

Living in Liminal Liability

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Jennifer M. Chacón, *Producing Liminal Legality*, 92 **Denver U. L. Rev.** (forthcoming), available at [SSRN](#).

[Jennifer Chacon's](#) [Producing Liminal Legality](#) is a must read, and not only because the title so aptly reflects the liminality of the article itself. The work is betwixt and between criminal and immigration law, between formal and functional analysis, pointing back in history and forward towards social change. It appears in a symposium issue, itself a liminal form of academic discourse, suspended between the immediacy of the academic blog post and the timeless stand-alone academic article. In light of the seemingly permanent status of liminal legality, this article promises to be both hot and timeless, with an illumination in every section.

Chacón draws from the cresting edge of the social science around liminal legal subjects, using it to uncover and critique the legal mechanisms that produce liminal legality. She describes the liminal legal statuses that are proliferating within immigration law and beyond it. Liminal legal categories function in two ways: “to effectuate administrative resource conservation through community-oriented risk management strategies” and to allow governmental actors to assert control over identified populations in ways that avoid the rights-protective schemes of the twentieth century.

The piece begins with a taxonomy of liminal legal status. Liminal status is rooted in the experiences of marginalized noncitizens and the ever-present threat of being plucked away from one’s settled life through a contemporary form of banishment. Central examples of liminal statuses are the administrative granting of immigration parole and “deferred action,” two feats of affirmative administrative inaction. A noncitizen granted parole or deferred action experiences “a reliance on administrative grace to effectuate freedom from banishment, an obligation to pay one’s way to prevent that banishment, experiences of heightened monitoring by governmental actors, and a related vulnerability to control, exclusion, and abuse by private actors.” (P. 709.) This is two moves in one: Chacón reveals how an official decision not to act serves to create a pseudo-status, or what Geoffrey Heeren calls “[The Status of Nonstatus](#).” More, Chacón evokes in the reader a sense of what it’s like to exist in such a state of liminal grace, simultaneously suspended by mere inaction and locked in a Damoclean suspense.

Chacón’s next conceptual move is to expand the class of those living in liminal legality beyond the group on the edge of banishment. She reveals as liminal the groups of noncitizens who have seemingly more stable legal privileges, such as lawful permanent residents “who live in heavily policed, restrictionist jurisdictions and who have old criminal convictions that might appear to render them deportable” and who “may experience greater liminality and a greater likelihood of banishment than an unauthorized noncitizen who is a low priority for removal and lives in a more immigrant-friendly jurisdiction.” (P. 732.) Liminality, then, is less dependent on formal immigration status categories than on the functional elements of time, place, and social context.

Liminality then crosses the citizenship divide to include citizens embedded in immigrant communities as well as citizens who don’t, but who nonetheless have regular contact with law enforcement officials. This is an important move, because it expands the map of liminal status in several ways. First, it illuminates how the operation of liminal legality is not confined to noncitizens, but affects citizens as well. Second, it demonstrates how the commonality of contact with law enforcement is a more accurate predictor of legal liminality than which system of governance—immigration or criminal justice—is operating on an individual.

Chacón advocates for using liminal legality because its transubstantive nature offers advantages over topical frames like “crimmigration.” She would return crimmigration scholarship to its original grounding in membership theory, thereby “reinvigorating the discussion of the role that race, class, and place play in structuring governance strategies both at the border of criminal and immigration law and beyond it.” (P. 764.)

This is why I think *Producing Liminal Legality* is such an important work for the current moment. Returning to membership theory with a transubstantive legal analysis like liminality is one way to stem the tide of immigration exceptionalism that the Executive Branch is now relying on to maximize its ability to exclude groups like Muslims and refugees. Also, Chacón uses the notion of liminality to make a series of connections that immigration scholarship often struggles with: the tenuousness of distinctions among the authorized citizenship and immigration statuses, the governance functions played by the interlacing of criminal and immigration law, and the role of race, class, and place in that complex interlacing. Having erased the citizenship line as a significant analytical boundary, and exchanged it for the level of governance through law enforcement that an individual or community experiences, the presence of race and class come into focus like elephants in a room.

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