Representation vs. Legislative Accountability:
American Presidentialism and Wartime Democracy in the 1940s

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Abstract:
In this paper, I intend to explore how public opinion of political intolerance got represented and eventually formulated into a policy by examining the case of evacuation and incarceration of the Japanese descendants in the U.S. immediately following the Pearl Harbor attack. American presidentialism is grounded on the constitutional basis that may allow for the national mandate to represent and legislate through executive orders. In this specific time of peril in the 1940s, political intolerance was arguably accepted by public and implemented by elites without any detriment to democratic principles. It was also a case in which the discovery that public opinion did indeed affect public policy-making does not make such a course of action "laudable." After a survey of theoretical accounts, the remaining part of paper is divided into three sections: the decision of evacuation culminated in the Executive Order 9066, the subsequent decision of incarceration rooted in the Executive Order 9102, and a concluding remark. In the first two sections, I also delineate how public opinion got framed into a policy by President FDR in a descriptive model of representation as reflected in policy decision-making: reactive and preemptive representation of public opinion. In place of a conclusion, I dwell upon the dilemma in democracy and speculate its ramification. In so doing, I purport to lay out 1) how American democracy worked in wartime in accordance with its principle, but 2) why its aftermath is discomforting even to its advocates by examining the 1942 relocation of Japanese ethnics, and 3) further research on representation in times of crisis.

Key words: representation, American presidentialism, public opinion, political intolerance, FDR, Japanese descendents

I. Introductory Remark

Inter arma enim silent leges, or in times of war, the law falls silent, the maxim goes. Does this maxim reverberate across all perilous times, or is there a limit to its validity? What is the criterion to tell apart those that threaten national survival from hoaxes? Who gives such authority by what? After the Pearl Harbor attack on December 7th, 1941, the federal government chose to intern 112,000 ethnic Japanese—albeit two thirds of them being the U.S. citizens, primarily because their loyalty could not be verified in times of war. In *Hirabayashi v. United States*, 320 U.S. 81 (1943) and *Yasui v. United States*, 320 U.S. 115 (1943), the United States Supreme Court upheld the suspension of *habeas corpus* "when the safety of the people becomes the supreme law."[1] Yet in 1986 and 1987, U.S. District Court in Seattle and the Federal Appeals Court overturned Hirabayashi's convictions on violating a curfew and relocation order. Internment was indeed "fearful sign of the times, fair or not" but how was it possible at all (Ramsey 2005)? How was an exception to the "We the People" justifiable in the American wartime democracy, to begin with? Or, do we simply "need not show that a policy is good if there is no coherent account of how it could be bad (Caplan 2007, kindle edition 49)"?

In a letter addressed to Jefferson on Oct. 17th, 1788, Madison (1867) wrote:

> "In our Governments the real power lies in the majority of the community, and the invasion of private rights is chiefly to be apprehended, not from acts of Government contrary to the sense of its constituents, but from acts in which the Government is the mere instrument of the major number of the Constituents (425)."

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[1] In *Ex parte Milligan*, 71 U.S. 2 (1866), it was remarked that even the Bill of Rights were essentially "peace provisions of the Constitution."

If the majority of people or their representative institution can imperil the rights of some people in peace time, then the interest of majority indeed becomes an even greater source of plausible danger to minorities in the context of democratic majoritarianism. While Madison and others were concerned with pure majority rule by the directly elected legislature, I intend to pay a special heed to the fact that the Constitution empowers presidents to legislate through inherent executive powers, including executive orders— presidential directives that have the force of law.[2] President of the United States is the only representative elected by all the people. With his national constituency, he is always tempted into claiming to speak for the people and the country. Crises are opportune times to legitimatize and reinforce such a mandate claim, that is, if and only if he is assured that the people are behind him (Stone 2004). The 1942 internment of Japanese ethnics was argued to be simply one of series of acts out of wartime necessity, which were dictated by perils upon the American general welfare. Or was it an act outside the law on the part of the FDR administration that was blindsided by yet willing to thrive upon political intolerance? More importantly and ironically, is it always desirable that the laws are silent in time of war in the name of democracy?

In this paper, I intend to explore how public opinion of political intolerance got represented and eventually formulated into a policy by examining the case of evacuation and incarceration of the Japanese descendants in the U.S. immediately following the Pearl Harbor attack. In this case, political intolerance is arguably accepted by public and

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[2] For specifics on the American presidency and its executive power, refer to Okyeon Yi,"Befuddling Executive Power with Executive Unilateralism in the Unitary Executive, "*Journal of International Politics* 16- 1 (2011),

implemented by elites without any detriment to democratic principles. It is also a case in which the discovery that public opinion does affect public policy-making does not make such a course of action "laudable (Kinder and Herzog 1993, 360)." After a survey of theoretical accounts, the remaining part of paper is divided into three sections: the decision of evacuation culminated in the Executive Order 9066, the subsequent decision of incarceration rooted in the Executive Order 9102, and a concluding remark. In the first two sections, I also delineate how public opinion got framed into a policy by President FDR in a descriptive model of representation as reflected in policy decision-making: reactive and preemptive representation of public opinion. In place of a conclusion, I dwell upon the dilemma in democracy and speculate its ramification. In so doing, I purport to lay out 1) how American democracy worked in wartime in accordance with its principle, but 2) why its aftermath is discomforting even to its advocates by examining the 1942 relocation of Japanese ethnics, and 3) further research on representation in the context of democratic majoritarianism in times of crisis.

II. Theoretical explanation: Public Opinion, Political Intolerance, Representation and Policy

It is a perennial and essential concern whether and how government policy is responsive to citizens' preferences in representative democracies. Accordingly, there are vast volumes of previous works that are devoted to theorizing about the effects of public opinion on policy, in particular, and representation, in general, yet they are equally divided into

pp. 223-251.

conflicting findings.[3]   What is common among these mutually exclusive findings of all previous works, though, is that the extent to which policy respond to public opinion is conditional upon other factors such as the nature of policy, the type of political system, the degree of salience, a specific period in history, to name a few. For instance, Monroe (1979) concludes that policy is highly consistent with public opinion if it involves foreign policy and if the concerned issues are highly salient (3-19). Several researchers also criticize that a large number of previous works are limited to the micro-level analysis of individual legislators, as the macro-level responsiveness is not exactly corresponding to the changes in voting behavior by individual members of Congress (Weissberg 1978). Moreover, when it comes to political intolerance, including racial prejudice or ideological deviance, a broad consensus on the extent to which such political intolerance affects political attitudes remains elusive.[4]

Indeed "tolerance is more costly than intolerance" in terms of psychological price and social cost (McClosky and Brill 1983, 4). Various studies of psychological and group behavior suggest that endurance—recognition and protection—of deviant opinions or behaviors goes against human nature, especially if those opinions or behaviors are perceived as threatening to the existing values. Moreover, if freedom is perceived to be

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[3] Economists are equally divided into those who predict a high extent of responsiveness (ex. Downs) and those who are pessimistic due to a bias toward organized interests (ex. Olson 1965). A group of political scientists (ex. Schattschneider) concur with the second group of economists, noting high information costs and transactions costs, while others (ex. Key) are cautiously optimistic although the direction of causality is reversed.

[4] Regarding racial prejudice, refer to Leonie Huddy and Stanley Feldman, "On Assessing the Political Effects of Racial Prejudice," *Annual Review of Political Science* 12 (2009), pp. 423-47. For political dissidence, refer to James Gibson, "Intolerance and Political Repression in the United States: A Half-Century After McCarthyism," manuscript (2007).

distributive, expansion of one group's rights may reduce others' turf even though such an expansion is not always a zero-sum game. In contrast to intolerance which requires little learning, tolerance obliges one to be educated on the democratic principles and to be able to understand the "rules of the democratic game (McClosky and Brill 1983, 15)." Regarding the effect of education on abated intolerance, Stoffer (1955/1963), along with McClosky and Brill (1983), strongly supports such an educational impact.[5] Yet Prothro and Grigg (1960) also added earlier that it is more important to put democratic rules and procedures into practice than to mention merely about one's consensus on abstract ideas (276-294).

Interestingly, McClosky & Brill (1983) point out that not all expressions—verbal or behavioral—of intolerance result from one's ignorance or inconsistency between abstract idea and concrete conduct. A purposive action of intolerance is taken in wartime in the name of democracy (18). Is it possible, then, to differentiate tolerance as a desirable doctrine from one as a realistic democratic practice?[6] Some even argue that few democratic theorists adopt "full and universal" tolerance as a requirement of a practicable democracy.[7] Thus, controversy arises surrounding whether a decision to limit certain expression or conduct, or in anticipation of its possible occurrence, may be considered an act of

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[5] For more details, refer to Samuel Stouffer, *Communism, Conformity, and Civil Liberties* (Gloucester: Smith, 1955/1963). Gibson further elaborates what consequences high political intolerance has upon political freedom by comparing survey data from 1954 to 2005 in "Intolerance and Political Repression in the United States: A Half-Century After McCarthyism," manuscript (2007).

[6] As Caplan (2007) succinctly puts, should we acknowledge that "voter irrationality is the key to a realistic picture of democracy (kindle edition 62)"?

[7] The concept of republicanism is based on conflict resolution through a pluralistic structure in the Constitution rather than the abstract acceptance of tolerance as a norm. By definition, democracy and tolerance may be linked, but as a matter of implementation, two may conflict. Thus develops a notion that there may be circumstances for compromise in the principles of tolerance in order to preserve 'some more important value' such as survival of a democratic system. For more details, refer to James Gibson, "Political

intolerance even though such a decision has been made through democratic procedure, i.e. representation of public will. In addition, conventional proposition is that elites are more tolerant of deviant ideas or behaviors than mass public is.[8] Given that democracy is founded on government by public opinion, if the conventional wisdom is correct, intolerant mass public drives elites to repress people with deviant ideas or conduct with democratic blessing.[9] Is this an inevitable dilemma of democracy or a contingent outcome under extraordinary circumstances?

In order to ponder upon this question, I first elaborate on intolerance with regard to circumstantial restriction, and the role played by public opinion under such circumstances. Intolerance may result from either a perceived threat or a mere dislike. Intolerance in a form of dislike has no legitimate place in democracy. However, intolerance resulting from a perceived threat leaves open a possibility of justification. War in which the survival of democracy system is at stake is a typical example. When threat is perceived to come from an undemocratic belligerent, political intolerance for the sake of a higher value, namely protection of democracy, is often advocated by public and elites alike.[10] More

Intolerance," in Russell Dalton and Hans-Dieter Klingemann (eds.). *Oxford Handbook of Political Behavior* (New York: Oxford University), 2006.

[8] Thus follows a positive correlation between education level and the sophistication of democratic principles. However, Gibson (1988) criticizes the elitist theory of democracy and argues that elites are responsible for political repression such as the McCarthy Red Scare. For another critical review of elitism, refer to Arthur Lupia, "How Elitism Undermines the Study of Voter Confidence," *Critical Review* 18-3 (2006), pp. 1-27.

[9] For more details, refer to V.O. Key, *Public Opinion and American Democracy* (New York: A. A. Knopf, 1967). For a critical review of the effect of framing, refer to James Druckman, "On the Limits of Framing Effects: Who Can Frame?" *Journal of Politics* 63-4 (2001), pp. 1041-1066. Druckman acknowledges that elites can influence, if not manipulate, public opinion when the source of frame is credible, though.

[10] If not for the norm of the Kantian democratic peace, war between democratic nations loses its moral justification. Yet even in this case, one nation is defined to be more democratic than the other. For example, America was fighting the Independence War with England. Although England had a long tradition of evolutionary democracy, she stood for the repressive regime over a newly forming political entity in the New

fundamentally, many theorists cast doubt upon the level of information and of interest which is held by public (Lippmann 1922/1949; Converse 1975). Lacking the knowledge and the capability of abstract ideology, public is described to be incapable of forming opinion, although much of "non-attitude" among public turns out to be an artificial outcome of vague survey questions (Kinder and Herzog 1993, 362).[11] In a nutshell, public opinion is described to form on a particular topic, which elites find selectively relevant to policy-making.

If public opinion is pertinent at all, the next question is how it is possible for policy makers to represent it in a coherent manner. In other words, how does the representation of public opinion take place in a form of policy? Stimson et al. (1995) present two mechanisms of representation: election and public policy-making. Public use their "ultimate weapon," i.e. voting privilege, in selecting or deselecting representatives to their expectation (Key 1967, 554). This legitimate and democratic replacement of "rascals" with new representatives should increase the odds that public get its wishes implemented. By throwing out "rascals," public get their will represented *post facto*: member change in the government is one mode of reactive representation of public opinion. In contrast to this

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World. In the process of a democratic nation building in which principle is founded on liberty and equality, America had to make a practical compromise between tolerance and democracy with regard to the fate of those loyal to England .

[11] Public opinion is still riddled with the heterogeneous public and the complex mixture of preferences, values, and so forth. A key is an 'artful frame' through which diverse public(s) and elite can communicate. For example, affirmative action is framed as 'remedial action for the past wrong' by advocates and 'unfair advantage on the basis of race' or 'reverse discrimination against white' by opponents. In so doing, the so-called unbridgeable gap between public and elites disappears and connection between public opinion and its impact on public policy becomes possible. For more details on political ideology, refer to Robert Lane, *Political Ideology: Why the American Common Man Believes What He Does* (New York: Free Press of Glencoe, 1962).

well-known mechanism of representation, a complete mechanism of public policymaking calls for further elaboration on elite-led preemption. Conventional theory usually deems public policymaking as a response to change in public opinion. Stimson et al. (1995) find it lacking and specifically focus on public policymaking as a preemptive segment in representation of public opinion: elites tune policymaking to public opinion with election in mind. Yet Page and Shapiro (1983) caution against a hasty conclusion that democratic responsiveness pervades American politics even though changes in policies are largely congruent with large and stable opinion changes on salient issues (175-190).

Stimson et al. (1995) define representation as dynamic when 1) "public opinion moves meaningfully over time," 2) when "government officials sense this movement," and 3) when "those officials alter their behavior in response to the sensed movement (543)." In this paper, I explore to use Stimson et al.'s model in delineating how President FDR as Chief Executive managed to step in to represent public opinion preemptively in anticipation of a high job approval rating in election. It is broadly agreed that American democracy—in accordance with presidency specified in the Constitution—empowers President to do so, although it is another matter whether President should act on it under specific circumstances. By taking a case of the 1941 and 1942 decisions in the next two sections, I purport to illuminate how American wartime democracy actually functioned.

III. Executive Order 9066: Nothing is quiet on the West

What has been brewing in the minds of the American public shortly before Pearl Harbor? On the national scene, the public is described to be "psychologically preparing for war" especially since the German invasion of Poland (The Fortune Survey 1940, no. 39). To the question of the attitude toward the present war, 38.7 percent of the respondents thought it a mistake to get involved in the war while 53.7 percent supported military intervention.[12] Yet the regional disparity is distinctively different between the East South and New England on the one hand, and Pacific Coast and the East North Central on the other hand. In the first two regions, public is in favor of risking war by two or three to one whereas in the last two regions public is equally divided between for risking war and against it.[13] The geographic region which the public projects as willing to defend is rather wide, with percentage of supporters running from 40.9 percent for Australia to 85.2 percent for the Panama Canal. The price for such a military intervention is very high in terms of curtailing one's private consumption or leisure and fairly high in terms of sacrificing one's family life.[14]

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[12] Q: Which one of the following statements most nearly represents your attitude toward the present war?

A1: Those who think this is our war are *wrong*, and the people of this country should resist to the last ditch nay mover that would lead us further toward war (16.3 percent)

A2: A lot of *mistakes* have brought us close to a war that isn't ours, but now that it's done we should support in full the government's program (22.4 percent)

A3: While at first it looked as though this was not our war, it now looks as though we should *back* England until Hitler is beaten (41.3 percent)

A4: It is *our war* as well as England's, and we should have been in the fighting with her before this (12.4 percent)

A5: Don't know (7.6 percent)

[13]

	East South Central	New England	Pacific Coast	East North Central
for risking war	70.8	61.5	48.3	42.3
against risking war	22.6	30.9	48.9	49.9
don't know	6.6	7.6	2.8	7.8

[14] The material sacrifice, including leisure time, is supported willingly whereas the emotional sacrifice, such as moving residence or job for defense purpose and military draft, is accepted if forced to.

The Gallup Poll also shows that public is gradually accepting the military intervention in regions from Canada to Europe.[15] One interesting survey result specifically deals with Japan. To the question of the governmental ban on the sale of arms, airplanes, gasoline, and other war materials, percentage of supporters increases from 73 percent in January, 1940 to 90 percent in October, 1940 (The Gallup Poll, 208 & 246). To the question of a more active intervention, supporters increase by one-and-half times between February, 1941 and November, 1941.[16] Compared to the rest of public, what has been going on among the Japanese descendants residing on the West Coast? To this question, Smith depicts "a divided people" between the Japanese aliens called *issei*, meaning the first generation, and the Japanese-American citizens called *nisei*, meaning the second generation, as well as among *nisei*, between the Americanized and the re-Japanized through education in Japan, called *kibei*, meaning those who come from America.

Several characteristics are found among the Japanese population to provoke "reasonable doubt." What differentiated the Japanese immigrants from the rest was not the skin of color *per se*, but their unique "community." For example, of 112,000 people of the Japanese ancestry, 18 percent was *kibei* citizens. Given that 60 percent of the total Japanese

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[15] To the question of military aid to Canada in the case of attack, 87 percent supports the aid and 13 percent opposes it. To the question of English and French refugees, 58 percent supports accepting them to stay in the U.S. till the war is over while 42 percent opposes it (The Gallup Poll, May-June 1940, 228-229). To the question of the military intervention, the ratio of supporters increases from 32 percent in February, 1940 to 68 percent in November, 1941. The ratio of opponents decreases from 68 percent to 32 percent, a remarkable change in the public attitude.

[16] A political intervention is more popular in February, 1941 as 56 percent supports it and 24 percent opposes it. In comparison, a military intervention divides the public into 40 percent of supporters and 39 percent of opponents. This ratio drastically changes toward November, 1941 when 64 percent supports risking the war with Japan and 25 percent opposes it. This tendency culminates in the survey done during November 27 through December 1, 1941 when 52 percent thinks the war with Japan is imminent and 27 percent thinks not.

population was *nisei* citizens, three out of ten citizens of the Japanese ancestry stayed familiar with Japan.[17,]   Language schools in the U.S. were another way to strengthen bondage to Japan. In addition, there existed organizations whose members usually alleged their patriotism to Japan rather than the United States. Not only their pro-Japan tendency but also their active fund-raising for the cause of Japanese government, including the military aggression, were especially perceived to be threatening to the American system at the time of international crisis.

However, it was the majority of *nisei*—70 percent of the Japanese-American citizens— who was most dismayed at the pro-Japan activities by these organizations called *kai*. In an effort to prevent any reactionary policy unfavorable to them, these citizens began to cooperate with the FBI or Naval Intelligence by providing information about the leaders of the patriotic organizations.[18]   Nevertheless, the rest of American public perceived all Japanese descendants to be the same. That is, the American public did not recognize that the West Coast Japanese descendants were sharply divided over their loyalty. Even worse, not many cared to differentiate the Japanese population. In other words, the American public chose to be intolerant of the Japanese population as a whole.

How did this intolerance get represented eventually by the Executive Order 9066 which called for the relocation of the Japanese population in the West Coast? The bifurcated

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[17] McWilliams provides the statistics in "California and the Japanese," *The New Republic*. March 2, 1942. As of April 1, 1940, 126,947 persons were recorded as people of the Japanese ancestry. 47,305 were the Japanese aliens, who are ineligible for citizenship permanently, and 79,142 were the Japanese-American citizens—62 percent of all Japanese descendants. In California alone, 93,717 were the Japanese descendants-- 74 percent, a high regional concentration. 33,569 were aliens and 59,158 were citizens, about the same ratio as the national one.

[18] Source?

model of representation is presented in Figure 1. The Executive Order 9066 authorized, first, the Secretary of War to prescribe military areas which would supersede designations of prohibited and restricted areas by the Attorney General under the Proclamations of December 7 and 8, 1941, and which also superseded the responsibility and authority of the Attorney General. Additionally, it authorized the exclusion and relocation of residents in the designated areas for the sake of 'protection against espionage and against sabotage to national-defense' matters (February 19, 1942). How did this policy of relocation get shaped? I argue that intolerance by public was channeled through reactive representation (I) and preemptive representation (III), thus crystallizing into E.O.9066 (II).

Figure 1: The mechanism of public opinion leading to E.O.9066
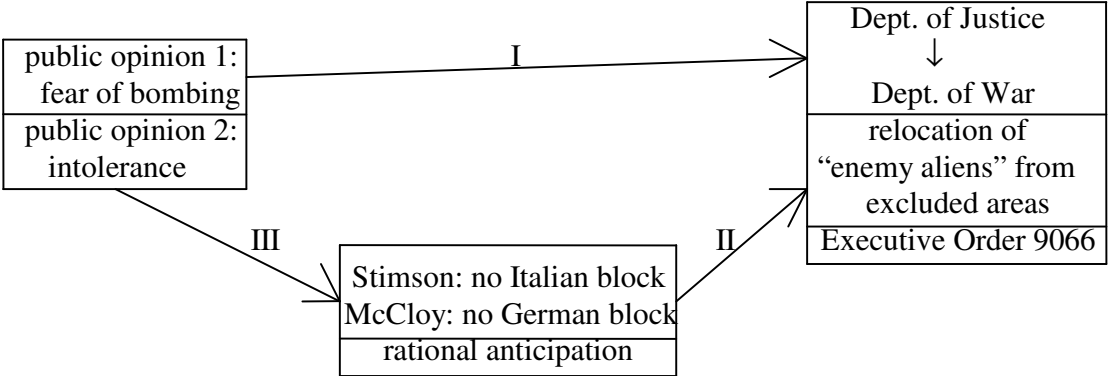
Reactive representation occurred as a *post facto* response to public opinion. The Gallup Poll and The Fortune Survey are two of many sources from which the elites may have looked for the clue to public opinion. This does not necessarily mean that the elites literally searched for the concrete evidences of public opinion and got relieved when they could. There is a reasonable presumption, however, that the elites should take the cue for the

course of action from public opinion in a democratic system. One instance is found in the crude attempts to gauge public opinion by the federal Office of Government Reports, which was a forerunner of the Office of War Information. This office collected newspaper editorials in the West Coast and circulated its analysis among high government officials.[19] Sensing the national preparation of the imminent war and an inevitable personal sacrifice, the elites carried out the corresponding policymaking decision. Initially, the government ordered all non-citizen residents in the U.S. to register with the government. This measure was in the right track of representation.[20] Immediately after Pearl Harbor, all the bank accounts held by these aliens were also frozen (Smith 1995, 95). The reactive representation occurred when FDR decided to transfer the authority from the Department of Labor to the Department of Justice, and finally to the Department of War by the Executive Order 9066.

Not only did public perceive the threat of war in general, but also did public become convinced that the enemy would bomb cities. For example, 49 percent of the West Coast residents thought bombing to be possible and 40 percent thought otherwise. Slightly smaller portion of the East Coast residents, that is 45 percent, regarded bombing possible whereas 44 percents considered it unlikely (The Gallup Poll, December 1941). Naturally, restriction and exclusion of access to coastal areas were legitimated as a military necessity. As a result, relocation of "enemy alien" was decided as the responsive representation of

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[19] The Western Defense Command conducted the similar survey of public opinion among the newspaper editorials in the West Coast. One thing to note is that this survey conveys a stronger support for measures executed by the military command than the federal government survey.

public opinion by the government. However, how was the Japanese population designated as the "enemy alien" among all other immigrant groups by the Roosevelt administration? In order to answer this question, I need to turn to the preemptive segment in representation of public opinion.

As noted above, the general public in U.S. remained suspicious of the "peculiar" Japanese population. Pearl Harbor substantiated "reasonable doubt" and legitimated intolerance; neither Germans nor Italians invaded the American territory, after all. In addition to the peculiar bondage within the Japanese community, there was also the residential and the occupational peculiarities of the Japanese descendants in the West Coast, the argument goes. McWilliams pointed out that a large percentage of these people resided close to the coast.[21] So did General DeWitt, commanding general of the Western Defense Command, in that "...by design or accident virtually always the Japanese communities were adjacent to very vital shore installations, war plants, etc... (Smith 1995, 106)." Regardless of the truth in this description, it is noticeable that alarm to the worst scenario—espionage and sabotage by the Japanese community—was resounding from the military command to the journalist coterie, and to political elites alike.

Given these circumstances, the previous year of 1940 also marked one of presidential elections in which Roosevelt was seeking for the unprecedented third term. The Gallup

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[20] To the question of the necessity for the alien registration, 95 percent agrees and 5 percent disagrees. The same trend is found across regions (The Gallup Poll May 25-30, 1940, p.228).

[21] He takes an example of fish canneries where the population of Japanese descendants concentrated (1942, p.295). Since fish canneries furnished this Japanese population with a good earning, the conjecture was high that the fund-raising for the cause of the Japanese government would be rampant. Moreover, such an environment would provide a favorable atmosphere in which the Japanese spies could work freely. However,

Poll shows that 57 percent of respondents supported Roosevelt while 43 percent did not (June 6, 1940). Except for South, Roosevelt carried a narrow advantage over Willkie, the Republican presidential candidate. Out of a desperate effort to avoid electoral defeat, Roosevelt and the Democrats may have looked for additional blocks of votes among the German and the Italian descendants. Then, the begging question is why this attempt was considered worthwhile at all. Unlike the Japanese descendants, they were judged to have incorporated into the American stream so that this electoral strategy would not anger the general electorate (Smith 1995, 114). Moreover, the potential voting population was large among the German and the Italian constituencies in comparison with the Japanese one, as shown in Table 1.

Table 1. Potential constituents: German, Italian, and Japanese descendents

ancestry	total	urban	rural non-farm	farm
German	1,238	920	169	149
Italy	1,624	1,430	148	46
Japan	127	70	12	45

Source: *Sixteenth Census of the United States: 1940*.
1. All the figures are in thousands and for citizens and aliens combined.
2. The total population of the U.S. in 1940 is 131,669 thousands.

Of 11 million "foreign-born white" population, Italian and German citizens were the first and the second largest groups: 14.2 percent and 10.8 percent respectively. Combined together, these two populations were one quarter of the entire white "foreign-born" population. Having this characteristic of two populations in consideration and the widely accepted intolerance toward the Japanese population, Stimson and McCloy as mouthpiece

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the primary members of the Japanese American Citizens League were fishermen as their interest of livelihood was at stake in crisis (Smith 1995, p.82). The other large portion of membership was taken by farmers.

of the Roosevelt administration appealed for leniency toward German and Italian populations.[22] This political pressure left out only the Japanese population whose voice was too small: it was stuck as being the only "enemy alien" to be relocated. The "evacuation juggernaut" indeed rolled on, but definitely not of its own (Smith 1995, 115). The decision of mass evacuation was made by everybody from public to elites in spite of sporadic resistance like one mounted by Biddle.[23] More importantly and pertinent to my argument, the possibility of mass evacuation of the Japanese population was deliberated by elites who represented public opinion with the approaching election in mind. And only too thoroughly, to which I turn in the next section.

IV. Executive Order 9102: To "Utah"

Once decision was made to relocate any person from "prohibited and restricted" areas and to transfer authority from the Department of Justice to the Department of War, military moved quickly to enforce mass evacuation. In addition to this military pressure, the political pressure mounted for mass evacuation, especially in California. For example, California Republican Leland Ford described wishes of his constituents as follows:

> "...to prevent any fifth column activity,...all Japanese, whether citizen or not, be placed in inland concentration camps. As justification for this, I submit that if an American born Japanese, who is a citizen, is really patriotic and wishes to make his contribution to the safety and welfare of this country, right here is his opportunity to do so, namely, that by permitting himself to be placed in a concentration camp..."[24]

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[22] John McCloy was FDR's Assistant Secretary of War while Henry L. Simson was FDR's Secretary of War.
[23] Francis Biddle was FDR's attorney general during World War II.
[24] http://www.digitalhistory.uh.edu/learning_history/japanese_internment/ford_statements.cfm (2011. 9. 27).

To this political climate was added practical concern that removal of the Japanese population who were mostly occupied in agriculture would harm food production. The initial proposal was concentration camps in interior California where free labor by the Japanese population was available to provide food stuff on vigilance. In spite of its simplistic appeal, execution of the mass evacuation and incarceration with war material was equally dissuasive. In fact, as far as the practical measure of the evacuation is concerned, confusion loomed large. For example, the Treasury Department's communiqué mentioned its concern over "re-employment" of the evacuees in new areas.[25] The Roosevelt administration obviously did not oblige itself to propose any specific plan for resettlement of the Japanese population, however. As long as the militarily designated areas were free of the Japanese population, the administration naively hoped that those evacuees would migrate voluntarily to interior locations and resettle. When asked where these people should go, one governmental official abruptly said, "To Utah or something (Smith 1995, 137)."

However, the hopeless "voluntary evacuation" was soon abandoned amid the mishaps of exploitation by "opportunistic junkmen and secondhand dealers" and the strong resistance by inner States to receive such a large Japanese population. The hearings of the Tolan Committee addressed the issue of protecting evacuee property, in particular[26] Key contends

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[25] In addition, when Henry Morgenthau Jr., FDR's treasury secretary, reported about the grave financial losses imposed upon Japanese ethnics. For more details, refer to Greg Robinson, *By Order of the President FDR and the Internment of Japanese Americans* (Cambridge, Massachusetts: Harvard University Press, 2001).
[26] In addition to the Truman Committee, a Senate committee for the continuous oversight of war agencies, the Murray Committee, another Senate committee, and the Tolan Committee, a House counterpart of the Truman Committee, were established to examine the logistics of wartime economy.

that protection of property rights is an essential rule of the game under constitutional democracy (1964, 539). Public was certainly aware of such principle and willing to abide by it with sympathy. Yet for some strange reasons, mass evacuation itself was rarely criticized in the same spirit. For one thing, as Biddle succinctly put, the Constitution may have hardly bothered any wartime President partly because he is entitled to.[27] A more fundamental reason is that public opinion was in favor of mass evacuation of the Japanese population from the West Coast. The logistical problem relevant to the resolution at the time, however, was that public opinion was against relocation of those evacuees anywhere. The Federal government surveys of public opinion provide more than two dozen newspaper editorials which, more or less, supported the idea of mass evacuation. One editorial by Walter Lippmann is even estimated to instigate decision toward mass evacuation.[28]

Figure 2: The mechanism of public opinion leading to E.O. 9102 & P.P. 4

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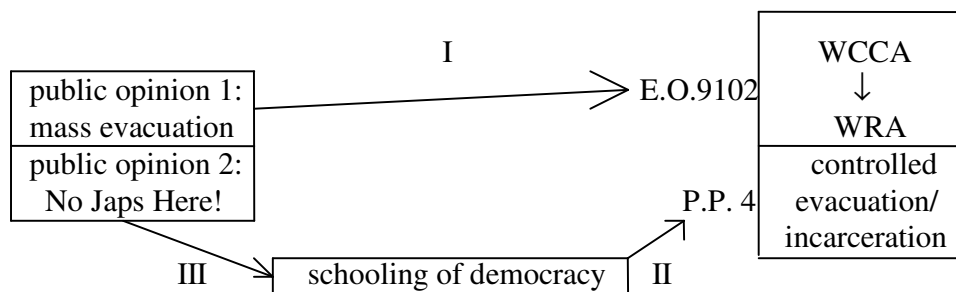
[27] Source?

[28] The term "fifth column" refers to those who engage in espionage or sabotage within their own country. Dated February 13, 1942, a column titled "The Fifth Column" by Walter Lippmann was published on Los Angeles Times, condoning removal of the Japanese population from the West Coast. "...It is a fact that the Japanese navy has been reconnoitering the coast...a citizen may not be   interfered with unless he has committed an overt act...The Pacific Coast is officially a combat zone...And nobody ought to be on a battlefield   who   has   no   good   reason   for   being   there..." http://www.digitalhistory.uh.edu/learning_history/japanese_internment/lippmann.cfm (2011. 9. 27).

How did public opinion get represented after the idea of "voluntary evacuation" was abandoned? To answer this question, I propose a descriptive model of representation as seen in Figure 2, which consists of two parts: reactive (I) and preemptive (II). In the end, it was Executive Order 9102, followed by Public Proclamation No. 4, which replaced voluntary evacuation with an alternative for a practical reason and ultimately made the forced evacuation and incarceration legal in 1942.

As mentioned earlier, public opinion was unequivocally in favor of mass evacuation of the Japanese population as a vague idea. As a reaction to this public opinion, E.O. 9102 was adopted to transfer the authority of evacuation from the Wartime Civil Control Administration (WCCA) to the War Relocation Army (WRA). E.O. 9102 also employed the controlled evacuation instead of the much troubled voluntary evacuation to carry out relocation of the Japanese population in an orderly and speedy way. However, it became increasingly evident that the voluntary emigration created anxiety in terms of the infringed property rights and of public intolerance in inner States. Political leaders began to acknowledge that "temporary" living accommodations should be required for all the evacuees including those who chose to emigrate voluntarily only to be rejected by other State (Smith 1995, 150).

The eventual decision of incarceration, then, was a preemptive representation of public opinion which clearly rejected the accommodation of the "enemy alien" in backyard. Internment decision was also a preemptive action by elites who proclaimed to represent public opinion which regarded such a decision as a noble challenge to carry out "schooling"

of democracy in "relocation center." Public and elites went along with this incarceration of the entire Japanese population in a conviction that civil liberties were being protected both for themselves and the "enemy aliens" alike. By separating themselves from the "enemy aliens," they justified that they were doing the service of guarding the "enemy aliens" from becoming a target of violent intolerance. In fact, Strout even contended that the record down to the present was a good one when compared with that of the First World War (March 16, 1942).

What was the criterion of such a wishful conclusion at the time? For one thing, protection of property rights was guaranteed. As Smith (1995) points out, however, many evacuees turned to the Evacuee Property Department, the government representatives in charge of such task, only as a last resort. An irony is that these were the lucky ones whose belongings, at least, were kept intact (142). To property-conscious Americans, this act was considered to be an evidence of their sincerity about democratic principles. Content with their decision, all of them went along. Yet history judged FDR harshly. Why is there commotion, then, when FDR had the authority to act the way he did?[29] A simple, possible answer is because it is completely a different matter whether he should have done so.

In the next section, I touch on this tacky question. Suffice it to recollect historical precedents here, though. FDR is certainly not the only President or the last one to be placed at crossroads where he had an option to choose wisely or otherwise in times of crisis. The executive Power is indeed vested in a President of the United States of America and

especially in wartime, his perception of national survival almost always takes precedence. From John Adams to Thomas Jefferson, Andrew Jackson, Abraham Lincoln, Woodrow Wilson, FDR, and even George W. Bush, President is rightfully entitled to defend the public safety and many chose to do so.[30] And they all claimed their mandate to represent the people and their wish for national survival.

Normative democratic theories dictate that democracy works when it does what people want. Their critiques pick up from there and argue that democracy does not function simply because it fails to do what people want. It is high time that we should change our thinking and embrace that democracy can fail at times even though or because it does what people want. Pitkin argues that

> "...representative government is the ideally best form of government, for the very reason that it will not actually be representative in its character unless it is properly organized and conditioned... (1967/1972, 240)"

Executive Order 9066, Executive Order 9102, and Public Proclamation No. 4 were all legitimate representation of public opinion. In all these occasions, public opinion opted for intolerance as a realistic democratic practice and elites got the message only too well. The outcome was the evacuation of the Japanese population, regardless of its citizenship, and its subsequent internment until the end of war. Unfortunately, it is no comfort that public

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[29] For a thorough review of executive orders, refer to Kennet Mayer,. "Executive Orders,"iIn Joseph Bessette and Jeffrey Tulis (eds.). *The Constitutional Presidency* (Baltimore: Johns Hopkins University Press, 2009), pp. 149-172.

[30] For example, Adams argued for the passage of the Alien and Sedition Acts which made political dissent criminal, thus authorizing President to deport any non-citizen he deemed "dangerous to the peace and safety of the United States." Jefferson sought to enforce the Embargo Act so that he could charge those who violated it with treason. Andrew Jackson attempted to censor the mail in the South so that he could stop abolitionist documents to be distributed, while Woodrow Wilson tried to censor the press in wartime. Lincoln ordered the trial of civilians by military tribunals, which George W. Bush quoted in the war on terror.

opinion precipitated public policymaking even in times of crisis. It might have comforted laymen and political leaders alike back in 1941 and 1942 to be assured that representative government was fully functional. Indeed the War Relocation Authority conducted a preliminary nation-wide survey of public opinion on Japanese Evacuation and tried to find support behind all the measures involving the Japanese population. And it found 92 percent of supporters. Nevertheless, history judges it not so benignly. In the next section, I revisit the 1942 internment of Japanese descendents and draw a concluding remark.

V. Concluding Remark

The 1942 Fortune Survey provides a portrait of the satisfied public which found that their will has been represented well in crisis management. Yet somewhere in the mountainous deserts were 112,000 people who were interned only because of their ancestry despite their citizenship in more than a majority of the cases.[31] Was political intolerance in 1942 really justifiable under the extraordinary circumstances? One result of the Gallup Poll casts doubt about the legitimacy of this justification. The following two questions were asked of residents in the West Coast on the special survey on December 1942.

> Q 1: Would you be willing to hire Japanese servants to work in your home after the war is over?
> Q 2: Would you be willing to trade at Japanese-owned stores after the war is over?

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[31] According to the "Estimation of the Situation" report filed by DeWitt, "...the very fact that no sabotage has taken place to date is a disturbing and *confirming* indication that such action will be taken..." (Smith 1995, 124). What was reason behind such a horrendous conclusion? "...these are organized and ready for concerted action at a favorable opportunity..."

This survey was carried out when the internment of all the people of Japanese ancestry was completed, thus pertinent to the question raised in this paper. To the first question, 69 percent said no and 26 percent said yes; to the second question, 58 percent said no and 38 percent said yes. If public placed its faith in democratic principles and if "schooling" of the Japanese population in the "relocation centers" is justified as an effort to nurture such principles, why does public deny a second chance to the re-born Japanese counterparts? Did intolerance start as a perceived threat, but end up as a mere dislike? Did the above two questions actually address to the degree of public resentment rather than a legitimate policy of intolerance? Or was this intolerance a form of dislike in disguise throughout the time?

Although I am unable to answer these questions fully in this preliminary examination of the data at hand, I can infer, at least, that decisions of mass evacuation and incarceration were not outcomes of strict policymaking due to military necessity.[32] In addition, the 1943 Gallup Poll provides a poignant venue to revisit the 1942 decision:

Q 1: Which country do you think we can get along with better after the war—
Germany or Japan? (June 11, 1943)

in comparison with

Q 2: Which country is the greater threat to America's future—Germany or
Japan? (December 23, 1941)
Q 3: In this war, which do you think is our chief enemy—Japan or Germany?
(February 24, 1943)

To the first question, 67 percent chose Germany and 8 percent chose Japan. To the second question, 64 percent thought Germany to be threat and 15 percent thought Japan to be so while 15 percent thought that both Germany and Japan posed threat. To an updated version

of the second question as in Q3, 53 percent selected Japan as threat and 34 percent selected Germany, however. Interestingly, the aftermath of Pearl Harbor had less effect on threat perception which the American public held about Japan than imagined. Yet one and half year later after nearly all the Japanese descendants were locked up in the remote of areas, this perception increased by more than three times. The outlook of longer war with Japan may partially explain such a sudden jump in threat perception.[33] The American public might have shifted its intolerance target from Germany to Japan. Or maybe this three-fold increase was an artificial effect of "schema" through which respondents formulated a different attitude at a particular point in time (Zaller 1992, 37).

In any case, controversy lingers around whether the decision of 1941 and 1942 was a legitimate act of intolerance as such decisions represented the predominant public opinion of the time. Maybe Key (1967) is correct in suggesting that the decay of democracy is inevitable if public opinion precipitates decision-making all the time in all cases. It is indeed an irony of democracy if public opinion has to be contained simply because its predominance may jeopardize the very existence of healthy democracy. Nor Lippmann's poignant comment is comforting if we consider that he was the very person who instigated intolerance of the Japanese population by all means. His actions betrayed his good-will sermons, in the end.

> "...it is only when we are in the habit of recognizing our opinions as a partial
> experience seen through our stereotypes that we become truly tolerant of an

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[32] Source?

[33] The Gallup Poll provides a result of survey in which respondents were asked about their expecting length of war with Germany and Japan respectively. 61 percent said from 6 months to 1 year with Germany; 58 percent said from 1 year to 2 years with Japan (February 26, 1943).

opponent. Without that habit, we believe in the absolutism of our own vision... (Lippmann 1922/1949, 82)"

Caplan points out that 1) policy can be popular yet counterproductive in democracies and that 2) such an irrationality is common (2007, kindle ed., 2580). Especially when the media picks up an unusually scary anecdote which feeds into the public scare and politicians jump into a bandwagon, pledging to solve the problem, a string of panics ensue even in the form of policy change. Democracy preaches many noble ideas, including political tolerance and political responsiveness in one breath. Yet in perilous times, those two ideas contradict each other. Furthermore, elites like President and his coterie of policy makers are only too glad to join the bandwagon of "folly," all in the name of democracy (Caplan 2007, kindle ed., 2252). Yet if the folly of democracy leads to political, social and economic excommunication of a segment of its own population, then public should dare to express dissent against democracy as religion.

Democracies usually work well, but that does not relieve public and elites alike from their obligation to question the sanctity of democracy, especially in times of crises. And mandate or not, President is not exempt from it, either. In the process of dynamic representation, public and elites should compare across all pros and cons and actually dwell on it—especially if it involves the decision on the fate of their own People. The question is not whether they can afford it, but whether they are willing to, especially in perilous times. The 1942 internment of Japanese ethnics is a classic example of their unwillingness to jump off the bandwagon of "democratic fundamentalism (Caplan 2007, kindle ed., 2280)."

"Democracy with attitudes," as Bartels (2003) succinctly puts, reminds us all that not all the ills of democracy can be cured by more democracy.[34]

This paper is a preliminary descriptive account of how the 1942 internment of Japanese descendents occurred, yet its implication forebodes beyond that particular event. Although America is not uniquely evil in times of crises, it is unique in that its enemy's ethnics are almost always found among segments of its own population. Yet such is neither limited to the U.S. nor violent crisis like war. Bearing it in mind, I plan to further research by systemizing an explanatory model I borrowed from Stimson et al. and expanding the data set to include the war on terror, on the one hand, and inferring to representation in times of non-military crises—specifically the ongoing financial crisis in the Euro zone and its latently pertinent issue of immigration—in the near future.

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[34] Al Smith who ran for the 1928 presidential election remarked that "all the ills of democracy can be cured by more democracy," on which Caplan poignantly comments that such is democracy as religion, i.e. not to be touched under any circumstances.

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