

## Article

# DYING AMERICAN OR THE VIOLENCE OF CITIZENSHIP: LATINOS IN IRAQ

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## Abstract

*Three of the first coalition soldiers to die in Iraq in 2003 were non-citizen Latinos who were given posthumous citizenship. This essay places the discursive contexts of the events against the backdrop of liberalism. The central argument is that giving posthumous citizenship to the soldiers was an illiberal practice because (1) it meant naturalizing the Latinos without their consent and (2) the debates obscured the illiberal ways in which the armed forces in America are staffed. These two illiberal elements were supported by ethnocentric discourses on citizenship and nationalism that assumed the soldiers desired naturalization and that reproduced the idea that the volunteer army equally targets all Americans as potential conscripts. Because of this, the honor of posthumous citizenship is reinterpreted as belonging to the American history of imperialism, class, and racial stratification.*

## Keywords

citizenship; military; immigration; Iraqi war; discourses on Latinos

## Introduction

The invasion of Iraq began the evening of March 20, 2003. Four of the first coalition soldiers to die in Iraq were non-citizens. Marine Lance Cpl. José Gutiérrez (killed March 21, 2003 and reported as the first US Army soldier killed) was a native of Guatemala; Marine Lance Cpl. Jesús Suárez del Solar



1 As it is, 8 USC Sec. 1440-1 grants a very limited version of citizenship that prohibits granting any benefits to survivors and limits filing privileges to next of kin.

2 This bill became an act on June 16, 2003.

(March 27, 2003) and Cpl. José Angel Garibay (March 28, 2003) were from Mexico; and Army Pfc. Diego Rincón (March 29, 2003) was from Colombia. Although US public law existed that could eventually give them posthumous citizenship (8 USC Sec. 1440-1), new bills that would expedite or make automatic the processes were quickly written.<sup>1</sup> Attesting to the extraordinary times, the new bills were introduced only days after the Iraqi invasion had begun by politicians of the states where these young men had lived. For instance, 11 House Representatives from Georgia, home to Diego Rincón, introduced House Resolution 1691 within days of Rincón's death. The same happened at the Senate level, where US Senators Zell Miller (D-GA) and Saxby Chambliss (R-GA) advocated for Act S. 783 on April 3. Legislation giving citizenship to Gutiérrez, Suárez, Garibay, Rincón, and others killed in battle was both bipartisan and had enormous public support, including the support of the Executive Office. This is not surprising because public discussion hailed these Latinos as national heroes and civic examples and, thus, as deserving the honor of posthumous citizenship. The key elements of these bills were written into H.R. 1954, also known as the *Armed Forces Naturalization Act of 2003*.<sup>2</sup> Besides granting posthumous citizenship to Armed Forces personnel killed in battle, H.R. 1954 also reduced the qualifying time to apply for citizenship from three years to one year for those non-residents serving in the military.

The purpose of this paper is to understand these events as illiberal practices. Liberalism here refers to a style of governance that emphasizes human dignity and personal freedom. In liberal philosophy, dignity can only result from the exercise of personal choice, including the consent to be governed. Illiberalism, by contrast, refers to social and governmental practices that eliminate choice and/or that eliminate the idea of consensual governance. I see these events as illiberal practices for two reasons. (1) The Latinos were naturalized without their consent. This practice by the American Government contradicts common understandings of naturalization and, as I show, replicates imperialistic practices of the 19th and early 20th century when the US Government also naturalized Mexicans and Puerto Ricans without their consent. Non-consensual naturalization belies the notion that naturalization is a contract that legitimizes the relationship between governor/subject. (2) To justify giving citizenship to these dead Latinos without their consent, politicians and news people used ideas of military honor that failed to acknowledge that the Armed Forces is structured to attract mostly the poor and the non-white. Presented to the American people as a "volunteer" army, the military is often constructed as a liberal institution that *uniformly* distributes the civic responsibility to protect the United States and constructs heroism along the lines of volunteerism. Both sets of legal, social, and discursive practices show deep ambivalences regarding the meaning of citizenship, naturalization, and liberalism and illustrate the conflicting role of the American military in the formation of citizenship and the State. Before examining these sets of practices, I briefly explore citizenship as a theoretical

construct that shapes Latino immigrant experiences. After that, I investigate the issue of consent in naturalization and review historical evidence linking American imperialist practices of the previous two centuries to citizenship and Latino/as. Last, I explore the relationship of voluntarism in the military with ideas of liberalism and consent.

### Governing citizenship

In this section, I discuss the contrasting ideas of citizenship and liberalism evinced in the events surrounding the granting of posthumous citizenship to the deceased soldiers. The basic facts are that these Latino immigrants enlisted in the Armed Forces to carry on duties typically associated with the obligations of citizens. They died serving the US nation and many (including Latino/as) applauded their actions and willingness to sacrifice. So did the Congress that, in that spirit of admiration, granted posthumous citizenship to the immigrants.

Ideally, in a liberal state, citizenship should be defined and experienced, using T.H. Marshall's famous words, as "full membership in a community" (Marshall, 1973, 70). However, as Marshall and others have pointed out, citizenship is rarely experienced or legally defined in this ideal way. Instead, the realities of class, race, gender, ethnicity, and national origin fracture and vertically divide communities, imposing hierarchies between citizens. For Latino scholarship, the impact of citizenship on Latino lives has fueled a complex engagement that attempts to account for the multiple social realities referred to by the term Latino experience (e.g., immigration, colonialism, illegality, marginalization, assimilation, and success) and the multiplicity of citizenships.<sup>3</sup>

In clarifying what this multiplicity may mean to Latino/as, Raymond Rocco (2004) writes: "Citizenship is neither singular, discrete, nor unchanging. Instead, we need to understand the theories and practices of citizenship as developed by nation-states as primarily a set of political mechanisms intended to control and regulate the level, type, and range of societal membership" (15–16). Citizenship is governance. This is particularly true regarding Latino/as, whose social and cultural marginalization has been manifested in laws that limited citizenship rights in the Southwest during the 19th century<sup>4</sup> and that today makes questionable the willingness of the State to grant, among other things, equal educational rights to Latino immigrants.<sup>5</sup>

The history of the American legal system is plagued with examples of legal marginalization of Latino/as in which the law is an institution enforcing rules on Latino/a citizens and communities.<sup>6</sup> In these instances, governance refers to the enforcement of institutional law on subjects where law is external to the subject. Subjects, however, also internalize the law. Toby Miller (1993) observes that contemporary societies characteristically make citizenship an instrument of self-government. He adroitly writes: "Citizenship is an open technology, a means of transformation ready for definition and disposal in dispersed ways at

3 See, for instance, *Latino Studies*, Vol. 2, 2004, a full two issues dedicated to citizenship. See also Flores and Benmayor (1997).

4 See, for instance, Rodríguez (2000) and Gutiérrez (1999, pair 10). On how the civilizing efforts of Anglos began to constitute language policies in the Southwest, see Anderson (2002, 317–320).

5 For an overview of Latino communities'

efforts to address educational inequality, see Meier and Stewart (1991, chapters 2 and 3).

6 See notes 2 and 3. In more contemporary issues, see how deportation constitutes a way of legally reducing Latinos to commodities (De Genova, 2002).

dispersed sites... . It produces a ‘disposition’ on (the citizen’s) part not to accept the imposition of a particular form of government passively, but to embrace it actively as a collective expression of themselves” (12). Described in this way, besides being a set of political mechanisms affecting Latino/as, citizenship is an internalized set of dispositions that legitimize and reconstitute broad social structures.

To understand the impact of citizenship on Latino/a lives means therefore understanding both the ways in which Latino/as internalize the law and how citizenship functions as a political strategy that contributes to ongoing stratification (Rocco, 2004, 10). Miller’s work is useful here. He posits that citizenship as a technology of governance works via the perception of incompleteness (Miller, 1993, 12). That is, individuals contrast their lives with standards of citizenship and perceive a gap between themselves and the ideal. This gap signals incompleteness and insufficiency, and is the subjective motivation for self-improvement and the psychic foundation for the internalization of the law. It can be argued that a similar mechanism is at play in the immigrant’s desire to assimilate (when that desire is present). The ongoing marginalization of Latino/as in the US questions the civic worth of Latino/a values and lives, producing a large gap between the individual’s self-image and civic ideals. Latino/a immigrants in particular are constantly bullied by legal and cultural norms to occupy subject positions from which the need and desire to assimilate seems logical. Marginalized in popular culture, politics, and civic narratives (e.g., US history), Latino/as may find few incentives to construct public identities that defy assimilation. Citizenship ideals not only compel immigrant Latino/as to confront their social devaluation, but also legitimize the legal and social prescriptions to predispose immigrants into embracing legal and social norms often deleterious to their well-being. As Jorge Mariscal (1999) writes of his father and generations of Latino/as, military service has been one such social norm that, he opines, has taken the lives and plundered the psyches of many in our communities.

Understanding citizenship in its relation to governance and the constitution of social hierarchies means moving it further from the idealized realm of political liberalism to the realm of the agonistics of difference, where gender, sexual, class, and racial identities shape belonging. The relationship of citizenship to governance and social hierarchies marks an important contradiction in a central concept of liberal democracies. That is, although in the liberal tradition, citizenship is often referred to as a legal equalizer that makes possible the horizontality of the nation, time after time, researchers have shown that the actual manifestations of citizenship have negated such equality (Kymlicka, 1995; Silvestrini, 1997; King, 2000; Castronovo, 2001; Glenn, 2002). Aware of this, Rocco (2004) suggests “that the most productive approach to rethinking citizenship in a way that is most salient for Latino/a communities is to focus on the particular factors that have characterized their experiences and that have

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been most fundamental in affecting the level and nature of the articulation between these communities and the major institutions of power in the United States” (7). Our case in point offers a glimpse into some of these articulations, one rooted in the immigrant experience, the needs of the federal government to support and legitimize the Iraqi conflict, the dispositions of Latino/as to shape their lives in ways useful to the polity (regardless of ethnic and racial inequality), and the social pressures to make hegemonic an idea of citizenship that would recreate American militarism. These articulations are rooted in a contradiction of liberalism manifested, in this case, in law, discourse, and history.

### Non-consensual citizenship

Liberalism is a set of political theories concerned with granting citizens equal rights under the law and similar opportunities to pursue their life projects.<sup>7</sup> Early liberalism, linked to the revolutionary decades of France and the United States, emphasized individual freedom (Isin and Wood, 1999, viii) and engendered ideas of citizenship that included the individual’s free association with the state (Schuck, 1998, 20). In “advanced liberalism,” citizenship continues to be associated with consent, but the consent of the state to protect the subject is understood as something that can be withdrawn, and is thus conditional (21). The ongoing relationship of citizenship to consent is central to liberalism because, as Marta Tienda (2002, 587) comments, citizenship is “derived from the consent to be governed.” Accordingly, the legitimacy of government and of subjects is based on consensus, thus, in consensual actions. Peter H. Schuck (1998) agrees to this point when he writes: “The consent principle occupies an important place in the liberal tradition. It holds that political membership should not be ascribed to an individual on the basis of the contingent circumstances of his or her birth. Instead, it must reflect the individual’s free choice to join the polity as well as the polity’s concurrence on that choice” (168).

The ideal of consensus has been codified in naturalization law, which polices the process whereby individuals born outside the nation acquire citizenship willingly and only if they fulfill the requirements set by government (Bureau of Citizenship and Immigration Services, BCIS, formerly the Immigration and Naturalization Services, INS). As is implied, naturalization is one of the most clearly contractual processes of the liberal state because the individual willing to be naturalized swears allegiance to the State and the Constitution and undergoes a long, difficult, and expensive (often in the thousands of dollars) legal process. In exchange, the State is to protect and grant rights and privileges to the individual (Tienda, 2002, 588). In this section, I argue that posthumous citizenship does not fit into liberal understandings of citizenship because consent cannot be obtained from the individuals to become citizens. Moreover, the practice of imposing citizenship on an individual is a practice consistent with

7 For a compelling discussion on the different types of liberalisms and their relationships to citizenship, see Kymlicka (1989).

imperialism and a practice that has already affected negatively many Latino/a lives, and thus should be rejected.

The legal procedures initiated by members of Congress after the deaths of Gutiérrez, Garibay, and Rincón had the goal of modifying immigration law and producing a simpler (even automatic) postmortem naturalization process for non-citizens killed in battle. With this in mind, Republican House Representative for Georgia, John H. Isakson and others, introduced bill H.R. 1691 on April 9, 2003. The bill's goal was "To expedite the granting of posthumous citizenship to members of the United States Armed Forces." News media positively reported the introduction of the bill in the House and its quick passage in both the Senate and House (the evening of April 10) (Chu, 2003; Fagan, 2003; Goldstein and Moreno, 2003; Immigrant Soldiers, 2003).<sup>8</sup> Other bills also were written to address similar issues. For instance, bill H.R. 1850, introduced on April 29 after the death of another Latino (Marine Staff Sgt. Riayan Tejada), and also referred to as the *Fairness for America's Heroes Act*, was designed to provide immigration benefits to the immediate surviving family (children, wife, parents) (Fairness, 2003; Riayan, 2003). H.R. 1685 (introduced in the House April 9, 2003), also aimed at granting posthumous citizenship, procured amendments to the Immigration and Nationality Act to include those military personnel killed by illness or in combat, and their families. In addition, it made this amendment retroactive to September 11, 2001.

Typically, citizenship is given to those (Latino/a) immigrants who have lived in the US within the boundaries of legality and who have shown not only a respect for US law but also an awareness of the economic and cultural imperatives governing this society as well as the ability to live by them (Glenn, 2002, 144–190).<sup>9</sup> These imperatives are protected by American institutions such as the US Citizenship and Immigration Service (USCIS is a branch of BCIS) that have the goal of sustaining a cultural, legal, and economic national constancy or identity. Reading one of the key objectives of the USCIS illustrates this: its objective is "[To enhance] the educational opportunities in English, Civics, and History for all immigrants of all ages to assist their integration into US society and foster participation in civic activities."<sup>10</sup> As a result, naturalization can be seen as a reward for previous actions and also as a leap of faith on the quality, legality, and productivity of the individual's future actions. To most, these are reasonable provisions, for they try to protect the viability of a society reshaped by new members. At stake is the future of the nation, at least as is imagined by members of Government and some interested publics.<sup>11</sup>

However, our case differs from these legal and theoretical uses of naturalization. Let me illustrate this. The core of H.R. 1691 (as of 8 USC Sec. 1440-1) is Section 1.d, written as follows: "Documentation of Posthumous Citizenship. If the Director of the Bureau of Citizenship and Immigration Services approves the request referred to in subsection (c), the Director shall

8 See H.R. 1691's Senate counterpart at S 783 ES.

9 For a very practical take on the matter, see the US Citizens and Immigration Services website. In the section, titled "Office of Citizenship," the institution defines one of its roles as the training of legal residents on citizenship requirements. The goal is outlined as follows: "Reviving and emphasizing the common civic identity and shared values that are essential to citizenship." "Office

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send to the next-of-kin of the person who is *granted citizenship*, a suitable document which states that *the United States considers the person to have been a citizen of the United States at the time of the person's death*" (my emphasis).<sup>12</sup> Two points have to be mentioned. First, this bill grants one very peculiar type of citizenship. It is posthumous, thus retroactive ("to have been a citizen of the US at the time of the person's death"), but very real citizenship. It is posthumous and retroactive because the legal status of citizenship has to be given to a "person." The dead cannot enter into the contractual aspects of naturalization. Thus, citizenship needs to be given just before death occurs.

It is a very real citizenship ("granted citizenship") because it occupies a legal location within the range of legal citizenships currently existing in the US. This range includes two large categories: citizenship by birth and naturalized citizenship. These two citizenship categories include important subcategories, particularly if citizenship is understood as related to and dependent on legal rights. Consider felons and ex-felons, who often lose many legal rights, including the rights to privacy, movement, and political participation (voting rights) (Harvard Law Review Note, 1989). In addition, felons may be considered simultaneously US citizens and be legally treated as slaves. Let us not forget that the 14th amendment allows for slavery within the prison system and that several states, as Howard Winant has argued, have consistently used this legal prerogative to appropriate the labor of prisoners (Winant, 2004, 91). Minors also belong to a category of citizenship with a limited set of legal, political, and civil rights (Bhabha, 2003, 53–59). People who reside in Puerto Rico and the Virgin Islands also have a complex set of rights and legal prescriptions tailored for their extraordinary situations. They are American citizens but have limited federal political participation or what Pedro A. Malavet calls a "democratic deficit" (Niето-Phillips, 1999, 65; Malavet, 2002, 390; Hoover, 2004, 503). Also a tailored category, posthumous citizenship exist in a very peculiar state, one that precludes its bearers from enjoying any personal benefits, but that allows them to extend some of the benefits of naturalization to their families, as in the cases analyzed here.

Granting posthumous citizenship to legal residents because of their role in serving the nation may seem to be an exception to the contractual understanding of citizenship. However, it is not. The contractual aspect of citizenship was considered, particularly when the House and Senate forced deliberations on the type of benefits the families of the dead would enjoy.<sup>13</sup> These deliberations aimed to clarify the details of the naturalization to be given to the war casualties. In general, naturalization is a contract that includes clauses that make the naturalization process of the wife and parents of the subject being naturalized, for instance, a priority to the BCIS (see note 13). Simply, it is easier to get naturalization if you are the parent or wife of a naturalized citizen. If you are a non-married, under-age offspring of a naturalized citizen, your naturalization is even easier. On June 4, 2003, Congress debated whether these

of Citizenship, in *US Citizenship and Immigration Services*, February 7, 2004, <<http://uscis.gov/graphics/citizenship/index.htm>> (February 10, 2004).

<sup>10</sup> Retrieved April 10, 2005 <<http://uscis.gov/graphics/citizenship/index.htm>>.

<sup>11</sup> For a look at the evolution of these ideals, see Peter H. Schuck (1998, 12–81).

<sup>12</sup> It is important to emphasize that the phrasing of this bill is common among these type of legislation. For instance, H.R. 150, which became public law in March 7, 1990, amended the Immigration and Nationality Act with similar goals in mind although it also included provisions to grant citizenship to aliens (8 USC Sec. 1440-1). The term alien may refer also to non-legal residents or non-residents of the United States. The term legal non-citizen, which was used in the 2003 bills, refers only to green-card holders. As it is written, the bill stipulated that according to the State, an alien who died while "serving on active duty with the US Armed Forces during certain periods

of hostilities to be considered a citizen of the United States at the time of the alien's death" (Posthumous, 1989).

13 See the speech by the Honorable Walter B. Jones of North Carolina in the House of Representatives on April 11, 2003.

In this speech, Jones introduces the Fallen Heroes Immigrant Spouse Act, which aimed at extending rights to spouses of the fallen soldiers. See also the congressional record of the discussions on The Armed Forces Naturalization Act of 2003 (discussion that took place on the House on June 4, 2003). Retrieved April 14, 2004 <<http://thomas.loc.gov/cgi-bin/query/F?r108:5:./temp/~r108FJe82d:e64882>>.

same benefits would be extended to the families and kids of the dead soldiers. Although Congress eventually granted benefits to those families, the existence of the debates evidences the State's contractual understanding of *all* naturalization, even posthumous citizenship. Congress, in this case, represents the State and the nation, and Congress' actions legally signify consent. In sum, the State's consent to entering into the contract with these men and their families was important and was treated with legal thoroughness. Given that the subjects were dead, we know that the Latinos' consent was not treated legally; however, consent could have been ascertained based on other arguments. With this in mind, I ask: Did actions of these non-citizens before their deaths amount to consent?

### Did they consent?

Two arguments have to be considered here: First, an argument can be made that the Latinos' Oath of Enlistment, required to sign into the Army, constituted a type of consent that signaled that they were agreeing to become citizens. A second argument can be made that the Latinos stated that they wanted citizenship and thus the government is simply fulfilling their wishes or their stated wills (with the awareness that an "oral will" is simply not legally binding). The basis for the first argument is that the Oath of Enlistment conveys some important ideas of citizenship. The current Oath, written in Title 10 of the US Code and amended on May 5, 1960, reads:

I, \_\_\_\_\_, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to regulations and the Uniform Code of Military Justice. So help me God.

With this Oath, the enlistee consensually embraces important elements of citizenship including civic duties such as supporting and defending the Constitution and obeying the President and military officers. As important as these elements of civic conduct are, I argue, they are not equivalent to a citizenship oath. The great majority of green-card holders consensually embrace elements of citizenship (they pay taxes, abide by the law, participate in politics), but this does not mean they want to become citizens. A large percentage of Latino immigrants (according to Schuck 1998, 168–169) by 1990, 56 percent of Latino/as had failed to naturalize) never become citizens, although they legally could. Moreover, the Oath of Enlistment does not require the enlistee to renounce allegiance to other nations, states, laws, nor to renounce a foreign citizenship. By contrast, compare the Enlistment Oath with the Naturalization Oath that military members have to read in order to become citizens. This Naturalization Oath begins with the following: "I hereby declare, on oath, that I

absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen.”<sup>14</sup> When read side by side, these two Oaths may resemble each other and signal a strong and willful relationship to the Army, but they do not signal the same relationship to the American nation. In the United States, naturalization is a dramatic change of legal identity that means renouncing your past, your previous national allegiances, the citizenship of your place of origin (Schuck, 1998, 169).

Although the Oath of Enlistment cannot be considered a citizenship oath, it is possible that the soldiers had stated their wishes to become citizens and thus that the State was, in a sense, fulfilling a will. This is a harder issue to clarify. There is evidence that Rincón may have wanted to become a citizen, at least that is what his father told reporters (McMurray, 2003). This may indeed be considered an expression of his will and perhaps in his case posthumous citizenship should have been granted. However, there is nothing to suggest that the other soldiers wanted to become citizens. In fact, there are facts that negate the idea that these Latinos wanted to become citizens. First, in the cases analyzed here, all these non-citizens (including Rincón) were green-card holders for more than five years (five years is the time required by the INS and BCIS before applying for citizenship), and thus had the option of applying for citizenship before their deaths. Rincón was five years old when his parents came from Colombia and settled in Georgia. Gutiérrez was 14 when he arrived in California and 22 when he was killed. Garibay was only two months old when he arrived in the United States.<sup>15</sup> Suárez was 14 and was killed at 20.<sup>16</sup> What is more, Fernando Suárez del Solar has repeatedly stated that his son did not want to become a citizen, and wished to remain a Mexican citizen. Posthumous citizenship was accepted in the case of Suárez by his next of kin, his wife, to access naturalization rights (his son was born in US territory and was thus already a citizen by birth).<sup>17</sup>

The actions of these non-citizens before their deaths did not amount to consent to becoming American citizens. This lack of consent, I argue, should be relevant to Latino/as for at least two reasons: because of our history in this nation and because pursuing the most utopian ideas of liberalism seems the only reasonable political avenue (for the time being) for Latino/as to eventually reach a more equitable stance in this society (Kymlicka, 1995, 12–16). The reasons relate because questioning the uses of citizenship and naturalization regarding Latino/as also forces us to understand the gap existing between citizenship as an idealized political category deployed within liberalism to justify the State, and the historical applications of citizenship law and their effects on Latino/a lives. Moreover, this gap is salient for Latino/as because it shapes what Rocco (2004) calls the “articulation between [Latino/a] communities and the major institutions of power” (7), in this case, the Armed Forces and Congress.

14 I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and the laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the Armed Forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely, without any mental reservation or purpose of evasion; so help me God. Retrieved December 9, 2005 <<http://usmilitary.about.com/library/milinfo/citizenship/blcitizen-4.htm>>.

15 For some biographical information on the three soldiers, see *Fallen Heroes of Operation Iraqi Freedom*, a website memorial to the soldiers fallen in combat. URL: <http://www.fallenheroesmemorial.com/oif/> Retrieved February 10, 2004. For Diego Rincon, see his memorial site at <http://www.diegorincon.com/>

16 Interview by the author with Fernando Suárez del Solar, father of the victim on September 2005, at Austin Texas. The family migrated from Tijuana, Mexico, in 1997.

17 See note 16.

## Latino/as, non-consensual citizenship, and imperialism

Reviewing the historical application of citizenship law and Latino immigration brings to the fore even more troublesome issues. The first is that the origins of Latino history in the United States were legally defined by the imposition of citizenship. The two most obvious cases, and the ones that underscore the legal or illegal status of most Latino/as in America, are the histories of Mexicans and Puerto Ricans, who first became American citizens via US imperial expansions. Mexicans were “assimilated” into the American polis during the war of 1846–1848. Mexico’s loss of the war meant losing the Northern territories, which were ceded to the US with the Treaty of Guadalupe Hidalgo. This Treaty also gave US citizenship to everyone living in the territories of New Mexico, Nevada, Colorado, California, Arizona, and Texas; this included 60,000 Mexicans (Rosen, 2001, par 5). Although the bulk of inhabitants claimed Mexican mestizo (mixed European and Native descent) heritage, Native Americans and African Americans also resided in these territories. These new Americans were given one year to opt out of US citizenship and select Mexican citizenship; however, American citizenship was imposed on them in 1849 (Ngai, 1999, par 47).

Although the letter of the Treaty did not differentiate between races, the spirit of the Treaty and ensuing legislations were quickly racialized. Senator John C. Calhoun (South Carolina) passionately declared soon after the Treaty’s ratification:

[W]e have never dreamt of incorporating into our Union any but the Caucasian race – free white race. To incorporate Mexico would be the first instance of the kind of incorporating an Indian race; for more than half the Mexicans are Indians, and the other is composed chiefly of mixed tribes. I protest against such a union as that! Ours, sirs, is the Government of a white race. The greatest misfortunes of Spanish America are to be traced to the fatal error of placing these colored races on an equality with the white race. That error destroyed the social arrangement which formed the basis of society (Quoted in Nieto-Phillips, 1999, 53).

As extreme as Calhoun’s words may sound, they accurately foretold the direction of racial politics in these States and territories and the type of citizenship rights that would be given to non-whites. On this, David Montejano (1987) carefully documents how during the 19th and 20th centuries, naturalization and citizenship notwithstanding, Mexicans in Texas, Tejanos, were systematically disenfranchised by Anglo immigrants (who were granted full citizenship) and residents, with the acquiescence and/or cooperation of the American legal and judicial systems. The disenfranchisement took the forms of white citizens appropriating the land, labor (indentured servitude), and political rights. Many, but not all, Mexicans were declared “colored” and, in accordance

with US conventions, their political rights were severely reduced (Nieto-Phillips, 1999, 57). Although an opening existed to welcome Mexicans into a liberal state via the application of citizenship rights, it was quickly shut by reference to cultural understandings of citizenship, which trumped the law to the point of making the law absurd and irrational. Consider the political and philosophical contortions needed to define women as citizens without the vote, or African Americans, Mexican Americans, and Chinese Americans as little more than beasts.

Puerto Rico was annexed by the United States in 1898. Using arguments of the racial and educational composition of Puerto Ricans, the US government denied American citizenship to Puerto Ricans, giving them Puerto Rican citizenship in 1900. This did not mean that Puerto Rico was independent; it was more a reflection on the conflicting ideas the US Government had regarding these new subjects (Nieto-Phillips, 1999, 58). In 1909, President Roosevelt ran on a platform that included the proposal of giving Puerto Ricans American citizenship. This only spurred new debates on the racial and educational character of Puerto Ricans. About this, Representative Atterson Walden Rucker of Colorado stated: "The English language was scarcely known in the island [in 1898], and ... 87 percent of the million people could neither read nor write their own language; ... and it can be furthermore fairly said that 60 percent of these native voters are colored people" (63). Echoing debates regarding Mexicans in the southwest, the US congress assessed the right of Puerto Ricans to become citizens based on race and culture. Citizenship was again denied. In 1917, President Woodrow Wilson and Congress made the decision to naturalize Puerto Ricans through the Jones Act, quickly drafting 20,000 to fight on the European front. As many Puerto Ricans had feared, the citizenship they got was a second class citizenship that did not allow them to participate in federal politics, nor to receive the economic benefits of statehood (64).

The cases of Mexicans and Puerto Ricans shed light on the historical impact of citizenship law on Latino/a communities, particularly when related to naturalization and consent. Naturalization cannot simply be seen as a privilege or an honor. Consent is important, particularly for Latino/as, many of whom chose not to become citizens, not to enter into the contract, even though they may have qualified. What is more, when imposed, as the history of American imperialism shows, naturalization is a more complex process. It does not only signal the accessing of citizenship rights; in fact, in the cases reviewed, most political rights are not available to the naturalized citizen for a long time. Without irony I must remark that the same was true for the posthumous citizenship of these Iraqi war soldiers. Moreover, in the cases of Mexicans and Puerto Ricans, imposed naturalization was part of processes of territorial, economic, and labor appropriations by the racial, cultural, and class majorities. Again, without irony, I must remark the obvious. The US

Government, as well as the great majority of Americans (the fraternity of raced and classed individuals), have appropriated not only the physical bodies of these non-citizens, their lives, but also their cultural memories, which are now recast in a national history structured by race, gender, and class in which Latino immigrants are often defined as opposite to the economic and cultural ideals of the Anglo majority.

### Liberalizing the armed forces

Imposed naturalization is an illiberal practice of citizenship that, I argue, should be rejected by Latino/as.<sup>18</sup> However, the practice is even more problematic when considering that the American government has used citizenship (including naturalization) as a political tool to fatten the military. During the Revolutionary War, 5,000 Blacks were fighting alongside the Revolutionary forces in the north with the understanding the freedom from slavery was near (Zinn, 2003, 89). During the Texas War, not only Irish immigrants but also Mexican nationals fought on the side of the seceding army (seceding from Mexico). Non-citizen African-Americans and Latino/as fought on both sides of the Civil War (Lopez, 1998). Puerto Ricans were ceded by Spain on December 10, 1898. Though not yet citizens, the first company of native-born Puerto Ricans was organized in 1899 to join the American Colonial Army. In 1917, during World War I, (WWI) the needs of the US Army were such that the draft went on targeting immigrant populations. As Nancy Gentile Ford (1997) has argued, in 1918 non-citizens accounted for some 18 percent of the Army (almost 200,000). European nations protested the drafting of their citizens; to calm these nations, the US Government quickened the pace of naturalization. In all of these cases, the non-citizens were either fighting because they were drafted (Puerto Ricans in WWI; Chinese Americans in the Civil War) or voluntarily enlisted to gain some citizenship rights (Blacks in the Revolutionary War; Irish and Mexicans in the Texas War).

Drafting non-citizens (or giving citizenship to people so that they can be drafted) can easily be argued as an illiberal practice.<sup>19</sup> However, volunteering to join the army would seem to be a classic example of liberalism. More importantly, if we consider that the idea of volunteerism is central to liberalism partly because volunteerism is the epitome of consent, then it is easy to understand the textual features of the public discussion on granting posthumous citizenship. In this discussion, the soldiers' actions were interpreted as the actions of consenting to citizenship, because the soldiers have volunteered to join the army. In this section I criticize this public discussion for failing to see that enlisting in the army is not the same as seeking citizenship and for failing to problematize the issue of enlistment, or how the army targets non-whites and the poor.

18 My position is the following: posthumous citizenship should be avoided in all cases incurring non-citizens killed in combat. However, Congress should pass immigration law that would allow the families of the deceased soldiers to acquire the benefits of citizenship if so desired.

19 For a discussion on how more recent drafting practices are illiberal and have affected Latinos, see Jorge Mariscal (1999).

## Enlistment meant consent

To justify naturalization for Gutiérrez, Garibay, Suarez, and Rincón, elected officials and others interpreted the immigrants' actions as evidence of wanting citizenship. Sen. Miller and Sen. Cornyn – to name two strong supporters of the posthumous citizenship bills – believed these soldiers' heroism was related to their wish to become citizens. Other politicians stated the same, as is evidenced in the June 4, 2003 discussion in Congress.<sup>20</sup> Rincón's father repeated several times that Diego Rincón always wanted to become a citizen. In his news piece, Harmon, writing about all of the immigrants who were killed, stated that these Marines "hoped to secure their citizenship by their service" (Associated Press, 2003; Harmon, 2003; Washington Heights, 2003). Guillermo Martínez (2003, 76), writing for *Hispanic* magazine, also interpreted enlistment as evidence of these soldiers' desire to become citizens. This public discussion gave *meaning* to the soldiers' rationale for enlisting and fighting, and interpreted their actions prior to their deaths as signaling that they wanted citizenship. Instead of consent, voluntary enlistment became evidence of desire to be citizens. This was a mistake. As shown above, there are no legal reasons to believe that enlisting in the army is equal to consenting to be naturalized (see above discussion on the Oath of Enlistment). Moreover, even if these interpretations were correct in some cases (maybe in Rincón's case), they cannot stand in for legal consent (an oral will is not a legal will). However, these interpretations clue us into an ideology that reproduces existing racial and national fantasies about the military. In these fantasies, the military is an honorable liberal institution populated by volunteers wishing to serve the nation. What most of the interpretations left out sheds light on what was left in: they failed to locate posthumous citizenship within the overall strategy by the State to secure ongoing voluntary enlistment by non-citizens.<sup>21</sup> Moreover, they failed to address the social, cultural, economic, and political reasons that make voluntary enlistment an important life choice for non-citizen Latino/as in America.

The *Armed Forces Naturalization Act of 2003* did more than grant posthumous citizenship to the non-citizen Latino war casualties. It also allowed for the expedited naturalization of non-citizens serving in the military. Both modifications to immigration law can be seen as part of the overall strategy post-9/11 to secure military enlistment. The idea of expedited naturalization came from an initiative by President Bush, who on July 3, 2002, signed an executive order to this effect. This order allowed non-citizens serving in the Armed Forces to apply for citizenship more quickly. The waiting time (typically five years) was reduced to one year. This law has the goal, openly discussed by the enlistment services in the Armed Forces, of making the military more attractive to non-citizens, at a time when reaching enlistment goals is a challenge (the military seems less attractive since the Iraqi invasion and occupation). According to the latest estimates, 42,000 non-citizens (roughly 2 percent of

20 For instance, Texas Rep. Jackson-Lee emphatically declared during the discussion of the bill: "this Nation continues to be a Nation built upon immigrants and their desire to be part of this great democracy." She also refers to Martha Espinosa, one of José Gutiérrez's foster parents, who stated that Gutiérrez once told her, "I was born the day I arrived in this county." Washington Representative Hastings also declared: "Mr. Speaker, these patriotic men and women have willingly volunteered to carry out one of the most solemn duties any nation can ask of its citizens, the defense of freedom. In doing so, I believe that they have truly earned the opportunity to become citizens of the country that they serve to protect. ... As my colleagues know, some of our troops who died in Iraq wearing the uniform of the United

States gave their lives before they were truly entitled to call themselves Americans.” Both sets of statements are part of the House of Representative discussion, on June 4, 2003, regarding *The Armed Forces Naturalization Act of 2003*.

21 Notable exceptions include journalists like Conde (2003), Halbfinger and Holmes (2003), Zook (2003), and Seaton *et al.* (2003).

22 The idea of the “citizen-soldier” as a political category of governance linked to idealized forms of citizenship is well documented. See Chambers II (1987) and Cress (1982). For scholarship dealing with contemporary issues, including the issue of recruitment, see Moskos (2002) and Snyder (2003).

23 See also the publications in *The Project on Youth and*

the Armed Forces) currently serve in the different branches of the Army, Navy, Air Force, and Civil Guard, (Gamboa, 2003). Since July 3, 2002, more than 10,000 have applied for expedited citizenship. An irony and a deep contradiction that still prevails is that if they were to die in combat, these non-citizen soldiers would be awarded posthumous citizenship immediately.

There is evidence that expedited naturalization is indeed working to bring non-citizens to the Armed Forces. Sgt. 1st Class Rodolfo Abalos, who recruits for the Armed Forces, comments on the point: “That’s another thing we can offer, especially to Asians who want to become citizens.” Abalos, born in the Philippines, continues: “I tell them about how they can get the citizenship a lot faster joining the Army, compared to being a civilian and waiting for five years.” Joseph Macaraeg, a Filipino resident who enlisted in 2003, hoped that his daughter would grow up as a citizen. In consonance with Abalos, Macaraeg said: “I’m always thinking about my daughter” (Kong, 2003). Moreover, many Mexicans, hearing about President Bush’s resolution, made inquiries to the American Embassy in Mexico City regarding this quick method of acquiring citizenship. The Embassy was forced to place a notice in their web page stating that it was false that the United States was offering citizenship in exchange for enlistment (Ferriss, 2003). All these legal redefinitions of immigration policy have allowed the Armed Forces to offer potential recruits an extra incentive.

In spite of the clearly utilitarian way that naturalization has been used by the US Government to attract non-citizens, public discussions of the military continue reproducing the suspicious notion that volunteers populate the Armed Forces. This notion is central to the idea of the citizen-soldier and to the argument that soldiering is a type of civics. Leo Braudy (2003) has observed, in a time of war, when the sovereignty of the nation is at stake, the ideal citizen often becomes discursively linked to the soldier, an ideal character that inhabits military narratives where his civic qualities of heroism, sacrifice, and love for the nation are displayed.<sup>22</sup> However, for the idea of the citizen-soldier to work as a model of ethical behavior, it is required that we imagine the individual’s actions as voluntary. Political liberalism, after all, sits atop humanist liberalism and its emphasis on individualism, freedom, and the power of the will to guide the self toward betterment.

Since 1973, the army has relied on volunteers; because of this, the targeting of the poor and non-white communities can more easily be hidden from public scrutiny. *Voluntarism obscures the illiberal, racialized, and classed ways the American military works*; voluntarism veils the institutional practices that have secured the military’s ability to attract personnel, such as the locations for recruitment offices in our middle and lower class neighborhoods (see Palaima, 2004; Seeley, 2004; Lovato, 2005)<sup>23</sup> or the targeting of some populations (Crawley, 2003) or geographical areas over others. The DoD recognizes the South, which is home to a huge minority population, as a great enlistment source and preferred target of recruiters and military advertisers (Sackett and

Mavor, 2004, 64). To unearth the way class and race are central to the Armed Forces, in 2002, New York Congressman Charles Rangel introduced a bill that would reinstate the draft. A Korean war veteran, Rangel has argued that all Americans should share the burden of defending the nation. He believes that Congress would be more reluctant to send troops to combat if their sons and daughters were subject to the draft. As it is, the white poor, the non-white, and, now, the non-citizen share the burden and pay the price of Congress' actions (with the majority's acquiescence).

Rangel's lack of success in using the same discourses most politicians tout as central to American identity (patriotism, honor, sacrifice, and citizenship) illustrate a troubling reality. In spite of the relevance of nationalism in media and politics, most Americans embrace discourses and practices of privilege that ignore the unfair connection between enlistment and race and class. Nathaniel Fick enacted this privilege in July 20, 2004 by publishing an article in *The New York Times* where he criticized the draft proposal. In it, he argues against the notion that racial minorities and the poor constitute the bulk of the volunteer army. Fick, a former Marine captain who served in Afghanistan and Iraq, proudly remarks that his soldiers came "from virtually every part of the socio-economic spectrum." Though, he observes, Blacks make 19 percent of the Armed Forces compared to 13 percent of the population and Latino/as, he misinforms us, are underrepresented in the military. To support his argument he points out that Latino/as make 11 percent of the Armed Forces, compared to 13.3 percent of the population. Regardless of the merits of Fick's arguments, his "socio-economic" analysis is faulty (below I show why) but publishable, partly because Fick had an education and class background that allowed him to write it. He graduated from Dartmouth, one of our most selective and expensive liberal arts universities, and now he can exercise his privilege by having some control over the discourse of honor, citizenship, military service, and race.

Fick's is a common defense of voluntarism that in the same breath romanticizes the civic attributes of the citizen-soldier while highlighting the liberal value of choice. Although this position may be correct in imagining that choice is at play in the enlistment of people like Fick, to whom privilege lends choice, in America choices are stratified. Because of this, the Armed Forces have mostly been the "choice" of poor whites, racial and ethnic minorities, and increasingly, non-citizens. Let us briefly consider data on Latino/as in the military.

Given the growth of the Latino population, which is the fastest growing ethnicity in America, the Department of Defense is becoming more interested in learning to target Latino/as recruits (Defense Manpower Data Center, 2002; Hattiangadi *et al.*, 2004). This includes non-citizens Latino/as, who, according to the 2000 census, numbered 10.2 million. Already Latino/as account for 11 percent of the Armed Forces in general, but compose 13.6 percent of the Marines (the most risky of the branches) and 17.7 percent of all personnel that

*Non-Military Operations*, YANO, directed by Jorge Mariscal <<http://www.projectyano.org/>>.

handles weapons. Considering that Latino/as amount only to 9.6 percent of the US population with the educational and legal credentials to enlist (only citizen and green-card holders with high school can serve), it is clear that Latino/as are overrepresented in the Armed Forces in general and hugely overrepresented in risk positions. In fact, since 2000, Latino/as have exceeded the proportion of Black recruits in the Marines (Hattiangadi *et al.*, 2004, 19). The trend is likely to continue if we consider that according to a report by The CNA Corporation (a non-profit research organization used by the DoD to investigate a variety of issues in the military), Latino/as have the highest active duty propensity of any racial group or ethnicity. That is, Latino/as are more likely to see enlistment as attractive: “For example, male high-school senior propensities were 44 percent for Hispanics, 36 percent for blacks, and 24 percent for whites. For male high-school graduates who had not gone on to college, propensities were 21 percent for Hispanics, 18 percent for blacks, and 7 percent for whites” (20). Those more likely to enlist cited money for education and job training as the two most important reasons to enlist. Aware of this, recruiters aggressively target Latino communities and the Army’s advertising, in a concerted effort to maintain the numbers in the military, does the same (Moniz, 1999; Leyva Martinez, 2003). Duty propensity numbers are hardly surprising considering the poverty levels among Latino/as and comparing these numbers with poverty among whites. According to the US Census, in 2000, 22.8 percent of Latino/as and 8 percent of whites lived under the poverty line. Although it is not my intention to make a sociological correlation between poverty and duty propensity, it is hard not to notice the following: duty propensity for Latino males who will not go to college is 21 percent. The poverty level among Latino/as is 22.8 percent. Duty propensity for white male who had not gone to college is 7 percent. The poverty level among whites is 8 percent. The similarity in both sets of numbers opens the possibility for arguing that duty propensity is directly proportional to poverty levels. Finally, Green-Card holders can serve in the military and currently account for 2.6 percent of the Armed Forces and number 6,500 in the Marines (Hattiangadi *et al.*, 2004, 16).

These data force us to consider the fact that the Armed Forces are structured in a racialized and classed fashion and that the notion of a volunteer army is, at best, a lazy idea, if not an outright fantasy. This notion fails to acknowledge the social, economic, and cultural pressures the poor and non-whites disproportionately face to make the risks of service palatable. In light of this, it is important to recast the Armed Forces and the idea of a volunteer army and call it what it is. The idea of voluntarism is a cornerstone of illiberalism in America that not only fools most into believing that we have an army of choice, but also that propagates the idea of the citizen-soldier while hiding the racist and classist way in which it operates. As it stands, the “majority” is able to obscure the racialization of military service, much in the same way it was able to make logical the granting of naturalization to dead Latinos. In both cases, citizenship

and naturalization are used as tools for governance embedded in the ongoing project of securing the State.

### Consent and voluntarism revisited

Citizenship's consistent role in American politics is governance. As such, it has been a central part of the legal and rhetorical arsenal used by hegemonic racial, economic, and political classes to reconstitute the grounds of their internal and foreign dominance. The cases of the granting of posthumous citizenship to non-citizen Latinos killed in combat in Iraq show the impetus to use citizenship as governance. On the one hand, this impetus elided the fact that naturalization was given without the individuals' consent and, on the other, it served to obscure, yet again, the way the Armed Forces is structured as a racialized and classed institution. Both practices contradicted liberal ideas of governance. Non-consensual naturalization went against the notion that in a liberal state, naturalization is a contract that secures the legitimization of the relationship of governor/subject. The rhetoric of the cases also cloaked military practices presented to the American people as liberal (the idea of the "volunteer" army) but that rely on persisting economic, cultural, and educational stratifications.

The power of liberalism as a political theory (or system) depends on how governments under its rubric spread rights and responsibilities. Ideally, these rights and responsibilities ought to be equal for all citizens. Not surprisingly, liberalism can be a radical and powerful force against social injustices. As it exists in American society, it can also be the basis for further oppression and inequality. The volunteer army offers an example of both. It is sought out by Latino/as as an avenue toward education, prosperity, and social respect. In addition, the army serves the paradoxical role of legitimizing liberalism by helping propagate the notion that as a volunteer army it is an institution that *equally* spreads out the civic responsibility to defend the nation. Both roles are contradictory for they sit on the impossible assumption that enlistment is at once self-serving (in the Latino cases, politicians and news people believed that the soldiers sought citizenship) and civic minded (the Latinos "loved" the nation). The Latinos' return to the nation in body-bags, as citizens and heroes, symbolizes the limits of liberalism in America and shows how the articulation of ethnicity and militarism are made possible by the contradictions of liberalism.

At the heart of my argument are the notions of consent and voluntarism and the tensions they provoke between the ideal of liberalism and governmental practices. I argued that naturalization without the consent of the subjects to be naturalized is an illiberal practice. I also argued that the army's targeting of Latino/as, blacks, and poor-whites to "voluntarily" enlist is another example of illiberalism. Pressured by limited economic and educational prospects, Latino/as enlist while the middle and upper classes hypocritically celebrate the valor and civic fiber of the soldier. In both cases, politicians, newsmakers, and established

Latino/as controlled the dispersal of the ideas of consent and voluntarism, controlling in the process of racial and class character of the discourse of liberalism. To the question of whose consent is required for naturalization, these people answered “The state’s.” To the issue of how voluntarism should be understood, these people offer a self-serving liberal definition of social action that explains Latino enlistment as voluntary and that disregards the social, racial, and class pressures placed upon Latino/as to enlist. These pressures may include the desire to assimilate, to achieve economic stability, to study, and to gain social respect. It is important to note that without the idea a voluntary enlistment, politicians, newsmakers and parents could not have justified naturalization. *Voluntary enlistment stood in place of consent and was used as evidence of the soldiers desire to be naturalized.*

With the history of race and militarism in America I have argued here that giving posthumous citizenship to these Latinos is another way of giving legal form to illiberalism. For, as a category for the living, with consent, citizenship is a portfolio of rights and an invitation to fraternity; as a category for the dead, citizenship is reduced to a cultural frame for memory, an invitation to self-centeredness. I say this because our traditional narratives of heroism have a racial inertia that will likely erase these Latinos from memory, much in the same way that it erased the patriotic service to the nation of non-citizen Native Americans, Chinese, Mexicans, Puerto Ricans, Blacks, and Filipinos. Moreover, as heart warming as it is to hear such important citizens (politicians and news people) praise these immigrants, it is important to recognize the role of Congress and mainstream media in validating the invasion of Iraq and reproducing American militarism. Congress and media reconstitute the Army’s need for more military personnel and forces this institution to actively seek non-citizens, poor whites, and racial minorities. The 75th Annual League of United Latin American Citizens (LULAC) National Convention was held in San Antonio, Texas from July 6 to July 11, 2004. In a surreal fashion, the convention was teeming with Armed Forces members, representing all branches of the military, in full-recruiting mood.

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