8-4-2017

Fighting to Belong: Asian American Military Service and American Citizenship

Deenesh Sohoni
College of William and Mary, dssoho@wm.edu

Chapter 4

Fighting to Belong

Asian-American Military Service and American Citizenship

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The military has been recognized as one of the most crucial institutions in setting the parameters of national citizenship, and in helping facilitate the expansion of these boundaries to include racial minorities. Historically, it is during periods of war and strong external threat that notions of shared American identity become most salient. It is also during these periods that racial minorities can demonstrate their patriotism through military service, and thus make a claim for the full benefits of social membership (Bruscino, 2010).

As with other minority groups, military service has at times provided Asian-Americans the opportunity to prove themselves "true" Americans and deserving of all the legal rights of American citizenship. Yet frequently, preexisting racialized stereotypes of Asian-Americans as "permanent foreigners," unable or unwilling to assimilate into American society, have led to discriminatory policies that constrained their participation in the military, as well as limited the benefits they received when they served.

This chapter contributes to research on diversity in the US military by studying the military participation of Asian-Americans. Specifically, this chapter provides a legal-historical analysis of how Asian foreign nationals used the military to prove their patriotism and their worthiness to receive US citizenship, and of how US-born Asian-Americans used the military to prove their loyalty and worth as citizens. In doing so, I highlight the critical role Asian-Americans played in challenging legal race-based barriers to US citizenship, as well as in contesting state sanctioned racial discrimination against its citizens. I conclude with how and why the history of Asian-American participation in the US military has continued relevance for contemporary public and legal debates regarding race, immigration and naturalization laws, military service, and American citizenship.

RACE, IMMIGRATION AND NATURALIZATION LAWS, AND MILITARY SERVICE

Scholars studying the relationship between race and citizenship have long emphasized the historical conflict between two dominant ideologies of national membership: first, civic citizenship based on a shared set of "American" values and beliefs; and second, ethnocultural membership rooted in Anglo-Saxon Protestant values, and a presumption of the innate superiority of "whites" (Calavita, 2005; Glenn, 2000; Kettner, 1978; Smith 1997; Sohoni & Vafa, 2010).

Glenn (2000, p. 2) traces the origins of the concept of civic membership to the founding of the United States, when colonial leaders tried to create a political rebuttal to the European feudal system, with its social hierarchies based on "differential legal and customary rights." Instead, they sought to establish a political system based on a social contract among members of free and equal status, such that those who willingly contributed to the well-being of the community were seen as deserving of its membership (Kettner, 1978). This ideology of equality and inclusion is enshrined in the language of the Declaration of Independence, which states, "*We hold these truths to be self-evident, that all men are created equal*."

The ideology of civic membership has also played an important role in shaping Americans' attitudes toward military participation. From early on in American history, there has been a strong belief that not only is military service a duty and right of citizenship but also that those who willingly fight on behalf of their country prove worthy of its citizenship (Jacobs & Hayes, 1981; Janowitz, 1976; Kettner, 1978). A contemporary example of this view can be found in the arguments that have been and are being put forth in support of the military pathway option of the DREAM Act.[1]

At the same time, there existed equally strong beliefs that viewed American national identity as rooted in a common European heritage and saw racial minorities, such as Native Americans and blacks, as unsuitable for the obligations and responsibilities of citizenship (Calavita, 2005; Glenn, 2000), and as a threat to the nature of America as a "white" nation (Smith, 1997). This ideology of racial differentiation and exclusion is found in the US Constitution,[2] and in the early legislative history of Congress, which passed the Naturalization Act of 1790, limiting the right to naturalize to free white citizens.

This ideology has also found strong legal support at other points in American history, as evidenced by the passage of restrictive immigration and naturalization policies often directed against non-European immigrants, and the differential treatment frequently afforded to white and nonwhite US citizens. These ethnocultural beliefs also influenced military participation through the norms and rules that governed who is eligible to serve in the military, and for those serving in the military, under what conditions.

Legal History of Asian Immigration and Citizenship

The period following the Civil War saw significant demographic and legal challenges to the existing US racial order. Immigrants from Asia first began to enter the United States in noticeable numbers, first from China and Japan, then from the Philippines, Korea, and India (see Table 4.1). Between 1860 and 1890, the Chinese ancestry population tripled from a little over 30,000 to over 100,000. With passage of the Chinese Exclusion Act of 1882, which barred Chinese immigrants from entering the United States, there was a shift to immigration from Japan as a way to meet US agricultural labor needs. As a result, the Japanese ancestry population in the United States went from a couple of thousand in 1890 to over 200,000 in 1920 (Hing, 1993). Similarly, when the Gentleman's Agreement of 1908 led to the informal restriction of Japanese immigrants, employers began recruiting immigrants from other Asian countries (and Asians residing in Hawaii for the mainland) (Hing, 1993).

Increased immigration from Asia occurred at the same time as large-scale growth in immigration from South, Central, and Eastern Europe, leading to greater hostility toward all these groups, and greater public support for more restrictive immigration policies (Daniels & Graham 2001; Sohoni, 2007).[3] Immigration from Asia also coincided with changes in the legal status of blacks at the end of the Civil War. The Naturalization Act of 1790 had originally restricted naturalization to "white persons," laying the foundations for a racially defined citizenship. In the aftermath of the Civil War, Congress passed legislation that gave new rights to blacks, particularly with respect

Table 4.1 Asian Ancestry Population, by Group and Decade

Decade ending	*Chinese*	*Japanese*	*Filipino*	*Asian-Indian*	*Korean*
1860	34,933[a]	xxx	xxx	xxx	xxx
1870	64,199[a]	xxx	xxx	xxx	xxx
1880	105,465[a]	xxx	xxx	xxx	xxx
1890	107,488[a]	xxx	xxx	xxx	xxx
1900	118,746	85,716	xxx	xxx	xxx
1910	94,414	152,745	2,767	5,424	5,008
1920	85,202	220,596	26,634	***	6,181
1930	102,159	278,743	108,424	3,130	8,332
1940	106,334	285,115	98,535	2,405	8,568
1950	150,005	326,379	122,707	***	7,030[b]
1960	237,292	464,332	176,310	12,296[c]	11,000[c]

xxx, not applicable.
***Missing data.
[a]Includes only Chinese living on the US mainland.
[b]Hawaiian population only.
[c]Includes only foreign-born population.
Source: Sohoni, D. (2007). Unsuitable suitors: Anti-miscegenation laws, naturalization laws, and the construction of Asian identities. Law and Society Review, 41: 587–618. Adapted from Hing, B. O. (1993). Making and remaking Asian America through immigration policy, 1850–1990. Stanford, CA: Stanford University Press.

to naturalization and citizenship. Specifically, the Civil Rights Act of 1866, stipulated that:

> Ch. 31. [a]ll persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared citizens of the United States; and such citizens, *of every race and color*, without regard to any previous condition of slavery or involuntary servitude . . . , shall have the same rights, in every State and Territory of the United States. (Emphasis added)

The 14th Amendment, and in particular its equal protection clause, further clarified the ability of states to create race-based legislation, by prohibiting states from denying "any person within its jurisdiction the equal protection of the laws."

Finally, in 1875, Congress passed the most progressive and comprehensive legislation regarding citizenship and naturalization. The Civil Rights Act of 1875 provided that

> Sec. 1. [i]t is the duty of government in its dealings with the people to mete out equal and exact justice for all, of whatever *nativity, race, color or persuasion, religious or political*; . . . That all persons within the jurisdiction of the United States of America shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theatres, and other places of public amusement; subject only to the conditions and limitations of law and applicable alike to *citizens of every race and color*, regardless of any previous condition of servitude (Emphasis added).

Civil Rights legislation appeared, in theory, to provide Asian immigrants an avenue to naturalize and gain citizenship. In fact, during debates regarding the wording of the Naturalization Act 1870, several Congressmen sought to remove the term "white" from naturalization laws altogether (Haney López, 1996). However, fear among representatives from Western states that the rapidly growing Chinese population would seek citizenship rights-led Congress to reject proposals to make naturalization statutes colorblind or to extend naturalization rights to Asian immigrants (Chang, 1999). As a result, the Naturalization Act of 1875 finally read:

> "The provisions of this title shall apply to aliens being free white persons, and to aliens of African nativity, and to persons of African descent."

For the judiciary, this left the problem of reconciling the conflict between Congressional Civil Rights legislation, which granted stronger protections to racial minorities, and immigration and naturalization laws, which continued to rely on racial categories in determining citizenship. For those of Asian

ancestry, the judiciary's response was to distinguish between the "rights of citizens" and the "right to become a citizen" (Sohoni, 2007; Sohoni & Vafa, 2010).

The underpinnings of this legal distinction first arose when Chinese immigrants facing deportation from the United States challenged the Chinese Exclusion Act of 1882 based on its incompatibility with existing treaties between the United States and China. In two critical court cases, *Chae Chan Ping v. United States* (1889) and *Fong Yue Ting v. United States* (1893), the Supreme Court granted Congress nearly unrestricted power over immigration and naturalization through the "plenary power doctrine," which held that only the executive and legislative branches have the "sovereign power to regulate immigration, and that this power was beyond judicial review" (Chin, 1998).[4] Thus, while the Supreme Court would eventually rule in *United States v. Wong Kim Ark* that US-born Asians were guaranteed birthright (*jus soli*) citizenship, and in theory, protection from race-based discrimination, the Court continued to allow Congress to pass legislation based on racial status that served to limit Asian immigration and naturalization (Sohoni & Vafa, 2010).

With passage of the Immigration Act of 1917, which created the Asiatic Barred Zone, Congress extended the Chinese exclusion laws to include all other Asians groups (Hing, 1993).[5] Finally, in response to post–World War I anti-immigrant sentiment, Congress passed the Immigration Act of 1924 (Johnson-Reed Act). While primarily concerned with limiting immigration from Southern, Central, and Eastern European countries (through the use of national quotas), this Act also permanently excluded all "aliens ineligible for citizenship." Under the Naturalization Act of 1870 and the revisions in the Act of February 18, 1875, and with the noteworthy exception of Filipinos, this meant "Asians" (Hing, 1993).[6] The net result of these Congressional Acts was that until racial restrictions on naturalization were finally removed by the Immigration and Nationality Act of 1952, Asian immigrants were banned from entering the United States because they were ineligible for citizenship, and ineligible for citizenship because they were not white (or black).

However, the impact of these discriminatory laws affected not only foreign-born Asians, but also their US-born offspring. Specifically, the justifications used for prohibiting Asian immigrants—that they were incapable of assimilating, and "innately" unsuited for republican forms of government—suggested a "biological" component for cultural differences, and allowed for the creation of a racialized ethnicity that included a perception of the intrinsic foreignness of Asians that linked together foreign-born and US-born Asian-Americans (Saito, 1997). This linking of race and foreignness has repeatedly, during periods of strong external threat, allowed for some US citizens to be seen as still tied to their ancestral countries, and thus never truly "American" (Daniels, 2004; Stein, 2003).

Race and Military Service

Racial minorities living in the United States have long viewed military service as a means to challenge racial prejudices and stereotypes, and as an avenue to higher status within American society. For instance, during the Revolutionary War, blacks fought on both sides of the war, hoping that loyalty to their respective sides would be rewarded by greater social and legal rights. Even after African-Americans acquired formal citizenship following the Civil War, black leaders continued to push military service as a way for blacks to prove their worth as citizens (Segal, 1989). Yet, as Astor (1998) notes, despite their willingness to serve, between independence and World War II, the use of African-Americans followed a clear pattern:

> At first, the authorities declined to enlist them. As the shortages of manpower became apparent, they were grudgingly enrolled, largely for menial work rather than combat duty and denied positions that might give them authority over white servicemen. With the passage of time the consumption of cannon fodder would grant some the right to bleed for their country. And when the shooting was over and the number of men under arms sharply reduced, they were the first to be dismissed (p. 14).

Like African-Americans, members of Asian groups also have had a long and complicated history of military service on behalf of the United States. While Asian ancestry individuals have served on behalf of the United States since at least the War of 1812 (Williams, 2005), it was not until the early 1900s that the first widespread use of Asians in the US military began (see Table 4.2). The forced opening of Japan in 1853 by Commodore Perry marked the start of US involvement in Asia. In 1898, the United States "annexed" the Philippines and Hawaii, and a year later started its "Open Door" policy in China (Okihiro, 2001, p. 25–26). The resulting increased pressure to protect US interests in Asia forced the military to seek local labor (most prominently Filipinos) to meet its personnel needs.

Whereas African-Americans faced intense levels of racism in their attempts to prove their worth as citizens, Asian aliens had to overcome racialized constructions that portrayed them as perpetual outsiders in order to prove themselves worthy of citizenship (Moore, 2003). Specifically, even as many Asian aliens willingly chose to serve in the US military, they faced race-based legal restrictions that made them ineligible for US citizenship. This distinction would come, in time, to affect even how US-born Asian citizens were treated by the United States and its armed services, in particular, with respect to the experiences of Japanese-Americans during World War II. In the following section, I discuss how the racial and nativity status of Asian foreign

nationals and US-born Asian-American citizens affected their ability to serve their country and claim membership as Americans.

ASIAN-AMERICAN MILITARY SERVICE

Military Naturalization and Asian Citizenship[7]

In principle, only American citizens are eligible to serve in the US military; however, in practice, the United States has long relied on noncitizens to satisfying its military needs (Ford, 2001). During the Revolutionary War, George Washington relied heavily on German and Irish foreign nationals to supplement his forces, and even though Congress technically restricted the enlistment of aliens upon independence, these restrictions were typically suspended in times of military conflict (Ford, 2001). For example, during the Civil War, the Union Army enlisted European resident aliens, and even unofficially encouraged the recruitment of European immigrants with offers of free passage to the United States (Jacob & Hayes, 1981). In order to legitimize these practices, Congress passed the Act of July 17, 1862, which created "military naturalization" as a pathway to citizenship:

> Sec. 21. That any alien, of the age of twenty-one years and upwards, who has enlisted or shall enlist in the armies of the United States, . . . , may be admitted to become a citizen of the United States, . . . and that he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen.

With respect to citizenship, naturalization laws make aliens legally the same as US-born Americans (Kettner, 1978). Normally, the naturalization process requires a waiting period of several years, during which time aliens are expected to "become firmly attached to the well-being of the Republic" (Kettner, 1978, p. 243). This waiting period served to allow individual immigrants to demonstrate their loyalty and allegiance, qualities considered essential for constructing and maintaining national unity (Kettner, 1978). Military service was sufficient in demonstrating these characteristics, thus justifying the shorter waiting periods permitted by military naturalization.

Scholars note that for many European immigrants, military naturalization provided not only an accelerated pathway toward citizenship but also an important force in their "Americanization" (Ford, 2001; Jacob & Hayes, 1981; Kettner, 1978). For Asian aliens, however, the right to seek military naturalization placed into legal conflict the respective ideologies of civic and

Table 4.2: Estimates of Asian and Asian American Military Participation

Time Period	*Military Participation: Context and Background*	*Estimated Numbers Serving*
19th Century		
War of 1812 (1812-1815)	Accounts of Filipinos ("Manilamen") helping General Andrew Jackson defend New Orleans against the British under the command of Jean Baptise Lafitte.[1]	Unknown number of Filipinos.
Civil War (1861-1865)	Evidence that Chinese foreign nationals fought on both sides of the Civil War.[1]	≈50 Chinese
Spanish-American War (1898)	Evidence that Chinese and Japanese-Americans served aboard US warships in the Battle of Manila.[2]	Unknown number of Chinese and Japanese-Americans.
20th Century		
Philippine-American War (1899-1902)	President William McKinley signs Executive Order (1901) allowing the US Navy to enlist Filipinos as part of the insular force.[3]	≈500 Filipinos.
WWI (1914-1918)	Over 2.5 million Americans served in US Army, with around 18% being foreign born.[4]	≈5,700 Filipinos[5] and several thousand "other Asian."[4]
WWII (1939-1945)	Approximately 16 million Americans served in the US Armed Forces. The majority were US born due to the effects of restrictive immigration policies.[4]In the US, Filipinos originally were not allowed to enlist. Most ended up serving in two segregated units—the 1st and 2nd Filipino Infantry Regiments. Filipinos living in the Philippines mainly served in segregated units as part of the US Army— Philippine Scouts, Philippine Division. Chinese-Americans mainly served in integrated units, about 40% were foreign-born.[8] Japanese-Americans initially were denied the opportunity to serve. Most fought in the all-Japanese-American 100th Infantry Battalion and the 442nd Infantry Regiment—known collectively as the 442nd Regimental Combat Team.	In total, approximately 60,000 Asian Americans in the United States served. About 7,000 Filipino Americans residing in the United States served.[6]Between 142,000 and 400,000 Filipinos served in various capacities under or working with the US military.[7]Between 12,000 and 15,000 Chinese-Americans served.[9]Approximately 33,000 Japanese-Americans served.

1948	President Harry S. Truman Issues Executive Order 9981, abolishing racial discrimination in the US Armed Forces, which eventually ending segregation in the military.	
Korean and Vietnam Wars	Based on 1990 Census figures, the number of surviving Asian American veterans are:	32,559 for the Korean War.[8]88,052 for the Vietnam War.[8]
21st Century Current Forces	Today Asian Americans comprise 3.8% of the active duty population, a percentage similar to their representation in the general population.[10]	52,326 Asian Americans are serving on active duty.[10]

[1] Williams (2005). Citing speech given by David Chu, undersecretary of defense for personnel and readiness, at the DoD Asian-Pacific American Heritage Month luncheon on June 2, 2005.
[2] Japanese-American National Museum. "Japanese-Americans in America's Wars: A Chronology." http://www.janm.org/nrc/resources/militarych/ (Last accessed 3/5/2016).
[3] Bureau of Naval Personnel (1976).
[4] Bruscino (2010).
[5] Kramer (2006).
[6] Lee (2015).
[7] Frank (2005).
[8] US Department of Veterans Affairs (1998).
[9] Wong (2005).
[10] US Department of Defense (2013).

ethnocultural membership and put the courts in the position of resolving the contradiction between military naturalization legislation, which granted all aliens who served in the military the right to naturalize, and more general naturalization laws that limited citizenship to whites and blacks (Sohoni & Vafa, 2010).

In the first three cases that appeared before the federal courts, judges sought to deny that legislation allowing military naturalization was incompatible with existing race-based policies prohibiting Asian aliens the right to naturalize. Rather than debate the constitutionality of race-based naturalization laws, the courts followed the precedent established by earlier Supreme Court cases, that decisions regarding who should be able to enter the country and who could become a citizen were matters of "national interest" and thus strictly the domain of the legislative and administrative branches of government.

For example, in 1908, the District Court in Washington ruled that Buntaro Kumagai, a Japanese alien who had served honorably in the US Army, was ineligible for citizenship (*In re Buntaro Kumagai*). In presenting the court's opinion, Judge Hanford argued that the Constitution clearly delineated the roles of Congress and the courts with respect to naturalization, and thus distinguished between those born in the United States, who had the right to citizenship "without distinction to race or color," and aliens, who could only claim the privilege of becoming citizens under the provisions of laws enacted by Congress (p. 923).

Thus, rather than address the question of whether military naturalization laws provided a challenge to the ideology of race-based citizenship, Judge Hanford shifted the legal issue to whether Congress had intended military naturalization to provide an exception to laws limiting naturalization to whites and blacks. In presenting the court's ruling, Judge Hanford held that because both the Act of July 17, 1862, which had authorized military naturalization, and the (Naturalization) Act of February 18, 1875, which limited naturalization to whites and blacks, had been incorporated into succeeding immigration and naturalization laws, Congress must have intended military naturalization to give way to the broader framework of race-based naturalization.

In the following two years, the District Court in New York (*In re Knight*, 1909), and the Court of Appeals for the Fourth Circuit (*Bessho v. United States,* 1910), reached very similar decisions regarding military naturalization for foreign-born Asians. In the first case, Knight, whose father was English, and whose mother was half-Chinese and half-Japanese, argued that his service in the US Navy entitled him to naturalize under the Act of July 26, 1894, which specified that "any alien" who had served in the US Navy "shall be admitted to become a citizen of the United States."[8] As in the case of *In re Buntaro Kumagai*, the court ruled that race-based naturalization laws took precedence over military naturalization. In justifying the court's opinion,

Judge Chatfield argued that Congress must have known that members of other races would serve in the US Army and Navy, and thus by *not* specifying which racial groups were eligible for military naturalization, Congress had meant to limit military naturalization to whites and blacks, the only groups allowed to naturalize based on the more general immigration and naturalization laws.[9] Similarly, in *In re Bessho*, the court ruled against a Japanese petitioner who had served in the US Navy, arguing that because Congress failed to specifically repeal section 2169 of the Revised Statutes limiting naturalization to whites and blacks,[10] it must have intended race to matter in questions of citizenship.

The net result of these cases was that despite Congressional legislation that appeared to grant US citizenship to any alien who served in the military, and the willingness of the US military to allow them to serve, Asian aliens who had fought on behalf of the United States were denied its citizenship (Sohoni & Vafa, 2010). Furthermore, these rulings served to reinforce the dominance of ethnocultural views of US citizenship, as well as the right of Congress to make and use immigration and naturalization laws to ensure the demographic and ideological dominance of whites. As Judge Hanford noted in *In re Buntaro Kumagai* "the use of the words 'white persons' indicates the intention of Congress to maintain a line of demarkation [*sic*] between races, and to extend the privilege of naturalization only to those of that race which is predominant in this country." (p. 924)

However, these legal justifications for excluding Asian-Americans from citizenship soon came under pressure due to the unique legal situation of Filipinos and the Philippines. Particularly critical for judicial proceedings was the legal status of Filipinos as "nonalien/noncitizens" owing allegiance to the United States, and the need to attract foreign labor to meet military needs in Asia. Under the Treaty of Paris (1898), which ended the Spanish-American War, the United States gained control of the Philippines from Spain. When Filipino rebels continued their struggle for independence against the United States,[11] the US government responded by establishing the Philippine Scouts, units of Filipino-enlisted men led by US Army officers, to help quell the rebellion. The United States' eventual victory forced Filipino leaders to accept US sovereignty, and the new territorial government under US stewardship (Cabotaje, 1999).[12] In the years leading up to World War I, the US Navy began recruiting Filipinos to fill its most menial positions (such as stewards and mess men) and meet its growing manpower needs (Segal, 1989). Between 1903 and 1914, the number of Filipinos serving in the US Navy grew from nine individuals to about six thousand (Espiritu, 1995).

When Filipinos first tried to use their military service as a means to seek US citizenship, the federal courts used the same legal arguments that they had used against the naturalization of foreign-born Chinese-Americans and

Japanese-Americans. For instance, in 1912, the District Court in Pennsylvania denied Alverto, a citizen of the Philippines, who at the time had been serving in the US Navy for seven years, his petition to become a US citizen (*In re Alverto*, 1912). Citing the precedent established in the three previously described cases, Judge Thompson argued "however commendable" Alverto's naval service, Congress had only intended to extend naturalization by service to those "who were of the white or African races" (p. 690). Judge Thompson further argued that since the Philippines was a protectorate of the United States, Filipinos were technically not "aliens" and thus ineligible to naturalize.

At the beginning of World War I, Congress passed the Act of June 30, 1914, granting citizenship to aliens who served for four years in the US Navy or Marine Corps. As with previous military naturalization legislation, Congress neglected to specify racial eligibility or restrictions. However, Congress did add that military naturalization was restricted to aliens who were eligible for citizenship under existing law. In 1916, the District Court of Massachusetts used the unique legal status of the Philippines to support the right of Filipinos living in the United States to seek citizenship. In *In re Mallari*, Judge Morton argued that since the (Naturalization) Act of June 29, 1906 authorized admission to citizenship for "all persons not citizens who owe permanent allegiance to the United States" (p. 417), that Mallari would be eligible to naturalize given his status as a resident of the Philippines.[13]

A year later, however, two federal courts reached strongly contrasting decisions regarding the military naturalization of Filipinos. In *In re Rallos* (1917), the District Court of the Eastern District of New York denied Rallos, a half-Spanish, half Filipino, who had served in the US Navy, US citizenship. Judge Chatfield argued that because Filipinos were not legally aliens, they could not naturalize. He further argued that granting Filipinos military naturalization would defeat the purpose of existing immigration and naturalization laws, which limited naturalization to whites. However, in the same year, in *In re Bautista*, the District Court of Northern California granted a Filipino's petition for citizenship. The court argued that because Section 30 of the Naturalization Act of June 29, 1906 authorized "the admission to citizenship of *all persons not citizens who owed permanent allegiance* to the United States" (p. 767). Congress must have intended to allow Filipinos and Puerto Ricans the opportunity to naturalize. However, unlike the opinion in *In re Mallari*, Judge Morrow argued that this did not mean that all Filipinos were eligible, but only those with necessary qualifications—which in the case of Bautista, was his naval service. Furthermore, Judge Morrow noted that it would not make sense to deny Bautista citizenship, since this "would defeat the purpose of the act to encourage enlistment." (p. 769)

During World War I, and largely in response to the US Navy's personnel demands in Asia, Congress passed the Act of May 9, 1918, which for the first

time specified that "Filipinos" and "Porto Ricans" who served in the US military were eligible to naturalize. However, the Act also stated that "any alien" who had enlisted or planned to enlist in the US Army, Navy, Marine Corps, and Coast Guard was eligible to naturalize, while simultaneously concluding that the Act should not be seen as repealing or enlarging section 2169 of the Revised Statutes, thus leaving the status of members of other Asian groups unclear.

To further complicate matters, Congress passed the Act of June 19, 1919, which made "[a]ny person of foreign birth" eligible for naturalization if they served in the US military during World War I. The vagueness of Congressional legislation with respect to non-Filipino Asians led some federal and state court judges to grant citizenship to Asian servicemen (Salyer, 2004). Yet, it is important to note that these were primarily administrative decisions made at the height of wartime patriotism and did not substantively or symbolically challenge the primacy of race-based citizenship (Sohoni & Vafa, 2010).

Once World War I ended however, the judiciary was again forced to interpret the conflicting legislative messages regarding military and race-based naturalization. In the case of *In re Para* (1919), the District Court for the Southern District of New York denied two aliens, one of South American Indian ancestry and one of Japanese ancestry, the right to naturalize despite their service in the US Navy during World War I. In supporting its opinion, the court argued that "any alien" in the Act of May 9, 1918, was limited to whites and blacks, *and* to Filipinos and Puerto Ricans, who had been spelled out in the language of the legislation (p. 643–644).

The joint cases of *In re En Sk Song* and *In re Mascaranas*, in 1921, would further clarify this legal distinction between Filipinos/Puerto Ricans and other Asian groups. Specifically, in these cases, the District Court for the Southern District of California ruled that even though both Song (a Korean) and Macaranas (a Filipino) had engaged in military service for the United States, only Mascaranas was eligible for citizenship under the Act of May 9, 1918. At the same time, Judge Bledsoe noted that these legislative acts lacked the uniformity expected of naturalization law, and the problematic nature of denying citizenship to someone who had "bared his breast to the bayonet of the enemy." (p. 25–26)

In total, between the end of World War I and 1925, federal and state courts repeatedly and consistently interpreted congressional intent in this manner, culminating in the Supreme Court decision in *Toyota v. United States* (1925) where the Court upheld the District Court of Massachusetts's decision to vacate an order allowing a Japanese alien to naturalize based on his military service (Sohoni & Vafa, 2010). Specifically, the Supreme Court ruled that the Act of May 9, 1918 did not provide a challenge to the long history of "national policy to maintain the distinction of color and race" because Congress had only intended to make an exception for Filipinos and Puerto Ricans who had *served in the military* (p. 412).[14]

Despite the Act of June 24, 1935,[15] which allowed Asian-American World War I veterans previously ineligible for citizenship to naturalize, it was not until World War II that Congress finally dismantled the racial restrictions that prevented Asians from citizenship (Sohoni & Vafa, 2010). On December 17, 1943, Congress overturned the Chinese Exclusion Acts, allowing Chinese aliens to naturalize. Three years later, Congress passed legislation making Filipinos and Asian-Indians eligible for citizenship.[16,17] This process culminated with the passage of the Immigration and Nationality Act of 1952, whereby Congress made all races eligible for citizenship, thereby also eliminating race as a bar to immigration (Sohoni & Vafa, 2010). However, it is important to note that the primary motivation behind the repeal of these race-based discriminatory policies against Asians was less about improving the status of Asian aliens within the United States, and more about symbolically rewarding our war-time Asian allies, and responding to the needs of Cold War politics (Hing, 1993).

Patriotism and the Constitution

The legal conflict between civic-based and ethnocultural-based ideologies of US membership, described above for foreign-born Asian-Americans, also affected US-born Asian-Americans. For US-born Asian-Americans, this discord is best captured by the contrasting experiences of Japanese-Americans and members of other Asian-American groups during World War II.

For US-born Japanese-Americans, their fate as "Americans" became intrinsically tied to relations between the United States and Japan. In the years leading up to World War II, the United States expected and was preparing for a conflict with Japan in the Pacific, with the primary surprise being the speed and success of the Japanese attack on US Naval Forces at Pearl Harbor on December 7, 1941 (Daniels, 2004). Before the Japanese attack on Pearl Harbor, US-born Japanese-Americans were treated similar to other US citizens with respect to military service. In preparation for the impending war, President Roosevelt had signed into law the Selective Training and Service Act of 1940, the first peacetime military draft in US history. Critically, this law was one of the first to contain a nondiscrimination clause:

> Sec. 4. (a) *Provided*, that in the selection and training of men under this Act, and in the interpretation and execution of the provisions of this Act, there shall be no discrimination on account of race or color.

Over the next year, more than 3,000 US-born Japanese-Americans were inducted into the armed forces by the Selective Service System, with many other US-born Japanese-Americans enlisting with National Guard units

(Daniels, 2004). In fact, many of the first responders that provided aid after Pearl Harbor and helped secure the coastline against potential Japanese landing were Japanese-American members of the Hawaiian National Guard (Crost, 1994). However, after the attack, and in direct violation of the nondiscrimination clause of the 1940 statute, many military commanders began discharging Japanese-Americans, and local draft boards stopped drafting them (Daniels, 2004). Soon after, the Selective Service System illegally sent out a directive to draft boards requiring them to classify all Japanese-Americans, regardless of their citizenship status, as 4-C, a category normally reserved for enemy aliens (Daniels, 2004).

This grouping of foreign-born Japanese-Americans (Issei) and US-born Japanese-Americans (Nisei) would continue when President Franklin D. Roosevelt issued Executive Order 9066 on February 19, 1942. Despite multiple reports indicating that the majority of Japanese-Americans were likely to prove loyal to the United States, and that mass incarceration was unnecessary, President Roosevelt issued the Order by which nearly 120,000 Japanese-Americans living on the West Coast were forcibly relocated to internment camps, irrespective of their citizenship status (Daniels, 2004; Lee, 2015).[18] This treatment was in sharp contrast to the treatment of German-Americans and Italian-Americans, who despite originating from countries that were also at war with the United States, only saw a select number of foreign-born members placed into confinement, and only after each was examined individually (Daniels, 2004).

In summarizing the various groups responsible for the wartime internment of Japanese-Americans, Daniels (2004, p. 46) has concluded:

> A deteriorating military situation created the opportunity for American racists to get their views accepted by the national leadership. The Constitution was treated as a scrap of paper not only by McCloy, Stimson, and Roosevelt but also by the entire Congress, which approved and implemented everything done to the Japanese Americans, and by the Supreme Court of the United States, which in December 1944, nearly three years after the fact, in effect sanctioned the incarceration of the Japanese Americans.

By early 1943, however, with an attack by Japan no longer considered likely, the War Relocation Authority began to explore options for the release of "loyal" detainees, one of which was to make them available for the draft.[19] The majority of the Nisei would end up fighting in segregated units—the 442nd Regimental Combat Team and the 100th Infantry Battalion[20]—in Europe, while a smaller number of Japanese-Americans were recruited to serve as translators for the Military Intelligence Service (MIS) in the Pacific Theatre (Croft, 1994). As has been well-documented, the 442nd become one

of the most decorated combat units in World War II (McCaffrey, 2013); less chronicled, but equally importantly, Japanese-Americans in the MIS proved critical in translating captured documents, monitoring radio traffic, and interrogating prisoners (Crost, 1994; Daniels, 2004).

Even more neglected has been the valuable contributions made by US-born Japanese-American (Nisei) women to the war effort. As has been detailed by Moore (2003), a large number of Nisei women volunteered for the Women's Army Auxiliary Corps (WAAC)/Women's Army Corp (WAC) with the US Army—serving in such capacities as clerical workers, typists, and nurses.[21] Critically, the WAC's need for qualified women to fill these roles, and the voluntary nature of military service for women, enabled Nisei women to resist attempts to create segregated companies (Moore, 2003).

In contrast to Japanese-Americans, who had to overcome government hostility to prove their worth as citizens, members of other Asian ethnic groups, such as Chinese-, Filipino-, Korean-, and South Asian Americans found themselves actively supported by the US government in their efforts to prove themselves worthy Americans. Specifically, members of these groups, who previously had been the frequent target of racial prejudice and discrimination, now found themselves classified as "good Asians" due to their homelands' statuses as wartime allies of the United States or as enemies of Japan (Lee, 2015).

One illustration of the impact of this changed status can be found in the government-supported media campaign intended to change public stereotypes regarding Chinese-Americans, from "inassimilable" to "law-abiding, peace-loving, courteous people living quietly among us," and to teach Americans how to differentiate between "good" and "bad" "Orientals," rather than viewing them as indistinguishable (Lee, 2015, p. 254). (In)famously, as part of this campaign, on December 22, 1941, both *Time* and *Life* magazine would run stories with pictures to help readers distinguish between their Chinese "friends" and enemy "Japs" (Lee, 2015, p. 254).

It was within this changed social context, that members of other Asian-American ethnic groups joined the US military. For many, serving in the US military allowed them to help their countries of origin, as well as prove their loyalty to America. Overall, about 12,000–15,000 Chinese-Americans would enlist in the US military, serving in both integrated units and all-Chinese units (such as the Fourteenth Air Service Group [ASG]) (Wong, 2005). Likewise, Filipino-Americans, after initially being declared ineligible to serve due to their legal status as "US nationals," soon began to enroll in large numbers once Roosevelt changed the draft law. In California, nearly 16,000 Filipino-Americans registered their names for the draft, and more than 7,000 Filipino-Americans would go on to serve in the segregated 1st Filipino Infantry Regiment and the 2nd Filipino Infantry Regiments. While numerically

smaller, other Asian-American ethnic groups also provided soldiers for the United States war effort (Lee, 2015).

Without taking away the significance of the military service provided by Asian-Americans toward US war efforts, and the pride this patriotism engendered within their respective communities, it is important to note that the changed status of other Asian-American groups within American society was fundamentally a result of international policy concerns related to the war (i.e., not being seen as "racist" by war-time allies) and was based on their members' respective ethnic identification, rather than on their US-born members being suddenly seen as more American. Thus, like US-born Japanese-Americans, US-born members of other Asian-American groups still found their ethnicity more important than their nativity status in terms of how they were viewed and depicted by the dominant white society.

ASIAN-AMERICAN SERVICE TODAY

It would be easy to present the history of Asian-American military service as a story of a racial minority group successfully fighting to overcome societal prejudice and discrimination, and the slow but inexorable victory of civic citizenship over ethnocultural citizenship. However, while elements of such a narrative exist, the history presented here points to a much more complicated story. Rather, the history of Asian-American military service demonstrates the resilience of racial ideologies for "American citizenship" despite strong instrumental pressures toward the inclusion of minorities. Specifically, it shows that despite the willingness of Asian-Americans to fight for their country and the general acceptance of Asian-Americans into its ranks by the military, that this has rarely had an immediate or direct effect on the legal or social status of Asian-Americans within broader American society.

As detailed in this chapter, during periods of armed conflict, Congress frequently passed vague and inconsistent legislation that appeared to allow Asian nationals serving in the US military the right to naturalize, but this legislation was typically repealed when the need for surplus manpower ended. Similarly, despite the opportunity provided by military naturalization cases to establish egalitarian, civic-based definitions of citizenship, the judiciary chose to interpret congressional legislation in ways that limited the ability of Asian aliens to naturalize, thus reinforcing ethnocultural views of citizenship (Sohoni & Vafa, 2010). Likewise, for US-born Asian-Americans, ethnic status appears to have been more important than nativity status with respect to being accepted as Americans—both in the case of US-born Japanese-Americans, who were interned despite their US citizenship (and also initially

forbidden to serve), and in the case of other US-born Asian-Americans, who found their status in the US improved because they looked like (and were seen as representing) America's Asian allies.

Furthermore, despite the patriotism exhibited by Asian-American and other minority soldiers during World War II, in the immediate aftermath of the War, the US Armed Services continued or returned to their previous policies of segregation and exclusion (Bruscino, 2010). In fact, it was only due to the active efforts of Civil Rights leaders, and the support of political leaders like President Harry S. Truman, who in 1948 issued Executive Order 9981, ordering the desegregation of the US military, that the military started on their way toward integration (Bruscino, 2010).[22]

Today, Asian-Americans have made great strides in terms of military participation. Once underrepresented as a percentage of the US population, they now comprise around 4 percent of the active duty military in the United States, a percentage similar to their overall representation among the military service age-eligible population (US Department of Defense, 2013). Asian-Americans have also served as high-ranking officers in all branches of the US Armed Forces, including most prominently General Eric K. Shinseki, the former Secretary of Veteran Affairs, who was the first Asian-American four-star general, and who served as the 34th Chief of Staff of the Army (US Army, 2016). In addition, the number of Asian-Americans entering the service academies has steadily increased over the past five years, and they now make up a greater percentage of the US Military Academy at West Point and the US Naval Academy (7.0 percent and 7.1 percent in the Class of 2017, respectively) than their percentage of the US student-age population (Ang, 2014).

Despite these gains, there is still some evidence that Asian-Americans continue to face prejudice and discrimination in the service based on their presumed "foreignness," as suggested by a study of Asian-American Vietnam veterans—who reported facing discrimination for "looking like the enemy" (Chao, 1999), and as seen in the case of Danny Chen, a born and raised New Yorker, who committed suicide after reportedly facing physical abuse and racial slurs about his Chinese heritage from other men in his unit (Hajela, 2012). Similarly, despite the fact that nearly 50,000 US soldiers have been granted permanent beard exemptions for medical reasons, it took the threat of a lawsuit against the US Department of Defense for Sikh Americans to receive religious accommodations that would allow them to serve with turbans and beards in accordance with their faith (Wang, 2016).

Furthermore, the legal legacy underlying the historical treatment of Asian-Americans still endures. While legislation like the McCarran-Walter Act of 1952 and the Immigration and Nationality Act Amendments of 1965[23] have officially put an end to the use of race and ethnicity in immigration and naturalization laws, and while the judiciary has become more willing to place

judicial constraints on the most blatant forms of racial and ethnic discrimination, the courts have still not fully repudiated the principles, established in *Chae Chan Ping* (1889) and *Fong Yue Ting* (1893), that Congress has the right to determine what constitutes "national interests" in immigration and naturalization policies (Chin, 1998; Sohoni & Vafa, 2010).

Therefore, even though race-based immigration and naturalization laws are no longer legally acceptable, this does not mean that there have been no attempts to exclude broad categories of immigrants, especially during times of economic uncertainty and with concerns regarding national security. Whereas in the past racial/ethnic markers were used to deny citizenship to certain immigrant groups, today we see a transition to secondary characteristic. For example, emphasis on the criminality and illegality of Mexicans immigrants has helped create a perception of them as a threat, a threat with racial overtones, and one requiring harsher immigration policies as well as a greater acceptance of the discriminatory monitoring of US-born Hispanics (Sohoni & Sohoni, 2014).

Moreover, the relationship among military naturalization, race, citizenship, and the nature of American identity continues to play out today with new immigrant groups. In the past decade and a half, the House and Senate have repeatedly failed in attempts to pass the DREAM Act, which would have provided undocumented minors an opportunity to gain legal status by serving in the US military or attending college (Olivas, 2009).[24] Attempts like the DREAM Act, which would allow citizenship for "high-quality" undocumented immigrants through military service, are again likely to raise legal issues regarding naturalization and citizenship that the courts will need to face. Given the history of judicial deference that the courts have given to Congress with respect to immigration and naturalization, it is quite possible that the courts could permit Congress to pass racially, ethnically, or religiously discriminatory legislation, such as a version of the DREAM Act, that does not allow undocumented minors from Middle Eastern countries the same rights as other undocumented minors (Sohoni & Vafa, 2010).

Finally, as Daniels (2004, pp. 115–121) warns in the epilogue to the revised version of his book on the Japanese internment, it is unclear whether in a post-9/11 climate, that "race prejudice, war hysteria, and a failure of political leadership," might lead to discriminatory policies against both foreign and US-born Arab Americans if there are heightened concerns of terrorist attacks. These concerns appeared during the 2016 Presidential Election, suggesting the potential for foreign- and native-born members of certain ethnic and religious groups to become linked in the public's consciousness (Diamond, 2015). Daniels (2004) notes that *Korematsu v. United States* (1944), the landmark Supreme Court case that tested the constitutionality of Executive Order 9066, and held that military necessity could justify the imprisoning of US citizens based on racial criteria, has not been officially overturned.[25]

The example of the Japanese-Americans experience during World War II provides a powerful reminder that people from all backgrounds can provide outstanding service to their country in the armed forces, and the continued need to be vigilant against racist and nativist immigration and naturalization policies.

NOTES

1. The Development, Relief, and Education of Alien Minors ("DREAM") Act, first introduced in 2001 by Dick Durbin (D-IL) and Orrin Hatch (R-UT) as Senate Bill 1291 (107th Congress), would allow for aliens brought to the United States as children an opportunity to "earn" their citizenship by meeting certain education requirements or through service in the US military.

2. For instance, the infamous 3/5th Compromise in Article 1, Sec. 2 of the US Constitution, which treated "slaves" (not directly stated) as 3/5 of a person for apportioning seats in the House.

3. Critically, Daniels and Graham (2001) note that Asian immigrants constituted only a small fraction of total immigrants during this period. For example, in the 1900 Census, only 1.2 percent of the foreign-born originated from Asia, compared to nearly 85.0 percent from European countries.

4. In *Chae Chan Ping v. United States* (1889), also known as the Chinese Exclusion Case, the Supreme Court upheld a part of the Chinese Exclusion Act (1888) that Chinese "aliens" could be excluded from the United States, even though they were US residents who possessed government-issued papers assuring their return; while in *Fong Yue Ting v. United States* (1893), the Supreme Court ruled that an "alien" could be deported strictly based on their race.

5. The zone covered most of Asia, including the islands of the Pacific. China and Japan were not included as the Chinese Exclusion Act (1888) and the Gentleman's Agreement (1908) already restricted immigrants from these countries.

6. Since the Philippines were a protectorate of the United States, Filipinos could enter the United States as noncitizen nationals.

7. The following section draws on my earlier work with a colleague, which gives a more detailed account of this process (Sohoni & Vafa, 2010).

8. Ch. 165, 28 Stat. 123, 124 cited in *In re Knight*, 171 F. at 300.

9. Judge Chatfield also discussed what percentage of "Mongolian" blood would disqualify someone from being classified as "white." Drawing on an earlier federal case, *In re Camille*, 6 F. 256 (1880), Judge Chatfield argued that Knight could not be considered white, as "a person, one-half white and one-half of some other race, belongs to neither of those races, but is literally a half-breed."

10. Section 2169 of the Revised Statutes, Amended in 1875, U.S. Comp. St. 1901, p. 1333.

11. The Philippine-American War, 1898–1902

12. Congress would incorporate the Philippine Scouts into the regular US Army regiments in World War II (Act of Feb. 2, 1901, §36, 31 Stat. 748), see (Cabotaje, 1999).

13. Ironically, the court ruled that Mallari was ineligible for citizenship for procedural reasons, as he had used the Act of July 26, 1894 relating to military naturalization, rather than the (Naturalization) Act of June 29, 1906, which used the term "owe permanent allegiance."

14. See also *De La Ysla v. United States* (1935) and *United States v. Javier* (1927), which further clarified that Filipinos seeking to naturalize had to do so based on their military service.

15. As detailed by Salyer (2004), Asian veterans of World War I were able to win the support of the traditionally nativist American Legion to pressure Congress to allow for their naturalization. However, five years later, Congress passed the Nationality Act of October 14, 1940, which again restricted citizenship to whites, those of African descent, and Filipinos who had served in the military, again blocking off naturalization for members of other Asian groups.

16. Act of Dec. 17, 1943, Ch. 344, 57 Stat. 600 ("The Chinese Repealer" or Magnuson Act). The Filipino and Indian Naturalization Act (Ch. 534, 60 Stat. 416).

17. Ironically, in the same year that Congress removed the racial bars that had prevented Filipinos who had not served in the military naturalizing, it also passed the Rescission Acts of 1946, 60 Stat. 14 (1946) and 60 Stat. 223 (1946), taking away veterans benefits for those who had not served directly under the US military (i.e., the Filipino Army, recognized guerilla groups, and members of the New Philippine Scouts). Among the benefits denied to these veterans was the right to military naturalization (Cabotaje, 1999).

18. Two-thirds of those interned were US citizens.

19. To determine "loyalty," the government designed a questionnaire that tested the "American-ness" vs. "Japanese-ness" of detainees. These included the two controversial questions: Q 27, which asked all draft-age males if they were "Willing to serve in the armed forces of the United States on combat duty, wherever ordered?" and Q28, which asked all others if they would be willing to "swear allegiance to the United States of America . . . and forswear any form of allegiance or obedience to the Japanese emperor . . ." that many Japanese-Americans (particularly Issei) found difficult to answer (Lee, 2015).

20. The 100th Infantry Battalion was primarily made up of Japanese-Americans from Hawaii, many who had previously been in the Hawaiian National Guard (Crost, 1994). After suffering heavy losses in Italy, they joined the 442nd Regimental Combat Team.

21. After contentious debate in Congress, on May 15, 1942, President Roosevelt signed Public Law 77–554, creating the Women's Army Auxiliary Corps (WAAC). The goal of the WAAC was to free servicemen from clerical positions to serve in combat. Originally, as the WAAC, while women received military pay, food, housing, and medical care, they did not have military status nor receive pensions. This auxiliary status was challenged, and on July 1, 1943, after being approved by the House and Senate, President Roosevelt signed Public Law 78–110 creating the Women's Army Corp (WAC) as part of the US Army (Moore, 2003).

22. In response to the recommendations by several boards and committees that found that segregation in the armed forces was both inefficient and morally indefensible, President Truman passed Executive Order 9981 on July 26, 1948, which

abolished racial discrimination in the U.S. Armed Forces and eventually led to the end of segregation in the services (Bruscino, 2010).

23. The 1965 Immigration and Nationality Act (also known as the Hart-Celler Act) ended the national origins quota system that had favored immigrants from Northern and Western Europe.

24. Since 2001, when it was first introduced in the Senate, there have been over twenty attempts to pass variants of this bill.

25. In 2011, the Justice Department acknowledged it had been in error in prosecuting the case, and that it had hidden relevant information that US-born Japanese were not likely to be a threat to national security.

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