

## Introduction

*The Emergency Detention Act:  
A “Concentration Camp Law”*

**O**n September 25, 1971, President Richard Nixon was on his way to Anchorage, Alaska, to meet Emperor Hirohito of Japan. He stopped in Portland, Oregon, to sign HR234, a bill that repealed the Emergency Detention Act of 1950.<sup>1</sup> Nixon, on signing the bill, reiterated the nation’s faith in its democratic tradition:

This strong country has no reason to fear that the normal processes of law—together with those special emergency powers which the Constitution grants to the Chief Executive—will be inadequate to deal with any situation, no matter how grave, that may arise in the future. But we do have a great deal to fear if we begin to lose faith in our constitutional ideals.<sup>2</sup>

The law that fell on that autumn day had passed in Congress by an overwhelming majority exactly twenty-one years earlier. The Emergency Detention Act (hereafter Title II) formed Title II of the Internal Security Act of 1950. The Internal Security Act, also popularly called the McCarran Act, was one of the antisubversion laws passed by Congress in the context of early Cold War anticommunist fervor. The law gave the president power to apprehend and detain any person who the government suspected might engage in acts of espionage and sabotage in the event of invasion, war, or insurrection.<sup>3</sup> It authorized the Justice Department to construct detention facilities to lock up potential spies and saboteurs as soon as the president declared the exis-

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tence of an internal security emergency. Drafted, debated, and passed a few months after the start of the Korean War and the arrests of Julius and Ethel Rosenberg, Title II greatly expanded the government's power to restrict civil liberties. Soon after its drafting, it acquired the nickname of "the concentration camp law," and this label lingered for the duration of the law's existence.

Title II was one of many laws Americans passed as they struggled to balance individual freedom and internal security. One characteristic, however, distinguished it from other pieces of legislation that restricted citizens' liberty for the nation's security: Title II embodied the idea of *preventive detention*.

Preventive detention is a measure to protect internal security by restricting the freedom of a certain individual or a group of individuals on the basis of actions that *might be* taken to threaten the security of a nation or region. It differs from criminal punishment, which is based on actions *already* taken that violate existing criminal laws. In preventive detention, the accused cannot be tried beyond a reasonable doubt, the principal guideline in criminal trials, since the accusation is based on the assumed probability of certain future actions. It also differs from military tribunals or enemy combatant cases, because the apprehension involves civilians who are not necessarily engaged in military or pseudo-military actions. Finally, preventive detention requires special detention facilities, or concentration camps, to house those who are apprehended, instead of prisons, which jail people found guilty and sentenced in criminal trials.

Because preventive detention depends heavily on government officials' discretion, it conflicts with the Fifth Amendment of the U.S. Constitution, which prohibits depriving any person of "life, liberty, or property, without due process of law." Such a policy is considered acceptable only when there is a grave danger to national or internal security (such as war, espionage, or terrorist attacks) that outweighs the constitutional protection of civil liberties.

Under the U.S. constitutional system, the government cannot make a law that violates the Constitution, even if the president or Congress believes such a law is necessary. How, then, did Congress justify Title II so that it passed by an overwhelming majority? The obvious background for the passage of law was the rising tide of McCarthyism and the imminent threat of nuclear espionage in the early Cold War period. As today we confront the fear of terrorist attacks in major cities and heightening military tension in East Asia, we may be living in a similar political atmosphere. Many democratic nations are now implementing systems of closer governmental surveillance on their citizens' lives, and there is stronger public support for stricter law enforcement at the expense of civil liberties. The late 1940s and early 1950s were when the world experienced the threat of nuclear annihilation for the first time. The ideological schism between the Eastern and Western blocs as well as the esca-

lating arms race between the United States and the Union of Soviet Socialist Republics (USSR) made the majority of Americans feel that extreme security measures such as preventive detention were acceptable and even necessary.

On the other hand, when I examined the congressional debates at the passage of Title II, I noticed that the repressive nature of the law severely disturbed the consciences of federal lawmakers, legal experts, and even mainstream journalists. Many were concerned about the possibility of governmental abuse of power, and some lawmakers tried to provide human rights protections within the bill and restrictions on its implementation.

An even more peculiar thing about Title II was that the law was repealed by Congress twenty-one years after its passage, despite the facts that it was never invoked during its statutory life and the possibility of its future invocation was minimal. And although the law was designed to deal with internal security crises, the repeal took place in 1971, a year when there was widespread protest against the government on city streets and university campuses.

Nixon explained the repeal as follows:

The mere continued existence of these legal provisions has aroused concern among many Americans that the act might someday be used to apprehend and detain citizens who hold unpopular views. Some have feared that it might someday be used to permit a situation comparable to the detention of Americans of Japanese ancestry during World War II.<sup>4</sup>

This speech shows two reasons for ending Title II. Nixon hoped that the repeal would ease public anxiety about the government's repression of social and political dissent among minorities and radical dissidents, symbolized in the image of U.S. "concentration camps." Nixon's speech also suggests that the memory of Japanese American wartime incarceration gave impetus to the repeal. This indicates that Americans in 1971 associated Title II with Japanese American incarceration during World War II, an incident that predated the law's passage. To elucidate the connection between Japanese American internment and Title II, this book scrutinizes the debates concerning civil liberties in three historical moments of national crisis: the forced relocation and incarceration of Japanese Americans during World War II, the passage of Title II in 1950, and the law's repeal in 1971.<sup>5</sup>

Although Title II has been studied in three academic fields, it has received comparatively little attention considering the potential severity of its impact on the freedoms of citizens. In the 1950s and 1960s, several articles analyzed Title II in law journals. Political analyses of its passage began to appear in the 1970s, when New Left historians engaged in the revision of

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the political history of the early Cold War era. Title II is mentioned occasionally in Japanese American historiography, but there is only one article-length work on the relationship between Title II and the mass incarceration of Japanese Americans, other than my own work and articles written by those directly involved in the repeal campaign.<sup>6</sup> One obvious reason for this neglect is that this law never actually came into effect in American legal processes. Title II was to be activated only when the government declared the existence of a national emergency (i.e., war, invasion, or insurrection). The American government did not make such a declaration between 1950 and 1971.

Unlike Title II, which has rarely been discussed in scholarly works in any substantial way, the wartime removal and incarceration of Japanese Americans has become one of the most heavily studied civil rights violations in U.S. history. Yet past studies have approached the events as two separate phenomena. During World War II, the American government forcibly removed and detained American citizens and resident aliens suspected to be linked to an enemy state through racial affiliations. Not a single Japanese American—including Issei, who were legally Japanese nationals—was convicted of espionage or sabotage. After the end of World War II, Japanese Americans never again became a target for mass detention, nor was their loyalty to the United States collectively placed in doubt. Title II, a law passed in the context of early Cold War national insecurity, was a manifestation of the severe prosecution of communists during the 1950s and had the potential to be used against radical social dissenters in the 1960s. The persecution of racial/ethnic minorities and that of political spies and radicals have conventionally been treated as separate issues in ethnic studies or American studies. Even when the connection is made through the study of Title II, the relationship between these two issues has been rendered a simple one.<sup>7</sup>

In the past two decades, however, an increasing number of works have started to link civil rights issues with the Cold War. Mary Dudziak, one of the pioneering scholars on Cold War racial politics, elucidated how the Cold War motivated the U.S. government's effort to tackle domestic racial inequality in order to promote an image of the nation as a leader of democratic regimes in the international sphere.<sup>8</sup> Recently, Asian American scholars have come to juxtapose the post-World War II construction of Asian Americans as a “model minority” against the negative representations of African Americans as a group socially dependent on governmental intervention for their racial ascendancy. They have analyzed this contrast in light of the United States' Cold War desire to be the leader of the so-called free world while facing strong domestic resistance against the liberalization of race relations. Works such as Ellen Wu's *Color of Success* (2014) and Cindy I-fen Cheng's *Citizens of Asian America* (2014) show how Asian Americans actively participated in the advancement

of Cold War liberalism by demonstrating their patriotism and desirability as citizens, on the one hand, and striving to remove racially exclusive conventions such as restrictive covenants and immigration quotas on the other.<sup>9</sup>

Other recent works investigate the link between antiradicalism and racial persecution. For example, Jeff Woods analyzes smear campaigns and scare tactics against civil rights activists in the U.S. South during the early Cold War period.<sup>10</sup> Utilizing anticommunist rhetoric, those campaigners ultimately aimed to maintain the southern way of life founded on the social principles of segregation and white supremacy. Woods elucidates how segregationist southerners worked with the anticommunist and antiradical FBI director, J. Edgar Hoover, to conduct persistent surveillance on civil rights organizations. He concludes that these concerted efforts were successful in derailing the civil rights organizations' efforts to pursue African American rights and desegregation lawsuits, as they were pressed into defensive positions regarding communist infiltrations in the 1950s.

In line with these recent findings in American studies and Asian American studies, this book analyzes the entangled discourses of race, national security, and civil liberties during what I call the "age of concentration camps" between 1941 and 1971. It closely examines rhetorical as well as direct historical links between Japanese American incarceration and the passage of Title II to elucidate how Cold War liberalism created a regime that confined American citizenship within the boundary of loyalty and patriotism, while the nation tried to rid itself of overt racial oppression and exclusion. Cold War liberalism expanded the boundary of discursive citizenship to include racial minorities, but at the same time, it placed individuals considered not loyal or patriotic outside the national boundary.

This book adopts critical discourse analysis as its primary method. Based on a constructionist view of history, discourse analysis focuses on how language produces knowledge, shapes meaning, and influences social practice. Constructionism frees us from being concerned with the intentionality of historical actors and helps us focus on the relationship between one action and another by looking at power and the practice of representation. Critical discourse analysis looks at historical texts within their contexts and illuminates the social structures, often including uneven power relationships, that legitimate, enact, or reproduce particular forms of social interaction.<sup>11</sup> Rather than trying to fix the definitions of terms such as "loyalty," "American," and "un-American," this book analyzes the contested usage of such terms and explores how the boundaries of citizenship shifted as domestic and international political contexts changed between 1941 and 1971.

To see how the concept of citizenship was manipulated through the construction or threat of concentration camps, this book looks at the wartime

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mass incarceration of Japanese Americans, a legal precedent of Title II, in the history of American national and internal security. In reality, the camps, euphemistically named War Relocation Centers, were concentration camps for American citizens and long-term residents of Japanese ancestry, who were deprived of constitutional freedoms. Officially, however, the policy enacted the wartime internment of enemy aliens and their dependents. Issei, first-generation immigrants who constituted one-third of camp residents, were de jure enemy aliens, because they were barred from naturalization and thus had retained their Japanese citizenship. Nisei and Sansei, the second and third generations who were American citizens by birth, were treated *like* enemy aliens, and to do so the government devised terms such as “non-aliens” to legally and constitutionally justify the forced removal and detention of American citizens.

Rather than drawing a fixed line between Issei and Nisei based on legal citizenship statuses, this book looks at the fluidity of such categories to illuminate the *alienability* of citizenship based on factors such as race, loyalty, and political beliefs, particularly at times of national and internal security crisis. Chapter 1, “Alienable Citizenship: Race, Loyalty, and the Mass Incarceration of Japanese Americans,” explains Japanese American mass incarceration as a wartime measure of preventive detention by analyzing its administrative process and related Supreme Court decisions. By manipulating words to label Japanese Americans as enemy aliens or non-aliens and racially and culturally marking them as potentially disloyal, the government succeeded in justifying mass incarceration based on race. In 1943, the government forced incarcerated Japanese Americans over the age of sixteen to answer a “loyalty questionnaire.” Those who did not answer “yes” to two crucial questions—whether they were willing to serve in the U.S. Army and whether they would forswear any allegiance to the Japanese emperor—were branded as disloyal and sent to Tule Lake Segregation Center as potential renunciants of American citizenship. The rest of the incarcerated, now determined as loyal to the United States, were allowed to leave the camps and encouraged to reintegrate into the society after being cleared for indefinite leave.<sup>12</sup>

While the government defended its decision as based on military necessity, the incarceration of a racial group en masse disturbed those who administered the policy. The Supreme Court justices who ruled on its constitutionality were reluctant to give the military unrestricted discretion over civilians even in wartime. The sense of guilt ironically led liberal lawmakers in 1950 to draft a bill that allowed the government to construct concentration camps and lock up subversive citizens, based on individual assessment, in an emergency. Chapter 2, “Legalizing Preventive Detention: The Passage of the Emergency Detention Act of 1950,” explains the legislative process in which Title II was passed. Ironically, Title II was a product of liberal lawmakers’ attempts to

defeat the communist registration and anti-immigration bill advocated by conservatives in Congress. Title II was drafted to set the rules for preventive detention, so that the government could remove ostensibly dangerous persons from society and lock them up in camps while maintaining liberty for the rest of the American people. The bill's drafters modeled it after Japanese American incarceration, and they installed provisions to protect the detainees' rights in order to prevent the arbitrary detention of innocent citizens, even minorities. The drafters and sponsors of the bill included liberal lawyers and politicians directly involved in the administration of wartime incarceration or resettlement of Japanese Americans as government officials.

Chapter 3, "The Shifting Ground of Civil Liberties: McCarthyism, the FBI, and the Supreme Court in the Age of Concentration Camps," elucidates how Title II contributed to the strengthening of the FBI as an internal security agency and also led to the construction of detention camps designated specifically for Title II in case the law was invoked. Throughout the McCarthy era, Title II also provided statutory justification for expanding the FBI's power of surveillance and creating a blacklist of potentially subversive persons. Contrary to the intentions of Title II's liberal drafters, the procedural protections of civil liberties provided by the law had limited effects. The FBI grew in size and influence as a domestic intelligence agency during the 1950s and 1960s, and the information it gathered was used for anticommunist congressional and state investigations. The list was also utilized to watch civil rights and labor activists. The Justice Department built six detention camps in accordance with the provisions of Title II. One of the camps was Tule Lake, the former segregation center for the "disloyal" Japanese Americans, which was partly rehabilitated for the new law. Title II legitimized the development of a formidable surveillance agency that transcended racial and political boundaries and infiltrated private spheres to monitor even the minds and thoughts of individuals as loyalty came to be used to draw the boundary between Americans and un-Americans. The shadow of concentration camps loomed throughout the society, even though Title II was never enforced.

The later chapters connect the Japanese American internment with the rise of political radicalism in the late 1960s. In this period, notions such as loyalty and patriotism came to be questioned by various groups. Chapter 4, "Quiet Americans No More: The Expansion of Political Dissent and the Grassroots Campaign to Repeal Title II," explains how the campaign to repeal Title II started within the Japanese American community and spread to other groups. As a rumor arose that the government was preparing concentration camps to lock up African Americans and radical antiwar activists, a few Japanese American social activists moved to involve the Japanese American Citizens League (JACL), an ethnic organization led by mainstream Japanese

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Americans, to formally oppose Title II and advocate its repeal. After joining the JAACL, grassroots activists worked with the long-term leftist opponents of the Internal Security Act as well as radical African American organizations and emerging Asian American student groups to repeal Title II. Through the campaign, Japanese Americans started talking about their wartime experiences in public, and this helped the repeal campaign gain popular support.

Chapter 5, “Recommitting to Civil Liberties: The Repeal of Title II and the Passage of the Non-Detention Act,” explains the congressional process that ended the law. The debates and discussions that took place suggest that the shared memory of the wartime incarceration of Japanese Americans was crucial to the consensus building for repeal. Many civic organizations, ethnic groups, and politicians advocated repeal—but for different reasons. Liberal politicians had a chance to express their regret for Japanese Americans’ wartime treatment and, for some, to alleviate their own sense of guilt for passing Title II. Conservative politicians and the Nixon administration took advantage of the opportunity to appease public anxiety about the political repression of dissidents. Minorities, particularly African Americans, narrated their own historical oppression in relation to the tragic wartime persecution of Japanese Americans. Japanese Americans connected their wartime experiences to Title II in the image of barbed-wire fences and watchtowers, and they succeeded in obtaining support from groups with a wide range of views on internal security and civil liberties. Opponents of the repeal tried to separate the Title II issue from Japanese American removal, but the very presence of Japanese Americans in the repeal campaign ensured the symbolic connection between the two. The historical memory of mass incarceration, acknowledged by all participants in the repeal process, made opposition to repeal virtually impossible.

In 1971, Americans of various racial, ethnic, religious, and political affiliations came together to repeal Title II, and Congress declared once and for all that the United States did not need concentration camps. The images of barbed-wire fences and watchtowers haunted the law, as the memory of Japanese American internment was resurrected after two decades of amnesia. The public discussions that led to the repeal of Title II elucidate how unsettling memories shaped Americans’ understanding of preventive detention vis-à-vis changing race relations and contested political perceptions about social resistance in the 1960s. The Title II repeal campaign was a precursor to the Japanese American Redress movement—the movement to demand official governmental apology and compensation for the wartime mass incarceration—as it gave political voice to Japanese Americans as victims of U.S. historical racism.

Americans looked into the past when they passed Title II, and again when they repealed the act and found Japanese American mass incarceration

to be an important reference point in dealing with the civil liberties of those whose loyalty to the nation was rendered questionable. Shedding light on the notion of preventive detention reveals the shift in the discursive boundaries of citizenship, precisely because preventive detention as an emergency measure lies at the very fringe of the constitutional protection of civil liberties and citizenship. Preventive detention, often justified by a discourse of danger, places detainees outside the citizenry, notwithstanding Fifth Amendment protections. Careful scrutiny of the discursive shifts in language used in the wartime policy for Japanese Americans and Title II reveals the performative construction of U.S. identity and the boundaries of citizenship.

Cold War liberalism necessitated the inclusion of “desirable” racial minorities to showcase American superiority in the ideological competitions against the socialist bloc and the decolonizing third world. Japanese Americans who passed the loyalty screening perfectly embodied a desirable racial minority that the postwar United States could use as an example of a successfully integrated population. Title II, designated as an improvement over mass internment, nominally credited Cold War liberals for their advocacy of liberal democracy. In practice, however, it advanced Cold War conservatives by allowing the passage of a concentration camp law, which tremendously expanded the discretion of the executive branch by granting it power to watch over citizens and to label and lock up certain individuals as undesirables. Two decades later, in the Title II repeal campaign, Americans revisited the wartime incarceration of Japanese Americans, whose experiences were now understood in the context of the historical exclusion and oppression of racial minorities. As the nation went through a wholesale reevaluation of its past in terms of civil rights and liberties, people felt that a concentration camp law needed to be struck down in a legislative spectacle.

Now is a peculiar time to be contemplating how the United States in the past has tried to balance civil liberties with national and internal security. Title II was passed early in the Cold War, when the anticipation of a nuclear war hovered over people’s everyday thinking. The law was repealed while the United States was fighting an imperialistic war in Asia and massive protests were organized in almost every city in the nation. Today, we are witnessing rising military tensions in East Asia, with the expansion of Chinese naval power and an unclear schedule or process for North Korea’s nuclear disarmament.<sup>13</sup> Japan’s looming remilitarization is a cause of concern as well.

Writing history is writing in hindsight—we know what happened after the incident we are describing. However, today I am writing with uncertainty about tomorrow. The “shadow of war,” as Michael S. Sherry titles his book, covers our lives.<sup>14</sup> As a citizen of Japan, I realize that it has been a luxury to have lived for several decades without fear of random destruction by military

## Excerpt • Temple University Press

THE INTRODUCTION

might, thanks to the nation's pacifist constitution. But it has been merely a geopolitical and historical contingency that many of us living in the Global North did not have to live in such fear.

As the feeling of insecurity rises, we are witnessing the increase of discriminatory and hateful messages around issues such as immigration, security, labor, and diversity throughout the Global North. In the United States, a presidential candidate who used racist and sexist language throughout the election process proved to have run the most successful campaign. Even after taking office in January 2017, Donald J. Trump has continued to tweet inflammatory and divisive language. Moreover, he has introduced policies that exclude certain people from entering the United States based on nationality and religion, as well as policies that would limit civil rights for people within the nation. In Japan, Prime Minister Shinzo Abe is trying to introduce a constitutional change to remilitarize the country and curtail civil liberties. While the majority of Japanese citizens support the retention of the pacifist clause, the administration touts a need for change. The draft of the new constitution proposed by the ruling Liberal Democratic Party (LDP) significantly weakens the protection of human rights, and it strengthens governmental power to restrict individual civil liberties for the sake of maintaining public order.

One way of coping with this fear is to acknowledge the ephemerality of our lives in *ukiyo*, or the floating world, and go with the flow—let fate take its own way. But as a historian and a parent, I know I have another choice, which is to write and act in order to prevent or at least postpone massive destruction, and to search for an alternative destiny for humankind. This book, like many other history books, describes how people acted to defend human rights in a time of social crisis. These events offer many lessons from which we can learn to resist the general apathy that the fears of war and political oppression are generating today. People came together, shared their histories, and developed consciousness about the legal and executive structure of one form of political oppression—preventive detention—and repealed the law that authorized the government to exercise such power.

I never wanted this research to be timely. I wish that the fear of concentration camps was a story of the past. But we know that detention—whether threatened or enforced, massive or arbitrary—based on the mere suspicion of subversive future actions is a governmental apparatus for silencing dissent. As the shadow of war grows more imminent, telling the story of Title II's enactment and repeal becomes increasingly important. In this sense, this publication is a timely one. I deliver this book with help and support from so many people who share the feeling that we need to value civil liberties for all, especially at a time when those in power propagate the idea that the repression of liberties is necessary to keep us safe.