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BOOK REVIEW

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Race, Nation, and Refuge:
The Rhetoric of Race in Asian American Citizenship Cases
Doug Coulson

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Race, Nation, and Refuge: The Rhetoric of Race in Asian American Citizenship Cases
Doug Coulson (SUNY Press 2017), 318 pages

Leslie P. Culver, rev'r*

There is a special need for rhetorical strategy in advocacy where legitimacy, power, and identity are rooted in particular relationships. In *Race, Nation, and Refuge: The Rhetoric of Race in Asian American Citizenship Cases*, Doug Coulson analyzes race eligibility cases[1] to dramatically underscore the value of rhetoric in judicial advocacy. With this frame, he contests the view that effective legal discourse must use technical language and rules. Instead, in exploring the "deeply intertwined histories of rhetoric and law," Coulson contends that "legal discourse can only be adequately understood by considering its rhetorical dimension."[2] While traditional legal discourse might endorse judicial narratives grounded in well-established and neutral decisionmaking based on clear rules of law, many immigrant advocates in the nineteenth and twentieth centuries relied upon imagery of the American dream to successfully challenge arbitrary barriers to becoming "free white persons." In doing so, they used a rhetorical strategy that politically aligned the advocate's interest with the United States's national security.

Coulson's thesis is to showcase the rhetorical dance that balances the United States's perceived threats to national security with the nation's

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1 "Race eligibility cases" are judicial decisions between 1878 and 1954 in which federal and state courts, as well as the United States Board of Immigration Appeals, interpreted the racial-eligibility provision of the 1790 Naturalization Act for purpose of American citizenship. DOUG COULSON, RACE, NATION, AND REFUGE: THE RHETORIC OF RACE IN ASIAN AMERICAN CITIZENSHIP CASES ix (2017). For the specific ethnic groups, see *infra* note 9.

2 COULSON, *supra* note 1, at xii.

profoundly subjective definition of whiteness and freedom. Borrowing from linguists' theory of transitivity,[3] Coulson argues that where high transitivity[4] was attributed to a third party's actions to demonstrate a "shared external threat"[5] between the advocate and the United States, the advocate was successful. More simply put, where advocates successfully pointed to a third party as the true source of persecution or fear (attribution of high transitivity), a persecution or fear that the United States also experienced (shared external threat), the advocates successfully aligned themselves with the United States and appealed to the need to unify, thus becoming "free white persons" for citizenship by naturalization. Yet, where applicants were the archetype of their own racial group, proclaiming their group bore characteristics of, or better than, European whiteness, and were therefore deserving of racial and political inclusion, they generally "failed to invoke the unifying power of a shared external threat to transcend racial differences."[6] Instead, such rhetoric often raised concerns of a potential threat to the United States.

To demonstrate the value of rhetoric in legal advocacy, Coulson's book moves beyond the often-explored published judicial opinions in race eligibility cases and casts a larger literary net to include unpublished judicial opinions, hearing transcripts, legislative documents, and other memoranda that captured the vigorous debates, sentiments, and emotive appeals from the various legal actors on both sides of the issue.[7] The book is divided into four chapters with the focus on Asian-race-eligibility cases. This focus is due to the exclusion of Asians within the Naturalization Act of 1790, which limited eligibility of naturalization to "free white persons" and, for a period after the Civil War, to those of African descent.[8] Thus,

3 "Although transitivity is most commonly used to refer to the classification of transitive and intransitive verbs depending on whether they allow or take an object, linguists have identified transitivity as a property of all languages that describes situations in which one participant in a clause transfers action or "'does something to' another" in a relative and contextual manner that is gradable rather than absolute." *Id*. at xxv–xxvi (quoting ÅSHLID NÆSS, PROTOTYPICAL TRANSITIVITY 42 (2007)). Most notably Coulson's reliance on transitivity as a theoretical foundation is to note that "[a]n action that has little or no effect on the actor who does something to the other, but a substantial effect on the target of the action, reflects a greater transfer of action and is therefore higher in transitivity than an action that has more effect on the actor or less effect on the target." *Id*. at xxvi.

4 For an explanation of high transitivity, see *supra* note 3.

5 COULSON, *supra* note 1, at 31, xxiv (discussing his reason for examining the shared external threats in race eligibility cases as a purposeful intent to not focus on "imitative racial performance[]," as many studies of these cases employ, because "imitative performance fails to account for cases in which applicants were held to be racially ineligible for naturalization despite having offered impressive evidence of assimilability as well as for cases in which applicants were held racially eligible for naturalization despite offering little evidence of assimilability").

6 *Id.* at 32.

7 *See id.* at xix (discussing the extensive review of National Archive records from judicial files among other research Coulson conducted beyond published judicial opinions).

8 *Id.* at xi.

the issue of Asian inclusion for naturalization became highly contested in both state and federal courts.[9]

In Chapter 1, Coulson examines race and citizenship from the period shortly after the Naturalization Act through the United States Supreme Court's first race-eligibility-for-naturalization case, *Ozawa v. United States*.[10] Telling rhetorical strategies during this period included American Indians' being dubbed eligible for citizenship because of the need to have them serve on the United States's behalf in times of war, particularly so because African Americans were prohibited from serving in such capacity. Thus categorical whiteness for naturalization purposes was, as Coulson describes, "contingent on perceived threats to the nation's borders and the enmities and alliances they prompted."[11]

Next, in Chapter 2, Coulson compares the rhetorical strategies of appealing to Indian nationalism on the one hand to a stateless personhood on the other, employed in *United States v. Thind*[12] and post-*Thind* cases. For example, prior to *Thind*, the Court held Indians to be racially eligible for naturalization. However, the *Thind* court ruled oppositely on the application of Bhagat Singh Thind, a high-caste Indian. Coulson maintains this reversal was largely due to Thind's political activism for Indian nationalism and Thind's failed rhetorical strategy of asserting that high-caste Indians, as descendants of Aryan ancestry, actually rendered Hindus "more 'white' than the 'whites'"—a sentiment that enraged Americans.[13] The attorneys for the United States argued that the "negative associations of the Indian caste system"[14] culturally and politically separated Indians and Europeans, and thus Indians did not share "the 'white' man's burden but 'imposed' it"[15] and were not racially eligible for naturalization.[16] For contrast, Coulson compares Thind's case to *United States v. Sakharam Ganesh Pandit*,[17] where Asian Indian lawyer Sakharam Pandit fought to retain his naturalization certificate. Already an American citizen, Pandit's

9 *Id*. (noting Asian immigrant groups affected included Afghan, Arab, Armenian, Burmese, Chinese, Filipino, Hawaiian, Hindu, Iraqi, Japanese, Kalmyk, Korean, Mexican, Palestinian, Parsi, Syrian, Tatar, Turkish, Thai, Vietnamese, as well as American Indians).

10 Ozawa v. United States, 260 U.S. 178 (1922).

11 COULSON, *supra* note 1, at 10.

12 United States v. Thind, 261 U.S. 204 (1923).

13 COULSON, *supra* note 1, at xxix, 62 (quoting HAROLD ISAACS, SCRATCHES ON OUR MIND: AMERICAN VIEWS OF CHINA AND INDIA 290 (1958)).

14 *Id*. at 66.

15 *Id*. at 68.

16 *Id*. at 82 (noting that Thind eventually obtained citizenship by way of naturalization in 1935 only under the Nye-Lea Act, "which made World War I veterans eligible for naturalization regardless of race").

17 United States v. Sakharam Ganesh Pandit, 15 F.2d 285 (9th Cir. 1926).

rhetorical strategy successfully magnified the "perceived dangers of the Indian caste system"[18] the Americans already believed from *Thind*. Specifically, Pandit argued that due to his American citizenship he would be an outcast in India and become a stateless person. This plea of being a victim of the oppressive Indian caste system, Coulson suggests, created a bond with the United States who equally shared in the distaste of statelessness, commenting that "like the fear of enemies, offering asylum to fugitives has often been associated with the founding of political groups."[19] Ultimately, under both equitable estoppel and the "conscience of the court," Pandit's naturalization was not cancelled and the court called him a member of the "national family."[20]

To provide further contrast, in Chapter 3, Coulson examined the 1924 naturalization trial of Tatos Cartozian,[21] an Armenian immigrant. The United States opposed Cartozian's naturalization on the assertion that Armenians were Asian, and thus neither free white persons nor of African descent under the Act. In reviewing the *Cartozian* transcript, Coulson effectively moves the reader beyond the evidence regarding racial history—that Armenians were descendants from European ancestry, retained strict segregation in Asia, and thus were white and not Asian—and toward the defense's use of emotions and experiences of Armenian and American soldiers who fought together against Turkey in the Armenian Genocide of World War I. Specifically, the defense framed this wartime brotherhood as inspirational and loyal based on testimony from United States soldiers. The defense also framed the Armenian history as entrenched with religious persecution from the Turks and other Asian constituents because of the Armenians' professed Christianity and sympathy for Europeans. In this way, Coulson suggests the rhetorical strategy of uniting the Armenians and Americans against shared external threats—Turkish aggression and Islamophobia—established that Armenians have suffered in Asia due to their European identity, and effectively secured Armenian status as *free white persons* eligible for naturalization.

Finally, in Chapter 4, Coulson maintains that the extension of racial eligibility for the Chinese was fueled primarily by the United States's need to "strengthen alliances in Asia against Japanese aggression."[22] Perhaps equally as important during and after World War II was the United States's

18 COULSON, *supra* note 1, at xxx.

19 *Id.* at 158.

20 *Id.* at 81.

21 United States v. Cartozian, No. E-8668 (D. Or. May 8–9, 1924); United States v. Cartozian, 6 F.2d 919, 922 (D. Or. 1925).

22 COULSON, *supra* note 1, at xxxi.

use of the proclamation from the Declaration of Independence that "all men are created equal."[23] This proclamation became a rhetorical "unifying device"[24] in that the shared external threat motivated the United States to convert immigrants into friendly allies through naturalization. For example, prior to World War II, the Chinese were specifically excluded from citizenship through the Chinese Exclusion Act of 1882. But after the Japanese invasion on Pearl Harbor, "the Chinese were suddenly depicted as a brave and honorable people due to their status as allies in the war"[25] and were then eligible for citizenship.

Coulson concludes by remarking on the value of examining these cases to "understand[ ] racial and national formation."[26] Specifically, the rhetorical strategy of amplifying shared external threats was necessary for two reasons. First, immigrants obtained a favorable construction of whiteness for American citizenship. Second, the United States often reconstructed its alignment with other nations, previously perceived as potential enemies. This alignment of the "construction of enemies" functioned as "a form of rhetorical transcendence, by which divisions are overcome [through] shifting perspective."[27] Coulson also defends his position that critical rhetorical approach should be infused within modern legal theory and is particularly suitable to understand "relationships that constitute identity, power, and legitimacy in the practice of legal advocacy."[28] In racial eligibility cases, for example, where America's white elitism often butted against the immigrant's humble dreams of freedom, Coulson makes an effective argument that the rhetorical strategy of appealing to shared external threats was a better means of "transcending perceived racial divisions" as opposed to formal legal doctrine, particularly where the United States's enemies and allies were "closely intertwined" with "race, nation, and sovereignty."[29]

For those interested in critical race theory and critical legal studies, readers will find the book both profound and enlightening. One critique is that while the book conveyed many important and complex ideas, the text is weighed down at times with technical language. That said, the theory of transitivity[30] (Coulson's theoretical framework) is the language of

23 *Id.* at 120.

24 *Id.*

25 *Id.* at 127.

26 *Id.* at xxxi.

27 *Id.* at xxiv–xxv.

28 *Id.* at 164.

29 *Id.* at 165.

30 *Id.* at xxv–xxvi.

linguists.[31] It is possible then that what could feel seemingly technical and unwieldy to a legal reader is both relevant and necessary for this work to credibly reach an interdisciplinary audience.

Ultimately, this book will delight legal historians, critical race scholars, and those excited by the passion of rhetorical strategies in the law. Coulson's use of a critical rhetorical approach[32] provides a unique vantage point from which to view these cases, that is, not from a stance of truth and falsity, but rather with a focus on, as articulated by Raymie Mckerrow, how "symbols come to possess power—what they 'do' in society as contrasted to what they 'are.'"[33]

Reading this work provoked two persistent thoughts—one saddening and the other insightful. First, reflecting on the immense resources and energy the immigrants in these race cases expended to simply be deemed a "free white person," one is reminded of W.E.B. Du Bois's words, "But what on earth is whiteness that one should so desire it?"[34] And Du Bois answers his own question stating, "Then always, somehow, some way, silently but clearly, I am given to understand that whiteness is the ownership of the earth forever and ever, Amen!"[35] Second, in pondering the value of Coulson's rhetorical strategy beyond race-eligibility cases for Asians in the eighteenth and nineteenth centuries, one wonders if his strategy could provide a template for any disenfranchised or marginalized group that seeks inclusion or status equality within a dominant societal structure to simply survive. While the race-limiting provision of the original Naturalization Act has long since been amended,[36] could marginalized and privileged groups find a common enemy that would unite them in the twenty-first century? What praise to this rhetorical strategy that would be.

31 *Id.* at xxv.

32 *Id.* at xv ("A critical rhetorical approach recognizes the materiality of discourse, viewing it as a mediated and fragmented, 'unconnected, even contradictory or momentarily oppositional' in its mode of presentation, and disputes the distinction between knowledge and power.").

33 *Id.* at xv–xvi (quoting Raymie McKerrow, *Critical Rhetoric: Theory and Praxis*, 56 COMM. MONOGRAPH 91, 101 (1989)).

34 W.E.B. DU BOIS, *The Souls of White Folk*, *in* DARKWATER: VOICES FROM WITHIN THE VEIL, ch. II (1920), https://www.gutenberg.org/files/15210/15210-h/15210-h.htm#Chapter_II (last visited Mar. 31, 2018).

35 *Id.*

36 This language was removed from the Naturalization Act in 1952. *See* COULSON, *supra* note 1, at xi.