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Excerpt from U.S. Supreme Court trial of 1922

Opinion written by U.S. Supreme Court justice George Sutherland on November 13, 1922

An upstanding twenty-year Japanese immigrant resident of the United States fails in his application to become a U.S. citizen

"The intention was to confer the privilege of citizenship upon that class of persons whom the fathers knew as white, and to deny it to all who could not be so classified."

Takao Ozawa was born in Japan, moved to the territory of Hawaii, and later lived in California. Altogether he had lived in the United States continuously for twenty years when he applied in 1914 for naturalization, the process of becoming a U.S. citizen. At the time, he had graduated from high school in Berkeley, California, and had been a student at the University of California for three years. He had children, all born in the United States. The family spoke English at home and attended American churches. Nevertheless, the U.S. government opposed his application to become a citizen, on grounds that he was not "white." Eight years after his application was filed, the U.S. Supreme Court agreed with the government: Ozawa was not eligible to become a citizen.

Immigration of Asians to the United States had been an issue long before the U.S. Supreme Court took up the case of *Ozawa v. United States*. In California, where most Asian immigrants settled, opposition to Asian immigrants was especially strong. California's representatives persuaded the U.S. Congress in 1882 to pass the Chinese Exclusion Act, barring Chinese from entering the United States as immigrants. In

1894, as Japan was emerging as a strong military and industrial power in Asia, a treaty with the United States had guaranteed free immigration to the United States for Japanese. But six years later, in the midst of strong opposition to Japanese immigrants among European Americans in California, Japan agreed not to issue passports for laborers seeking to enter the United States. (A passport is the formal travel document issued by a country's government that allows a citizen of that country exit and reentry.) For the Japanese government, it was a way to cut off emigration and solve the problem without agreeing to treatment that would be regarded as discriminatory against Japanese. The cutoff of passports did not, however, include passports for laborers seeking to enter Hawaii, Canada, or Mexico, from any one of which it was easy for Japanese to enter the United States.

In 1907, the San Francisco Board of Education decided to segregate its Asian students. All Asian students, including Japanese students, were to be placed in a single "Asian school" that kept the students apart from "white" European American students. Seeing Japanese the objects of discrimination upset the government of Japan just at the moment when the administration of President Theodore Roosevelt (1858–1919; served 1901–9) wanted to maintain smooth diplomatic relations with Japan. Roosevelt, who was eager to increase U.S. influence in east Asia, was counting on Japan to counter the influence of Russia in the region.

To cool the diplomatic tensions with Japan created by the school board in San Francisco, Roosevelt persuaded the school board to drop its segregation plan in exchange for promises that the federal government would try to solve the issue of Japanese immigration. The result was the "Gentleman's Agreement" (an agreement that falls short of a formal treaty) of 1907 under which Japan agreed to cooperate in stemming the flow of Japanese workers to the United States. The Japanese government said it would continue to refuse to issue passports for all Japanese workers planning to go to the United States. In

addition, it would not object to the removal of Japanese from the United States who held passports issued for travel elsewhere, such as Canada or Mexico. In return, San Francisco authorities discontinued segregating Japanese students in a special school for Asians. Officially, Japanese still had the right to immigrate, on an equal basis with citizens of other countries.

The San Francisco school board incident demonstrated how U.S. immigration laws and attitudes affected American diplomatic policies unrelated to immigration. The incident also served as a reminder of the long-standing controversy in California over the admission of people from Asia, whether Japanese or Chinese, and the importance of race in determining U.S. policy. As early as 1790, the Congress had passed a law limiting citizenship to immigrants who were "free white persons." At the time it was adopted, the law was intended to deny citizenship to slaves from Africa. Seventy-five years later, after slavery was abolished, the immigration law was amended to include Africans and people of African descent—but nothing was said about Asians.

With many Americans displeased with immigration from Asia (and also from southern and eastern Europe), the U.S. district attorney (prosecutor) had objected when Ozawa applied for citizenship. The government, in its arguments to the Supreme Court, admitted that Ozawa would make a good citizen: He was well educated; his family spoke English at home and attended church; and he had lived in the United States for most of his life. There was nothing in his conduct that might suggest he would make a poor citizen. Nevertheless, the government argued in court that U.S. law had been clear, since 1790: "Any alien being a free white person … may be admitted to become a citizen." The only exception was made in the Naturalization Act of 1870, which also made Africans or people of African descent eligible to become naturalized citizens. Ozawa did not fit any of these categories, in the government's opinion.

Ozawa's lawyers cited inconsistencies in the way that U.S. immigration laws had been written. They argued that when Congress passed a new naturalization law in 1906, it intended to overhaul the immigration law completely. Since the 1906 law had not specifically barred citizenship for Japanese people (as other laws specifically barred Chinese people), Ozawa's lawyers argued that he deserved to become a naturalized citizen. But the Supreme Court said no, ruling that if Congress had intended to remove the racial limitations on naturalized citizenship, it would have done so explicitly and decisively, rather than simply ignoring the issue. The Supreme Court noted that limiting citizenship to free white persons had been the law since 1790 and that the law had only been amended to include people born in Africa or of African descent. No such exception was ever made for Japanese, which both sides on the argument described as being a separate "race."

The Supreme Court also ruled on two other questions raised in the case: first, whether someone from Japan could be considered "white" under the law; and second, whether Ozawa could be barred from becoming a citizen because of race.

On the first question, Ozawa's lawyers had argued that the original immigration laws referred to "free white persons" in order to distinguish them from enslaved Africans, or "black," people. The lawyers tried to persuade the court that "white" meant "not black," and that the phrase was not intended to exclude Asians. The court's opinion rejected the argument, holding that people from Japan were not considered to be "Caucasian," which was what the law meant by "white," and were therefore not eligible to become citizens.

On the second question, the court ruled that Congress did have the power under the Constitution to determine the basis on which immigrants could become citizens, even if the basis was a concept as vague as race.

The *Ozawa* decision was significant in the history of immigration to the United States because it reconfirmed the importance of race when deciding whether immigrants should be allowed to become citizens—a standard for eligibility that had existed since the very beginnings of the United States as an independent country. The ruling came at a period of history when prejudice against racial and religious minorities was very strong among European American citizens, a fact that was not lost on the justices of the Supreme Court.

Things to remember while reading an excerpt from *Ozawa v. United States:*

- The *Ozawa* case came before the court at a time when the United States had already begun to restrict immigrants, especially those from southern and eastern Europe. For the forty years preceding the case, a higher number of Europeans than ever before had come to the United States, including many from poor areas of southern and eastern Europe. The case was decided in an era when the idea of "race" seemed highly important to many Americans, who were disturbed by the large number of darker-skinned individuals from countries around the Mediterranean. Although the Supreme Court is intended to interpret what Congress might have meant in passing laws, and making sure those laws do not conflict with the U.S. Constitution (the basic law of the land), in reality justices of the court usually have a political background and are often sensitive to the public sentiments of the time.
- The concept of race has always been vague, as the court's opinion admits. What race is the child of a black mother and a white father, for example? The court's opinion brushes aside this fundamental issue by saying that such questions fall into a "zone of more or less debatable ground." But since Ozawa had been born in Japan, the issue of his race was not subject to question: He was not white, and therefore not eligible to become a citizen.
- The court's opinion carefully examined minute details of previous immigration laws in an effort to understand what Congress intended to do. On the subject of what constitutes a "white" person, the opinion in essence says the court did not have time to study the issue from a scientific basis. The court ruled that anyone who was not a "free white person" (or who was not born in Africa or of African descent) did not fall into the category of people eligible to become citizens, and that included people from Asia. On the question of whether the authors of the 1790 law intended to exclude Asians, the court simply said that it has no power to read the minds of the authors of the original law. Since no subsequent Congress changed the wording, the court had no power to rule otherwise.

***Excerpt from* Ozawa v. United States**

The act of June 29, 1906, entitled "An act to establish a Bureau of Immigration and Naturalization, and to provide for a uniform rule for the naturalization of aliens throughout the United States," consists of 31 sections and deals primarily with the subject of procedure. There is nothing in the circumstances leading up to or accompanying the passage of the act which suggests that any modification of section 2169, or of its application, was contemplated.

The report of the House Committee on Naturalization and Immigration, recommending its passage, contains this statement:

"It is the opinion of your committee that the frauds and crimes which have been committed in regard to naturalization have resulted more from a lack of any uniform system of procedure in such matters than from any radical defect in the fundamental principles of existing law governing in such matters. The two changes which the committee has recommended in the principles controlling in naturalization matters and which are embodied in the bill submitted herewith are as follows: First, the requirement that before an

alien can be naturalized he must be able to read, either in his own language or in the English language and to speak or understand the English language; and, second, that the alien must intend to reside permanently in the United States before he shall be entitled to naturalization."

This seems to make it quite clear that no change of the fundamental character here involved was in mind….

In 1790 the first naturalization act provided that—

"Any alien being a free white person … may be admitted to become a citizen…." 1 Stat. 103, c. 3.

This was subsequently enlarged to include aliens of African nativity and persons of African descent….

In all of the naturalization acts from 1790 to 1906 the privilege of naturalization was confined to white persons (with the addition in 1870 of those of African nativity and descent), although the exact wording of the various statutes was not always the same. If Congress in 1906 desired to alter a rule so well and so long established it may be assumed that its purpose would have been definitely disclosed and its legislation to that end put in unmistakable terms….

It is the duty of this Court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment and inquire into its antecedent history and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail…. We are asked [by Ozawa's lawyers] to conclude that Congress, without the consideration or recommendation of any committee, without a suggestion as to the effect, or a word of debate as to the desirability, of so fundamental a change, nevertheless, by failing to alter the identifying words of section 2169, which section we may assume was continued for some serious purpose, has radically modified a statute always theretofore maintained and considered as of great importance. It is inconceivable that a rule in force from the beginning of the government, a part of our history as well as our law, welded into the structure of our national polity by a century of legislative and administrative acts and judicial decisions, would have been deprived of its force in such dubious and casual fashion. We are, therefore, constrained to hold that the act of 1906 is limited by the provisions of section 2169 of the Revised Statutes.

Second. This brings us to inquire whether, under section 2169, the appellant is eligible to naturalization. The language of the naturalization laws from 1790 to 1870 had been uniformly such as to deny the privilege of naturalization to an alien unless he came within the description "free white person. By section 7 of the act of July 14, 1870 …, the naturalization laws were "extended to aliens of African nativity and to persons of African descent." Section 2169 of the Revised Statutes, as already pointed out, restricts the privilege to the same classes of persons, viz. "to aliens being free white persons, and to aliens of African nativity and to persons of African descent." It is true that in the first edition of the Revised Statutes of 1873 the words in brackets, "being free white persons, and to aliens" were omitted, but this was clearly an error of the compilers and was corrected by the subsequent legislation of 1875…. Is appellant, therefore, a "free white person," within the meaning of that phrase as found in the statute?

On behalf of the appellant it is urged that we should give to this phrase the meaning which it had in the minds of its original framers in 1790 and that it was employed by them for the sole purpose of excluding the black or African race and the Indians then inhabiting this country. It may be true that those two races were alone thought of as being excluded, but to say that they were the only ones within the intent of the statute would be to ignore the affirmative form of the legislation. The provision is not that Negroes and Indians shall be excluded, but it is, in effect, that only free white persons shall be included. The intention

was to confer the privilege of citizenship upon that class of persons whom the fathers knew as white, and to deny it to all who could not be so classified. It is not enough to say that the framers did not have in mind the brown or yellow races of Asia. It is necessary to go farther and be able to say that had these particular races been suggested the language of the act would have been so varied as to include them within its privileges….

If it be assumed that the opinion of the framers was that the only persons who would fall outside the designation "white" were Negroes and Indians, this would go no farther than to demonstrate their lack of sufficient information to enable them to foresee precisely who would be excluded by that term in the subsequent administration of the statute. It is not important in construing their words to consider the extent of their ethnological knowledge or whether they thought that under the statute the only persons who would be denied naturalization would be Negroes and Indians. It is sufficient to ascertain whom they intended to include and having ascertained that it follows, as a necessary corollary, that all others are to be excluded.

The question then is: Who are comprehended within the phrase "free white persons"? Undoubtedly the word "free" was originally used in recognition of the fact that slavery then existed and that some white persons occupied that status. The word, however, has long since ceased to have any practical significance and may now be disregarded.

We have been furnished with elaborate briefs in which the meaning of the words "white person" is discussed with ability and at length, both from the standpoint of judicial decision and from that of the science of ethnology. It does not seem to us necessary, however, to follow counsel in their extensive researches in these fields. It is sufficient to note the fact that these decisions are, in substance, to the effect that the words import a racial and not an individual test, and with this conclusion, fortified as it is by reason and authority, we entirely agree. Manifestly the test afforded by the mere color of the skin of each individual is impracticable, as that differs greatly among persons of the same race, even among Anglo-Saxons, ranging by imperceptible gradations from the fair blond to the swarthy brunette, the latter being darker than many of the lighter hued persons of the brown or yellow races. Hence to adopt the color test alone would result in a confused overlapping of races and a gradual merging of one into the other, without any practical line of separation…. Moreover, that conclusion has become so well established by judicial and executive concurrence and legislative acquiescence that we should not at this late day feel at liberty to disturb it, in the absence of reasons far more cogent than any that have been suggested…. The determination that the words "white person" are synonymous with the words "a person of the Caucasian race" simplifies the problem, although it does not entirely dispose of it. Controversies have arisen and will no doubt arise again in respect of the proper classification of individuals in border line cases. The effect of the conclusion that the words "white person" means a Caucasian is not to establish a sharp line of demarcation between those who are entitled and those who are not entitled to naturalization, but rather a zone of more or less debatable ground outside of which, upon the one hand, are those clearly eligible, and outside of which, upon the other hand, are those clearly ineligible for citizenship. Individual cases falling within this zone must be determined as they arise from time to time by what this court has called, in another connection …, "the gradual process of judicial inclusion and exclusion."

The appellant, in the case now under consideration, however, is clearly of a race which is not Caucasian and therefore belongs entirely outside the zone on the negative side. A large number of the federal and state courts have so decided and we find no reported case definitely to the contrary. These decisions are sustained by numerous scientific authorities, which we do not deem it necessary to review. We think these decisions are right and so hold.

The briefs filed on behalf of appellant refer in complimentary terms to the culture and enlightenment of the Japanese people, and with this estimate we have no reason to disagree; but these are matters which cannot enter into our consideration of the questions here at issue. We have no function in the matter other than to ascertain the will of Congress and declare it. Of course there is not implied—either in the legislation or in our interpretation of it—any suggestion of individual unworthiness or racial inferiority. These considerations are in no manner involved….

What happened next …

Two years after the *Ozawa* case, the Supreme Court ruled in another case *(United States v. Bhagat Singh Thind)* involving a man described as "a high-caste Hindu, of full Indian blood, born at Amritsar, Punjab, India" who had applied for citizenship, arguing that he was "Caucasian." In the *Ozawa* case, the Court ruled that the word "white" did not really refer to skin color (since many people have lighter or darker skins), but rather to the "Caucasian" race. But in the *Thind* case, the Court took the opposite approach: Thind might be Caucasian, in a scientific sense, but in a popular sense, his skin was too dark to qualify as "white," and therefore he was not eligible to become a citizen, the court ruled. "It may be true," wrote U.S. Supreme Court justice George Sutherland (1862–1942), "that the blond Scandinavian and the brown Hindu have a common ancestor in the dim reaches of antiquity, but the average man knows perfectly well that there are unmistakable and profound differences between them today; and it is not impossible, if that common ancestor could be materialized in the flesh, we should discover that he was himself sufficiently differentiated from both of his descendants to preclude his racial classification with either." In other words, the "average man" knows a "white" person when he sees one, even if lawyers and scientists cannot agree on what the term means. It was a startling admission that the concept of race and skin color, applied to immigration law, had no real meaning beyond what the "average man" might think at any given moment.

In 1924, Congress took another approach to limiting immigration. The Immigration Act of 1924 set permanent limits on the number of immigrants from each country. From 1924 through 1927, the number of immigrants from any one country was set at 2 percent of the number of foreign-born people of that nationality already in the United States in 1890. After July 1, 1927, the limits on each nationality were determined by a more complicated formula calculated by determining what percentage of the total population was represented by each national group, then multiplying that percentage by 150,000. Thus, if nationality "A" represented 1 percent of the U.S. population in 1890, the number of immigrants of nationality "A" admitted each year would equal 1 percent of 150,000, or 1,500 people. The practical effect of the 1924 law was to limit severely the number of immigrants after 1924, especially immigrants from non-European countries. The law also included a provision that barred anyone from immigrating who was not eligible to become a citizen. This provision was specifically aimed at Japanese immigrants and was at least partly based on the *Ozawa* decision of the Supreme Court.

Did you know …

- The *Ozawa* case was just one of several examples of how racial consciousness played a large role in American politics during the 1920s. The year before the decision was handed down by the Supreme Court, Congress had passed the Emergency Quota Act of 1921, which limited immigration from any single country to a number equal to 3 percent of the number of immigrants of that country who were living in the United States in 1910.

- The Ku Klux Klan was a secret organization that first appeared after the American Civil War (1861–65) as a means of terrorizing newly freed African American slaves and discouraging them from exercising their right to vote. Members of the original Klan wore long, white robes with a tall, peaked hood. They often burned crosses near African American neighborhoods at night as a means of frightening black people. In 1915, a new organization had been formed, using the same name as

the Klan and the same costumes. The second version, however, was more open in its membership. Rather than being limited to the southern states, like the first Klan, the reborn Klan found many members in states of the Midwest, particularly Indiana. Although the second Klan still burned crosses, it also took on the form of a social club. Many elected politicians, including future president Harry S. Truman (1884–1972; served 1945–53), admitted to belonging to the Klan for a time. Whereas the first Klan had aimed its attacks at newly freed slaves, the second Klan attracted people opposed not only to racial minorities but also to Catholics, Jews, and immigrants from southern Europe (many of whom were also Catholic). Inside organizations like the Ku Klux Klan, racial prejudice and religious prejudice went hand in hand.

- George Sutherland, the Supreme Court justice who wrote the opinion in *Ozawa v. United States,* was himself an immigrant. Sutherland was born in Buckinghamshire, England, and brought to the United States as a baby. His family settled in what was then Utah Territory, which be came a state in 1896. Sutherland, a Republican, was Utah's sole U.S. representative from 1901 to 1903 and a U.S. senator from 1905 to 1917. He was nominated for the Supreme Court by President Warren Harding (1860–1924; served 1921–24) on September 5, 1922, and confirmed by the Senate on the same day. He had been a Supreme Court justice for just a month when the *Ozawa* case was argued, October 3–4, 1922. The case was decided one month later, on November 13, 1922.

For More Information

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