

least burdensome means to accomplish its goal.”⁴⁷¹ A closely divided Court earlier ruled that, in time of war, the deportation of an enemy alien may be ordered summarily by executive action; due process of law does not require the courts to determine the sufficiency of any hearing that is gratuitously afforded to the alien.⁴⁷²

Judicial Review of Administrative or Military Proceedings.—To the extent that constitutional rights are involved, due process of law imports a judicial review of the action of administrative or executive officers. This proposition is undisputed so far as questions of law are concerned, but the extent to which the courts should and will go in reviewing determinations of fact has been a highly controversial issue. In *St. Joseph Stock Yards Co. v. United States*,⁴⁷³ the Court held that, upon review of an order of the Secretary of Agriculture establishing maximum rates for services rendered by a stockyard company, due process required that the court exercise its independent judgment upon the facts to determine whether the rates were confiscatory.⁴⁷⁴ Subsequent cases sustaining rate orders of the Federal Power Commission have not dealt explicitly with this point.⁴⁷⁵ The Court has said simply that a person assailing such an order “carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences.”⁴⁷⁶

There has been a division on the Court with regard to what extent, if at all, proceedings before military tribunals should be reviewed by the courts for the purpose of determining compliance with the Due Process Clause. In *In re Yamashita*,⁴⁷⁷ the majority denied a petition for certiorari and petitions for writs of *habeas corpus* to review the conviction of a Japanese war criminal by a military commission sitting in the Philippine Islands. It held that, because the military commission, in admitting evidence to which objection had been made, had not violated any act of Congress, a treaty, or a military command defining its authority, its ruling on evidence and on the mode of conducting the proceedings were not reviewable by the

⁴⁷¹ 538 U.S. at 528. There was disagreement among the Justices as to whether existing procedures afforded the alien an opportunity for individualized determination of danger to society and risk of flight.

⁴⁷² *Ludecke v. Watkins*, 335 U.S. 160 (1948). Three of the four dissenting Justices, Douglas, Murphy, and Rutledge, argued that even an enemy alien could not be deported without a fair hearing.

⁴⁷³ 298 U.S. 38 (1936).

⁴⁷⁴ 298 U.S. at 51–54. Justices Brandeis, Stone, and Cardozo, although concurring in the result, took exception to this proposition.

⁴⁷⁵ *FPC v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *FPC v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1941).

⁴⁷⁶ *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944).

⁴⁷⁷ 327 U.S. 1 (1946).