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**The United States Congress and the Japanese ‘Problem’:
Racial Prejudice and the Call for the Exclusion and Internment of
Japanese Americans**

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Abstract

In the aftermath of the attack on Pearl Harbor, with the spread of Fifth Column hysteria, persons of Japanese ancestry – both aliens and American citizens – were scapegoated for the unprovoked attack perpetrated by the Empire of Japan and thus faced increased racial prejudice. Japanese Americans were designated as the 'enemy within', based on their racial affinity, and were subjected to forced mass exclusion and incarceration in accordance with Executive Order No. 9066 issued by President Franklin D. Roosevelt on February 19, 1942. The present paper introduces the wartime contribution of the United States Congress, the debate over the Japanese 'problem' and the push by the West Coast delegates for the collective removal of the Japanese community from the Pacific Coast during the early months of the war. On March 21, 1942, President Roosevelt signed into law Public Law No. 503, intended by Congress to facilitate the ability of the Executive to wage war successfully. The Act of March 21 provided the required enforcement machinery requested by the designated Military Commander citing military necessity, making the violation of military orders a federal crime, thereby approving the actions taken under Executive Order No. 9066.

Keywords: exclusion and incarceration of Japanese Americans, Fifth Column, Japanese 'problem', racial prejudice, United States Congress, Public Law No. 503

Introduction

The United States Congress provided immense support for the war effort of the Roosevelt Administration – the forced removal and incarceration of the Japanese American community – by issuing Public Law No. 503 post factum: "To provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, leaving, or committing any act in military areas or zones."¹ It was signed by Sam Rayburn, Speaker of the House of Representatives, and was ratified by President Franklin D. Roosevelt on March 21, 1942. The Act of Congress essentially made it a federal crime to violate the regulations and restrictions issued by the Military Commander concerning persons of Japanese ancestry living on the West Coast, in accordance with the President's Executive Order. The focus of the present study is on the role of Congress with respect to the

¹ Those who violated the statute could be guilty of a misdemeanor and if convicted be fined \$5,000 or sentenced to imprisonment for no more than one year, or both. "Public Law No. 503," March 21, 1942, National Archives Catalog, National Archives and Records Administration, accessed October 2, 2018, <https://catalog.archives.gov/id/5730387>.

forced removal and imprisonment of persons of Japanese descent, as the lack of congressional oversight in approving the Roosevelt Administration's course of action following Pearl Harbor led to the collective victimization of the Japanese American community based on racial grounds.

This analysis is justified in light of the fact that any violation of the military orders was interpreted as a federal crime, and eventually led to the Japanese American Supreme Court cases² which found the exclusion program constitutional, even though it targeted a select minority. It must be remembered that by March 21 President Roosevelt had already assented to the exclusion and incarceration by signing Executive Order No. 9066 on February 19, while Lt. General John L. DeWitt, the designated Military Commander, had issued Public Proclamation No. 1³ on March 2, 1942. Other proclamations and 108 civilian exclusion orders were to follow the initial military regulations. The Legislative Branch of the Federal Government supported the war measures of the Administration by providing the legislative means to enforce the anti-Japanese provisions in close cooperation with the Department of War, which requested the proper legal means to enforce its restrictions.

On the eve of America's entry into World War II there were approximately 126,947 persons of Japanese lineage living in the United States.⁴ The Japanese American community was predominantly concentrated on the Pacific Coast as 70% of the population lived in the States of Washington, Oregon, and California, with Japanese residents representing only 1.6% of California's population in 1940.⁵ Population concentration certainly was one of the motivating factors behind the anti-Japanese movement of the era from a national defense perspective, apart from racial prejudice. Nevertheless, the exclusion also had economic aspects considering that Japanese persons were represented in various professional

² In the *Hirabayashi v. United States*, 320 U.S. 81 (1943), *Yasui v. United States*, 320 U.S. 115 (1943), and *Korematsu v. United States*, 323 U.S. 214 (1944) cases the Justices of the Supreme Court found the curfew order, and the exclusion and incarceration of persons of Japanese ancestry constitutional. *Hirabayashi v. United States*, 320 U.S. 81 (1943), accessed September 27, 2018, <https://caselaw.findlaw.com/us-supreme-court/320/81.html>; *Yasui v. United States*, 320 U.S. 115 (1943), accessed April 5, 2018, <https://caselaw.findlaw.com/us-supreme-court/320/115.html>; *Korematsu v. United States*, 323 U.S. 214 (1944), accessed April 5, 2018, <https://caselaw.findlaw.com/us-supreme-court/323/214.html>.

³ Public Proclamation No. 1 was issued to establish Military Area No. 1 and 2 along the Pacific Coast. Public Proclamation No. 1, March 2, 1942, Box 383, Fred T. Korematsu Folder 2 (4 of 7, Docket Nos 39), Record Group 21, Series Criminal Case Files, 1935-1951, Case No. 27635 Korematsu v. United States 1942-1984, The National Archives at San Francisco.

⁴ Harry H. L. Kitano, "Japanese," in *Harvard Encyclopedia of American Ethnic Groups*. Edited by Stephan Thernstrom et al. (Cambridge, MA.: Belknap Press of Harvard UP, 1980), 562.

⁵ United States Commission On Wartime Relocation And Internment Of Civilians, ed., *Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians* (Washington, D.C.: Civil Liberties Public Education Fund, 1997), 31.

sectors, most notably in the field of agriculture. By 1940 one-third of the crops in California were produced by Japanese farmers.⁶ In regards to truck crops the Japanese were expected to produce 30% to 40% of the harvest in 1942.⁷ Such agricultural productivity and economic competition was achieved even though Japanese Americans were targeted by discriminatory measures such as the Alien Land Law of 1913 and 1920, which restricted ownership and leasing of land based on race, and the ineligibility for citizenship.⁸ The war effort was not the only factor behind the end of partisan politics as war hysteria overcame the nation following Pearl Harbor. Anti-Japanese sentiment – the issue of race and citizenship – and racial profiling were also key components in uniting the American public and Members of Congress against the supposed Japanese 'Fifth Column'.

On December 7, 1941, the Imperial Japanese Navy launched a surprise attack against the Pacific Fleet of the United States Navy stationed at Pearl Harbor, on the Island of Oahu. Within a matter of hours the intelligence services, including the Federal Bureau of Investigation, began to detain persons of Japanese ancestry on the Hawaiian Islands and the Continental United States as they were deemed a threat to the national security and defense of America. Following the "Day of Infamy" members of the Japanese American community became the 'Fifth Column' due to fear of espionage and sabotage along the Pacific Coast. Residents of the West Coast states and their representatives in Congress began to call for the mass exclusion and detention of Japanese persons for the duration of the war without any regard to their citizenship, constitutional rights, or civil liberties. On February 19, 1942, President Roosevelt signed Executive Order No. 9066⁹ authorizing the Secretary of War and the designated Military Commander to establish military areas and to exclude any or all persons citing military necessity, "[...] and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restrictions the Secretary of War or the appropriate Military Commander may impose in his discretion." This military regulation was later collectively applied to the West Coast Japanese without any due process. The forced removal and incarceration of approximately 120,000 persons of Japanese parentage – around 86% of the Japanese population –, $\frac{2}{3}$ of them

⁶ Thomas Sowell, "The Japanese," in *Ethnic America: A History* (New York: Basic Books, 1981), 167.

⁷ Commission On Wartime Relocation And Internment Of Civilians, *Personal Justice Denied*, 43.

⁸ Clifford I. Uyeda, ed., *Due Process: Americans of Japanese Ancestry and the United States Constitution 1787-1994* (San Francisco: National Japanese American Historical Society, 1995), 21, 22; United States War Relocation Authority, *Wartime Exile: The Exclusion of the Japanese Americans from the West Coast*, ed. Ruth E. McKee (Washington, D.C.: U.S. Government Printing Office, 1946), 15.

⁹ Exec. Order. No. 9066, 7 Fed. Reg. 1407 (February 25, 1942), accessed May 24, 2017, <https://catalog.archives.gov/id/5730250>; John L. DeWitt, *Final Report: Japanese Evacuation From The West Coast, 1942* (Washington, D.C.: U.S. Government Printing Office, 1943), 26-27.

American citizens, was seen by the Roosevelt Administration and the Department of War as a wartime military necessity due to the Japanese ‘problem’. It has to be noted that the treatment of Japanese Americans was not a singular event in American history – rather it fits into a pattern of victimizing individuals and communities based on their political ideology, ethnicity, national origin, or race. In the event of war or national emergency the United States Federal Government and the American people have proven to be susceptible to scapegoating certain groups, not neglecting the persecution and exploitation of such ethnic groups as Native Americans and African Americans. This tendency has left a distinct mark on the history of civil liberty¹⁰ in the United States, as in the case of the Alien Sedition Acts of 1798, the Espionage Act of 1917, and the Sedition Act of 1918, as well as the Nativist movement of the late 19th and early 20th century.

The Pearl Harbor Debacle and Members of Congress

The United States Congress swiftly responded to the passionate “Day of Infamy” Speech delivered by President Franklin D. Roosevelt on December 8, 1941, to a joint session of Congress, declaring war on the Empire of Japan by adopting S. J. Res. 116¹¹ and H. J. Res. 254¹² with a 82 *Yeas* to 0 *Nays* and 388 *Yeas* to 1 *Nays* ratio in the Senate and the House of Representatives respectively. The attack on Pearl Harbor was a devastating shock to the United States Navy and the American people. Representative Stephen M. Young went as far as to state to the Speaker of the House on December 9, 1941, that “[...] in the entire history of our Republic no naval defeat equals the magnitude of the disaster suffered by us on December 7 at Pearl Harbor.”¹³ It seems it was inevitable that Congress would call for inquiries into the events and possible negligence, dereliction of duty, and unpreparedness leading to that fateful day. The American political leadership was looking for scapegoats and initially they investigated amongst the circle of the Army and Navy Command

¹⁰ In his analysis of civil liberty in wartime Geoffrey R. Stone concludes that in national emergencies the Federal Government and Courts are quick to judge suspected acts of dissent and opposition: “While the nation is at war, ‘serious, abrasive criticism’ was ‘beyond constitutional protection.’” Geoffrey R. Stone, *War and Liberty. An American Dilemma: 1790 to the Present* (New York and London: W. W. Norton and Company, 2007), 62.

¹¹ Address by the President, S. J. Res. 116, on December 8, 1941, 77th Cong., 1st sess., *Congressional Record* 87, pt. 9: 9506.

¹² War Resolution, H. J. Res. 254, on December 8, 1941, 77th Cong., 1st sess., *Congressional Record* 87, pt. 9: 9536.

¹³ Representative Stephen M. Young, speaking on Pearl Harbor, on December 9, 1941, 77th Cong., 1st sess., *Congressional Record* 87, pt. 14: A5500 (hereafter cited as Representative Young, speaking on Pearl Harbor, 87, pt. 14).

on the Hawaiian Islands. A frequent question concerning Pearl Harbor was: "Where was our vaunted Navy?"¹⁴

"Future generations of Americans will recall Pearl Harbor and December 7, 1941 and say that was our black Sunday. Hundreds of years from now, will this disaster be cited as a flagrant example of inattention, carelessness, and failure?"¹⁵, philosophized Mr. Young only two days after the assault on the Island of Oahu. In a sense the Representative was right as the Pearl Harbor disaster is still a topic of heated debate, however this statement can also be applied to the forced removal and incarceration of Japanese Americans. In the search for scapegoats, Japanese persons were the ones to be named next on the list of suspects to be held accountable for potential subversive activities, espionage and sabotage. This philosophical question can thus be also applied to the role of Congress, the suffering of the Japanese American community and how it is interpreted today after more than half a century.

The United States Congress and the Japanese 'Menace'

Before introducing the debate leading to Public Law No. 503 it is vital to highlight the political atmosphere prior to March of 1942, the approval of the aforementioned public law. Members of Congress were deeply affected by the assault on Pearl Harbor, expressing their allegiance and loyalty to the Roosevelt Administration in its campaign to defend the nation against the Empire of Japan. The remarks and speeches delivered on the floor of the Senate and the House of Representatives – chronicled in the *Congressional Records*¹⁶ – paint an ominous picture of the Japanese 'enemy aliens' and subversives, the Japanese 'Fifth Column' menace. A frequent subject is the lack of assimilation, Americanization, the issue of dual citizenship, and the Japanese 'problem' on the West Coast. The debates in Congress and the political discourse were dominated by anti-Japanese statements and racial stereotypes – racial prejudice –, which echoed the debates over the exclusion of Asian immigrants, the ineligibility of Japanese aliens to become naturalized citizens, leading up to the Immigration Act of 1924.

¹⁴ Representative Young, speaking on Pearl Harbor, 87, pt. 14: A5500.

¹⁵ Representative Young, speaking on Pearl Harbor, 87, pt. 14: A5500.

¹⁶ For the present paper the author examines the remarks raised and views expressed by Members of Congress during the initial months of the war and the 'evacuation' program, included in the *Congressional Records* of the House of Representatives and the Senate, 1st sess. and 2nd sess. of the 77th Cong., Volume 87, 1941, and Volume 88, 1942.

Over the succeeding weeks members of the House and Senate shared their views on the Japanese ethnic community, only a few making a distinction between Japanese nationals (aliens) and Japanese Americans (American citizens of Japanese parentage) living in the United States. Representative Harry L. Haines went as far as to state on December 9, 1941, that someone is either an American or not. Mr. Haines firmly stated, that “[a]ny man who says he is an American and something else also is no American at all.”¹⁷ He called for allegiance in order to make the sacrifices needed for victory, to eliminate the enemies within and to avenge the loss of American lives. Representative Haines voted for the declaration of war because it was a war for the defense of liberty. It was not a war of conquest, but rather a call to “take up arms in defense of our own national security.”¹⁸ At this point no one could have foreseen that the sacrifice demanded of the Japanese would entail their collective removal from the Pacific Coast, interpreted as the contribution of the community to the war effort. From January of 1942 onwards there were voices of concern raised over the Japanese ‘problem’ resulting in mounting political pressure on Congress and the Roosevelt Administration.

The West Coast residents felt the urgent need to handle the Japanese population and pressured their representatives to raise this issue in Congress. On February 9, 1942, Representative John M. Costello addressed the House and stated that a West Coast Committee¹⁹ was established by the delegates of the three western states, with members from the House and Senate, in order to examine the Japanese ‘problem’ and to publish its findings and recommendations. The Committee felt that the Federal Government had to consider the removal of Japanese persons from defense areas, and their relocation to the interior. To make his assessment more profound his remarks included the radio address of Fletcher Bowron²⁰, the Mayor of Los Angeles, from February 5, 1942. The address served to illustrate the menace of the disloyal Japanese populace. It seems that by February the people and the state administration of California were looking for an actual federal policy and action. There was clear evidence of war hysteria, considering that California was arguing for the ‘evacuation’ of Japanese residents because of their ‘overwhelming’ numbers, their

¹⁷ Representative Harry L. Haines, speaking on War Resolution, on December 9, 1941, 77th Cong., 1st sess., *Congressional Record* 87, pt. 14: A5490 (hereafter cited as Representative Haines, speaking on War Resolution, 87, pt. 14).

¹⁸ Representative Haines, speaking on War Resolution, 87, pt. 14: A5490.

¹⁹ Representative John M. Costello, speaking on The Japanese Problem in California, on February 9, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 8: A457 (hereafter cited as Representative Costello, speaking on The Japanese Problem in California, 88, pt. 8).

²⁰ Representative Costello, speaking on The Japanese Problem in California, 88, pt. 8: A457.

concentration and distribution in the State. According to the data²¹ provided by Mayor Bowron, the Los Angeles Japanese accounted for about 1/5 of all the Japanese in America, and 1/4 of California's Japanese lived within the city limits of Los Angeles. Altogether, there were approximately 126,000 Japanese residents in the Continental United States and 93,000 of them lived in the state, with 39% residing in Los Angeles County and 23,321 in Los Angeles. Los Angeles was portrayed as the center of Japanese subversive activities, of sleeping agents waiting to betray Angelenos in case of an invasion, going as far as to refer to L.A. as the "human sacrifice"²² if attacked by invading Japanese forces. His prejudice towards Japanese people was based on racial antagonism, the belief that the Japanese race could not be assimilated on account of its different physical appearance, training, and philosophy. It should be added at this point that according to the Office of War Information (O.W.I.) Japanese Intelligence depended on non-Japanese agents living in the U.S. as they believed that Japanese Americans were untrustworthy, and were regarded as cultural traitors.²³ Furthermore, not one Japanese American was convicted of sabotage or espionage on the Hawaiian Islands or the Mainland based on an O.W.I. report from June 14, 1943.²⁴ We might also refer to the findings of the Munson intelligence reports²⁵ on the Hawaiian and West Coast Japanese residents, prepared by Curtis B. Munson in 1941 at the request of the White House, which found that the large majority of the Issei and approximately 90% to 98% of the Nisei were loyal to America.

The Mayor called for the wholesale exclusion of Japanese nationals from the coastal areas, or their detention in "concentration camps".²⁶ Needless to say, no evidence was provided to support the claims made on Japanese disloyalty and subversive activities. The lack of subversive activity was in fact construed by many, including the designated Military Commander, as proof of the disloyalty of the Japanese Americans. "The Japanese

²¹ Representative Costello, speaking on The Japanese Problem in California, 88, pt. 8: A458.

²² Representative Costello, speaking on The Japanese Problem in California, 88, pt. 8: A458.

²³ Eric J. Sundquist, "The Japanese-American Internment: A Reappraisal," *The American Scholar* 57, no. 4 (1988), 542.

²⁴ Carey McWilliams, *What About Our Japanese-Americans?* (New York: Public Affairs Committee, 1944), 8.

²⁵ Curtis B. Munson, December 8, 1941, Report On Hawaiian Islands, Box 1, Folder Roosevelt Lib. Materials, 1941-1942, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco; John Franklin Carter to President Franklin D. Roosevelt, December 8, 1941, Box 1, Folder Roosevelt Lib. Materials, 1941-1942, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco; Curtis B. Munson, Japanese On The West Coast Report, November 7, 1941, *President Franklin D. Roosevelt's Office Files, 1933-1945. Part 3: Departmental Correspondence Files*, microfilm, Roosevelt Study Center, Middelburg, Netherlands, Reel 33.

²⁶ Representative Costello, speaking on The Japanese Problem in California, 88, pt. 8: A458.

race is an enemy race, and while many second and third generation Japanese born on United States soil, possessed of United States citizenship, have become ‘Americanized,’ the racial strains are undiluted,”²⁷ reasoned Lt. General DeWitt.

A great majority of the American public felt that Japanese persons should voluntarily accept their removal and incarceration, believing that they should sacrifice their freedoms and liberties at the altar of national defense and military necessity, even though other ‘enemy aliens’ were not forced to face the same choice. The separate treatment of the German and Italian community²⁸ – treated on an individual basis – reflects the selective discriminatory treatment of the Japanese, the victims of racial profiling. This notion of voluntary relocation as proof of allegiance to America was shared by certain Members of Congress, for example Representative Leland M. Ford. Mr. Ford was of the firm conviction that if the Japanese relocated of their free will, their sacrifice would be a worthy contribution to the war effort. Representative Ford regarded it as the responsibility of the loyal Japanese residents: “How better could they prove their loyalty?”²⁹, he pondered.

The Japanese ‘menace’ arose on numerous occasions as the delegates of the Pacific Coast states met four times by February 23, 1942. The West Coast delegates were in contact with the Executive, exchanged correspondence with the Secretary of War, Secretary of Navy, Secretary of State, and the Attorney General, including the F.B.I.³⁰ According to Representative Ford, the conclusion of their investigation was that all Japanese persons, aliens and loyal American citizens, should be removed from defense areas.³¹ It would be considered a dereliction of duty if Congress did not do everything in its power to prevent a Japanese attack. The delegates reasoned that the defense of America was paramount. In the meantime, Mr. Ford insisted that the relocation of the Japanese populace should be handled in a democratic way, with consideration, justice, and humanity. “Is it not evi-

²⁷ Peter Irons, “A Jap’s a Jap,” in *A People’s History of the Supreme Court: The Men and Women Whose Cases and Decisions Have Shaped Our Constitution* (New York: Penguin Books, 2000), 350.

²⁸ Attorney General Francis Biddle insisted in his memorandum to President Franklin D. Roosevelt on April 17, 1943, that Executive Order No. 9066 was drafted to authorize the exclusion of persons of Japanese ancestry from the West Coast, and was not intended to apply to Germans and Italians. Francis Biddle to President Franklin D. Roosevelt, April 17, 1943, Box 1, Folder Documents: Francis Biddle, 1942-1944, Series 1, JACL Redress Collection, Japanese American National Library, San Francisco.

²⁹ Representative Leland M. Ford, speaking on Defense of the West Coast Area, on February 23, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 8: A661 (hereafter cited as Representative Ford, speaking on Defense of the West Coast Area, 88, pt. 8).

³⁰ Representative Ford, speaking on Defense of the West Coast Area, 88, pt. 8: A661.

³¹ Representative Ford, speaking on Defense of the West Coast Area, 88, pt. 8: A661.

dent, therefore, that removal of all Japanese is a very humanitarian way to treat this whole problem?"³², he remarked.

The representatives of the Pacific Coast states placed significant political pressure on the Roosevelt Administration and the Federal Government, demanding immediate action. The West Coast delegation³³ met on February 13, 1942, in the office of Senator Hiram Johnson. It was decided that they would recommend to the President the 'evacuation' of Japanese persons from the Pacific Coast. If the Japanese 'question' was not handled appropriately, then the West Coast states would take direct action, which might result in race tension and violence. Representative Ford called the attention of Congress to this possibility in his remarks on February 23, 1942, "[...] if the departments will act quickly and do this promptly, any cause for the people of California, either individually or collectively, to take direct action, will be removed, and there will be no disorder, no riots, and no violations of race against race."³⁴ This statement contrasts with his earlier remarks on the humanitarian treatment of the Japanese community, and it can be interpreted as a warning to the Government and Japanese Americans, or maybe even as a threat. If the Federal Government did not respond to the political pressure, race tension, or violence, could have been a possible alternative.

Members of Congress summarized their findings in a recommendation prepared for President Roosevelt. The *Recommendation*³⁵ of the West Coast delegation was quoted on the floor of the House of Representatives by Richard J. Welch on February 23, 1942. The document cited the need to defend strategic industrial and military areas by relocating all Japanese persons into the interior across the Sierra Nevada and Sierra Madre Mountains. In this way the West Coast states certainly made a case for the removal of the Japanese aliens and citizens. Notwithstanding, some felt that the Federal Government had not taken to heart their warnings and recommendations. On March 7th Representative Carl Hinshaw accused the Government of "diddling around with this Japanese problem on the West Coast."³⁶ Nonetheless, following the initiation of the exclusion program Representative Martin F.

³² Representative Ford, speaking on Defense of the West Coast Area, 88, pt. 8: A661.

³³ McWilliams, *What About Our Japanese-Americans?*, 6.

³⁴ Representative Ford, speaking on Defense of the West Coast Area, 88, pt. 8: A662.

³⁵ Representative Richard J. Welch, speaking on The Alien Transfer Problem, on February 23, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 8: A663.

³⁶ Representative Carl Hinshaw, speaking on The Japanese Situation on the West Coast, on March 7, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 2: A2032.

Smith³⁷ firmly declared on July 27, 1942, that the President acted on the recommendations of the West Coast committee by authorizing the removal of all persons of Japanese descent from strategic defense areas on the Pacific Coast, implying that it was the result of continued pressure on the Roosevelt Administration. The exclusion, incarceration, and resettlement of Japanese persons “were expedited by our efforts”³⁸, stated the Representative.

Anti-Japanese Sentiments on the Floor of the United States Congress

The pressure to relocate Japanese persons and to detain them in ‘concentration camps’ only intensified, going as far as accusing civil liberty organizations with un-American activities for opposing the ‘evacuation’ program. John E. Rankin accused the Civil Liberties Union of being a Communist and un-American organization – the charges were made in the House of Representatives on February 23, 1942, in response to their protest against the removal order.³⁹ Mr. Rankin was in favor of placing the “treacherous Japs” in “concentration camps” in the Territory of Alaska and Hawaii, and in the Continental United States. In support of his arguments the Representative cited false rumors from the sensationalized articles and headlines that filled newspapers in the aftermath of Pearl Harbor. The Representative’s remarks showed evidence of racial prejudice towards the Japanese, who according to his opinion could not be assimilated and threatened the Government, as well as the American way of life and civilization: “[...] these treacherous Japs, who have sponged on our generosity for their very existence, are now driving the dagger in our backs.”⁴⁰ Further elaborating that they could not be assimilated: “Once a Jap, always a Jap. We cannot afford to trust any of them. The leopard cannot change his spots.”⁴¹ This view of the Japanese was shared by military officials. Lt. General DeWitt later made a similar declaration before a congressional committee, arguing that citizenship did not change the status or loyalty of Japanese Americans, nor their ties to the Empire of Japan.⁴² Mr. Rankin did not recognize the citizenship of the Nisei, because the practice of

³⁷ Representative Martin F. Smith, speaking on Defense of the Pacific Coast – Work of Congressional Committees, on July 27, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 5: 6669 (hereafter cited as Representative Smith, speaking on Defense of the Pacific Coast, 88, pt. 5).

³⁸ Representative Smith, speaking on Defense of the Pacific Coast, 88, pt. 5: 6669.

³⁹ Representative John E. Rankin, speaking on Concentration Camps for Japanese, on February 23, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 8: A768 (hereafter cited as Representative Rankin, speaking on Concentration Camps for Japanese, 88, pt. 8).

⁴⁰ Representative Rankin, speaking on Concentration Camps for Japanese, 88, pt. 8: A768.

⁴¹ Representative Rankin, speaking on Concentration Camps for Japanese, 88, pt. 8: A768-769.

⁴² Irons, “A Jap’s a Jap,” 350.

dual citizenship⁴³ within the Japanese community raised certain constitutional questions. The Representative maintained that “[w]hile born in the United States, they did not become citizens because they were not subject to the jurisdiction thereof, but were subjects of Japan.”⁴⁴ He did not believe that the children of Japanese aliens were covered by the provisions of the 14th Amendment of the Constitution, since they were Japanese citizens. This demonstrated a complete disregard of the Supreme Court’s decision in the *United States v. Wong Kim Ark*, 169 U.S. 649 (1898)⁴⁵ case on the citizenship clause of the 14th Amendment. The question of citizenship was not only a constitutional issue, but also a racial one with Mr. Rankin proclaiming that “America [is] for Americans”, and the Japanese should be deported since they can never become citizens or Americans because of their racial and religious differences.⁴⁶

The fear of a Japanese invasion was firmly entrenched in the conscience of the Representatives and Senators who were responsible for their constituents. There were three notable incidents⁴⁷ that reinforced the call for swift and firm action in countering the Japanese ‘menace’. One of these incidents was the shelling of the West Coast near Santa Barbara, California, on the night of February 23, 1942, by a Japanese submarine. It was the district of Representative Alfred J. Elliott⁴⁸, who addressed the House on February 24 in response to the Japanese attack. Mr. Elliott believed that the Japanese presented a national security threat to the “defense infrastructure”, which consisted of ideal targets for the Japanese ‘Fifth Column’:⁴⁹ oil fields, hydroelectric and steam plants, forests, and airfields within the proximity of Japanese communities. He demanded the removal of all Japanese on the grounds that “[i]t is known that many of the American-born Japanese put

⁴³ Representative Rankin, speaking on Concentration Camps for Japanese, 88, pt. 8: A769.

⁴⁴ Representative Rankin, speaking on Concentration Camps for Japanese, 88, pt. 8: A769.

⁴⁵ *United States v. Wong Kim Ark*, 169 U.S. 649 (1898), accessed April 19, 2019, <https://supreme.justia.com/cases/federal/us/169/649/>.

⁴⁶ Representative Rankin, speaking on Concentration Camps for Japanese, 88, pt. 8: A769.

⁴⁷ These incidents, direct attacks upon the Continental United States, were also cited by Lt. General John L. DeWitt in his *Final Report*, in his call for the mass exclusion of the West Coast Japanese populace. The Ellwood Oil Field and refinery at Goleta, near Santa Barbara, was attacked at 7:10 p.m., on February 23, 1942, by a Japanese submarine. On September 9, 1942, an enemy airplane launched from a submarine off the coast at Cape Blanco dropped 132-pound incendiary bombs on Mount Emily, near Brookings, with the objective of starting a forest fire. The third attack targeted the coastal battery guns near Astoria, Oregon, on June 21, 1942. Fort Stevens was shelled between 11:30 p.m. and 11:45 p.m. by an enemy submarine. DeWitt, *Final Report*, 18.

⁴⁸ Representative Alfred J. Elliott, speaking on Permission to address the House, on February 24, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 2: A1565 (hereafter cited as Representative Elliott, speaking on Permission to address the House, 88, pt. 2).

⁴⁹ Representative Elliott, speaking on Permission to address the House, 88, pt. 2: A1565.

loyalty to Japan above loyalty to America.”⁵⁰ For Representative Elliott the West Coast was a potential war zone and he believed that the Japanese should not be permitted to stay on the “front line”, since the Japanese were ready “to strike a dagger at the heart of America.”⁵¹ America was at war, but he had the impression that the Federal Government had not comprehended the seriousness of the situation. Such anti-Japanese rhetoric and the fervent support for the war effort explains the lack of congressional oversight in regard to the military necessity justification of Public Law No. 503. Members of Congress were not inclined to question the requests and judgment of the officers of the War Department, accepting the paramount importance of national defense in wartime.

The Senate and House Debates over Public Law No. 503

One of the controversial laws passed by the Senate and the House of Representatives was Public Law No. 503, which provided the necessary legal enforcement requested by the War Department to proceed with the exclusion of persons of Japanese descent from the Pacific Coast military zones. The debate over Senate bill 2352⁵² was held on March 19, 1942. The analysis of the *Congressional Record of Proceedings and Debates of the 77th Congress, 2nd Session*, allows for investigation of the issues that defined the discussion, and the role of Congress in restricting the freedom of aliens and citizens in military areas.

Based on the *Congressional Records* it cannot be disputed that there was a symbiosis between Congress and the Department of War in providing an adequate means of enforcement of the military regulations to be issued later by the Western Defense Command. It was Henry L. Stimson, the Secretary of War, who requested of Senator Robert Reynolds, Chairman of the Committee on Military Affairs, on March 9, 1942, to introduce Senate bill 2352.⁵³ In his letter the Secretary of War sent a draft of the bill and described it as the following: “A bill to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining in, or leaving military areas or zones, which the War Department recommends to be enacted into law.”⁵⁴ Secretary Stimson wished to have a

⁵⁰ Representative Elliott, speaking on Permission to address the House, 88, pt. 2: A1565.

⁵¹ Representative Elliott, speaking on Permission to address the House, 88, pt. 2: A1565.

⁵² Control of Aliens and Others in Military Zones, S. 2352, on March 19, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 2: 2722-2726 (hereafter cited as Control of Aliens and Others in Military Zones, S. 2352, 88, pt. 2).

⁵³ Senator Robert Reynolds, speaking on S. 2352, on March 19, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 2: 2722, 2725 (hereafter cited as Senator Reynolds, speaking on S. 2352, 88, pt. 2).

⁵⁴ Secretary of War Henry L. Stimson’s letter of March 9, 1942, S. 2352, on March 19, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 2: 2722.

means of legal enforcement of the military orders in the Federal Criminal Courts. The bill was referred to the Senate Committee on Military Affairs, which was assembled on March 13, 1942, to discuss and review the bill with Col. B. M. Bryan representing the War Department. On the floor of the Senate Mr. Reynolds addressed the circumstances and the reasons for introducing bill 2352, painting an image of the enemy alien menace on the West Coast and fostering a need for the protection of the American people and the defense industry on the Home Front.

The bill requested by the War Department provided extensive powers to defend the military zones. This authority applied collectively to 'enemy aliens' and also American citizens of Japanese ancestry. Senator Reynolds quoted Colonel Bryan who stated before the Committee that "[t]he purpose of this bill is to provide for enforcement in the Federal courts of orders issued under the authority of this proclamation."⁵⁵ At the time there was no penalty provided for violating the military regulations. Lt. General DeWitt informed Colonel Bryan the day before the Committee convened that the passage of the bill was necessary in order to duly execute the provisions of the Executive Order issued by President Roosevelt. The report of the Committee was favorable and recommended that the Senate confirm S. 2352.⁵⁶ Members of the Committee felt that the passage of the bill was a "military necessity".

Senator Reynolds was also contacted by Robert Patterson, Acting Secretary of War, on March 13, 1942. The letter⁵⁷ was attached to the proceedings on bill S. 2352. It provides grounds for further analysis of the military necessity argumentation of the Department of War. Acting Secretary Patterson informed Mr. Reynolds of his telephone conversation with Lt. General DeWitt on March 12, 1942. The Commanding General appealed for an acceleration of the legislative process with regards to S. 2352 and H. R. 6758. Furthermore, he desired a bill which would be broad enough to enforce restrictions within the designated military areas, such as a curfew order, in the interest of national defense. The Lt. General did not want to act without proper legal basis. "General De Witt indicated that he was prepared to enforce certain restrictions at once for the purpose of protecting certain vital national defense interests, but did not desire to proceed until enforcement machinery had been set up,"⁵⁸ wrote Mr. Patterson. This letter is a further indication of

⁵⁵ Senator Reynolds, speaking on S. 2352, 88, pt. 2: 2724.

⁵⁶ Committee on Military Affairs Report, S. 2352, on March 19, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 2: 2725.

⁵⁷ Acting Secretary of War Robert Patterson's letter of March 13, 1942, S. 2352, on March 19, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 2: 2725 (hereafter cited as Robert Patterson's letter of March 13, 1942, 88, pt. 2).

⁵⁸ Robert Patterson's letter of March 13, 1942, 88, pt. 2: 2725.

the close cooperation between Congress and the Department of War. No evidence is provided that the Committee, or Members of Congress, investigated the military necessity justification, or extensively scrutinized the arguments listed by the Executive or the Military Commander.

S. 2352 passed in the Senate on March 19, 1942; an identical bill to H. R. 6758 approved by the House of Representatives the same day.⁵⁹ The bill was introduced in the House at the request of the Secretary of War on March 10, 1942. Secretary Stimson had exchanged correspondence and the draft of the proposed legislation simultaneously with the Chairman of the Senate Committee on Military Affairs and also with the Speaker of the House of Representatives.⁶⁰ The Department of Justice concurred with the content of the bill and was included in the drafting of the legislation, just as in the drafting of Executive Order No. 9066. The tools for enforcing the restrictive regulations were realized in Public Law No. 503 and were provided legal enforcement in the Federal Criminal Courts. The War Department and the Commanding General received the statute – the means to enforce the military regulations –, which they had requested from Congress. The draft prepared by the War Department was approved, thereby Public Law No. 503 became the symbol of a united Congress. Only two days after it was approved by Members of Congress the bill awaited for President Franklin D. Roosevelt's signature, and was eventually signed into law on March 21, 1942.

Conclusion

The wartime prejudice experienced by the West Coast Japanese had a history of precedent which centered on the tradition of anti-Asian sentiments, the anti-Japanese movement, since the late 19th century. The anti-Asian phase of the Nativist movement had a significant impact on the Oriental community, one of its manifestations being the Chinese Exclusion Act⁶¹ of 1882 and the subsequent anti-Japanese provisions. By 1924 the United States Congress had accepted the concept of selective immigration on grounds of “racial

⁵⁹ Control of Aliens and Others in Military Zones, S. 2352, 88, pt. 2: 2726.

⁶⁰ *Hirabayashi v. United States*, 320 U.S. 81 (1943), accessed September 27, 2018, <https://caselaw.findlaw.com/us-supreme-court/320/81.html>; DeWitt, *Final Report*, 29.

⁶¹ The Chinese Exclusion Act proved to be a defining moment in federal immigration policy as it ended the “open door” ideology, henceforth immigration was restricted based on national origin and racial discrimination. This precedent is exemplified by the series of restrictive measures to prohibit the entry of undesired immigrants, eventually excluding Asians. Éva Eszter Szabó, “Bevándorlás és Faji Diszkrimináció az Egyesült Államokban (1880-1925),” *Századok* 133, no. 5 (1999): 988, 993.

and national origin".⁶² The Native Sons of the Golden West, established in 1875, was one of the most prominent anti-Japanese organizations⁶³, which declared in its monthly publication *The Grizzly Bear* that California was "Japanized".⁶⁴ This long held prejudice was reinforced by the events of December 7, 1941, and by the war hysteria that swept America.

There were no partisan politics when it came to the Japanese question in 1942. "Partisan differences perished in the fires of Pearl Harbor. All became Americans dedicated to a common and an assured victory,"⁶⁵ declared Senator Ralph Brewster at the Maine Republican State Convention in 1942. The Imperial Japanese Navy not only sunk the battleships of the United States Navy, but the "Day of Infamy" also brought an end to partisan politics. Members of Congress were united by national security interests, the common effort to wage war successfully. From this perspective the approval of Public Law No. 503 was the war contribution of Congress in support of the Federal Government's war effort, expressing its loyalty and patriotism, although at the expense of civil liberty and tainted by expressions of racial antagonism. Such an influential bill passed in Congress in only twelve days in direct cooperation with the Roosevelt Administration. An evidence of the lack of any comprehensive debate or legal scrutiny over Public Law No. 503 is the fact that it amounted to only seven pages in the *Congressional Records*, despite its immense impact on the lives of an ethnic minority. Public Law No. 503 sealed the fate of the Japanese American community despite being, in the words of Senator Robert A. Taft, an "indefinite" and "uncertain" bill, the "sloppiest" criminal law" he had ever seen.⁶⁶ The Statute of March 21, 1942, greatly restricted the civil liberties and rights of persons of Japanese ancestry citing military necessity, entailing their wartime incarceration on the grounds of their racial affinity to the enemy.

⁶² Szabó, "Bevándorlás és Faji Diszkrimináció az Egyesült Államokban (1880-1925)," 996.

⁶³ Various other anti-Japanese groups were founded over the decades, such as the Japanese and Korean Exclusion League, the California Oriental Exclusion League, California Joint Immigration Committee, and the Japanese Exclusion League. These organizations acted as pressure groups – via their anti-Japanese platform – seeking to exclude the Japanese, with the Native Sons declaring that "California was given by God to a white people." Roger Daniels, *The Politics of Prejudice: The Anti-Japanese Movement in California and the Struggle for Japanese Exclusion* (Berkeley: University of California Press, 1977), 79.

⁶⁴ Daniels, *The Politics of Prejudice*, 85.

⁶⁵ Senator White, speaking on Address by Senator Brewster to Maine Republican State Convention, on April 6, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 3: 3333.

⁶⁶ Senator Robert A. Taft, speaking on S. 2352, on March 19, 1942, 77th Cong., 2nd sess., *Congressional Record* 88, pt. 2: 2725-2726.

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