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The McCarran-Walter Act: A Contradictory Legacy on Race, Quotas, and Ideology

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The McCarran-Walter Act of 1952 ended the blanket exclusion of immigrants based on race and created the foundation for current immigration law, but imposed a racialized immigration quota system and new ideological grounds for exclusion.

June 27th marks the 52nd anniversary of the controversial 1952 Immigration and Nationality Act (INA), also known as the McCarran-Walter Act.¹ The historical legacy of the Act is overwhelmingly negative, but also somewhat contradictory. The Act is justly vilified for creating a rigid immigration quota system based on national origins and racial categories. Yet, the Act also repealed the blanket exclusion laws against the immigration and naturalization of Asians, although it established only token quotas for Asian immigration and was clearly biased towards Europeans. While the national origins quota system was dismantled in 1965, other provisions of the Act – such as the creation of family and employment-based preference categories – remain an integral part of U.S. immigration law to this day. The Act also redefined the ideological grounds for the exclusion and deportation of immigrants. Most of these provisions were formally repealed by Congress in 1990, but many were resurrected by the USA PATRIOT Act of 2001.

Immigration Policy at the Dawn of the Cold War

The McCarran-Walter Act was a product of the dramatically changed international environment after World War II. It reflected

not only the rise of anti-communist sentiment in the United States in the early Cold War era, but also the emergence of independent countries from colonialism after the defeat of Nazi Germany and Imperial Japan. Prior to the war, American immigration policy was designed specifically to exclude all Asians and peoples of color, restrict Southern and Eastern European immigration, and encourage the arrival of Western Europeans. The United States had been walled off to immigrants from Asia through a series of racist laws that included the Chinese Exclusion Act of 1882, the Asia Barred Zone Act of 1917 (which denied entry to peoples from South and Southeast Asia and the islands of the Indian and Pacific Oceans, with the exception of the American possessions of the Philippines and Guam), the 1924 Immigration Act (which totally excluded the Japanese and other Asians from immigration and naturalization), and the Tydings-McDuffie Act of 1934 (which reclassified all Filipinos as ‘aliens’ and permitted only a 50 person annual quota).

During World War II the U.S. government began to distinguish between “friendly” Asians and “enemy” Asians. Japanese-Americans were deemed potentially dangerous and forced into relocation camps in 1942. In contrast, the Chinese, who were

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major allies against the Japanese, were rewarded by the 1943 Magnuson Act, which repealed the Exclusion Act of 1882 and lifted the racial bar against non-whites established in the Naturalization Act of 1790 by permitting a small annual quota of 105 Chinese immigrants and by making Chinese already in the country eligible for citizenship. With the end of the war, Asian colonies, such as the U.S.-governed Philippines and British-controlled India, also were permitted small immigrant quotas through the enactment of special exclusion repeal measures. However, the U.S.-occupied Japanese were still banned from immigration, and the concept of the Asia Barred Zone was still extant in the law.

After the War ended, the consolidation of Eastern Europe under the influence of the Soviet Union, the success of the communists in mainland China in 1949, and the outbreak of the Korean War in 1950 stimulated a fierce anti-communist backlash in the United States. Senator Paul McCarran (D-Nevada), head of the Senate Judiciary Committee's Internal Security Subcommittee, initiated an investigation of the administrations of Presidents Franklin Roosevelt and Harry Truman to search for communist infiltration. He promoted the McCarran Internal Security Act of 1950, which required American Communist Party members to register with the Attorney General. Title II of this Act used the wartime incarceration of Japanese Americans as a precedent for rounding up alleged subversives under "loyalty clearance programs."² President Truman vetoed the bill and, in comments reminiscent of contemporary opinions about the registration of Arabs, Muslims, and South Asians, wrote that "The basic error of this bill is that it moves in the direction of suppressing opinion and belief...that would make a mockery of the Bill of Rights and of our

claims to stand for freedom in the world."³ Nevertheless, Congress overrode Truman's veto and the bill became law.

The McCarran-Walter Act

Two years after passage of the McCarran Internal Security Act, Senator McCarran and Congressman Francis Walter (D-PA), who would become chairman of the Committee on Un-American Activities in the late 1950s, teamed up to write the McCarran-Walter Immigration Act. Like McCarran's previous efforts, the legislation contained provisions aimed at "subversion". In this case, it permitted the exclusion or deportation of any alien who engaged or had purpose to engage in activities prejudicial to the public interest or subversive to national security. Although the exclusion or deportation of aliens on purely ideological grounds was not a new concept in immigration law, the modern adaptation of this practice in the 1952 Act would have a lasting effect. Despite a repeal of most ideological grounds for deportation by Congress in 1990, provisions of the McCarran-Walter Act have been used as recently as 2002 in the ongoing deportation cases against two Palestinian activists who as students distributed magazines and raised funds for a group the government later designated as a terrorist organization. Several courts have ruled that the deportations are unconstitutional because the men were not involved in terrorist activity.⁴ Moreover, the practice of ideological exclusion has been resurrected in provisions of the USA PATRIOT Act that target aliens for deportation and exclusion based not on their actions but on their words, including words that would be protected under the First Amendment of the U.S. Constitution if spoken by U.S. citizens.⁵

However, the McCarran-Walter Act was more than just another law directed against communists. It was also a conscious attempt to collect and codify the many existing statutes governing immigration and to reorganize the structure of immigration law. The Act retained the National Origin Quota System established by the 1924 Immigration Act, but expanded it to all countries and introduced the first system of visa preferences. This necessitated both the removal of previous bars to immigration from Asia and the imposition of numerical limits on immigration from Latin America and the Caribbean that had not existed before. However, the ethnic bias of the new system was clear: 70 percent of all immigrant slots were allotted to natives of the United Kingdom, Ireland and Germany, most of which went unused. The Act also created preferences within national quotas for immigrants with special skills and for the relatives of persons already in the United States (50 percent of a country's quota were reserved for those highly skilled workers whose services were in short supply among the native labor force, while another 20 percent were set aside for the spouses and unmarried adult children of permanent resident aliens), thus establishing the basis for today's employment-based and family-sponsored preference categories.⁶ In addition, the Act detailed grounds and procedures for exclusion, denaturalization, deportation, and relief from deportation.

On the basis of its discriminatory national quota provisions, the legislation was opposed by organizations such as the American Jewish Congress, American Jewish Committee, National Council of Jewish Women, Hebrew Immigrant Aid Society, and Association of Immigration and Nationality Lawyers (which became the American Immigration Lawyers Association). In Congress the fight against

the bill was led by several prominent Jewish members including Rep. Emanuel Celler and Rep. Jacob Javits, who argued that the law would put "a legislative seal of inferiority on all persons of other than Anglo-Saxon origin."⁷ President Truman vetoed the bill despite the recommendation of the Department of State,⁸ explaining that it would create a second-class status by dividing citizens by birth and citizens by naturalization. But Congress overrode the veto by a vote of 278-113 in the House and 57-26 in the Senate, and the bill became Public Law No. 82-414 – the Immigration and Nationality Act (INA).

In 1953 Truman convened a presidential commission to investigate the social and political implications of the INA's national origins quotas.⁹ This Presidential Commission on Immigration and Naturalization (PCIN) recommended relaxing the security provisions of the McCarran-Walter Act, a stance supported by the Communist Party of the U.S.A. McCarran later accused PCIN of containing communist sympathizers and stated that subverting the national origins system "would, in the course of a generation or so, tend to change the ethnic and cultural composition of this nation."¹⁰

A Mixed Bag for Asian Americans

The provisions of the McCarran-Walter Act that lifted the bars to immigration and naturalization for Asians and Pacific Americans were sponsored by the famous "China hand," Republican representative Dr. Walter H. Judd. These provisions eliminated the 1917 Asiatic Barred Zone and all exclusionary acts against Asian nationalities, but replaced them with a territorial concept called the "Asia-Pacific Triangle." Immigration of people indigenous to the Triangle was capped annually at just 2,000,

while each Asian country within the Triangle was permitted a mere 100 immigrants. Adding to the restrictiveness of these provisions, a person of Chinese descent who was a native resident and citizen of France would be counted toward the 2,000 person Triangle ceiling. This racial attribution rule applied exclusively to Asians.

The Asian American community was divided in its reaction to the McCarran-Walter Act, and remains so to this day. For instance, the Japanese American Citizen's League (JACL), the oldest Asian American civil rights organization (founded in 1929), lobbied for the inclusion of a provision under which the Japan-born *issei* (first generation) were permitted to immigrate, and U.S.-born Japanese-Americans could be naturalized. Although some Japanese-Americans objected to the provision because of the token quotas it established, the JACL still proudly claims that it led the efforts to pass the act which finally lifted the bar against Japanese immigrants and allowed Asian immigrants to become naturalized U.S. citizens. Other Asian-Americans, such as Professor Lisa Lowe, believe the Act "racialized" Asians because it was not

racially neutral.¹¹ Journalist Phil Tajitsu Nash writes: "Not until the comprehensive overhaul of our immigration laws in 1965 did this explicit racial discrimination against Asian immigration cease."¹²

Conclusion

The fight to overturn the national origins quota system in the 1952 INA began as soon as the law was passed. Soon after its enactment, the prominent Harvard historian of immigration, Oscar Handlin condemned the Act for its racist xenophobia and token quotas for Asians and West Indian Blacks.¹³ The Immigration Act of 1965 replaced quotas based on national origin with a uniform annual cap on immigration of 20,000 per country. Nevertheless, many other aspects of the McCarran-Walter Act live on, ranging from the centrality of family and employment-based preferences in U.S. immigration law to the exclusion and deportation of immigrants on the basis of beliefs. The Act was an important, historic piece of immigration legislation, although only an imperfect step toward ending discrimination based on race in U.S. immigration policy.

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Endnotes

¹ Congress passed the Act on June 11. It was vetoed by President Truman on June 25, and the veto overridden on June 27. It went into effect on December 24, 1952.

² Phil Tajitsu Nash, "Fifty Years Since McCarran-Walter," *AsianWeek*, June 7, 2001.

³ September 22, 1950 veto message of President Harry Truman, cited in Nash, *ibid*.

⁴ David Cole, "9/11 and the LA 8," *The Nation*, October 9, 2003.

⁵ David D. Cole, "Enemy Aliens," *Stanford Law Review*, Vol. 54, 2002, p. 953.

⁶ Ira J. Kurzban, *Immigration Law Sourcebook*, 8th edition, AILF, 2002, pg. 3.

⁷ Kevin MacDonald, "Jewish Involvement in Shaping American Immigration Policy, 1881-1965: A Historical Review," *Population and Environment*, 19 (4), March 1998, quoting Dr. Israel Goldstein, President of the American Jewish Congress from a report in *The New York Times*.

⁸ R.A. Divine, *American immigration policy, 1924-1952*, New Haven: Yale University Press, 1957.

⁹ Nash, *ibid.* Truman was also accused of being influenced by the Jewish lobby; see MacDonald, *ibid.* p. 25.

¹⁰ MacDonald, p. 23, quoting M.T. Bennett, *American immigration policies: A History*, Washington, DC: Public Affairs, Press, 1963, p. 185.

¹¹ Lisa Lowe, "Work, Immigration, Gender: Asia 'American' Women," *Making More Waves*, eds. Elaine H. Kim, Lilia Villanueva, and Asian Women United of California, Boston: Beacon Press, 1997.

¹² Nash, *ibid.*

¹³ *Commentary*, 14, July 1952, p. 1-7.