Mr. Justice FRANKFURTER, concurring.

According to my reading of Civilian Exclusion Order No. 34, it was an offense for Korematsu to be found in Military Area No. 1, the territory wherein he was previously living, except within the bounds of the established Assembly Center of that area. Even though the various orders issued by General DeWitt be deemed a comprehensive code of instructions, their tenor is clear and not contradictory. They put upon Korematsu the obligation to leave Military Area No. 1, but only by the method prescribed in the instructions, i.e., by reporting to the Assembly Center. I am unable to see how the legal considerations that led to the decision in Kiyoshi Hirabayashi v. United States, 320 U.S. 81, 63 S.Ct. 1375, fail to sustain the military order which made the conduct now in controversy a crime. And so I join in the opinion of the Court, but should like to add a few words of my own.

The provisions of the Constitution which confer on the Congress and the President powers to enable this country to wage war are as much part of the Constitution as provisions looking to a nation at peace. And we have had recent occasion to quote approvingly the statement of former Chief Justice Hughes that the war power of the Government is 'the power to wage war successfully.' Hirabayashi v. United States, supra, 320 U.S. at page 93, 63 S.Ct. at page 1382 and see Home Bldg. & L. Ass'n v. Blaisdell, 290 U.S. 398, 426, 54 S.Ct. 231, 235, 88 A.L.R. 1481. Therefore, the validity of action under the war power must be judged wholly in the context of war. That action is not to be stigmatized as lawless because like action in times of peace would be lawless. To talk about a military order that expresses an allowable judgment of war needs by those entrusted with the duty of conducting war as 'an [323 U.S. 214, 225] unconstitutional order' is to suffuse a part of the Constitution with an atmosphere of unconstitutionality. The respective spheres of action of military authorities and of judges are of course very different. But within their sphere, military authorities are no more outside the bounds of obedience to the Constitution than are judges within theirs. 'The war power of the United States, like its other powers ... is subject to applicable constitutional limitations', Hamilton v. Kentucky Distilleries, Co., 251 U.S. 146, 156, 40 S.Ct. 106, 108. To recognize that military orders are 'reasonably expedient military precautions' in time of war and yet to deny them constitutional legitimacy makes of the Constitution an instrument for dialetic subtleties not reasonably to be attributed to the hardheaded Framers, of whom a majority had had actual participation in war. If a military order such as that under review does not transcend the means appropriate for conducting war, such action by the military is as constitutional as would be any authorized action by the Interstate Commerce Commission within the limits of the constitutional power to regulate commerce. And being an exercise of the war power explicitly granted by the Constitution for safeguarding the national life by prosecuting war effectively, I find nothing in the Constitution which denies to Congress the power to enforce such a valid military order by making its violation an offense triable in the civil courts. Compare Interstate Commerce Commission v. Brimson, 154 U.S. 447, 14 S.Ct. 1125; Id., 155 U.S. 3, 15 S.Ct. 19, and Monongahela Bridge Co. v. United States, 216 U.S. 177, 30 S.Ct. 356. To find that the Constitution does not forbid the military measures now complained of

does not carry with it approval of that which Congress and the Executive did. That is their business, not ours.