

The Insular Cases:

A Comparative Historical Study of Puerto Rico and Other Overseas U. S. Territories



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Territorial Clause

“The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.”

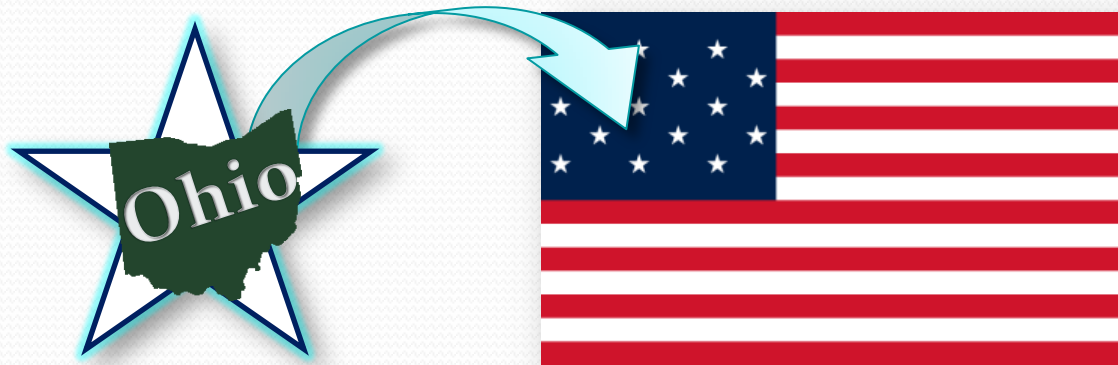


U. S. Const. Art. IV,
Section 3

1789

Northwest Ordinance

- Congress appointed Governor and Judges for territory
- Established civil rights for territory
- When population exceeded 5,000 adult males, voters could elect legislature and send non-voting delegate to Congress
- When territory or division reached population of 60,000 it could petition for statehood



1898

Newlands Resolution

Treaty of Paris

Overseas U.S. Territories

- Hawai`i
- Puerto Rico
- Guam
- Philippines

Subsequently Acquired

Other Overseas U.S. Territories

- American Sãmoa (1899)
- Guantánamo Bay (1903)
- U. S. Virgin Islands (1917)
- Commonwealth of the Northern Mariana Islands (CNMI) (1976)

Puerto Rico **Hawai'i** **Cuba**



“Holding His End Up”
by Fred Morgan
Philadelphia Inquirer
(1898)

**Ladrones
(CNMI)**

Philippines

It's really most extraordinary
what training will do.
Why, only the other day
I thought that man unable
to support himself.”

John Bull (England)

“[it would be unwise] to give the half-civilized Moros of the Philippines, or the ignorant and lawless brigands that infest Puerto Rico... the benefits of the Constitution.”



Simeon E. Baldwin, Yale Law Professor
and co-founder of the ABA,
The Constitutional Question Incident to
the Acquisition and Government by the
United States of Island Territories,
12 Harv. L. Rev. 393, 401 (1899)

“[no sería sabio] proveerle a los Moros poco civilizados en Filipinas, o a los ignorantes y desordenados bandidos que habitan Puerto Rico... los beneficios de la Constitución.”



Simeon E. Baldwin, Profesor de leyes en Yale y co-fundador de la ABA,
La cuestión constitucional incidente a la adquisición y gobernación estadounidense de territorios isleños,
12 Harv. L. Rev. 393, 401 (1899)

“The Filipinos, who [are] Asiatics, Malays, negroes and of mixed blood have nothing in common with us and centuries cannot assimilate them...They can never be clothed with the rights of American citizenship nor their territory be admitted as a State of the American Union.”

Statement of U. S. Representative
Thomas Spight of Mississippi,
33 Cong. Rec. 2105 (1900)



“Los filipinos, quienes [son] asiáticos, malayos, negros y de sangre mixta, no tienen nada en común con nosotros y el paso de los siglos no podrá asimilarlos... Nunca podrán arroparse con el manto de los derechos de la ciudadanía americana ni se podrán admitir sus territorios como un Estado de la Unión Americana.”

Declaración del Representante de
E. U. por Mississippi Tomás Spight,
33 Cong. Rec. 2105 (1900)



“[B]eware of those mongrels of the East, with breath of pestilence and touch of leprosy. Do not let them become part of us with their idolatry, polygamous creeds and harem habits.”

Statement of U. S. Senator
William B. Bate of Tennessee,
33 Cong. Rec. 3616 (1900)



[O]jo con estos mestizos del este, con aliento a pestilencia y un toque de lepra. No les permitan convertirse en una parte de nosotros, con sus idolatrías, creencias polígamas y costumbres de harén.”

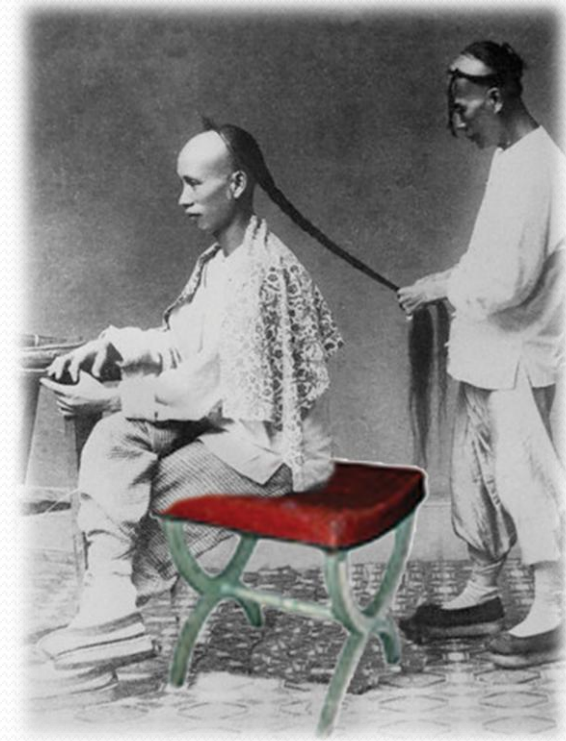
Declaración del Senador de E. U.
por Tennessee William B. Bate,
33 Cong. Rec. 3616 (1900)



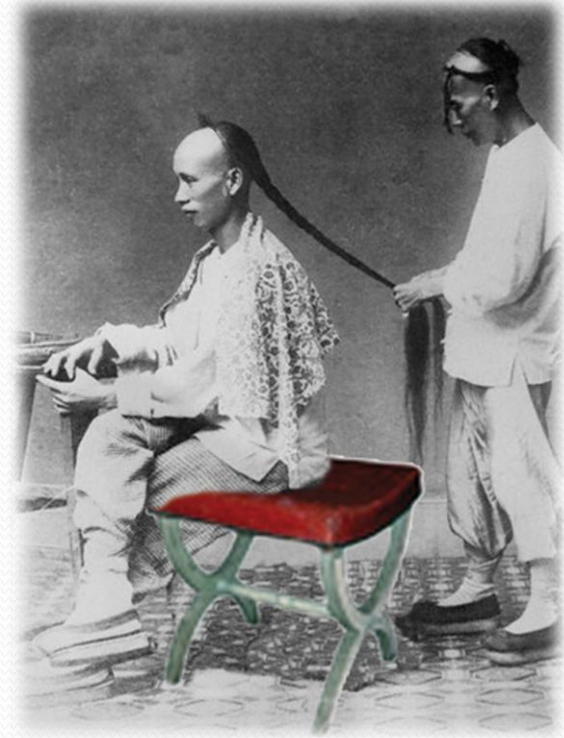
“How can we endure our shame, when a Chinese Senator from Hawai`i, with his pig-tail hanging down his back, with his pagan joss in his hand, shall rise from his curule chair and in pidgin English proceed to chop logic with George Frisbie Hoar or Henry Cabot Lodge.”



Statement of U. S. Representative
James Beauchamp Clark of Missouri,
Congressional Record
June 14, 1898 p. 6019



“¿Cómo podremos vivir con la vergüenza de tener un Senador chino de Hawai`i, su cabello trenzado colgándole sobre las espaldas, un ídolo pagano en las manos, levantándose desde su silla curul para dirigirse en un inglés chapurreado a George Frisbie Hoar o Henry Cabot Lodge para argumentar sutilezas?”



Declaración del Representante de E. U.
por Missouri James Beauchamp Clark,
Registro Congresional
14 de junio de 1898 p. 6019

“God has not been preparing the English-speaking and Teutonic peoples for a thousand years for nothing but vain and idle self-contemplation and self-admiration. No! He has made us the master organizers of the world to establish a system where chaos reigns. He has made us adept in government that we may administer government among savage and servile peoples.”

Statement of U. S. Senator
Albert Beveridge of Indiana,
56 Cong., I Sess pp 704 – 712
(January 9, 1900)



“Dios no ha estado preparando a los pueblos teutónicos y de habla inglesa durante miles de años para que se regodeen en la auto-admiración y auto-contemplación vana y frívola. ¡No! Él nos ha dado el dominio organizativo del mundo para establecer un sistema allí donde reina el caos. Él nos ha hecho expertos en asuntos de gobierno para poder administrar los gobiernos de los pueblos salvajes y serviles.”

Declaración del Senador de E. U.
por Indiana Albert Beveridge,
56 Cong., I Sess pp 704 – 712
(9 de enero de 1900)



“In our treatment of the Filipinos we have acted up to the highest standard that has yet been set as marking the proper way in which a powerful and advanced nation should treat a weaker people.”

President Theodore Roosevelt
speech at Methodist Episcopal
Church celebration of the African
Diamond Jubilee, Washington DC
(January 18, 1909)



“En el trato que le hemos dado a los filipinos hemos actuado conforme a las normas más elevadas que se hayan establecido hasta este momento para demarcar la forma correcta en que una nación avanzada y poderosa debe tratar a un pueblo más débil.”

Discurso del Presidente Teodoro Roosevelt en el Aniversario de Diamante de las misiones africanas de la Iglesia Episcopal Metodista en Washington DC (18 de enero de 1909)



“Besides acting in good faith, we have acted with good sense, and that is also important. We have not been frightened or misled into giving to the people of the island (Puerto Rico) a form of government unsuitable to them. While providing that the people should govern themselves as far as possible, we have not hesitated in their own interests to keep the power of shaping their destiny.”

President Theodore Roosevelt
Address at Hartford Coliseum,
Connecticut (August 22, 1902)



“Además de haber actuado de buena fe, hemos actuado con sano juicio y eso también es importante. No nos hemos dejado intimidar o engañar para darle al pueblo de [Puerto Rico] una forma de gobierno que sea inapropiada para ellos. A la vez que hemos tomado providencias para que el pueblo se gobierne a sí mismo en la medida en que sea posible, no hemos titubeado, por el bien de ellos, en retener el poder para moldear su destino.”

Discurso del Presidente Teodoro Roosevelt
en el Coliseo de Hartford, Connecticut
(22 de agosto de 1902)



U. S. Supreme Court's Doctrine of Territorial Incorporation



Incorporated Territories

- Constitution fully applies
- Destined for statehood



Unincorporated Territories

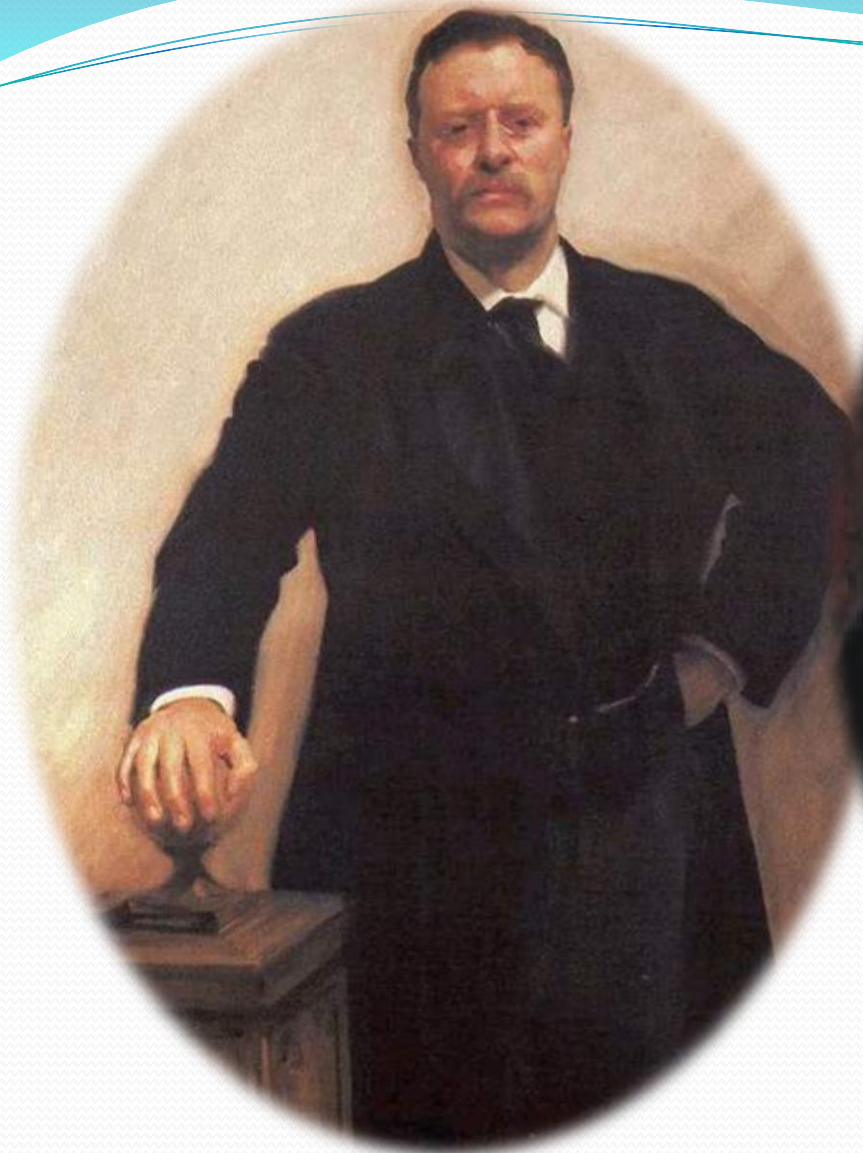
Guarantees of
“fundamental”
personal rights apply

*It is obvious that in the annexation of outlying and distant possessions **grave questions will arise from differences of race, habits, laws and customs of the people**, and from differences of soil, climate and production, which may require action on the part of Congress that would be quite unnecessary in the annexation of contiguous territory inhabited only by people of the same race or by scattered bodies of native Indians.*

[Downes v. Bidwell, 182 U.S. 244, 282 \(1901\)](#)

Es obvio que en la anexión de las posesiones periféricas y distantes habrán de surgir serias preguntas por las diferencias de raza, hábitos, leyes y costumbres de los pueblos, así como por las diferencias en suelos, climas, y producción, las que podrán requerir alguna acción por parte del Congreso que de otro modo hubiese sido innecesaria si la anexión se tratase de territorios contiguos habitados solamente por pueblos de la misma raza o por cuerpos dispersos de indígenas nativos.

[Downes v. Bidwell](#), 182 U.S. 244, 282 (1901)

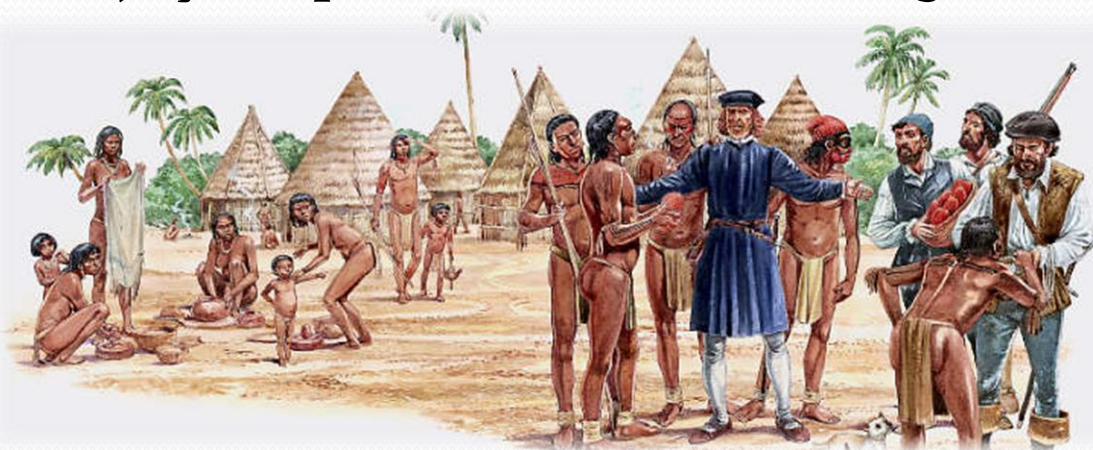


*President Theodore
Roosevelt*



*Justice Oliver
Wendell Holmes*

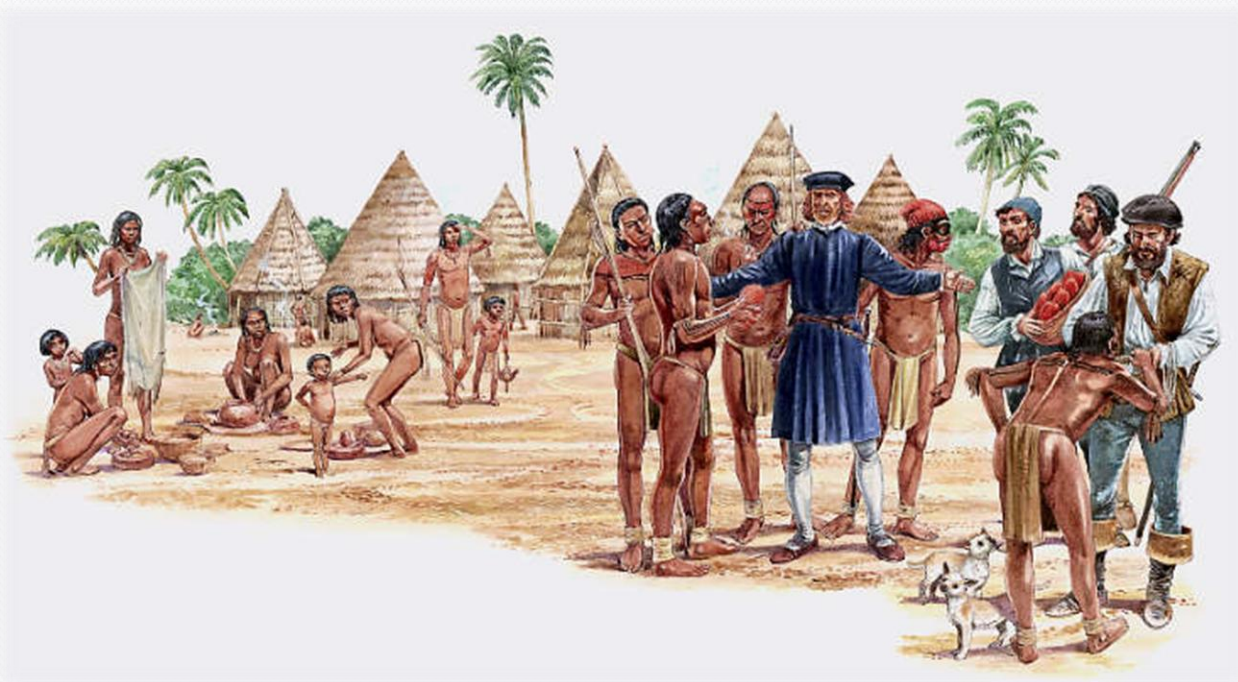
“Congress has thought that a people like the Filipinos, or the Porto Ricans, trained to a complete judicial system which knows no juries, living in compact and ancient communities, with definitely formed customs and political conceptions... In making Porto Ricans American citizens,... is the desire to put them as individuals on an exact equality with citizens from the American homeland, to secure them more certain protection against the world, and to give them an opportunity, should they desire, to move into the United States proper, and there without naturalization to enjoy all political and other rights.”



Balzac v. Porto Rico,
258 U.S. 298, 310-
311 (1922)

“vive en comunidades compactas y antiquísimas, con costumbres y conceptos políticos firmemente enraizados.”

Balzac v. Porto Rico, 258 U.S. 298, 310-311 (1922)



[Puerto Rico is a] distant ocean communit[y] of a different origin and language from those of our continental people.

Balzac v. Porto Rico, 258 U.S. 298, 311 (1922)



[Puerto Rico es una] comuni[dad] oceánica distante con un origen y lenguaje distintos al de nuestra gente continental.

Balzac v. Porto Rico, 258 U.S. 298, 311 (1922)



The right to suffrage is not a personal and fundamental right and, therefore, the [Seventh] Amendment as framed is not in force in Porto Rico.

The right of suffrage, therefore, is a noble right, or ought to be so; but is not a [fundamental] right. It is a political right.

The [Puerto Rico] Legislature has not conferred upon women the right to vote in this Island...



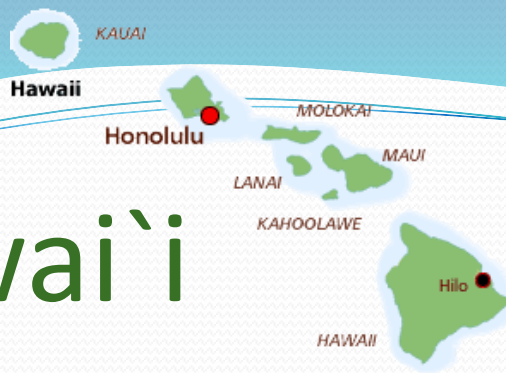
Morales v. Board of Registration,
33 P.R.R. 76 (1924)

El derecho al sufragio ... es un derecho noble... debe serlo, pues no es un derecho natural. Es un derecho político...



Morales v. Junta Local de
Inscripción,
33 D.P.R. 79 (1924)

Hawai`i



Date	Congressional / Judicial / Other Event	Effect
1898	Newlands Resolution	Hawai`i annexed as U. S. territory
1900	Organic Act	<ul style="list-style-type: none"> •Conferred U. S. Citizenship •Local Civil Government Established •Bi-Cameral Legislature •Creates U. S. Territorial Court
1903	Hawai`i v. Mankichi	<ul style="list-style-type: none"> •Hawai`i became incorporated territory in 1900 following Organic Act •All constitutional rights extend to Hawai`i
1959	Hawai`i Admission Act	<ul style="list-style-type: none"> •Hawai`i joins Union •State government is republican in form •Article III U. S. District Court established •Hawai`i Constitution approved •Palmyra Atoll excluded from statehood

Puerto Rico



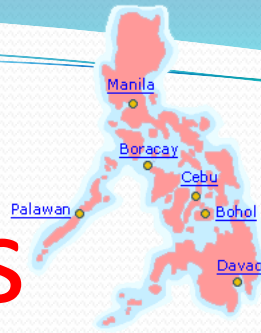
Date	Congressional / Judicial / Other Event	Effect
1898	Treaty of Paris	Puerto Rico annexed as U. S. territory
1900	Organic Act	<ul style="list-style-type: none">• Local Civil Government Established• Creates U. S. territorial court
1901-1905	Insular cases decided	U. S. Constitution applies ex proprio vigore to Puerto Rico, however not all constitutional rights extend to unincorporated territory
1904	Gonzalez v. Williams	Citizens of Puerto Rico are U. S. nationals
1917	Jones Act	<ul style="list-style-type: none">• Conferred U. S. citizenship to citizens of Puerto Rico• Bi-cameral Legislature established
1922	Balzac v. Porto Rico	<ul style="list-style-type: none">• Granting of U. S. citizenship did not incorporate Puerto Rico• VI th Amendment Right to Jury Trial in Criminal Cases inapplicable

Puerto Rico (cont.)



Date	Congressional/Judicial/Other Event	Effect
1950	Law 600	Congress authorizes Puerto Rico to draft Constitution
1952	Law 477	<ul style="list-style-type: none">• Puerto Rico Constitution approved by Congress (before that of Hawai`i)• Puerto Rico government is republican in form
1954	Brown v. Board of Education	Doctrine of “Separate but Equal” violates Equal Protection
1966	PL 89-571	Article III Court established in Puerto Rico
1970	Garcia Mercado v Superior Court	Right to jury trial in civil cases locally inapplicable because of civil law tradition (constitutional ramifications not addressed)
1978	PL 95-48	Additional Article III judgeships created for Puerto Rico

Philippines



Date	Congressional / Judicial / Other Event	Effect
1898	Treaty of Paris	Philippines annexed as U. S. territory
1899	Senate Resolution	Philippines not to be annexed permanently
1901	The Diamond Rings	1899 Senate Resolution has no effect
1902	Organic Act	<ul style="list-style-type: none">• Local Civil Government Established• No U. S. territorial court is established
1904-1905	Dorr v. U. S. Rasmussen v. U. S.	Philippines is unincorporated territory
1916	Organic Act	Congress announces intention to grant Philippines independence
1935	Tydings-McDuffie Act	10 years transitory intention to grant Philippines independence
1946	Philippines Independence	

Guam



Date	Congressional/ Judicial/Other Event	Effect
1898	Treaty of Paris	Guam annexed as U. S. territory
1898 – 1950	Military Occupation	Guam under jurisdiction of U. S. Navy
1950	Organic Act	<ul style="list-style-type: none">• Local civil government established• U. S. Citizenship• U. S. Territorial Court established
1968	Elective Governor Act	Right to vote for own governor

American Sāmoa



Date	Congressional/Judicial /Other Event	Effect
1899	Treaty with Germany	American Sāmoa annexed as U. S. territory
1899 – 1951	Military Occupation	American Sāmoa under jurisdiction of U. S. Navy
1956	Transfer to Civil Authority	American Sāmoa under jurisdiction of U. S. Department of the Interior
1967	Local Constitution enacted	Not approved by U. S. Congress
1977	First Local Elections	Governor Elected
Present	“Unorganized territory”	<ul style="list-style-type: none">• No U. S. Citizenship (“U. S. Nationals”)• No Organic Act• No Territorial Court• Justices of High Court of American Sāmoa appointed by Secretary of the Interior• Most federal cases are presented in Hawai`i and DC federal district courts

Commonwealth of Northern Mariana Islands (CNMI)

Date	Congressional/ Judicial/Other Event	Effect
1976	CNMI Established pursuant to “Covenant”	<ul style="list-style-type: none">• Former U. S. Trust Territory• Republican form of government
1977	48 U.S.C. § 1821	U. S. District Court for the CNMI established (non-Article III Court)
1978	CNMI Constitution	CNMI Constitution enters into effect
1986	U. S. Congress extends U. S. Citizenship	U. S. Citizenship pursuant to “Covenant”
2009	CNMI vs. USA	<ul style="list-style-type: none">• U. S. Immigration Laws apply to CNMI• U. S. Department of Homeland Security over immigration and border controls

U. S. Virgin Islands (USVI)



Date	Congressional/ Judicial/Other Event	Effect
1917	Treaty of Cession with Denmark	USVI becomes U. S. territory
1917- 1931	Military Government	<ul style="list-style-type: none"> • USVI under jurisdiction of U. S. Navy • In 1931, transferred to U. S. Department of the Interior
1927	8 U.S.C § 1406	U. S. Citizenship
1936 & 1954	Organic Act	<ul style="list-style-type: none"> • Creates U. S. Territorial Court • Unincorporated Territory • VI and VII Amendment Rights to jury trial extended to USVI • Republican form of government
1970		First Local Elections

U. S. Virgin Islands (USVI)



Date	Congressional/ Judicial/Other Event	Effect
1994	Pub L. 94-584	Vth Constitutional Convention
2004	Congressional Authorization	USVI Supreme Court created
2010	Congress does not approve USVI Constitution	USVI Constitution referred back to Constitutional Convention

- Puerto Rico annexed
- Hawai`i annexed
- Philippines annexed

1st Philippines
Organic Act

1898

1900

1902

- 1st Puerto Rico Organic Act
- Hawai`i Organic Act
- Hawai`i U. S. Citizenship
- Hawai`i Incorporated
(USSCt 1903)

- 2nd Philippines Organic Act
- Philippines to become independent

Philippines
10 year
transition

Puerto Rico
authorized to draft
Constitution



1916

1917

1935

1946

1950

- 2nd Puerto Rico Organic Act
- Puerto Rico U. S. Citizenship
- Puerto Rico not incorporated (USSCt 1922)

Philippines
Independence

- Puerto Rico Constitution Approved
- Republican form of government

- Hawai`i Statehood
- Republican form of government
- Hawai`i Constitution Approved
- Article III U. S. District Court
- Palmyra Atoll remains incorporated territory

1952

1954

1959

Brown v. Board of Education

- Article III
U. S. District Court
- (Additional
judgeships in 1978)

- Boumediene v. Bush
- Guantánamo Bay is
unincorporated territory
- Fundamental Constitutional
rights extend in
unincorporated territory



It is thus not surprising that although Puerto Rico is not a state in the federal Union, it ... seem[s] to have become a State within a common and accepted meaning of the word.

United States v. Laboy Torres,
553 F.3d 715 (3rd Cir. 2009)
(O'Connor, J (retired))




No es sorprendente que a pesar de que Puerto Rico no es un estado de la Unión Federal, ...parece haberse convertido en un estado dentro del sentido común y aceptado de esa palabra...

United States v. Laboy Torres,
553 F.3d 715 (3rd Cir. 2009)
(O'Connor, J (retirada))



Puerto Rico possesses “a measure of autonomy comparable to that possessed by the States.” Like the States, it has a republican form of government, organized pursuant to a constitution adopted by its people, and a bill of rights. This government enjoys the same immunity from suit possessed by the States. Like the States, Puerto Rico lacks “the full sovereignty of an independent nation,” for example, the power to manage its “external relations with other nations,” which was retained by the Federal Government. As with citizens of the States, Puerto Rican citizens are accorded United States citizenship, and the fundamental protections of the United States Constitution. The rights, privileges, and immunities attendant to United States citizenship are “respected in Puerto Rico to the same extent as though Puerto Rico were a State of the Union. Finally, Puerto Rican judgments are guaranteed the same full faith and credit as are those of the States.

United States v. Laboy Torres, 553 F.3d 715 (3rd Cir. 2009)
(O’Connor, J (retired))



La isla posee una medida de autonomía comparable a la de los Estados. Igual que los estados, tiene una forma de gobierno republicana, organizada conforme a una constitución adoptada por su pueblo, y una carta de derechos... Igual que los Estados, Puerto Rico carece de la soberanía absoluta de una nación independiente... Igual que a los ciudadanos de los Estados, a los ciudadanos de Puerto Rico se les ha concedido la ciudadanía americana y las protecciones fundamentales de la Constitución de los Estados Unidos.

United States v. Laboy Torres, 553 F.3d 715 (3rd Cir. 2009)
(O'Connor, J (retirada))

The purpose of Congress in the 1950 and 1952 legislation was to accord Puerto Rico the degree of autonomy and independence normally associated with a State of the Union.

Examining Board v. Flores de Otero, 426 U.S. 572, 594 (1976)

“Prior to 1950 Puerto Rico’s legal status was closer to that of a “territory” than that of a “state”, and that since 1952 Puerto Rico’s status changed from that of a mere territory to the unique status of Commonwealth. And the federal government’s relations with Puerto Rico changed from being bounded merely by the territorial Clause, and the rights of the People of Puerto Rico as United States Citizens, to being bounded by the United States and Puerto Rico Constitutions, Public Law 600, the Puerto Rico Federal Relations Act and the rights of the People of Puerto Rico as United States Citizens.”

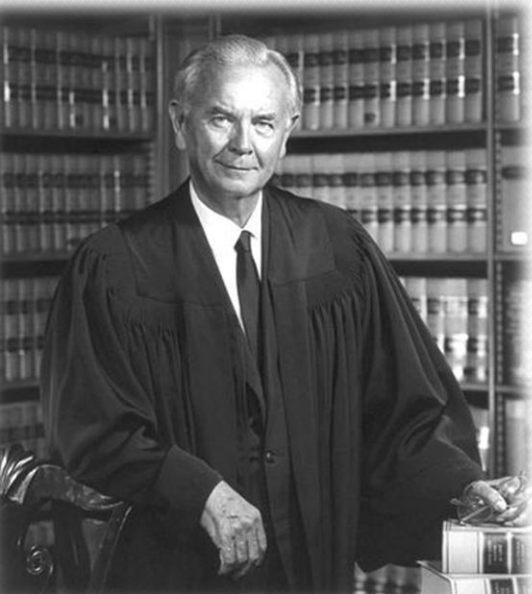
[Cordova & Simonpietri Ins. Agency v. Chase Manhattan Bank](#), 649 F.2d 36, 41 (1st Cir. 1981) (Breyer, J.)



*The 'Insular Cases' can be distinguished from the present cases in that they involved the power of Congress to provide rules and regulations to govern **temporarily** territories with wholly dissimilar traditions and institutions.*

Reid v. Covert, 354 U.S. 1, 14 (1957)

*Whatever the validity of [the Insular Cases], in the particular historical context in which they were decided, those cases are clearly not authority for questioning the application of the Fourth Amendment—or any other provision of the Bill of Rights—to the Commonwealth of Puerto Rico in the 1970s. As Justice Black declared in Reid v. Covert: “neither the cases nor their reasoning should be given any further expansion. **The concept that the Bill of Rights and other constitutional protections against arbitrary government are inoperant when they become inconvenient or when expediency dictates otherwise is a very dangerous doctrine and if allowed to flourish would destroy the benefit of a written Constitution and undermine the basis of our government”***



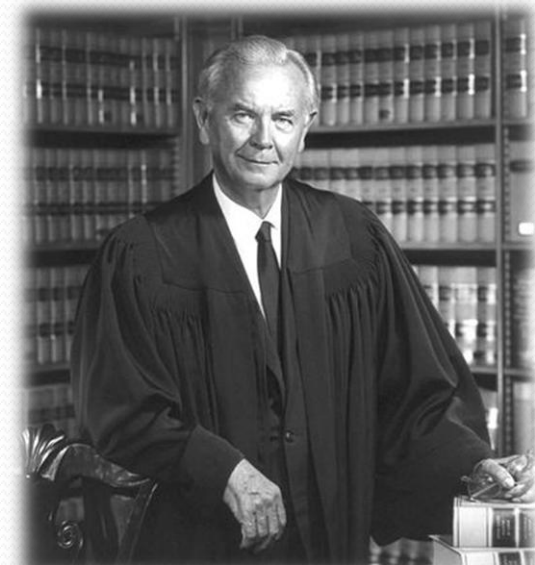
Torres v. Commonwealth of Puerto Rico,
442 U.S. 465, 475-476 (1979)
(Brennan, J., concurring, joined by
Stewart, Marshall and Blackmun, JJ.)

Sea cual sea la validez de [los Casos Insulares], en el contexto histórico particular en el cual se decidieron, esos casos claramente no son la autoridad para otorgar la aplicación de... cualquier... disposición de la Carta de Derechos al Estado Libre Asociado de Puerto Rico en la década de 1970... El concepto de una Carta de Derechos y otras protecciones que otorga la Constitución contra gobiernos arbitrarios, que puedan cesar en el momento en que se tornen inconvenientes o inoportunos, representa una doctrina sumamente peligrosa que, de permitírsele prosperar, destruiría el beneficio de una Constitución escrita y minaría los fundamentos de nuestro gobierno.

Torres v. Commonwealth of Puerto Rico,

442 U.S. 465, 475-476 (1979)

(Brennan, J., concurrente, junto a Stewart, Marshall and Blackmun, JJ.)



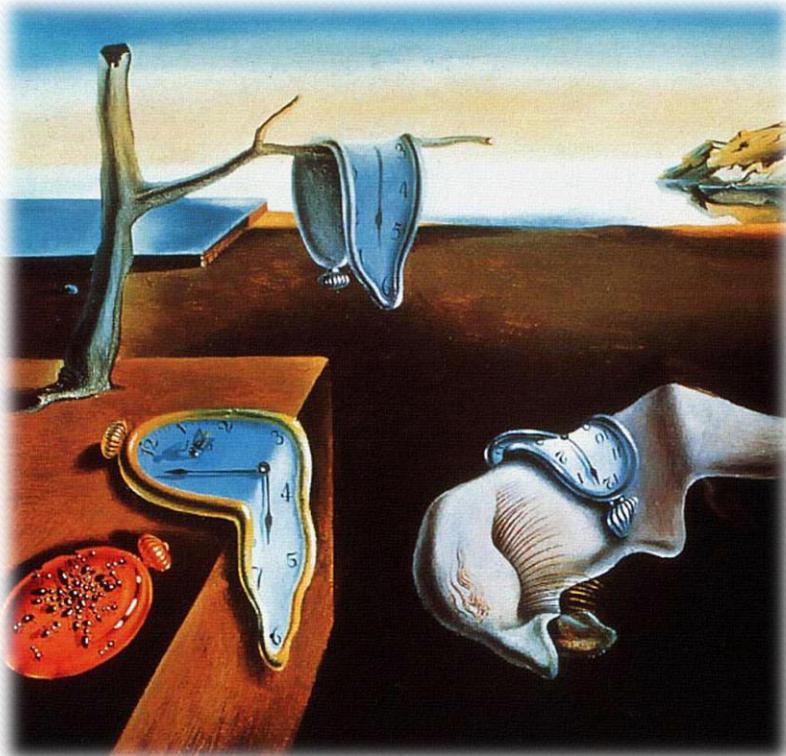
The Insular Cases involved territories “with wholly dissimilar traditions and institutions” that Congress intended to govern only “temporarily”.

It may well be that over time the ties between the United States and any of its unincorporated territories strengthen in ways that are of constitutional significance.



[Boumediene v. Bush](#), U.S.,
128 S. Ct. 2229, 2255 (2008)

“Bien podría ser que con el paso del tiempo los vínculos entre Estados Unidos y cualquiera de sus territorios se fortaleciesen de forma tal que tuviesen un alcance constitucional”



Boumediene v. Bush, U.S.,
128 S. Ct. 2229, 2255 (2008)

*Our basic charter cannot be contracted away like this. The Constitution grants Congress and the President the power to acquire, dispose of and govern territory, **not the power to decide when and where its terms apply.** Even when the United States acts outside its borders, its powers are not “absolute and unlimited” but are subject “to such restrictions as are expressed in the Constitution.” Abstaining from questions involving forward sovereignty and territorial governance is one thing. **“To hold the political branches have the power to switch the Constitution on or off at will is quite another.”***

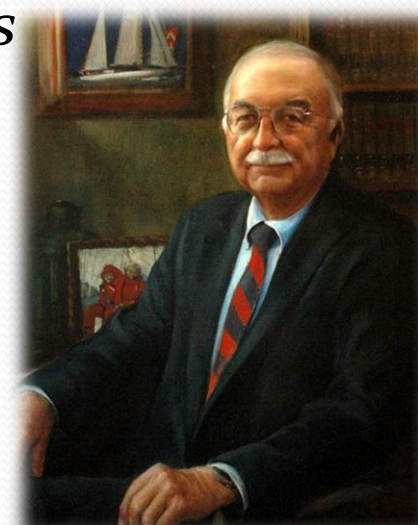
[Boumediene v. Bush](#), U.S., 128 S. Ct. 2229, 2259 (2008)

La Constitución le otorga al Congreso y al Presidente el poder para adquirir, enajenar y gobernar los territorios, pero no el poder para decidir cuándo y dónde se aplican sus designios... Abstenerse en asuntos que incidan en la soberanía y el gobierno futuro de los territorios es una cosa. Afirmar que las ramas políticas tienen el poder para poner y quitar la Constitución a su gusto es otra cosa muy distinta.

Boumediene v. Bush, _ U.S. _, 128 S. Ct. 2229, 2259 (2008)

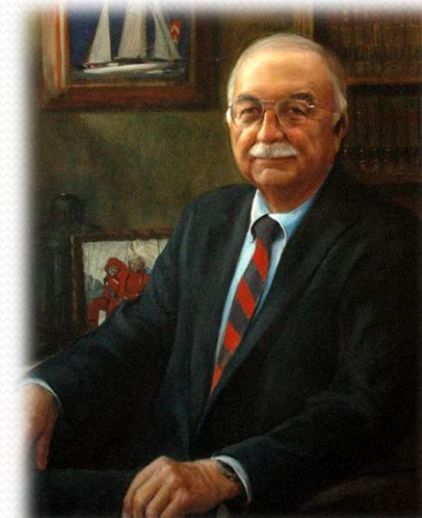
“This is a most unfortunate and denigrating predicament for citizens who for more than one hundred years have been branded with a stigma of inferiority, and all that follows therefrom. At the root of this problem is the unacceptable role of the courts. As in the case of racial segregation, it is the courts that are responsible for the creation of this inequality... Changed conditions have long undermined the foundations of these judge-made rules, which were established in a by-gone era in consonance with the distorted views of that epoch. Although the unequal treatment of persons because of the color of their skin or other irrelevant reasons, was then the modus operandi of governments, and an accepted practice of societies in general, the continued enforcement of these rules by the courts is today an outdated anachronism, to say the least.”

Igartua v. United States of America, __ F. 3d __,
2010 WL, 4751781 * 17-18 (1st Cir. 2010)
(Torruella, J. concurring in part; dissenting in part)
(Citations to Supreme Court cases omitted)



“Este es un dilema por demás desafortunado y denigrante para aquellos ciudadanos que durante más de cien años han llevado sobre sus espaldas el estigma de la inferioridad y todo lo que de ello emana. La raíz del problema es el papel inaceptable de los tribunales. Al igual que en el caso de la segregación racial, son los tribunales los responsables por la creación de esta desigualdad... Hace mucho que las condiciones cambiantes han minado los fundamentos de estas reglas inventadas por los jueces, establecidas en una era ya extinta, conforme a las ideas distorsionadas de antaño. Aunque el trato desigual de las personas por el color de su piel u otras razones irrelevantes fuera el modus operandi de los gobiernos en el pasado, como también fuera ésta una práctica aceptada por las sociedades en general, el que hoy en día los tribunales quieran seguir validando estas reglas es un anacronismo insostenible, en el mejor de los casos.”

Igartua v. United States of America,
F. 3d __, 2010 WL, 4751781 * 17-18 (1st Cir. 2010)
(Torruella, J. concurrente en parte; disidente en parte)
(Las citas del Tribunal Supremo fueron omitidas)



2008 Boumediene v. Bush





Puerto Rico 2011



- U. S. Citizens
- Congressionally Approved Constitution
- Republican form of government
- Article III Court
- All U. S. Criminal and Civil laws apply (limited exceptions)
- Federal Executive Presence
- Only U. S. territory within U. S. Customs and Immigration zone
- Puerto Rico residents pay full Social Security and Medicare payroll taxes, as well as federal import, export, and commodity taxes.
 - Federal employees and persons with federal income file federal income tax returns
- A jurisdiction with one of the largest per capita enlistment in United States Armed Forces.
- Non-fundamental constitutional provisions extended by Federal Courts.



Puerto Rico 2011



... BUT ...

- No presidential vote
- No Congressional Representation with voting power
 - 2 Senators
 - 5 Representatives
- Discrimination in federal benefits in welfare and social programs.
- Only jurisdiction in the U. S. where U. S. citizens are not afforded fundamental right to jury trial in civil cases in state court.

Unanswered Questions ???



- In the U.S. territories, are there still “grave questions [that] will arise from differences of race, habits, laws and customs of the people,” as the Supreme Court observed in *Downes v. Bidwell* in 1901?
- More so, given that more than 50 years have passed since the Court decided *Brown v. Board of Education*, can such insidious racial and ethnic discrimination be constitutionally justified today?
- How long may Congress “temporarily” hold a territory when the territory has evolved into a model of a federated state without having been formally admitted to the union? What is the effect, if any, of the constitutional strengthening of ties between the territory and the United States over the past 110-plus years?

Interrogantes ???

- En los territorios de los EE.UU., ¿quedan todavía “graves interrogantes [que] habrán de surgir por las diferencias de razas, hábitos, leyes y costumbres de los pueblos”?, como observara el Tribunal Supremo en 1901, en *Downes v. Bidwell*.
- Más aún, han pasado más de cincuenta años desde que el Tribunal decidió el caso de *Brown v. Board of Education*. ¿Es posible justificar hoy en día, desde el punto de vista constitucional, un discrimen racial y étnico tan insidioso?
- ¿Cuánto tiempo puede retener “temporalmente” un territorio el Congreso, cuando el territorio ha evolucionado hacia un modelo de estado federado sin una admisión formal a la Unión?
¿Qué efecto tiene el fortalecimiento Constitucional de los vínculos entre el territorio y los Estados Unidos por más de 110 años, si es que tiene algún efecto?



Conclusion

The time has very much belatedly come for the U.S. Supreme Court to revisit and remedy the anachronistic and denigrating judicial predicament that today nearly five million United States citizens residing in Puerto Rico and other U.S. territories have sustained for more than 110 years.

Conclusión

Ya es hora – e incluso ya se le ha hecho tarde – de que el Tribunal Supremo re-examine y remedie este dilema judicial obsoleto y denigrante que han tenido que tolerar durante más de cien años los casi cinco millones de ciudadanos estadounidenses que residen en Puerto Rico y otros territorios de los Estados Unidos.

Comments and Observations

- Use any of the microphones located in both aisles.
- Please be brief



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