



**Opening Statement
Full Committee Hearing
Insular Affairs Legislative Hearing on
H. Res. 279, Resolution Rejecting the Insular Cases
Wednesday, May 12, 2021 - 1:00 PM**

Thank you, Mr. Chairman.

The Constitution's Territorial Clause gives Congress full power over the governing and fate of the territories and their residents.

After the Spanish-American War, a major debate arose regarding the fate of the newly acquired territories and the status and constitutional rights of the residents of those territories. The debates reached the Supreme Court in a series of cases later called the "Insular Cases", where it held that full constitutional protection of rights does not automatically extend to all places under American control. This meant that inhabitants of unincorporated territories such as Puerto Rico— even if they are U.S. citizens"— may lack some constitutional rights.

As Judge Juan Torruella explained, the Insular Cases "authorized the colonial regime created by Congress, which allowed the United States to continue its administration—and exploitation—of the territories acquired from Spain after the Spanish-American War" and allowed for the United States government to extend unilateral power over these newly acquired territories.¹

Former Puerto Rico Supreme Court Chief Justice José Trías Monge contended that the Insular Cases were based on premises

¹ Juan A. Torruella. (Fall 2013). *Ruling America's Colonies: The "Insular Cases"*. YALE LAW & POLICY REVIEW 32(1): 57-95.

that would be legally and politically unacceptable in the 21st century, premises such as: that democracy and colonialism are “fully compatible”; that there is “nothing wrong when a democracy such as the United States engages in the business of governing other” subjects that have not participated in their democratic election process; that people are not created equal, some races being superior to others; and that it is the “burden of the superior peoples, the white man’s burden, to bring up others in their image, except to the extent that the nation which possesses them should in due time determine”.² **These decisions were odious, reflecting cultural and racial biases that are now rightfully rejected by most Americans.**

I cosponsored the Resolution being discussed today because the Insular Cases doctrine denies democracy and equality and reflects abhorrent bias and have provided a justification for Congress to discriminate against American citizens unfairly and irrationally, citizens to whom full representation in their national Government has been denied.

Some of the language of the resolution, however, may confuse the fundamental issue of the territories’ status and I want to make the record clear as to where I stand. It is **not** the Insular Cases that deny the residents of the territories voting representation; Articles I and II of the Constitution do. It is not the Insular Cases that have denied equality in Federal programs; it has been Congress who has done that.

As to Puerto Rico’s political status, the policy of the federal government’s political branches has been that it is the sole responsibility of the majority of the voters of Puerto Rico to

² José Trías Monge. (2001). *Injustice According to Law: The Insular Cases and Other Oddities*. In Christina Duffy Burnett & Burke Marshall (eds.). *FOREIGN IN A DOMESTIC SENSE: PUERTO RICO, THE AMERICAN EXPANSION, AND THE CONSTITUTION*. Durham, NC: Duke University Press. p. 243.

determine its ultimate political status from among the possible, constitutional status: statehood or independence (with or without a subsequent sovereign relationship with the United States). Public Law 114-187, for example, recognized “Puerto Rico’s right to determine its future political status.”

The Island has had three free and fair votes on possible status options in eight years. The first in 2012 specifically rejected the current territory status, while in the last plebiscite, held November 3, 2020, the majority of voters chose statehood.

The solution chosen by the voters of Puerto Rico to determine its ultimate political status is clear: they chose by clear majority the equality within the Nation that they are citizens of. The voters in Puerto Rico understand that equality that can’t be taken away and equal voting representation can only come through statehood.

In 1957, the Supreme Court stated that, “neither the [Insular] cases nor their reasoning should be given any further expansion.”³ However, the Court has not overruled these decisions and continues to cite them as precedent.

In 1944, the Supreme Court validated the practice of forcibly relocating U.S. citizens to concentration camps, on the sole basis of race, as within the scope of Presidential authority.⁴ It took the Supreme Court 75 years to correct what, for years now, everyone else has recognized to have been a despicable and shameful act

³ *Reid v. Covert*, 354 U.S. 1, 14 (1957); cf. *Downes v. Bidwell*, 182 U.S. 244, 380 (1901) (Harlan, J., dissenting) (“In my opinion, Congress has no existence and can exercise no authority outside of the Constitution. Still less is it true that Congress can deal with new territories just as other nations have done or may do with their new territories. The nation is under the control of a written constitution, the supreme law of the land and the only source of the powers which our Government, or any branch or officer of it, may exert at any time or any place.”).

⁴ *See Korematsu v. United States*, 323 U.S. 214 (1944).

by our Government.⁵ If passed by the House, this Resolution would not overturn the Insular Cases; the Justices of the Supreme Court will continue to bear the shame of their predecessors' racism until they, themselves act to overturn them. However, this Resolution will send an unequivocal message to the Executive and the Judiciary Branches of our Government that we repudiate the cultural biases that these cases are based on and, as such, should not be the basis of their decisions.

If we are serious about reversing the doctrines of the Insular Cases, we should do the job that the Constitution has placed upon Congress, enact legislation addressing unequal treatment, and grant statehood or nationhood if that is the People's choice. Abraham Lincoln stated that "Most governments have been based, practically on the denial of the equal rights of men... Ours began by affirming those rights."⁶ Let us work so that we can truthfully say that our Country not just began by affirming those rights, but that it survives and thrives for that very reason.

I look forward to the testimony and yield back.

⁵ *Trump v. Hawaii*, ___ U.S. ___, 138 S.Ct. 2392, 2422 (2018) ("... *Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—'has no place in law under the Constitution.'") (internal citations omitted).

⁶ Abraham Lincoln, Speech on slavery and the American Dream (April 1, 1854) *in* Fragments on Slavery, <http://teachingamericanhistory.org/library/document/fragments-on-slavery/>. TEACHINGAMERICANHISTORY.ORG,