

# **Japanese Americans and the Internal Security Act of 1950: American Concentration Camps and the Cold War**

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The Second World War was a total war that did not result in a total peace. Americans may have expected an “American Century” of relative peace but were instead faced with a different form of conflict: cold war. Although this would differ from the war that preceded it in certain ways, lessons would be drawn from the Second World War and applied to the Cold War by American policymakers. In the ongoing battle against domestic subversion, for example, the incarceration of Japanese Americans under the auspices of Franklin Roosevelt’s Executive Order 9066 provided a model for Title II of the Internal Security Act of 1950.<sup>1</sup> The movement to repeal Title II that culminated in success in September 1971 presented a unique opportunity to Japanese Americans who had suffered a gross violation of their civil rights between 1942 and 1945. These victims of unnecessary and undemocratic federal government power would play a key role in helping to reform government policy and attempting to ensure that their wartime experience would not be repeated in the future against another unpopular minority group.

## **The Japanese American Precedent**

Executive Order 9066 developed in the context of a long and often hysterical history of anti-Japanese agitation in the United States, especially in the Pacific coast states. Racism, fears generated by the upward economic mobility of Japanese Americans, and the external threat of Japanese militarism all provided preconditions for the decision for evacuation. As hostility grew in the aftermath of Pearl Harbor and came increasingly to focus on race and implied guilt, the American government began high-level talks concerning the possibility for mass incarceration.<sup>2</sup>

General John L. DeWitt and the War Department became the primary advocates of the mass exile and incarceration of Japanese Americans. He referred to all Japanese as members of an “enemy race” and explained to the already anxious American public that “[a] Jap is a Jap. . . . It makes no difference whether he is an American citizen, he is still Japanese.”<sup>3</sup> DeWitt provided the first proposal for mass evacuation within seventy-two hours of

the Pearl Harbor attack and justified it with fantasies of a looming Japanese American revolt. The War Department adopted the goal of mass exile and began to use its considerable wartime prestige and weight of opinion to pressure the Department of Justice to exert more vigorous control of this presumed potentially disloyal group.

The threat of sabotage and espionage seemed to dominate popular concerns about Japanese Americans on the West Coast. Rumors of such actions found broader circulation and increased legitimacy after alleged details of subversion concerning the attack against Pearl Harbor became public knowledge. Public statements by Earl Warren, the California Attorney General, in the months after the Japanese attack reinforced this hysterical perspective. Warren's testimony before the Tolan Committee reiterated these widely-shared ideas: "To assume that the enemy has not planned fifth column activities for us in a wave of sabotage is simply to live in a fool's paradise."<sup>4</sup> These fears resulted in increasing editorial support for the evacuation of the Japanese American population as well as the argument that exile was necessary to maintain public morale. Everybody would feel safer, the argument went, if all Japanese Americans were incarcerated in concentration camps.

Racism remained at the heart of most of the arguments designed to prove Japanese American disloyalty. Such feelings led to statements like "once a Jap, always a Jap."<sup>5</sup> Cultural considerations also played into the hysteria that was seizing the American public. Japanese American culture simply made, some hypothesized, for an inferior Americanism. Education in the late-afternoon language schools fashioned students who were, for all intents and purposes, Japanese. Japanese religion also served as a deterrent to the development of loyal Americans. The perverse logic of the times is shown by the argument that Japanese Americans clearly remained loyal to Japan because no Japanese American had ever informed on a subversive Japanese American.

Burdened with such racial and cultural liabilities, Japanese Americans faced the ultimate "Catch-22" when the federal government decided to send them into exile. Loyal Japanese Americans, the argument went, would willingly cooperate with all government decisions. Any who disobeyed were, by definition, disloyal. Thus, Japanese Americans who had acculturated politically and believed in the Constitution and the civil liberties that it was supposed to protect had to give up their freedom without protest. The alternative was clear: if one was not loyal enough to cooperate quickly with

the government and move quietly to a concentration camp, one obviously belonged in a camp as a disloyal person.

Executive Order 9066 was almost immediately endorsed by Congress and later by the Supreme Court. Congress accepted the War Department's claim of "military necessity" without question. The Supreme Court's approval relaxed its standards for civil liberties. The *Hirabayashi* decision in June 1943 as well as the *Korematsu* and *Endo* decisions in December 1944 did not refute the constitutionality of the government's decision to implement a program of exile and incarceration.

### **The Internal Security Act of 1950**

Although the mid-February 1942 decision to incarcerate Japanese Americans on the mainland on the basis of their race and not individual actions faced little initial opposition, a growing number of critics began to question the future implications of this policy. Morton Grodzins noted the potential future ramifications of incarceration as early as 1949, warning that "[t]he process of government is a continuing process; what it produced for Japanese Americans it can also produce for other Americans."<sup>6</sup>

Grodzins' warning would be realized the very next year with the passage of the Internal Security Act of 1950.<sup>7</sup> The anti-Japanese hysteria of the Second World War was followed by the anti-Communist hysteria in the early years of the Cold War that peaked between 1945 and 1954. Richard Fried has argued that Americans in this era "developed an obsession with domestic communism that outran the actual threat and gnawed at the tissue of civil liberties."<sup>8</sup> This climate of opinion helped to convince Congress to pass a bill that would reestablish concentration camps for use in times of an internal security emergency. The bill mirrored government actions taken towards Japanese Americans in the Second World War in dealing with perceived threats to internal security.

Congressional debate in August and September over the various anti-Communist proposals that became the Internal Security Act of 1950 focused on the immense threat posed by Communism to the United States. The stridently anti-Communist rhetoric that had permeated the eighty-first Congress even prior to this debate outweighed objections to the concentration camp clause of the Internal Security Act of 1950 contained in Title II. Representative John S. Wood (D, GA) described the Communist Party as a "cancer on the body politic"<sup>9</sup> while Congressman John Jennings, Jr. (R, TN)

charged that it was staffed by “miserable curs” and “traitors” who sought “to destroy by conspiracy, by perjury, and by treason.”<sup>10</sup>

The rhetoric used to justify the necessity of the act often paralleled that used to support the incarceration of Japanese Americans earlier. Both groups were accused of being loyal to a foreign entity. The Communists, much like the Japanese Americans before them, lurked menacingly within the United States, enjoying the benefits of citizenship while fiendishly plotting internal subversion designed to overthrow the government. This represented an especially threatening situation because the Communist mind, much like that of the Japanese during the Second World War, was considered to be inscrutable. Representative John McSweeney (D, OH) lamented, “I cannot understand a Communist. . . . I find there is a basic similarity among all of them, and yet I have not been able to formulate a definition which will cover all of them.”<sup>11</sup> Communists were also considered guilty by association by most supporters of the new legislation. Simply put, membership in this ideological group, like previous Japanese American membership in a racial group, meant disloyalty. Concentration camps, Senator Edwin C. Johnson (D, CO) reasoned, made considerable sense when faced with such an enemy, at least if limited to a time of national emergency.<sup>12</sup> This qualification generally represented the strongest reservation in Congress about the inclusion of Title II in the Internal Security Act of 1950.

Congressional rhetoric concerning internal security in 1950 placed Communists in a “Catch-22” situation with which Japanese Americans had earlier become all too familiar. Congressman Gordon Leo McDonough (R, CA) reasoned, “An American who is loyal to his country can have no objection to stating his loyalty. . . .”<sup>13</sup> Thus, anyone who resisted the legislation, even on the grounds that it was unconstitutional, proved themselves beyond any reasonable doubt to be un-American. Congressman Thomas Albert Jenkins (R, OH) claimed that any true patriot would support any anti-Communist legislation that was drafted. Representative Charles Wesley Vursell (R, IL) branded anyone who opposed registration as, at best, a dupe of the Communists.<sup>14</sup>

Six liberal Democratic Senators, not wanting to be outdone on the issue of anti-communism, responded to a bill requiring the registration of Communists proposed by Patrick J. McCarran (D, NV) by offering what they presented as a fairer but even more potent anti-Communist proposal that authorized, in times of emergency as declared by the president, the detention of those likely to engage in sabotage or espionage.<sup>15</sup> They claimed that

the concentration camp bill represented an improvement over the incarceration of Japanese Americans during the Second World War because it provided a clearly defined procedure that allowed for hearings and at least the possibility of release.<sup>16</sup> The compromise that resulted was a logical, if unhappy, one: the McCarran bill, with emergency detention now attached by the Senate as Title II.<sup>17</sup>

The internal security bill was brought to a vote in both houses on September 21, 1950. Not surprisingly, given the recent outbreak of war in Korea and the strong anti-Communist rhetoric in Congress, it passed easily despite President Harry Truman's threats to veto it.<sup>18</sup> Truman vetoed the act on September 22, but his veto was swiftly overridden, in large part because many Congressmen ignored the bill's perils in order to avoid the impression of not being tough enough on communism.<sup>19</sup>

The Internal Security Act, as finally enacted on September 23, 1950, consisted of two sections. Title I required officers or members of Communist groups to register with the Attorney General. It also barred covered individuals from government and defense jobs as well as American passports. Espionage and immigration laws were tightened to crack down on potential subversives. Title I ultimately resulted in considerable litigation, but no Communist group was ever registered under its mandate.<sup>20</sup>

Title II was based on the model of Executive Order 9066 and "mandated detention of likely spies and saboteurs during an internal-security emergency declared by the President."<sup>21</sup> The act clearly followed the precedent established by the Franklin Roosevelt administration during the Second World War. It could be activated by the declaration of an internal security emergency by the President, who would then transfer oversight of the program to the Attorney General. The Attorney General would then issue warrants for detention against anyone reasonably believed likely to conspire to engage in sabotage or espionage against the United States.<sup>22</sup> The right to appeal was established in the act and a system of administrative review was created. The rights of detainees were limited, however, by the Attorney General's right to withhold evidence or sources deemed potentially dangerous to national security.<sup>23</sup>

Title II was never invoked. However, appropriations were made by Congress between 1952 and 1957 to ready six detention sites throughout the country. Tule Lake, a California location of a World War II camp for Japanese Americans, was selected as one of the sites for future concentra-

tion camps, a reminder of the parallels between Title II and the Japanese American experience. It also provided a symbol for Japanese Americans to rally around in their campaign to repeal Title II in the late 1960's. Funding for the camps was not renewed after 1957, however, and most of the camps were eventually sold, leased, or given to state governments.<sup>24</sup>

### **The Campaign for Repeal**

A concerted movement for repeal of Title II did not begin until the late 1960's, at the height of the civil rights and anti-Vietnam War protests. At this time, rumors began to circulate of government plans for concentration camps to incarcerate various groups of dissenters.<sup>25</sup> Japanese Americans would take advantage of this receptive environment to begin to lead an active campaign for repeal of Title II. The Japanese American Citizens League (JACL) eventually adopted repeal as its primary legislative goal in August 1968 and assumed leadership of the repeal movement.<sup>26</sup>

The bill that eventually became law on September 25, 1971, represented more than simple repeal. It included what political scientist Richard Longaker has identified as "a positive prohibition of detention."<sup>27</sup> Congress, that is, not only repealed Title II, but also amended section 4001 of Title 18 of the United States Code to begin: "No citizen shall be imprisoned or otherwise detained by the United States except pursuant to an act of Congress."<sup>28</sup> The power of the president to act unilaterally as Franklin Roosevelt had in 1942 seems to have been circumscribed by this language. It is important to note that Congress still reserved to itself the power to authorize detention. Longaker has argued that this loophole is relatively unimportant, contending that "the cumulative legislative history leaves no room for doubt that Congress intended to prohibit rather than permit, even under its own authority, the use of detention."<sup>29</sup>

Historian Roger Daniels takes a less optimistic view of Title II and its 1971 repeal. He has no confidence that the legislative intent of Congress will necessarily prevail in some future emergency. He points out that the three Supreme Court decisions upholding the constitutionality of the Japanese American exile and incarceration remain unchallenged and unrevised precedents yet today.<sup>30</sup>

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The positive progress achieved by the repeal of the Emergency Detention Act should not be minimized, but the danger of concentration camps has not disappeared completely. While the 1971 act does make it more difficult for camps to be established, it is still quite possible to imagine a situation, given a deeply felt sense of emergency as well as an unpopular target group, in which concentration camps might once more appear on the American landscape. Although the 1971 law requires Congressional approval for the establishment of concentration camps, Congress had strongly supported concentration camps for Japanese Americans. The Supreme Court likewise bowed to political considerations, wartime emergency, and “military necessity” in allowing the concentration camps to continue.<sup>31</sup>

Thus, while American concentration camps may seem an impossibility today, especially in light of the recent end of the Cold War and the elimination of the Communist menace, the danger of a repeat of the Second World War Japanese American experience remains. The fluid transfer of guilt by association from a racial to an ideological group in the 1950’s suggests the readiness of Americans to find new enemies in times of perceived emergency. Given this predisposition, the repeal of Title II in 1971 is but poor protection should a new and serious threat to internal security, either real or imagined, arise in the future.

## NOTES

1. Roger Daniels, *The Decision to Relocate the Japanese Americans* (Malabar, Florida: Robert E. Krieger Publishing Company, 1986 reprint edition), 57.

2. The material on the Japanese American precedent is drawn from Daniels, *Decision*; Roger Daniels, *Concentration Camps USA: Japanese Americans and World War II* (New York: Holt, Rinehart and Winston, Inc., 1972); Roger Daniels, *Asian America: Chinese and Japanese in the United States since 1850* (Seattle: University of Washington Press, 1988); Morton Grodzins, *Americans Betrayed: Politics and the Japanese Evacuation* (Chicago: University of Chicago Press, 1949); Morton Grodzins, *The Loyal and the Disloyal: Social Boundaries of Patriotism and Freedom* (Chicago: University of Chicago Press, 1956); Francis Biddle, *In Brief Authority* (Garden City, New York: Doubleday and Company, Inc., 1962); and Audrie Girdner and Anne Loftis, *The Great Betrayal: The Evacuation of the Japanese-Americans During World War II* (London: The MacMillan Company, 1969).

3. As quoted in Grodzins, *Americans Betrayed*, 362.

4. Grodzins, *Americans Betrayed*, 401-402; U.S. Congress, House, Select Committee Investigating National Defense Migration, *Hearings*, 77th Congress, 2d Session, Part 29, 11011-11012.

5. As quoted in Grodzins, *Americans Betrayed*, 407-408.

6. Morton Grodzins, *Americans Betrayed*, 1.

7. 64 *Stat.* 1019. The text of Title II of the McCarran Act may also be found in *Congressional Record*, 81st Cong., 2d sess., 1950, vol. 96 pt. 18: A7126.

8. Richard M. Fried, *Nightmare in Red: The McCarthy Era in Perspective* (New York: Oxford University Press, 1990), 3; Ellen Schrecker, *Many Are the Crimes: McCarthyism in America* (Boston: Little, Brown and Company, 1998), xiv.

9. *Congressional Record*, 81st Cong., 2d sess., 96 pt. 10, 29 August 1950: 13730, 13733 [hereafter cited as *CR*].

10. *CR*, 81st Cong., 2d sess., 96 pt. 10, 29 August 1950: 13731, 13734.

11. *CR*, 81st Cong., 2d sess., 96 pt. 10, 29 August 1950: 13732, 13747; *CR*, 81st Cong., 2d sess., 96 pt. 11, 12 September 1950: 14622-14623.

12. *CR*, 81st Cong., 2d sess., 96 pt. 11, 12 September 1950: 14621, 14624; *CR*, 81st Cong., 2d sess., 96 pt. 10, 29 August 1950: 13739.

13. *CR*, 81st Cong., 2d sess., 96 pt. 10, 29 August 1950: 13747.

14. *Ibid.*, 13741-13742.

15. The six senators were Harley M. Kilgore (WVA), Paul H. Douglas (IL), Hubert H. Humphrey (MN), Herbert H. Lehman (NY), Estes Kefauver (TN), and Frank P. Graham (NC).

16. Richard Longaker, "Emergency Detention: The Generation Gap, 1950-1971," *Western Political Quarterly* 27 (1974): 395-396; Fried, *Nightmare in Red*, 116.

17. "Congress Passes Bill to Curb Reds by Heavy Margins," *New York Times*, September 21, 1950, 1; *Legislative History Collection: Document Pertaining to the Internal Security Act of 1950, H.R. 9490, S. 4037, P.L. 81-831, 81st Congress, 2nd Session* (Washington, D.C.: Atomic Energy Commission, 1951). The amended bill was passed by the Senate on September 12 by a vote of 70 to 7.

18. The House of Representatives approved the bill by a vote of 312 to 20, the Senate by a count of 51 to seven.

19. "Congress Passes Bill to Curb Reds by Heavy Margin," *New York Times*, September 21, 1950, 1, 13; "Red Control Bill is Vetoed, Repassed at Once by House; Congress Votes Big Tax Raise," *New York Times*, September 23, 1950, 1; Longaker, "Emergency Detention," 396-397. The text of Truman's veto may be found in *Congressional Record*, 81st Congress, 2d sess., vol. 96, pt. 11, 22 September 1950: 15629-15632. Although a few more Democratic representatives rallied to support Truman, the House easily overrode the veto on the same day that it was issued by a vote of 286 to 48. In the Senate, after an abortive attempt to filibuster by a group seeking to uphold Truman's veto, the act was repassed after an all-night session by a vote of 57 to ten, four Democrats joining the six originators of the concentration camp bill in seeking to uphold Truman's veto.

20. "Red Control Bill is Vetoed, Repassed at Once by House; Congress Votes Big Tax Raise," *New York Times*, September 23, 1950, 1, 6; "Red Bill Veto Beaten, 57-10, by Senators," *New York Times*, September 24, 1950, 1, 57; Fried, *Nightmare in Red*, 117. The FBI had begun to compile lists of allegedly dangerous individuals as early as 1939, although it had no mandate for such actions. The Security Index, as the list assembled by the FBI for its "custodial detention plan" came to be called, grew quickly after the Internal Security Act of 1950 authorized its existence, rising from 12,000 names in 1950 to 26,000 in 1954.

The FBI also compiled another list of "slightly less dangerous individuals," accumulating more than 430,000 files on groups and individuals by 1960. See Schrecker, *Many Are the Crimes*, 208.

21. Fried, *Nightmare in Red*, 117.

22. Longaker, "Emergency Detention," 397-400.

23. *Ibid.*, 400. After the hearing, the detainee would either be released or held. A detainee who did not obtain release had the right of direct appeal to a bipartisan Detention Review Board, which had to hear the case within forty-five days of the appeal. The Board, however, had no time limit imposed on its decision.

24. Fried, *Nightmare in Red*, 117-118; Longaker, "Emergency Detention," 400.

25. Longaker, "Emergency Detention," 400; Mike Masaoka with Bill Hosokawa, *They Call Me Moses Masaoka: An American Saga* (New York: William Morrow and Company, 1987), 303. One key event that seems to have fueled such reports and drawn renewed attention to Title II and its undemocratic provisions was a 1968 report that originated in the House Un-American Affairs Committee. Titled "Guerrilla Warfare in the United States," the report contained a suggestion that Title II could be used to create concentration camps for the new and threatening breed of subversives. This report, in addition to rumors of the reopening of camps noted by Masaoka, sparked a revitalized interest in Title II.

26. Bill Hosokawa, *JACL: In Quest of Justice* (New York: William Morrow and Company, Inc., 1982), 323; Masaoka and Hosokawa, *Moses Masaoka*, 304; Raymond Okamura, "Background and History of the Repeal Campaign," *Amerasia Journal* 2 (1972): 76-79; Longaker, "Emergency Detention," 401. The JACL published a pamphlet titled "Concentration Camps in America?" which can be found in the Sumiko Kobayashi Papers, Box 7, File 10, at the Balch Institute for Ethnic Studies. Nisei activism in favor of repeal may have helped to set a precedent for the later movement for redress. The JACL must certainly have learned the importance of government lobbying as well as public relations in its campaign for the repeal of the Internal Security Act of 1950.

27. Longaker, "Emergency Detention," 405.

28. *United States Code: Congressional and Administrative News*, 92nd Congress, 1st sess., 1971, vol. 1: 363.

29. Longaker, "Emergency Detention," 405-406.

30. Richard Drinnon sees the two United States District Court Decisions in the 1980's that overturned the indictments and convictions in *Korematsu* and *Hirabayashi* as part of a lifting of the "'legal cloud' that has hung over Japanese Americans for decades." The Supreme Court did not, however, rule on either of these cases and thus still has not overruled the precedents it established in the 1943-1944 Japanese American cases of World War II. The *coram nobis* plaintiffs' lawyers in these cases hoped for a Supreme Court rehearing that might reverse the half-century old precedents, but the Reagan administration blocked this move by refusing to appeal after losing in the lower courts. See Richard Drinnon, *Keeper*, 259-260n; Roger Daniels, *Asian America*, 281; and Roger Daniels, *Prisoners without Trial: Japanese Americans in World War II* (New York: Hill and Wang, 1993), 99-100. For an account of the cases, see Peter Irons, editor, *Justice Delayed: The Record of the Japanese American Internment Cases* (Middletown, Connecticut: Wesleyan University Press, 1989).

31. Daniels, *Asian America*, 281.