Life During Wartime I: Rights and Safety

Questions for Thursday, December 2nd

On Thursday we begin our final two substantive classes of the term, looking at questions of rights during wartime. Thursday we will look at historical precedent of World War II, when two particularly important cases involving the Constitution in times of war reached the Supreme Court. One involved state laws requiring that all public school children begin their day by reciting the Pledge of Allegiance (note that at the time the Pledge did not include the words “under God”; those words were added in 1954). These laws were challenged by Jehovah’s Witnesses (a Christian religious sect) who contended that the forced pledge recitation violated their First Amendment right to free exercise of religion. The Court allowed the laws to stand in 1940 (in the Gobitis decision). The case you have in the reader – Barnette – overturned the previous case a mere three years later.

The second case involved the forced evacuation and detention in so-called “Relocation Camps” of people of Japanese descent (both citizens and non-citizens) from the West Coast of the United States in the year following the Japanese attack on Pearl Harbor in December 1941. Both cases raise important questions about the extent to which we should or should not override individual rights in the name of national safety or national security.

1. What are the various positions taken by the Justices of the Supreme Court in Korematsu? How do they justify their opinions? With whom do you agree and why?

2. What are the rights that are violated by the relocation order? Why should these rights be respected at a time of danger or war? Could it ever be justifiable to override individual rights in the name of national security? In what situations? How would you structure such an order? How would you achieve your goals? What concerns would you have about the ability to exercise such power?

3. After reading the West Virginia statute requiring the daily flag salute (reader, p. 99), do you believe this type of law should be allowed as a means of advancing national unity and loyalty? Why or why not? Do you agree with Justice Jackson’s reasoning as to why they should not be allowed? Why or why not?

4. Of what value is the Constitution if our nation (and people) is so threatened that to abide the rights therein could mean the destruction of the nation? How should we decide which rights should be respected and which (if at all) should be set aside in times of war? How was this decision made in Korematsu and Barnette? Do you think the Justices made the right choices?

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1 For further exploration of the history of the Japanese internment, see:
www.pbs.org/childofcamp/history
www.jainternment.org