning Korematsu k2 repudiation of other racist policies**

**Wu, 2**

(Frank H., Professor of Law, Howard University, “Profiling in the Wake of September 11,” Justice Magazine, <http://www.abanet.org/crimjust/cjmag/17-2/japanese.html>, September 2002)

**The condemnation of the internment may lead to the condoning of milder measures in the classical fallacy of false alternatives.** Anything short of an internment is compared to the internment, as if to say it could be worse and so there is no cause for complaint. To be fair, **racial profiling can be carried out in a much milder form than internment camps. To be precise, the current secret detentions are best likened to the apprehension of hundreds of Japanese Americans, German Americans, and Italian Americans and the curfews and other measures that preceded the internment itself.** In that context, **the conclusion that the internment was wrong is not enough.** **The reasons it was wrong must be articulated again.** As lawyers well know, the rationale may be as important as the result by itself in comprehending the meaning of legal authority. What is constitutional is not necessarily advisable. Technically, for all the contempt directed at the Supreme Court’s internment cases, **it is worth noting that the decisions have never been repudiated and actually have been followed consistently.** Indeed, **Chief Justice William H. Rehnquist penned a book a few years ago intimating that if a similar matter were to come before the Court again he would not expect it do otherwise.** (William H. Rehnquist, All the Laws But One: Civil Liberties in Wartime (Knopf 1998).)

**Remembrance of the racist subordination surrounding the Korematsu case enables the creation of a lens that allows us to recognize and address future instances of racism like those Muslim and Arab Americans experience today**

**Volpp 10** (Leti, Robert D. and Leslie Kay Raven Professor of Law in Access to Justice at the University of California – Berkley School of Law receiving her J.D. from Colombia University in 1993, *Excesses of Culture: On Asian American Citizenship and Identity*, Asian American Law Journal, Volume 17, Issue 1, pgs. 63-82, accessed via HeinOnline, <http://heinonline.org/HOL/Page?handle=hein.journals/aslj17&div=6&collection=journals&set_as_cursor=16&men_tab=srchresults&terms=korematsu&type=matchall>, 2010, JKE)

Let me conclude by turning to our present circumstances, by examining, post-September 11, how some of these ideas about culture, identity and citizenship have shifted, and how some have not, and make something of an ethical argument. In her book Immigrant Acts, Lisa Lowe suggests that **Asian Americans have a particular collective memory-that of being constituted as aliens- that allows us to be critical of the notion of citizenship and the fault lines in the liberal democracy it upholds." Asian Americans share a collective memory of imputed foreignness, of being marked as the enemy within.**72 The late nineteenth-century policing of Chinese immigrants led to the creation of a new administrative bureaucracy.73 As Gabriel J. Chin has argued, **we can link the rise of the administrative state to the policing of Asian exclusion.**74 Lisa Lowe, in turn, suggests **this regulation has**, in recent years, **been "refocused particularly on 'alien' and 'illegal' Mexican and Latino workers."** As such, **Asian American culture can be "the site of remembering, in which the recognition of Asian immigrant history in the present predicament of Mexican and Latino immigrants is possible."**71 I would suggest that **we see this kind of collective memory exemplified in Fred Korematsu's brief challenging the imprisonment of hundreds of prisoners on Guantanamo in the Supreme Court's deliberations of Rasul v. Bush, which addressed whether or not the prisoners had the** 76 **right to challenge their confinement through statutory habeas. The brief began: More than sixty years ago, as a young man, Fred Korematsu challenged the constitutionality of President Franklin Roosevelt's 1942 Executive Order that authorized the internment of all persons of Japanese ancestry on the West Coast of the United States. He was convicted and sent to prison. In Korematsu v. United States, this Court upheld his conviction**, explaining that because the United States was at war, the government could constitutionally intern Mr. Korematsu, without a hearing, and without any adjudicative determination that he had done anything wrong. **More than half a century later, Fred Korematsu was awarded the Presidential Medal of Freedom, the nation's highest civilian honor, for his courage and persistence in opposing injustice. In accepting this award, Mr. Korematsu reminded the nation that "We should be vigilant to make sure this will never happen again."** He has committed himself to ensuring that Americans do not forget the lessons of their own history. Because Mr. Korematsu has a distinctive, indeed unique, perspective on the issues presented by this case, he submits this brief to 77 assist the Court in its deliberation. **The historical experience of subordination of a community can create a lens**, a way to see, **which** I would argue **lends itself to an ethical argument: that it behooves us**, as Asian Americans, **to be particularly sensitive to the communities today subjected to the unjust treatment that has characterized treatment of our own community. I think this is precisely what Fred Korematsu did. This is a very particular argument about politics. This does not say that our political activity should focus on Asian American bodies. This says that we should think about what we know from our past experience-and what we have learned from this experience-to think critically about who is being treated in this way now, and that the bodies that this is happening to now**, whether Asian American or not, **should be a focus of our concern.** If we think about this on the terrain of culture, I think **it is unarguable that the people today subject to the most violent expulsion from membership are Muslims. Post-September 11-and the wars in Afghanistan and Iraq-the West has been ever more defined as progressive, democratic, civilized and feminist, in stark contrast to Islam and to Muslims.**78

**Framing**

#### Critique must engage the state. Failure to do so guarantees that the alternative will fail, no coalitions will be formed, and politics will be ceded to authoritarian Right-wing groups. Only engaging the institutions of the state can transform them.

Mouffe 2009

(Chantal Mouffe is Professor of Political Theory at the Centre for the Study of Democracy, University of Westminster, “The Importance of Engaging the State”, *What is Radical Politics Today?*, Edited by Jonathan Pugh, pp. 233-7)

In both Hardt and Negri, and Virno, there is therefore emphasis upon ‘critique as withdrawal’. They all call for the development of a non-state public sphere. They call for self-organisation, experimentation, non-representative and extra-parliamentary politics. They see forms of traditional representative politics as inherently oppressive. So they do not seek to engage with them, in order to challenge them. They seek to get rid of them altogether. This disengagement is, for such influential personalities in radical politics today, the key to every political position in the world. The Multitude must recognise imperial sovereignty itself as the enemy and discover adequate means of subverting its power. Whereas in the disciplinary era I spoke about earlier, sabotage was the fundamental form of political resistance, these authors claim that, today, it should be desertion. It is indeed through desertion, through the evacuation of the places of power, that they think that battles against Empire might be won. Desertion and exodus are, for these important thinkers, a powerful form of class struggle against imperial postmodernity. According to Hardt and Negri, and Virno, radical politics in the past was dominated by the notion of ‘the people’. This was, according to them, a unity, acting with one will. And this unity is linked to the existence of the state. The Multitude, on the contrary, shuns political unity. It is not representable because it is an active self-organising agent that can never achieve the status of a juridical personage. It can never converge in a general will, because the present globalisation of capital and workers’ struggles will not permit this. It is anti-state and anti-popular. Hardt and Negri claim that the Multitude cannot be conceived any more in terms of a sovereign authority that is representative of the people. They therefore argue that new forms of politics, which are non-representative, are needed. They advocate a withdrawal from existing institutions. This is something which characterises much of radical politics today. The emphasis is not upon challenging the state. Radical politics today is often characterised by a mood, a sense and a feeling, that the state itself is inherently the problem. Critique as engagement I will now turn to presenting the way I envisage the form of social criticism best suited to radical politics today. I agree with Hardt and Negri that it is important to understand the transition from Fordism to post-Fordism. But I consider that the dynamics of this transition is better apprehended within the framework of the approach outlined in the book Hegemony and Socialist Strategy: Towards a Radical Democratic Politics (Laclau and Mouffe, 2001). What I want to stress is that many factors have contributed to this transition from Fordism to post-Fordism, and that it is necessary to recognise its complex nature. My problem with Hardt and Negri’s view is that, by putting so much emphasis on the workers’ struggles, they tend to see this transition as if it was driven by one single logic: the workers’ resistance to the forces of capitalism in the post-Fordist era. They put too much emphasis upon immaterial labour. In their view, capitalism can only be reactive and they refuse to accept the creative role played both by capital and by labour. To put it another way, they deny the positive role of political struggle. In Hegemony and Socialist Strategy: Towards a Radical Democratic Politics we use the word ‘hegemony’ to describe the way in which meaning is given to institutions or practices: for example, the way in which a given institution or practice is defined as ‘oppressive to women’, ‘racist’ or ‘environmentally destructive’. We also point out that every hegemonic order is therefore susceptible to being challenged by counter-hegemonic practices – feminist, anti-racist, environmentalist, for example. This is illustrated by the plethora of new social movements which presently exist in radical politics today (Christian, anti-war, counter-globalisation, Muslim, and so on). Clearly not all of these are workers’ struggles. In their various ways they have nevertheless attempted to influence and have influenced a new hegemonic order. This means that when we talk about ‘the political’, we do not lose sight of the ever present possibility of heterogeneity and antagonism within society. There are many different ways of being antagonistic to a dominant order in a heterogeneous society – it need not only refer to the workers’ struggles. I submit that it is necessary to introduce this hegemonic dimension when one envisages the transition from Fordism to post-Fordism. This means abandoning the view that a single logic (workers’ struggles) is at work in the evolution of the work process; as well as acknowledging the pro-active role played by capital. In order to do this we can find interesting insights in the work of Luc Boltanski and Eve Chiapello who, in their book The New Spirit of Capitalism (2005), bring to light the way in which capitalists manage to use the demands for autonomy of the new movements that developed in the 1960s, harnessing them in the development of the post-Fordist networked economy and transforming them into new forms of control. They use the term ‘artistic critique’ to refer to how the strategies of the counter-culture (the search for authenticity, the ideal of selfmanagement and the anti-hierarchical exigency) were used to promote the conditions required by the new mode of capitalist regulation, replacing the disciplinary framework characteristic of the Fordist period. From my point of view, what is interesting in this approach is that it shows how an important dimension of the transition from Fordism to post- Fordism involves rearticulating existing discourses and practices in new ways. It allows us to visualise the transition from Fordism to post- Fordism in terms of a hegemonic intervention. To be sure, Boltanski and Chiapello never use this vocabulary, but their analysis is a clear example of what Gramsci called ‘hegemony through neutralisation’ or ‘passive revolution’. This refers to a situation where demands which challenge the hegemonic order are recuperated by the existing system, which is achieved by satisfying them in a way that neutralises their subversive potential. When we apprehend the transition from Fordism to post- Fordism within such a framework, we can understand it as a hegemonic move by capital to re-establish its leading role and restore its challenged legitimacy. We did not witness a revolution, in Marx’s sense of the term. Rather, there have been many different interventions, challenging dominant hegemonic practices. It is clear that, once we envisage social reality in terms of ‘hegemonic’ and ‘counter-hegemonic’ practices, radical politics is not about withdrawing completely from existing institutions. Rather, we have no other choice but to engage with hegemonic practices, in order to challenge them. This is crucial; otherwise we will be faced with a chaotic situation. Moreover, if we do not engage with and challenge the existing order, if we instead choose to simply escape the state completely, we leave the door open for others to take control of systems of authority and regulation. Indeed there are many historical (and not so historical) examples of this. When the Left shows little interest, Right-wing and authoritarian groups are only too happy to take over the state. The strategy of exodus could be seen as the reformulation of the idea of communism, as it was found in Marx. There are many points in common between the two perspectives. To be sure, for Hardt and Negri it is no longer the proletariat, but the Multitude which is the privileged political subject. But in both cases the state is seen as a monolithic apparatus of domination that cannot be transformed. It has to ‘wither away’ in order to leave room for a reconciled society beyond law, power and sovereignty. In reality, as I’ve already noted, others are often perfectly willing to take control. If my approach – supporting new social movements and counterhegemonic practices – has been called ‘post-Marxist’ by many, it is precisely because I have challenged the very possibility of such a reconciled society. To acknowledge the ever present possibility of antagonism to the existing order implies recognising that heterogeneity cannot be eliminated. As far as politics is concerned, this means the need to envisage it in terms of a hegemonic struggle between conflicting hegemonic projects attempting to incarnate the universal and to define the symbolic parameters of social life. A successful hegemony fixes the meaning of institutions and social practices and defines the ‘common sense’ through which a given conception of reality is established. However, such a result is always contingent, precarious and susceptible to being challenged by counter-hegemonic interventions. Politics always takes place in a field criss-crossed by antagonisms. A properly political intervention is always one that engages with a certain aspect of the existing hegemony. It can never be merely oppositional or conceived as desertion, because it aims to challenge the existing order, so that it may reidentify and feel more comfortable with that order. Another important aspect of a hegemonic politics lies in establishing linkages between various demands (such as environmentalists, feminists, anti-racist groups), so as to transform them into claims that will challenge the existing structure of power relations. This is a further reason why critique involves engagement, rather than disengagement. It is clear that the different demands that exist in our societies are often in conflict with each other. This is why they need to be articulated politically, which obviously involves the creation of a collective will, a ‘we’. This, in turn, requires the determination of a ‘them’. This obvious and simple point is missed by the various advocates of the Multitude. For they seem to believe that the Multitude possesses a natural unity which does not need political articulation. Hardt and Negri see ‘the People’ as homogeneous and expressed in a unitary general will, rather than divided by different political conflicts. Counter-hegemonic practices, by contrast, do not eliminate differences. Rather, they are what could be called an ‘ensemble of differences’, all coming together, only at a given moment, against a common adversary. Such as when different groups from many backgrounds come together to protest against a war perpetuated by a state, or when environmentalists, feminists, anti-racists and others come together to challenge dominant models of development and progress. In these cases, the adversary cannot be defined in broad general terms like ‘Empire’, or for that matter ‘Capitalism’. It is instead contingent upon the particular circumstances in question – the specific states, international institutions or governmental practices that are to be challenged. Put another way, the construction of political demands is dependent upon the specific relations of power that need to be targeted and transformed, in order to create the conditions for a new hegemony. This is clearly not an exodus from politics. It is not ‘critique as withdrawal’, but ‘critique as engagement’. It is a ‘war of position’ that needs to be launched, often across a range of sites, involving the coming together of a range of interests. This can only be done by establishing links between social movements, political parties and trade unions, for example. The aim is to create a common bond and collective will, engaging with a wide range of sites, and often institutions, with the aim of transforming them. This, in my view, is how we should conceive the nature of radical politics.

#### Democratic opposition to the uncritical usage of the war powers of the President is essential to exposing the operations of whiteness in creating an intersectional grid of oppression. Debates about the topic are the starting point to overcome racism, patriarchy, heteronormativity, and neoliberal capitalism.

Lipsitz 6

(George Lipsitz is Professor of Black Studies and Sociology at the University of

California, Santa Barbara, *The Possessive Investment in Whiteness*, Temple University Press, pp. 72-4)

Reginald Horsman’s study of nineteenth-century racism and Manifest Destiny¶ explains how presumptions about racial purity and fears of contamination encouraged white Americans who envisioned themselves as Anglo-Saxons to fabricate proof of the inferiority of other groups. Horsman shows how racialized hierarchies on the home front served as impetus for imperial expansion abroad, with the rationalizations originally developed to justify conquest ofNative Americans eventually applied to Mexicans and Filipinos. Yet the categories created for racist purposes displayed great instability—at one time or another, depending on immediate interests and goals, Native Americans, blacks, Mexicans, and Asians might be either elevated above the others or labeled the most deficient group of all. Similarly, David Roediger’s research shows how the derogatory term “gook” originated among U.S. forces to deride the Nicaraguans fighting with Cesar Augusto Sandino during the U.S. occupation of that nation in the 1920s before it was applied as a racial slur against Koreans, Vietnamese, and even Iraqis in subsequent conflicts.7 Yet whiteness never works in isolation; it functions as part of a broader dynamic grid created through intersections of race, gender, class, and sexuality. The way these identities work in concert gives them their true social meaning. The renewal of patriotic rhetoric and display in the United States during and after the Reagan presidency serves as the quintessential example of this intersecting operation. Reagan succeeded in fusing the possessive investment in whiteness with other psychic and material investments—especially in masculinity, patriarchy, and heterosexuality. The intersecting identity he offered gave new meanings to white male patriarchal and heterosexual identities by establishing patriotism as the site where class antagonisms between men could be reconciled in national and patriotic antagonisms against foreign foes and internal enemies. By encoding the possessive investment in whiteness within national narratives of male heroism and patriarchal protection, Reagan and his allies mobilized a crossclass coalition around the premise that the declines in life chances and opportunities in the United States, the stagnation of real wages, the decline of basic services and infrastructure resources, and the increasing social disintegration stemmed not from the policies of big corporations and their neoliberal and neoconservative allies in government, but from the harm done to the nation by the civil rights, antiwar, feminist, and gay liberation movements of the 1960s and 1970s. By representing the national crisis as a crisis of the declining value of white male and heterosexual identity, Reagan and his allies and successors built a countersubversive coalition mobilized around protecting the privileges and prerogatives of the possessive investments in whiteness, in masculinity, in patriarchy, and in heterosexuality. The murders of Vincent Chin, Ly Yung Cheung, the Southeast Asian school children in Stockton, and Luyen Phan Nguyen become understandable as more than the private and personal crimes of individual criminals when placed in these two contexts:widely shared social beliefs, practices, and images that render Asians as foreign enemies, and the decline of life chances and opportunities in the United States viewed as the result of the defeat in Vietnam and the democratic movements for social change that, among other accomplishments, helped end that war. The key to the conservative revival that has guided leaders of business and government since the 1970s has been the creation of a countersubversive consensus mobilized around the alleged wounds suffered by straight white men. At the heart of this effort lies an unsolvable contradiction between their economic goals and the cultural stories they have to tell to win mass support. The advocates of surrendering national sovereignty and self-determination to transnational corporations rely on cultural stories of wounded national pride, of unfair competition from abroad, of subversion from within by feminists and aggrieved racial minorities, of social disintegration attributed not to systematic disinvestment in theUnited States but to the behavior of immigrants and welfare recipients. Thus we find ourselves saturated with stories extolling American national glory told by internationalists who seek to export jobs and capital overseas while dismantling the institutions offering opportunity and upward mobility to ordinary citizens in the United States. The seeming paradox of reconfirmed nationalism during the 1991 Gulf War and the globalization of world politics, economics, and culture that emerged in its wake represents two sides of the same coin. For more than twenty years, reassertions of nationalism in the United States have taken place in the context of an ever-increasing internationalization of commerce, communication, and culture. Furthermore, some of the most ardent advocates of public patriotism and militant nationalism have been active agents in the internationalization of the economy. Wedded to policies that have weakened the nation’s economic and social infrastructures in order to assist multinational corporations with their global ambitions, the nation’s political and economic leaders have fashioned cultural narratives of nationalist patriotic excess in order to obscure and legitimize the drastic changes in national identity engendered by their economic and political decisions. In times of crisis, the illusion that all contradictions and differences would be solved if we would only agree to one kind of culture, one kind of education, one kind of patriotism, one kind of sexuality, and one kind of family often hold widespread appeal. Exploring the dynamics of nationalistic rhetoric and patriotic display during an era of economic and political internationalization can help us understand the role of whiteness as a defining symbolic identity that mobilizes gender and sexual elements in the service of obscuring class polarization. Close study of the patriotic revival of the post-Vietnam era, especially, reveals organic links between discussions of white male identity and the U.S. defeat in the Vietnam War, deindustrialization, changes in gender roles, and the rising emphasis on acquisition, consumption, and display that has characterized the increasingly inegalitarian economy of the postindustrial era. Perhaps most important, analysis of the connections among these events and practices will enable us to see how the whiteness called forth by dominant narratives of “American patriotism” has functioned paradoxically to extend the power of transnational corporations beyond the control of any one nation’s politics.

#### Policy debate is good for education, the development of empathy, and producing real world engagement from participants. Clear rules, a stable topic, and institutional role playing and simulation are integral to the process. The things you criticize about debate make it a unique exercise in active learning.

Lantis 8

(Jeffrey S. Lantis is Professor in the Department of Political Science and Chair of the

International Relations Program at The College of Wooster, “The State of the Active Teaching and Learning Literature”, <http://www.isacompss.com/info/samples/thestateoftheactiveteachingandlearningliterature_sample.pdf>)

Simulations, games, and role-play represent a third important set of active teaching and learning approaches. Educational objectives include deepening conceptual understandings of a particular phenomenon, sets of interactions, or socio-political processes by using student interaction to bring abstract concepts to life. They provide students with a real or imaginary environment within which to act out a given situation (Crookall 1995; Kaarbo and Lantis 1997; Kaufman 1998; Jefferson 1999; Flynn 2000; Newmann and Twigg 2000; Thomas 2002; Shellman and Turan 2003; Hobbs and Moreno 2004; Wheeler 2006; Kanner 2007; Raymond and Sorensen 2008). The aim is to enable students to actively experience, rather than read or hear about, the “constraints and motivations for action (or inaction) experienced by real players” (Smith and Boyer 1996:691), or to think about what they might do in a particular situation that the instructor has dramatized for them. As Sutcliffe (2002:3) emphasizes, “Remote theoretical concepts can be given life by placing them in a situation with which students are familiar.” Such exercises capitalize on the strengths of active learning techniques: creating memorable experiential learning events that tap into multiple senses and emotions by utilizing visual and verbal stimuli. Early examples of simulations scholarship include works by Harold Guetzkow and colleagues, who created the Inter-Nation Simulation (INS) in the 1950s. This work sparked wider interest in political simulations as teaching and research tools. By the 1980s, scholars had accumulated a number of sophisticated simulations of international politics, with names like “Crisis,” “Grand Strategy,” “ICONS,” and “SALT III.” More recent literature on simulations stresses opportunities to reflect dynamics faced in the real world by individual decision makers, by small groups like the US National Security Council, or even global summits organized around international issues, and provides for a focus on contemporary global problems (Lantis et al. 2000; Boyer 2000). Some of the most popular simulations involve modeling international organizations, in particular United Nations and European Union simulations (Van Dyke et al. 2000; McIntosh 2001; Dunn 2002; Zeff 2003; Switky 2004; Chasek 2005). Simulations may be employed in one class meeting, through one week, or even over an entire semester. Alternatively, they may be designed to take place outside of the classroom in local, national, or international competitions. The scholarship on the use of games in international studies sets these approaches apart slightly from simulations. For example, Van Ments (1989:14) argues that games are structured systems of competitive play with specific defined endpoints or solutions that incorporate the material to be learnt. They are similar to simulations, but contain specific structures or rules that dictate what it means to “win” the simulated interactions. Games place the participants in positions to make choices that 10 affect outcomes, but do not require that they take on the persona of a real world actor. Examples range from interactive prisoner dilemma exercises to the use of board games in international studies classes (Hart and Simon 1988; Marks 1998; Brauer and Delemeester 2001; Ender 2004; Asal 2005; Ehrhardt 2008) A final subset of this type of approach is the role-play. Like simulations, roleplay places students within a structured environment and asks them to take on a specific role. Role-plays differ from simulations in that rather than having their actions prescribed by a set of well-defined preferences or objectives, role-plays provide more leeway for students to think about how they might act when placed in the position of their slightly less well-defined persona (Sutcliffe 2002). Role-play allows students to create their own interpretation of the roles because of role-play’s less “goal oriented” focus. The primary aim of the role-play is to dramatize for the students the relative positions of the actors involved and/or the challenges facing them (Andrianoff and Levine 2002). This dramatization can be very simple (such as roleplaying a two-person conversation) or complex (such as role-playing numerous actors interconnected within a network). The reality of the scenario and its proximity to a student’s personal experience is also flexible. While few examples of effective roleplay that are clearly distinguished from simulations or games have been published, some recent work has laid out some very useful role-play exercises with clear procedures for use in the international studies classroom (Syler et al. 1997; Alden 1999; Johnston 2003; Krain and Shadle 2006; Williams 2006; Belloni 2008). Taken as a whole, the applications and procedures for simulations, games, and role-play are well detailed in the active teaching and learning literature. Experts recommend a set of core considerations that should be taken into account when designing effective simulations (Winham 1991; Smith and Boyer 1996; Lantis 1998; Shaw 2004; 2006; Asal and Blake 2006; Ellington et al. 2006). These include building the simulation design around specific educational objectives, carefully selecting the situation or topic to be addressed, establishing the needed roles to be played by both students and instructor, providing clear rules, specific instructions and background material, and having debriefing and assessment plans in place in advance. There are also an increasing number of simulation designs published and disseminated in the discipline, whose procedures can be adopted (or adapted for use) depending upon an instructor’s educational objectives (Beriker and Druckman 1996; Lantis 1996; 1998; Lowry 1999; Boyer 2000; Kille 2002; Shaw 2004; Switky and Aviles 2007; Tessman 2007; Kelle 2008). Finally, there is growing attention in this literature to assessment. Scholars have found that these methods are particularly effective in bridging the gap between academic knowledge and everyday life. Such exercises also lead to enhanced student interest in the topic, the development of empathy, and acquisition and retention of knowledge.

**The Korematsu decision displays how apocalyptic rhetoric justifies things like internment**

**Snyder, 8**

(Fritz, Professor of Law, University of Montana School of Law, “OVERREACTION THEN (KOREMATSU) AND NOW (THE DETAINEE CASES),” The Critui, Vol. 2, Issue 1, p. 107-109, 2008, <http://thecritui.com/wp-content/uploads/2011/02/Snyder.pdf>)

The Supreme Court in the last few years has shown, in large part because it is immune from political pressures, an admirable respect for civil liberties which the nervous Bush administration has sought to curtail. **The incarceration of 120,000 people of Japanese ancestry under President Roosevelt’s authority “set the stage for other presidential power grabs, culminating in President George W. Bush’s unprecedented claims of executive authority in the war on terror.**”242 Thus, **we have a President wielding an extraordinary amount of power because of a perhaps excessive concern with terrorism contrasted with the Supreme Court trying to retain basic civil liberties – and both stemming from Korematsu.** America, like any other country, meets fearful times with fearful actions. **Brutality justifies brutality; an external threat trumps internal freedom. American politicians have too often allowed “fear and hysteria rather than sober-minded judgment . . . rule their decision-making processes.”**243 **The mindset and the culture of the country as they relate to terrorism and threats of terrorism are crucial. Paranoia leads to cloudy thinking.** “Which is the greater threat: terrorism, or our reaction against it?”244 **The continued internment of Arabs and Muslims, without the rights of due process, can “only take place if the culture, the press, and the political climate” allow it.**245 Such was the case with people of Japanese ancestry. **The internment took place because decent, intelligent people did nothing or did little.** Courage to resist was called for, but such courage was lacking. “[**T]he President, the Congress, and the Supreme Court all failed in their responsibility to preserve and protect the Constitution, and the public sat by silently, or worse, cheered them on.”**246 **Now it is the President and the executive branch who have lost perspective and have set aside fundamental liberties**. “In the name of protecting national security, the executive branch sanctioned coerced confessions, extrajudicial detention, and other violations of individuals’ liberties that have been prohibited since the country’s founding.”247 Fortunately, though, the Supreme Court has maintained perspective. **Citizens, too, according to the polls have turned against the President.**248 To fight a war successfully, even sometimes a war against terrorism, it is necessary for soldiers to risk their lives. “But it is not necessarily ‘necessary’ for others to surrender their freedoms.”249 Before the present time, the federal government twice suspended civil liberties to permit detention without trial or charges for thousands. President Lincoln suspended habeas corpus during the Civil War, allowing military authorities to detain civilians suspected of disloyalty.250 Unlike the Korematsu court, however, the Supreme Court in Ex Parte Milligan declared unanimously that Lincoln’s actions were unlawful.251 An essential principle of democracy is that “all citizens are entitled to the same rights and legal protections.”252 **Interning 120,000 people without any rights of due process was a horrendous mistake.** Wayne **Collins,** the admirable attorney who was a profile in courage in helping the “renunciants” remain in this country, **said** 30 years after the evacuation: **“I still feel bitter about the evacuation. It was the foulest goddam crime the United States has ever committed against a wonderful people.”2**53 **The internment saga should serve, and has served, “as a reminder to all who cherish their liberties of the very fragility of their rights against the exploding passions of the more** **numerous fellow citizens** . . . .”254 **We cannot have people in power saying, as Assistant Secretary of War John McCloy said in 1942: “[I]f it is a question of the safety of the country [and] the Constitution . . . why the Constitution is just a scrap of paper to me.”**255 The Court then condoned the unconstitutional internment and passed up its opportunity to establish legal precedent that might have dissuaded future executive misbehavior.256 The Court now is doing better. “In time . . . the Bush Administration’s descent into torture [will] be seen as akin to Roosevelt’s internment of Japanese Americans during World War II. **It happened . . . in much the same way, for many of the same reasons.** **‘Fear and anxiety were exploited by zealots and fools.’”**257 Our Constitution is the bedrock of our country. Without it, we are ruled by whim and caprice. **We must never lose sight of the 5th Amendment: “No person shall be . . . deprived of life, liberty, or property without due process of law.” Finally, we must not overreact**.