Forsaken and Forgotten: The U.S. Internment of Japanese Peruvians During World War II

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The internment of Japanese Americans during World War II has been well discussed by scholars, but few remember or even know about the internment of Japanese Peruvians in the U.S. This note examines the history of the Japanese Peruvian internment, focusing on the U.S. government's legal justification for the program and the unjust treatment of the Japanese Peruvians under the U.S. immigration system after the conclusion of the war. The author considers U.S. legal and constitutional theories and cases relevant to the Japanese Peruvian internment and highlights the vulnerability of non-citizens in the U.S. during wartime. In conclusion, the author argues that the U.S. government should grant Japanese Latin Americans reparations equal to that awarded to Japanese Americans. Furthermore, the U.S. government should acknowledge the responsibility to avoid race or nationality-based bias, whether in crafting domestic policy or acting in foreign affairs.

INTRODUCTION

In no other wartime instance in United States (U.S.) history has the abrogation of individual liberties been more glaring than in the incarceration of ethnic Japanese during World War II. Under the guise of "military necessity,"[1] racist politicians and opportunistic businessmen succeeded in pressuring the U.S. government to remove the Japanese population from the U.S.'s west coast. The government herded some

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1. *See generally* Korematsu v. United States, 323 U.S. 214, 233-42 (1944) (Murphy, J., dissenting); PETER IRONS, JUSTICE AT WAR: THE STORY OF THE JAPANESE AMERICAN INTERNMENT CASES (1983) [hereinafter IRONS I]; JUSTICE DELAYED: THE RECORD OF THE JAPANESE AMERICAN INTERNMENT CASES (Peter Irons ed., 1989).

120,000 Japanese Americans,[2] two-thirds of whom were U.S. citizens, to camps in barren, unwanted lands to the east.[3] Few Americans knew then, or know now, that U.S. internment policies stretched past its own borders. As a part of a program to ensure the security of the Western Hemisphere, U.S. leaders coordinated a deportation program to remove dangerous enemy aliens from Latin American nations and place them in U.S. custody.

An appreciable majority of the Latin Americans interned in the U.S. were ethnic Japanese.[4] Among these internees, the Japanese Peruvians[5] merit special attention. Leaders in the highest offices of the Peruvian government cooperated with U.S. internment policies more than any other Latin American officials. As a result, the Japanese Peruvians were the largest group of Latin American internees, comprising over half of the entire Latin American internee population. Though only one of fourteen Latin American countries that deported its residents to the United States for internment,[6] Peru produced 1,771 of the 2,118 Japanese Latin American internees by the war's end.[7]

This paper will examine the history of the Japanese Peruvian internment, focusing on the U.S. government's role in their deportation and its legal justification of the program. Part I outlines the history of the Japanese Peruvian experience, concentrating on their wartime deportation and internment. It will examine the causes of the internment, the U.S. government's part in encouraging Peruvian persecution of its Japanese population, and the after effects of this program. Part II considers U.S.

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2. The term "Japanese Americans" refers to people of Japanese ethnicity living in the United States. The *Issei*, or first generation Japanese Americans, all retained their Japanese citizenship, as the U.S. government banned them from naturalization. The American-born *Nisei*, or second generation, held American citizenship and during the war were euphemistically called "non-aliens" in order to make the incarceration more palatable. *See* GLEN KITAYAMA, *"non-alien,"* JAPANESE AMERICAN HISTORY: AN A-TO-Z REFERENCE FROM 1868 TO THE PRESENT 270 (Brian Niiya ed. 1993).

3. See *infra* notes 190-199 and accompanying text.

4. In all, about 3,000 Latin Americans, including people of German, Italian, and Japanese descent, were deported to the United States. This figure was approximated from the ship totals given in C. HARVEY GARDINER, PAWNS IN A TRIANGLE OF HATE: THE PERUVIAN JAPANESE AND THE UNITED STATES (1987) 25-111 [hereinafter GARDINER I].

5. The term "Japanese Peruvians" refers to people of Japanese ethnicity who lived in Peru at the beginning of World War II. Included in this group are the first-generation immigrants, who generally possessed Japanese citizenship, and second-generation Peruvian nationals. Later, Peruvian law stripped some of these Peruvian-born Japanese of their Peruvian citizenship. *See infra* note 26 and accompanying text.

6. The other Latin American countries involved in the U.S. internment program were Bolivia, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, and Venezuela. Panama was the only country other than Peru to contribute a significant number of Japanese to the internment program. Other countries chose to intern or otherwise deal with their alien enemies without U.S. aid, including Brazil, which had Latin America's largest Japanese population. *See* C. HARVEY GARDINER, THE JAPANESE AND PERU: 1873-1973 87-88 (1975) [hereinafterGARDINER II]; MICHI WEGLYN, YEARS OF INFAMY 59 (1996); UNITED STATES COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED 307 (1982) [hereinafter CWRIC].

7. GARDINER II, *supra* note 6, at 87. For general historical information about the Japanese Peruvian and Japanese Latin American internment, *see generally* CWRIC, *supra* note 6, at 305-314; JOHN EMMERSON, THE JAPANESE THREAD: A LIFE IN THE U.S. FOREIGN SERVICE 125-49 (1978); GARDINER I, *supra* note 4; SEIICHI HIGASHIDE, ADIOS TO TEARS: THE MEMOIRS OF A JAPANESE-PERUVIAN INTERNEE IN U.S. CONCENTRATION CAMPS (1993).

legal and constitutional theories and case law relevant to the Japanese Peruvian internment. This section focuses on the treatment of enemy aliens under U.S. law and the development of anti-Japanese jurisprudence before and during World War II. A study of the Japanese Peruvian internment exposes the racist sentiments embedded in U.S. law at the time and highlights the vulnerability of non-citizens in the U.S. during wartime. The plight of the Japanese Peruvians shows the great damage that can be done when racism and fear collide.

I. THE JAPANESE EXPERIENCE IN PERU

A. Pre-War Struggles in Peru

The story of the Japanese in Peru begins in the late 19th century. Peru established diplomatic relations with Japan in 1873, recognizing the great potential for commercial and economic cooperation with the emerging Asian power.[8] Japanese immigration to Peru began in 1898, sparked by domestic unrest and economic troubles in Japan and the needs of the Peruvian rubber and sugar industries.[9] Immigration gained momentum as immigrants began to send for relatives and friends and established thriving communities in the large port cities of Lima and Callao.[10] Those who arrived in the late 1920s were not laborers, like their predecessors, but artisans and craftsmen, in many cases with ties to established and successful Japanese Peruvians.[11] Native Peruvians had begun nurturing anti-Asian sentiments during the Chinese immigration boom twenty-five years before.[12] The existing anti-Asian feeling transferred to Japanese laborers when the Japanese began to threaten Peruvian jobs. The Japanese laborer was better paid and "his work habits stamped the average Peruvian as a second-class worker."[13] Peruvians became more anxious as they saw the industrious immigrants succeed as small businessmen and independent farmers.

The insularity of the Japanese Peruvian community aroused Peruvian suspicions about the immigrants' loyalty to their native country. Some Japanese did attempt to assimilate, converting to Catholicism and marrying

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8. *See* JOÃO FREDERICO NORMANO & ANTONELLO GERBI, THE JAPANESE IN SOUTH AMERICA: AN INTRODUCTORY SURVEY WITH SPECIAL REFERENCE TO PERU 66 (1943).

9. *See id.* at 68; GARDINER II, *supra* note 6, at 23; WALTER LAFEBER, THE CLASH: A HISTORY OF U.S.-JAPAN RELATIONS 54 (1997).

10. At the end of 1909, 5,158 Japanese lived in Peru. The vast majority who emigrated (96 percent) were male and had been contracted to come by various emigration companies. GARDINER II, *supra* note 6, at 29-30. By 1927, the Japanese Peruvian population had jumped to 15,207, of whom 4,966 were female. *Id.* at 37. The 1940 Peruvian census counted 17,598 Japanese citizens in residence: 11,745 male and 5,853 female. *Id.* at 41. The same census reported that the Japanese community included 8,790 Peruvian-born *Nisei*. EMMERSON, *supra* note 7, at 131.

11. *See* NORMANO & GERBI, *supra* note 8, at 76.

12. GARDINER I, *supra* note 4, at 7; NORMANO & GERBI, *supra* note 8, at 68. According to Normano and Gerbi, Peru had allowed almost 100,000 Chinese immigrants into the country between 1849 and 1874, flooding the country with cheap labor and sparking riots and massacres. *Id.*

13. GARDINER II, *supra* note 6, at 31.

Peruvian natives.[14] In general, however, Japanese workers were unlikely to intermarry with native Peruvians, opting instead to bring wives from Japan or send for brides.[15] As the Japanese community grew, the immigrants established Japanese language school systems and civic organizations.[16] For the native Peruvians, the social development of the Japanese communities was a threat, a dangerous sign of separation from the rest of the society. The new associations and schools provided forums where the Japanese could retain their language and belief systems, making them less likely to integrate with the rest of the Peruvian population.

The isolation of the Japanese Peruvians was not entirely self-imposed. Poor relations between the Japanese laborers and their Peruvian employers, exacerbated by the language barrier and the Peruvians' general anti-Asian prejudice, had set the tone for mutual distrust and dislike.[17] Peruvians turned to race and culture to assert their blood superiority. Intermingling and intermarrying was frowned upon; Peruvians believed that "miscegenation involving the Japanese would inevitably lead to the deterioration of the Peruvian nation."[18]

The Peruvian press voiced Peruvian misgivings about the Japanese immigrant community. In 1937, *La Prensa*, a Lima newspaper, announced, "It is the government of Japan that organizes Japanese activity in Peru."[19] This suspicion dovetailed with anxiety over Japan's aggressive military imperialism in the 1930s: "If, as a growing number of Peruvians concluded, expanding Japanese economic desires had prompted invasion and military conquest in East Asia, would not this pattern repeat itself in Japanese Peruvian relations?"[20] Rumors flew about secret military drills and stockades of weapons and their connection to the Japanese civic and educational associations.[21] False reports that arms had been found in Japanese-owned haciendas near Lima triggered anti-Japanese riots on May 13, 1940; ten Japanese Peruvians lost their lives.[22] In the conclusion to their 1943 study of the Japanese Peruvian community, João Frederico Normano and Antonello Gerbi, presented what they believed to be the average Peruvian's view of the Japanese:

> The ordinary Peruvian knows that most Japanese are ready to sacrifice themselves for the fatherland. He knows that they are all imbued with the traditional ideals of fanatical patriotism and devotion to the Emperor. And, therefore, while he respects and even admires the individual

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14. *See id.* at 73; NORMANO & GERBI, *supra* note 8, at 83-84.

15. *See* GARDINER I, *supra* note 4, at 6-7; NORMANO & GERBI, *supra* note 8, at 83. Normano and Gerbi assert that this behavior contrasted with that of Chinese laborers, who tended to come without wives and thus intermarried more than the Japanese immigrants. *Id.*

16. *See* GARDINER II, *supra* note 6, at 75.

17. *See id.* at 26, 27, 29, 35.

18. *Id.* at 70. Both the efforts of the Japanese community in coping with establishing itself in a new country and the negative reaction of the native population mirrored the Japanese American experience.

19. GARDINER II, *supra* note 6, at 69.

20. *Id.*

21. *See id.* at 74.

22. *See* NORMANO & GERBI, *supra* note 8, at 79.

> Japanese. . .he regards with misgivings such a standoffish and organized foreign group—people who do not speak Castilian, do not profess the Catholic faith, do not attempt to participate in the social and intellectual life of the country, and send their money away. To many Peruvians, Japanese tenacity and diligence seem doubly dangerous.[23]

Such prejudice led to the passage of anti-Japanese laws. In the late 1930s, Peru enacted legislation establishing immigration quotas to counter the "Japanese 'invasion.'"[24] In July 1936, the Peruvian government suspended naturalization proceedings for Japanese immigrants.[25] Second-generation Japanese Peruvians became the next target. A 1937 law annulled alien birth registrations and banned the Japanese from claiming *jus soli* nationality, citizenship based on nation of birth. A 1940 decree, which clearly targeted the Japanese, stripped citizenship from Peruvian-born children of parents from *jus sanguinis* nations who traveled to live or study in their parents' native countries.[26] These legal restrictions put official imprimatur on anti-Japanese sentiments and set firmly in place the Peruvian prejudices that motivated the Japanese Peruvian internment.

B. The Latin American Internment Program

The United States government had taken notice of the Japanese Latin American communities well before the Pearl Harbor attack. Soon after the European War began in 1939, the United States and the other North and South American countries turned their attention to the potential threat of Axis nationals in the Western Hemisphere. A meeting of foreign ministers of the American nations on September 23, 1939, called for proposals "to suppress violations of neutrality and subversive activities by nationals of belligerent countries or others seeking to promote the interest of belligerent powers in the territory and jurisdiction of any or all of the American Republics."[27] By order of President Franklin D. Roosevelt, undercover FBI agents spread out across South America in June 1940.[28] Originally, their mandate was to investigate and disable German intelligence and covert operations. However, the large Japanese populations in Brazil and Peru soon attracted their attention,[29] and along with Army and Navy intelligence agents, the FBI began extensive investigations of the Japanese

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23. *Id.* at 122.

24. *Id.*

25. *See* GARDINER I, *supra* note 4, at 8.

26. GARDINER I, *supra* note 4, at 9; Normano & Gerbi, *supra* note 8, at 116; EDWARD N. BARNHART, *Japanese Internees from Peru*, 31 PACIFIC HISTORICAL REV. 169-70 (1962). Nations with *jus sanguinis* policies consider children of citizens as citizens, regardless of where those children are born. Japan did have and now has a *jus sanguinis* law.

27. The meeting in Panama was the first in a series of meetings of the Western Hemisphere's foreign ministers to discuss security and economic issues arising out of the European and then the Pacific War. U.S. DEPARTMENT OF STATE, 5 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 17 (1957).

28. *See* EMMERSON, *supra* note 7, at 127; GARDINER II, *supra* note 6, at 84.

29. The Japanese Brazilian population in the early 1940s was estimated at about 300,000. The 1940 Peruvian census indicated that there were a total of 25,888 Japanese Peruvians: 17,598 Issei and 8,790 Nisei. *See* EMMERSON, *supra* note 7, at 127, 131.

Latin American communities.[30]

The first detention of Japanese Latin Americans took place in Panama within days of the Pearl Harbor attack. Because of its crucial canal, Panama was a central concern of the American military.[31] In October 1941, U.S. Ambassador to Panama Edwin C. Wilson began discussing an internment program with Panamanian Foreign Minister Octavio Fabrega. By the end of the month, the Panamanian Cabinet had agreed to administer an American-funded internment program in Panama.[32] Five days after Pearl Harbor, Wilson notified Undersecretary of State Sumner Welles that Panamanian authorities had rounded up all Japanese men, women and children.[33] The imprisonment of Japanese Panamanians became a model for the internment of all suspicious Latin Americans.

From the early stages of the Pacific War, the U.S. encouraged the other Western hemispheric countries to consider detaining their enemy aliens. In January 1942, the third meeting of the foreign ministers of these countries formed the Emergency Advisory Committee for Political Defense, which in the ensuing months recommended a "comprehensive and vigorous program of detention of Axis nationals."[34] The committee recommended that countries unable to handle their own internment programs deport their enemy aliens to other American republics, with the unspoken understanding that "the most obvious 'other' republic was the United States."[35] Many American officials believed that it was in the best interest of the United States "'to remove *all* the Japanese from these American Republic countries for internment in the United States.'"[36]

Undersecretary of State Sumner Welles prodded other State Department officials to act quickly. He worried that the other Latin American countries could not be trusted to monitor and detain dangerous Axis nationals.[37] Assistant Secretary of State Breckenridge Long concurred, "[I]f these persons are not taken now the South American

30. *See* EMMERSON, *supra* note 7, at 127; BARNHART, *supra* note 26, at 170; CWRIC, *supra* note 6, at 305.

31. P. SCOTT CORBETT, QUIET PASSAGES: THE EXCHANGE OF CIVILIANS BETWEEN THE UNITED STATES AND JAPAN DURING THE SECOND WORLD WAR 140 (1987). The major shipyards were all on the East Coast. Without access to the Panama Canal, the U.S. had no hope of winning the Pacific War. Interview with Brian Hayashi, Professor (Dec. 1, 1998) (on file with the author).

32. *See* Memorandum from Edwin C. Wilson, U.S. Ambassador to Panama, to Cordell Hull, Secretary of State (Oct. 20, 1941) (on file with the author).

33. Only male German and Italian Panamanians were rounded up in this sweep. *See* Letter from Edwin C. Wilson, U.S. Ambassador to Panama, to Sumner Welles, Undersecretary of State (Dec. 12, 1941) (on file with the author). Later, the Panamanian officials would abandon plans for internment on Panamanian soil, instead turning their internees over to the United States. *See* Letter from Edwin C. Wilson, U.S. Ambassador to Panama, to Cordell Hull, Secretary of State (Jan. 14, 1942) (on file with the author).

34. BARNHART, *supra* note 26, at 171.

35. CORBETT, *supra* note 31, at 142.

36. Corbett cites an August 27, 1942 letter from Hull to President Roosevelt, requesting that more ships be made available to handle Japanese Peruvian deportees. *Id.* at 146.

37. Memorandum from Lawrence M.C. Smith, Chief of Special Defense Unit, to Francis Biddle, U.S. Attorney General (Mar. 19, 1942) (on file with the author) [hereinafter Memorandum from Lawrence M.C. Smith, Mar. 19, 1942].

governments may neither surrender nor detain them at all."[38] Such a wide-scale and complex undertaking was sure to give rise to nightmarish logistical problems: America lacked the spare boats and men to implement such a program; and the Justice Department worried that this program could be challenged under international law if non-enemy nationals were interned.[39] However, the preoccupation with speed superseded the objections to a deportation and internment program.

The deportation was so hurried that the first shipload of Latin American "alien enemies" set sail for the U.S. before the different U.S. departments had settled which one would take custody of the deportees once they arrived on U.S. soil. The Justice Department finally agreed to take responsibility for the Latin Americans, but only as a two to six week temporary measure pending their repatriation to Japan.[40] This would not only solve the problem of resources but would provide the Justice Department officials with a way to circumvent the international law issue, as it was considered legitimate to assist in repatriating a non-belligerent nation's enemy aliens to their home country.

C. Internment of Japanese Peruvians

The U.S. was particularly anxious to assist Peru with the handling of its Japanese population because of the community's size and strategic location.[41] Within days of the attack on Pearl Harbor, U.S. Ambassador to Peru Henry Norweb consulted with Peruvian Foreign Minister Alfredo Solf y Muro about what was to be done with Peru's Japanese population. In a December 11, 1941, telegram to Secretary of State Hull, Norweb reported that he had informed Solf y Muro of America's plan to intern its West Coast Japanese. Norweb explained that the Peruvian government "would sever diplomatic relations with Japan immediately if it knew what to do with the large Japanese population."[42] Hull replied two days later that America would happily agree to assist with an internment program. Peru

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38. Memorandum from Edward J. Ennis, Chief of Alien Enemy Control Unit to Francis Biddle, U.S. Attorney General (Mar. 15, 1942) (on file with the author) [hereinafter Memorandum from Edward J. Ennis, Mar. 15, 1942].

39. *See* Memorandum from Lemuel B. Schofield to Francis Biddle, U.S. Attorney General (Mar. 27, 1942) (on file with the author); Memorandum from Edward J. Ennis, Mar. 15, 1942, *supra* note 38. *See also* Memorandum from R. Henry Norweb, to J. Edgar Hoover, Director, F.B.I. (May 8, 1942) *Japanese activities along the west coast of South America* (on file with the author) [hereinafter Japanese activities]; Natsu Taylor Saito, *Justice Held Hostage: U.S. Disregard for International Law in the World War II Internment of Japanese Peruvians—A Case Study*, 40 BOSTON COLLEGE L. REV. 275, 303-13 (1998) (reviewing the international legal principles violated by the U.S. program).

40. *See* Memorandum from Lawrence M.C. Smith, Mar. 19, 1942, *supra* note 37.

41. The shock and surprise of the Pearl Harbor attack had U.S. government agencies frantically seeking ways to make up for the failure of U.S. intelligence and diplomacy. John Emmerson recalled the frustration and panic in the State Department: "someone's eyes wandered down the map of the Pacific coast, fixing on the startling fact that thirty thousand Japanese were living quietly in the coastal regions of Peru, a vital, strategic area where enemy infiltration, clandestine communication, and all manner of spying could be perpetrated with impunity. Something had to be done about Peru!" EMMERSON, *supra* note 7, at 126.

42. U.S. DEPARTMENT OF STATE, 6 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1941, 124-25 (1963).

broke relations with Japan on January 24, 1942.[43] American officials rejected the idea of interning suspicious individuals in Peru because Peruvian officials were known for their "indifference, laxity, and corruption in their administration of regulations and in their cooperation with American authorities."[44]

The Peruvian government quickly instituted policies in accordance with the U.S. program for hemispheric security. Soon after Pearl Harbor, the Peruvian government pledged to allow the construction of U.S. military installations in Peru.[45] Peruvian officials shut down Japanese schools, community organizations, and newspapers; imposed travel restrictions; and, at the suggestion of the U.S. government, confiscated phones from homes of Japanese Peruvians.[46] Economic restrictions inflicted more damage on the Japanese Peruvian community. Japanese land leases were canceled and assets frozen.[47] Two days after Pearl Harbor, the Peruvian government placed hundreds of Japanese and their businesses on a "blacklist"[48] which originated in the U.S. under Presidential Proclamation No. 2497.[49] In the spring of 1943, Peruvian laws gave the government the authority to take over Japanese farms and confiscate the property of Axis nationals.[50] Peruvian police arrested "suspicious" Japanese,[51] sometimes in brutal nighttime raids, and detained inmates in Peruvian jails. The Japanese Peruvian community was cowed and economically powerless.

For both the Peruvian and the American governments, hemispheric security and anti-Japanese prejudice were initially the main motivations for the Japanese Peruvian deportation program. As the war progressed, other reasons for the deportations emerged. Some U.S. citizens had been caught in Japanese territory when the war began, and the U.S. had from the beginning conducted civilian exchange negotiations with Japan. Japan's conquests covered a large part of East Asia, and as the war persisted, it became apparent to U.S. officials that Japan held a larger than expected number of Americans in its prisoner camps. The government feared that it would not have enough Japanese in custody in the U.S. to exchange for American civilian prisoners. Deporting unconsenting Japanese Americans was out of the question. As a remedy to this problem, Cordell Hull urged the President to continue "our efforts to remove *all* the Japanese from these American Republic countries."[52] The importation of internees from Peru

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43. CORBETT, *supra* note 31, at 143.

44. GARDINER I, *supra* note 4, at 54. A March 19, 1942 memorandum to the Attorney General stated, "Mr. Welles pointed out . . . that if they were kept in the countries they would not be adequately guarded and would probably be released and continue to do damage in South America to our interests." Memorandum from Lawrence M.C. Smith, Mar. 19, 1942, *supra* note 37.

45. *See* CWRIC, *supra* note 6, at 307.

46. *See* EMMERSON, *supra* note 7, at 137.

47. *See* GARDINER II, *supra* note 6, at 89.

48. *See* GARDINER I, *supra* note 4, at 14-15. The American government first issued the "blacklist" on December 8. *See* EMMERSON, *supra* note 7, at 138.

49. Signed on July 17, 1941. *See* Proclamation 2947, 3 C.F.R. 241 (1938-1943).

50. *See* GARDINER II, *supra* note 6, at 90.

51. The Peruvians had no real evidence against any of the Japanese Peruvians, but targeted teachers, clergymen, organization leaders, and other high-profile members of the community.

52. CORBETT, *supra* note 31, at 56.

and other South American nations gave the U.S. valuable bartering currency.[53]

Economic motives also came into play. A State Department Special Division meeting recognized that "certain economic advantages would accrue to individual Peruvians" because of the removal of the Japanese community. For Norweb, ridding Peru of the Japanese meant relieving the country of a group that threatened Peru's post-war progress towards an American-style democracy:

> [E]conomic-social changes [in post-war Peru] will stand a far better prospect of satisfactory outcome if they are not complicated by the existence of what is now Peru's largest alien group, industrious and thrifty but with a low standard of living, separatist, inassimilable, always disliked, non-democratic, and permanently loyal to an anti-democratic state.[54]

Peruvian officials saw the war as a serendipitous opportunity to rid Peru of its Japanese population altogether. In a July 20, 1942, memorandum, Norweb reported to Welles that the goal of Peruvian President Manuel Prado "apparently is the substantial elimination of the Japanese colony in Peru."[55] President Prado asked about U.S. shipping capability and indicated that Peru would not readmit interned Japanese Peruvians.[56] In stark contrast, Prado and other Peruvian officials took almost no action against the large, well-established German population and the smaller Italian community.[57]

Norweb recommended that Peru deport all persons of Japanese descent, regardless of their citizenship status. His memo revealed his own anti-Japanese bias. Here, as in the discussions leading to the Japanese American internment program, the close-knit nature of the community and, paradoxically, the *lack* of evidence of sabotage or subversion worked against the Japanese people:

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53. In a December 11, 1942 letter, General George C. Marshall wrote,"These interned nationals are to be used in exchange for American civilian nationals now interned." BARNHART, *supra* note 26, at 171, quoting Letter from General George C. Marshall to CG Caribbean Defense Command (Dec. 11, 1942) (on file with the author). The government may have also interned the Japanese Latin Americans as hostages. Kidnapping these Japanese provided a guarantee against Japanese abuse of American civilian and soldier prisoners in Japanese camps. Interview with Brian Hayashi, Professor (August 4, 2000) (on file with author).

54. Japanese activities, *supra* note 39, at 6-7.

55. Letter from R. Henry Norweb, Ambassador of Peru, to Sumner Welles, Undersecretary of State (July 20, 1942) (on file with the author) [hereinafter Letter from Henry R. Norweb, July 20, 1942].

56. *Id.*

57. In Peru, as in other American republics (and the United States, for that matter), the German population was bigger and better established, with strong ties to the elites in business and government. In addition, there was a significant enough number of Peruvians,"among them prominent individuals," in Germany to make the Peruvians think twice before enthusiastically backing the deportation of masses of Germans. These tempering influences on wartime fear did not exist for the Japanese Peruvians, whose deportation the Peruvian government supported with "near abandon." *See* GARDINER I, *supra* note 4, at 20. Peru did send Germans and some Italians to the United States; the government sought to deport sailors who were in Peru basically by accident when their boats were sunk off the Peruvian coast. *Id.* at 25. According to Emmerson, there was no real investigation into the Italian community because "the Italians hardly counted." EMMERSON, *supra* note 7, at 127.

> The Japanese problem is . . . of immediate importance. Up to the present the Japanese have been *grimly quiet.* We know that they hold the firm conviction that their Emperor's forces will finally triumph . . . . We know that they are prepared to do their part when called upon by Japan and that their organization is thorough, centralized, and efficient . . . . Should Japan's war strategy dictate an attack on the west coast of South America, then the Japanese here, in their present status, would constitute an active danger of the gravest character.[58]

A lack of ships, personnel, resources, and space prevented the kind of wholesale deportation Prado and Norweb desired. However, partial deportation was accomplished through the cooperation of the American and Peruvian governments. In February 1942, the State Department dispatched Far Eastern specialists Lawrence Salisbury and John K. Emmerson to Lima to help the Peruvian government investigate the Japanese communities and select deportees.[59] Only one of several U.S. government agencies to send officials to Latin America, the State Department used local informants to investigate the Japanese and German communities in Peru.[60] Emmerson and a Chinese embassy staff officer named George Woo received warm welcomes and investigative assistance from Chinese Peruvians eager to show their allegiance to the Allied cause.[61] Emmerson also worked with Peruvian police officials, who regularly confiscated Japanese Peruvian mail to show to him.[62]

Deportation of Japanese Peruvians to the U.S. began soon after the January 1942 foreign ministers' conference. On April 4, 1942, the *S.S. Etolin* stopped at Callao on its way to San Francisco to pick up a cargo of male Japanese, German, and Italian Latin Americans.[63] The *S.S. Acadia* followed eight days later.[64] Deportations continued steadily through the middle of 1943. Passengers protested that the treatment was inhumane. They reported sleeping on cement floors in Peruvian prisons, and being held under strict guard in crowded, unventilated quarters below deck for the journey.[65] U.S. officials held some internees in a temporary camp in Panama before sending them to the United States. Camp guards forced the inmates to salute the American flag and recite the Pledge of Allegiance before sending them to labor in the rain forest.[66]

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58. Japanese activities, *supra* note 39, at 7 (emphasis added).

59. *See* EMMERSON, *supra* note 7, at 127.

60. *See id.*

61. *See id.* at 142-43.

62. *See id.* at 139.

63. *See* EMMERSON, *supra* note 7, at 139. Gardiner gives a passenger count: 173 Germans, 141 Japanese, 11 Italians. *See* GARDINER I, *supra* note 4, at 25. The *Etolin* picked up 38 Germans and 10 Japanese in Ecuador and 149 Germans and 3 Italians in Columbia before docking in San Francisco. *See* GARDINER I, supra note 4, at 29.

64. *See* CORBETT, *supra* note 31, at 144. The *Acadia* eventually carried 654 internees: 491 Germans, 94 Japanese, and 69 Italians. GARDINER I, *supra* note 4, at 35.

65. *See* Letter from Victor K. Tateishi, detainee of alien detention center, to the Ambassador of Spain, (June 30, 1944) (on file with the author).

66. *See* HIGASHIDE, *supra* note 7, at 145.

U.S. officials confiscated passports and other paperwork en route and ordered the consulates not to issue visas to the internees.[67] Upon the deportees' arrival on U.S. soil, the Immigration and Naturalization Service held hearings to establish that the internees entered illegally because they lacked the proper paperwork.[68] The Latin American internees joined those classified as "alien enemies" and were assigned to the jurisdiction of the Department of Justice.[69] The Justice Department housed most of the Latin American internees in three camps in Texas: Kennedy, for men; Seagoville and Crystal City for families.[70] Some would only spend a few months at the camps before boarding boats for Japan,[71] while others remained in the camps for the duration of the war and beyond.

Initially, the targets of the deportation program were consular and diplomatic officials, as well as some prominent businessmen.[72] These men would be included in the American civilian exchange program. Their deportation opened the way for other non-officials, including those considered suspicious or those who volunteered for repatriation, to leave Peru. Unable to find any real evidence of subversion amongst the Japanese Peruvians, Emmerson established the "criteria of leadership and influence in the community" to select deportees.[73] He reasoned that singling out journalists, Japanese language teachers, civic organization presidents, and other leaders of the community would be the most effective way to catch "*potential* subversives" amongst the Japanese Peruvians.[74] Emmerson applied this criterion not only to the large urban Japanese Peruvian populations in Lima and Callao, but also to the small communities that inhabited coastal villages and towns.

Despite Emmerson's efforts, those deported to the U.S. were a random lot. The Peruvian officials had never established a procedure for selecting its deportees, and "the whim of enforcing officials played a major part in the designation of the undesirables."[75] Some were not Japanese citizens, but naturalized Peruvian citizens or Peruvian-born Nisei.[76] The State Department suspected that the Peruvian government did not bother to

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67. CWRIC, *supra* note 6, at 308.

68. BARNHART, *supra* note 26, at 173.

69. CORBETT, *supra* note 31, at 147. "Alien enemies" consisted mostly of citizens of enemy countries who were on American soil at the time of Pearl Harbor. They were given hearings and held in Department of Justice internment camps. They were distinguished from the Japanese Americans, who were not "interned" but euphemistically "relocated" under the jurisdiction of the War Relocation Authority. *See infra* note 196 and accompanying text.

70. *See* GARDINER I, *supra* note 4, at 58-59. Other camps with smaller concentrations of Japanese-Peruvians included Kooskia, Idaho, Santa Fe, New Mexico, and Fort Missoula, Montana. *See* Grace Shimizu, *Japanese Peruvians*, 4 NIKKEI HERITAGE 6 (Winter 1992).

71. *See* CORBETT, *supra* note 31, at 147.

72. *See* CWRIC, *supra* note 6, at 308. There was also evidence that some Japanese Peruvians were able to bribe their way out of deportation. *See* Japanese activities, *supra* note 39, at 4; EMMERSON, *supra* note 7, at 143-44.

73. EMMERSON, *supra* note 7, at 143.

74. *Id.* at 139.

75. GARDINER II, *supra* note 6, at 85. American officials discovered the haphazard nature of Peru's deportation procedures through individual investigations and interviews conducted with internees in U.S. camps. *See* BARNHART, *supra* note 26, at 173.

76. GARDINER II, *supra* note 6, at 86.

distinguish between dangerous and non-dangerous Japanese Peruvians because the haste to get rid of as many Japanese as possible eclipsed concerns of getting rid of the "right" Japanese. The U.S. embassy at Lima reported the willingness of the Peruvians to send Japanese to the U.S. as repatriates "regardless of whether or not there was any possibility of their repatriation [to Japan]."[77]

Edward J. Ennis, chief of the Department of Justice's Alien Enemy Control Unit, acknowledged that the U.S. officials operating in Lima did not follow the same standards as those used in selecting alien enemies detained on U.S. soil.[78] U.S. officials acted in great haste and accepted the possibility that there would be errors. A few Peruvian officials tried to maintain some kind effective screening method. However, when Peruvian officials argued that evidence should be presented to justify deportation on an individual basis, they were told that the Americans were "unprepared to investigate each individual but that the Peruvians should see the program as preventing fifth-column activities."[79] The Americans were most concerned with taking preventative measures in Peru, regardless of whether or not those measures resulted in fair treatment for the Japanese Peruvians involved. Attorney General Francis Biddle determined that errors and potential for errors "did not warrant the restriction of internment."[80] U.S. officials disregarded evidence of Peru's indiscretions in selecting deportees and did little to ensure that the Japanese Peruvians received just treatment.

The anti-Japanese environment in Peru, exacerbated by the wartime economic and legal restrictions, drove some Japanese Peruvians to want to leave Peru. The blacklists and the general prejudice made it difficult for a Japanese Peruvian to earn a living and lead a normal life.[81] For those who wished to go to Japan, the path led through the U.S. Towards the middle of the war, even those who did not want repatriation began to offer themselves for deportation with the expectation of better lives in the U.S., even though that meant confinement in camps. George H. Butler, First Secretary of the Embassy at Lima, reported to the Secretary of State that "at first the Japanese did not wish to leave Peru but that now 'all of them' want to go to the United States."[82]

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77. Department of State Special Division, *Meeting concerning disposition of dangerous Axis nationals in Peru* (on file with the author). Though the U.S. government used the word "repatriation" in referring to sending the Japanese Peruvians to Japan, the term does not fit. Some of the Japanese Peruvians did not hold Japanese citizenship, and "repatriation" should have meant their return to Peru. Moreover, for many Japanese Peruvians and internee family members who had never been in Japan, the voyage was not a return at all but a frightening first-time visit. For the sake of consistency, I will use "repatriation" to mean travelling to the enemy nation of ethnic origin.

78. *See* Memorandum of Conversation, Edward J. Ennis, Chief of Alien Enemy Control Unit, and James Keeley, Special Division (January 7, 1943) (on file with the author) [hereinafter Memorandum of Conversation, Ennis and Keeley, January 7, 1943].

79. CORBETT, *supra* note 31, at 145-146. *See also* GARDINER I, *supra* note 4, at 41. "Fifth-column activities" refers to sabotage or spying by enemy agents on American soil.

80. Letter from Francis Biddle, U.S. Attorney General, to Cordell Hull, Secretary of State (January 11, 1943) (on file with the author).

81. Japanese activities, *supra* note 39, at 5 ("They sense a growing suspiciousness and hostility directed toward them; they are apprehensive of worsening future conditions.").

82. Letter from George H. Butler, First Secretary of the Lima Embassy, to Cordell Hull, Secretary

The inconsistencies in selecting deportees became a problem that demanded immediate attention when the civilian exchanges with Japan fell through. Now the Justice Department needed to prepare for indefinite internment instead of temporary detention.[83] The Justice Department wanted to make their acceptance of more deportees contingent on their ability to hold hearings once the internees were on U.S. soil. The State Department rejected this proposal. Ironically, their concern was that the Peruvian government would interpret a hearings policy as an insult to their competency and integrity, and would therefore refuse to cooperate with future U.S. programs.[84] As a compromise, both departments agreed that a Justice Department official would be sent to Lima to determine the acceptability of internees before they boarded vessels bound for the U.S. Subsequently, Raymond Ickes, head of the Central and South American Division of the Department of Justice's Alien Enemy Control Unit, visited Lima to help select internees.[85] Ickes and Emmerson discovered that many of the Japanese named on the Peruvian government's expulsion list did not meet Emmerson's criteria for potential dangerousness, and rejected many of the Japanese Peruvians rounded up by the Peruvian government for internment.[86]

Several other factors contributed to the gradual slowing of the Peruvian deportation program. By fall 1942, American victories at Midway and Coral Sea had crippled the Japanese fleet, turned back the Japanese advance in the Pacific, and assuaged fears of a Japanese threat to the Western Hemisphere.[87] As the hysteria that followed the Pearl Harbor attack died down, so too did the perceived threat of the Japanese Peruvian communities to the security of the Americas.[88] The effects of the persecution of Japanese Peruvians also calmed Peru's fears. Some Japanese went into hiding to avoid unpredictable arrest raids, and Japanese Peruvian landowners and businesspeople were hamstrung by the economic restrictions.[89] In addition, there were questions as to the availability of resources to continue the program; the Justice Department foresaw overcrowding problems in the camps.

Because of these factors, the deportation of internees on the basis of their threat to hemispheric security grounded to a halt in 1943. From June 1943 to the end of the war, a vast majority of the passengers on ships

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of State (July 10, 1943) (on file with the author). Butler explained,"This is logical, considering the constantly increasing force of economic restrictions in Peru and the news of good treatment in American internment camps." EMMERSON, *supra* note 7, at 145. Those still in Peru heard good things about the camps from those already interned:"The letters said, in effect, 'Come on up and join us! It's not so bad here. We see movies twice a week and eat chicken on Sundays.'"

83. Memorandum of Conversation, Ennis and Keeley, January 7, 1943, *supra* note 78 ("The whole matter had taken on a different aspect.").

84. GARDINER I, *supra* note 4, at 70.

85. *Id.*

86. *Id.* at 71; EMMERSON, *supra* note 7, at 145.

87. WEGLYN, *supra* note 6, at 62.

88. *See* EMMERSON, *supra* note 7, at 147.

89. *See generally* HIGASHIDE, *supra* note 7. *See* Donna Kato, *The Exiles*, SAN JOSE MERCURY NEWS 1L (Mar. 21, 1993); EMMERSON, *supra* note 7, at 138.

headed for the U.S. were women and children joining their husband/father internees in Texas. These dependents had suffered the pain of separation from husbands and fathers and also found themselves deprived of their means of support in Peru.[90] These last ships also continued to carry passengers who had volunteered for deportation, were found to be community leaders, or were arbitrarily arrested by the Peruvian police.[91]

D. "Repatriation"[92]

As it became apparent that the Allied forces would triumph in the Pacific, questions began to arise about what to do with the Latin American internees. In the rush to deal with the Japanese Peruvian problem, U.S. and Peruvian officials had not decided what the deportees' ultimate fate would be.[93] Peruvian officials had mentioned to Norweb and others that they did not want to readmit deported Japanese Peruvians, but there had never been an official agreement.[94] In February and March of 1945, the foreign ministers gathered in Mexico City for another inter-American conference. In Resolution VII, they recommended that anyone whose "residence would be prejudicial to the future security or welfare of the Americas" be deported from the hemisphere.[95] On September 8, 1945, the U.S. government implemented Resolution VII through Presidential Proclamation No. 2662, which ordered the deportation of the Latin American internees.[96] In addition to the perceived security threat, U.S. officials worried: "Not only does their continued stay in the United States constitute a burden for the American taxpayer, but as a group they are not desirable additions to our own population."[97]

U.S. officials had "no information which would enable [them] to make a case-by-case review" of the Japanese Peruvian internees, but had plenty of evidence showing that the Germans Peruvians were "clearly dangerous."[98] In light of this fact, the U.S. asked Peru to take back all of

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90. The following ships carried mostly women and children: *Aconcagua*, June 29, 1943, carrying 86 Japanese; *Imperial*, July 1943; *Madison*, January 18, 1944; *Cuba*, March 1, 1944, carrying 339 Japanese, over half of whom were children; *Cuba*, June 17, 1944, with only 9 men of the 377 Japanese. *See* CORBETT, *supra* note 31, at 157, 162; GARDINER I, *supra* note 4, at 90.

91. *See* CORBETT, *supra* note 31, at 157.

92. "Repatriation" was the deportation of Japanese, German, and Italian Latin Americans to their nations of ethnic origin.

93. *See* GARDINER II, *supra* note 6, at 91.

94. "In any arrangement that might be made for the internment of Japanese in the States, Peru would like to be sure that these Japanese would not be returned to Peru later on." Letter from R. Henry Norweb, July 20, 1942, *supra* note 55.

95. BARNHART, *supra* note 26, at 173.

96. *See* 3 C.F.R. 1938-1943 Comp, 64-65; Removal of Alien Enemies, President's Proclamation No. 2662 of September 8, 1945 (10 F.R. 11635 – Sept. 12, 1945) (on file with the author). This Proclamation was issued to deal specifically with the Latin American internees; Presidential Proclamation No. 2655 ordered the deportation of "dangerous" alien enemies apprehended in the U.S. 3 C.F.R. 1938-1943 Comp, 57-58 (Issued July 14, 1945).

97. Letter from Joseph Grew, Acting Secretary of State, to Henry Stimson, U.S. Secretary of War (May 8, 1945). *See* U.S. DEPARTMENT OF STATE, 9 FOREIGN RELATIONS OF THE UNITED STATES: DIPLOMATIC PAPERS 1945, 266 (1957) [hereinafter FRUS 1945].

98. Memorandum from Jonathan B. Bingham, Assistant to Assistant Secretary of State, to Spruille Braden, Assistant Secretary of State, and Dean Acheson, Undersecretary of State (Dec. 13,

the Japanese Peruvian internees.[99] However, while defending the German Peruvians' rights to not be "repatriated" to Germany without their consent, the Peruvian government urged the U.S. to repatriate all of the Japanese Peruvians.[100] The Peruvian government refused readmission to all but about 100 Japanese Peruvians.[101] Most of these people were allowed to return to Peru only because they were Peruvian-born Nisei or were married to Peruvian wives and had Peruvian-born children. Peruvian officials pointed to Resolution VII, which urged the prevention of "the reestablishment of any Axis influences in the New World" to justify this position.[102] William D. Pawley, the new U.S. Ambassador to Peru, supported the Peruvian government's stance. Pawley recommended that the U.S. government concede to all of the Peruvian demands for the handling of the internees. He strongly agreed with Peruvian officials that the return of the Japanese to Peru would be "politically disastrous."[103]

Soon after the war's end, German Latin American internees brought legal proceedings against the U.S. government, filing *habeas corpus* petitions to forestall their repatriation to Germany.[104] A January 10, 1946, decision determined that the internees were indeed "alien enemies" within the definition of the Alien Enemy Act of 1798, and could legally be deported under the Act.[105] Other cases affirmed this decision.[106] These legal rulings left the Japanese Peruvians in a terrible predicament. Most of the internees wanted to return to Peru, where many had been born and all had spent years building lives and raising families.[107] Some believed that their best option would be to start anew in the U.S., especially those with children who were born during the internment and who qualified as U.S. citizens.[108] Japan was a country so war-torn that its own population faced mass starvation. Yet some believed that repatriation was the only possible way to reunite with families who had been left in Peru.[109] In the end, convinced that neither Peru nor America would allow them to stay, most of the internees "elected" to accept repatriation to Japan.[110]

1945) FRUS 1945, *supra* note 97, at 299.

99. *See id.*

100. *See* Memorandum from Wells, Assistant Chief of the Division of North and West Coast Affairs to White, Acting Chief of the Division of North and West Coast Affairs (Aug. 14, 1945), FRUS 1945, *supra* note 97, at 273.

101. *See* GARDINER II, *supra* note 6, at 92 (finding that Peru only admitted 79 internees in 1946). CORBETT, *supra* note 31, at 153 (approximately 26 internees were readmitted in 1945, 81 in 1946).

102. *See* CORBETT, *supra* note 31, at 165.

103. GARDINER I, *supra* note 4, at 135. Pawley wrote, "'[T]his alien population in Peru has reverted to its non-moral Asiatic cunning, unchecked by self-respect.'" *Id.*

104. *See* CWRIC, *supra* note 6, at 312.

105. *See* GARDINER I, *supra* note 4, at 133. For the text of the Alien Enemy Act, *see* text accompanying note 164, *infra* 174.

106. *See, e.g.*, Citizens Protective League et al. v. Clark, 155 F.2d 290 (U.S. App. D.C. 1946); U.S. ex rel. Von Heymann v. Watkins, 159 F.2d. 650 (2d Cir. 1957); Citizens Protective League et al. v. Byrnes, 64 F. Supp. 233 (U.S. Dist. D.C., 1946).

107. GARDINER I, *supra* note 4, at 119.

108. *Id.* at 120.

109. *See* WEGLYN, *supra* note 6, at 64.

110. *See* SAITO, *supra* note 39, at 301 & note 136. The *S.S. General G. M. Randall* sailed on Nov. 25, 1945 with 117 Japanese Peruvians, and *S.S. Matsonia* sailed on Dec. 8, 1945, with 659 Japanese

Some continued to reject repatriation, and about 300 Japanese Peruvians were left in the United States when the Department of State declassified them as "alien enemies" on April 6, 1946.[111] Yet this nominal change in status did not lessen the possibility that they could be deported. By transferring authority over the deportations from the State to the Justice Department, the government turned the Japanese Peruvian cases into immigration cases. By the strict letter of the law, the internees were non-residents who "were not admitted to this country under the immigration laws" and had "no recognized interest or right to remain in this country."[112] As U.S. officials had not issued visas and had confiscated Japanese Peruvian documents before they set foot on U.S. soil, the Japanese Peruvians were still technically "non-resident aliens" who could be deported to Japan under the Immigration Act of 1924.[113]

The government continued its efforts to deport the internees as illegal immigrants. The Department of Justice issued warrants and arrested some of the internees at the camps.[114] However, before the deportations could be carried out, attorney Wayne M. Collins filed two *habeas corpus* test cases in the Northern District Court of California to stall the deportations.[115] The U.S. government continued to petition Peru to readmit more internees through the early 1950s. However, with a few exceptions, Peru continued to rebuff the U.S. government's requests.[116]

Peruvians aboard. *See* Letter from Acting Secretary of State to the Charge d'Affaires ad interim of Peru in early 1946 (on file with the author). [The *U.S.A.T. General Randall* carried 138 and the *S.S. Matsonia* 660 Japanese Peruvians. The *U.S.A.T. General Ernst* sailed on Feb. 23, 1946, with more than 80 Japanese Peruvians aboard, and the *U.S.A.T. General Meigs* sailed with more than 50 on June 13, 1946]. *See* GARDINER I, *supra* note 4, at 124, 130. In all, about 700 male Japanese Peruvians repatriated, accompanied by approximately 1,000 dependents.

111. *See* BARNHART, *supra* note 26, at 175. *See also*, GARDINER I, *supra* note 4, at 160, stating that 298 Japanese Peruvians were in the United States in early 1947: 178 at Seabrook Farms, in Connecticut; 91 at Crystal City Internment Camp; 26 paroled elsewhere; 3 in hospitalization.

112. Letter from Dean Acheson, Acting Secretary of State, to Tom C. Clark, Attorney General (July 8, 1946) (on file with the author).

113. *See* WEGLYN, *supra* note 6, at 64. German Latin Americans deported to the United States were also ordered to be deported under this Act and later filed petitions for writs of *habeas corpus* to escape deportation. *See, e.g.*, U.S. ex rel. Schirrmeister v. Watkins, 171 F.2d 858 (2d Cir. 1949); U.S. ex rel. Sommerkamp v. Zimmerman, 178 F.2d 645 (3d Cir. 1949); U.S. ex rel Bradley v. Watkins, 163 F.2d 328 (2d Cir. 1947).

114. GARDINER I, *supra* note 4, at 144. The internees turned illegal immigrants faced deportation under several immigration laws. *See, e.g., Bradley*, 163 F.2d at 329, citing the Immigration Act of 1924 §13(a)(1) (making illegal entry without an unexpired immigration visa); Act of May 22, 1918 (22 U.S.C.A. 223) (making illegal entry without an unexpired passport).

115. *See generally* In re Yamasaki, Docket No. (26139) (N.D.Ca. 1946); In re Sakasegawa, Docket No. (26140) (N.D.Ca. 1946) (Folders 26139-26140, Box 520, Series Civ. Cs. Fls., 1938-1953, Subgroup No. Dist. of Calif., RG21 NA, San Francisco, National Archives Pacific Sierra Region Branch, San Bruno, CA). While these cases, and the fate of the remaining 365 Japanese Peruvians, were pending, Collins arranged for the internees to be paroled and employed at Seabrook Farms, a New Jersey vegetable and fruit canning company. *See* Letter from Wayne M. Collins to Ugo Carusi, INS Commissioner (May 15, 1946) (on file with the author); Letter from James P. McGranery, Assistant to the Attorney General, to Ugo Carusi, INS Commissioner (October 4, 1946) (on file with the author).

116. *See* Letter from W. F. Kelly, Assistant Commissioner, Border Patrol, Detention & Deportation Division, to A. C. Devaney, Assistant Commissioner, Inspections & Examinations Division (Dec. 9, 1952) (on file with the author). A trickle of internees was allowed to return to Peru, including Iwamori (a.k.a. Francisco de) Sakasegawa, for whom Collins had filed a petition for a writ of *habeas corpus*. *See, Sakasegawa, supra* note 115.

Three years passed before Public Law 863, passed on March 4, 1949, allowed Japanese Peruvians to apply to have their deportation suspended if it was found that "deportation would result in serious economic damages to citizen-spouse or children and if the alien had resided continuously in the United States for seven or more years."[117] In 1952, Japanese nationals finally won the right to become U.S. citizens under an amendment of the Immigration and Naturalization Act.[118] Another two years would pass before Public Law 751, passed on August 31, 1954, gave Latin American internees the right to apply for the status of a permanent resident legally admitted into the U.S. This also qualified them for citizenship.[119] Collins' cases were dismissed so that the internees could apply for residency.[120] After over a decade of persecution and confinement, the 300-some Japanese Peruvians who had eluded deportation to Japan finally found a home in the U.S.

Despite these victories, those who settled in the U.S. after the war continued to receive disparate treatment because of their non-citizenship status during the war. The Civil Liberties Act of 1988[121] was a great triumph for Japanese American internees. It entitled each surviving internee to an official letter of apology and a compensation award of $20,000. The Act excluded Japanese Peruvians and other Japanese Latin Americans, declaring that only those people who were U.S. citizens or permanent residents during the War were entitled to apologies and reparation monies. In response, the surviving Japanese Peruvians filed a class action suit for redress in the Court of Federal Claims. Under the settlement reached in *Mochizuki v. U.S.*, the court ordered the U.S. government to make reparations to the Japanese Peruvians in the form of an apology and payment of $5,000 each.[122] The Japanese Peruvian former internees and their descendants continue to fight today, working for the

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117. BARNHART, *supra* note 26, at 176. This provision amended section 19 of the Immigration Act of Feb. 5, 1917, to read: "In the case of any alien. ..who is deportable under any law of the United States and who has proved good moral character for the preceding five years, the Attorney General may . . . (2) suspend deportation of such alien if he is not ineligible for naturalization or *if ineligible, such ineligibility is solely by reason of his race*, if he finds . . . (b) that such alien has resided continuously in the United States for seven years or more and is residing in the United States upon the effective date of this Act." *See* 8 U.S.C. §155(c); *See also,* 62 Stat. 1206 (emphasis added).

118. *See* Pub. L. No. 414, 66 Stat. 163 (1952); BARNHART, *supra* note 26, at 176. Japanese immigrants were banned from applying for naturalization by the 1924 Natural Origins Act. *See infra* notes 145-147 and accompanying text.

119. *See* Pub. L. No. 749, 68 Stat. 1044 (1954), amending the Refugee Relief Act of 1953; 67 Stat. 403; GARDINER I, *supra* note 4, at 170-71.

120. Chika Yamasaki, one of the internees for whom Collins filed a test case, had his case dismissed in order to apply for suspension of deportation under this provision. *See, In re Yamasaki.*

121. Pub. L. No. 100-383, 102 Stat. 903 §101 (1988).

122. Mochizuki v. U.S., 43 Fed. Cl. 97 (Fed. Cl. 1999) (approving proposed settlement); 41 Fed. Cl. 54 (Fed. Cl. 1998) (reporting proposed settlement). Compared with the $20,000 received by Japanese American ex-internees, this was a paltry sum that led many to consider the *Mochizuki* settlement a bitter triumph. Worse yet, the Department of Justice fund which was to provide the reparations monies for all eligible ex-internees dried up after only 145 Japanese Latin Americans were paid. It was not until the summer of 1999 that the 44 remaining eligible Japanese Latin American internees received compensation. "Campaign for Justice," at <http://rice-rockets.com/ja-redress/campaignforjustice.html> (2000).

passage of bills that would grant them inclusion under the Civil Rights Act of 1988 and thus compensation in the same amount as the redress monies received by Japanese Americans.[123]

II. THE JAPANESE PERUVIANS AND AMERICAN LAW

The participation of the U.S. in the internment of Japanese Peruvians violated principles of international law.[124] U.S. officials collaborated with Peruvian officials to deport civilians from a nonbelligerent to a belligerent country, detaining those civilians indefinitely, and then forcing "repatriation" of those civilians to their nation of ethnic origin. While international legal principles and the customary law of war of the time protected human rights, the codification of many of these protections did not occur until 1949.[125] International law, though established before the onset of World War II, had little effect on U.S. decision-making.

While lack of codification and spotty enforcement allowed the U.S. government to sidestep applicable international law, U.S. law was a greater obstacle. Because the development of civil and individual liberties has been a central part of U.S. history, there were decades of precedents, theories, and protections relevant to the U.S. involvement in the Japanese Peruvian internment. U.S. officials made efforts to find laws to validate the Japanese Peruvian internment. Their efforts to justify their actions provide a lens through which to examine the treatment of "aliens," "enemies," and Asians in U.S. legal history.

The Japanese Peruvian internment program was also at odds with America's goals in participating in World War II. World War II was perceived as the ultimate struggle between freedom, embodied by liberal Enlightenment notions of human liberty, and oppression, Hitler's Fascism.[126] The U.S. fought in part, rhetorically, to ensure that basic freedoms would extend to all.[127] After the war, Americans took the lead in establishing international conventions and organizations which would protect those inherent and natural individual rights so crucial to America's understanding of its own history and legacy. How then was the government able to justify its racially discriminatory program of internment and the stripping of individual rights of thousands of ethnic Japanese throughout the Western Hemisphere?

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123. *See, e.g.*, H.R. 619, 107th Cong., 1st Sess. (2001); S. 1237, 107th Cong., 1st Sess. (2001).

124. *See* SAITO, *supra* note 39, at 304-305.

125. World leaders, realizing that those principles had done nothing to prevent World War II's horrific crimes, passed the 1949 Geneva Convention to establish binding international protections for human rights, including the prohibition of the deportation of civilians. *Id.*

126. ERIC FONER, THE STORY OF AMERICAN FREEDOM 221 (1998).

127. *Id.* at 237.

A. U.S. Legal and Constitutional Theories

1. Sovereignty and the Individual Rights of Non-Citizens

The notion of sovereignty provides the most basic justification for the treatment of Japanese Peruvians and all alien enemies during the war. Sovereignty powers are at the core of any country's existence and are essential for a nation to maintain its independent status.[128] In *U.S. v. Curtiss-Wright Export Corp.*, the Court concluded that sovereign powers essential for participation in the global community are "vested in the federal government as necessary concomitants of nationality."[129] Accordingly, sovereign powers are by origin natural and aconstitutional, and are not bounded by the restrictions of the Constitution and its Amendments, including the protections of individual rights.[130]

In the arena of alien rights, America's social contract tradition supports the sovereignty argument's denial of constitutional protections. During the nation's founding, many believed that the conscious decision to be American was of core importance: "Voluntary adherence rather than a passive, imputed allegiance was the connective tissue that would bind together the new polity."[131] This means that only those who participate in the mutual consent pact that forms the nation should benefit from the protections offered by that pact. This "membership" notion of the Constitution lends ideological credence to the exclusion of aliens from the protections of the Bill of Rights.[132] Those who support this idea cite the very first line of the Constitution: "'We, the people of the United States,' were the only people concerned in making that instrument. [I find] nothing in it which [binds] us to fraternize with the whole world."[133]

Sovereignty and social contract authority are checked by notions of limited government and inherent individual rights. Under the limited government argument, the American government derives all of its powers from the Constitution and thus is always bound by its limiting provisions. In *Curtiss-Wright*, the Court defined sovereign powers as inherent but insisted that the government's action in foreign affairs, "like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution."[134] Since individual rights inherently and naturally belong to all humans, not just American citizens, the Bill of Rights protects all individuals and applies to treaties and international agreements as well as other U.S. foreign affairs policies.[135] All persons

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128. *See* EDWARD S. CORWIN, THE CONSTITUTION AND WORLD ORGANIZATION 5 (1944).

129. 299 U.S. 304, 318 (1936).

130. Corwin, *supra* note 128, at 1, 19.

131. PETER H. SCHUCK & ROGERS M. SMITH, CITIZENSHIP WITHOUT CONSENT: ILLEGAL ALIENS IN THE AMERICAN POLITY 1 (1985).

132. *See* GERALD L. NEUMAN, STRANGERS TO THE CONSTITUTION: IMMIGRANTS, BORDERS, AND FUNDAMENTAL LAW 54 (1996).

133. *Id.* at 54.

134. LOUIS HENKIN, FOREIGN AFFAIRS AND THE CONSTITUTION 253 (1972) (quoting *Curtiss-Wright*, 299 U.S. at 320).

135. *Id.* at 254.

also have rights to equal protection, and discrimination based on nationality is allowable only if dictated by legitimate government policy; discrimination by race is illegal.[136]

The friction between those theories which give broad authority to the government and those that restrict that authority is featured in the debate over alien rights and wartime policy. The Constitution not only defines the government's powers but acts as a body of law. Its integrity is ensured by applying it consistently to all who fall under its jurisdiction. In 1800, James Madison wrote, "Aliens are not more parties to the laws, than they are parties to the Constitution; yet, it will not be disputed, that as they owe, on one hand, a temporary obedience, they are entitled, in return to their protection and advantage."[137] The arbitrary denial of rights to any group of people, who naturally have the same inherent rights as Americans, degrades the integrity of the principles embodied in the Constitution. By doing so, such a denial threatens the rights of American citizens themselves.[138] Protesters of the Alien and Sedition Acts grieved, "the barrier of the Constitution thus [has been] swept away from us all. . .the friendless alien has indeed been selected as the safest subject of a first experiment: but the citizen soon will follow."[139] This 200-year old prophecy was borne out with the imprisonment of innocent Japanese American citizens. If authority over non-citizen residents could be stretched to cover Japanese American citizens, it was even easier for the government to extend its power over the Japanese Peruvians, either as alien enemies or as illegal immigrants.

2. *Judicial Deference to International Policy: Asian Immigration and Deportation*

Despite the theoretical problems and potential hazards of permitting virtually limitless government power, courts have rarely restricted the government's sovereign powers, especially in the realm of foreign affairs. The Supreme Court has found the government's sovereign authority in foreign affairs to be totally different from its internal powers, which are imminently more limitable.[140] Restricting the government's powers in the international sphere has the unacceptable consequence of weakening the nation in relation to other countries and "to that extent [making it] subject to the control of another power."[141]

Sovereign authority over aliens is so broad that the Supreme Court has generally denied itself judicial review in such cases. In the *Chinese*

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136. *Id.* at 258. *See also* Yick Wo. v. Hopkins, 118 U.S. 356, 372 (1886). "No reason for [this discrimination] exists except hostility to the race and nationality to which the petitioners belong, and which in the eye of the law is not justified. The discrimination is, therefore, illegal, and the public administration which enforces it is a denial of the equal protection of the laws and a violation of the Fourteenth Amendment of the Constitution."

137. NEUMAN, *supra* note 132, at 58.

138. *Id.* at 60.

139. JIM ROSENFELD, *Deportation Proceedings and Due Process of Law*, 26 COLUM. HUMAN RIGHTS L. REV. 713, 748 (1995) (quoting the Kentucky Resolution of 1798).

140. *See Curtiss-Wright*, *supra* note 128.

141. Chae Chan Ping v. United States, 130 U.S. 581, 604 (1889).

Exclusion Case,[142] the Court established government plenary powers in immigration cases and held that the judiciary had no power to contravene the sovereign right of Congress to exclude aliens from the U.S.[143] In *Ekiu v. U.S.*,[144] the Court declared that the government, under its powers as a sovereign nation, had the right to appoint officers to decide immigration cases. Once an appointed official passed judgment on the facts of a case, "no other tribunal. . .is at liberty to reexamine or controvert the sufficiency of evidence on which he acted."[145] Drawing on *Chinese Exclusion* and *Ekiu*, *Fong Yue Ting v. U.S.* extended these plenary powers to deportation cases by declaring that banishment from the United States was a preventative and non-punitive measure.[146] These precedents affirming Congress' plenary power over aliens are "legion,"[147] one of the Supreme Court's strongest jurisprudential traditions.[148]

The use of sovereign powers in immigration matters expanded in response to the influx of Asian immigrants in the late nineteenth and early twentieth centuries. In 1882, anti-Chinese sentiment led to the first large-scale federal immigration restrictions based on nationality or race.[149] The government put an indefinite halt to Chinese immigration in 1902.[150] In 1922, the Court ruled that the Naturalization Act of 1790 precluded Japanese immigrants from becoming naturalized citizens.[151] The Court denied that this discrimination was malicious and invalid, reasoning that the legislators who wrote the original Act did not intend to exclude Asians but simply could not "foresee precisely who would be excluded by that term in the subsequent administration of the statute."[152] The 1924 National

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142. *Chae Chan Ping*, 130 U.S. 581.

143. *Id.* at 602-603. "This court is not a censor of the morals of other departments of the government; it is not invested with any authority to pass judgment upon the motives of their conduct. When once it is established that Congress possesses the power to pass an act, our province ends with its construction, and its application to cases as they are presented for determination."

144. 142 U.S. 651 (1892).

145. *Id.* at 660-62. In this case, a Japanese woman was to be deported on grounds that she was a pauper and would be a burden to the state.

146. *See* STEPHEN H. LEGOMSKY, IMMIGRATION AND THE JUDICIARY: LAW AND POLITICS IN BRITAIN AND AMERICA 218 (1987), citing 149 U.S. 698 (1893).

147. Kleindienst v. Mandel, 408 U.S. 753, 766 (1972) (involving a Belgian journalist denied a visa by the INS because he did not follow his speaking itinerary during a previous visit).

148. "'[O]ver no conceivable subject is the legislative power of Congress more complete than it is over' the admission of aliens." *Id.*, quoting Oceanic Steam Navigation Co. v. Stranahan, 214 U.S. 320, 339 (1909) (regarding fines assessed to a navigation company for failing to perform the requisite medical examinations on alien passengers). *See also* Ekiu v. U.S., 142 U.S. 651, 659 (1892) (refusing to review the decision of an immigration inspector to deny a Japanese alien entrance into the U.S.); Galvan v. Press, 347 U.S. 522, 530-32 (1954) (refusing to overturn decision to deport member of Communist party). For other decisions dealing with the exclusion of aliens, *see infra* note 167.

149. In a separate category altogether, but worthy of note, was the restriction of movement and transportation of Africans in America from pre-Revolutionary times. *See generally* DAVID JACOBSON, RIGHTS ACROSS BORDERS: IMMIGRATION AND THE DECLINE OF CITIZENSHIP 47 (1996).

150. MILTON R. KONVITZ, THE ALIEN AND THE ASIATIC IN AMERICAN LAW 7, 9 (1946).

151. Ozawa v. U.S., 260 U.S. 178 (1922). The 1790 Act, which set up a uniform law of naturalization for all "free white aliens" was amended in 1870 to grant naturalization rights to African-Americans. 1 Stat. 103 (1790); 16 Stat. 256 (1870); KONVITZ, *supra* note 150, at 80.

152. *Id.* at 196. Justice Sutherland's opinion is careful to close with a paragraph assuring the Japanese that this case did not indicate any prejudice against them: "The briefs filed on behalf of appellant refer in complimentary terms to the culture and enlightenment of the Japanese people, and

Origins Act, also known as the Japanese Exclusion Act, surreptitiously but pointedly shut off Japanese immigration by banning the entry of "aliens ineligible for citizenship."[153]

Originally, the power to exclude certain groups of immigrants came from a constitutionally enumerated power, the commerce clause.[154] In the *Chinese Exclusion Case*, the Supreme Court made sovereignty a dominating feature of alien rights law by justifying the power to exclude Chinese immigrants as an element of the sovereign right of war.[155] The Court pointed to the fierce labor competition that Chinese immigration had engendered in California and accused the Chinese American community of refusing to assimilate, causing economic hardship, and bringing their inferior morality to America.[156] The Court cited to a California convention's plea to Congress that the large numbers of Chinese immigrants amounted to an "Oriental invasion,...a menace to our civilization. [They] in fact constitut[e] a Chinese Settlement within the state."[157] The Court asserted that legislative action against the Chinese immigrants was really a move of sovereign self-defense:

> To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation... It matters not in what form such aggression and encroachment come, whether from the foreign nation acting in its national character or from vast hordes of its people crowding in upon us.[158]

Four years later, in *Fong Yue Ting v. U.S.*,[159] the Court expanded the use of sovereignty to support the deportation of aliens. Writing for the majority, Justice Gray asserted that the right to expel aliens was part of the "inherent and inalienable right of [a] sovereign and independent nation."[160] This decision has been described as recognizing authority over immigrants to be a "congressional power without constitutional limits."[161] The *Fong Yue Ting* opinion was doubly effective because of Justice Gray's reliance on a membership notion of rights to support the use of sovereign powers over aliens. Justice Gray quoted Ortolan: "[T]he foreigner, not making part of the nation, his individual reception into the territory is [a] matter of pure permission, of simple tolerance, and creates no obligation."[162] Even in

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with this estimate we have no reason to disagree... Of course there is not implied—either in the legislation or in our interpretation of it—any suggestion of individual unworthiness or racial inferiority. These considerations are in no manner involved." The brief filed for the appellant asserted, "The Japanese are 'free.' They, or at least the dominant strains, are 'white persons,' speaking an Aryan tongue and having Caucasian root stocks; a superior class, fit for citizenship. The Japanese are assimilable."

153. LAFEBER, *supra* note 9, at 144-45.

154. *See* U.S. Const. art. I, § 8, cl. 3; KONVITZ, *supra* note 150, at 3; Edye v. Robertson, 112 U.S. 580 (1884).

155. *Chae Chan Ping*, 130 U.S. 581, 609 (1889).

156. *Id.* at 595.

157. *Id.* at 595-96.

158. *Id.* at 606.

159. 149 U.S. 698 (1893).

160. *Id.* at 711.

161. LOUIS HENKIN, *The Constitution and United States Sovereignty: A Century of Chinese Exclusion and its Progeny*, 100 HARV. L. REV. 853, 858 (1987).

162. *Fong Yue Ting*, 149 U.S. at 708, quoting Ortolan, *Diplomatie de la Mer*, lib. 2, c. 14, 4th ed.,

cases where the rights of Asian immigrants seemed to be upheld, the rhetoric of these decisions betrayed the courts' disinterest in the just treatment of Asian aliens. The extension of due process rights to Kaoru Yamataya, a deportable Japanese woman, in *The Japanese Immigrant Case* is often cited as a victory for alien rights.[163] The Court declared that aliens had the right to hearings before deportation and protection under the Fifth Amendment.[164] However, the Court wrote that it was not necessary for the defendant to understand what was happening at the hearing.[165] The Court stated that it was the defendant's "misfortune" that she did not understand English, and that the hearing was valid and binding even if it was merely a "pretended" hearing.[166]

Notably, there are no major immigration cases involving the exclusion of any other racial group, although sovereign powers were cited to extend restrictive and exclusive policies to idiots, lunatics, polygamists, anarchists, contract laborers, prostitutes and others whose moral or ideological failings made them unfit for U.S. citizenship.[167] The ethnic background of Asian aliens rendered them undesirable additions to American society. Significantly, some of the most aggressive assertions of sovereignty on U.S. soil, during peace and war, have supported repressive actions against people of Asian descent. This legacy of racism provided the foundation for America's treatment of the Japanese Peruvian internees.

B. In the Case of Japanese Peruvians

1. Alien Enemies and U.S. Law

The war power is perhaps the most crucial of sovereign powers. During wartime, courts have paid special deference to the President in his role as military commander, tying it to his general authority in the realm of foreign affairs.[168] The primary duty of a sovereign nation is to preserve itself, and thus it has a natural and undeniable right to anything necessary for its self-protection. The sovereign power of war is "the power to wage war successfully," and the Court has given wide latitude to the President to

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297. Gerald Neuman notes that Field's argument in the *Chinese Exclusion Case* was based on a more narrow version of this "guest theory," that "an admitted alien is a guest of the nation" and the admission is a "retractable privilege." *See* NEUMAN, *supra* note 132, at 121.

163. *See* KONVITZ, *supra* note 150, at 59-60; ROSENFELD, *supra* note 139, at 731; TAMARA J. CONRAD, *The Constitutional Rights of Excludable Aliens: History Provides a Refuge*, 61 WASH. L. REV. 1459 (1986).

164. Yamataya v. Fisher, 189 U.S. 86, 100 (1903).

165. *Id.* at 101-02.

166. *Id.*

167. *See* WILLIAM C. VAN VLECK, THE ADMINISTRATIVE CONTROL OF ALIENS: A STUDY IN ADMINISTRATIVE LAW AND PROCEDURE 5-12 (1932); U.S. ex rel. Turner v. Williams, 194 U.S. 279 (1904) (excluding an alien anarchist); Zakonaite v. Wolf, 226 U.S. 272 (1912) (excluding an alien prostitute); U.S. ex rel. Knauff v. Shaughnessy, 338 U.S. 537 (1950) (excluding an alien enemy war bride); Shaughnessy v. U.S. ex rel. Mezei, 345 U.S. 206 (1953) (excluding an alien for undisclosed security reasons).

168. John C. Yoo, *The Continuation of Politics by Other Means: The Original Understanding of War Powers*, 84 CAL. L. REV. 167, 183-85 (1996).

exercise his military powers.[169] Internment must be understood in light of the special powers given to the President and military during wartime.

The piece of legislation at the heart of the Japanese Peruvian internment in the U.S., and all such internment programs, was the Alien Enemy Act of 1798.[170] This statute granted the President wide-ranging and virtually unlimited authority:

> [W]henever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States, . . . all natives, citizens, denizens, or subjects of the hostile nation or government, . . . who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured and removed, as alien enemies.[171]

At the time of its passage, the Alien Enemy Act was described as a "permanent wartime statute" with "bipartisan support" that "raised no controversial constitutional questions."[172] Its authority came from multiple sources: unspecified sovereignty powers, enumerated war powers,[173] and common law.[174] It has remained basically the same since its writing, with only one minor amendment in two centuries of existence.[175]

Many agree with the necessity and legitimacy of government authority over alien enemies. However, the dangers of granting this nearly unlimited power to the government was recognized even by its supporters. Even as he advocated for the Act, John Quincy Adams cautioned: "This power is tremendous; it is strictly constitutional; . . . but it breaks down every barrier so anxiously erected for the protection of liberty, property and of life."[176]

President Roosevelt's use of the Alien Enemy Act in World War II was not unprecedented. The Act had been the basis of internment of suspected saboteurs and spies during the First World War.[177] During that war, President Woodrow Wilson issued Presidential Proclamations to establish protected zones from which to exclude German and Austro-Hungarian citizens.[178] President Roosevelt's December 1941 Proclamations drew heavily from Wilson's Proclamations; Roosevelt sometimes quoted Wilson word-for-word. Roosevelt's Executive Order

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169. Hirabayashi v. U.S., 320 U.S. 81, 93 (1943).

170. Act of July 6, 1798, ch. 66, §1, 1 Stat. 577.

171. 50 U.S.C. §21 (1991).

172. JAMES MORTON SMITH, FREEDOM'S FETTERS: THE ALIEN AND SEDITION LAWS AND AMERICAN CIVIL LIBERTIES 35, 49 (1956).

173. U.S. Const. art. I, § 8, cl. 11.

174. "At common law 'alien enemies have no rights, no privileges, unless by the king's special favor, during the time of war.'" (*Clark*, 155 F.2d at 294, quoting 1 William Blackstone, Commentaries 372-3).

175. The Act originally only applied to men. It was amended by Congress on April 16, 1918, to include women. Presidential Proclamation of April 19, 1918, 40 Stat. 1772.

176. *Byrnes*, 64 F. Supp. at 234.

177. *See* Letter from Francis Biddle, U.S. Attorney General, to Cordell Hull, U.S. Secretary of State (Dec. 11, 1941) (on file with the author).

178. *See* 40 Stat. 1650 (1917) (restricting alien nationals of Germany); 40 Stat. 1729-30 (1917) (restricting alien nationals of Austria-Hungary); 40 Stat. 1772 (1918) (extending restrictions to female alien nationals of Germany and Austria-Hungary).

9066[179] was based on Wilson's April 5, 1917, Proclamation, which declared that:

> An alien enemy shall not reside in or continue to reside in, to remain in, or enter any locality which the President may from time to time designate by Executive Order as a prohibited area in which residence by an alien enemy shall be found by him to constitute a danger to the public peace and safety. . . .[180]

Presidential authority over alien enemy nationals was upheld by Wilson-era courts. In cases arising from World War I internment, courts held that alien enemies were not entitled to writs of *habeas corpus*,[181] nor to bring action against the government on grounds of due process.[182] In *Ex parte Graber*, the court held that the President was the "exclusive judge" of whether a citizen could be detained as an enemy alien, and that courts would not review the executive's decision by entertaining *habeas corpus* petitions.[183] Similarly, in *Minotto v. Bradley*,[184] the Court rejected procedural rights for aliens because "determination by the President whether the facts justify the internment of the petitioner, provided he is an alien enemy, is not to be investigated by the courts."[185] The only question for the courts was whether or not the defendant was actually an alien enemy; once that was established, there was "no question here of violating the provisions of our Constitution."[186] *Ex parte Gilroy* confirmed the legitimacy of the Alien Enemy Act, and agreed that alien enemies were not entitled to hearings. To grant them hearings would "defea[t] the protective and safeguarding objects of the enactment at the threshold."[187] Thus, decades before World War II broke out, summary seizure and detention of alien enemies without hearings were determined to be legitimately "preventive, protective, and precautionary in character."[188]

Cases arising out of World War II also supported the constitutionality of the Alien Enemy Act.[189] The court in *Citizens Protective League v. Clark* asserted that no court had ever held the Act to be unconstitutional.[190] The court referred to the authority granted to the executive by the Act not only as a power, but a "right" and a part of his "solemn responsibility" to forestall threats to America's war efforts.[191] The Supreme Court echoed the holdings of the World War I-era judges by emphasizing that the powers

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179. 7 Fed. Reg. 1407 (Feb. 19, 1942).
180. *See* 40 Stat. 1650-52 (1917).
181. Ex parte Graber, 247 F. 882 (Ala. 1918).
182. Minotto v. Bradley, 252 F. 600 (Ill. 1918).
183. *Graber*, 247 F. at 886.
184. 252 F. at 603.
185. *Id.* at 603.
186. *Id.* at 604.
187. Ex parte Gilroy, 257 F. 110, 112 (S.D.N.Y. 1919).
188. J. EDGAR HOOVER, *Alien Enemy Control*, 29 IOWA L. REV. 396 (1944).
189. *See* Ex parte Arakawa, 79 F. Supp. 468 (E.D. Pa. 1947); *Byrnes*, 64 F. Supp. 233 (U.S. Dist. D.C. 1946); *Clark*, 155 F.2d 290 (U.S. App. D.C. 1946); U.S. ex rel. Kessler et al. v. Watkins, 163 F.2d 140 (2d Cir. 1947); Ludecke v. Watkins, 335 U.S. 160 (1948); U.S. ex rel. Schlueter v. Watkins, 67 F. Supp. 556 (S.D.N.Y. 1946); *Von Heymann*, 159 F.2d 650 (2d Cir. 1947).
190. 155 F.2d at 294.
191. *Id.*

granted under the Act were not to be reviewed by courts.[192]

2. The Alien Enemy Act and World War II

As legitimate as the Alien Enemy Act may be in expressing the President's war powers, the U.S. government's application of it in the case of the Japanese Peruvians was suspect. "Alien enemies" were arrested under actual suspicion of subversion and placed under the jurisdiction of the Department of Justice.[193] The Department of Justice internment camps held "dangerous" Japanese Americans, as well as German and Italian enemy aliens.[194] Because the Japanese Peruvians and all other Latin American internees had supposedly been detained selectively in their home countries, they were labeled "alien enemies" under U.S. law, and the courts confirmed this classification.[195] In contrast, the Japanese Americans, both citizen and non-citizen, who were not specifically charged with sedition, were labeled "evacuees" and "relocated" by the War Relocation Authority.[196] The detention of the Japanese Peruvians was not selective, nor based on evidence of actual subversion. More, the Japanese Peruvians were not "alien" to the U.S., since they were not on U.S. soil at the time of their detention. Nor were many of the Japanese Peruvians "enemies;" while some of the internees were Japanese citizens, some were Peruvian citizens.

The Alien Enemy Act targeted those "who shall be within the United States" at the time of a declared war.[197] U.S. officials had no authority under the Act to help apprehend alien nationals who were not on U.S. soil. In the *habeas* cases filed by the Latin American internees, the government and courts simply disregarded the U.S.'s involvement in the internees' capture and deportation. In *U.S. ex rel. Von Heymann v. Watkins*,[198] the U.S. Circuit Court of Appeals for the Second Circuit declared that it had to be assumed that Costa Rican officials acted properly in apprehending the internees.[199] The District Court of the District of Columbia stated, "The facts as to how the [petitioners] came here are neither important nor controlling—the important and conclusive factor is their presence in and their status as 'within the United States.'"[200] Under these cases, the various Latin American governments were responsible for apprehending the internees, and actions by foreign governments on their own territories were

192. *Ludecke*, 335 U.S. at 163-65. "[E]very judge before whom the question has since come has held that the statute barred judicial review."

193. KITAYAMA, *supra* note 2, *"internment camps,"* at 175-76.

194. *Id.*

195. *Von Heymann*, 159 F.2d at 653.

196. As part of its campaign of euphemism surrounding the Japanese American internment, the government referred to the internment as an "evacuation" or "relocation" and the Japanese Americans as "evacuees." *See* KITAYAMA, *supra* note 2, *"relocation centers,"* at 292. *"War Relocation Authority,"* at 347-48.

197. Act of July 6, 1798, ch. 66, §1, 1 Stat. 577.

198. 159 F.2d 650 (2d Cir. 1947).

199. *Id.* at 652.

200. *Byrnes*, 64 F. Supp at 234.

not reviewable in U.S. courts.[201]

Even if courts had recognized that the U.S. government had assisted with the capture of the Latin American internees, the question remains whether government officials acted within the constraints of the Constitution. It has never been conclusively shown that the constitutional protections of individual liberties apply to U.S. action abroad. In fact, the prevailing view originated from an 1891 case, *In re Ross*,[202] in which the Court stated, "[t]he constitution can have no operation in another country."[203] In the early 1900s, the American acquisition of territory through victory in the Spanish-American War and other means raised the legal question of whether the Constitution's protections apply in U.S. colonies as in U.S. proper. In the *Insular Cases*,[204] the Court refused to extend fundamental constitutional protections to the territories, asserting that the Constitution does not "follow the flag."[205] Sovereign powers are so crucial to a nation's ability to function in foreign affairs that courts have been hesitant to restrict them, even to protect individual rights.

The government did acknowledge in an internal memoranda that the arrest and detention of the Japanese Peruvian internees were accomplished illegally in their home countries.[206] Ennis relied on cases that had come before the United States Supreme Court to assert that jurisdiction over a defendant is not affected by the "illegality of the arrest."[207] Among the cases to which he referred was *Ker v. Illinois*.[208] Ker was wanted for larceny in Illinois, but escaped to Lima, Peru. The messenger carrying the Secretary of State's request for extradition found Ker, apprehended him, and brought him back to the U.S. Ker was subsequently brought to trial. The Court ruled that though Ker had been a victim of an "unlawful and unauthorized kidnapping" in Peru, "for mere irregularities in the manner in which he may be brought into the custody of the law, we do not think he is

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201. *See* 159 F.2d at 652.

202. 140 U.S. 453 (1891).

203. *Id.* at 464. Though the Court in *Ross* determined that the Bill of Rights protections need not be applied abroad, they strongly upheld the right of the U.S. government to try U.S. citizens abroad in U.S. consular tribunals. This is a clear example of the courts' racial bias against Japanese. The Justices' decision rested on the belief that Japan was uncivilized, and thus that their tribunals could not be trusted to give fair hearings and punishments. *See also* Reid v. Covert, 354 U.S. 1, 57-58 (1957). U.S. consular tribunals were needed as Japan "progresse[d] in civilization and in the assimilation of its system of judicial procedure to that of Christian countries . . . ."

204. The Insular Cases were a serious of decisions in which the Court discussed the application of Constitutional rights to non-state territories. These decisions included Balzac v. Porto Roco, 250 U.S. 298 (1922) (right to jury trial inapplicable in Puerto Rico); Ocampo v. United States, 234 U.S. 91 (1914) (grand jury provision in Fifth Amendment inapplicable in Philippines); Dorr v. United States, 195 U.S. 138 (1904) (right to jury trial inapplicable in Philippines); Hawaii v. Mankichi, 190 U.S. (1903) (right to indictment by grand jury and right to jury trial inapplicable in Hawaii).

205. *See* NEUMAN, *supra* note 132, at 5. In Balzac v. Porto Rico, the Court stated, "The citizen of the United States living in Porto Rico can not there enjoy a right of trial by jury under the Federal Constitution, any more than the Porto Rican. It is locality that is determinative of the application of the Constitution, in such matters as judicial procedure, and not the status of the people who live in it." 258 U.S. 298, 309 (1922).

206. Memorandum from Edward J. Ennis, Mar. 15, 1942, *supra* note 38.

207. *Id.*

208. 119 U.S. 436 (1886).

entitled to say that he should not be tried at all for the crime with which he is charged in a regular indictment."[209] Ennis also cited cases that involved the unlawful arrest of a fugitive in one state prior to extradition to another.[210]

Ennis' use of precedent was flawed. While the cases he cited did support the contention that the "forcible seizure" of a defendant, and/or "his conveyance by violence, force or fraud" are not controlling factors,[211] the defendant in *Ker* had committed a crime on U.S. soil and was to stand trial for that crime. Neither the U.S. nor the Peruvian governments found any evidence suggesting that the Japanese Peruvians threatened the security of the Western Hemisphere. Neither had the Japanese Peruvians committed any crimes in the U.S. In participating in the overseas capture and transport of innocent civilians, the U.S. government overstepped its authority over alien enemies.

Once the internees were in U.S. territory, however, it was relatively simple to assert authority over them. As soon as the alien nationals set foot on U.S. soil, they fell under the purview of the Alien Enemy Act and the Presidential Proclamations which enforced it. As Edward Ennis, chief of the Alien Enemy Control Unit, stated in a March 1942 memo, "[O]ur legal authority to intern alien enemies summarily is [no] less over those brought here involuntarily from another country than over residents. Their presence here supports our jurisdiction."[212] The courts affirmed this reasoning.[213] The courts also consistently ruled that action taken under the Alien Enemy Act was unreviewable.[214]

The government decided to provide hearings for suspected alien enemies who were in the U.S. during the outbreak of the hostilities.[215] By Presidential order, the Attorney General established hearing boards in January 1942. If a hearing board determined the internees to be dangerous, the Justice Department interned them in camps separate from those established for the relocated Japanese Americans by the War Relocation Authority. There was no requirement for fair and consistent legal procedure. Defendants were denied legal counsel and the right to object to the government's line of questioning or presentation of evidence.[216] Still, many internees found that the hearings were "held promptly, and release was very likely despite the government's great advantages in the hearing process."[217] The Department of Justice was careful to announce that the

209. *Id.* at 440-41.

210. *See* Mahon v. Justice, 127 U.S. 700 (1888); Pettibone v. Nichols, 203 U.S. 192 (1906).

211. *Mahon*, 127 U.S. at 715.

212. Memorandum from Edward J. Ennis, Mar. 15, 1942, *supra* note 38.

213. *Byrnes*, 64 F. Supp. at 234. The courts eventually acknowledged America's responsibility for the forced deportation of internees to the United States. However, this admission did not bar the government from deporting the internees through other means. See *infra* notes 104-09 and accompanying text.

214. *See Clark*, 155 F.2d at 294; *Ludecke*, 335 U.S. at 164-65.

215. *See* TIMOTHY J. HOLIAN, THE GERMAN-AMERICANS AND WORLD WAR II: AN ETHNIC EXPERIENCE 103-04 (Don Heinrich Tolzmann ed., 1996).

216. *See* CWRIC, *supra* note 6, at 55.

217. *Id.* at 285. As of December 31, 1943, the 100-some Enemy Alien Hearing Boards scattered

"hearing has been provided, not as a matter of right, but in order to permit them to present facts in their behalf."[218] Courts could not review the hearings.[219] The inadequate legal process allowed alien enemies, at that time, was a privilege, not a right. It was a privilege, however, that the American government ostensibly intended to provide to all alien enemies who were arrested under suspicion of subversive activity by the FBI and Department of Justice.[220] The Department of Justice had held hearings for German, Italian, and Japanese American aliens.

The arbitrary and hurried detention of the Japanese Peruvians precluded the later possibility of their receiving the process that other alien enemies were granted. In the Japanese Peruvian cases, the government found that preliminary reviews and hearings could not be held because of the "complete lack of information on [the Japanese Peruvians]."[221] In contrast, U.S. officials performed a preliminary review of two-thirds of the German Latin American cases and began hearings for all of the German internees in February 1946.[222]

3. *Internees as Illegal Immigrants*

Beginning in 1946, internees of German descent brought *habeas corpus* cases to avoid deportation under the immigration laws. The courts agreed that because the German Latin Americans had been arrested and brought to the U.S. against their will, they had never truly "entered" the country as immigrants. Therefore, they could not be deported as illegal immigrants until they were given the opportunity to depart voluntarily.[223] Despite these victories, the government retained the prerogative to deport Latin American internees who chose not to leave. Some remained in the United States because their Latin American home countries refused to readmit them and return to their country of ethnic origin was unthinkable.[224] In the court's eyes, internees who refused to voluntarily leave the U.S. were distinguishable from those who had not yet been given the opportunity. In *U.S. ex rel. Paetau v. Watkins*, the court ruled that an

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across the United States had conducted 9,389 hearings, interning 3,402, paroling 4,411, and releasing 1,576 suspected enemy aliens. *See* GREGORY SIDAK, *War, Liberty, and Enemy Aliens*, 67 N.Y.U. L. REV 1402, 1417 (Dec. 1992).

218. *Schlueter*, 67 F. Supp. at 565.

219. In *Ludecke*, Justice Frankfurter, on behalf of the Court, wrote, "A war power of the President not subject to judicial review is not transmuted into a judicially reviewable action because the President chooses to have that power exercised within narrower limits than Congress authorized . . . . The fact that hearings are utilized by the Executive to secure an informed basis for the exercise of summary power does not argue the right of courts to retry such hearings, nor bespeak denial of due process to withhold such power from the courts." 335 U.S. at 166, 171-72.

220. GARDINER I, *supra* note 4, at 133.

221. *Id.*

222. *See id.*

223. *See Bradley*, 163 F.2d at 330; U.S. ex rel. Ludwig v. Watkins, 164 F.2d 456, 457 (2d Cir. 1947); U.S. ex rel. Paetau v. Watkins, 164 F.2d 457, at 460.

224. In *Paetau*, the court submitted former internee's testimony at his original hearing in New Orleans: "I very fervently apply to give me the chance [to stay in the U.S.], as they don't accept me in Guatemala. Even if I should stay in a camp here I could work to let me stay in the United States and not send me to Germany, because it is a hell from which we have come." 164 F.2d at 460.

alien who entered the U.S. involuntarily would eventually become subject to deportation because his entry became "clearly voluntary by his continued unforced stay."[225] In *U.S. ex rel. Schirrmeister v. Watkins*, the court ordered a former internee to be deported: "[H]e is not entitled to depart when he pleases, or to remain here indefinitely, simply because he did not choose to come here in the first place."[226]

Ethnic Japanese internees faced an extra handicap. The government claimed further authority to deport them because those with Japanese citizenship were still ineligible to apply for U.S. citizenship.[227] This restriction prevented the Japanese Peruvians from appealing under a law that suspended the deportation of "Caucasians and such aliens. . .[in like hardship cases who are] racially admissible or eligible to naturalization."[228] Thus, the Japanese Peruvians were to suffer doubly from the U.S.'s legacy of racism: under particularly harsh wartime policies as alien enemies, and under the institutionalized discrimination against the Japanese immigrants and residents in U.S. law.

CONCLUSION

Although the U.S. government clearly wronged the Japanese Peruvians, the Japanese Peruvians could not rely on U.S. constitutional and legal protections, even when on U.S. soil. Because of their status as aliens, their classification as enemy aliens, and the obscurity of U.S. law regarding their peculiar situation, the Japanese Peruvians had no certain claims to the civil rights guaranteed U.S. citizens and residents and no clear recourse under the law.

Even if the Japanese Peruvians had been protected by our Constitution and laws, those legal protections would most likely have fallen to claims of military necessity, as they did in the case of the Japanese Americans. The arguments that trump individual rights protections find justification in legitimate law and reasonable powers; the sovereign authority to make war is a power we would never want our government to forfeit completely. However, while the ideas of sovereignty and social contract are legitimate and important aspects of our political tradition, they must be put in their proper places within that tradition. The "more perfect union" that the U.S. strives to be is not one in which personal rights are swept aside when pressing national matters arise.

The U.S. government should grant the Japanese Latin Americans reparations equal to that awarded the Japanese Americans. Though classed as enemy aliens and illegal immigrants, the Japanese Peruvians were forced to reside indefinitely in the U.S. They became Japanese Americans, albeit against their will, and should be compensated as such.[229] In granting a

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225. 164 F. 2d at 458.

226. *Shirrmeister*, 171 F. 2d at 860.

227. *See In re Sakasegawa*, Application and Petition for Writ of Habeas Corpus, June 24, 1946, 7; *In re Yamasaki*, Application and Petition for Writ of Habeas Corpus, June 24, 1946, 7.
Children born in the camps were considered American citizens.

228. *Sakasegawa*, Application and Petition for Writ of Habeas Corpus, June 24, 1946, 8-9.

229. This was a major argument in the *Mochizuki* case. *See* SAITO, *supra* note 39, at 277-78

lesser reparations award to the Japanese Latin Americans than that given to Japanese Americans, the U.S. government makes an expressive statement about the value of the former internees as individuals. By refusing to so acknowledge Japanese Peruvian sufferings, the U.S. government worsens its misdeeds by trivializing the Japanese Peruvian experience.

More, the government cheapens its own wartime efforts. The Allied powers assailed the Axis governments for crimes committed in China and against the Jewish population in Europe. The U.S. purported to fight World War II to defend the freedoms enjoyed in the U.S. and help freedom-loving nations prevail over oppressive regimes.[230] By falsely detaining the Japanese Peruvians and then refusing to fully concede its responsibility for their mistreatment, the government exposes its hypocrisy. Its refusal to pay equal reparations to the surviving Japanese Peruvian internees suggests that the goals and values for which World War II was fought only applies selectively to U.S. action, and that the lessons the U.S. hoped to teach to the world fell on deaf ears at home.

The Japanese Peruvian experience was not simply part of a wartime program, unconnected to the rest of U.S. history. The Japanese Peruvians, like the Japanese Americans, were victims of long-standing racism and intolerance in the U.S. It is inadequate to condemn this inglorious incident as simply the actualization of military-driven wartime hysteria and move on, hiding it and other unjust government actions behind the veil of our prouder traditions. By granting equal compensation to the Japanese Peruvian former internees for the wrongs it committed over half a century ago, the government will affirm its commitment to the ideals of inherent individual rights and individual dignity. It will acknowledge a responsibility to avoid race or nationality-based bias, whether in crafting domestic policy or acting in foreign affairs.

Today, U.S. leaders are struggling to deal with new kinds of global threats and are now, as in the past, characterizing this fight as a fight for freedom.[231] Redressing the World War II-era wrongs committed against Japanese Latin Americans would help to remind U.S. leaders to be heedful of the fundamental principles that America champions, and that give credence to America's leadership as a nation of liberty and justice for all.

(citing Plaintiffs' Memorandum in Opposition to Defendant's Motion to Dismiss at 9-12, Mochizuki v. U.S., 41 Fed. Cl. 54 (1998) (No. 97-924C)).

230. FONER, *supra* note 126, at 221-23.

231. President George W. Bush, *State of the Union Address* (Jan. 29, 2002), *available at* <http://www.nytimes.com/2002/01/30/politics/30BTEX.html>.