



Dr. Daniel Immerwahr, Professor of History, Northwestern University
Testimony on H.Res 279, “Insular Cases Resolution”
U.S. House of Representatives Committee on Natural Resources
May 12, 2021

Chair Grijalva and distinguished committee members:

Thank you for the chance to testify in support of this important measure. I am a professor of U.S. history at Northwestern University, and I’ve written a book about the United States’ overseas territory. I would like to fill in the history of the Insular Cases and the “territorial incorporation doctrine” they established. Plainly put, that doctrine was the result of open racism.

The Insular Cases followed a war the United States fought with Spain in 1898. In that war, the United States took three of Spain’s colonies—Puerto Rico, the Philippines, and Guam—and it claimed, at the same moment, Hawai‘i and American Samoa. The United States had expanded before, but it had never taken in anywhere near this number of people—almost 9 million in all. The inhabitants of these new acquisitions comprised about ten percent of the U.S. population.

This massive, unprecedented influx raised immediate questions. Would the new residents be citizens? Would they be able to vote? Would their territories become states? Such questions prompted a loud political debate.

That debate was rooted in racism. The new territories were full of nonwhite people (even Spanish-descended Puerto Ricans were classified as nonwhite in the United States). Were the new territories treated as the older ones had been, the result would be Filipinos, Puerto Ricans, Native Hawaiians, Chamorus, and Samoans in the Senate and House, voting on laws. Leading politicians shared an understanding that this was wholly unacceptable. One senator warned that Hawai‘i, if made a state, “would be represented by the country of dusky ex-cannibals.”¹

With that possibility ruled out, there were two main positions left. Anti-imperialists argued that for the United States to protect its tradition of representative government, it would have to relinquish the territories. Imperialists, on the other

¹ William Roach of North Dakota, quoted in Eric T. L. Love, *Race over Empire: Racism and U.S. Imperialism, 1865–1900* (Chapel Hill: University of North Carolina Press, 2004), 150.

hand, argued that for the United States to retain its territories, it would have to relinquish representative government. The new territories should be ruled as colonies, the United States should be an empire.

That is what happened. The United States annexed the territories but didn't grant them statehood, despite their large populations. (Hawai'i, the only 1898 acquisition to become a state, had to wait more than six decades.) In place of representative government, the United States imposed colonial rule.

The Insular Cases are an enduring artifact from that political moment. In them, the Supreme Court introduced a novel distinction between "incorporated" and "unincorporated" territories and ruled that the Constitution did not fully extend to the latter. As one justice summarized the logic, the Constitution was "the supreme law of the land" but the unincorporated territories were "not part of 'the land.'"² The reasoning was straightforwardly racist; justices referred to the inhabitants of the overseas territories as "savages" and "alien races."³ Including them within the constitutional fold, one warned, would "wreck our institutions," perhaps leading the "whole structure of the government" to be "overthrown."⁴ As a result, inhabitants of the unincorporated territories have lacked rights, including a constitutional right to citizenship.

The justices who decided the first Insular Cases were largely the same justices who decided *Plessy v. Ferguson*, the infamous ruling that sanctified Jim Crow by allowing "separate but equal" facilities for whites and nonwhites. *Plessy* divided the country into distinct administrative spaces, consigning some citizens—literally and metaphorically—to the back of the bus. The Insular Cases did something similar, dividing the country into two zones, one covered fully by the Constitution, the other not. The Insular Cases relegated millions to the back of the constitutional bus.

The difference is that, in 1954, with *Brown v. Board of Education*, the Supreme Court overturned *Plessy*. We now regard *Plessy* as one of the Court's greatest mistakes—an infamously racist ruling that deprived millions of their rights. By contrast, the country has not yet repudiated the Insular Cases. It's time we do.

Thank you.

² *Dorr v. United States*, 195 U.S. 138, 155 (1904) (Harlan, J., dissenting).

³ *Downes v. Bidwell*, 182 U.S. 244, 251 and 287 (1901).

⁴ *Downes*, 182 U.S. at 313 (White, J., concurring).