

CREATING A RACIALIZED LIMINAL STATUS:
THE 1790 ACT AND INTERSTITIAL CITIZENSHIP

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INTRODUCTION

Born in the Philippines in 1902, when the country was a territory of the United States,¹ Roque Espiritu De La Ysla moved to Los Angeles, California, and petitioned to become a naturalized U.S. citizen in 1935.² De La Ysla applied under the Naturalization Act of 1906, which allows persons who are not citizens “who owe permanent allegiance to the United States” to apply for naturalization.³ The district court, however, denied his petition, and the U.S. Court of Appeals for the Ninth Circuit affirmed.⁴ De La Ysla faced two barriers to naturalization. First, the court explained that the Naturalization Act of 1906 did not apply to De La Ysla.⁵ Naturalization applies only to those who are “aliens,” and as a Philippine citizen who owed allegiance to the United States, De La Ysla was not an “alien.”⁶ Second, even if he were, the 1906 Naturalization Act barred him from naturalization because only those noncitizens who were “free white persons or persons of African nativity or descent” were eligible to apply.⁷ De La Ysla was therefore doubly-barred from citizenship. Both his political status as neither citizen nor “alien” and his “race” made him racially ineligible to acquire citizenship.⁸

This Comment began with De La Ysla’s case to highlight the political status that Filipinos held when the Philippines was a U.S. territory.⁹ This Comment argues that this status, which a court would later describe as a “hybrid status ... the so-called ‘non-citizen

1. Between 1898 and 1946, the Philippines was a U.S. territory. Dawn Mabalon, *The Significance of 1946 for Filipina/o Americans*, FILIPINO AM. NAT’L HIST. SOC’Y, <http://fanhs-national.org/filam/about-fanhs/thesignificance-of-1946-for-filipinao-americans/> [https://perma.cc/549U-RQ76].

2. See *Roque Espiritu De La Ysla v. United States*, 77 F.2d 988, 988 (9th Cir. 1935).

3. See *id.* at 989; Naturalization Act of 1906, Pub. L. 59-338 § 30, 34 Stat. 596, 606.

4. *Roque Espiritu De La Ysla*, 77 F.2d at 989.

5. *Id.*

6. *Id.*

7. *Id.*

8. See *id.* (“Filipinos, not being free white persons or persons of African nativity or descent were still not eligible for [citizenship].”).

9. Other courts reached similar conclusions. See, e.g., *In re Alverto*, 198 F. 688, 690 (E.D. Pa. 1912); *In re Lampitoe*, 232 F. 382, 382 (S.D.N.Y. 1916); *United States v. Javier*, 22 F.2d 879, 880 (D.C. Cir. 1927).

national,”¹⁰ was a racialized liminal political status with roots in the 1790 Naturalization Act (1790 Act). Professors Jack Chin and Paul Finkelman claim that the 1790 Act played a critical role in shaping “the very composition of the people of the United States”¹¹ by including the “free white person” clause in the country’s first naturalization law.¹² One of the goals of Congress in passing this law, as Chin and Finkelman contend, was to intentionally encourage the immigration of primarily White immigrants and ensure that the country would be a White nation.¹³ The 1790 Act did so not only by explicitly restricting the group of immigrants who were deemed racially eligible to become citizens but by providing the “foundation for a variety of other discriminatory laws”¹⁴ as well.

I wholeheartedly agree with Chin and Finkelman’s claim. Indeed, I argue that the 1790 Act had a greater role in the establishment of the country as a White nation than Chin and Finkelman maintain in their article. Using De La Ysla’s case and those of other Filipinos whose naturalization applications were also denied,¹⁵ I contend that the racial restriction on citizenship that the First Congress pioneered provided powerful support to the United States’s imperialist goals at the turn of the twentieth century when it acquired territories after the Spanish American War, including the Philippines, and denied U.S. citizenship to the estimated six million Filipinos residing there.¹⁶ In particular, courts relied on the 1790 Act’s goal of limiting citizenship based on race and laws governing the Philippines, including naturalization laws, to ensure that Filipinos were confined to a liminal non-citizen U.S. national political status.¹⁷ In doing so, courts placed Filipinos outside of the ambit of

10. *Cabebe v. Acheson*, 183 F.2d 795, 797-98 (9th Cir. 1950).

11. See Gabriel J. Chin & Paul Finkelman, *The “Free White Person” Clause of the Naturalization Act of 1790 as Super-Statute*, 65 WM. & MARY L. REV. 1052 (2024).

12. *Id.*

13. *See id.*

14. *See id.* at 1055.

15. *See, e.g., In re Alverto*, 198 F. 688, 690 (E.D. Pa. 1912); *In re Lampitoe*, 232 F. 382, 382 (S.D.N.Y. 1916); *United States v. Javier*, 22 F.2d 879, 880 (D.C. Cir. 1927).

16. *See infra* Part II.

17. As I have described elsewhere, this noncitizen U.S. national (American nationality) political status is neither citizen nor “alien” and is thus a type of liminal, interstitial citizenship. *See* Rose Cuison Villazor, *American Nationals and Interstitial Citizenship*, 85 FORDHAM L. REV. 1673, 1717 (2017).

naturalization laws and guaranteed that they remained racially barred from citizenship. As neither citizen nor “alien,” this racialized liminal political status ensured that Filipinos would not have a path to citizenship during the territorial period (1898 to 1946) despite their allegiance to the United States.¹⁸ Thus, more than a century since the passage of the 1790 Act, the First Congress’s vision “of the United States as a White nation”¹⁹ not only endured but also expanded beyond the nation’s borders. The newly acquired territories,²⁰ whose residents were primarily people of color, provided challenges to both Congress and the courts as they sought to implement Congress’s goal of promoting a White nation through the 1790 Act.

In Part I, I briefly situate the arguments presented in this Comment within the liminality literature and the work of other legal scholars who have theorized liminality in immigration law.²¹ I have previously used liminality as a concept to describe noncitizen nationals as liminal or interstitial citizens and explored how this status disrupts the framing of citizenship along a citizen or noncitizen binary paradigm.²² I build on this prior work by connecting interstitial citizenship to the 1790 Act.

In particular, as I claim in Part II, the 1790 Act laid the foundation for the denial of citizenship to Filipinos at the turn of the twentieth century, which led to their interstitial political status. Congressional remarks surrounding the Treaty of Paris, which ended the Spanish American War, demonstrate the overarching sentiments against extending citizenship to residents of the Philippines, Puerto Rico, and Guam.²³ Based on fears of millions of people of color acquiring U.S. citizenship, Congress subsequently passed laws that created a new political status that was liminal in

18. Congress created an exception for Filipinos who served in the U.S. armed forces. Chin & Finkelman, *supra* note 11, at 1108-10.

19. *Id.* at 1061.

20. Another territory acquired during or shortly after the Spanish American War was Hawaii once the United States helped overthrow the monarchy and annexed the Hawaiian Islands. *Annexation of Hawaii, 1898*, U.S. DEP’T OF STATE, <https://2001-2009.state.gov/r/pa/ho/time/gp/17661.htm> [<https://perma.cc/Z5HJ-CU89>].

21. See Chin & Finkelman, *supra* note 11, at 1051-52.

22. See Cuison Villazor, *supra* note 17, at 1674.

23. See *infra* Part II.

nature.²⁴ This in-between status would subsequently receive the support of the Supreme Court in the *Insular Cases*.²⁵

Part III discusses the role that the 1790 Act played in naturalization cases filed by Filipinos residing in the United States. As that Part explains, courts interpreted subsequent amendments to the 1790 Act as indicative of Congress's goal to continue to limit naturalization based on race and, in so doing, ensured that Filipinos would never be able to leave their racialized liminal status.²⁶

The final Section explores the implications of this colonial history for Chin and Finkelman's understanding of how the 1790 Act shaped the United States as a White nation.

I. LIMINALITY IN CITIZENSHIP LAW

This Part explains what I mean by liminality and its connection to immigration and citizenship literature. At the outset, the concepts of liminal, liminality, and liminal spaces were popularized by anthropologist Victor Turner.²⁷ Turner referred to liminal as the movement “between the formerly familiar and stable and the not-yet familiar and stable.”²⁸ As scholars who have recently explored Turner's work have explained, Turner “regard[ed] liminality as characteristic of inter-structural, ‘betwixt and between’ situations,

24. See *infra* Part II.

25. Cf. Christina Duffy Ponsa-Kraus, *The Insular Cases Run Amok: Against Constitutional Exceptionalism in the Territories*, 131 *YALE L.J.* 2449, 2464-74 (2022) (explaining how the *Insular Cases* and their progeny “deeply entrenched ... the permanent colonial system” by solidifying the notion of a “nearly extraconstitutional zone under U.S. sovereignty”).

26. See *infra* Part III.

27. For recent work exploring Victor Turner's work on liminality and its application in other disciplines, see MICHAEL HUBBARD MACKAY & ZOHAR HADROMI-ALLOUCHE, *BETWIXT AND BETWEEN LIMINALITY AND MARGINALITY: MIND THE GAP* (Zohar Hadromi-Allouche & Michael Hubbard MacKay eds., 2023). As the editors of this book explained, Turner adopted and reinvented the concept of liminality from Arnold van Gennep, a French folklorist, who first introduced the concept. See MICHAEL HUBBARD MACKAY & ZOHAR HADROMI-ALLOUCHE, *Introduction* to *BETWIXT AND BETWEEN LIMINALITY AND MARGINALITY: MIND THE GAP*, 1, 2 (Zohar Hadromi-Allouche & Michael Hubbard MacKay eds., 2023) (explaining that there are three rites of passage in society, including the first phase, which focuses on separation of subjects from their old place in society, the last phase, which is rite marking transformation, and the middle phase, in which “the subjects of the rite are no longer part of their old place in society, nor do they belong to their new one”).

28. VICTOR TURNER, *BLAZING THE TRAIL: WAY MARKS IN THE EXPLORATION OF SYMBOLS* 132-33 (Edith Turner ed., 1992).

of ambiguity and transition, and the ‘liminaries’ as those who cannot be classified in the ordinary classification for they are neither here nor there, neither one thing nor the other.”²⁹

The concept of liminality has been theorized in other fields,³⁰ including in immigration law.³¹ As professors Juliet Stumpf and Stephen Manning noted recently, “[l]iminality in immigration law is at the cutting edge of the new functionalism in immigration scholarship.”³² Some scholars use the concept to refer to the body of immigration rules, such as those arising from agencies and courts, that shape “the governance of migration in the United States.”³³ Others deploy the term to refer to the liminal immigration status held by individuals whose liminal status was produced by varied immigration laws. For instance, Professor Jennifer Chacón explains that “the notion of liminal legality is used to describe individuals moving in and out of, and living on the edges of, legal immigration status.”³⁴

Although immigration scholars differ slightly on how they are using liminality as a theoretical framework, an important point these scholars have made is that immigrants who fall in these liminal spaces are legally vulnerable due to the discretionary nature of immigration law enforcement. As Stumpf and Manning noted, those

29. See MACKAY & HADROMI-ALLOUCHE, *supra* note 27, at 3 (explaining Turner’s definitions of liminal, liminality, and liminaries).

30. See *id.* at 2 (discussing explorations of liminality in other fields, such as literature, American studies, geography, and organization studies).

31. See Juliet P. Stumpf & Stephen Manning, *Liminal Immigration Law*, 108 IOWA L. REV. 1531, 1537-44 (2023) (describing various immigration rules and policies as liminal in nature to theorize the canon of “liminal law” in immigration law); Edelina M. Burciaga & Aaron Malone, *Intensified Liminal Legality: The Impact of the DACA Rescission for Undocumented Young Adults in Colorado*, 46 L. & SOC. INQUIRY 1092, 1094-95 (2021) (exploring liminality as applied to people with DACA status); Jennifer M. Chacón, *Producing Liminal Legality*, 92 DENV. U. L. REV. 709, 713-30 (2015) (examining the use of liminality in understanding immigration laws and regulations governing immigrants, including lawful and unauthorized migrants).

32. Stumpf & Manning, *supra* note 31, at 1535 (explaining that liminality in immigration law builds on “sociologist Cecilia Menjivar’s groundbreaking work on liminal legality and Luin Goldring’s description of the ‘precarious status’ of noncitizens without sanctioned permanent residence” (footnote omitted)).

33. *Id.* at 1536. See also Leticia M. Saucedo, *Employment Authorization, Alienage Discrimination and Executive Authority*, 38 BERKELEY J. EMP. & LAB. L. 183, 187-88 (2017) (describing employment laws that produce liminality among immigrants).

34. Chacón, *supra* note 31, at 710.

with liminal status are “vulnerable to forms of marginalization that are themselves less visible and so less accountable.”³⁵

I have used the term liminal in a related but different context—citizenship law. In particular, I have deployed the term “liminal” to describe a type of *formal* political membership I call “interstitial citizenship.”³⁶ Interstitial citizenship in general “is an intermediate status in which its holders possess some rights that are limited to U.S. citizens, yet are still denied some citizenship rights because they are formally noncitizens.”³⁷ Interstitial citizens, I have argued, disrupt the framing of citizenship along a citizen/noncitizen binary.³⁸ As neither citizens nor “aliens,” interstitial citizens enjoy some of the benefits limited to U.S. citizens but are denied some rights because they are noncitizens. American Samoans, for example, who are the only group of Americans today who still possess U.S. nationality status at birth, possess the right—like U.S. citizens—to freely move to the United States and to permanently remain. They can never be deported.³⁹ However, as U.S. nationals, they do not have the right to vote, serve on a jury, or apply for jobs restricted to U.S. citizens.⁴⁰ American Samoans may choose to naturalize, but they must do so by moving to one of the fifty states or four territories.⁴¹

The next Part further discusses interstitial citizenship by providing the historical and political context that led to its establishment. As Part II explains, the acquisition of new territories, including the Philippines, at the end of the nineteenth century, led some members of Congress to fear the expansion of citizenship to people of color. To minimize these fears, Congress opted not to

35. Stumpf & Manning, *supra* note 31, at 1535.

36. Cuison Villazor, *supra* note 17, at 1711.

37. *See id.*

38. *See id.*

39. *See id.* at 1676-77, 1678 n.22. There is robust scholarship examining the legal debates surrounding American Samoans as U.S. nationals. *See, e.g.*, Ponsa-Kraus, *supra* note 25, at 2513-24 (arguing for overturning the *Insular Cases* and recognizing American Samoans as birthright citizens). This issue has also been the subject of litigation. *See* Fitisemanu v. United States, 1 F.4th 862, 864 (10th Cir. 2021), *reh'g en banc denied*, 20 F.4th 1325 (10th Cir. 2021); Tuaua v. United States, 788 F.3d 300, 301-02 (D.C. Cir. 2015).

40. *See* Cuison Villazor, *supra* note 17, at 1676.

41. Natasha Frost, *The Only U.S. Territory Without U.S. Birthright Citizenship*, N.Y. TIMES (Nov. 25, 2022), <https://www.nytimes.com/2022/11/25/world/australia/american-samoan-birthright-citizenship.html> [<https://perma.cc/V3D2-H78D>].

extend citizenship to Filipinos and other territorial residents and instead established the path towards U.S. nationality. In other words, interstitial citizenship emerged in the backdrop of the American Empire. Part III explains that the 1790 Act's racial restrictions ensured that nationals were prohibited from acquiring citizenship.

II. THE 1790 ACT AS FOUNDATION FOR RACIALIZED LIMINAL STATUS

In their article, Professors Chin and Finkelman explained that although it is not as clear whether the framers of the U.S. Constitution protected slavery or merely accommodated it, "there can be no question that the First Congress conceived of the United States as a White nation."⁴² This vision is evidenced by the passage of the Naturalization Act of 1790 and its limitation of the right to naturalization to "any alien, being a free white person" to support their claim.⁴³ The First Congress understood the effect that naturalization restrictions would have on "encouraging or discouraging immigration."⁴⁴ In other words, immigration was essential to the growth of the new nation, and Congress preferred that immigrants would be White people who could easily become citizens of the United States.

More than a century later, a different Congress in the late 1890s expressed similar restrictions on citizenship as part of a larger debate on the expansion of the United States. This time, however, the expansion was overseas and involved what political status to assign to the residents of the newly acquired territories, who were primarily people of color.⁴⁵ In April 1898, the United States declared war against Spain, and when the war ended, the United States acquired three of Spain's territories (the Philippines, Puerto Rico, and Guam) as a result of the Treaty of Paris.⁴⁶ As Professor Sam Erman wrote, one of the key issues that the United States' political leaders faced at that time was whether to annex the islands and

42. Chin & Finkelman, *supra* note 11, at 1061.

43. See Naturalization Act of 1790, ch. 3, § 1, 1 Stat. 103 (repealed 1795).

44. Chin & Finkelman, *supra* note 11, at 1068.

45. SAM ERMAN, *ALMOST CITIZENS: PUERTO RICO, THE U.S. CONSTITUTION, AND EMPIRE* 9 (2019).

46. Treaty of Peace Between the United States of America and the Kingdom of Spain, Spain-U.S., Apr. 11, 1899, 30 Stat. 1754 [hereinafter, *Treaty of Paris*] (ending the Spanish-American War of 1898).

what the political status of the residents of the newly acquired territories should be.⁴⁷

By the late nineteenth century, the law of citizenship had changed in a number of ways that indicated its potential to be more inclusive. In particular, in 1866, the Fourteenth Amendment was adopted and included the Citizenship Clause, which provided that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States.”⁴⁸ In adopting this *jus soli* approach to citizenship, the Fourteenth Amendment overturned the holding in *Dred Scott v. Sandford* that African Americans were not and could not be citizens of the United States.⁴⁹ Signaling a broader conception of citizenship, Congress amended the 1790 Act to authorize persons of African nativity or of African descent to naturalize.⁵⁰ The Supreme Court followed suit twenty years after the passage of the Fourteenth Amendment when it held in *United States v. Wong Kim Ark* that persons born in the United States acquired citizenship. In so holding, the Court made clear that Chinese Americans whose parents were not racially eligible to naturalize under the 1790 Act and subsequent amendments would nevertheless gain U.S. citizenship at birth.⁵¹ This more inclusive holding—recognizing birthright citizenship for all persons while Asian immigrants were racially barred from naturalization—represented a tension between immigration and citizenship law. Indeed, as Professor Amanda Frost commented, the case illustrated an inherent conflict between the restrictive 1790 naturalization law and the universal birthright citizenship mandated by the Citizenship Clause.⁵²

47. See ERMAN, *supra* note 45, at 12.

48. U.S. CONST. amend. XIV § 1.

49. 60 U.S. (19 How.) 393, 427 (1856) (enslaved party), *superseded by constitutional amendment*, U.S. CONST. amend XIV.

50. Naturalization Act of 1870, 16 Stat. 254. To be sure, Congress’s “broader” view of citizenship was not as expansive as it could have been because the 1870 Act applied only to those of African descent and continued to ban citizenship to other racial groups.

51. 169 U.S. 649, 693 (1898).

52. Professor Amanda Frost is right to highlight there is a real tension between the Citizenship Clause’s mandate of universal birthright citizenship and the 1790 Naturalization Act. Amanda Frost, Comment, *Paradoxical Citizenship*, 65 WM. & MARY L. REV. 1177, 1181 (2024). However, as I explain in the following sections, Congress’s decision to not extend the Constitution, or at least the Citizenship Clause, to the newly acquired territories and confer nationality instead of citizenship to the residents *and their children* later born in the

Thus, when the Spanish American War ended and the United States had the opportunity to annex the new territories of the Philippines, Puerto Rico, and Guam, Congress faced the question of whether to confer citizenship upon the people of those territories.⁵³ After President William McKinley submitted the treaty to the Senate for ratification, the Senate faced a clash between anti-imperialists who opposed the expansion of the American empire overseas and those who supported the President and the ratification of the treaty.⁵⁴ Unfortunately, any potential to open citizenship to those beyond the seas diminished. The possibility that Filipinos might become members of the American polity raised concerns. Ultimately, Congress had to address the question on how a “nation bound by the Reconstruction Constitution could both acquire the Philippines and exclude the Filipino people.”⁵⁵ Even anti-imperialists expressed trepidation that annexation would “bring Filipinos U.S. citizenship.”⁵⁶

Channeling the vision of the First Congress that aimed to limit citizenship to White persons, some senators issued statements during the debates about annexation that emphasized their desire to keep Filipinos away from U.S. citizenship. Senator George Turner from Washington state, for example, claimed that “[n]o person on either side of the Philippine question has ever admitted or will admit ... that we can, after any possible lapse of time, admit the Philippine Islands into the Union as one or more of the States of the United States of America.”⁵⁷ Indeed, views of the racial inferiority of Filipinos seemed central to the debate. Senator Turner noted as follows:

territories demonstrates the limits of the Fourteenth Amendment and claims about the universality of birthright citizenship. See Ponsa-Kraus, *supra* note 25, at 2452.

53. See ERMAN, *supra* note 45, at 12; Christina Duffy Burnett [Christina Ponsa-Kraus], *They Say I Am Not an American ...: The Non-Citizen National and the Law of American Empire*, 48 VA. J. INT'L L. 659, 661 (2008). As legal scholars have noted, the other primary questions surrounding the acquisition of the territories were whether they would eventually become states and whether the Constitution extended to the territories. See Burnett [Ponsa-Kraus], *supra*, at 688-90. Prior to 1898, territories acquired by the United States were destined to statehood. See *id.* at 688; ERMAN, *supra* note 45, at 11.

54. See ERMAN, *supra* note 45, at 28-31.

55. *Id.* at 29.

56. *Id.*

57. 33 CONG. REC. S1049, 1055 (daily ed. Jan. 23, 1900) (statement of Sen. George Turner).

While [Filipinos] undoubtedly have some capacity for government, they have none whatever for Anglo-Saxon government, and never will have. To admit 10,000,000 Filipinos now, or 20,000,000 or 40,000,000 in the indefinite future, as the case may be, to American citizenship through statehood would be the beginning of the end of the American Republic.... When we shall have finally annexed the Philippines many curious and inconvenient consequences will ensue besides that of debauching the citizenship of this nation.⁵⁸

As this quote highlights, Senator Turner feared that the extension of citizenship to Filipinos would devalue citizenship itself because it would entitle them with “all the rights [that] citizens of the United States” possess.⁵⁹ One particular right that Senator Turner sought to curb was the right of freedom of movement.⁶⁰ He was especially troubled by the migration of Filipinos and their ability to “come and go at pleasure everywhere within the confines of the nation.”⁶¹ Thus, Turner reminded his brethren not only that “we have upon our statute books restrictions against the landing of Asiatics on our shores” but that these immigrants were not eligible “to apply for naturalization in our courts.”⁶² No doubt, Turner wanted to ensure that the 1790 Act’s racial restriction of citizenship for White persons that had been recently amended by the 1870 Act⁶³ would not be extended to other groups.

Anxieties about extending citizenship to Filipinos were also expressed by those who professed to being anti-imperialists, focusing in particular on the perceived inferiority of Filipinos. Senator Ben Tillman of South Carolina stated during one of the debates as follows:

I have left to the last the discussion ... of this subject which is most important and vital—the race question. It is well understood that the people who inhabit the Philippines belong to what

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. See Naturalization Act of 1870, Pub. L. No. 41-254, § 7, 16 Stat. 254, 256 (1870).

we call the colored races, and the most perplexing and disturbing factor in the whole question arises from this fact. The number of these people is variously estimated at from six to ten million and the Senator from Indiana, who has spent some time [there] asserts in the most positive manner that they are unfit for self-government.⁶⁴

Ultimately, the Senate reached a compromise that allowed free movement but not citizenship. The Senate ratified the treaty that allowed Spain to cede the territories to the United States without the latter annexing those territories.⁶⁵ In so doing, the Senate broke with past policies and practices of annexing territories.⁶⁶ This change in policy allowed the United States to treat the territories as “part of the United States” without simultaneously conferring U.S. citizenship on their residents as it had done with other territories, including Hawaii, or giving the people the option to become U.S. citizens.⁶⁷ Instead, the Treaty of Paris provided that “[t]he civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.”⁶⁸ Through this provision, Congress simultaneously delayed the political status question and also chose not to extend the U.S. Constitution to the territories.⁶⁹

As if to ensure that Filipinos would not be conferred citizenship, Congress passed a resolution stating as follows:

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That by the ratification of the treaty of peace with Spain it is not intended to incorporate the inhabitants of the Philippine Islands into citizenship of the United States, nor is it intended to permanently

64. 33 CONG. REC. S1247, 1259 (daily ed. Jan. 29, 1900) (statement of Sen. Ben Tillman).

65. ERMAN, *supra* note 45, at 31.

66. *See id.*; Burnett [Ponsa-Kraus], *supra* note 53, at 661.

67. *See* Burnett [Ponsa-Kraus], *supra* note 53, at 669 (quoting *Downes v. Bidwell*, 182 U.S. 244, 341-42 (1901) (White, J., concurring)). Note though that the Hawaiian people did not want citizenship. *See* Rose Cuisson-Villazor, *Rejecting Citizenship*, 120 MICH. L. REV. 1033, 1056 (2020).

68. Treaty of Paris, *supra* note 46, art. IX; *see also* Burnett [Ponsa-Kraus], *supra* note 53, at 668.

69. Ponsa-Kraus, *supra* note 25, at 2455. This led to the *Insular Cases*, a discussion of which is beyond the scope of this Comment.

annex said islands as an integral part of the territory of the United States.⁷⁰

Thus, at the dawn of the twentieth century, the template of a new type of political status was formed—one that would liminally occupy the interstices of the citizen and noncitizen. By declaring the territories part of the United States but not addressing the political status of Filipinos, Congress created the path to a new category of membership—one that suggested that the people were only partially part of the United States.

Two years later, the framework of interstitial citizenship continued to take shape. Congress passed the Act of July 1, 1902, which established how the Philippines would be administered and, importantly, officially determined the political status of Filipinos. The Act of 1902 stated that, “all inhabitants of the Philippine Islands ... and their children born subsequent thereto, shall be deemed and held to be citizens of the Philippine Islands and as such entitled to the protection of the United States.”⁷¹ Thus, although Filipinos received the protection of the United States, they were not provided with U.S. citizenship.

Finally, the Supreme Court solidified the liminal nature of the political status of Filipinos and other people in the U.S. territories. The year before the enactment of the Act of 1902, the Supreme Court had held in *Downes v. Bidwell* that Puerto Rico was “foreign in a domestic sense.”⁷² In so doing, the Court created an ambiguous status for U.S. territories, declaring them somewhere between an alien nation and part of the United States. The Supreme Court would issue other opinions that continued to sow confusion regarding whether U.S. territories and their peoples were part of the United States. For example, in 1904, the Supreme Court held in *Gonzales v. Williams* that Puerto Ricans are not “aliens” but did not declare them to be U.S. citizens either.⁷³

To be sure, in 1906, Congress passed a law that seemingly provided a path to citizenship for people in the territories. Section 30 of the Naturalization Act of 1906 provided that, “all the applicable

70. 32 CONG. REC. 1829, 1835 (1899). See also ERMAN, *supra* note 45, at 33.

71. The Philippine Organic Act, Pub. L. No. 57-235, § 4, 32 Stat. 691, 692 (1902).

72. 182 U.S. 244, 341 (1901).

73. 192 U.S. 111 (1904).

provisions of the naturalization laws of the United States shall apply to and be held to authorize the admission to citizenship of all persons not citizens who owe permanent allegiance to the United States.”⁷⁴ However, the Act of 1906 did nothing to move territorial peoples outside of their liminal status. As Part III explains, the intended goal of the 1906 Act was thwarted by racial restrictions stemming from the 1790 Act.⁷⁵

To be sure, Congress amended the laws of naturalization when it enacted the Naturalization Act of 1918, which allowed Filipinos who enlisted in the U.S. armed forces for three years to apply for citizenship.⁷⁶ This arguably provided a path out of the racialized liminal status of noncitizen nationality, but, as the Supreme Court would express in 1925, this provision was limited to Filipino service-members. Specifically, in *Toyota v. United States*, the Supreme Court addressed the question of whether a Japanese man who served ten years in the U.S. Coast Guard was eligible for citizenship.⁷⁷ Answering in the negative, the Court explained that citizenship vis-à-vis military service was limited to Filipinos who applied under the Act of 1918.⁷⁸ All other Filipinos remained ineligible because they were not “aliens” who had allegiance to a foreign country.⁷⁹

This in-between political status would shift closer to the “alien” side of the noncitizen/citizen spectrum in 1934. That year, Congress passed the Philippines Independence Act of 1934.⁸⁰ The 1934 Act provided that upon the creation of a Constitution and approval by the United States, the Filipino people would be able to elect their own government and the United States would withdraw from the Philippines.⁸¹ The Act was set to expire on July 4, 1944, and the Philippines at that time would be recognized as an independent country.⁸²

74. Naturalization Act of June 29, 1906, Pub. L. No. 59-338, § 30, 34 Stat. 596, 606 (1906).

75. See *infra* Part III.

76. Alien Naturalization Act, Pub. L. No. 65-144, 40 Stat. 542, 542-43 (1918).

77. 268 U.S. 402, 406-07 (1925).

78. *Id.*

79. *Id.* at 404.

80. Philippines Independence Act (Tydings-McDuffie Act), Pub. L. No. 73-127, 48 Stat. 456 (1934).

81. *Id.* § 2(b)(2).

82. *Id.* § 10(a). Due to World War II, the 1934 Act did not formally expire until July 4,

Notably, the Philippine Independence Act of 1934 stated that until the expiration of the Act, “[a]ll citizens of the Philippine Islands shall owe allegiance to the United States.”⁸³ This allegiance had of course been held by Filipinos since 1898, and it meant that they would remain noncitizen nationals.⁸⁴ However, the 1934 Act included a provision that made applicable the Immigration Act of 1924, which barred from immigration those who were racially ineligible for citizenship, as well as all immigration laws governing the entry, exclusion, and deportation of noncitizens.⁸⁵ Indeed, the 1934 Act specifically stated that “citizens of the Philippine Islands who are not citizens of the United States shall be considered *as if they were aliens*.”⁸⁶ To ensure that Filipinos would be treated as noncitizen “aliens,” the 1934 Act provided that the Philippines would be considered a separate country for purposes of the immigration quota system and “shall have for each fiscal year a quota of fifty.”⁸⁷

This law severely restricted the emigration of Filipinos from the Philippines.⁸⁸ As I previously wrote, more than 36,000 Filipinos entered the United States in 1931; a few years later in 1937, only 72 Filipinos had entered the country.⁸⁹ Crucially, the 1934 Act’s recognition of Filipinos as “aliens” meant that the many Filipinos residing in the United States became subject to deportation if they violated immigration laws.⁹⁰ Indeed, Congress subsequently passed

1946. Ricardo Trota Jose, *July 4, 1946: The Philippines Gained Independence from the United States*, NAT’L WWII MUSEUM (July 2, 2021), <https://www.nationalww2museum.org/war/articles/july-4-1946-philippines-independence> [https://perma.cc/5ZYZ-LRLP] (discussing the impact of World War II on delaying the effective date of Philippine independence); see also *Rabang v. Boyd*, 353 U.S. 427, 430-31 (1957) (stating that the 1934 Act expired on July 4, 1946).

83. Philippines Independence Act § 2(a)(1).

84. *Rabang*, 353 U.S. at 430-31 (holding that until the expiration of the 1934 Act, Filipinos were nationals of the United States and became aliens on July 4, 1946 when the 1934 Act expired).

85. Philippines Independence Act § 8(a)(1).

86. *Id.* (emphasis added).

87. *Id.*

88. RICK BONUS, *LOCATING FILIPINO AMERICANS, ETHNICITY & CULTURAL POLITICS OF SPACE* 41 (2000).

89. Cuison Villazor, *supra* note 17, at 1716.

90. Philippines Independence Act § 8(a). As one court noted, it is a “pity ... that thousands of [Filipino] employees in government work may lose their employment unless Congress continues to incorporate saving provisions in certain appropriation acts, as it has in several

the Filipino Repatriation Act to assist the *voluntary* deportation of Filipinos to the Philippines, further signaling that their liminal political status would eventually shift to “aliens,” which took place on July 4, 1946.⁹¹

Thus, on the one hand, Filipinos became noncitizen “aliens” for purposes of immigration and were no longer freely able to migrate to the United States.⁹² On the other hand, Filipinos retained their noncitizen national status for citizenship purposes and, as such, they remained ineligible to naturalize. That is, the 1934 Act did not provide them with a path to U.S. citizenship.⁹³ As explained earlier, only those who were White or of African nativity or descent were racially eligible to apply for naturalization.⁹⁴

In sum, as this Part explained, Congress passed various laws between 1898 and 1946 that created the liminal status of Filipinos as noncitizen nationals. This vulnerable in-between status denied them a path to U.S. citizenship and ultimately ended with Filipinos becoming recognized as noncitizens by 1946.

III. FILIPINOS AS RACIALIZED LIMINAL AMERICANS

The “white persons” provision of the 1790 Act provided foundation for the denial of citizenship to Filipinos in the early 1900s, which led to their racialized liminal status. As this Part discusses, it also played a significant role in ensuring that Filipinos remained in that liminal status. In cases filed by Filipinos residing in the United States, courts interpreted subsequent amendments to the 1790 Act as indicative of Congress’s goal to continue to limit naturalization

such acts, beginning in 1946.” Application of Vioria, 84 F. Supp. 584, 586 (D. Haw. 1949). *But see* Barber v. Gonzalez, 347 U.S. 637, 642 (1954) (holding that a Filipino residing in the United States who lost his national status and became an “alien” was nevertheless not deportable despite violating immigration laws).

91. *See infra* Part III. Filipino Repatriation Act, Pub. L. No. 74-202, 49 Stat. 478 (1935).

92. *See infra* Part III.

93. “[T]he Philippine government feared that a mass emigration of newly naturalized Filipinos to the United States would drain the country of much needed manpower and thwart post-war reconstructive efforts.” *See* Olegario v. United States, 629 F.2d 204, 209 (2d Cir. 1980) (citing Memorandum from Edward Shaughnessy, Special Assistant to the Comm’r, Immigr. and Naturalization Serv., to Ugo Carusi, Comm’r, Immigr. and Naturalization Serv. (Oct. 19, 1945)).

94. *See supra* note 61 and accompanying text.

based on race.⁹⁵ In so doing, courts ensured that Filipinos would never be able to leave their liminal political status.

For example, on September 24, 1912, the United States District Court for the Eastern District of Pennsylvania denied the naturalization application of Eugenio Alverto, a citizen of the Philippines who had served for seven years in the U.S. Navy.⁹⁶ Alverto applied for citizenship under the Naturalization Act of 1906, which authorized those persons “not citizens who owe permanent allegiance to the United States” and “may become residents of any State or organized Territory” to be eligible to apply for citizenship.⁹⁷ The Philippine Islands were acquired by the United States after the Spanish American War in 1898, and their people became Philippine citizens “entitled to the protection of the United States.”⁹⁸ Alverto also applied for citizenship under the Act of July 26, 1894, which allowed current or former U.S. military service members to be “admitted to become a citizen of the United States” upon application.⁹⁹ The court did not question Alverto’s military record.¹⁰⁰ Indeed, the court recognized his commendable service.¹⁰¹ Nevertheless, the court rejected the application.¹⁰² The court cited two reasons for doing so. First, the court explained that Section 2169 of the Revised Statutes provided that naturalization “shall apply to aliens being free white persons, and to aliens of African nativity and to persons of African descent.”¹⁰³ According to the court, naturalization of those who served in the military were, as dictated by Section 2169, still limited to “the white or African races.”¹⁰⁴ Alverto, who was “ethnologically speaking, one-fourth of the white or Caucasian race and three-fourths of the brown or Malay race” was not

95. See *In re Alverto*, 198 F. 688, 689 (E.D. Pa. 1912).

96. *Id.* at 691.

97. Naturalization Act of June 29, 1906, Pub. L. No. 59-338, § 30, 34 Stat. 596, 606 (1906).

98. *In re Alverto*, 198 F. at 689.

99. Act of July 26, 1894, ch. 165, 28 Stat. 124 (1894) (“Any alien of the age of twenty-one years and upward who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may serve five consecutive years ... and has been ... honorably discharged, shall be admitted to become a citizen of the United States upon his petition.”).

100. *In re Alverto*, 198 F. at 690.

101. *Id.*

102. *Id.* at 691.

103. *Id.* at 689.

104. *Id.* at 690.

a “free white person” and thus was racially ineligible to naturalize.¹⁰⁵

Second, the court explained that the Naturalization Act of 1906 did not provide a path to citizenship for Alverto despite its terms authorizing him to obtain citizenship. The court noted that naturalization laws “applied only to aliens” and required renunciation of “former allegiance.”¹⁰⁶ Alverto and other citizens of the Philippines, however, were not “aliens” because they already had allegiance to the United States and were therefore not “capable of becoming naturalized.”¹⁰⁷ Notably, the court explained that the 1906 Act did not repeal section 2169. Instead, the court held that “[t]he use of the words ‘white persons’ clearly indicates the intention of Congress to maintain a line of demarcation between races and to extend the privilege of naturalization only to those of the races named.”¹⁰⁸

As the foregoing shows, Alverto was stuck in the middle—a liminal space—with no path forward for citizenship and was thus an interstitial citizen. The combination of laws supporting America’s colonization of the Philippines coupled with the racial project of the 1790 Act kept Filipinos in their subordinated, liminal status. Alverto, and others like him, was not eligible for naturalization because although he was not a U.S. citizen, he was not an “alien” either, and he already owed allegiance to the United States. Moreover, even if he were a non-citizen or immigrant, he was not racially eligible.

Other courts reached similar conclusions. Judge Learned Hand, when faced with the question of whether to grant the naturalization application of “the son of a Filipino mother and of a father whose mother was a Filipino and whose father was a full-blooded Spaniard,” held that the applicant was not racially eligible because the petitioner was not a “white person.”¹⁰⁹ The court in the case of *In re Lampitoe* noted: “[W]here the Malay blood predominates it would be a perversion of language to say that the descendant is a ‘white

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *In re Lampitoe*, 232 F. 382, 382 (S.D.N.Y. 1916).

person.’ Certainly any white ancestor, no matter how remote, does not make all his descendants white.”¹¹⁰

Additionally, in the case of *In re Rallos*, the court, in denying the applicant’s petition to naturalize because he was not a White person, stated that “[a] contrary interpretation would mean that Chinese, Japanese, and Malays could become citizens, if they were inhabitants of the Philippine Islands, so as to become citizens of the Philippines under the laws following the Spanish War, and if they thereafter moved to the United States.”¹¹¹

In 1946, Congress passed the Luce-Celler Act, which lifted the racial restriction on citizenship against Filipinos and Indian immigrants.¹¹² By 1946, there were approximately 150,000 Filipinos residing in the United States and Hawaii.¹¹³ Two days after the Luce-Celler Act passed, the 1934 Philippine Independence Act expired, and the Philippines officially became an independent country.¹¹⁴ As a result, Filipinos officially lost their noncitizen national status, ending their racialized interstitial citizenship.

IMPLICATIONS AND CONCLUSION

The foregoing discussion offers at least two implications for Professors Chin and Finkelman’s claim about the importance of the 1790 Act. First, the 1790 Act is connected to the colonization of territories and territorial peoples in the twentieth century. In 1790, Congress viewed naturalization laws as central to immigration by encouraging White persons to immigrate to the United States and discouraging non-White persons from doing the same thing. The 1790 Act was instrumental to the nation-building project of the young nation. The Congress of the late 1890s and early 1900s had a different type of nation-building project—one that involved acquiring new territories thousands of miles away from the continental United States while simultaneously ensuring that the millions

110. *Id.*

111. *In re Rallos*, 241 F. 686, 687 (E.D.N.Y. 1917).

112. Luce-Celler Act, Pub. L. No. 79-483, § 303(a), 60 Stat. 416 (1946). According to Professor Dawn Mabalon, more than 10,000 Filipinos who resided in the United States before 1934 were naturalized as a result of the Luce-Celler Act. Mabalon, *supra* note 1.

113. Mabalon, *supra* note 1.

114. Treaty of General Relations Between the United States of America and the Republic of the Philippines, July 4, 1946, 7 U.N.T.S. 3.

of residents there would not become U.S. citizens. In other words, the 1790 Act would subsequently become a tool for the American Empire.

Second, citizenship, as Chin and Finkelman have shown, has two sides—the part that is inclusionary and the other that is exclusionary.¹¹⁵ Their paper should serve as an important reminder of the need to explore the normative view that citizenship should be desired given its susceptibility to subordinate people of color.

115. I have been exploring the exclusionary side of citizenship and have theorized what it means to reject citizenship in the first instance. *See generally* Cuison-Villazor, *supra* note 67.