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To Yick Wo, Thanks for Nothing!: Citizenship for Filipino Veterans

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TO YICK WO, THANKS FOR NOTHING!: CITIZENSHIP FOR FILIPINO VETERANS

Kevin Pimentel*

In this Note, the Author uses science fiction novelist Robert Heinlein's model of citizenship as an analytical framework for examining the historical treatment of Filipino veterans of World War II. The Author Heinlein's conception of citizenship in Starship Troopers was one in which a person can acquire citizenship only through a term of service in the state's armed forces. Similarly, the United States provided immediate eligibility for citizenship to World War II era foreign veterans, but it effectively excluded Filipino veterans from this benefit. The Author examines how the plenary power doctrine in immigration law, has quashed legal challenges by Filipino veterans and created a structural imbalance that not only allows but encourages similar inequities. The Author also notes that while Congress has enacted remedial legislation, this delayed conferral of citizenship without accompanying veteran's benefits is both inadequate and incomplete. Accordingly, the Author suggests that the plenary power doctrine, in the context of the Filipino veterans, must give way to textual reading of the U.S. Constitution which places an express limit of geographic uniformity in the area of naturalization. Drawing from the use of reparations in immigration policy, the Author recommends that further legislative remedies be enacted to ensure that Filipino veterans and their descendents are provided a fair and equitable remedy for their service to the United States.

The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants.¹

As to liberty, the heroes who signed the great document pledged themselves to buy liberty with their lives. Liberty is

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never unalienable; it must be redeemed regularly with the blood of patriots or it always vanishes. Of all the so-called natural human rights that have ever been invented, liberty is least likely to be cheap and is never free of cost.²

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INTRODUCTION

Citizenship is generally conceived of as a reciprocal relationship between an individual and a state.³ The citizen accepts certain duties and responsibilities to the sovereign in exchange for the protection, rights, and privileges a state can provide. The mechanics of this

³. One often-cited understanding of citizenship states:

At the level of theory, it is a natural evolution in political discourse because the concept of citizenship seems to integrate the demands of justice and community membership .... Citizenship is intimately linked to ideas of individual entitlement on the one hand and of attachment to a particular community on the other.

process is most evident when analyzing citizenship acquisition structures. Typically, an applicant for citizenship must demonstrate some degree of connection to the nation before citizenship can be granted.

U.S. citizenship can be acquired in many ways. Birth to U.S. citizen parents under certain conditions, birth on American soil, and naturalization are all legally recognized methods of obtaining citizenship. None of these methods of citizenship acquisition are presently marred with any discrimination on the basis of race. However, perhaps the most arduous and deadly path to citizenship—serving in the United States armed forces—has long been denied to Filipinos.

As will be fully explicated later, Robert Heinlein's science fiction novel, *Starship Troopers*, constructs a model of citizenship explicitly and completely based on a reciprocal nation/citizen relationship. Before one can acquire citizenship, a term of service in the armed forces is required. This structure manages to protect the integrity of the political process by ensuring that the power associated with citizenship is only exercised by those who have proven themselves responsible through military service.

The American system of government synthesizes this protection of the political process in a different manner. Although there are no analogous requirements for citizenship, the power of the legislature is kept in check by the oversight functions of the judiciary under the Constitution. However, in immigration law, the plenary power doctrine effectively prohibits judicial oversight. This corrupted structure of unchecked imbalance not only permits, but actively fosters the type of mistreatment faced by Filipino veterans.

This note analyzes the historical treatment of Filipino veterans of World War II, using Heinlein’s model of citizenship as an

4. "What may the immigrant justifiably demand of the nation? What may the nation justifiably demand of the immigrant?" *Id.* at 213.


9. It was only in 1952 that racial restrictions on naturalization were abolished. See generally, INA, ch. III, § 301 et seq., 8 U.S.C. § 1101 et seq.

10. See infra Part I.


12. See infra Part III.
analytical framework. Part One outlines Heinlein’s vision of citizenship in a future galaxy. Part Two explores the historical context of the exclusion of Filipino veterans. Part Three presents an overview of the plenary power doctrine in immigration law. Part Four examines legal challenges made by Filipino veterans and scrutinizes the efficacy of remedial legislation. Part Five examines possible legal challenges that may be brought on behalf of the veterans and, drawing upon reparation theory, poses various methods of obtaining justice.

I. STARSHIP TROOPERS: NO DOGS OR FILIPINOS ALLOWED

Robert Heinlein’s *Starship Troopers* is a science fiction novel written in the late 1950’s. Heinlein’s works are marked with a deeply philosophical and sociological bent. For example, Heinlein’s previous novel, *Citizen of the Galaxy*, is an exploration of the eradication of slavery in the future. In fact, many science fiction novels from this period contain explicitly political and philosophical content, as America’s collective unconscious reeled from the staggering effects of World War II and the invention of the atomic bomb. Science fiction also showed signs of explicitly dealing with racial issues, as evidenced by the works of Ray Bradbury.

*Starship Troopers*, ostensibly a tale of intergalactic conflict between mankind and a number of alien races, ultimately focuses on the issue of political structure. By constructing a future world that has evolved radically since twentieth century America, Heinlein is

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15. *See, e.g., WARD MOORE, BRING THE JUBILEE* (1997) (showing the South winning the American Civil War); *FRED POHL, SLAVE SHIP* (1957) (forecasting in this novel that the Vietnamese might defeat the United States by depicting how the Vietnamese conquer much of Asia, and can only be defeated by an alien approach).


17. *See HEINLEIN, supra note 2.*
able to envision his own "Republic," a society that succeeds in implementing his ideals of duty, honor and service through a structural re-organization. In Heinlein's post-democratic society, citizenship is only granted to those who serve in the armed forces. As Major Reid, military instructor of History and Moral Philosophy in the novel explains, "[u]nder our system every voter and office-holder is a man who has demonstrated through voluntary and difficult service that he places the welfare of the group ahead of personal advantage."

Responsibility is viewed as the foundation and natural converse of authority. Reid continues:

Since sovereign franchise is the ultimate in human authority, we insure that all who wield it accept the ultimate in social responsibility—we require each person who wishes to exert control over the state to wager his own life—and lose it, if need be—to save the life of the state. The maximum responsibility a human can accept is thus equated to the ultimate authority a human can exert. Yin and yang, perfect and equal.

This structure is perfect in its symmetry and simplicity. By equating the benefit of the political franchise with the costs of engaging in armed conflict, Heinlein establishes a social structure that values membership by establishing a high threshold for participation and ensures a level of competency.

Heinlein expounds at length on the superior structure of this future society, pointing out examples of a failed and diseased twentieth century American system of justice and political participation. Heinlein employs a first-person narrative to explicate his views and advance the storyline. Yet few personal details of the narrator's life are revealed. Rather, the majority of the narrative focuses on the structure of the military, training conditions and interactions with other recruits and superiors. Towards the end of the

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18. Heinlein's Republic is in contrast to Plato's Republic, which a character in Starship Troopers refers to as "weird in the extreme . . . antlike Communism urged by Plato under the misleading title The Republic." See id. at 181.
19. See id. at 183–184.
20. Id. at 183–84. While the film version of Starship Troopers, see STARSHIP TROOPERS (Tristar Pictures & Touchstone Picture 1997), featured a fully sexually integrated military, including co-ed showers, the novel is much more modest. While females are generally Naval officers, since they are considered superior pilots, there is gender segregation for the most part. See HEINLEIN, supra note 2, at 203–04.
21. Id. at 183–84.
22. See id. at 120.
novel, however, Heinlein reveals the narrator's ethnic identity as Filipino.\textsuperscript{23}

Curiously, the movie version of \textit{Starship Troopers} does not feature a Filipino protagonist.\textsuperscript{24} Furthermore, while the novel makes frequent references to robotic fighting dogs,\textsuperscript{25} they too were cut from the movie. The exclusion of dogs and Filipinos in the Hollywood version of \textit{Starship Troopers} evokes images of early twentieth century California signs outside bars and hotels that read "No dogs or Filipinos allowed."\textsuperscript{26} But the true irony of this juxtaposition between the novel and the movie lies in the reality that while almost all foreign veterans of World War II who fought for the United States were granted the right to become U.S. citizens, the only group denied this right were Filipino veterans.\textsuperscript{27}

Regardless of how distasteful Heinlein's neo-fascist views regarding military service and citizenship may seem, there is a very salient point behind the citizenship/military service metaphor he constructs: citizenship is not merely a means of conferring privilege; there are a set of duties and responsibilities concomitant with any benefit.

In modern times, this idea has resurfaced in the debate over welfare reform. Immigrants are depicted as parasites on the American economy, absorbing the benefits of life in the United States while refusing to participate in the financial, cultural, and economic upkeep of the country.\textsuperscript{28} The notion of sovereignty is typically used to advance the notion that a country can take

\begin{itemize}
\item \textsuperscript{23} See id. at 260.
\item \textsuperscript{24} See \textit{STARSHIP TROOPERS}, supra note 20.
\item \textsuperscript{25} See HEINLEIN, supra note 2, at 37 (describing the "neodogs" as "artificially mutated symbiote[s] derived from dog stock").
\item \textsuperscript{26} See LAN CAO \& HIMILCE NOVAS, EVERYTHING YOU NEED TO KNOW ABOUT ASIAN AMERICAN HISTORY 166 (1996). See also RONALD TAKAKI, STRANGERS FROM A DIFFERENT SHORE (photo reprint 1930) (1998) (picture which states "Positively No Filipino’s (sic) Allowed" posted on the door of a hotel in 1930’s California).
\item \textsuperscript{27} See infra Part II.
\end{itemize}
whatever measures necessary to exclude foreigners. Yet the converse of this idea—namely, what duties and responsibilities a nation owes to those noncitizens who actively support a country—is rarely discussed.

Immigration status has often been linked to military status. Current immigration laws create penalties for aliens based on negative military status. For example, any alien who deserts or evades military service in the armed forces becomes permanently ineligible for citizenship. Furthermore, any alien who seeks and receives an exemption or discharge from military training or service is also permanently ineligible for naturalization. These laws work to ensure that those unwilling to physically protect the sovereignty of this nation will never participate fully in American society.

Clearly, the nascent meowlings of Heinlein's ideas have been implemented in U.S. immigration law. But the troubling aspect of the duties/benefits paradigm arises in determining which entitlements apply to foreigners who choose to fight on behalf of the United States. Although Filipino servicemen played a pivotal role in supporting the United States war effort in the Pacific, they remain unable to avail themselves of the entitlements given to other veterans.

II. FIGHT FOR YOUR RIGHT TO NATURALIZE: FILIPINOS IN WORLD WAR II

When World War II began, the Philippines was still a territory of the United States. One of the branches of the Filipino military, the Old Philippine Scouts, was incorporated in the regular United States Army in 1901. Under the provisions of the Philippine Independence Act of 1934, the U.S. was authorized "upon the order of the President, to call into the service of [United States] armed forces


30. Although legal permanent residents are generally ineligible for any federal welfare benefits, see generally Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, § 402, 110 Stat. 2105 (the Welfare Reform Act), they are still required to pay the federal taxes that fund these benefits.


all military forces organized by the Philippines government.”35 In 1935, the Philippines set up a Constitution, a new government, and a new army—the Philippine Commonwealth Army.36 In an executive order on April 26, 1941, President Roosevelt exercised this authority under the Philippine Independence Act to “call the then existing military of the Philippine government ‘into the service of the armed forces of the United States . . . ’.”37

Initially, the Commonwealth Army was to retain its own national integrity, “with its own uniforms, its own scales of pay, its own promotion list, its own rations, and its own code of military law, with Philippine Army headquarters theoretically being responsible for discipline and punishment.”38 Over the course of the war, the United States Army took control of the Philippine forces, and Congress authorized $269 million to mobilize, train, equip and pay the Philippine Army.39 The Filipinos who fought alongside American troops often suffered heavy casualties. For example, in the infamous Bataan Death March,40 it is estimated that between 6000 and 9000 Filipinos died.41 By 1945, at least 472,000 Filipino soldiers and guerrillas were under American control.42

In March 1942, Congress amended the Nationality Act of 194043 to provide for immediate eligibility for citizenship for all non-citizens who served honorably in the United States armed forces. The legislative intent behind these amendments is clear: “If a man is ready to fight for our country, we ought to give him the benefits of citizenship without the normal peacetime requirements of time,

39. See Besinga v. United States, 14 F.3d 1356, 1358 (9th Cir. 1994).
40. In the Bataan Death March, “many of the 75,000 soldiers captured by the Japanese were forced to march about 65 miles to prison camps. Many were killed or died en route, and many more died later of wounds, mistreatment and disease.” Mary Schneiter, Ceremony Will Honor Filipino WWII Vets: Service Organization Seeks to Raise Awareness of Role Filipinos Played in War, THE NEWS TRIBUNE, May 26, 1999, at CE1. For more information on the Bataan Death March, see <http://home.pacbell.net/fbaldie/Battling Bastards of Bataan.html> (visited September 5, 1999).
42. See At Long Last, Justice for Filipino Vets, LOS ANGELES TIMES, December 2, 1990, at M1.
declaration of intent, and so forth. . . .” The 1942 amendments provided that “any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States during the present war, and who, having been lawfully admitted to the United States, including its Territories and possessions . . . may be naturalized.”

The United States provided for naturalization through a representative of the Immigration and Naturalization Service (“INS”) for those servicemen aliens who were not within the jurisdiction of any court authorized to naturalize aliens. The Philippines, though a U.S. territory at the time, had no court with jurisdiction to naturalize aliens. Additionally, the Japanese occupation precluded the special appointment of an INS official authorized to naturalize aliens. However, in the period between 1942 and 1945, approximately 7000 Filipino servicemen obtained U.S. citizenship outside the Philippines. Though most received citizenship in the United States, at least 1000 of these 7000 servicemen were granted citizenship outside the U.S., having been naturalized by special INS officials who traveled on rotation throughout England, Iceland, North Africa and the Pacific islands. These officials naturalized over 142,000 other non-citizen servicemen.

After the Japanese occupation of the Philippines ended in August 1945, the American Vice Consul in Manila was authorized to naturalize aliens. This authority was short-lived, as his authority to naturalize was revoked less than two months later on October 25, 1945. In revoking the authority, the INS Commissioner cited the Philippine government's concern that “a mass migration of newly naturalized veterans would drain the country of essential manpower, undermining postwar reconstruction efforts in the soon-to-be independent country.” This contention has received criticism from some scholars who view the revocation as “a seemingly obvious political move [by the United States] to gain a stronger foothold in

44. SECOND WAR POWERS ACT, S. DOC. NO. 77-2208, at 29 (1942).
46. See id. at § 702.
48. See id.
50. See id.
51. See Hibi, 414 U.S. at 10 (Douglas, J., dissenting).
52. See Olegario v. United States, 629 F.2d 204, 209 (2d Cir. 1980).
53. See Pangilinan, 486 U.S. at 879.
54. See id. at 879.
55. Id. at 879.
the Philippines." 56 But in August of 1946, the INS authorized a new official with the power to naturalize, and approximately 4000 more Filipino servicemen obtained citizenship. 57

This grant of authority was also short-lived, as Congress took active steps to deny recognition of Filipino veterans. For example, in 1946, the First Supplemental Surplus Appropriation Rescission Act was passed. 58 A rider to a supplemental appropriations act, this act declared that the service Filipino veterans in the Commonwealth Army performed in World War II "shall not be deemed active service for purposes of any law of the United States conferring rights, privilege, or benefits." 59 This rider conditioned a $200 million grant to the post-war Philippine Army on the ineligibility of the Commonwealth Army veterans. 60 A later Appropriation Rescission Act 61 provided that veterans in the New Philippine Scouts would also be ineligible for veterans benefits in the United States. 62 Thus, the only group of veterans who remained eligible were Filipinos in the Old Philippine Scouts, a unit incorporated into the regular U.S. army over forty years before World War II. 63

III. PLENARY POWER CORRUPTS PLENARALLY: AN OUTLINE OF THE DOCTRINE

To understand the standards of review involved in the legal challenges brought by Filipino veterans against the United States, a general discussion of the U.S. immigration system is necessary since "[i]mmigration law is a constitutional oddity." 64 The Constitution

57. See Pangilinan, 486 U.S. at 880.
59. Id.
60. See id.
62. See id.
64. Stephen H. Legomsky, Immigration Law and the Principle of Plenary Congressional Power, 1984 SUP. CT. REV. 255, 255. Note that the term "immigration law" refers to the body of law governing admissions and removals from the United States. Other aspects of aliens' rights, including government benefit eligibility, employment discrimination, and tax status are generally not governed by the plenary power doctrine. See Hiroshi Motomura, Immigration Law After a Century of Plenary Power:
makes few references to immigration. Article I, Section 8, clause 4, grants to Congress the power “[t]o establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States.” Article I, Section 9, clause 1, states that “[t]he Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.” The paucity of substantive constitutional immigration provisions led the judiciary branch to construct their own doctrine of judicial review.

The first constitutional challenge of immigration policy was launched by a Chinese American immigrant, Chae Chan Ping. Arguing that Congress had no authority to pass an 1888 statute which mandated his exclusion, Ping also attempted to avail himself of Fifth Amendment protection against bills of attainder and ex post facto laws. The Supreme Court firmly refused to extend judicial review to the statute, noting that the only recourse Ping had was to petition the Chinese government to “make complaint to the executive head of our government.”

In Nishimura Ekiu v. United States, the court expanded on this doctrine of judicial non-interference. Ekiu, a Japanese American immigrant, challenged an administrative officer’s determination that she was excludable. She argued that her Fifth Amendment due process rights required a judicial proceeding. The Supreme Court rebuffed her attempt to enforce an individual constitutional right and further extended judicial deference to the political branches in immigration matters.

Phantom Constitutional Norms and Statutory Interpretation, 100 YALE L.J. 545, 547 (1990).

67. Or more appropriately a doctrine prohibiting judicial review.
68. See Chae Chan Ping v. United States, 130 U.S. 581 (1889).
69. See id. at 603.
70. See id. at 584, 589.
71. Id. at 606.
72. 142 U.S. 651 (1892).
73. See id. at 652–653.
74. See id. at 656.
75. See id. at 659–660.
76. See id.
These cases lay the foundation for the plenary power doctrine. Expressed most clearly in *Oceanic Steam Navigation Co. v. Stranahan*, the doctrine states: “[O]ver no conceivable subject is the legislative power of Congress more complete than it is over [immigration].”

The Supreme Court has used several extra-constitutional justifications for this doctrine, beginning with the sovereignty theory. The sovereignty theory, based on international law, posits that every nation has a power of self-preservation inherent in its existence, granting it complete power to exclude aliens. For example, the Court in *Ping* considered statements made by various State Department officials before concluding that “[t]he power of exclusion of foreigners [is] an incident of sovereignty belonging to the government of the United States.” Subsequent cases continue to go beyond the Constitution in defining the power of sovereignty.

Another extra-constitutional justification is the political question doctrine. Though related to the sovereignty doctrine, the political question doctrine explicitly removes certain subjects from judicial review based on foreign policy implications. As the Supreme Court has stated:

> It is no new thing for the law-making power ... to submit the decision of questions, not necessarily of judicial cognizance, either to the final determination of executive officers, or to the decision of such officers in the first instance, with such opportunity for judicial review of their action as Congress may see fit to authorize or permit.

In later decisions, the Court expanded this doctrine to encompass the entire field of immigration. Subsequent challenges to immigration police based on constitutional grounds became nearly fruitless. Attempts at challenging unreasonable detention conditions at the border on the basis of Fifth Amendment “due process” grounds met

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77. 214 U.S. 320 (1909).
78. Id. at 339.
79. See *Nishimura Ekiu*, 142 U.S. at 659 (stating that “every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe”); see also *Chae Chan Ping* v. United States, 130 U.S. 581, 603–04 (1889) (stating that “if [a nation] could not exclude aliens, it would be to that extent subject to the control of another power”).
80. Id. at 609.
81. See discussion in Legomsky, *supra* note 64, at 273–75.
82. See discussion in Legomsky, *supra* note 64, at 261–269.
83. *Fong Yue Ting* v. United States, 149 U.S. 698, 714 (1893).
84. See Legomsky, *supra* note 64, at 261–63.
with little success. As the Supreme Court stated in *United States ex rel. Knauff v. Shaughnessy*, 56 “[W]hatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.”

The claim that the plenary power doctrine implements an absolutist regime over the entire field of immigration is somewhat of an overstatement. However, the extent to which substantive constitutional norms apply to immigration law is unclear. As Hiroshi Motomura notes, the plenary power doctrine provides, “as a matter of explicit constitutional theory, . . . that . . . we cannot directly apply mainstream constitutional norms in immigration cases.” However, Motomura recognizes that the courts have made various departures in protecting alien rights which he calls “phantom constitutional norms”—constitutional decisions from other areas of law imported into the immigration context which manage to create results sympathetic to aliens without disturbing the plenary power doctrine. Nonetheless, he notes that while these phantom norms appear to challenge the plenary power doctrine, they actually work to enforce it. Motomura states: “[T]he tension between the plenary power doctrine and subconstitutional phantom norm decisions has caused considerable damage to the process of dialogue about the future of immigration law.” Though Motomura shows guarded optimism regarding the extent to which phantom norms can lead to meaningful reform, the mere existence of phantom norms is disturbing on a structural level.

This illusory erosion of the plenary power doctrine marks the degree to which the judiciary branch has removed itself from meaningful immigration review, as it shows an unwillingness to establish and maintain a coherent doctrine. Because the judiciary can point to their phantom norm decisionmaking as evidence of inherent limits within plenary power, they are unlikely to erect any structural changes. However, any discretionary, self-initiated reform that does not draw on constitutional principles to create standards of review is ultimately another method of enforcing the plenary power doctrine.

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86. *Id.* at 544.
87. Motomura, *supra* note 64, at 564.
88. *See generally id.*
89. *Id.* at 612.
90. *See id.* at 613.
IV. What's Process Got to Due With It?: Legal Challenges and Legislative Remedies

Despite the plenary power doctrine and its inherent judicial deference to the political branches, Filipino veterans began bringing legal challenges against the INS immediately after they were denied immigration benefits and privileges. In 1957, Alejandro Munoz, a Commonwealth Army veteran, brought suit in district court to petition for his naturalization. The district court held that the Rescission Act was not meant to deprive Filipino veterans of the right to naturalize, but merely to prevent them from receiving direct financial benefits. The district court cited legislative history from a House report on the law amending the First Rescission Act to counter the far-reaching language of the Rescission Act:

[T]he question of extending the GI bill of rights, terminal leave, hospitalization, mustering-out pay, and other veterans' benefits which American soldiers received, were under consideration by the Appropriations Committee. From the best information now available it seems reasonably certain that the insertion of the restrictive language on Philippine Army forces was made for the purpose of excluding such personnel from the above-mentioned veterans' rights and it was not intended that the Filipino Army personnel be excluded from the rights, benefits, and privileges of the Missing Persons Act.

The district court concluded that the Rescission Act "does not encompass rights and privileges accorded by the naturalization statutes." However, later decisions denied Filipino veterans naturalization rights. Subsequently, other Filipino veterans began the process of challenging the legality of their disenfranchisement.

A. America is in the Court: Petitioning for Citizenship

The first case to reach the Supreme Court on the question of Filipino veterans' citizenship rights was INS v. Hibi in 1973.

92. See id. at 186.
Marciano Hibi enlisted in the Old Philippine Scouts in 1941. He served under the U.S. Army and was captured by the Japanese. He was released in April, 1945 and continued to serve until his discharge in December, 1945. In 1964, Hibi entered the United States on a visitor-for-business visa. Upon the expiration of his visa, he filed for naturalization under § 701 of the Naturalization Act of 1940.

Hibi based his naturalization petition on the grounds that the government was estopped from relying on the statutory time limit which Congress had attached to § 701. His estoppel claim was based on the failure of the INS to advise him of his right to naturalize during the time he was eligible and their failure to maintain a naturalization representative in the Philippines during the time Filipino servicemen were eligible to naturalize. When he raised the estoppel claim at the district court level, Hibi prevailed. Upon appeal, the Court of Appeals affirmed the decision, noting that they "reject the government's contention that an official of the executive branch could unilaterally nullify this Act of Congress." The court granted Hibi an equitable remedy, citing Ninth Circuit precedent that established their ability to grant citizenship when it has been "denied due to erroneous action on the part of administrative officials."

However, the Supreme Court quickly and decisively reversed the Court of Appeals in just three paragraphs. First, the Court claimed that by establishing a cutoff date for claiming citizenship, the INS was merely "enforcing the public policy established by Congress." It is not clear what the Court meant by these words, as Congress clearly mandated that "any person entitled to naturalization under section 701 of this Act, who while serving honorably in the military ... may be naturalized ... without appearing before a naturalization court." Moreover, while the Court did recognize

96. See id.
97. See id.
98. See id. at 6.
99. See id. at 7.
100. See id.
101. See id.
102. See id. at 7–8.
103. See id. at 8.
104. INS v. Hibi, 475 F.2d 7, 11 (9th Cir. 1973).
105. Id.
106. See Hibi, 414 U.S. at 5.
107. Id. at 8.
that perhaps "affirmative misconduct" by the government may give rise to a claim of estoppel, they noted that there was no such misconduct in this case.\textsuperscript{109}

In his dissent, Justice Douglas cited § 702 of the Nationality Act to show that Congress intended naturalization representatives to be available outside the jurisdiction of a naturalization court.\textsuperscript{110} Douglas asserted that the failure to have a naturalization officer in the Philippines in the last three months of Hibi's active service is a "deliberate—and successful—effort on the part of agents of the Executive Branch to frustrate the congressional purpose and to deny substantive rights to Filipinos."\textsuperscript{111}

Despite the great precedential weight of a Supreme Court opinion, Filipino veterans seeking naturalization continued to bring legal challenges against the INS. In 1975, Hibi returned to court, this time joining sixty-seven other Filipino veterans to petition again for naturalization.\textsuperscript{112} Bringing new evidence and separating the veterans into three categories based on factual differences, these veterans were able to bring their claims back into federal court.\textsuperscript{113}

The first category ("Category I") consisted of seven veterans who mailed applications for naturalization to the United States during active service and before December 31, 1946.\textsuperscript{114} Their applications were rejected and returned, with a letter from the INS stating that "no purpose would be served, therefore, by the submission of such an application to this office."\textsuperscript{115} The court held that these petitioners, unlike Hibi, were victims of the government's affirmative misconduct and thus were entitled to naturalization.\textsuperscript{116}

The second category ("Category II") consisted of fifty-three petitioners who did not take active steps to pursue naturalization before December 31, 1946.\textsuperscript{117} Unlike Hibi's first claim, their claim was based on the Fifth Amendment protection of due process of law.\textsuperscript{118} The Court held that Filipinos were entitled to constitutional protections, as residents of a territory of the United States.\textsuperscript{119} The Court went on to note that classifications based on nationality are "inherently sus-
pect and subject to close judicial scrutiny.” Applying this strict scrutiny standard, the Court held that the government had not met its burden in justifying the discriminatory conduct of not having a naturalization officer in the Philippines; therefore, petitioners were deprived of their due process rights and were entitled to citizenship.

The third category (“Category III”) consisted of veterans without adequate evidence that they served in the military. They were given ninety days to present proof of their service, and thus naturalize.

The INS initially docketed an appeal from the 68 Filipinos decision, but after a new administration and a new INS Commissioner took office, withdrew it. The Ninth Circuit Court of Appeals granted the motion to withdraw on November 30, 1977. The INS later changed its position again and began to appeal all grants of naturalization to Category II veterans, except for the naturalization of veterans who filed petitions before the November 30, 1977 appeal withdrawal date.

In Olegario v. United States, a Category II veteran, Antonio Olegario, was granted citizenship by the District Court pursuant to the 68 Filipinos decision. The Court reviewed Olegario’s constitutional claim de novo, and, surprisingly, disaggregated the plenary power doctrine. It notes that this case “involves the due process constraints on the executive’s authority [and] this question in contrast to the wisdom of a foreign policy decision is not textually committed exclusively to the political branches.” However, the analysis moved on to whether there were due process violations where the Court simply reiterated the plenary power doctrine, citing Hampton v. Mow Sum Wong and Mathews v. Diaz. The Court used the foreign policy doctrine to justify this deference, citing their willingness to presume the existence of “a national interest sufficient

120. Id. at 950 (quoting Graham v. Richardson, 403 U.S. 365, 371–372 (1971)).
121. See id. at 951.
122. See id. at 937.
123. See id. at 951.
125. See id.
126. See id.
127. 629 F.2d 204 (2nd Cir. 1980).
128. See id. at 211.
129. See id. at 217.
130. Id.
131. See id. at 228–32.
to justify the unequal treatment of aliens or a particular class, even
in the absence of an official government statement on the issue.\textsuperscript{134}
Consequently, the distinction between political question and foreign
affairs did little to limit plenary power.

It was not until 1984 that the Supreme Court made another
ruling on the status of Filipino veterans. In \textit{United States v. Mendoza},\textsuperscript{135} Sergio Mendoza, a Commonwealth Army veteran (who
would be classified as Category II under the \textit{68 Filipinos} distinction),
was granted naturalization by the District Court.\textsuperscript{136} In granting his
naturalization, the court held that the U.S. government was collater-
ally estopped from litigating the constitutional issue of his due
process violation established in the earlier \textit{68 Filipinos} decision.\textsuperscript{137} The
Court of Appeals affirmed this decision, ruling that the District
Court did not abuse its discretion in applying collateral estoppel.\textsuperscript{138}
The Supreme Court did not reach the underlying constitutional
issues, as it reversed the Court of Appeals holding that the United
States may not be collaterally estopped on this issue.\textsuperscript{139}

Four years later, the Supreme Court decided a Filipino veteran
citizenship case on its constitutional merits. In \textit{INS v. Pangilinan},\textsuperscript{140}
the INS appealed a Court of Appeals decision that granted naturali-
zation to 16 Filipino veterans. The Supreme Court considered
previously made arguments for naturalization and summarily re-
jected them all.\textsuperscript{141} First, the Court noted that none of the petitioners
were statutorily entitled to citizenship, as they filed for naturaliza-
tion after the 1946 deadline.\textsuperscript{142} The Court then examined the idea of
naturalization as an equitable remedy, and, after citing extensive
case law, decided that Congress alone can grant citizenship through
legislation and as carried out by the INS.\textsuperscript{143}

Lastly, the Court discussed possible due process violations by
the INS. Unlike the District Court in \textit{68 Filipinos}, the Supreme Court
noted that a seven month presence of a naturalization officer consti-
tuted due process.\textsuperscript{144} The Court did not discuss the revocation of
naturalization authority as a component of this presence, stating that
the respondents were not entitled to "the continuous presence of a

\begin{thebibliography}{139}
\bibitem{134} See Olegario, 629 F.2d at 232.
\bibitem{136} See Mendoza v. United States, 672 F.2d 1320, 1325 (9th Cir. 1982).
\bibitem{137} See id.
\bibitem{138} See id. at 1330.
\bibitem{139} See Mendoza, 464 U.S. at 164.
\bibitem{140} 486 U.S. 875 (1988).
\bibitem{141} See id. at 882-887.
\bibitem{142} See id. at 883.
\bibitem{143} See id. at 884.
\bibitem{144} See id. at 885.
\end{thebibliography}
naturalization officer in the Philippines from October 1945 until July 1946.\textsuperscript{145}

In attempting an equal protection analysis, the Court stated that the presence of the naturalization officer compared favorably with the “merely periodic presence of such officers elsewhere in the world.”\textsuperscript{146} However, the Court’s equal protection analysis was wholly inadequate, as it did not attempt to compare the number of non-citizen servicemen stationed in the Philippines as compared to other parts of the world. Because such a large number of non-citizen servicemen were stationed in the Philippines, it was not equal protection to have only the periodic presence of a naturalization officer in the Philippines, when compared with other countries, and it did not provide due process. Nonetheless, the Supreme Court concluded that none of the Filipino claims were meritorious and reversed the Court of Appeals decision.\textsuperscript{147}

What was even more inadequate than the equal protection analysis was the Court’s inability to explicitly state the applicable standard of review for such an analysis. While the Court did refer to passages in \textit{Fiallo v. Bell}\textsuperscript{148} and \textit{Matthews v. Diaz}\textsuperscript{149} to support its equal protection arguments,\textsuperscript{150} both passages simply reiterated Congress’ plenary powers over immigration. However, the Court in \textit{Diaz} upheld a statute on the basis of it not being “wholly irrational.”\textsuperscript{151} This standard of review, far more lenient than the “rational relation” test, is especially invidious, as it is another iteration of complete judicial deference masquerading as a level of scrutiny.\textsuperscript{152} Like Motomura’s “phantom norms,” this is a “phantom” level of constitutional review. It enables the judiciary to refrain from adequately and substantively reviewing legislation while creating the appearance of doing so. The Supreme Court once again declined to set an uniform standard of review.

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\textsuperscript{145} \textit{Id.}  \\
\textsuperscript{146} \textit{Id. at 886.}  \\
\textsuperscript{147} \textit{See id. at 887.}  \\
\textsuperscript{148} 430 U.S. 787, 792 (1977).  \\
\textsuperscript{149} 426 U.S. 67, 79-83 (1976).  \\
\textsuperscript{150} \textit{See Pangilinan}, 486 U.S. at 886.  \\
\textsuperscript{151} \textit{See Diaz}, 426 U.S. at 83.  \\
\textsuperscript{152} This haphazardly stated and arbitrarily applied standard of review is similar to the “fantasy or pretense” standard iterated in \textit{Harisiades v. Shaughnessy}, 342 U.S. 580, 590 (1952) (“Can we declare that congressional alarm about a coalition of Communist power without and Communist conspiracy within the United States is either a fantasy or a pretense?”).
\end{flushright}
B. Colonialism in the House: Rescission Act Challenges

Filipino veterans have also challenged the Rescission Act, which stripped them of veteran status, under the due process clause. In 1994, Cornelio Besinga, a Filipino veteran, brought a constitutional challenge against the United States for his reclassification. As the courts had decided earlier in 68 Filipinos, inhabitants of the Philippines, as residents of a United States territory, are subject to protection under the Constitution including Fifth Amendment due process protection as well as Fourteenth Amendment equal protection. Besinga charged that the Rescission Act is subject to strict scrutiny because it erects "an invidiously discriminatory classification on the alternative bases of race, nationality, or alienage."

Using precedent based on cases involving the territory of Puerto Rico, the court decided that the broad powers granted to Congress based on the Territory Clause are inconsistent with any application of heightened judicial scrutiny to legislation regarding the territories. Applying a rational relation test, the court upheld the constitutionality of the rider.

In finding that the rider was rationally related to its purposes, the Besinga court applied three factors articulated in the analogous Puerto Rico cases. In Torres, for example, the denial of Social Security payments to residents of Puerto Rico was challenged on two grounds: as violating the equal protection component of the Fifth Amendment, and as an impermissible limitation on the fundamental right to travel protected by substantive due process under the Fifth Amendment. The court cited three factors in its rational relation inquiry: (1) Puerto Rican residents were not entitled to SSI benefits since they were part of a unique tax structure and did not pay into the federal treasury; (2) the costs of paying SSI benefits would be extremely great—an estimated 300 million a year; and (3) inclusion into the SSI program might disrupt the Puerto Rican economy.

153. See Besinga v. United States, 14 F.3d 1356 (9th Cir. 1994).
155. Besinga, 14 F.3d at 1360.
156. See, e.g., Harris v. Rosario, 446 U.S. 651 (1980) (holding constitutional, under rational basis review, a congressional statute treating Puerto Rican residents different from residents of states); Califano v. Torres, 435 U.S. 1 (1978) (holding that, for provisions of the Social Security Act, Congress' definition of residence in the United States as being limited to the 50 states and the District of Columbia did not interfere with the constitutional right to travel).
157. See Besinga, 14 F.3d at 1360.
158. See Rosario, 446 U.S. at 652; Torres, 435 U.S. at 5 n.7.
159. See id. at 3–4.
160. See id. at 5 n.7.
The court analogized Besinga’s situation to the facts in Torres, noting that “[t]hese factors are present here . . . [and] that they are dispositive . . . .”161 After considering that Besinga, as a U.S. citizen, did pay into the federal treasury and that any benefits paid to him would not disrupt the Philippine economy, the court invalidated the first and third factors.162 However, even the invalidation of most or even all of the Torres factors seemed trivial to the court, as the they decided that “[n]othing in Torres or Rosario suggests that a challenged statute must satisfy all, or a majority, of the three Torres factors.”163 The court’s gloss on the Torres factors serves as simply another subtle iteration of the plenary power doctrine. By establishing a “phantom” test that is meaningless to the outcome of the case, the court failed to exercise any real form of judicial review.

The Besinga court did articulate other factors. For instance, the court noted that the United States was concerned that the payment of benefits to hundreds of thousands of Filipinos would be perceived as a threat to the sovereignty of the soon-to-be-independent Philippine Government.164 Moreover, the payment of benefits was perceived to be prohibitively expensive.165

The first factor did not seem plausible. If the United States was truly concerned with threats to sovereignty, placing the entire Philippine military under its control during World War II seems inconsistent with that concern. In any case, this threat to sovereignty argument did not prevent the United States from conferring veterans benefits to members of the Old Philippine Scouts. However, in denying benefits to Besinga, the Court distinguished him, a veteran of the Commonwealth Army, from the Old Philippine Scouts, who were receiving full veterans benefits.166 The Court noted that there is no violation of equal protection because the Old Philippine Scouts were “more integrally a part of the United States armed forces.”167

The second factor seemed more plausible. As the court in Quiban v. Veterans Administration,168 another case involving a Filipino veteran challenging the Rescission Act, noted, “the costs of extending full veterans’ benefits to veterans of the [Philippine Commonwealth Army] would approach 2 billion dollars annually, for a substantial period of time.”169 However, given the relatively

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161. Besinga, 14 F.3d at 1361.
162. See id. at 1363.
163. Id.
164. See id. at 1361.
165. See id.
166. See id. at 1362.
167. Id.
169. Id. at 1161.
small number of veterans surviving today, this factor must be re-examined.

As the outcome in Besinga shows, it is clear that constitutional challenges to the Rescission Act will not be upheld, since heightened judicial scrutiny is unavailable for these cases controlled by the Territory Clause of the Constitution. Despite the fact that the Rescission Act facially discriminates on the basis of race, Besinga clearly illustrates the court’s unwillingness to apply heightened scrutiny or any form of substantive judicial review in these cases.

C. Too Little, Too Late: Remedial Legislation

Subsequent to the Pangilinan decision, Congress decided to amend the immigration laws to provide for the naturalization of Filipino veterans. Section 405 of the 1990 Immigration Act allowed Filipino nationals who served on active duty during World War II to apply for citizenship between May 1, 1991 and May 1, 1993, and also allowed for the conferral of citizenship posthumously. The Act was later amended to extend the deadline for naturalization until February, 1994. Approximately 28,000 Filipino veterans were naturalized pursuant to the 1990 Act.

While the legislation seems just, it is only in the face of blatant injustice and discrimination that one can be satisfied with this result. First, the fifty-year waiting period between World War II and 1991 resulted in the death of many Filipino veterans. Many of these veterans would have taken advantage of the offer to naturalize if extended earlier.

Furthermore, the conferral of posthumous citizenship is completely inadequate. Pursuant to the 1990 amendments to the Immigration and Naturalization Act, aliens served honorably in the armed forces during periods of hostilities are eligible for citizenship if their deaths were a result of that service. As President Reagan noted when he proposed the legislation, “we cannot repay these men for their sacrifice, valor or patriotism; but it is only right that we bestow on each of them our Nation’s highest honor: American citizenship.”

Despite these noble intentions, the legislation does little

to confer any semblance of citizenship to these veterans. Obviously, the dead veterans do not have the right to vote or immigrate to the United States. More importantly, any surviving family members are denied any chance to benefit from the dead veteran’s citizenship, as citizens must be alive to petition for their family to immigrate to the United States.\(^\text{174}\) As the application form for citizenship reads, citizenship does “not confer any benefits nor make applicable any provision of the Immigration and Nationality Act to the surviving spouse, parent, son, daughter, or other relative of the decedent.”\(^\text{175}\) This nominal citizenship hardly seems to reflect “our Nation’s highest honor.” Rather, it creates a second class citizenship that mocks the alien veteran’s sacrifice.

Beyond the problem of dead veterans lies the inadequacy of conferral of citizenship under Section 405 for the veteran. One important right that citizens have is the ability to get permanent residence for their immediate family.\(^\text{176}\) While a veteran would be able to immediately bring his wife and children with him to the United States, immigration law is structured such that any children over the age of 21 must petition to come to the U.S.\(^\text{177}\) As of February 1998, it would take approximately twelve years for a Filipino veteran to immigrate his unmarried son or daughter over the age of 21.\(^\text{178}\) Due to the delay, Filipino veterans are now unable to enjoy the full benefits of citizenship that they would have if they were naturalized fifty years ago. Furthermore, Filipino veterans are still ineligible for veteran’s benefits under the 1946 Rescission Act, unless they are dead, maimed or separated from active service for physical disability.\(^\text{179}\) Without these veteran’s benefits, many of the surviving Filipino veterans who were naturalized under Section 405 find themselves unable to find gainful employment because of their age, and survive solely on Supplemental Security Income and Food Stamps rather than on the more generous veterans’ benefits they have earned through their tour of duty for the United States.

\(^{174}\) See INA, ch. II, § 201(b) (2) (A), 203(a), 8 U.S.C. § 1151, 1153.

\(^{175}\) See IMMIGRATION AND NATURALIZATION SERVICE, IMMIGRATION AND NATURALIZATION ADMINISTRATION FORM N-17, NATURALIZATION REQUIREMENTS AND GENERAL INFORMATION, at 32.

\(^{176}\) See INA, ch. II, § 201(b) (2) (A), 8 U.S.C. § 1151.

\(^{177}\) Under INA § 203(a), unmarried sons and daughters over the age of 21 are not considered “children” within the rubric of immediate family. See INA, ch. I, § 101(b) (I), 8 U.S.C. 1101 (statutory definition of “child”).

\(^{178}\) See ALENIKOFF ET AL., supra note 66, at 296. While it is certainly possible that a WWII veteran would have a child under the age of 21, this scenario is extremely unlikely.

\(^{179}\) See First Supplemental Surplus Appropriation Rescission Act, supra note 58, at 14.
This state of affairs has led to increasing political activism by Filipino veterans themselves. In June of 1997, more than 40 Filipino veterans began a sit-in at MacArthur Park in Los Angeles to bring attention to their plight.\textsuperscript{180} Many of the veterans chained themselves to a statue of General MacArthur and began a lengthy hunger strike.\textsuperscript{181} Twice in the summer of 1997, hundreds of Filipino veterans marched to the White House in a re-enactment of the Bataan Death March in order to protest the current administration’s failure to recognize their veteran status.\textsuperscript{182} In April, 1998, 14 Filipino veterans chained themselves to General MacArthur’s statue again in order to support legislative efforts to grant veterans’ benefits.\textsuperscript{183} In fact, since 1993, legislation designed to finally grant these entitlements to Filipino veterans has been proposed every year. To date, none of these efforts have been successful.\textsuperscript{184}

V. THE OFFSPRING OF THE CONCENTRATION CAMPS: LIMITING PLENARY POWER AND REPARATIONS THEORY

The plight of Filipino veterans of World War II continues to this day. In order to explicate any meaningful legal moral from their situation, the legal basis for the continued denial of citizenship must be examined critically.

A. The Phantom Constitutional Menace: Possible Restrictions on Plenary Power

Since its inception, the notion of Congress’ plenary power over immigration, which gives Congress a wide range of discretion based on non-delineated powers, has been repeatedly attacked. For example, the foundations of the plenary powers—especially the sovereignty doctrine, in which the courts have relied on international law concepts of sovereignty to justify a lack of judicial review—has also been harshly criticized. As Justice Brewer maintained in an 1893 dissent:

\textsuperscript{181} See id.
\textsuperscript{183} See \textit{Filipino Veterans Press for War Benefits}, \textsc{N.Y. Times}, April 20, 1998, at A17.
It is said that the power here asserted is inherent in sovereignty. This doctrine of powers inherent in sovereignty is one both indefinite and dangerous. Where are the limits to such powers to be found, and by whom are they to be pronounced? Is it within legislative capacity to declare the limits? If so, then the mere assertion of an inherent power creates it, and despotism exists.\(^{185}\)

Other commentators have expanded on this critique. Most notably, Stephen Legomsky argued that expanding the sovereignty doctrine to justify "preclusion of judicial review for compliance with those constitutional limitations protecting individual rights is a non-sequitur."\(^{186}\) Moreover, even if we accept that the sovereignty doctrine has its foundation in eighteenth century international law, there has been a constant evolution of international law since that era.\(^{187}\) Current customary international law mandates a recognition of human rights,\(^{188}\) as evinced by the proliferation of human rights treaties and custom.\(^{189}\)

Similarly, the political question doctrine, in which all immigration decisions have been broadly characterized as political questions and consequently taken outside the scope of judicial review,\(^{190}\) has also been criticized. While it is obvious that certain immigration decisions are "so inextricably bound up with foreign policy that a court should not intrude,"\(^{191}\) "it ignores reality to hold that every provision concerned with immigration, as applied to every fact situation it might encompass, is so intimately rooted in foreign policy that the usual scope of judicial review would hamper the effective conduct of foreign relations."\(^{192}\) Legomsky suggests the use of the political question test, established by the Supreme Court in Baker v. Carr,\(^{193}\) which mandates "a discriminating inquiry into the precise facts and posture of the particular case."\(^{194}\)

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185. Fong Yue Ting, 149 U.S. 698, 737 (1893) (Brewer, J., dissenting).
188. See id. at 1011 (noting that the modern structure of international law "imposes generally agreed upon positive limitations on nations’ sovereignty").
189. See generally id. at 1015–1030.
190. See supra notes 82–84 and accompanying text.
191. Legomsky, supra note 64, at 262.
192. Id.
194. Id. at 217.
Legomsky also postulates that external social and political factors led to the development of the plenary power doctrine.\textsuperscript{195} For instance, the cases that formed the foundation of plenary power all involved Asian immigrants between 1889 and 1902.\textsuperscript{196} The presence of Anti-Asian animus in American society at that time is well documented.\textsuperscript{197} Strikingly, even members of the Supreme Court did not hesitate to reveal their distaste for Asians.\textsuperscript{198} Similarly, the “second coming” of plenary power in the 1950s occurred at a time of anti-Communist hysteria.\textsuperscript{199} Here, exclusion and deportation cases focused on removing those with ties to Communism, however weak the link.\textsuperscript{200} The most recent revival of plenary power came at a time when anti-Arab sentiment ran high.\textsuperscript{201} In \emph{Reno v. American-Arab Anti-Discrimination Committee},\textsuperscript{202} the Court interpreted a recent immigration statute to be “aimed at protecting the Executive’s discretion from the court—indeed, that can fairly be said to be the theme of the legislation.”\textsuperscript{203} The Court held that “an alien unlawfully in this country has no constitutional right to assert selective enforcement as a defense against his deportation.”\textsuperscript{204} In so doing, without explicitly mentioning the plenary power, the Supreme Court again affirmed the doctrine.

\textbf{B. What’s Uniformity Got to Do with it?: Constitutional Limitations on Plenary Power}

Irrespective of the plenary power doctrine, the Constitution contains a Naturalization Clause which grants to Congress the power “[t]o establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United

\textsuperscript{195} See Legomsky, supra note 64, at 278–79 and 286–95.
\textsuperscript{196} See id. at 289 n.174.
\textsuperscript{197} See id. at 288; see also ANGELO ANCHETA, RACE, RIGHTS, AND THE ASIAN AMERICAN EXPERIENCE 21–22 (1998).
\textsuperscript{198} See, e.g., Fong Yue Ting v. United States, 149 U.S. 698, 743 (1893) (“It is true this statute is directed only against the obnoxious Chinese; . . . .”); Plessy v. Ferguson, 163 U.S. 537, 561 (“There is a race so different from our own that we do not permit those belonging to it to become citizens of the United States . . . . I allude to the Chinese race.”).
\textsuperscript{199} See Legomsky, supra note 64, at 289–90.
\textsuperscript{200} See id. at 290 n.182.
\textsuperscript{202} No. 97-1252, 1999 U.S. LEXIS 1514 (Feb. 24, 1999).
\textsuperscript{203} Id. at *27.
\textsuperscript{204} Id. at *29.
This clause appears to expressly delegate a naturalization power to Congress and apply a limit on that power by mandating uniformity. Consequently, despite the plenary power doctrine, it would seem that the judiciary could legitimately review legislative decisions and decide on the constitutionality of such matters. Unfortunately, the extent to which a “law of Naturalization” must be “uniform” is very limited. Until the 1952 McCarran-Walter Act, naturalization was restricted to “aliens being free White persons, and to aliens of African nativity and to persons of African descent.” The focus on African Americans in naturalization and the specific omission of Asian Americans from eligibility subsequently thrust them into judicial challenges over the naturalization laws.

In 1922, a Japanese American man who met the requirements of naturalization attempted to argue that he was a free White person, under the terms of the statute. The court decided that he was not “white,” as the statute referred not to skin color, but to racial origins. A few months later, in United States v. Bhagat Singh Thind, a naturalized South Asian veteran of World War I was brought to court to be denaturalized. The Court reasoned that despite Thind’s Aryan ethnicity, he clearly was not “white” in terms of skin color. After this decision, several dozen other South Asian Americans found their citizenship being challenged and canceled.

It was not until 1942 that Asian Americans attempted to construe the language of “uniform law of Naturalization” to apply to all racial categories. Kharaiti Ram Samras was a South Asian American legal permanent resident who applied for naturalization in 1940, and his petition was denied “on the ground of racial ineligibility.” He argued that the Naturalization Clause meant “uniformity as to all races and not uniform geographically throughout the United States.” He further argued that a racially
biased naturalization statute was neither necessary nor proper\(^{216}\) under the Necessary and Proper Clause,\(^{217}\) and that the naturalization statute, by virtue of being a “manifestly and grossly unreasonable, irrational, illogical, arbitrary, capricious and discriminatory classification based on color,”\(^{218}\) violated the Due Process Clause of the Fifth Amendment.\(^{219}\) The Ninth Circuit rejected this argument. The court acknowledged that certain actions of Congress that are considered political—such as the war power and the exclusion and deportation of aliens—cannot be subject to judicial review.\(^{220}\) While there is no direct mention of the plenary power, the court cited *Nishimura Ekiu*.\(^{221}\) The court distinguished the power over naturalization as expressly granted in the Constitution and separate from other aspects of immigration law, but then characterized the nature of naturalization as inherently political.\(^{222}\) In doing so, the court managed to bring the Naturalization Clause within the plenary power, despite an express limitation placed on Congress’ power through the Naturalization Clause. This circular argument is both confusing and unjust.

As discussed above, one of the sources of the plenary power doctrine was the Naturalization Clause, but the lack of express power to regulate immigration, and the need to draw from both the sovereignty and political question doctrines formed the basis of judicial deference in the cases creating and strengthening the plenary power doctrine. In *Kharaiti Ram Samras*, the court willingly ignored any responsibility for constitutional review of an expressly granted power based on that doctrine. The court continued, spouting idle dicta, asserting that “assuming that we may discuss the questions argued, we think none of [Ram Samras’] assertions are sound. . . . It is obvious that the statute was one which in the judgment of Congress would effect a ‘uniform Rule of Naturalization’, otherwise it would not have been passed.”\(^{223}\) But if this argument is taken to its logical outcome, one could assume that even if Congress created a system of naturalization that was not geographically uniform (perhaps easing residency requirements for becoming a citizen

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216. See id. at 880–81.
217. U.S. Const. art. I, § 8, cl. 18 (stating that Congress shall “make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers”).
218. *Samras*, 125 F.2d at 881.
219. See U.S. Const. amend. V.
220. See *Samras*, 125 F.2d at 881.
221. See id. (citing *Nishimura Ekiu* for the proposition that “the power [over naturalization] is political, and the exercise thereof cannot be challenged in the courts”).
222. See id.
223. Id.
if one applied in Virginia, or eradicating naturalization in the state of New Jersey), the court would be unable to rule on the constitutionality of such a law. Clearly, the judiciary exists to ensure that the legislature complies with the Constitution and the express limitation on power must be judicially reviewed and enforced.225

Samras' suggestion that uniformity applied to race and not geography was not accepted by the court. It construed the word "uniformity" similarly to the line of cases about "uniformity" in bankruptcy law. The Constitution mandates "uniform Laws on the Subject of Bankruptcies throughout the United States."225 Since 1902, the Supreme Court has interpreted this clause to refer to geographic uniformity only. In *Hanover National Bank v. Moyes*,226 the Court was faced with a constitutional challenge to the Bankruptcy Act of 1898. Since this federal law prescribed differential bankruptcy exemptions depending on state law, Moyes challenged the constitutionality of the statute by virtue of its non-uniform nature.227 The Court held that geographic uniformity does not preempt state law and any other form of uniformity, such as personal uniformity, is irrelevant.228

However, analogizing "uniformity" in naturalization law to "uniformity" in bankruptcy law is problematic.229 A close textual analysis of the Constitution illustrates that this analogy is not warranted. Article I, Section 8, Clause 4, states that Congress shall have the power "[t]o establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States."230 The clause "throughout the United States" modifies only the second phrase "uniform Laws on the subject of Bankruptcies" and the comma separating the two phrases suggests that the clause "throughout the United States" may not modify the Naturalization Clause.

Beyond this nearly specious textual analysis, naturalization presents significantly unique problems compared to other fields. Bankruptcy and import/export taxes are domestic transactions that can only be completed within the United States. As the circumstances facing the Filipino veterans after World War II show, naturalization can take place abroad as well. While this situation may not have been within the contemplation of the framers of the

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226. 186 U.S. 181 (1902).
227. See id. at 182–83.
228. See id. at 188–89.
229. Analogizing "uniformity" in naturalization law to any other requirements for uniformity mentioned in the Constitution, such as import and export taxes, is equally problematic.
Constitution, we must attempt to interpret their mandate of geographic uniformity in this context.

One interpretation would be to strike down all forms of naturalization that do not take place in the United States. However, this view flies in the face of congressional intent, not only with regard to legislative history in enacting the 1942 amendments to the Nationality Act of 1940, but also with regard to subsequent legislation that makes clear the intent to grant citizenship to foreign veterans. Another interpretation would be to require geographic uniformity throughout areas in which foreign servicemen were stationed. While this proposition could be deemed too costly in terms of appointing INS officials in all areas of conflict, it is the only reasonable interpretation of the uniformity requirement that preserves both congressional intent and constitutionality. One final possible interpretation would be to require servicemen to apply for naturalization in the United States or through the mail, as the first category of veterans in 68 Filipinos did. Yet this would not be a reasonable interpretation of the 1942 amendments which mandated floating INS representatives in areas of conflict.

In any case, the constitutional mandate of geographic uniformity seems fairly clear. Because it is an express limit on the power granted to Congress by the Constitution in the area of naturalization, the plenary power doctrine should not apply. Moreover, this power cannot be considered a political question, as it pertains to administrative access to immigration and not substantive foreign policy or matters of national security.

In fact, a recent case regarding grants of naturalization to veterans involved in the Grenada conflict supports this theory. In Reyes v. Immigration and Naturalization Services, a Filipino veteran challenged a geographic restriction on an executive order relaxing naturalization standards for veterans—an order very similar to the 1942 amendments to the Nationality Act. Section 329 of the Immigration and Naturalization Act provides the President the authority to relax naturalization standards for veterans for a certain time period:

Any person who, while an alien or noncitizen national of the United States, has served honorably in an active-duty status in the military, air, or naval forces of the United States during . . . [a] period which the President
by Executive Order shall designate as a period . . . [of] armed conflict with a hostile foreign force . . . may be naturalized under this section.\textsuperscript{235}

However, when President Reagan issued the order, he specified not only a time period in which eligible veterans must have served, but a geographic restriction limiting eligibility to those serving in "the islands of Grenada, Carriacou, Green Hog, and those islands adjacent to Grenada in the Atlantic Seaboard where such service was in the direct support of the military operations in Grenada."\textsuperscript{236} Reyes was not stationed in any of the aforementioned areas, but he was in active service during the specified time period.\textsuperscript{237} Reyes argued that geographic restrictions were an impermissible exercise of executive power, and the court agreed with him.\textsuperscript{238} Ironically, the court decided to strike the entire order rather than allowing him to naturalize, reasoning that since there was no severability clause or any way to effectuate the order without granting naturalization to all veterans who served in that time period, the executive order was entirely void.\textsuperscript{239}

Since this case dealt with an executive order, it is not clear whether Congress itself could place a geographic restriction on a statute to a similar effect. If Congress did place such a geographic restriction on naturalization, it would appear to be in conflict with the uniformity required by the Naturalization Clause.\textsuperscript{240} Although this aspect of immigration law has not been adjudicated, that type of geographic restriction seems clearly unconstitutional on its face.

Regardless, there were no geographic restrictions placed in the 1942 amendments to the Nationality Act of 1940, and a strict constitutional interpretation would permit the Court to allow veterans eligible at the time to apply again for naturalization. Since the Supreme Court has made it clear that federal courts cannot grant naturalization,\textsuperscript{241} any legal challenge must incorporate a theory of equity that will allow courts to award monetary damages to the Filipino veterans. Unfortunately, any system of reparations will likely come from the legislature and not from the judiciary. While Congress must be applauded for allowing the veterans the right to naturalize in 1990, citizenship alone is clearly inadequate.\textsuperscript{242}

\textsuperscript{235} INA, ch. III, § 329, 8 U.S.C. § 1440.
\textsuperscript{236} Executive Order No. 12,582, 52 C.F.R. 3,395 (1987).
\textsuperscript{237} See Reyes, 910 F.2d at 612.
\textsuperscript{238} See id.
\textsuperscript{239} See id. at 613.
\textsuperscript{240} U.S. CONST. art. I, § 8, cl. 4.
\textsuperscript{242} See discussion supra at Part IV.C.
C. With Plenary Power Comes Plenary Responsibility: Reparations

The United States has traditionally been reluctant to acknowledge or make reparations for harms it inflicted upon racial minorities. While slavery has forever perverted and delegitimized the social, political, and economic structure of the United States, attempts at receiving a modest apology for the disdainful institution have been met with overwhelming opposition.243

On August 10, 1988, President Reagan signed the Civil Liberties Act of 1988.244 The Act was designed to do three things: 1) "Acknowledge the fundamental injustice of the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry during World War II;"245 2) "[a]pologize on behalf of the people of the United States for the evacuation, relocation, and internment of such citizens and permanent resident aliens,"246 and 3) "make restitution to those individuals of Japanese ancestry who were interned."247 The Act authorized payments of $20,000 to individuals who were interned.248 While the reparations movement has been criticized as a failed attempt to alter the "fundamental realities of power" and for fostering "illusions of change" that are unwarranted given continuing American racism,249 the success of the redress movement was the creation of a historical moment where the United States acknowledged racism and made an attempt to remedy it.

In the context of immigration, Congress has been able to exercise this power of reparation. The plenary power doctrine, which grants the legislative branch complete control over the immigration system unfettered by judicial review, gives a potentially unlimited scope to such immigration reparations programs. This broad scope for reparations can be seen in the current immigration laws, which underwent a radical shift in the late 1980s away from the values of family reunification and employment necessity established in 1965.

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245. Id. at 903.
246. Id.
247. Id.
248. See id. at 906.
In 1986, the NP-5 program was implemented. It provided 5000 special visas to countries “adversely affected” by existing immigration law. “Adversely affected” meant that the average annual rate of immigration to the United States during the period from July 1, 1966 to September 30, 1985 was less than the average annual rate of immigration to the United States during the period from July 1, 1953 to June 30, 1965. This standard excluded most Central and South American countries and all Asian countries except for Japan. Moreover, these visas were not dependent on the applicant having shown a connection to the United States via family relations, employment opportunity, or refugee status; rather, they were distributed on a first come first serve basis. Although the NP-5 program has been amended over the last decade, its basic structure remains relatively intact.

These reparations for “adversely affected” countries is problematic on two levels. First, unlike the well-documented restrictions on Asian immigration prior to 1965, the 1965 amendments to the Immigration and Nationality Act did not place any discriminatory immigration limits on the aforementioned “adversely affected” countries. In fact, the 1965 amendments constituted the first time the U.S. had an immigration system without national origins quotas or explicit restrictions on immigration from certain countries. Outright exclusion and exceedingly low numerical limits placed on Asian immigration prior to 1965 have been well documented. Yet almost all Asian countries were ineligible for NP-5 visas. Second, even if there existed a class of adversely affected potential immigrants, this program did nothing to identify any class of individuals harmed by the 1965 provisions. It merely distributed visas to any nationals of the aforementioned countries.

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251. See id.
253. The NP-5 program has since been slightly modified and established as a permanent set-aside known as the “diversity visa”. Approximately 55,000 visas each year are distributed in a lottery system to countries that have not immigrated a certain number of people in the last 5 years.
254. See, e.g., Chinese Exclusion Act, 22 Stat. 58 (1882) (curtailing most Chinese immigration); Immigration Act of 1917, 39 Stat. 874 (1917) (establishing a “barred zone” which prevented nearly all immigration from Asia).
255. See discussion supra note 254 and accompanying text.
Even though the NP-5 program does not specifically help Filipino veterans in their battle over naturalization rights, this form of immigration reparation may bode well for Filipino veterans, since surviving veterans and families of deceased veterans are an easily identifiable class. Furthermore, the broad nature of the NP-5 program, which conflated national identity with individual nationals, suggests that remedies may exist for veterans who died without issue. The remedial NP-5 visas are not granted only to actual descendents of those who were “adversely affected” by previous immigration laws. Rather, they are freely distributed to anyone from specific countries. Similarly, the United States can provide the Philippines with additional visas in response to how Filipino veterans were “adversely affected” by their disenfranchisement.

Further legislative remedies are obvious. Congress can again amend the immigration system to take account of the Philippines, a country “adversely affected” by actions of both the executive and legislative branches the U.S. government. Filipino veterans who served in World War II should not only be allowed to naturalize, they should receive additional procedural protections that ordinary U.S. citizens do not. They should be allowed to have their sons and daughters immediately naturalized, regardless of marital status or age. Additionally, sons and daughters of deceased Filipino veterans should also be able to naturalize immediately. In order to offset the unavailability of remedies to deceased veterans without descendents, a set number of additional visas should be granted to the Philippines on a yearly basis because family preference processing times for the Philippines are much longer than any other country. Because the United States occupied the Philippines as a territory and failed to provide naturalization rights for those veterans who fought for the United States, a sincere and concerted attempt should be made to bring Filipino immigration up to date with the rest of the world.

CONCLUSION

Throughout this paper, Heinlein’s notions of citizenship have been used as a model to examine the treatment of Filipino veterans. The United States has clearly failed to fulfill its part of the reciprocal rights/duties citizenship paradigm. On the surface, *Starship Troopers* stands for the proposition that anyone willing to die for a country must be allowed full membership within that country. The United States has not permitted Filipino veterans naturalization rights despite their courage and valor.
But Heinlein's deeper message is that political power must be exercised responsibly. His society is structured so that the only ones able to vote have proved their responsibility by shouldering the responsibility of national defense. To Heinlein, political power must be taken seriously. He describes the power to vote as "the supreme authority from which all other authority derives ... the [political] franchise is force, naked and raw, the Power of the Rods and the Ax." While this power is great, it is tempered with the responsibility evinced by the military commitment undertaken by each citizen. This combination ensures that such power will not be abused.

In the United States, our political system adopts safeguards against abuse through the system of checks and balances. The three branches of the government work with and against each other to ensure fairness to citizens. But Filipino veterans find themselves caught in the nexus of colonial and immigration law—two fields in which the legislative branch wields ultimate plenary power. The absence of structural safeguards against abuse both permits and encourages such manifest injustice. It is apparent that the unchecked imbalance within the plenary power structure is neither necessary nor proper. But until plenary power is abolished, Congress needs to wield their broad power responsibly and enact remedial legislation that will make Filipino veterans and the Philippines whole after their valiant sacrifice in World War II.

257. See HEINLEIN, supra note 2, at 183.