

# NOTE

## Abolition Democracy and Abolition Constitutionalism: A Constitutional Framework for Overruling the *Insular Cases*

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## INTRODUCTION

*A new abolition constitutionalism could seek to abolish historical forms of oppression beyond slavery, including settler colonialism, patriarchy, heteronormativity, ableism, and capitalism, and strive to dismantle systems beyond police and prisons, including foster care, regulation of pregnancy, and poverty. It could extend beyond the United States' borders to challenge U.S. deportation policies and U.S. imperialism and to connect to freedom struggles around the world. . . . Its objective could extend beyond abolishing particular systems to establishing freedom for all—a new freedom constitutionalism.*<sup>1</sup>

—Dorothy E. Roberts, “Foreword: Abolition Constitutionalism”

The United States territories consist of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands; all of the territories exercise self-governance while also being subject to U.S. sovereignty and congressional plenary power.<sup>2</sup> Each territory is considered unincorporated and thus subject to different constitutional treatment than a state.<sup>3</sup> Such unincorporated territories are defined as U.S. insular areas—“[a] jurisdiction that is neither a part of one of the several States nor a Federal district”<sup>4</sup>—in which the U.S. Congress has determined that only selected parts of the U.S. Constitution apply.<sup>5</sup> Only the most “fundamental” constitutional rights and protections are extended to residents of the territories, unlike the U.S. citizens residing in one of the fifty states who are automatically afforded the rights and protections of the Constitution.<sup>6</sup> As an Indigenous Chamoru<sup>7</sup> living in the fifty states, I am afforded more rights and

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1. Dorothy E. Roberts, *Foreword: Abolition Constitutionalism*, 133 HARV. L. REV. 1, 120–21 (2019) (footnote omitted).

2. *Developments in the Law: The U.S. Territories*, 130 HARV. L. REV. 1616, 1617 (2017).

3. See Ross Dardani, *Weaponized Citizenship: A Critical Race Theory Analysis of U.S. Citizenship Legislation in the Pacific Unincorporated Territories 2* (Dec. 15, 2017) (Ph.D. dissertation, University of Connecticut), <https://opencommons.uconn.edu/dissertations/1671> [<https://perma.cc/WW9K-8CE6>].

4. See *Definitions of Insular Area Political Organizations*, U.S. DEP’T OF THE INTERIOR: OFF. OF INSULAR AFFS., <https://www.doi.gov/oia/islands/politicatypes> [<https://perma.cc/HA4P-6E5B>] (last visited Mar. 11, 2026).

5. See Dardani, *supra* note 3, at 2.

6. See, e.g., *Dorr v. United States*, 195 U.S. 138, 148 (1904) (finding that Congress is not required to extend the right to a jury trial to the territories).

7. The Indigenous people of Guam and the Northern Mariana Islands did not originally refer to themselves as “Chamorro,” as this name was introduced during Spanish occupation. Raquel Bagnol, *CHamoru or Chamorro: The Spelling Confusion*, PAC. ISLAND TIMES (Mar. 4, 2024), <https://www.pacificislandtimes.com/post/chamoru-or-chamorro-the-spelling-confusion> [<https://perma.cc/9NYW-YZW3>]. In 1993, following a series of public hearings, the Chamorro Language Commission “announced its decision to change the official spelling of ‘Chamorro’ to ‘Chamoru’ to conform to the Chamorro Standard Orthography” (the official spelling system for written Chamorro). Gina E. Taitano, *Chamorro vs. Chamoru*, GUAMPEDIA, <https://www.guampedia.com/chamorro-vs-chamoru> [<https://perma.cc/2G58-HBZ7>] (last visited Mar. 11, 2026). Proponents of the spelling “Chamoru” argue that the spelling “Chamorro” reflects Spanish orthography, and the spelling “Chamoru” represents “a conscious decision to take ownership of an otherwise borrowed name.” *Id.* However, the Twenty-second Guam Legislature mandated “Chamorro” as the official spelling through a 1994 law. *Id.* While “Chamorro” is the official spelling, I make the conscious decision to use “Chamoru” to refer to the

constitutional protections than my family members living in Guam. Chamorus are the “Indigenous people of Guam and the Northern Mariana Islands.”<sup>8</sup>

The Supreme Court determines on a case-by-case basis which rights are “fundamental” and thus extended to the territories.<sup>9</sup> For example, the Birthright Citizenship Clause of the Constitution does not apply to the territories.<sup>10</sup> Instead, citizenship for inhabitants of the territories is determined on a case-by-case basis, and individuals born in U.S. territories (with the exception of American Samoa) are U.S. citizens through acts of Congress, not the Constitution.<sup>11</sup> Citizenship status for inhabitants of ceded territories is “usually governed by the terms of the treaty between the respective countries and by any supplementary congressional legislation.”<sup>12</sup>

In addition to being deprived of birthright citizenship, residents of the territories experience disparate, second-class treatment by experiencing taxation without representation. While residents of the territories do not pay federal income tax, they are still responsible for paying other federal taxes, such as Social Security and Medicare.<sup>13</sup> Although subject to federal taxation, residents of the territories do not have the right to vote in presidential elections and lack meaningful representation in Congress, unlike citizens living in the fifty states.<sup>14</sup> Despite a lack of access to meaningful electoral participation and congressional representation, residents of the territories are still “subject to most federal laws.”<sup>15</sup>

The *Insular Cases* established the doctrine of incorporation, under which the full United States Constitution and Bill of Rights do not automatically extend to unincorporated territories; this framework continues to govern U.S. authority

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Indigenous people of Guam and the Northern Mariana Islands as my way of honoring my ancestors and denouncing Spanish colonization.

8. *Chamorro*, ENCYCLOPÆDIA BRITANNICA, <https://www.britannica.com/topic/Chamorro> [<https://perma.cc/4S4T-26LT>] (last visited Mar. 11, 2026).

9. *See, e.g., Dorr*, 195 U.S. at 148 (deciding that the right to a jury trial is not a “fundamental right” that extends to the territories).

10. *See Fitisemanu v. United States*, 1 F.4th 862, 864–65 (10th Cir. 2021) (holding that Congress has authority to decide whether Citizenship Clause applies to American Samoa), *cert. denied* 143 S. Ct. 362 (2022).

11. *Id.* at 865 (noting that Congress has not conferred American citizenship on the people of American Samoa); *see* Michael Milov-Cordoba, *Territorial Courts, Constitutions, and Organic Acts, Explained*, STATE CT. REP. (Jan. 6, 2025), <https://statecourtreport.org/our-work/analysis-opinion/territorial-courts-constitutions-and-organic-acts-explained> [<https://perma.cc/Y79A-N996>]; Alex Burness, *Americans by Name, Punished for Believing It*, BOLTS MAG. (Jan. 8, 2026), <https://boltsmag.org/prosecuted-for-voting-american-samoans-alaska> [<https://perma.cc/RYQ9-LFBL>] (describing prosecution of American Samoans residing in Alaska who attempted to vote in local elections because they were not considered U.S. citizens).

12. 14 C.J.S. *Citizens* § 8 (2025).

13. Tim Webber, *What Does Being a U.S. Territory Mean for Puerto Rico?*, NPR (Oct. 13, 2017, at 04:39 ET), <https://www.npr.org/2017/10/13/557500279/what-does-being-a-u-s-territory-mean-for-puerto-rico> [<https://perma.cc/CHN3-EXZH>].

14. Neil Weare, *Why the Insular Cases Must Become the Next Plessy*, HARV. L. REV. BLOG (Mar. 28, 2018), <https://harvardlawreview.org/blog/2018/03/why-the-insular-cases-must-become-the-next-plessy> [<https://perma.cc/8CNX-79R7>].

15. *See Citizenship Status in Territories of the United States*, BALLOTPEDIA, [https://ballotpedia.org/Citizenship\\_status\\_in\\_territories\\_of\\_the\\_United\\_States](https://ballotpedia.org/Citizenship_status_in_territories_of_the_United_States) [<https://perma.cc/LBA8-GCZ9>] (last visited Mar. 11, 2026).

over the territories today.<sup>16</sup> Despite being framed in legal terms, at their core, the plenary power doctrine and doctrine of incorporation are rooted not in the text of the Constitution but in racism, bigotry, white supremacy, and colonialism.

The *Insular Cases*' references to territorial residents as "alien races"<sup>17</sup> and "savage tribes"<sup>18</sup> mirrored the racist sentiment of the Court's decision in *Chae Chan Ping v. United States* (the *Chinese Exclusion Case*)<sup>19</sup>—the first case to articulate the plenary power doctrine, which granted Congress unlimited plenary power over immigration without being subject to judicial review.<sup>20</sup> Justice Stephen J. Field, in the *Chinese Exclusion Case*, held that laborers who are not citizens of the United States are "aliens" and the U.S. government may act by legislation to exclude aliens from its territory, "a proposition which [the Court] do[es] not think open to controversy."<sup>21</sup> Law professor Sherally Munshi analyzes the plenary power doctrine in her chapter "*The Courts of the Conqueror*": *Colonialism, the Constitution, and the Time of Redemption*, describing the "extraordinary power" of the plenary power doctrine to differentiate between citizen-insiders and foreign-outsiders, "to define who is an insider [and who is an] outsider," to determine who is entitled to citizenship and who is not, and to control "who is protected by rights and who is rendered rightless."<sup>22</sup>

The Court has extended the plenary power doctrine beyond its initial application in immigration to U.S. sovereignty over the territories from the Territory Clause of the Constitution, which states that "[t]he 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; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."<sup>23</sup> Christina D. Ponsa-Kraus, a Puerto Rican constitutional scholar and legal historian,<sup>24</sup> describes the doctrine of incorporation as "a judicial innovation designed for the purpose of squaring the Constitution's commitment to representative democracy with the Court's implicit conviction that nonwhite people from unfamiliar cultures were ill-suited to participate in a majority-white, Anglo-Saxon polity."<sup>25</sup> Ponsa-Kraus notes that the "raison d'être of the *Insular*

16. See Milov-Cordoba, *supra* note 11; see also *Downes v. Bidwell*, 182 U.S. 244, 287 (1901) (holding that Puerto Rico is "not a part of the United States within the revenue clauses of the Constitution").

17. *Downes*, 182 U.S. at 287.

18. *De Lima v. Bidwell*, 182 U.S. 1, 219 (1901) (McKenna, J., dissenting).

19. 130 U.S. 581, 606 (1889) (indicating that Congress considered Chinese immigrants to be people "who will not assimilate with us" and "dangerous to . . . peace and security").

20. Kit Johnson, *Chae Chan Ping at 125: An Introduction*, 68 OKLA. L. REV. 3, 3–4 (2015).

21. *Chae Chan Ping*, 130 U.S. at 589, 603.

22. Sherally Munshi, "*The Courts of the Conqueror*": *Colonialism, the Constitution, and the Time of Redemption*, in *LAW'S INFAMY: UNDERSTANDING THE CANON OF BAD LAW* 50, 67–68 (Austin Sarat et al. eds., 2021).

23. U.S. CONST. art. IV, § 3, cl. 2.

24. See Christina D. Ponsa-Kraus, COLUM. L. SCH., <https://www.law.columbia.edu/faculty/christina-d-ponsa-kraus> [<https://perma.cc/L27A-3TU7>] (last visited Mar. 11, 2026).

25. Christina Duffy Ponsa-Kraus, *The Insular Cases Run Amok: Against Constitutional Exceptionalism in the Territories*, 131 YALE L. J. 2449, 2455 (2022).

*Cases* was . . . to provide the constitutional foundation for perpetual American colonies.”<sup>26</sup>

Judge Juan R. Torruella, another leading scholar and prominent critic of the *Insular Cases*, has argued that the *Insular Cases* are akin to *Plessy v. Ferguson* by allowing Americans in unincorporated territories “to be treated unequally from those in the rest of the nation solely by reason of their geographical residence.”<sup>27</sup> Judge Torruella has called upon the Court to rectify “[o]ver one hundred years of denigrating colonial status” in the territories and that “[t]he Supreme Court, as it did with *Plessy*, must step forward to correct the wrong it created by sanctioning the *Insular Cases* and their progeny.”<sup>28</sup>

Addressing the unequal treatment of the territories is as important as ever, as the Supreme Court continues to uphold a regime of second-class status for residents of the territories. In April 2022, the Court in *United States v. Vaello Madero* held that Congress has authority to categorically exclude Puerto Rican residents from the Supplemental Security Income (SSI) program without violating the “equal-protection component of the Fifth Amendment’s Due Process Clause.”<sup>29</sup> In an 8–1 decision, the Supreme Court held that Congress is permitted, but not required, to extend SSI benefits to residents of Puerto Rico, and this was reviewed not under strict scrutiny but rational basis review.<sup>30</sup> The Court’s holding in *Vaello Madero* illuminates the larger issue of disparate treatment of residents of the territories, regardless of citizenship status.<sup>31</sup> This decision also shows the Court’s ability to determine that a right is “fundamental” for citizens living in the fifty states but not “fundamental” for residents of the territories—maintaining a legal system where one group is deprived of political and civil rights, otherwise known as a system of apartheid. Apartheid is the “implementation and maintenance of a system of legalized racial segregation in which one racial group is deprived of political and civil rights.”<sup>32</sup> Apartheid is often associated with the “former policy of segregation and political, social, and economic discrimination” against non-white residents in South Africa from the late 1940s through the mid-1990s.<sup>33</sup> Systems of apartheid continue to exist around the world, including in the U.S. territories, where residents are relegated to second-class status. Residents of

26. *Id.*

27. Juan R. Torruella, *Why Puerto Rico Does Not Need Further Experimentation with Its Future: A Reply to the Notion of “Territorial Federalism”*, 131 HARV. L. REV. F. 65, 66, 68–69 (2018) (footnote omitted).

28. Juan R. Torruella, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 29 U. PA. J. INT’L L. 283, 347 (2007).

29. See *United States v. Vaello Madero*, 596 U.S. 159, 162 (2022).

30. See *id.* at 160, 165–66.

31. See, e.g., Adam Liptak, *Supreme Court Looks at Puerto Rico’s Status in Case on Benefits*, N.Y. TIMES (Nov. 9, 2021), <https://www.nytimes.com/2021/11/09/us/supreme-court-puerto-rico-social-security.html>.

32. *Apartheid*, CORN. L. SCH.: LEGAL INFO. INST.: WEX, <https://www.law.cornell.edu/wex/apartheid> [<https://perma.cc/ZG5N-UUY2>] (last visited Mar. 11, 2026).

33. *Apartheid*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/apartheid> [<https://perma.cc/S88M-MDT2>] (last visited Mar. 11, 2026).

the U.S. territories are denied political and civil rights and subject to “a de jure and de facto condition of political apartheid.”<sup>34</sup>

Some legal scholars have suggested repurposing the *Insular Cases*, rather than overruling them, to “protect” the distinctive Indigenous cultures of the territories. Stanley Laughlin, an early proponent and defender of repurposing the *Insular Cases*, argues,

The genius of the [doctrine of the *Insular Cases*] is that it allows the insular areas to be full-fledged parts of the United States but, at the same time, recognizes that their cultures are substantially different from those of the mainland United States and allows some latitude in constitutional interpretation for the purpose of accommodating those cultures.<sup>35</sup>

When Laughlin writes that the territories’ cultures are “substantially different from those of the mainland,”<sup>36</sup> Laughlin engages in the same flawed rationale that differentiates between citizens of the mainland United States as insiders and the residents of the territories as outsiders. Laughlin’s logic is flawed in asserting that the *Insular Cases* allow the insular areas to be full-fledged parts of the United States. The territories are not “full-fledged”—they do not have an inherent right to self-governance and are subject to unfettered U.S. control.

The *Insular Cases*, and their extension of congressional plenary authority to the territories, exemplify the continuing project of political apartheid. Indigenous peoples in the territories have and continue to experience destruction because of the *Insular Cases*. For example, Guam was developed into a prominent U.S. military base after World War II—a decision Guam had no say in.<sup>37</sup> This military development significantly altered and destroyed Indigenous agricultural practices; now, Guam is forced to import most of its food.<sup>38</sup> Repurposing the *Insular Cases* would continue to subject the territories to second-class treatment and destruction. This is why the *Insular Cases* must be overruled, not merely repurposed.

Abolitionist theory challenges racial inequality, imperialism, and border fortification as the status quo,<sup>39</sup> making it an especially appropriate lens for analyzing territorial law. Overruling the *Insular Cases* and eliminating second-class status in the territories is thus necessary to fully realize a robust vision of democracy, which abolitionist theory seeks to achieve. While overruling the *Insular Cases*, by itself, is insufficient to fully dismantle an institution of American colonialism and imperialism, it would be a step in the right direction.

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34. See Torruella, *supra* note 28, at 347.

35. Stanley K. Laughlin, Jr., *Cultural Preservation in Pacific Islands: Still a Good Idea—and Constitutional*, 27 U. HAW. L. REV. 331, 374 (2005).

36. *Id.*

37. See Dirk Anthony Ballendorf & Sophie Foster, *Guam*, ENCYCLOPEDIA BRITANNICA (Mar. 11, 2026), <https://www.britannica.com/place/Guam> [<https://perma.cc/67PQ-2E8V>].

38. *Id.*

39. See Roberts, *supra* note 1, at 120–21.

This Note argues that viewing abolition of the *Insular Cases* as a non-reformist reform can help legal scholars theorize abolitionist struggles as matters of global justice, “interconnected to the movements to abolish the military-industrial complex, colonization and imperialism. The connections between decolonial and abolitionist struggles are deep and full of coalitional possibilities.”<sup>40</sup> According to abolitionist legal scholar Amna Akbar, a non-reformist reform “aim[s] to undermine the prevailing political, economic, social order, construct an essentially different one, and build democratic power toward emancipatory horizons.”<sup>41</sup> Overruling the *Insular Cases* is a non-reformist reform because, although it works within the constraints of the current legal system, it ultimately undermines the prevailing imperial order that the United States exercises over the territories. Undermining prevailing colonial and imperial norms is one of the very goals that abolition seeks to achieve.<sup>42</sup>

To make the case for overruling the *Insular Cases*, Part I of this Note sets the theoretical landscape by providing an overview of abolitionist thought, including an overview of Frederick Douglass’s constitutional philosophy and an analysis of law professor Dorothy Roberts’s abolition constitutionalism framework. Part II provides an overview of the *Insular Cases* and the doctrine of incorporation, which govern the contemporary treatment of the territories by the U.S. government. Part III draws on Roberts’s framework and recent judicial critiques, including Justice Neil Gorsuch’s, to argue for overruling the *Insular Cases*.

I write this Note as an Indigenous Chamoru advocating for a world where Chamoru people, and all Indigenous people of the territories, are freed from American colonial rule and are given the freedom to decide, for themselves, how to structure their government and how to use their own land and natural resources. I do not wish to propose a blanket solution for what the status of each territory should be. There are many political statuses ranging from statehood to independence, and as a Chamoru living on the mainland, it is not my place to decide what is in the best interest of all of the territories. There is no blanket solution. This Note ultimately seeks to advocate for a more robust vision of democracy by drawing upon abolitionist scholars to inform contemporary movements for political rights and Indigenous self-determination in the territories.

#### I. ABOLITION CONSTITUTIONALISM AND ABOLITION DEMOCRACY AS A FRAMEWORK FOR INDIGENOUS SELF-DETERMINATION

Conceptions of abolition democracy and abolition constitutionalism provide a helpful framework to make the case for overruling the *Insular Cases* as one step (of many) in extending full political, social, and civil rights to residents and Indigenous peoples of the territories. In order to unite abolitionist and anti-

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40. Jason Wu, *Abolitionist Struggles Are Also Matters of Global Justice*, TRUTHOUT (Apr. 28, 2021), <https://truthout.org/articles/abolitionist-struggles-are-also-matters-of-global-justice> [https://perma.cc/L5DR-S7RQ].

41. Amna A. Akbar, *Non-Reformist Reforms and Struggles over Life, Death, and Democracy*, 132 YALE L. J. 2497, 2507 (2023).

42. See Roberts, *supra* note 1, at 120.

colonial theory, this Part provides an overview of abolitionist legal scholarship, including the work of W.E.B. Du Bois, Angela Davis, Audre Lorde, Allegra McLeod, and Amna Akbar, who all further visions of abolition. These scholars provide a framework to interpret Frederick Douglass's constitutional philosophy and Dorothy Roberts's abolition constitutionalism, which both draw upon the Constitution itself to justify the principles of liberty and freedom. Uniting and putting these scholars in conversation with one another sets up the framework for Part III, which argues that drawing upon the Constitution itself can be used to overrule the *Insular Cases*.

#### A. FROM W.E.B. DU BOIS TO ALLEGRA MCLEOD: ABOLITION DEMOCRACY

W.E.B. Du Bois argues that “colonial imperialism [is] a primary determinant of war and violence.”<sup>43</sup> In 1935, he “coined the term ‘abolition democracy’” to describe the “ambition necessary to achieve a racially just society.”<sup>44</sup> A Columbia University-sponsored blog describes Du Bois's work as follows:

The ambition of abolition democracy required the construction of new institutions, new practices, new social relations that would have afforded freed Black persons the economic, political, and social capital to live as equal members of society. That vision of a full and uncompromising reconstruction of American society, as Du Bois documents in *Black Reconstruction*, was thwarted by White resistance during the decade following the end of the Civil War and ultimately abandoned with the political compromise of 1876 that resulted in the negotiated election of President Rutherford B. Hayes and the withdrawal of federal troops from the South.<sup>45</sup>

Like the thwarted Reconstruction that “would have afforded freed Black persons the economic, political, and social capital to live as equal members of society,”<sup>46</sup> the *Insular Cases* thwarted the promise of equal citizenship for the territories that were acquired after the Spanish-American War.<sup>47</sup>

Du Bois's theoretical framework of “abolition democracy” was “later interpreted by Angela Davis[] as a way [of] think[ing] critically about the different struggles for abolition, both historically and in their current context.”<sup>48</sup> “Building global justice movements are what Angela Davis calls intersectional solidarity—bringing struggles together to end systems of oppression and exploitation across

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43. George Steinmetz, *W.E.B. Du Bois as Theorist of Colonies and Empire*, U. MICH., <https://websites.umich.edu/~geostein/docs/Steinmetz%202008%20Du%20Bois%20theorist%20of%20colonialism.pdf>, [<https://perma.cc/YE5G-EURX>] (last visited Mar. 11, 2026).

44. Gayatri Chakravorty Spivak et al., *2/13 | Abolition Democracy*, COLUM. UNIV.: ABOLITION 13/13 (Oct. 15, 2020), <https://blogs.law.columbia.edu/abolition1313/2-13-abolition-democracy> [<https://perma.cc/352Q-B3PC>].

45. *Id.*

46. *Id.*

47. See Torruella, *supra* note 28, at 284 nn. 4–5, 285.

48. Spivak et al., *supra* note 44. See generally ANGELA Y. DAVIS, *ABOLITION DEMOCRACY BEYOND EMPIRE, PRISONS, AND TORTURE* (Greg Ruggiero ed., 2005).

national borders.”<sup>49</sup> This Note engages in the practice of intersectional solidarity by uniting the abolitionist struggles of the Reconstruction era and the Civil Rights Movement of the 1960s together with the abolitionist struggle against colonial rule of the territories to create a legal environment where the territories can demand action from political branches. As Audre Lorde once said,

There is no such thing as a single-issue struggle because we do not live single-issue lives. . . . Our struggles are particular, but we are not alone. . . . Black people have been here before us and survived. We can read their lives like signposts on the road and find . . . that each one of us is here because somebody before us did something to make it possible.”<sup>50</sup>

All of our struggles are particular, but are all rooted in underlying systems of racial capitalism, colonialism, and imperialism. Bringing together these global justice movements promotes necessary coalition-building with an objective that extends beyond abolishing particular systems to establishing a new freedom for us all.

Law professors Allegra McLeod and Amna Akbar later drew upon abolitionist themes present in Du Bois, Davis, and Lorde’s theoretical frameworks to illuminate how abolitionist struggles and anti-colonial movements can and should be theorized alongside one another. Allegra McLeod’s *Envisioning Abolition Democracy* provides a framework to envision justice in abolitionist terms, which “expos[es] the violence, hypocrisy, and dissembling entrenched in existing legal practices, while attempting to achieve peace, make amends, and distribute resources more equitably. Justice for abolitionists is an integrated endeavor to prevent harm, intervene in harm, obtain reparations, and transform the conditions in which we live.”<sup>51</sup> McLeod further argues that “such resistance involves addressing how mainstream economic practices and arrangements perpetrate violent theft every day in ways that can be thoroughly redressed only by democratizing political and economic institutions so as to prevent and respond to the highly unequal distribution of resources and life chances.”<sup>52</sup> Similarly, in Amna Akbar’s *Demands for a Democratic Political Economy*, Akbar writes,

We are living in a time of grassroots demands to transform our built environment and our relationships with one another and the earth. To abolish prisons and police, rent, debt, borders, and billionaires. To decommodify housing and healthcare and to decolonize land. To exercise more collective ownership over our collectively generated wealth. Some of us are reimagining the state. Others are dreaming of moving beyond it. But these are more than dreams. These are demands for a democratic political economy.<sup>53</sup>

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49. Wu, *supra* note 40.

50. Audre Lorde, *Learning from the 60s*, in *THE SELECTED WORKS OF AUDRE LORDE* 134, 138 (Roxanne Gay ed., 2020).

51. Allegra M. McLeod, *Envisioning Abolition Democracy*, 132 *HARV. L. REV.* 1613, 1615 (2019).

52. *Id.* at 1616.

53. Amna A. Akbar, *Demands for a Democratic Political Economy*, 134 *HARV. L. REV. F.* 90–91 (2020) (footnotes omitted).

Uniting the abolitionist theories of Du Bois, Davis, Lorde, McLeod, and Akbar creates a nuanced framework for abolitionists to build real-world alliances among the movements and struggles that each theorist describes. These abolitionist frameworks expose how the *Insular Cases*' preservation of colonial hierarchies parallels other systems of oppression, making their overruling a necessary step toward a more democratic political economy. Abolitionist organizing is aimed at remedying not only the historical struggles against slavery and its afterlives, but also the struggles against imperialism and its legacies of racial capitalism.<sup>54</sup>

B. FREDERICK DOUGLASS AND DOROTHY ROBERTS: ABOLITION CONSTITUTIONALISM

Frederick Douglass and Dorothy Roberts take a similar abolitionist approach—both draw upon the Constitution itself to justify principles of liberty and freedom. These very constitutional principles of liberty and freedom support territorial self-determination and overruling the *Insular Cases*.

1. Frederick Douglass and Early Abolitionism

Early radical abolitionists argued that slavery could not be reconciled with the Declaration of Independence and the idea of universal human rights.<sup>55</sup> They had broad conceptions of freedom, expanding beyond mere legal ownership of the self. Indeed, many abolitionists believed that freedom included the right to buy land, be reunited with family, and live a Christian life.<sup>56</sup> According to legal historian Paul Finkelman, the framers of the Constitution believed that life, liberty, and the pursuit of happiness for white Americans was only possible *because* they were not applied to Black people.<sup>57</sup>

William Lloyd Garrison, a radical abolitionist, believed that the northern states had an obligation and duty to secede from the southern states and that “participating in elections would dignify a system that was rotten to the core.”<sup>58</sup> Those who subscribed to this view were referred to as the Garrisonians.<sup>59</sup> However, in the 1850s, Frederick Douglass departed from the Garrisonians and began utilizing the Constitution as a tool for abolition, arguing the Constitution was actually a “glorious

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54. McLeod, *supra* note 51, at 1617.

55. See Paul Finkelman, *The Centrality of the Peculiar Institution in American Legal Development*, 68 CHI.-KENT. L. REV. 1009, 1016–18 (1993).

56. See Hilary Moss, *Book Reviews*, 97 J. AM. HIST. 495, 495 (2010) (reviewing CATHERINE ADAMS & ELIZABETH H. PLECK., *LOVE OF FREEDOM: BLACK WOMEN IN COLONIAL AND REVOLUTIONARY NEW ENGLAND* (2010)).

57. See Finkelman, *supra* note 55, at 1011.

58. Nicholas Guyatt, *How Proslavery Was the Constitution?*, N.Y. REV. BOOKS (June 6, 2019), <https://www.nybooks.com/articles/2019/06/06/how-proslavery-was-the-constitution/> (reviewing SEAN WILLENZ, *NO PROPERTY IN MAN: SLAVERY AND ANTISLAVERY AT THE NATION'S FOUNDING* (2018)).

59. See *id.*

liberty document”<sup>60</sup> and, despite the Constitution’s proslavery consequences, the text actually contained principles “entirely hostile to the existence of slavery.”<sup>61</sup> Douglass argued that the Constitution is an anti-slavery and abolitionist document, highlighting the fact that the word “slavery” was not explicitly mentioned in the text.<sup>62</sup> Douglass’s use of the Constitution as a tool for abolition is an example of a non-reformist reform by working within the confines of an existing system—the Constitution—to undermine the prevailing political, economic, social order of the time, which subjugated Black people. He used the Constitution to build democratic power for Black people with the ultimate goal of a more robust vision of democracy and a demand for a democratic political economy.

## 2. Dorothy Roberts and Abolition Constitutionalism

While many contemporary abolitionists have repudiated the Constitution altogether,<sup>63</sup> Dorothy Roberts builds on Douglass’s approach by acknowledging that the dominant reading of both the original Constitution and Reconstruction Amendments has been anti-abolitionist, yet arguing that there is good reason for contemporary abolitionists to, nonetheless, engage in abolition constitutionalism.<sup>64</sup> Roberts describes abolition as “‘a form of consciousness,’ ‘a theory of change,’ ‘a long-term political vision,’ and ‘a spiritual journey.’”<sup>65</sup> Roberts draws upon the Reconstruction abolitionists’ interpretation of the Constitution to provide a framework for dismantling historical forms of oppression. Roberts explains that, in 1865, Congress enacted the Thirteenth Amendment, which abolished slavery except as punishment for crime.<sup>66</sup> In response to white efforts to inflict terror upon newly freed Black people and reinstate white rule, Radical Republicans passed the Civil Rights Act of 1866 and, in 1868, passed the Fourteenth Amendment, which provided for equal protection under the law and extended citizenship to formerly enslaved people.<sup>67</sup> The principle of equal citizenship inherent in the Fourteenth Amendment exposes the contradiction of territorial residents being denied full constitutional rights.

Roberts highlights the revolutionary nature of early abolition constitutionalism, explaining that the “language of the Fourteenth Amendment can be traced to specific speeches and writings of leading antislavery advocates who developed an abolition constitutionalism in the preceding decades.”<sup>68</sup> Antislavery abolitionists directly engaged with the Constitution to make the case for abolishing the institution of slavery; this work was necessary to develop a reading of the

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60. *Id.*

61. *Id.*

62. See James Oakes, *Frederick Douglass’s Constitution*, 111 CALIF. L. REV. 1943, 1945–47, 1951 (2023).

63. Roberts, *supra* note 1, at 107.

64. See *id.* at 8–9.

65. *Id.* at 6 (footnotes omitted).

66. *Id.* at 62.

67. *Id.* at 63, 74–75.

68. *Id.* at 63 (citations omitted).

constitutional text that rendered “human bondage incompatible with fundamental constitutional principles” and allowed for amending the text of the Constitution when those constitutional principles were insufficient to end slavery.<sup>69</sup>

Dorothy Roberts describes another abolitionist reading of the Constitution extending birthright citizenship to African Americans, “setting the stage for the [later adopted] Fourteenth Amendment’s explicit provision.”<sup>70</sup> Roberts uncovers a lesser-known reading of the Constitution, writing,

Even more neglected in constitutional history than these white abolitionists are black Americans who theorized and defended claims to equal citizenship. Although the fiery orator and prominent antislavery activist Frederick Douglass . . . remains well known, other African Americans whose legal arguments contributed to antebellum abolitionist constitutionalism have received far less attention.<sup>71</sup>

An abolitionist reading of the Constitution also calls into question how the Birthright Citizenship Clause in the Fourteenth Amendment does not extend to the territories,<sup>72</sup> subjecting residents of the territories to second-class status. Essentially, Roberts argues for a reading of the Constitution that is consistent with a higher standard of justice, writing,

The Constitution is not the standard of justice we should faithfully uphold; equal citizenship is. We know what democracy means not by immersing ourselves in the Constitution’s language but by imagining what it would mean for black people to be treated like free and equal human beings. The purpose of constitutional fidelity is to insist that constitutional interpretations abide by this higher standard of justice.<sup>73</sup>

Roberts suggests that justice must be rooted in equal citizenship and political power and, by Roberts’s standard, the *Insular Cases*’ denial of full constitutional rights to territorial residents starkly violates the principle of equal citizenship. Like how early abolitionists used the Constitution as an instrument to achieve a higher principle of justice,<sup>74</sup> and as Dorothy Roberts continues to use the Constitution as an abolitionist tool today,<sup>75</sup> this same constitutional philosophy can be applied to overrule the *Insular Cases* and advocate for a robust vision of democracy in the territories. This constitutional philosophy does not necessarily require statehood for the territories. Rather, this Note argues that this higher principle of justice requires the United States to view the territories as its equals, rather than as its colonies.

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69. *Id.* at 54.

70. *Id.* at 56.

71. *Id.* at 57.

72. See *Fitisemanu v. United States*, 1 F.4th 862, 864–65 (10th Cir. 2021), *cert. denied* 143 S. Ct. 362 (2022).

73. Roberts, *supra* note 1, at 109.

74. See *supra* Section I.B.1.

75. See *supra* notes 64–73 and accompanying text.

## II. THE *INSULAR CASES* & DOCTRINE OF INCORPORATION: POLITICAL APARTHEID IN THE TERRITORIES

Conceptions of abolition democracy and global justice should inform movements for democracy in the territories. Abolitionist scholars from Du Bois and Davis to Douglass and Roberts provide a useful framework to make the constitutional argument for overruling the *Insular Cases* as inconsistent with the text and principles of the Constitution.

This Part provides an overview of the *Insular Cases* and the doctrine of incorporation, drawing upon law professor Sherrily Munshi's work criticizing the plenary power doctrine, and summarizes how the United States currently exercises authority over the territories. The subsequent Part also draws upon the Constitution itself to justify overruling the *Insular Cases* as unconstitutional and inconsistent with the text, even under originalist and textualist understandings of the document. It ends with an explanation of what overruling the *Insular Cases* would mean for the territories and the additional steps necessary to fully realize a robust vision of democracy for the territories.

### A. THE *INSULAR CASES* AND THE DOCTRINE OF INCORPORATION

The *Insular Cases* were a series of Supreme Court decisions in the early twentieth century that created a legal framework for how the United States would govern newly acquired territories after the Spanish-American War. The early *Insular Cases* arose due to commercial operations disputes with newly acquired territories, which raised constitutional questions regarding the relationship between the United States and its territories.<sup>76</sup> These cases led to a framework that promoted global expansion by granting unfettered authority to Congress over the territories.<sup>77</sup> *Downes v. Bidwell*, decided in 1901, is one of the first *Insular Cases* and it was decided by the same Court that, only a few years earlier, had upheld racial segregation in *Plessy v. Ferguson*.<sup>78</sup> *Downes* held that the United States could acquire and hold a territory without immediately incorporating it as a State.<sup>79</sup> In *Plessy v. Ferguson*, the Court had held that public accommodations segregated on the basis of race do not violate the Fourteenth Amendment's Equal Protection Clause, as long as the accommodations are "separate but equal."<sup>80</sup> In both the *Insular Cases* and *Plessy v. Ferguson*, the Supreme Court used a rationale that distinguishes and separates insiders from outsiders, relying on conceptions of citizenship at the expense of Black and Brown communities. In particular, the *Insular Cases* rely on conceptions of citizenship at the expense of the Indigenous populations living in the territories that were acquired

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76. Torruella, *supra* note 28, at 300. The *Insular Cases* include the following cases: *Downes v. Bidwell*, 182 U.S. 244 (1901); *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); and *Huus v. N.Y. & P.R. S.S. Co.*, 182 U.S. 392 (1901).

77. See Munshi, *supra* note 22, at 73.

78. See *Plessy v. Ferguson*, 163 U.S. 537, 550–51 (1896); Torruella, *supra* note 28, at 300–03.

79. See *Downes*, 182 U.S. at 286.

80. See *Plessy*, 163 U.S. at 550–51.

after the Spanish-American War.<sup>81</sup> Ultimately, *Plessy* was overturned,<sup>82</sup> but its rationale lives on in the *Insular Cases*. Because of the consequences of the Court's rationale, overruling the *Insular Cases* is the first step to remedy the marginalization of communities in the territories. Under the *Insular Cases*' framework, all of the rights and protections of the Constitution were not automatically extended unless the territory had been "formally 'incorporated' by an act of Congress."<sup>83</sup> Meanwhile, citizens of the fifty states are automatically afforded all of the rights and protections of the Constitution. The *Insular Cases* created a new status of "unincorporated" territories, and the territories would keep that status until Congress deemed the territory ready for statehood and decided to incorporate it.<sup>84</sup>

*Downes v. Bidwell* articulates the *Insular Cases*' doctrine of incorporation.<sup>85</sup> The plaintiff in *Downes* paid a tax on goods shipped from Puerto Rico, which was imposed under a federal act that created a civil government for the territory of Puerto Rico.<sup>86</sup> The plaintiff sued a New York tax collector and argued that when Puerto Rico became a part of the United States after the Spanish-American War, it required uniform congressional taxation.<sup>87</sup> The Court held that Puerto Rico did not automatically become a part of the United States and specified that Congress has the discretion to determine whether a territory is "fit" to be incorporated into the United States, noting:

[W]here a treaty contains no conditions for incorporation, and, above all, where it not only has no such conditions, but expressly provides to the contrary, incorporation does not arise until in the wisdom of Congress it is deemed that the acquired territory has reached that state where it is proper that it should enter into and form a part of the American family.<sup>88</sup>

If Congress is not ready to incorporate a territory, the *Downes* ruling allows Congress to establish a temporary government that is not subject to all of the restrictions of the U.S. Constitution.<sup>89</sup> *Downes* extended broad plenary authority to Congress over territories to determine the civil rights and political status of the newly acquired territories after the Spanish-American War, particularly the Philippines, Puerto Rico, and Guam.<sup>90</sup> Justice Edward D. White concurred but suggested that "for the legislative department, in the exercise of its discretion, to

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81. See Torruella, *supra* note 28, at 285–86; *Plessy*, 163 U.S. at 550–52.

82. *Brown v. Bd. of Educ.* 347 U.S. 483, 494–95 (1954). See also *Plessy's Place in the List of Supreme Court Decisions*, NAT'L CONST. CTR. (May 18, 2024), <https://constitutioncenter.org/blog/plessys-place-in-the-list-of-supreme-court-decisions> [<https://perma.cc/B8GB-HA4J>].

83. Munshi, *supra* note 22, at 73.

84. See Dardani, *supra* note 3, at 62.

85. See *Downes v. Bidwell*, 182 U.S. 244, 346 (1901) (Gray, J., concurring).

86. See *id.* at 247.

87. See *id.* at 247, 249.

88. *Id.* at 339 (White, J., concurring).

89. See *id.* at 250–51.

90. See *id.*; Munshi, *supra* note 22, at 67–68; *The Spanish-American War, 1898*, U.S. DEP'T OF STATE: OFF. OF THE HISTORIAN, <https://history.state.gov/milestones/1866-1898/spanish-american-war> [<https://perma.cc/X276-LRUE>] (last visited Mar. 11, 2026).

accept a cession of and permanently hold territory which is not intended to be incorporated” may constitute “a violation of duty under the Constitution.”<sup>91</sup>

Justice John M. Harlan—who also dissented in *Plessy*<sup>92</sup>—criticized the majority in *Downes* for allowing Congress to exercise authority beyond the bounds of the Constitution, comparing the congressional plenary authority to monarchies and despotism.<sup>93</sup> Harlan argued that all government power is subject to the Constitution, the supreme law of the land.<sup>94</sup> He reasoned that only “[m]onarchical and despotic governments”<sup>95</sup> are not controlled by a written constitution and have the discretion to exert power over newly acquired territories in any way they please. Harlan asserted that by allowing Congress to exercise extra-constitutional power over its territories, this “engraft[s] upon our republican institutions a colonial system such as exists under monarchical governments.”<sup>96</sup> Harlan’s dissent illuminates and critiques how the *Insular Cases* imported colonial logic and reasoning into American constitutional law, legitimizing a system of second-class governance that persists today.

*De Lima v. Bidwell* is another prominent case in the *Insular Cases* which helped to establish the doctrine of incorporation. In *De Lima*, an importer from Puerto Rico sought recovery of duties paid on the goods brought from Puerto Rico into the port of New York.<sup>97</sup> Justice Henry B. Brown’s *De Lima* opinion held that the Constitution confers power to make treaties upon the U.S. government and that the government has the power to acquire territories “by conquest or by treaty”,<sup>98</sup> Puerto Rico became a territory of the United States upon ratification of the Treaty of Paris “although not an organized territory in the technical sense of the word.”<sup>99</sup> By establishing permanent sovereignty of the U.S. government over Puerto Rico, Puerto Rico no longer existed as a foreign country and became a domestic territory of the United States.<sup>100</sup> Justice Brown seemed opposed to the idea that Congress may hold a territory indefinitely; however, the doctrine of incorporation in the *Insular Cases* prevailed.<sup>101</sup> Justice Brown wrote that the notion that a territory may be held indefinitely by the United States is “pure judicial legislation” and is unwarranted by the Constitution.<sup>102</sup>

In his dissenting opinion, Justice Joseph McKenna argued that Puerto Rico was not incorporated into the United States because of the treaty with Spain and “instead of providing for incorporating the ceded territory into the United States

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91. *Downes*, 182 U.S. at 343–44 (White, J., concurring).

92. Torruella, *supra* note 28, at 302.

93. *See Downes*, 182 U.S. at 380 (Harlan, J., dissenting).

94. *Id.*

95. *Id.*

96. *Id.*

97. *See De Lima v. Bidwell*, 182 U.S. 1, 2 (1901).

98. *Id.* at 174, 195–96.

99. *Id.* at 196.

100. *See id.* at 197–200.

101. *See id.* at 197–98.

102. *Id.* at 198.

... [the treaty] expressly declares that the status of the ceded territory is to be determined by Congress.”<sup>103</sup> He mirrored popular white supremacist sentiment<sup>104</sup> of the era when he opined that, given Congress’s ability to determine territorial status, “the danger of the nationalization of savage tribes cannot arise.”<sup>105</sup> McKenna’s dissent in *De Lima* would become the foundation for the contemporary doctrine of incorporation that remains to this day.<sup>106</sup>

In *Dorr v. United States*, the Court applied the doctrine of incorporation to affirm a conviction of libel without a right to a jury trial.<sup>107</sup> The Court, citing *Hawaii v. Mankichi* (an *Insular Case* decided in 1903),<sup>108</sup> held that only the most fundamental privileges and immunities contained in the Bill of Rights apply to unincorporated territories.<sup>109</sup> The Court concluded that the right to a trial by jury and presentment by grand jury are “not fundamental in their nature.”<sup>110</sup> By labeling jury trial rights as non-fundamental, the Court gave itself broad discretion to pick and choose which rights applied to territorial residents. Munshi’s scholarship provides another example of how the doctrine of incorporation granted certain constitutional rights to inhabitants of the fifty states, while not applying to inhabitants of the newly acquired territories after the Spanish-American War,

In territories that had not been incorporated or granted statehood, only “fundamental” constitutional protections would apply. Accordingly, people living in Alaska Territory were guaranteed Sixth Amendment rights to a trial by jury in criminal cases, but people living in Puerto Rico were not. Alaska Territory, with its vast resources and sparse population, had been “incorporated” by treaty and legislation. But Congress had shown no interest in granting statehood to Puerto Rico.<sup>111</sup>

Ultimately, the *Insular Cases* established the following: 1) “the Treaty of Paris trump[s] the Constitution in determining the civil rights of the inhabitants of the former Spanish islands and the status of these territories”; 2) the Territory Clause is the source of Congress’s plenary powers over U.S. territories; 3) the Constitution does not fully apply to unincorporated territories; 4) only “fundamental” rights apply to unincorporated territories, determined by the Supreme

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103. *Id.* at 214 (McKenna, J., dissenting).

104. See Ried E. Mackay & Joe Feagin, “*Merciless Indian Savages*”: Deconstructing Anti-Indigenous Framing, 8 SOCIO. RACE & ETHNICITY 518, 520, 530 (2022) (noting that “Native Americans have long been framed and rationalized as unlike whites and savage, primitive, and even devil-servants”).

105. *De Lima*, 182 U.S. at 219 (McKenna, J., dissenting).

106. Torruella, *supra* note 28, at 304.

107. See 195 U.S. 138, 149 (1904).

108. See *Hawaii v. Mankichi*, 190 U.S. 197, 198, 218 (1903) (holding that a plaintiff who was not indicted by a grand jury and was found guilty of manslaughter by nine out of twelve jurors did not have his constitutional rights violated because the right to a grand jury and unanimous vote by a jury are not fundamental in their nature, but concern merely a method of procedure).

109. See *Dorr*, 195 U.S. at 144–45 (quoting *Mankichi*, 190 U.S. at 217–18).

110. *Id.* at 145.

111. Munshi, *supra* note 22, at 73.

Court on a case-by-case basis, and 5) all territories that the United States acquired before the Spanish-American War would be “incorporated” and subject to the full application of the Constitution.<sup>112</sup> As a result, residents of the U.S. territories have been subject to political apartheid and second-class status. The *Insular Cases* codified a second-class constitutional status and represent the very colonial logic that abolition constitutionalism seeks to dismantle.

#### B. THE CURRENT STATE OF UNITED STATES AUTHORITY OVER THE TERRITORIES

Today, unincorporated territories are subject to the broad plenary power of Congress.<sup>113</sup> Under the plenary power doctrine, residents of the unincorporated territories do not have an inherent right to self-governance. Rather, Congress has the authority to establish a civil government for the territories and the territories do not have the inherent right to establish their own government without congressional approval.<sup>114</sup> Courts have interpreted Congress’s plenary authority over territories from the Territory Clause of the Constitution, which states that “[t]he 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; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.”<sup>115</sup> While Congress has broad authority over the territories, it is not unlimited—regulation of the territories must comport with what the *Insular Cases* refer to as the fundamental principles of justice that are “the basis of all free government.”<sup>116</sup> However, the “fundamental principles of justice” standard does not amount to much of a limitation on Congress’s ability to limit the rights of the territories. The Bill of Rights is not included in these fundamental principles of justice.<sup>117</sup> Nor is the Equal Protection Clause of the Fourteenth Amendment, which requires that statutes that discriminate based on suspect classifications (race, religion, national origin, and alienage) or a quasi-suspect classification (sex), will be subject to heightened judicial scrutiny.<sup>118</sup> Under the Territory Clause, Congress is permitted to treat territories differently from the States, as long as there is a rational basis for doing so.<sup>119</sup> Because of the *Insular Cases* and its creation of the doctrine of incorporation,

112. Juan R. Torruella, *Ruling America’s Colonies: The Insular Cases*, 32 YALE L. & POL’Y REV. 57, 74 (2013).

113. 86 C.J.S. *Territories* § 15.

114. *Id.*; see also *Guam v. Guerrero*, 290 F.3d 1210, 1214 (9th Cir. 2002) (holding that Guam has “no inherent right to govern itself” and that “Congress has the power to legislate directly for Guam” and may “establish a government for Guam subject to congressional control”).

115. U.S. CONST. art. IV, § 3, cl. 2; *Fitisemanu v. United States*, 1 F.4th 862, 877 n.19 (10th Cir. 2021), *cert. denied* 143 S. Ct. 362 (2022) (“Article IV vests authority over the territories squarely in the hands of Congress.”).

116. *Dorr v. United States*, 195 U.S. 138, 147 (1904).

117. See *id.* at 144–45.

118. *Suspect Classification*, CORN. L. SCH.: LEGAL INFO. INST.: WEX, [https://www.law.cornell.edu/wex/suspect\\_classification](https://www.law.cornell.edu/wex/suspect_classification) [<https://perma.cc/34WE-2UP2>] (last visited Mar. 11, 2026); see, e.g., *Loving v. Virginia*, 388 U.S. 1, 11 (1967). While the Fourteenth Amendment applies to the states, the Supreme Court has interpreted the Due Process Clause of the Fifth Amendment to require equal protection from the federal government as well. See *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

119. 86 C.J.S. *Territories* § 15 (2025).

the territories do not have uniform citizenship status or voting rights—these are determined by Congress.<sup>120</sup>

The territories have varying organization and incorporation statuses. Guam and the U.S. Virgin Islands are unincorporated, though organized territories, meaning that some parts of the Constitution are applied to their residents through an organic act, which confers powers of government upon a territory by an act of Congress.<sup>121</sup> American Samoa is an unincorporated and unorganized territory, “meaning that only certain parts of the U.S. Constitution apply to its residents,” and Congress has not enacted an organic act establishing a system of government for the territory.<sup>122</sup> The Northern Mariana Islands and Puerto Rico are unincorporated territories and commonwealths of the United States, meaning both are organized U.S. insular areas that have established a more developed relationship with the federal government, “embodied in a written mutual agreement.”<sup>123</sup> Despite these varying organization statuses, all of these territories remain unincorporated and subject to second-class constitutional treatment.

The territories also have varying voting rights statuses. Residents of Guam, Puerto Rico, the U.S. Virgin Islands, American Samoa, and the Northern Mariana Islands may not vote in federal elections but may vote in local elections and elections for a non-voting delegate to represent the territory in Congress’s House of Representatives.<sup>124</sup> While delegates “may serve on Committees, speak on the U.S. House floor, introduce bills, and offer amendments,” they are not permitted to vote while conducting business on a committee or vote on the final passage of legislation.<sup>125</sup> This means that, although they can introduce bills, their inability to vote on final passage leaves territorial residents without meaningful representation in the federal lawmaking process.

In sum, the territories are not entitled to the Constitution’s guarantee of Birthright Citizenship and are deprived of the right to meaningfully vote and participate in democracy as a result of the *Insular Cases*. This dual system of treatment (citizens of the fifty states being treated one way, and residents of the

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120. See Munshi, *supra* note 22, at 68.

121. See *Citizenship Status in Territories of the United States*, *supra* note 15; see also *Organic Act*, THE L. DICTIONARY, <https://thelawdictionary.org/organic-act> [<https://perma.cc/JNZ5-CN6E>] (last visited Mar. 11, 2026).

122. See *Citizenship Status in Territories of the United States*, *supra* note 15.

123. See *id.*; *Definitions of Insular Area Political Organizations*, *supra* note 4.

124. See *Citizenship Status in Territories of the United States*, *supra* note 15.

125. See *United States Congressional Non-voting Members*, BALLOTPEdia, [https://ballotpedia.org/United\\_States\\_congressional\\_non-voting\\_members](https://ballotpedia.org/United_States_congressional_non-voting_members) [<https://perma.cc/9TEB-KTLQ>] (last visited Mar. 11, 2026). The once majority Black city of the District of Columbia has a similar status, though American residents of the District may vote for President in national elections and enjoy the same constitutional and statutory rights as Americans in the fifty states. See *Washington DC Voting Rights Amendment*, CORN. L. SCH.: LEGAL INFO. INST.: WEX, [https://www.law.cornell.edu/wex/washington\\_dc\\_voting\\_rights\\_amendment](https://www.law.cornell.edu/wex/washington_dc_voting_rights_amendment) [<https://perma.cc/L53E-ZTTS>] (last visited Mar. 11, 2026); JOSEPH V. JAROSCAK, CONG. RSCH. SERV., IF11443, DISTRICT OF COLUMBIA VOTING REPRESENTATION IN CONGRESS: OVERVIEW OF PROPOSALS 1 (2024); *African American Heritage*, DC.GOV: OFF. OF PLANNING., <https://planning.dc.gov/page/african-american-heritage> [<https://perma.cc/F83K-KRLD>] (last visited Mar. 11, 2026).

territories being treated another) is effectively political apartheid and a contemporary version of “separate but equal,” which was struck down in *Brown v. Board of Education*.<sup>126</sup>

### III. USING THE CONSTITUTION TO OVERRULE THE *INSULAR CASES*

Legal scholars and Justice Neil Gorsuch have condemned the *Insular Cases* as unconstitutional and rooted in racism.<sup>127</sup> Even under an originalist and textualist interpretation of the Constitution, the *Insular Cases* are inconsistent with the Constitution. Thus, Dorothy Roberts’s abolitionist constitutionalism framework is a helpful tool to argue for the Constitution as an anti-colonial document in the context of the U.S. territories. Like Douglass’s argument that the word “slavery” is not explicitly included in the text of the Constitution (prior to the enactment of the Thirteenth Amendment which abolished slavery),<sup>128</sup> the text of the Constitution does not mention “unincorporated” or “incorporated” territories. Together, Roberts’s abolitionist constitutionalism and originalist critiques converge to reveal that the *Insular Cases* are constitutionally baseless and morally indefensible, supporting the proposition that the *Insular Cases* must be overruled, not merely reposed.

This Part shows how both originalist and abolitionist readings reject the *Insular Cases* as extraconstitutional. Justice Gorsuch’s concurrence in *United States v. Vaello Madero* takes an originalist approach and mirrors Justice Harlan’s dissent in *Downes v. Bidwell* to highlight how the Court has created an extraconstitutional power of the United States over the territories.<sup>129</sup> This Part puts legal scholars from the territories into conversation with one another to highlight the fundamental flaws of the *Insular Cases*—Judge Torruella was a Puerto Rican federal judge “who championed the rights of his fellow Puerto Ricans,”<sup>130</sup> Adriel Derieux “was born and raised in Puerto Rico,”<sup>131</sup> Neil Weare was raised in Guam,<sup>132</sup> and Christina Ponsa-Kraus was raised in Puerto Rico.<sup>133</sup>

#### A. ORIGINALIST AND TEXTUALIST ARGUMENTS

Justice Gorsuch, in his 2022 concurrence in *United States v. Vaello Madero*, makes the case for a constitutional interpretation that supports overruling the

126. Torruella, *supra* note 27, at 68; *Brown v. Bd. of Educ.* 347 U.S. 483, 494–95 (1954)

127. See *infra* Section III.A.

128. See *supra* Oakes, note 62, at 1947, 1951.

129. See *infra* notes 134–38 and accompanying text; *Downes v. Bidwell*, 182 U.S. 244, 380 (1901) (Harlan, J., dissenting).

130. Sam Roberts, *Juan Torruella, Groundbreaking U.S. Appeals Judge, Dies at 87* (Oct. 28, 2020), <https://www.nytimes.com/2020/10/28/us/juan-torruella-groundbreaking-us-appeals-judge-dies-at-87.html>.

131. *How I Got Here: Adriel I. Cepeda Derieux '10*, COLUM. L. SCH. (Aug. 21, 2024), <https://www.law.columbia.edu/news/archive/how-i-got-here-adriel-i-cepeda-derieux-10> [https://perma.cc/6QQJ-LXDY].

132. *Who We Are: Neil Weare, President*, RIGHT TO DEMOCRACY, <https://www.righttodemocracy.us/about#neilweare> (last visited Mar. 11, 2026).

133. *Christina D. Ponsa-Kraus*, *supra* note 24.

*Insular Cases*.<sup>134</sup> In *Vaello Madero*, the Court held that Congress has the authority to categorically exclude Puerto Rican residents from the Supplemental Security Income program without violating the equal protection component of the Fifth Amendment's Due Process Clause.<sup>135</sup> Justice Gorsuch, in concurrence, contends,

The flaws in the *Insular Cases* are as fundamental as they are shameful. Nothing in the Constitution speaks of “incorporated” and “unincorporated” Territories. Nothing in it extends to the latter only certain supposedly “fundamental” constitutional guarantees. Nothing in it authorizes judges to engage in the sordid business of segregating Territories and the people who live in them on the basis of race, ethnicity, or religion.<sup>136</sup>

Justice Gorsuch explains that a century ago, the *Insular Cases* held that the federal government could exercise unfettered power over Puerto Rico and other territories “largely without regard to the Constitution,” and emphasizes that “[it] is past time to acknowledge the gravity of this error and admit what we know to be true: The *Insular Cases* have no foundation in the Constitution and rest instead on racial stereotypes. They deserve no place in our law.”<sup>137</sup>

The *Insular Cases*' stark departure from the Constitution's original meaning has never been a secret, as Justice Gorsuch emphasizes. He writes: “[e]ven commentators at the time understood that the notion of territorial incorporation was a thoroughly modern invention. The *Insular Cases* deviated, too, from this Court's prior and longstanding understanding of the Constitution.”<sup>138</sup> Justice Harlan's dissent in *Downes v. Bidwell* supports Justice Gorsuch's argument that the Court understood that the *Insular Cases* created an extraconstitutional power of the United States over the territories.<sup>139</sup> Justice Gorsuch criticizes the logic of the *Insular Cases*, posing the following questions,

What provision of the Constitution could any judge rightly declare less than fundamental? On what basis could any judge profess the right to draw distinctions between incorporated and unincorporated Territories, terms nowhere mentioned in the Constitution and which in the past have turned on bigotry? There are no good answers to these bad questions.<sup>140</sup>

While Justice Gorsuch has been a staunch proponent of overruling the *Insular Cases*, the Supreme Court has, nonetheless, refused to revisit the constitutionality

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134. See *United States v. Vaello Madero*, 596 U.S. 159, 180 (2022) (Gorsuch, J., concurring).

135. *Id.* at 164–66.

136. *Id.* at 184–85 (Gorsuch, J., concurring).

137. *Id.* at 180 (Gorsuch, J., concurring); Justice Gorsuch has shown a similar concern for rectifying treatment of Indigenous people under the Indian Child Welfare Act (ICWA). See *Haaland v. Brackeen*, 599 U.S. 255, 297 (2023) (Gorsuch, J., concurring).

138. *Vaello Madero*, 596 U.S. at 185 (Gorsuch, J., concurring).

139. See *Downes v. Bidwell*, 182 U.S. 244, 380 (1901) (Harlan, J., dissenting).

140. *Vaello Madero*, 596 U.S. at 187 (Gorsuch, J., concurring).

of the *Insular Cases*. The Supreme Court denied a petition for a writ of certiorari in *Fitisemanu v. United States*, a Tenth Circuit case holding that citizens of American Samoa were not birthright citizens of the United States by virtue of the Citizenship Clause of the Fourteenth Amendment.<sup>141</sup> In *Fitisemanu*, a Utah resident who was born in American Samoa, argued that he was a non-citizen U.S. national entitled to birthright citizenship because he was born in an unincorporated territory.<sup>142</sup> The Tenth Circuit rejected the argument that the Citizenship Clause of the Fourteenth Amendment automatically extends to American Samoa by virtue of being an unincorporated territory. The Tenth Circuit applied the doctrine of the *Insular Cases*, recognizing Congress's plenary authority and preeminent role in determining citizenship for unincorporated territorial lands; it clarified that courts play a "subordinate role in this process."<sup>143</sup> Though the Supreme Court has declined to revisit the *Insular Cases*, other notable legal scholars continue to advocate for overruling the *Insular Cases*.

Echoing Justice Harlan's dissent in the *Insular Cases*, Judge Torruella has condemned the *Insular Cases* as lacking a constitutional foundation, resulting in "'pure judicial legislation' . . . contrary to longstanding constitutional jurisprudence and historical precedents . . ."<sup>144</sup> As discussed earlier, the *Insular Cases* have effectively created a system of political apartheid in the territories.<sup>145</sup> Residents of the U.S. territories are denied political and civil rights and subject to what Judge Torruella refers to as a "constitutional antediluvian anachronism that has created a de jure and de facto condition of political apartheid for the U.S. citizens that reside in [the U.S. territories]."<sup>146</sup> Judge Torruella offers solutions to unequal treatment and political apartheid, arguing that the territories should be treated equally and on the same footing as the states.<sup>147</sup> Judge Torruella argues,

[I]t is up to the courts as guardians of the Constitution, and as the originators of this unequal treatment when they validated it in the *Insular Cases*, to correct this condition. As the Court said in *United States v. Carolene Products Co.*: "[P]rejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied upon to protect minorities, and which may call for a correspondingly more searching judicial inquiry."<sup>148</sup>

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141. See *Fitisemanu v. United States*, 1 F.4th 862, 864–65 (10th Cir. 2021), cert. denied, 143 S. Ct. 362 (2022) (holding "that neither constitutional text nor Supreme Court precedent demands the district court's interpretation of the Citizenship Clause of the Fourteenth Amendment" to extend birthright citizenship to American Samoa).

142. *Id.* at 865. See Kimberly Strawbridge Robinson, *Citizenship Laws Gorsuch Called 'Racist' Rejected for Review (1)*, BLOOMBERG L. (Oct. 17, 2022, at 10:10 EDT), [https://www.bloomberglaw.com/bloomberglawnews/us-law-week/X9QCFM0C000000?bna\\_news\\_filter=us-law-week#jcite](https://www.bloomberglaw.com/bloomberglawnews/us-law-week/X9QCFM0C000000?bna_news_filter=us-law-week#jcite).

143. *Fitisemanu*, 1 F.4th at 864, 869.

144. Torruella, *supra* note 112, at 69.

145. Torruella, *supra* note 28, at 286.

146. See *id.* at 347.

147. See Torruella, *supra* note 27, at 98.

148. *Id.* (quoting *United States v. Carolene Products Co.*, 103 U.S. 144, 153 n.4 (1938)) (footnotes omitted).

Judge Torruella analogizes the doctrine of territorial incorporation to the concept of “separate but equal” in *Plessy v. Ferguson*, “the constitutional remedy once considered valid in resolving racial discrimination and inequality that the Court struck down in *Brown v. Board of Education*.”<sup>149</sup> Judge Torruella further argues that by preserving the *Insular Cases*, the Supreme Court continues to deny that the relationship of the United States to its citizens in the unincorporated territories is an “egregious violation of their civil rights” and asserts that this relationship must be “frontally attacked and corrected ‘with all deliberate speed,’” drawing upon the language of the Court in *Brown*.<sup>150</sup> Torruella’s call to repudiate the *Insular Cases* “with all deliberate speed” also echoes Roberts’s abolition constitutionalism by demanding constitutional fidelity to equal citizenship over judicially created legal hierarchies.<sup>151</sup>

The central flaw of the *Insular Cases* and the reason underlying why it is necessary to overturn them is that the cases allow Congress to exercise untethered discretion to control and deprive residents of the unincorporated territories of the rights and protections afforded to the residents of the fifty states. Adriel I. Cepeda Derieux, Deputy Director for the American Civil Liberties Union’s Voting Rights Project, and Neil C. Weare,<sup>152</sup> a legal expert with a focus on the law of U.S. territories, write that the core defect of the *Insular Cases* is the untethered discretion they granted to Congress to control newly acquired territories, outside of constitutional restraints, which “sprang from the desire to keep the mostly non-white people who lived there outside the national polity.”<sup>153</sup>

Derieux and Weare urge the courts to overrule the *Insular Cases*, which “not only ratified but constitutionalized the era’s racism and racial hierarchies.”<sup>154</sup> The authors emphasize that *Downes v. Bidwell* was authored by Justice Brown (the same author of the majority opinion in *Plessy v. Ferguson*), and the case uses rhetoric describing territorial residents as “‘absolutely unfit’ for citizenship” and warned against the “‘evils’ of admitting ‘millions of inhabitants’ of ‘unknown island[s], peopled with an uncivilized race.’”<sup>155</sup> Weare argues that the *Insular Cases* should become the next *Plessy*; as *Plessy* invented the doctrine of “separate but equal,” the *Insular Cases* are based on the same type of racial stereotypes and subordination as *Plessy*, “providing a constitutional justification for ruling the populations of overseas territories without regard to traditional constitutional limitations or democratic principles.”<sup>156</sup> Weare explains that, as “*Brown* . . . create[d] [the] political environment” to reimagine civil rights for African Americans, the same must be done for the *Insular Cases* to reimagine civil rights for the

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149. Torruella, *supra* note 27, at 68.

150. *Id.* (quoting *Brown v. Bd. of Educ.*, 483 U.S. 494–95 (1954)).

151. *See supra* Section I.B.2.

152. *How I Got Here: Adriel I. Cepeda Derieux, supra* note 131; *Who We Are, supra* note 132.

153. Adriel I. Cepeda Derieux & Neil C. Weare, *After Aurelius: What Future for the Insular Cases?*, 130 *YALE L.J.F.* 284, 289 (2020).

154. *Id.*

155. *Id.* (quoting *Downes v. Bidwell*, 182 U.S. 244, 306, 313 (1901) (White, J., concurring)).

156. Weare, *supra* note 14.

territories and create an environment where the territories can demand action from political branches. Weare further writes,

A history of failed attempts to address the underlying inequality in U.S. territories shows the same is true for the Americans living in territories today, 98% of whom are racial or ethnic minorities. Until the *Insular Cases* are overturned, disenfranchised and marginalized Americans in the territories will continue to look in vain for solutions from the political branches. Just as it took *Brown* to create a political environment where civil rights for African Americans could be imagined, it will take a rejection of the *Insular Cases* to open a political space where fundamental changes to the undemocratic status quo in the territories finally become possible.<sup>157</sup>

Conceptions of abolition constitutionalism and abolition democracy can and should be used to advocate for self-determination in the territories. The logic of the *Insular Cases* is inconsistent with Frederick Douglass’s view of the Constitution, the founding values of the Declaration of Independence, and the idea of universal human rights. Douglass emphasized the Constitution’s potential as an anti-slavery document,<sup>158</sup> while Roberts urges constitutional loyalty to equal citizenship<sup>159</sup>—together, they reveal how the *Insular Cases* are fundamentally inconsistent with principles of justice. An abolitionist reading of the Constitution would view the *Insular Cases* and the unequal treatment of the residents of the territories as antithetical to abolitionist visions of equal citizenship and conceptions of universal human rights.

Both abolitionist and originalist readings reject the *Insular Cases* as extraconstitutional. The language of the Constitution supports overruling the *Insular Cases* in favor of an abolitionist approach to equal citizenship. A textualist and originalist approach emphasizes that notions of “incorporated” and “unincorporated” are nowhere to be seen in the text of the Constitution.<sup>160</sup> Thus, the Constitution itself can and should be viewed as an anti-colonial document. The *Insular Cases* are inconsistent with constitutional jurisprudence and confer an unconstitutional, extra-judicial power upon Congress. The Supreme Court has an affirmative obligation under the Constitution to rectify its shameful history, as it did in *Brown v. Board of Education*,<sup>161</sup> by overruling the *Insular Cases* in accordance with abolitionist principles of justice.

#### B. OVERRULING THE *INSULAR CASES*: WHAT DOES THIS MEAN FOR THE TERRITORIES?

Overruling the *Insular Cases* is a necessary but incomplete step toward dismantling the United States’ imperial relationship with the territories. Ultimately, after overruling the *Insular Cases*, the territories would still be territories. This means that, as long as the territories remain territories and subject to congressional

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157. *Id.*

158. See *supra* notes 60–62 and accompanying text.

159. See *supra* Section I.B.2.

160. See *United States v. Vaello Madero*, 596 U.S. 159, 187 (2022) (Gorsuch, J., concurring).

161. See Weare, *supra* note 14.

authority under the Constitution's Territory Clause, residents of the territories would still not be equal to the residents of the states under the law.<sup>162</sup> However, the original meaning of the Territory Clause before the *Insular Cases* was that territorial status is temporary.<sup>163</sup> "For better or worse, territorial self-determination cannot become a reality without action from the political branches of the federal government."<sup>164</sup> Ponsa-Kraus explains what overruling the *Insular Cases* would mean for the territories, writing,

No longer would a constitutional challenge involving a territory trigger a suspension of the laws of constitutional physics. No longer would the doctrine of territorial incorporation haunt constitutional challenges involving the territories, muddling matters and engendering a confused and confusing jurisprudence. No longer would cases involving these territories bestow a patina of legitimacy upon their patently illegitimate status. No longer would perpetual colonialism have the endorsement of the federal courts.<sup>165</sup>

Thus, self-determination for the territories is only possible by first overruling the *Insular Cases*. Territories, like Guam,<sup>166</sup> continue to mobilize for self-determination and decolonization. In 1997, the Guam Legislature established the Commission on Decolonization to enhance efforts of the Commission on Self-Determination to educate inhabitants and Indigenous people of Guam on decolonization efforts and the various political statuses available.<sup>167</sup> The Commission on Decolonization specifies various political status options available to the people of Guam,

The attainment of a Self-governing status is achieved when a colony's status has been changed and that change provides for the former colony to be either (1) an independent nation/state, (2) integration with a sovereign nation (e.g. statehood in U.S. system), or (3) a freely-associated state; an independent state that retains its sovereignty while negotiating aspects of its relationship (e.g. diplomatic, economic, and military relations) in an agreement with another sovereign nation.<sup>168</sup>

Activists and community organizers in Guam advocate for independence as the best political option for Guam. For example, Independent Guåhan is an organization committed to "informing the public about the benefits and freedoms that Guam would receive as a sovereign nation and also countering the myths and

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162. See Cesar A. Lopez-Morales, *Making the Constitutional Case for Decolonization: Reclaiming the Original Meaning of the Territory Clause*, 53 COLUM. HUM. RTS. L. REV. 772, 772 (2022).

163. See *id.*; Ponsa-Kraus, *supra* note 25, at 2454.

164. See Ponsa-Kraus, *supra* note 25, at 2540.

165. *Id.* at 2539.

166. Ballendorf & Foster, *supra* note 37.

167. *The Commission*, GOV'T OF GUAM: COMM'N ON DECOLONIZATION, <https://decol.guam.gov/commission> [<https://perma.cc/348X-NHHZ>] (last visited Mar. 11, 2026).

168. COMM'N ON DECOLONIZATION, GUAM: A TERRITORY LIKE NO OTHER 5, <https://decol.guam.gov/sites/default/files/decolonization-newspaper-insert-digital.pdf> [<https://perma.cc/3S6V-SJX3>].

misperceptions about what this status change would mean for Guam.<sup>169</sup> Independent Guåhan’s describes its mission as follows,

We wish to demonstrate that independence does not mean traveling back in time or cutting ourselves off from the world. In fact, becoming a sovereign nation means we can live in the way we want to live today and into the future because we will hold authority over our lives as opposed to being governed by people who live thousands of miles away. Most importantly, all decisions made for us would be chosen by our people.<sup>170</sup>

By overruling the *Insular Cases*, the people of Guam and all of the territories will no longer look to political branches in vain. While this Note focused on the Court’s responsibility to correct its racist holdings in the *Insular Cases*, Congress, too, still has the affirmative responsibility to act to ensure civil rights and political power for the territories. This means that Congress has the responsibility to enact the governing status the territories choose for themselves. The people of the territories should be afforded the autonomy to make the decision, for themselves, on whether they want equal citizenship, independent sovereignty, or something else altogether.

#### CONCLUSION

Though overruling the *Insular Cases*, itself, is insufficient to fully dismantle an institution of American colonialism and imperialism, it is a necessary step in the right direction. Viewing overruling the *Insular Cases* as a non-reformist reform can help legal scholars theorize abolitionist struggles as matters of global justice. The *Insular Cases* and the doctrine of incorporation, which govern the contemporary treatment of the territories by the U.S. government,<sup>171</sup> are rooted in racism and bigotry and are wholly inconsistent with the text of the Constitution and with Supreme Court jurisprudence. Dorothy Roberts’s abolition constitutionalism is a helpful tool for making this sort of originalist and textualist argument and theorizing abolition democracy in the territories. Overruling the *Insular Cases* and eliminating second-class status in the territories is a necessary precondition to fully realize a robust vision of abolition democracy.<sup>172</sup>

As an Indigenous Chamoru, I envision a world where Chamoru people, and all Indigenous people of the U.S. territories, have the right to self-determination. As it stands, Chamorus live on land that is shaped and controlled by the decisions of a colonizer—the United States.<sup>173</sup> “Some of us are reimagining the state. Others

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169. *Håyi Ham*, INDEP. GUÅHAN, <https://independentguahan.org/who-are-we> [<https://perma.cc/T6X5-GTXW>] (last visited Mar. 11, 2026).

170. *Id.*

171. See *supra* Part II.

172. See generally DAVIS, *supra* note 48 (examining “how historical systems oppression like slavery and lynching continue to influence and undermine democracy today”); McLeod, *supra* note 51 (exploring the project of abolition democracy).

173. COMM’N ON DECOLONIZATION, *supra* note 168, at 3, 6.

are dreaming of moving beyond it. But these are more than dreams. These are demands for a democratic political economy.”<sup>174</sup> As described by Independent Guåhan,

Self-determination will allow the people of Guam to evolve politically and culturally . . . a self-determined Guam will be better for everyone, mas maolek. . . . While hundreds of other colonies similar to Guam have become self-determined, our island remains a possession of the United States and our people remain colonized. In fact, Guam is one of only 16 places in the world that have not been allowed to exercise the right to self-determination. A change in Guam’s political status will allow the island to grow from an unincorporated territory (not apart of, but controlled by the United States) to a thriving, self-determined community with greater possibilities for economic and political growth. So long as Guam remains colonized it will be unable to grow beyond its current status. As an unincorporated territory our needs are not prioritized by the United States. A self-determined Guam will be an empowered Guam. It will prioritize the needs of its people over the interests of others. It will also be able to form better relationships with other nations and/or a more equal relationship with the United States. An empowered people is a thriving people, and self-determination will allow future generations of Chamorus to prosper in their land.<sup>175</sup>

I imagine a world where the United States no longer holds colonial and imperial power over territories overseas—a world where abolition democracy is possible.

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174. Akbar, *supra* note 53, at 91.

175. *Hafa Ilek-Mu . . . Self-Determination??*, INDEP. GUAHAN, <https://independentguahan.org/wp-content/uploads/2021/07/Self-Determination-411-1.pdf> [<https://perma.cc/MU2U-JPPP>] (last visited Mar. 11, 2026).