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PERSPECTIVE | CULTURALLY SPEAKING

Immigrants must be judged by conduct, not nationality

A quiet custody hearing in Orange County on Sept. 11, 2001, showed why the rule of law endures: courts judge conduct, not nationality, religion or the conflicts of nations.

By Abbas Hadjian

“A military order, however unconstitutional, is not apt to last longer than the military emergency... But once a judicial opinion rationalizes such an order..., the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens.”

— Justice Robert H. Jackson, dissenting in *Korematsu v. United States* (1944)



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Twenty-five years ago, on the morning of Tuesday, Sept. 11, 2001, as the United States was coming under terrorist attack, a quiet family courtroom in Orange County demonstrated something essential about the rule of law: *courts must judge individuals by their conduct, not by conflicts of nations, or their nationality, or religion.* On that day, in the southwest of this nation, in Orange County, the courthouse was getting ready for a routine custody hearing, unaware that one of the most devastating terrorist attacks in modern history was developing in the northeast of the country.

The parents in the case were Afghan. Their six-year-old son had been born in the United States. Without informing the mother, the father took the child from school on Thursday, traveling from Anaheim Hills to San Jose to participate in his Islamic marriage ceremony, despite not having obtained a California divorce. On Monday, the day before the 9/11 attacks, the court held an ex parte hearing and issued a simple

order: the father was to return the child from San Jose to the mother.

I left home in Los Angeles around 6:45 a.m. and arrived at the 341 The City Drive courthouse shortly before 8:30. I had not been listening to the radio during the ninety-minute drive and spent most of the trip thinking about the unusual circumstances of the case and how the dispute might be resolved without further harm to the child. In those days, there were no smartphones, but I carried a pager —

the small device that alerted you when someone urgently wanted to reach you.

While waiting for the courtroom to open, my pager signaled that my wife was trying to reach me. When I called her, she asked, “Have you heard?” “Heard what?” I replied. She told me airplanes had struck the World Trade Center in New York. The country was under attack. Airports across the nation were closing. Confusion and fear were spreading everywhere.

Then she mentioned something directly related to my case: the father in the custody dispute was Afghan. In the rapidly unfolding atmosphere, she doubted he would appear in court.

She was right. When the case was called, the father was not present. His attorney apologized to the court and explained that father’s flight from San Jose was cancelled. The court continued the hearing to 1:30 and ordered father to drive to the Court. At 1:30, the attorney for the father suggested that the hearing be continued to the next day because the father was on the road and could not arrive before 4:30. The commissioner listened quietly and issued a simple order: the father was to appear the following morning at 9:00 a.m. with the child. The next day, the father appeared and returned the child to the mother. The legal process continued normally. But the events of that morning left me with a lasting thought.

Two worlds

For the past quarter-century, I have often reflected on that day and on the courtroom’s quiet neutrality. I have realized that in our lives, two very different worlds are unfolding at the same time — one driven by economic interests, security fear and political conflict, the other guided quietly by the discipline of law. Outside the courthouse on Sept. 11, the world was defined by identity, fear and conflict. In New York, thousands of innocent people from many backgrounds — including many Jewish Americans — were becoming victims of an extremist act carried

out in the name of Islam. Inside the Orange County courtroom, however, we were simply litigants.

I was an Iranian lawyer representing an Afghan Muslim parent before an American Jewish judge. History has seen conflicts among these nations, religions and cultures. Yet inside that courtroom, none of those identities mattered. The judge did not allow personal or national anger or political fear to enter the courtroom. He saw only what the law required him to see: a custody order involving a father, a mother and a six-year-old child. That quiet court day among the terrorist chaos revealed something essential about the culture of the rule of law. War belongs to governments and armies. Courts deal with individuals. The legitimacy of the judicial system depends on preserving that distinction.

History's warning

The United States' history offers a powerful warning about what happens when the boundary between justice and politics collapses. During World War II, more than 110,000 people of Japanese ancestry — most of them American citizens — were removed from their homes and placed in internment camps not because of what they had done, but because of who they were. The policy was upheld in *Korematsu v. United States*, a decision now widely

regarded as one of the most troubling errors in American constitutional history. Fear and wartime hysteria overwhelmed the discipline of justice. Justice Robert Jackson warned in his dissent that once such discrimination is approved by the courts, it becomes “*a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need.*” The lesson is clear: justice must judge conduct — not identity. Family courts must be especially vigilant. Their purpose is to resolve intensely personal disputes involving children, families and property. Their legitimacy depends on maintaining neutrality even when the outside world is consumed by conflict.

History may be repeating

Today, the lesson of that courtroom feels as relevant to my fellow Iranians as ever. International tensions rise and fall and public emotions often follow the headlines of the day. At such moments, the independence of the courts becomes even more important. Conflicts between nations continue, and tensions between the United States and Iran rise and fall with the events of the day. Governments may clash. Armies may fight. But courts must remain immune from those conflicts.

Today and for many days to come, nationwide, thousands of Iranian parents and children will appear in

family courts seeking divorce, custody orders, property division, and protection for their families, worried about the impact of their nationality on the outcome. Many Iranians come from cultural and legal traditions unfamiliar to American courts. As a family lawyer and cultural expert in Iranian law, I often see how easily international tensions can shape assumptions about litigants, attorneys, judicial assistants and judicial officers. The courtroom must be aware of these assumptions and, to the extent possible, convince the litigants that the politics of the Middle East will not cloud the neutrality of its decisions. Judges must verbally distinguish between cultural context and political conflict — between the conduct of litigants and the actions of their governments. Litigants do not come to the family court for politics.

Iranians, whether born here or immigrated here, come to American courts not to settle the disputes between two political systems; they plead the courts for justice. They rely on the attorneys to explain and on judges to evaluate their conduct under the law — not their nationality, religion or the headlines of the day.

Justice, not politics

Twenty-five years ago, on one of the darkest mornings in American history, a quiet courtroom in Orange County demonstrated the enduring

strength of principled justice. Outside the courthouse, nations were colliding. Inside the courtroom, the law remained calm. The father appeared the next day. The child was returned. The case moved forward. No one asked where the parties were from. No one judged them by the actions of their governments. The court judged only what mattered: the law and the welfare of a child. Wars come and go. Justice must remain blind to nationality and faithful only to conduct.

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