

Popular Constitutionalism in the US Empire: The Legal History of US Citizenship in Guam

Ross Dardani 

This article presents a legal history of US citizenship in Guam. I argue that members of Guam’s Congress mobilizing for US citizenship in the 1930s and in the immediate aftermath of World War II offer a powerful and instructive example of popular constitutionalism, or the interactive, extrajudicial process that generates constitutional meaning. Guamanians made constitutional claims to US naval leaders and lawmakers, arguing that colonized people living in the US empire should be US citizens despite ambiguous Supreme Court precedents in the Insular Cases, congressional inaction, and naval obstruction. Guamanians interpreted the Constitution in a way that pressured and influenced naval leaders to support and US lawmakers to ultimately enact legislation that extended citizenship to Guam. This legal history demonstrates the complexity of popular constitutionalism within the context of US empire. By claiming that they should be considered US citizens after the United States formally annexed Guam after the Spanish-American War, Guamanians drew on the Constitution to demand equality, dignity, and full inclusion in the US polity for colonized people. US naval leaders and lawmakers turned this egalitarian reading of the Constitution to their own strategic advantage, however, deploying it as a valuable piece of Cold War propaganda. This article thus provides a useful example of the ideological indeterminacy of popular constitutionalism. The Constitution can be interpreted by marginalized populations to demand equality and inclusion. But the Constitution can also be interpreted by the military and congressional leaders of a global empire to maintain systems of power, oppression, and subordination.

INTRODUCTION

In this article, I argue that the campaign by members of Guam’s Congress to secure US citizenship for Guamanians is an example of popular constitutionalism in the context of US empire. The ambiguity over the status of citizenship in the territories acquired by the United States after the Spanish-American War created a space for constitutional contestation in which Guamanians made claims to US citizenship rooted in principles of loyalty, justice, fairness, “American” ideals, and equality. The struggle for US citizenship in Guam thus provides a powerful example of popular constitutionalism used by a colonized population to assert inclusion and practical rights within an imperial system of subordination and authoritarian control.

Ross Dardani, Assistant Professor, Department of Political Science, Muhlenberg College, Allentown, PA, United States. Email: rossdardani@muhlenberg.edu

The author thanks the anonymous reviewers for valuable feedback. The author would also like to express gratitude to Charles Venator-Santiago, Jane Gordon, Fred Lee, Cathy Schlund-Vials, and Jason Oliver Chang for their contributions to this article.

At the same time, US naval leaders and lawmakers transformed the liberatory constitutional claims Guamanians made for citizenship into a tool to legitimize US imperialism. Thus, this article demonstrates the multifarious, sometimes oppositional, uses of popular constitutionalism. While Guamanians were able to engage in popular constitutionalism to protest for formal inclusion within the US polity, US political and legal actors developed an understanding of the Constitution that allowed for the extension of citizenship to Guam while still preserving and protecting US imperialism in the Pacific.

The first section of the article provides an overview of popular constitutionalism. The second section gives a brief history of Western colonialism and imperialism in Guam before the United States formally annexed the island after the Spanish-American War of 1898. Next, the article provides an overview of the early years of US rule over Guamanians by analyzing the *Insular Cases*, which were decided shortly after the United States formally claimed sovereignty over Guam and established the contours of US governance in territories annexed after 1898. The *Insular Cases* are important for understanding Guam's status as an unincorporated territory under the plenary authority of Congress, its relationship to the federal government, and why US citizenship, birthright or statutory, did not automatically apply to Guamanians. The fourth section of the article analyzes the early decades of authoritarian US rule over Guam, which led members of Guam's Congress to protest in the 1920s and 1930s that US lawmakers should pass legislation to make Guamanians US citizens. Naval opposition prevented passage of this legislation, however. The last section of the article explains the conferral of US citizenship to Guam through the passage of the 1950 Organic Act. This event marked the culmination of decades of Guamanian efforts to advance their own reading of the Constitution, one in which they were equal citizens within the US polity. The legal history of the movement for US citizenship in Guam provides an example of the indeterminate, indefinite, and interactive process of how the meaning of the Constitution is shaped and created by both legal and extrajudicial actors in the context of US empire.

POPULAR CONSTITUTIONALISM

At its core, popular constitutionalism is a simple yet powerful idea: that interpreting the Constitution and the process that generates its meaning has never been and should never be only for the judiciary (Schmidt 2018, 67). Scholars of popular constitutionalism are particularly interested in ways that actors outside the formal judicial realm, from ordinary citizens to members of Congress to the president, have engaged in their own ways of thinking about the Constitution and helped to produce its meaning (Kramer 2004; Post and Siegel 2004; Tushnet 2006; Siegel 2008; Schmidt 2011, 2018; Ackerman 2014; Beienburg and Frymer 2016). In his formative work on the origins of popular constitutionalism in US political culture, Larry Kramer (2004, 7) explains that for the founding generation, the "Constitution remained, fundamentally, an act of popular will: the people's charter, made by the people . . . [I]t was 'the people themselves' . . . who were responsible for seeing that it was properly interpreted and implemented." According to Kramer, the belief that the judiciary would function as the final or sole arbiter of the Constitution only emerged over time, especially after

Brown v. Board of Education (1954) and *Cooper v. Aaron* (1958). The basic theory of popular constitutionalism is that through an interactive, constitutive, dialogical process of constitutional contestation between ordinary people, organized groups, elected officials, and the judiciary, the meaning of the Constitution is produced (Tushnet 2006, 999–1001; Schmidt 2011, 528; Beienburg and Frymer 2016). In this article, I argue that the movement for US citizenship in Guam offers a powerful example of this interactive process “of the development of constitutional principles in the distinctive realm of extrajudicial contestation” (Schmidt 2018, 90). Members of Guam’s Congress influenced US naval leaders and lawmakers to interpret the Constitution in a way that extended citizenship to Guamanians.

Recent scholarship has demonstrated that people and groups engaging in forms of popular constitutionalism have interpreted the Constitution in ideologically diverse ways. While theories of popular constitutionalism have mostly been connected to liberal scholars and progressive causes, especially as a critique against the conservatism of the Roberts Court, recent scholarship has explored how in contemporary American politics, right-wing, libertarian movements organized around principles of deregulation and small government may be better positioned to mobilize around popular constitutionalism, with a focus on interpretations of the Second Amendment and an individual right to bear arms (Siegel 2008) and the Tea Party Movement (Schmidt 2011). Others have argued that popular constitutionalism is healthy for US democracy (Collins and Eshbaugh-Soha 2019) and can be a source to generate novel and expansive progressive civil rights claims (Goluboff 2007; Lovell 2012). Sophia Lee (2014) has demonstrated that both liberals and conservatives mobilized around popular constitutionalism at various points throughout the twentieth century in the area of workers’ rights, making arguments about whether the Constitution applies in places of private employment and what this means for right-to-work laws, the right to organize, and the New Deal labor regime. Mary Ziegler (2015, 2023) has explained how leaders of the religious right and various groups in the antiabortion movement, and members of the reproductive freedom movement, have all generated their own influential understandings of what the Constitution means for abortion rights that are far removed from the Supreme Court’s opinion in *Roe v. Wade* (1973). Scholars have also emphasized that popular constitutionalism does not exist in opposition or as a dichotomy to judicial power, as people engaging in forms of popular constitutionalism can create meanings of the Constitution that demand a more powerful and autonomous judiciary (Shugerman 2012; Beienburg and Frymer 2016). Thus, “[p]opular constitutionalism is temporally and contextually bound, reflected in different forms and forums at different times in US political history and always dependent on the interactions between . . . institutions” (Beienburg and Frymer 2016, 242).

While there has been rich scholarship on popular constitutionalism, it has yet to be applied to extrajudicial actors mobilizing against US empire. Members of Guam’s Congress understood naval rule as despotic and a violation of foundational constitutional principles, and they mobilized around their own “aspirational” interpretation of the Constitution (“a claim . . . without a solid footing as a matter of court-defined constitutional law” [Schmidt 2018, 66]), one in which they were automatically US citizens once the United States claimed sovereignty over Guam, making this an example of popular constitutionalism in its “purest” form (Schmidt 2011, 530). The Supreme

Court's rulings in the *Insular Cases* left unclear whether citizenship automatically extended to people living in unincorporated territories after 1898 or if the extension of citizenship would require congressional action. This ambiguity enabled a space of constitutional contestation in which Guamanians were able to protest for US citizenship through a form of popular constitutionalism that demanded Guam's equal inclusion within the US political system. This ultimately led to Congress extending citizenship to Guam, demonstrating how Guamanians were able to participate in the interactive, contested process of "giving meaning to the nation's founding document" (Schmidt 2018, 67). While Guamanians based their moral and constitutional arguments on the theory that citizenship should have automatically extended once the United States formally annexed Guam (regardless of congressional action), Congress used the passage of an organic act in 1950 to make Guamanians citizens based on the precedents set in the *Insular Cases*. This is an example of how the meaning of the Constitution is contested and generated through an interactive process involving not only the courts, but also actors operating in extrajudicial settings.

The legal history of US citizenship in Guam illuminates how popular constitutionalism can exist as a form of resistance to US empire, and thus "expands[s] the terrain of actors and complicate[s] the ways in which democratic decision making through the purview of the Constitution takes place" (Beienburg and Frymer 2016, 261).

WESTERN COLONIALISM AND IMPERIALISM IN GUAM AND THE INSULAR CASES

This section offers a broad historical overview of Western colonialism and imperialism in Guam to contextualize the United States' formal annexation of Guam after the Spanish-American War and to emphasize the major precedents of the *Insular Cases* to understand the constitutional relationship between the US federal government and why Guamanians mobilized and protested for US citizenship.¹

There is a long history of European and US imperialism in Guam as its location in the Pacific has historically made it "an area of prime military importance" (Leibowitz 1989, 303). Guam was originally inhabited by the Chamoru,² descendants of Austronesian people originating from Southeast Asia, who developed a complex class-based society.³ While US naval leaders would assume that most of Chamoru

1. A few works that offer more detailed examinations of this history include Thompson (1969), Carano and Sanchez (1964), Hofschneider (2001), and Rogers (2011). For a discussion of the distinctions between US colonialism and imperialism, see Venator-Santiago (2013). For scholarship on US imperialism generally, see Love (2004), Go (2011), and Erman (2019).

2. I use "Guamanian" throughout the article since around 90 percent of the civilian population of Guam were Chamoru in the 1950s, but there were also people of Anglo-American and Filipino descent living in Guam during the time period this article focuses on (Bettis 1996, 105; Unterman 2020, 811). I also use the spelling "Chamoru," instead of the Spanish spelling of "Chamorro," since this is closer to the indigenous spelling (Unterman 2020, 811).

3. Much of the knowledge of Chamorro culture that is known today is based on Spanish colonists and other foreign explorers who had contact with the Marianas during the sixteenth to nineteenth centuries. See Thompson (1969) and Hofschneider (2001, 6–7) for a discussion of the highly developed class-based political systems that Chamorus established before Spanish colonization and the evolution of these systems leading up to the US annexation of Guam.

culture had been destroyed through Spanish colonization, “certain aspects of the ancient Chamorro culture and even of the native character have persisted through four hundred years of diversified contacts with the outside world” (Thompson 1969, 281). Chamoru resistance to European and US imperialism has thus remained a constant throughout Guam’s history.

Displacements caused by Spanish colonization transformed the Chamoru communal land system and help explain why Guamanians would later mobilize for US citizenship. The massive decrease in the Chamoru population due to Spanish colonization meant that there was an abundance of land to cultivate (Hofschneider 2001, 7). Spanish colonization also introduced new crops, like corn, and farming techniques, and made the Chamoru more dependent on land by prohibiting the construction of ocean canoes and sailing beyond the reefs of the island (8). This would lead Chamoru life to revolve around small farms, producing crops such as corn and copra for survival, as “each household formed an independent, self-sufficient economic unit” (8). Land ownership for small-scale farming would thus become a central aspect of Chamoru culture, setting up later disputes with the US government over naval use of Guam’s land and Guamanians mobilizing for the right to jury trials (Unterman 2020). Spanish colonization thus influenced Chamoru land customs and policies in ways that are important for better understanding why Guamanians later protested for US citizenship. In the post-WWII era, Guamanians believed citizenship would grant them individual property protections and rights against the US Navy colonizing land on the island for strategic military purposes.

Spain ceded sovereignty over Guam to the United States through the Treaty of Paris in 1898, which formally ended the Spanish-American War and also transferred power over the Philippines and Puerto Rico to the United States. The Treaty of Paris granted broad authority to Congress to govern the territories acquired from Spain, as it stated that “[t]he civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress” (Treaty of Peace, article IX). The annexation of Guam and the Philippines allowed US ships to have access to a more efficient route to Asian markets through Hawaii, Wake, Guam, and the Philippines, which helps explain why the United States placed such strategic military value in Guam after its US colonization (Kennedy 2009, 55–56).⁴ Immediately after the United States annexed Guam in 1898, Congress established a military government to rule the island, led by naval officers. The US military would govern Guam until 1950, disrupted by a three-year Japanese occupation during World War II. The passage of the Guam Organic Act⁵ in 1950 transferred authority over Guam from the Department of Defense to the Department of the Interior, where federal control remains. Immediately after the ratification of the Treaty of Paris, however, the Supreme Court was asked to determine the constitutional relationship of the US federal government to its newly annexed territories.

4. For literature on the development and motivations that shaped US imperialism in the latter half of nineteenth century, see McCormick (1990), Hoganson (1998), LaFeber (1998), Love (2004), Go (2011, 2014), Moore (2017), and Erman (2019).

5. Organic acts create governments for unincorporated territories and usually include a local constitution. It is important to remember that ultimate sovereignty over the unincorporated territories, even after the passage of an organic act, resides with the federal government.

In 1901, the Supreme Court issued a ruling in a case that would become the first in a series of decisions now known as the *Insular Cases*.⁶ This set of cases would establish the relationship between the federal government and the territories annexed by the United States after the Spanish-American War and the initial citizenship status of Puerto Ricans, Filipinos, and Guamanians. The main constitutional issue presented in the *Insular Cases* was popularly captured at the time with the question: does the Constitution follow the flag? US military leaders argued that the Bill of Rights and birthright citizenship, despite the Due Process and Citizenship Clauses of the Fourteenth Amendment, did not automatically extend to territories under US sovereignty after the Spanish-American War (Venator-Santiago 2015).⁷ To the question of whether the Constitution followed the flag, the Supreme Court would provide an ambiguous answer in *Downes v. Bidwell* (1901). The case considered whether the federal government imposing customs duties on imports from Puerto Rico that did not apply to other states was a violation of the Uniformity Clause (article I, section 8, clause 1) of the Constitution, which states that “all duties, imposts, and excises shall be uniform throughout the United States.” The Court ruled that the differential tax treatment of imports from Puerto Rico was constitutional, since the full protection of the Constitution applies only to those territories that are fully incorporated as an “integral part” of the United States. The Court then created a new territorial status, the unincorporated territory, to explain the relationship between the federal government and any territories annexed by the United States after the Spanish-American War. This meant that after *Downes* was decided it was initially unclear whether the Constitution, the entire Bill of Rights, and/or US citizenship applied automatically to any areas acquired by the United States after 1898, leaving Congress with significant power to determine the constitutional status and governing structure of the Philippines, Puerto Rico, and Guam. Only in precedents established after *Downes*, especially *Gonzalez v. Williams* (1904), when Puerto Ricans, through their first federal representative, Federico Degetau y González, argued that they were US citizens, did the Court explicitly rule that citizenship had not automatically extended to the territories annexed by the United States after the Spanish-American War (Erman 2014).

Various scholars have provided evidence that the Supreme Court created the unincorporated territory status because the justices and US policy makers feared that past territorial precedents could require the majority nonwhite populations of Puerto Rico and the Philippines to be fully included into the United States (Kaplan 2002; Kramer 2006; McCoy 2009; Erman 2019, 39–42, 51; McCann and Lovell 2020, 35–

6. A few influential works on the *Insular Cases* include Burnett and Marshall (2001), Kaplan (2002), Sparrow (2006), Roman (2006, 2010), Ramos (2007), Torruella (2007), Neuman (2009), Raustilia (2009), and Neuman and Brown-Nagin (2015).

7. For work on how US citizenship, especially naturalized forms, has historically been premised on racial, gender, and class discriminations and exclusions that influenced the creation of the Citizenship Clause of the Fourteenth Amendment, see Haney Lopez (1996), Smith (1997), and Ngai (2004). There is also a distinct and important history regarding the Fourteenth Amendment and citizenship with indigenous populations in the United States, which is beyond the scope of this article, but the main difference is that the Supreme Court has recognized that indigenous tribes have a separate sovereignty from the United States that does not exist for the unincorporated territories colonized by the United States after 1898. For some of the scholarship on the history and influences of the Fourteenth Amendment as a whole, see Gans (2022), Barnett and Bernick (2021), VanderVelde (2020), Foner (2019), Epps (2006), and Davis (1997).

66). Supreme Court justices, US lawmakers, and military leaders, through an “iterative” process that ultimately generated the foundational principles of territorial policy after 1898 (Erman 2014), believed that the nonwhite people living in the Philippines, Puerto Rico, and Guam were racially and culturally inferior and thus ineligible for inclusion in the US polity and unfit to rule themselves with a republican form of government without proper Anglo-Saxon tutelage (Briggs 2002; Love 2004; Kramer 2006; Go 2011). Thus, the main precedents in the *Insular Cases* enabled Congress to choose when and how to treat the newly created “unincorporated territories” as part of the United States for constitutional and citizenship purposes (Venator-Santiago 2013; Erman 2014).

One of the first cases that demonstrated that US citizenship did not automatically extend to the unincorporated territories was *Gonzalez v. Williams* (1904), in which the Court determined that residents of Puerto Rico were not completely foreign in their relationship to the United States or US citizens, but something in between: noncitizen nationals (Erman 2014).⁸ Other cases, such as *Hawaii v. Mankichi* (1903), *Dorr v. United States* (1904), and *Balzac v. Porto Rico* (1922), determined that even though certain nebulous and never explicitly defined “fundamental rights and liberties” applied in the unincorporated territories, this did not mean that the Bill of Rights or citizenship automatically applied in the unincorporated territories (Tauber 2006; Unterman 2020). And even after Congress formally extended citizenship to Puerto Rico with the Jones Act in 1917, the Court’s ruling in *Balzac* held that certain provisions of the Bill of Rights still did not apply in Puerto Rico. Thus, according to the territorial doctrine established by the Supreme Court after 1898, citizenship and many constitutional rights had to be individually extended to the unincorporated territories through congressional action (Tauber 2006)—and even then citizens in unincorporated territories were denied the right to vote and procedural protections for the criminally accused.⁹

The theory of popular constitutionalism helps explain why Congress extended US citizenship to Guam in 1950. Members of Guam’s Congress in the 1930s used foundational constitutional principles and moral values to argue that despite the holdings in the *Insular Cases* Guamanians should be considered US citizens even without affirmative congressional action. Guam’s congressional walkout in 1949 put pressure on the United States during the early years of the Cold War to recognize Guamanians as full and equal citizens in the US political community. By arguing that despotic US naval rule over the territory violated fundamental democratic principles, and was thus

8. For recent scholarship on the historical origins of the invention of the US noncitizen national status and the influence of US policy structuring the relationship between the federal government and indigenous populations, see Schlimgen (2020). The time period between when the Treaty of Paris was signed (in 1898) and when the Supreme Court issued its decision in *Gonzalez* (1904), determining that residents of the unincorporated territories are noncitizen nationals in the absence of explicit congressional action, is an area in need of further research. Were there political institutions, legal actors, and/or military leaders making the argument that a noncitizen national status applied in the unincorporated territories? Did these arguments influence the Court’s decision in *Gonzalez*? These are questions worth pursuing for future research.

9. Most of the freedoms and protections against governmental abuses of power outlined in the Bill of Rights now apply in the unincorporated territories because Congress has passed organic acts that include the rights and liberties found in the first eight amendments of the US Constitution. For this history, see Leibowitz (1989) and Tauber (2006). In *Reid v. Covert* (1957), the Court established that any constitutional provision, including the Bill of Rights, should apply in an unincorporated territory unless it is “impracticable and anomalous” (see Tauber 2006, 170–73).

unconstitutional, Guamanians' interpretation of the Constitution pressured US lawmakers to extend citizenship to Guam. Thus, the extension of US citizenship to Guamanians provides an example of how constitutional meaning is generated and shaped through "extrajudicial . . . contestation" that occurs outside of the formal legal realm (Schmidt 2018, 90).

NAVAL AUTHORITARIAN RULE OVER GUAM

The extension of US citizenship to Guam "was the product of a long determined campaign on the part of the Guam citizenry, sometimes with the support of the local naval officials, against the Washington opposition of their Department of the Navy counterparts" (Leibowitz 1989, 317).¹⁰ While Guamanians had expressed a desire for US citizenship consistently after annexation in 1898, it was only when naval leaders no longer opposed extending citizenship to Guam in the immediate years after World War II that Congress passed legislation conferring citizenship to the territory. This event was the product of a contested, interactive process of popular constitutionalism in which Guamanians mobilized to demand citizenship, culminating in a boycott organized by the Guam Congress in 1949.¹¹ The boycott pressured the United States to hold hearings to determine whether Congress should make Guamanians US citizens. These hearings demonstrate that naval leaders and US lawmakers believed that extending citizenship to Guam would serve as a valuable "psychological weapon" in the United States' propaganda struggle with the Soviet Union during the early years of the Cold War without threatening the United States' plenary control over Guam.

Recent work has demonstrated the multifaceted ways that citizenship can be used by different actors and the various meanings it can have for different populations. Scholars have illuminated novel claims of a right to birthright citizenship that granted protections to travel freely rooted in the Privileges and Immunities Clause that were made by free Black people throughout the antebellum period (Kantrowitz 2012; Pryor 2016; Glass 2018; Jones 2018; Schoeppner 2019); these are examples of the potential power of citizenship to be used by excluded and subordinated groups as a way to challenge structures of white supremacy and to demand full inclusion and equality within political communities. Other scholarship has examined how the extension of citizenship to the US unincorporated territories can be used by members of Congress and the military to legitimate US empire (Erman 2019; Dardani 2020).

The legal history of US citizenship in Guam provides a valuable example of the ambiguous and indeterminate nature of popular constitutionalism within the context of US imperialism. Members of Guam's Congress made moral claims and interpreted the Constitution in ways to argue that Guamanians should be considered US citizens

10. For an excellent history of various social movements against Western colonialism and imperialism throughout the Pacific that were linked and attempted to enact cultural, social, or economic change for colonized people, see Banivanua-Mar (2016). For a more thorough overview of Guamanian resistance to various policies pursued by the US Navy and the federal government before World War II, see Hattori (2004) and Cogan (2008).

11. Guam's Congress was established in 1917 by the naval government as an "advisory body" that "had no actual legislative powers" and remained subject to veto power by the naval governor (Unterman 2020, 821; Carano and Sanchez 1964, 2; and Hofschneider 2001, 56).

despite the precedents set in the *Insular Cases*. Guamanians based these arguments on moral and constitutional principles rooted in equality and fairness. US naval leaders and lawmakers then determined that extending citizenship to Guam could be valuable propaganda for the United States during the Cold War. This legal history provides an instructive example of the complexity of popular constitutionalism and its potential variegated uses. Guamanians protested to become US citizens for full inclusion within the United States. US policy makers believed extending citizenship to Guam would serve as valuable propaganda demonstrating the superiority of the American political system compared to the Soviet Union, while not fundamentally changing the relationship between the federal government and the unincorporated territories. Popular constitutionalism does not have a predetermined ideological outcome; the Constitution and the governmental system it establishes can be interpreted by marginalized people in progressive ways to demand equality and inclusion in a political community, or by military and political leaders of a global empire to maintain systems of power, oppression, and subordination. The legal history of US naval rule over Guam from 1898 to 1950 thus demonstrates the indeterminacy of popular constitutionalism.

As highlighted earlier, the Treaty of Paris granted Congress authority to determine the “civil rights and political status” of Guamanians (Treaty of Peace, article IX). Yet from 1898 to 1950, Congress did not enact any legislation to establish a territorial government for Guam, placing it in an ambiguous, liminal constitutional realm, neither fully outside nor within the Constitution and ultimately establishing Guamanians as noncitizen nationals. During this period, power over Guam resided in the US president and US military. Immediately following the conclusion of the Spanish-American War and the signing of the Treaty of Paris, President McKinley issued an executive order that placed a military governor in control of the political structure of Guam. Although intended as a temporary measure, this order would provide the legal basis for a half century of US rule over Guam (Hofschneider 2001, 18). Guam’s status became that of a “conquered” territory governed through the ideology of US imperialism: the military maintained authority over Guam, with Guamanians treated as “foreign” inhabitants within the sovereignty of the United States without access to full constitutional rights or US citizenship. The Governor of Guam had the unilateral ability to pass and implement laws and to overturn local court judgments—Guam was thus in a state of autocratic martial law (Hofschneider 2001, 32–33).

Reports filed by naval leaders during the early 1900s provide evidence of why the US military believed Guamanians could be easily controlled and why Guam would provide a valuable strategic base of global imperialist operations (Carano and Sanchez 1964, 2; Thompson 2010, 228–29).¹² Naval leaders described Guamanians as “like children, easily controlled and readily influenced by examples, good or bad” (Dyer 1904, 2–3, quoted in Thompson 2010). The 1904 Cottman Report, as another example, delineated the United States’ desire to change the official language of Guam from Spanish to English, to rid the island of Catholic influence and foster US Protestantism, and to sanitize the population and impose a work ethic, as US military leaders viewed

12. The US Navy’s belief in Guam’s value is evidence of the influence that the writings of A. T. Mahan had on the strategies that underpinned the development of US imperialism in the late nineteenth century. For a discussion on the influence of Mahan on US imperialism, see Venator-Santiago (2013, 1–8).

Guamanians as inherently unhygienic and lazy (Cottman 1899, quoted in Thompson 2010, 227–36). Educational plans focused on vocational training (e.g., farming, carpentry, weaving, copra making, sewing, cooking) and hygiene and stopped at sixth grade for most students, to ensure that the Navy would be able to maintain its base efficiently by training Guamanians to be “useful,” “productive,” and “happy . . . to farm, fish, or work in certain blue-collar, unskilled positions” (Hofschneider 2001, 37). The Navy viewed its role as one of beneficent paternalism to Guamanians, strengthening naval rule over the island by creating compliant laborers. In its efforts to “civilize” Guamanians, the Navy issued laws banning cohabitation, concubinage, male nudity in public, gambling, and cockfighting (Leibowitz 1989, 310; Hofschneider 2001, 23–24; Thompson 2010, 227–36). The Cottman Report situates Guam within a broader ideology of Western colonialism and imperialism, in which certain races were infantilized and viewed as less developed when compared to White Anglo-Saxons (McCarthy 2009). The “Anglo-Saxon tutelage” (Weiner 2001, 48–81) Guam was to receive, according to naval leaders, differed from the political training planned for other territories the United States acquired after the Spanish-American War. US military leaders understood Guamanians to be incapable of achieving a democratic form of governance, in contrast to the Philippines and Puerto Rico, which the Navy believed could be capable of self-government after proper education (Thompson 2010, 237–45). Military leaders thus believed that authoritarian rule was the best form of government for Guamanians, and US policy makers viewed Guam as nothing more than strategically valuable land for the United States to exploit in support of its global empire.

Guam’s Congress was established in 1917 by the US government for its military leaders to better understand how to effectively govern the island and increase agricultural and economic production. Guamanians became frustrated when it became clear that ultimate power over Guam still resided with the US military, as “[Guam’s Congress’s] decisions could be offered only as advice to the American Governor, who accepted or rejected the recommendations as he pleased” (Hofschneider 2001, 56).¹³ Initially, members of Guam’s Congress were chosen by the naval governor and had no actual legislative power, as it was considered an “advisory council” by the US military (56). It was not until reforms implemented by the US military in the early 1930s that members of Guam’s Congress were popularly elected by Guamanians, but the naval governor still maintained ultimate governmental authority over the territory (81).

US military personnel often analogized Guam to a ship, which had to be led by a single “captain” and manned by a disciplined, deferential crew (Hofschneider 2001, 32; Thompson 2010 235–37). The tutelage Guam would receive from US military officers was designed to train Guamanians to be sanitary, productive, and disciplined crew members and “mess attendants” (Thompson 2010, 227–45). US naval leaders thus believed that their ability to maintain a strategically valuable naval station on Guam was dependent on properly training Guamanians for the subordinate role they

13. For an overview of the creation of Guam’s Congress by US naval leaders and an analysis of why Guamanians became disillusioned with US military rule over Guam, see Hofschneider (2001, 56–71) and Rogers (2011, 135–51).

were naturally suited for: providing the physical labor needed for the USS *Guam* to operate.

GUAMANIAN MOBILIZATION FOR US CITIZENSHIP AFTER 1898

As early as 1901, Guamanians sought constitutional protections against arbitrary US rule and made arguments for inclusion as equals within the US polity through citizenship (Leibowitz 1989, 318; Unterman 2020, 822). With no formal congressional action on Guam's status during the period of military rule, a nebulous concept of "Guamanian citizenship" emerged, which had unclear requirements and constitutional protections.¹⁴

Congressional debate over the citizenship status of Guamanians highlighted the fear some senators had of the federal government indefinitely occupying Guam with no constitutional restraints. In 1903, Senator Augustus Octavius Bacon expressed discomfort with the potential for unchecked executive power over Guam, noting that he "dislike[d] to see upon the statute books an indefinite and unlimited power of the Executive to perform all three functions of government" (United States Congress, 1903). A former Confederate soldier and ardent supporter of Jim Crow, Bacon exemplified one strand of the racial logic that made many racist US lawmakers argue against US imperialism in the 1890s and early 1900s. These policy makers feared that the non-white populations living in the unincorporated territories annexed by the United States after 1898 would become racially integrated within the United States (Love 2004) and were suspicious of what they viewed as abuses of tyrannical federal power (including Reconstruction policies in the South).

During this same debate in 1903, in response to a question by Senator George Hoar about why unincorporated territories remained under military control, Senator Joseph Foraker explained that "they are both under the Navy Department; and they are there because Congress has never legislated with respect to them; and we are embarrassed all the time because there has been no act of Congress relating to them . . . I think it is the highest importance that we provide this legislation now." Hoar then responded:

[I]f anything could show the utter unfitness of this country . . . to govern dependencies thousands and thousands of miles off, it is the fact that they have to wait for their legislation . . . to wait . . . for such information as is filtered through the War Department and the Navy Department to Congress, and then, in time peace, years after we have established our claim to rule over them, they are kept under the Departments of War and of the Navy, whose law is secrecy and arbitrary power – the rule of one man . . . But it is so impossible to govern men who are dependent, who are not heard themselves, and who have no votes and no rights, at a distance of thousands

14. For example, the governor's report from 1929 explains Guamanian citizenship as being "almost meaningless" with "no . . . exact requirements" (United States Congress 1929, 4) and testimony provided by Margarito Palting from congressional hearings in 1937 argues that Guamanian citizenship does not exist and is a legally dubious category of citizenship (United States Congress 1937, 92–93). A report filed in 1950 by the Committee on Public Lands, however, states that Guamanians are nationals of the United States (United States Congress 1950, 2).

of miles off . . . That is the kind of rule we are going to have so long as we claim the right to govern and to tax men who have no votes and who have no representation, and to deal with men whose constitutional rights have got in the final resort to be determined by a court 8,000 miles away. (United States Congress, 1903)

These passages demonstrate that some US lawmakers were worried about the possibility of the United States exerting unchecked, authoritarian power over Guam due to the ambiguous relationship between the federal government and the unincorporated territories after 1898. The citizenship status of Guamanians was central to these debates.

The *Insular Cases* raised, but failed to resolve, significant constitutional questions about the citizenship status of Guamanians. Should Guamanians have automatically become US citizens once the United States formally annexed Guam in 1898, despite the precedents set by the Court? If not, what about those born in Guam after the United States asserted sovereignty over the island? Did the Citizenship Clause of the Fourteenth Amendment apply in Guam if Congress decided to pass legislation that made Guamanians citizens? By leaving these questions unanswered, the *Insular Cases* created a space for constitutional contestation that allowed members of Guam's Congress and US policy makers to engage in an interactive process of popular constitutionalism regarding the status of citizenship in the unincorporated territories.

Three episodes of Guamanians mobilizing and protesting for US citizenship provide examples of popular constitutionalism in the context of US empire: when Guamanians argued for US citizenship to US policy makers who traveled to Guam in the 1920s; when members of Guam's Congress petitioned US lawmakers in Washington, DC, to make Guamanians US citizens in the mid-1930s; and when, in the immediate years after World War II, Guamanians boycotted Guam's Congress to protest US naval rule, pressuring US lawmakers to extend US citizenship to Guam.¹⁵

The members of the House of Representatives who attended a meeting of Guam's Congress in 1925 received a speech by Don Atanasio T. Perez, Chief Clerk to the Governor of Guam, urging that Guamanians become US citizens:

When the United States acquired sovereignty over the Virgin Islands, citizenship was immediately conferred on the inhabitants, but Guam, for 26 years as American possession, has not yet been granted that privilege. We appeal to the American ideals and sense of justice . . . I hope that Congress will . . . strengthen our loyalty by granting us the title we would prize above all other – Citizens of the United States. (Governor of Guam, 1936, 30, quoted in Hofschnieder 2001, 66)

Ramon Sablan made a similar appeal to the US delegation:

For more than a quarter of a century we have been under the American flag, but neither as citizens nor as aliens. If we are neither aliens nor citizens, what

15. For a more thorough history of Guamanians mobilizing for US citizenship during the decades of naval rule, see Leibowitz (1989, 306–21) and Hofschnieder (2001, 47–78).

are we? Certainly the sentiments of an alien are not similar to ours toward the American Government. But the sentiments of true citizenship, we have been cultivating for the past 26 years. (United States Congress 1937, 53, quoted in Hofschneider 2001, 66)

These speeches show how Guamanians made constitutional arguments that invoked theories of loyalty, justice, and inclusion to explain how they felt like US citizens but also deserved formal legal recognition (Ngai 2004, 1–14; Ong 1996). This is similar to a theory of citizenship, rooted in loyalty to the federal government, that some former slaves—who did what they could in an oppressive environment to support the Union and resist the Confederacy—made in testimony to the Southern Claims Commission in the aftermath of the Civil War (Susanna Lee 2014, 90–112).

More evidence of Guamanians engaging in popular constitutionalism can be found in a petition voted on by Guam's Congress in 1933 (Hofschneider 2001, 86–88). Guamanians continued to make arguments for US citizenship connected to loyalty to the United States and its constitutional values. The petition asserted:

8. That the natives of the island of Guam have no other flag than that of the United States – loyal subjects with love for flag and Nation.

9. That the natives of the island of Guam are not looking forward to separation from the protection and support of the motherland.

10. That the natives of the island of Guam fervently aspire to become citizens of the United States.

11. That the natives of the Island of Guam are attached to the principles of the Constitution of the United States. (Hofschneider 2001, 87)

In 1937, Guamanian activists Baltasar (B. J.) Bordallo and Francisco Leon Guerrero traveled to Washington, DC, to deliver the 1933 petition to the US Congress (Unterman 2020, 823; Hofschneider 2001, 91–103; Hattori 1995, 59). Bordallo prepared a letter in which he emphasized an equality-based argument for Guamanian citizenship, explaining that Guamanians “are only concerned to the extent that our people be granted citizenship rights as have the people of Hawaii, Alaska, Puerto Rico and the Virgin Islands” (United States Congress 1937, 12).

Throughout this period of petitioning and lobbying for citizenship, US military leaders opposed changes to naval rule over Guam. They were motivated by racism, imperialistic paternalism, economic interests, and strategic concerns. A 1937 report filed by the Navy stated:

[T]he enactment of this measure [extending citizenship] would be prejudicial to the best interest of both the United States and the native population of Guam. The complicated international situation in the Far East, the questionable status of treaties, and the fact that the United States is withdrawing from the Philippines all contribute to the undesirability of any change in the status of the people of Guam or in the method of administration of that island

during the present unstable conditions. The geographical location of Guam in the midst of foreign territory, with foreign commercial and colonizing interests to be considered, together with the racial problems of that locality, combine to provide for a fertile field for international disputes. It is believed that the change provided for in the proposed legislation would aggravate the danger to peaceful international relations. (United States Congress 1937, 6)

The Navy was concerned that making Guamanians citizens would lead to “a change of government,” possibly securing the right to self-government for Guamanians through true representation in Guam’s Congress, as evidenced by Commander Davis saying that “United States citizens have a part in their Government” (United States Congress 1937, 92–93). Military leaders were also concerned that the extension of citizenship to Guamanians would threaten the Navy’s plans for dealing with a possible war in the Pacific with Japan (Rogers 2011, 123–24, 145–46). US strategic interests thus became a major obstacle to extending citizenship to Guam as the Navy persuaded the US State Department to also oppose extension of citizenship to Guam. R. W. Flournoy, a State Department representative, explained:

[A]fter a consultation with representatives of the Navy Department, and careful consideration by officials of the State Department . . . the Department came to the conclusions and said in the letter that it did not favor the proposal to make the inhabitants of Guam citizens of the United States, although it would be desirable or at least there would be no objection to declaring the inhabitants of Guam to be citizens of Guam owing allegiance to the United States. (United States Congress 1937, 81–82)

Military leaders even argued that Guamanians were better off without US citizenship. As a Navy representative explained to the Senate:

[A]s citizens of Guam,¹⁶ the people of that possession enjoy the privileges of United States citizenship and have few, if any, of the obligations connected therewith. They are accorded passport privileges, have no Federal taxes or tariffs to pay, receive free medical and educational services, and are, in general, a particularly privileged people. (United States Congress 1937, 6)

Thus, while Guamanians expressed a desire for US citizenship in the 1920s and 1930s, the Navy was opposed to congressional action extending citizenship to Guamanians. Military leaders feared the potentially exacerbating effects to US strategic interests in a rapidly changing Pacific landscape from any changes in the structure of naval rule over Guam, including Guamanians’ relationship to the federal government, and by claiming that the “citizens of Guam” already benefited from the privileges (with none of the obligations) of US citizenship.

16. “Citizens of Guam” references the nebulous form of citizenship that existed for residents of Guam between 1898 and 1950, discussed earlier in the article.

Guamanians were not persuaded. They viewed the extension of citizenship as important and meaningful, and not just for access to formal constitutional rights. These hearings highlight how citizenship can be linked to feelings of connection and solidarity within a political community. More than just a matter of rights, citizenship, as historian Stephen Kantrowitz (2012, 33) explains in his history of free Black people in the antebellum United States, can be “a way of describing people’s enmeshment in a common world of human joy and struggle.” Leon Guerrero told senators that Guamanians sought citizenship “[t]o have a sense of security and to have something to transmit to our posterity to live up to in accordance with what we have learned and not to be this,” indicating a book entitled *A Man without a Country* (United States Congress 1937, 57–58). There was thus a meaningful connection between theories of identity, inclusion, and “enmeshment” within a political community attached to US citizenship for Guamanians.

Bordallo also refuted the idea that Guamanians enjoyed the privileges of U.S. citizenship.

We have taxation without representation, a naval officer, as Governor of Guam, has the power to make or break laws, to provide the moneys of the people in any way or manner he desires without giving accountability to the people who are the taxpayers; the Governor appoints all high government officials including the court judges and the island treasurer, island attorney and district commissioners to serve during his pleasure. (United States Congress 1937, 13)

Bordallo disputed the Navy’s claim that Guamanians received free medical services and education, and he gave examples of how the Navy hindered the economic development of Guam (United States Congress 1937, 13).¹⁷ Bordallo ended his letter with the following passage:

For 39 years past our people have treated the military authorities in Guam in the spirit of friendship and understanding . . . we have extended them our spontaneous hospitality, inherent in our race; and we have wholeheartedly cooperated in the Americanization program for the assimilation of American culture, ideals and relations of our mother country; we have proven our loyalty to the country and our allegiance to the American flag in time of peace and in time of war . . . There can be no change in status, since we have none; we are neither aliens nor citizens, and we are not recommending for a change in administration in the island nor are we asking Uncle Sam for Federal appropriations. We are only petitioning the Congress to give citizenship rights accorded the inhabitants of the Territories and other possessions of the United States; which we feel we are justly entitled to, and have been waiting for 39 years. (United States Congress 1937, 13)

17. For a history of how the US Navy used health care policies to buttress its authoritarian governance in Guam, see Hattori (2004).

Bordallo's letter and testimony during these hearings provide more evidence of how Guamanians engaged in popular constitutionalism when making claims to US citizenship, emphasizing principles of equality, representation, self-government, republicanism, political efficacy, separation of powers, and loyalty to challenge the authoritarian relationship between the United States and Guam.

Swayed by the Navy's concern with national strategic interests, Congress refused to extend citizenship to Guam. The legislation that would have conferred citizenship to Guamanians was eventually abandoned "on security grounds . . . outside the presence of the Guamanians and off the record" (Leibowitz 1989, 321).¹⁸ In response, Bordallo offered this statement:

Are the people of Guam to assume at this executive session [Guamanians] are to be denied participation in a secret discussion that will perhaps determine their fate; that is, either extend them the rights and privileges of American citizenship or deny . . . them . . . their aspirations to join their mother country and enjoy her rights and privileges? Is it within the sense of American justice and fair play to hold a secret council in which to decide the fate of [Guamanians] without so much as to give them their human right to defend themselves? If [Congress] should decide against us, it means that the people of Guam shall remain subjects of America, a country whose Constitution gives no rights and privileges to its subjects. The founders of this great Republic made no provision, because they never intended that this country should maintain two forms of government, one for its citizens, and another, a different form, for its subjects. It is their purpose, it is their conviction, that only so long as this Government respects the rights and privileges which the Constitution guarantees its citizens can it survive. (United States Congress 1937, 96–97)

In this passage, Bordallo relies on principles of self-rule and fundamental rights and privileges to highlight the authoritarian nature of US rule over Guam. Bordallo also makes an argument against the legitimacy of a caste system in the United States, claiming that the Constitution prohibits the federal government from maintaining indefinite plenary sovereignty over a territory and governing people as "subjects." Here, Bordallo echoes constitutional arguments against US imperialism made by US policy makers and academics in law review articles in the 1890s (see Sparrow 2006; Love 2004).

The United States continued its authoritarian rule over Guam until World War II, when Japan invaded and then occupied the territory from December 1941 to July 1944. Japanese rule over Guam during World War II was cruel and dehumanizing: Chamorus were forced into concentration camps and manual labor, with "[e]xecutions, beatings and rapes . . . common," as "the Japanese military treated Guam's Chamorus as an enemy population" (Unterman 2020, 824).¹⁹ When Guam was liberated from Japanese control in 1944, the physical destruction to the island meant that most of

18. See United States Congress (1937, 92–93).

19. For an overview of Japan's occupation of Guam during World War II, see Carano and Sanchez (1964, 273–89), Leibowitz (1989, 311–12), Rogers (2011, 152–69), United States Congress (2004), United States Congress (2009), and Higuchi (2001, 19–35).

the remaining Chamoru population, once released from Japanese concentration camps, had to be relocated from their homes (Leibowitz 1989, 312; Maga 1988, 197).

When the United States regained control of Guam in July 1944, a large area of the island was taken over for military purposes (Maga 1988, 197; Leibowitz 1989, 312; Unterman 2020, 824); by 1947 the Navy occupied over half the land on the island (Hofschneider 2001, 127–30). The post-WWII policy of the United States was to strengthen Guam as a naval base to support military action in the Pacific. Guamanians protested the Navy's condemnation of land, especially for recreational uses that could only be used by members of the military. US takeover of so much of Guamanian land was a major factor in a new wave of mobilization for citizenship, as Guamanians hoped that citizenship would allow them to better protect their individual property rights against US military incursions (Hofschneider 2001, 126–30; Diaz 2004).²⁰

GUAMANIAN MOBILIZATION AFTER WORLD WAR II AND THE ORGANIC ACT OF 1950: EXTENSION OF US CITIZENSHIP TO GUAM

Members of Guam's Congress continued to make claims for citizenship in the immediate years after World War II, leading Congress to recognize Guamanians as US citizens in 1950. The causes for the passage of the 1950 Organic Act,²¹ which established a civilian territorial government and extended US citizenship to Guam, are "multifarious" (Hattori 1995, 24). To highlight the role that popular constitutionalism played in this achievement, I focus on two major influences. The first is Guamanian mobilization and protest in the immediate years after World War II, which culminated in a walkout by members of the Guam Congress in 1949. The second is Cold War politics, as US lawmakers recognized the propaganda value of extending citizenship to Guamanians in the United States' ideological struggle against the Soviet Union.

When US martial law ended in May 1946, leaders of Guam's Congress again demanded US citizenship (Hofschneider 2001, 116–17; Hattori 1995). In January 1947, Guam's House of Council and House of Assembly passed a Joint Resolution that petitioned the US president, Congress, and Navy for citizenship (Hofschneider 2001, 130). In December 1948, the Guam House of Council again petitioned the United States to extend citizenship to Guamanians (Hofschneider 2001, 132–36). By March 1949, a draft of organic legislation that would grant Guamanians citizenship was passed unanimously by both chambers of Guam's Congress (Hofschneider 2001, 132–36; Hattori 1995).

20. See Unterman (2020) for an overview of how Guamanians viewed citizenship as connected to the protection of property through the right to jury trials.

21. The Organic Act of 1950 defined Guam as an unincorporated territory with no guarantee of eventual statehood, but created a territorial government for the island and transferred federal authority over Guam from the Department of State to the Department of the Interior. The Organic Act of 1950 continues to guide the status relationship between Guam and the United States, in which Guam remains in a subordinate position to the federal without having the same protections and entitlements of "incorporated" US states.

The final event that led to the Guam Congress walkout in 1949 was Governor Charles Pownall's interference with the House of Assembly's ability to investigate, provide oversight, and hold hearings regarding complaints that the Navy had been selling business licenses to non-Guamanians (Hofschneider 2001, 145–47; Hattori 1995). In March 1949, when Governor Pownall refused to allow Guam's Congress the power to execute an arrest for someone it held in contempt, the House of Assembly unanimously voted to “adjourn at this time and not to reconvene until such time as this body receives a reply on the action of the Congress of the United States relative to the Organic Act for Guam as passed by both Houses of the Guam Congress” (Guam Congress 1949, 5, quoted in Hofschneider 147–48). Speaker Antonio B. Won Pat gave the following explanation for why the Guam Congress decided to engage in a walkout:

The members of the House of Assembly consider that the powers of the three branches of the government must be defined. It is further believed that only then can you and your staff, the Legislative and Judicial Branches of the Naval Government assure the people of Guam of the full functioning of the democratic processes of government. In the meantime, the members of the Assembly do not feel that they can appear to have the status of a legislative body without the proper powers to carry out that function. Until such time as they are permitted to play their proper role in the government of Guam, they prefer not to attempt to discharge their duties as members of the . . . Guam Congress. (Guam 1949, 1, quoted in Hofschneider 2001, 148)

The month-long walkout was highly effective. President Harry Truman ordered the Navy to turn over the governance of Guam to the Department of Interior within a year, which would eventually lead Congress to pass the 1950 Organic Act.

Further evidence of Guamanian mobilization and protest comes from the hearings of the Committee of Public Lands of the US House of Representatives, which were held in Guam's Congress in November 1949 (United States Congress 1949, 21–23; see Hofschneider 2001, 152). One member of Guam's Congress testified that Guamanians had mobilized to demand citizenship

because we would be no longer subjects of military rulers, we would be no longer subjected to Boot Camp disciplines and regulations, but we would have a government like other free people in the World - a government of the people, for the people and by the people . . . When the first word was passed around that Guam would be transferred from the Navy Department to the Department of the Interior, and that American citizenship would be conferred upon the inhabitants of Guam, there was a bit of fear entertained by the people. That . . . was the fear of whether we would get that genuine American citizenship as guaranteed by the Constitution of the United States of America—Liberty and Equality. The basic reason for this fear is the fact that today in Guam there are two basic kinds of American citizens. One kind of American citizen is the white American, and the other is the brown Guamanian . . . an American working side by side doing the same kind of work, the same rating, and having the same technical knowledge with a

Guamanian would still be paid under different schedule of wages. (United States Congress 1949, 128–31)

Another testified that

[t]he people of Guam are peaceful, law abiding citizens and want more than ever to be governed by a government of law and not by men. We want all of our rights protected, secure. We want freedom of the press . . . freedom of speech. We want every living person in Guam not to be deprived of life, liberty or property without due process of law. Our present system of government is dictatorial. (United States Congress 1949, 47)

These public speeches in Guam's Congress demonstrate that Guamanians continued to mobilize and protest for US citizenship in the immediate years after World War II through popular constitutionalism, making arguments rooted in constitutional principles of freedom of the press, free speech, liberty and equality, political representation, and due process.

Hearings held in the US Senate in 1950 to debate an organic act for Guam highlight another influence that helps explain why citizenship was extended to Guam in the post-WWII era: US military personnel and lawmakers viewed the extension of citizenship to Guamanians as a valuable Cold War propaganda tool. US policy makers recognized that making Guamanians citizens could improve the United States' image on the global stage, which would strengthen its geopolitical interests. Carlton Skinner, the first civilian Governor of Guam, testified that "unfortunately . . . for the reputation of the United States as a democratic country with a republican form of government" Guamanians had been denied citizenship since 1898, but that "[p]assage of this bill will meet with universal acclaim" (United States Congress 1950, 39–40). He emphasized that

the granting of citizenship and self-government, in itself, will be a powerful psychological and political weapon in our dealings with the independent peoples of the Far East. They are watching closely to see if Uncle Sam's professions of democratic ideals are borne out in his treatment of a people who have been under the American flag for over half a century and have demonstrated their intense devotion to that flag in war and peace. (United States Congress 1950, 41)

The recognition of the propaganda value of extending citizenship to Guam also helps explain why the Navy had altered its position by 1950 and strongly endorsed extending US citizenship to Guam. John L. Sullivan, the Under Secretary of the Navy, explained why the Navy changed its policy regarding the conferral of citizenship to Guam in hearings from 1947:

In providing an Organic Act for Guam, the United States will carry on the high principles it has demonstrated in its administration of dependent areas. Such a step will add further to the world prestige that came to the United

States when it fulfilled its pledge of independence to the Philippines. It will show that we practice, as well as preach, representative democracy, by permitting the inhabitants of Guam to participate in local government. It will bind them more closely to us, and will strengthen our hand in the strategically important Pacific area. (United States Congress 1947, 59)

Skinner also believed an organic act for Guam could economically benefit the United States:

[The organic act] will stimulate commercial, agricultural and industrial growth. With a responsible legislature, with an executive branch with clear but limited powers, and with a Federal and local court system officially established as part of the great system of American courts which protect private rights and private property as well as the public interest, the island can become an economic asset to the United States as well as a strategic base of great value. With the best harbor in the western Pacific and with fine airfields and a trans-Pacific cable station, Guam is already a commercial, transportation, and communications center. With the foundation provided by an organic act, it can become a vital link in our economic life line to southeast Asia and Japan. A substantial growth of business can be expected if this act is passed to provide political stability to the community. (United States Congress 1950, 40)

Another factor that helps explain why members of Congress decided to extend citizenship to Guam was the belief that they could do so without undermining US sovereign authority over Guam. William Lemke, a representative from North Dakota, explained that he “can see no danger of abuse [of extending citizenship to Guam], because the President, by appointing the Governor, who also has veto power, and then also by appointing the judiciary, fully protects any interests that the United States, the mainland, may have” (United States Congress 1950, 40). The extension of citizenship, Lemke went on to explain, still allows the federal government to maintain sovereignty over Guam’s government over any issue (United States Congress 1950, 41–42). Members of Congress were thus assured by military leaders that US authority over Guam would not be subverted despite the creation of a civil government for Guam and the extension of citizenship to Guamanians.

During these hearings, it was also made clear that the enactment of an organic act for Guam would not mean it that was to become a state, but that it was to remain as an unincorporated territory. As Governor Skinner explained:

At this point, I wish to state unequivocally that the people of Guam do not envision or desire statehood at any future time. The legislation under consideration contains no promise, direct or implied, of statehood. With citizenship and the addition of Guam to the United States as an unincorporated Territory with powers of government defined by the United States Congress, they will be happy and contented as to their political ambitions. They will have the foundation for fulfilling their own destinies economically, politically, and socially. (United States Congress 1950, 40)

Extending citizenship to Guam thus allowed for the United States to portray itself as egalitarian, nonracist, and the global leader of democracy and freedom while not altering the existing power structure between Guam, as a subordinate, occupied territory, and the US federal government.²² The legal history of citizenship legislation for Guam illustrates that the formal extension of citizenship does not by itself alter the imperial relationship between the United States and its unincorporated territories.

CONCLUSION

In this article, I have analyzed the Guamanian campaign for US citizenship in the 1930s and 1940s as an example of popular constitutionalism. Despite the Supreme Court's holdings in the *Insular Cases* and the Navy's opposition to their demands, Guamanians mobilized and protested around an interpretation of the Constitution that included them as equal and loyal citizens in the US polity. Their efforts eventually pressured Congress to pass an organic act in 1950 that made Guamanians US citizens. This legal history thus provides an example of the "generative dynamics of popular constitutional development" (Schmidt 2018, 67), as Guamanians were able to give their own meaning to the Constitution, one in which they influenced US policy makers by arguing that the United States was morally and constitutionally obligated to extend citizenship to Guam. This legal history connects popular constitutionalism to recent scholarship that illuminates some of the "mechanisms of representation" through which historically marginalized and disenfranchised groups have been able to exert political power and influence US policy (McKinley 2018).

US military leaders recognized that extending citizenship to Guam would be a way to buttress its desired image as a democratic, egalitarian nation in the early years of the Cold War. They weaponized Guamanian citizenship as a valuable propaganda tool for the United States in its global ideological struggle to demonstrate the superiority of American democracy and capitalism over Soviet totalitarianism and communism. This history should make scholars think critically about the ways in which the United States has used citizenship to legitimate its empire without fundamentally threatening its rule over its territories.

This does not diminish the decades-long struggle engaged in by Guamanians to protest and resist US empire by demanding an equal form of citizenship. Guamanians would not have become US citizens without active and effective mobilization around their own interpretations of the Constitution. Thus, the legal history of US citizenship legislation in Guam provides an example of how popular constitutionalism can exist as form of resistance to US empire by a subordinated population. Finally, the legal history of citizenship in Guam illuminates how various forms of oppression persist even after a subjected population gains citizenship. Despite becoming citizens, Guamanians remain dependent on Congress to continue to secure a statutory form

22. For more on the interconnected relationship between foreign policy and US domestic policy during the Cold War, see Bell (1980), Dudziak (2000), and Venator-Santiago (2019).

of citizenship, have no representative in Congress, and are unable to vote in federal elections. Guamanians, and other people living in the unincorporated territories that have won US citizenship or rejected it, have not yet achieved political equality.

REFERENCES

- Ackerman, Bruce. *We the People, Volume 3: The Civil Rights Revolution*. Cambridge, MA: Belknap Press of Harvard University Press, 2014.
- Banivanua-Mar, Tracey. *Decolonisation and the Pacific: Indigenous Globalisation and the Ends of Empire*. Cambridge, UK: Cambridge University Press, 2016.
- Barnett, Randy E., and Evan D. Bernick. *The Original Meaning of the Fourteenth Amendment: Its Letter and Spirit*. Cambridge, MA: Harvard University Press, 2021.
- Beienburg, Sean, and Paul Frymer. "The People against Themselves: Rethinking Popular Constitutionalism." *Law & Social Inquiry* 41, no. 1 (2016): 242–66.
- Bell, Derrick. "Brown v. Board of Education and the Interest-Convergence Dilemma." *Harvard Law Review* 93, no. 3 (1980): 518–33.
- Bettis, Leland. "Colonial Immigration in Guam." In *Issues in Guam's Political Development: The Chamorro Perspective*, 105. Agana, Guam: The Political Status Education Coordinating Commission, 1996.
- Briggs, Laura. *Reproducing Empire: Race, Sex, Science, and U.S. Imperialism in Puerto Rico*. Berkeley and Los Angeles, CA: University of California Press, 2002.
- Burnett, Christina Duffy, and Burke Marshall, ed. *Foreign in a Domestic Sense: Puerto Rico, American Expansion and the Constitution*. Durham, NC: Duke University Press, 2001.
- Carano, Paul, and Pedro C. Sanchez. *A Complete History of Guam*. Rutland, VT: Charles E. Tuttle Co., 1964.
- Cogan, Doloris Coulter. *We Fought the Navy and Won: Guam's Quest for Democracy*. Honolulu, HI: University of Hawai'i Press, 2008.
- Collins, Jr., Paul M., and Matthew Eshbaugh-Soha. *The President and the Supreme Court: Going Public on Judicial Decisions from Washington to Trump*. Cambridge, UK: Cambridge University Press, 2019.
- Governor of Guam, Annual Report, 1936.
- Guam Congress. House of Assembly. *Congressional Record*, 1949.
- Cottman, Vincedon. *Description of the Island of Guam*. Handwritten letter to the Secretary of the Navy, 1899.
- Dardani, Ross. "Citizenship in Empire: The Legal History of U.S. Citizenship in American Samoa, 1899-1960." *American Journal of Legal History* 60 (2020): 311–56.
- Davis, Peggy Cooper. *Neglected Stories: The Constitution and Family Values*. New York: Macmillan Publishers, 1997.
- Diaz, Vicente M. "Review Essay: Political Rights on the Island of Guam." *Micronesian Journal of the Humanities and Social Sciences* 3, no. 1–2 (2004): 94–100.
- Dudziak, Mary L. *Cold War Civil Rights: Race and the Image of American Democracy*. Princeton, NJ: Princeton University Press, 2000.
- Dyer, George. *Report of the Governor of Guam*. Typewritten letter to the Navy Department, Washington, DC, 1904.
- Epps, Garrett. *Democracy Reborn: The Fourteenth Amendment and the Fight for Equal Rights in Post-Civil War America*. New York: Henry Holt and Company, 2006.
- Erman, Sam. "Citizens of Empire: Puerto Rico, Status, and Constitutional Change." *California Law Review* 102, no. 5 (2014): 1181–1242.
- . *Almost Citizens: Puerto Rico, the U.S. Constitution, and Empire*. Cambridge, UK: Cambridge University Press, 2019.
- Foner, Eric. *The Second Founding: How the Civil War and Reconstruction Remade the Constitution*. New York: W. W. Norton & Company, 2019.

- Gans, David H. "Reproductive Originalism: Why the Fourteenth Amendment's Original Meaning Protects the Right to Abortion." *SMU Law Review* 75 (2022): 191–211.
- Glass, Maeve. "Citizens of the State." *University of Chicago Law Review* 85, no. 4 (2018): 865–934.
- Go, Julian. "'Racism' and Colonialism: Meanings of Difference and Ruling Practices in America's Pacific Empire." *Qualitative Sociology* 27, no. 1 (2004): 35–58.
- . *Patterns of Empire: The British and American Empires: 1688 to the Present*. New York: Cambridge University Press, 2011.
- Goluboff, Risa L. *The Lost Promise of Civil Rights*. Cambridge, MA: Harvard University Press, 2007.
- Guam News, 20 March 1949.
- Haney Lopez, Ian. *White by Law: The Legal Construction of Race*. New York: New York University Press, 1996.
- Hattori, Anne Perez. "Righting Civil Wrongs: The Guam Congress Walkout of 1949." *ISLA: A Journal of Micronesian Studies* 3, no. 1 (1995): 1–27.
- . *Colonial Dis-Ease: U.S. Navy Health Policies and the Chamorros of Guam, 1898-1941*. Honolulu, HI: University of Hawai'i Press, 2004.
- Higuchi, Wakako. *Remembering the War Years on Guam: A Japanese Perspective*. Mangilao: University of Guam, 2001.
- Hofschneider, Penelope Bordallo. *A Campaign for Political Rights on the Island of Guam, 1899 to 1950*. Saipan: CNMI Division of Historic Preservation: Occasional Historical Papers, 2001.
- Hoganson, Kristin L. *Fighting for American Manhood: How Gender Politics Provoked the Spanish-American and Philippine-American Wars*. New Haven, CT: Yale University Press, 1998.
- Jones, Martha. *Birthright Citizens: A History of Race and Rights in Antebellum America*. New York: Cambridge University Press, 2018.
- Kantrowitz, Stephen. *More than Freedom: Fighting for Black Citizenship in a White Republic, 1829-1899*. New York: Penguin Press, 2012.
- Kaplan, Amy. *The Anarchy of Empire in the Making of U.S. Culture*. Cambridge, MA: Harvard University Press, 2002.
- Kennedy, Joseph. *The Tropical Frontier: America's South Sea Colony*. Mangilao: University of Guam, Micronesian Area Research Center, 2009.
- Kramer, Larry D. *The People Themselves: Popular Constitutionalism and Judicial Review*. New York: Oxford University Press, 2004.
- Kramer, Paul. *The Blood of Government: Race, Empire, the United States, and the Philippines*. Chapel Hill, NC: University of North Carolina Press, 2006.
- LaFeber, Walter. *The New Empire: An Interpretation of American Expansion, 1860-1898*. Ithaca, NY: Cornell University Press, 1998.
- Lee, Sophia Z. *The Workplace Constitution: From the New Deal to the New Right*. New York: Cambridge University Press, 2014.
- Lee, Susanna Michele. *Claiming the Union: Citizenship in the Post-Civil War South*. Cambridge, UK: Cambridge University Press, 2014.
- Leibowitz, Arnold H. *A Comprehensive Analysis of U.S. Territorial Policy*. Leiden, Netherlands: Martinus Nijhoff Publishers, 1989.
- Love, Eric T. L. *Race of Empire: Racism and U.S. Imperialism, 1865-1900*. Chapel Hill, NC: University of North Carolina Press, 2004.
- Lovell, George I. *This Is Not Civil Rights: Discovering Rights Talk in 1939 America*. Chicago: University of Chicago Press, 2012.
- Maga, Timothy P. *Defending Paradise: The United States and Guam, 1898-1950*. New York: Garland Publishing, 1988.
- McCann, Michael W., with George I. Lovell. *Union by Law: Filipino American Labor Activists, Rights Radicalism, and Racial Capitalism*. Chicago: University of Chicago Press, 2020.
- McCarthy, Thomas. *Race, Empire and the Idea of Human Development*. New York: Cambridge University Press, 2009.
- McCormick, Thomas J. *China Market: America's Quest for Informal Empire, 1893-1901*. Chicago: Elephant Paperbacks, 1990.

- McCoy, Alfred W. *Policing America's Empire: The United States, the Philippines, and the Rise of the Surveillance State*. Madison, WI: University of Wisconsin Press, 2009.
- McKinley, Maggie. "Petitioning and the Making of the Administrative State." *Yale Law Journal* 127, no. 6 (2018): 1538–1637.
- Moore, Colin D. *American Imperialism and the State, 1893-1921*. New York: Cambridge University Press, 2017.
- Neuman, Gerald. "The Extraterritorial Constitution after *Boumediene v. Bush*." *Southern California Law Review* 82, no. 2 (2009): 259–90.
- Neuman, Gerald, and Tomiko Brown-Nagin, ed. *Reconsidering the Insular Cases: The Past and Future of the American Empire*. Cambridge, MA: Harvard University Press, 2015.
- Ngai, Mae M. *Impossible Subjects: Illegal Aliens and the Making of Modern America*. Princeton, NJ: Princeton University Press, 2004.
- Ong, Aihwa. "Cultural Citizenship as Subject Making: Immigrants Negotiate Racial and Cultural Boundaries in the United States." *Current Anthropology* 37, no. 5 (1996): 737–62.
- Post, Robert, and Reva Siegel. "Popular Constitutionalism, Departmentalism, and Judicial Supremacy." *California Law Review* 92, no. 4 (2004): 1027–44.
- Pryor, Elizabeth Strouder. *Colored Travelers: Mobility and the Fight for Citizenship before the Civil War*. Chapel Hill, NC: University of North Carolina Press, 2016.
- Ramos, Efron Rivera. *American Colonialism in Puerto Rico: The Judicial and Social Legacy*. Princeton, NJ: Markus Wiener Publishers, 2007.
- Raustiala, Kal. *Does the Constitution Follow the Flag? The Evolution of Territoriality in American Law*. New York: Oxford University Press, 2009.
- Rogers, Robert F. *Destiny's Landfall: A History of Guam*. Honolulu, HI: University of Hawai'i Press, 2011.
- Roman, Ediberto. *The Other American Colonies: An International and Constitutional Law Examination of the United States' Nineteenth and Twentieth Century Island Conquests*. Durham, NC: Carolina Academic Press, 2006.
- . *Citizenship and Its Exclusions: A Classical, Constitutional and Critical Race Critique*. New York: New York University Press, 2010.
- Schlingens, Veta. "The Invention of 'Noncitizen American Nationality' and the Meanings of Colonial Subjecthood in the United States." *Pacific Historical Review* 89, no. 3 (2020): 317–46.
- Schmidt, Christopher W. "Popular Constitutionalism on the Right: Lessons from the Tea Party." *Denver University Law Review* 88, no. 3 (2011): 523–57.
- . *The Sit-Ins: Protest & Legal Change in the Civil Rights Era*. Chicago: University of Chicago Press, 2018.
- Schoeppner, Michael A. *Moral Contagion: Black Atlantic Sailors, Citizenship, and Diplomacy in Antebellum America*. Cambridge, UK: Cambridge University Press, 2019.
- Shugerman, Jed Handelsman. *The People's Courts: Pursuing Judicial Independence in America*. Cambridge, MA: Harvard University Press, 2012.
- Siegel, Reva B. "Dead or Alive: Originalism as Popular Constitutionalism in *Heller*." *Harvard Law Review* 122, no. 1 (2008): 191–265.
- Smith, Rogers M. *Civic Ideals: Conflicting Visions of Citizenship in U.S. History*. New Haven, CT: Yale University Press, 1997.
- Sparrow, Bartholomew H. *The Insular Cases and the Emergence of American Empire*. Lawrence, KS: University Press of Kansas, 2006.
- Tauber, Alan. "The Empire Forgotten: The Application of the Bill of Rights to U.S. Territories." *Case Western Reserve Law Review* 57, no. 1 (2006): 147–78.
- Thompson, Lanny. *Imperial Archipelago: Representation and Rule in the Insular Territories under U.S. Dominion after 1898*. Honolulu, HI: University of Hawai'i Press, 2010.
- Thompson, Laura. *Guam and Its People*. New York: Greenwood Press, 1969.
- Torruella, Juan R. "The Insular Cases: The Establishment of a Regime of Political Apartheid." *University of Pennsylvania Journal of International Law* 29, no. 2 (2007): 283–347.
- Tushnet, Mark V. "Popular Constitutionalism as Political Law." *Chicago Kent Law Review* 81, no. 3 (2006): 991–1006.

- United States Congress. *Guam War Claims Review Commission, 2003-2004*. Mangilao: The Richard Flores Taitano Micronesian Area Research Center, University of Guam, 2004.
- . House of Representatives. *Annual Report of the Governor of Guam*. 71st Cong., 1st sess. (1929).
- . House of Representatives. *Assessing the Guam War Claims Process*. 111th Cong., 1st sess. (2009).
- . House of Representatives. Committee on Public Lands. *Hearings on H.R. 4499, et al., Bills to Provide a Civil Government for Guam, and for Other Purposes*. 81st Cong., 1st sess. (1949).
- . House of Representatives. *Hearings before the Subcommittee on Territorial and Insular Possessions of the House Public Lands Committee*. 80th Cong., 1st sess. (1947).
- . Senate. *A Bill to Provide a Civil Government for the Island of Guam, and for Other Purposes*. 81st Cong., 2nd sess. (1950).
- . Senate. *A Bill to Provide a Government for the Island of Guam*. 57th Cong., 2d. sess. (1903).
- . Senate. *Citizenship for Residents of Guam, Hearings before a Subcommittee of the Committee on Territories and Insular Affairs on S. 1450*. 75th Cong., 1st sess. (1937).
- . Senate. *Civil Government for Guam, Hearing before a Subcommittee of the Committee on Interior and Insular Affairs*. 81st Cong., 2nd sess. (1950).
- Unterman, Katherine. "Trial without Jury in Guam, USA." *Law and History Review* 38, no. 4 (2020): 811–41.
- VanderVelde, Lea. "The Anti-Republican Origins of the At-Will Doctrine." *American Journal of Legal History* 60, no. 4 (2020): 397–449.
- Venator-Santiago, Charles. "Extending Citizenship to Puerto Rico: Three Traditions of Inclusive Exclusion." *CENTRO Journal* 25, no. 1 (2013): 2–29.
- . *Puerto Rico and the Origins of U.S. Global Empire: The Disembodied Shade*. Abingdon, UK: Routledge Publishing, 2015.
- . "Interest Convergence and the Extension of U.S. Citizenship to Puerto Rico." *University of Miami Race and Social & Social Justice Law Review* 9, no. 1 (2019): 111–24.
- Weiner, Mark S. "Teutonic Constitutionalism: The Role of Ethno-Juridical Discourse in the Spanish-American War." *Foreign in a Domestic Sense: Puerto Rico, American Expansion and the Constitution*, edited by Christina Duffy Burnett and Burke Marshall, 48–81. Durham, NC: Duke University Press, 2001.
- Ziegler, Mary. *After Roe: The Lost History of the Abortion Debate*. Cambridge, MA: Harvard University Press, 2015.
- . *Roe: The History of a National Obsession*. New Haven, CT: Yale University Press, 2023.

CASES CITED

- Balzac v. Porto Rico*, 258 U.S. 298 (1922).
- Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).
- Cooper v. Aaron*, 358 U.S. 1 (1958).
- Downes v. Bidwell*, 182 U.S. 244 (1901).
- Dorr v. United States*, 195 U.S. 138 (1904).
- Gonzales v. Williams*, 192 U.S. 1 (1904).
- Hawaii v. Mankichi*, 190 U.S. 197 (1903).
- Reid v. Covert*, 354 U.S. 1 (1957).
- Roe v. Wade*, 410 U.S. 113 (1973).

STATUTES CITED

- Treaty of Peace between the United States and Spain, 30 Stat. 1754 (1898).
- Organic Act of Guam, 48 U.S.C. § 1421 (1950).