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Controversy over Citizens, Aliens, and Race in the Roman Empire

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Abstract

It has been frequently assumed that hordes of foreign “barbarians” invaded and overwhelmed the Roman Empire in the fifth century; Roman society by then had suffered “barbarization”, considerably diminishing its ability to resist the invasions. This article aims to revise the simple narrative of invasive foreigners that has long been perpetuated in Roman scholarship. The article shows that a) the Romans had always incorporated foreigners to strengthen their power; b) although the imperial government tended to elevate the civil and political status of foreigners, especially those rising from the military establishment, the officeholding nobility in the Senate strongly opposed any sort of inclusion that could threaten the status of entrenched officeholders; and c) as the rift between the nobility and the imperial government widened, foreigners progressively gained an increasing range of rights and privileges, until nobles resorted to force to reassert superior status. This controversy between the imperial government and the nobility over the inclusion of foreigners proceeded through several stages, beginning with legal repression of aliens, to universal citizenship, to foreigners in high office, and culminating with war and secession. Many aristocrats feared being declassed by ennobled foreign-born citizens, so they ended Emperor Theodosius’ peace with the Goths and instigated the wars that would fragment the Roman Empire and ruin many noble families. The Roman aristocracy’s antagonism towards upwardly mobile foreigners merits study, since it may provide insight into similar historical issues.

Introduction

According to legend, descendants of refugees founded Rome.¹ Over centuries, the Romans, never a homogenous exclusive group, managed to incorporate peoples throughout the Mediterranean.² Yet, the senatorial nobility was often wary of accepting new sheep to the fold. When Gallic-Roman citizens sought to obtain senatorial office in Rome, many senators argued that native-born citizens, not descendants of hostile tribes, should fill the Senate.³ They scorned the Gallic petitioners as “a mob of foreigners, a troop of captives, so to say,” and asked: “What distinctions will be left for the remnants of our noble houses...?”⁴ Emperor Claudius responded that those senators descended from Italian tribes once foreign to Rome. He cited the example of Rome’s founder Romulus, who “was so wise that he fought as enemies and then hailed as fellow citizens several nations on the very same day.”⁵ This story outlines two competing interests within the state. The imperial government sought to integrate foreigners into Roman society to unite entire nations and tribes under the Roman name; however, the nobility, consisting of those senators who could trace descent from illustrious office-holding families, objected to any sort of inclusion that would recognize foreigners subjugated by Rome as social equals and reduce the distinctions of noble houses. Since the imperial government held executive powers, this controversy within the state gradually enfranchised the alien, until senators used force to reassert social supremacy over whom they considered inferior outsiders. This ancient controversy over race, nationhood, and citizenship deserves attention, as it may improve our understanding of similar issues throughout history.

Citizens and Aliens in Roman Law

Roman law, a foundation for later legal codes, divided free people into two groups: citizens and *peregrini* (“foreigners”). Unlike *peregrini*, citizens could marry, inherit, dispose of property through wills, and

¹ C. Dio, *Roman History*, LanusCurtius, 2011, book 1, ch. 1, <https://bit.ly/CDioWPT>, (accessed 8 February 2022).

² N. Morley, “They Make a Desert and Call It Peace’: The Nature of Roman Rule’, in *The Roman Empire: Roots of Imperialism*, London, UK, Pluto Press, 2010, pp. 48–50, <https://doi.org/10.2307/j.ctt183pb5x.7>, (accessed 8 February 2022).

³ P.C. Tacitus, ‘The Annals’, in *Complete Works of Tacitus*, trans. A.J. Church, W.J. Brodribb, New York, Random House Inc., 1942, book 11, ch. 23, <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.02.0078>, (accessed 8 February 2022).

⁴ Tacitus, ‘The Annals’, book 11, ch. 23.

⁵ Ibid.

enjoy the protection of Roman law.⁶ Citizens were protected from torture, imprisonment, or execution without trial, but not *peregrini*. Citizens often received higher-pay jobs. Auxiliaries, non-citizen soldiers, were paid much less than legionaries, citizen soldiers.⁷ Thus, citizenship in Roman times conferred social and legal advantages.

Because citizenship helped to distinguish their status, Roman statesmen maintained the distinction between citizen and alien. When Gaius Gracchus proposed granting citizenship to the Latins in 122 BCE, the senator Gaius Fannius reportedly asked:

If you were to give Roman citizenship to the Latins, do you think that there would still be room for you at public meetings...? Do you not think that they would take up all the spaces?⁸

Through these rhetorical questions, the senator warns that extending citizenship to aliens empowers them to hold important public offices and supersede the nobility. Theoretically, any citizen could attain noble rank by holding a curule office (e.g., consulships, praetorships). In reality, families that already possessed noble rank sought to guard their exclusive access to prestigious offices.⁹ Since aliens could not hold senatorial office, legislation that separated aliens from citizens was one way that the nobility guarded those offices. In Fannius' mind, citizenship enabled officeholding, and curule office bestowed nobility, a venerable status that entrenched officeholders were unwilling to share with newcomers. Therefore, the Senate often pursued legislation to repress and disenfranchise aliens. In 65 BCE, the Senate passed the law of Papius, which reaffirmed the prohibition on aliens assuming the rights of a citizen and deported all aliens from the city of Rome.¹⁰ Senator Cicero, who disapproved of the latter part of the legislation as inhumane,¹¹ nonetheless agreed to the former and accepted the basic premise that the

⁶ R.W. Mathisen, 'Peregrini, Barbari, and Cives Romani: Concepts of Citizenship and the Legal Identity of Barbarians in the Later Roman Empire', *The American Historical Review*, vol. 111, no. 4, 2006, p. 1013, <https://doi.org/10.1086/ahr.111.4.1011>, (accessed 8 February 2022).

⁷ M.A. Speidel, 'Roman Army Pay Scales'. *The Journal of Roman Studies*, vol. 82, 1992, p. 106, <https://doi.org/10.2307/301286>, (accessed 8 February 2022).

⁸ H.I. Flower, *Roman Republics*, Princeton, NJ, Princeton University Press, 2009, p. 80.

⁹ F.B. Marsh, 'The Roman Aristocracy and the Death of Caesar', *The Classical Journal*, vol. 20, no. 8, 1925, p. 459, <http://www.jstor.org/stable/3288647>, (accessed 24 April 2022).

¹⁰ R.W. Husband, 'On the Expulsion of Foreigners from Rome', *Classical Philology*, vol. 11, no. 3, 1916, p. 328, <http://www.jstor.org/stable/261855>, (accessed 8 February 2022).

¹¹ M.T. Cicero, *De Officiis*, LanusCurtius, 2022, book 3, ch. 11, <https://bit.ly/DeOfficiis3B>, (accessed 18 February 2022).

Roman was far superior to any alien, even the most illustrious Gauls.¹² As one jurist asserted, the law understood aliens to be free albeit inferior peoples serving the power of the Roman people.¹³ To keep aliens disenfranchised and to preserve the status of the nobility, the Senate pursued coercive policies that resemble segregation.

The First Caesars and the Nobility

Although senators had meticulously crafted legislation to subordinate the alien to the citizen, Julius Caesar threatened to undo all their legal precision by empowering aliens with citizenship and senatorial office. Despite his noble lineage, Caesar had spent his youth far from Rome as a dispossessed refugee serving among alien auxiliaries in Asia, an experience that likely shaped his unorthodox policies.¹⁴ Not only did he extend citizenship to all free people in Cisalpine Gaul, but Caesar appointed Gallic aliens as senators. The premise of treating an alien as an equal so deeply offended established senatorial families that according to the Roman biographer Suetonius, the election of *peregrini* was a major factor that motivated some senators to assassinate Caesar. Interestingly, Suetonius lists this factor last, suggesting that it may have been the most important reason for Caesar's assassination. The nobles might have also resented Caesar doubling the number of praetorships and quaestorships, which would inevitably promote large numbers of new men, including Gallic foreigners, into the ranks of the aristocracy.¹⁵ Just like Fannius, the old Republican families could not tolerate the prospect that they might lose their exclusive control over prestigious offices to foreigners.

The highly class-conscious nobility feared that foreigners in the Senate would not only replace existing nobles but also declass them. Suetonius records the words of Caesar's opponents: "Caesar led the Gauls in triumph, led them to the senate-house; / Then the Gauls put off their breeches, and put on the laticlave [the purple stripe of a senator]."¹⁶ These verses appear to be a mere mockery of culturally alien Gauls, but closer analysis reveals a subtle fear that the inferior people are becoming the superior. The first verse subordinates the Gauls: they are

¹² E.S. Ramage, 'Cicero on Extra-Roman Speech', *Transactions and Proceedings of the American Philological Association*, vol. 92, 1961, p. 489, <https://doi.org/10.2307/283832>, (accessed 8 February 2022).

¹³ C. Ando, 'Aliens, Ambassadors, and the Integrity of the Empire.' *Law and History Review*, vol. 26, no. 3, 2008, p. 504, <http://www.jstor.org/stable/27641605>, (accessed 24 April 2022).

¹⁴ G.S. Tranquillus, 'The Life of Julius Caesar', in *The Lives of the Twelve Caesars*, LanusCurtius, 2013, ch. 2-4, <https://bit.ly/SuetJul>, (accessed 8 February 2022).

¹⁵ Marsh, 'The Roman Aristocracy and the Death of Caesar', p. 460.

¹⁶ *Ibid.*, 80.

captives being led. However, the second verse empowers the Gauls: donning the purple stripe, they become the leaders instead of the led. Now the Romans are the captives, it is implied. Furthermore, after assassinating Caesar, the conspirators styled themselves “liberators” and paraded a freedman’s cap on a spear, again implying Romans were captives or specifically slaves.¹⁷ The distinctions of office set the nobility apart from the rest of society; with their monopoly over high offices in danger, nobles might have felt that they would become subsumed with the common people. Fearing that officeholding foreigners would declass the Roman aristocracy from magistrates to slaves, leading aristocrats resorted to violence to reassert their superiority.

After Caesar’s assassination and the ensuing civil wars, Augustus sought to placate the aristocracy by reducing the number of magistracies and promoting largely from the old nobility. This settlement between the emperor and Senate restored the nobles’ exclusive access to high office and acknowledged their social prestige in return for loyalty.¹⁸ To satisfy the senators, the first emperors adhered carefully to the distinction between citizen and alien to reflect the aristocracy’s perception of aliens as mere resources. Senator Tacitus tacitly expresses such a perception in his work *Germania*:

For my own part, I agree with those who think that the tribes of Germany are free from all taint of inter-marriages with foreign nations and that they appear as a distinct, unmixed race, like none but themselves...

...

Foremost among all these nations in valor, the Batavi occupy an island within the Rhine and but a small portion of the bank. Formerly a tribe of the Chatti, they were forced by internal dissension to migrate to their present settlements and there become a part of the Roman Empire... Free from the usual burdens and contributions, and set apart for fighting purposes, like a magazine of arms, we reserve them for our wars. The subjection of the Mattiaci is of the same character. For the greatness of the Roman people has spread reverence for our empire beyond the Rhine and the old boundaries.¹⁹

¹⁷ W.E. Caldwell, ‘The Sequence of Events after Caesar’s Death’, *The Classical Weekly*, vol. 8, no. 9, 1914, p. 67, <https://doi.org/10.2307/4386987>, (accessed 8 February 2022).

¹⁸ Marsh, ‘The Roman Aristocracy and the Death of Caesar’, p. 463.

¹⁹ P.C. Tacitus, ‘Germany and its Tribes’, in *Complete Works of Tacitus*, trans. A.J. Church, W.J. Brodribb, New York, Random House Inc., 1942, ch. 4, 29, <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.02.0083>, (accessed 8 February 2022).

Tacitus appears to celebrate the inclusion of the Batavi and Mattiaci within the empire as an achievement that illustrates “the greatness of the Roman people.” Yet, he simultaneously exhibits contempt for marriage with foreigners as he considers interracial marriage a “taint.” Although Tacitus praises both the inclusion of foreigners into the country and the exclusion of foreigners from marriage, closer inspection reveals no contradiction. The senator compares the Batavi to a “magazine of arms”, which commodifies aliens as resources possessed by the Romans. Senators approved of enrolling aliens to serve Rome’s interests, but intended them to be subordinates, not equals as marriage implied. Hence, emperors, in accordance with the attitudes of the senatorial elite, regularly enforced the separation between aliens and citizens. According to Suetonius, Augustus was very unwilling to grant citizenship to any alien to keep the Roman stock “pure” and “unsullied by any taint of foreign or servile blood.”²⁰ The words “foreign” and “servile” are closely associated, again expressing the premise that aliens are social inferiors obligated to serve the superior people, the Romans. Emperor Claudius prohibited aliens from assuming Roman names and executed those who falsely claimed the rights of citizenship.²¹ When the senatorial aristocracy and imperial government shared common ideals, aliens generally faced repression and very low social prospects.

The Controversy within the State

As relations between the imperial government and aristocracy worsened, the status of aliens gradually improved. Resenting the growing influence of Emperor Commodus’ freedmen, prominent nobles organized multiple conspiracies to replace Commodus with someone more malleable.²² Following these conspiracies, Commodus, emulating the example of Romulus, began to blur the distinction between citizen and alien. Like how Romulus founded Rome in his name, Commodus refounded Rome as “Commodiana” and styled all people in the empire as “Commodians.”²³ By replacing all the old ethnic terminology (e.g., Romans, Gauls, Egyptians, Syrians, Greeks, Spaniards, etc.) with the overarching term “Commodians”, he attempted to unite Romans and aliens into one people, just as Romulus had united a diverse group of

²⁰ G.S. Tranquillus, ‘The Life of Augustus’, in *The Lives of the Twelve Caesars*, LanusCurtius, 2013, ch. 40, <https://bit.ly/SuetAug>, (accessed 8 February 2022).

²¹ Ibid.

²² J.S. McHugh, *The Emperor Commodus: God and Gladiator*, Barnsley, UK, Pen & Sword Military, 2015, ch. 3.

²³ ‘The Life of Commodus’, in *Historia Augusta*, LanusCurtius, 2019, ch. 15, https://penelope.uchicago.edu/Thayer/E/Roman/Texts/Historia_Augusta/Commodus*.html, (accessed 8 February 2022); Dio, *Roman History*, book 73, ch. 15.

followers into one people by the term “Romans.” To emphasize this idea of a common people, he titled Rome “Colony of the Whole Earth”, signifying that the people of Rome comprised all nationalities.²⁴ Many alien cities renamed themselves “Commodian”, and alien auxiliaries adopted the label “Commodian.”²⁵ Commodus likely appealed to the support of the common people and the military, as the aristocracy proved increasingly untrustworthy. Commodus’ reign established a rift between the nobility and the imperial government, aligning the imperial government more closely with the interests of aliens, especially those in the military.

The imperial government began to enfranchise aliens by treating them as Romans and providing the rights of citizenship. Commodus’ refounding of Rome signaled that the people of his empire comprised one tribe, a policy his successors would continue. In 212 CE, Emperor Antoninus Caracalla enacted the Antonine Constitution, which extended citizenship to all free people within the empire.²⁶ This policy redefined citizenship as a right, not a privilege, for any free individual under imperial rule. Following the Antonine Constitution, citizenship depended on one’s allegiance to the imperial government, not one’s geographical origins or tribal lineage.²⁷ With Gallic, African, and Syrian ancestry,²⁸ Caracalla likely sympathized with alien peoples, since he not only admitted all free aliens to citizenship but also promoted many aliens in his employ.²⁹ This infuriated the aristocracy. Senator Cassius Dio describes Caracalla as a madman who regularly murdered Roman nobles while advancing the most unqualified aliens into the highest offices of the state. One anecdote should sufficiently illustrate Dio’s disgust:

On Alexander’s account, then, [Caracalla] was very fond of the Macedonians. Once, after commending a Macedonian tribune for the agility with which he had leaped upon his horse, he asked him first: “From what country are you?” Then, learning that he was a Macedonian, he asked again: “What is your name?” And hearing that it was Antigonus, he further inquired: “And what was your father’s name?” When the father’s name was found to be Philip, he declared: “I have all my desire,” and promptly advanced him through all the other grades of the military career, and

²⁴ Dio, *Roman History*, book 73, ch. 15.

²⁵ McHugh, *The Emperor Commodus: God and Gladiator*, ch. 8, para. 15-35.

²⁶ Mathisen, ‘Peregrini, Barbari, and Cives Romani’, p. 1014.

²⁷ *Ibid.*, p. 1011-12.

²⁸ Dio, *Roman History*, book 78, ch. 6.

²⁹ *Ibid.*, ch. 8, 9, 13, 17. 19.

before long appointed him a senator with the rank of an ex-praetor.³⁰

This story shows Dio's scorn of lowborn aliens gaining status equal to highborn Romans. Antigonus' promotion to senatorial rank was completely undeserved from the perspective of nobles like Dio, who perhaps felt their education, experience, or breeding was far superior. Moreover, the adlection of a lowborn foreigner to the prestigious rank of ex-praetor insulted the honor and dignity of other ex-praetors and senators in junior offices. Social mobility for aliens accelerated after the Antonine Constitution. During the reigns of Caracalla and his successors, Gaius Julius Verus Maximinus rose from an obscure alien to a prominent Roman general.³¹ More soldiers of humble *peregrini* origins, now citizens, obtained command positions as well. After the death of Emperor Severus Alexander, these officers of alien origin, leading a very racially-diverse army, elected Maximinus emperor without a decree from the Senate.³² Enfranchised by the Antonine Constitution, an Illyrian-Roman general, whom nobles considered not a fellow citizen but a mongrel, became emperor in 235.³³ In Rome's case, universal citizenship elevated the social status of former aliens, with some reaching the highest levels of government to the disgust of traditional officeholding families.

“Barbarian” Emperors

Relations between the imperial government and the Senate worsened considerably, as the emperor himself became a foreigner. Antoninus Caracalla held alien blood, but he could nevertheless trace descent from the ennobled Septimius Severus. Emperor Maximinus however could claim no such noble lineage, as his origins were so obscure that Roman writers could only agree that he was born a “barbarian” of some kind. Herodian describes Maximinus as a lowly “barbarian” who erected a “savage tyranny.”³⁴ Reiterating Maximinus'

³⁰ Dio, *Roman History*, book 78, ch. 8.

³¹ I. Mennen, 'Changing Emperorship: Setting the Scene', in *Power and Status in the Roman Empire, A.D. 193-284*, Leiden, NL, Brill, 2011, pp. 23–24, <http://www.jstor.org/stable/10.1163/j.ctt1w76vsp.8>, (accessed 8 February 2022).

³² 'The Life of Severus Alexander', in *Historia Augusta*, LanusCurtius, 2019, ch. 61, https://penelope.uchicago.edu/Thayer/E/Roman/Texts/Historia_Augusta/Severus_Alexander/3*.html, (accessed 8 February 2022); 'The Two Maximini', in *Historia Augusta*, LanusCurtius, 2019, ch. 7-8, <https://bit.ly/MaxDuoSHA>, (accessed 8 February 2022).

³³ Mennen, 'Changing Emperorship', pp. 27-28.

³⁴ Herodian, *Historian of the Empire*, trans. C.R. Whittaker, Cambridge, Loeb Classical Library, 1969-70, cited in J. Moralee, 'Maximinus Thrax and the Politics of Race in

“low barbarian birth”, *Historia Augusta* calls Maximinus more beast than man and so racially inferior that even slaves mock him.³⁵ By using the word “barbarian”, these writers designated Maximinus as a non-Roman, challenging the idea of the Antonine Constitution that all free people throughout the empire were Romans. By condemning Maximinus as a racially-defective outsider, these writers argue that he is reaching above his station by attempting to rule “true” Romans, the aristocratic elite. Yet, Maximinus behaved in every aspect as a Roman, as evidenced by his Roman titles, his Roman name, his Roman citizenship, and his very Roman military campaigns against Germanic tribes.³⁶ Maximinus’ reign showed that a former alien could become head of state. However, the Senate’s racial derision of Maximinus proved that universal citizenship did not necessarily entail acceptance that he and other new citizens were Romans.

After Roman soldier-emperors from Illyria had stabilized their control of the imperial government by the fourth century, they remained both figuratively and distant from the nobility in Rome, as they elevated men from the provinces and frontiers into a new aristocracy. Fourth-century emperors rarely visited Rome and preferred to hold court in faraway cities like Nicomedia or Constantinople, the “New Rome.” Emperor Constantine created a second senate at Constantinople and greatly increased the number of administrative positions that bestowed senatorial rank. This policy introduced thousands of new men, including provincial elites, curials, and frontier army officers, into the senatorial order.³⁷ From capitals far removed from Rome, Illyrian-Roman emperors created a new aristocracy by granting power and rank to those with proven loyalty and ability, perhaps recognizing the old nobility’s animosity toward “barbarian” emperors. The statesman Aurelius Victor calls Emperor Diocletian “uncultured” and his co-ruler Maximian “rather uncivilized” due to their origins in Illyria.³⁸ Victor shares a similar opinion of Emperor Constantius Chlorus and Emperor Constantine: “They were so remarkable for their natural abilities that if those abilities emanated from cultivated minds..., without doubt, they would be considered exceptional.”³⁹ Although Victor acknowledged the

Late Antiquity’, *Greece & Rome*, vol. 55, no. 1, 2008, pp. 58–59, <http://www.jstor.org/stable/20204200>, (accessed 8 February 2022).

³⁵ *Historia Augusta*, “The Two Maximini”, ch. 8.

³⁶ A. Victor, *De Caesaribus*, trans. H.W. Bird, Liverpool, Liverpool University Press, 1994, ch. 25-26.

³⁷ R. Chenault, ‘Statues of Senators in the Forum of Trajan and the Roman Forum in Late Antiquity’, *The Journal of Roman Studies*, vol. 102, 2012, p. 107, <http://www.jstor.org/stable/41724968> (accessed 1 May 2022).

³⁸ Victor, *De Caesaribus*, ch. 39.

³⁹ *Ibid.*, 47.

achievements of Illyrian soldier-emperors, he nevertheless viewed Illyrians as culturally inferior aliens. He laments how the senatorial nobility's idleness allowed soldiers and "barbarians" to seize absolute power.⁴⁰ Victor's mixed sentiments towards Illyrian-Roman emperors indicate that a universal grant of citizenship did not erase cultural divisions and racial prejudice, which was now directed against Illyrian-Roman emperors and other foreigners in the new aristocracy.

As the imperial government promoted foreigners into the ranks of the aristocracy, disgruntled traditional elites increasingly racialized these men as dangerous outsiders. After emperors began rewarding able military officers with senatorial rank, many Franks joined the Roman military, and some talented Frankish generals, like Bauto and Richomeres, achieved the highest rank of the senatorial order.⁴¹ Bishop Synesius ridiculed such "barbarian" generals exchanging sheepskins for togas before Senate meetings, likening them to wolves in sheep's clothing.⁴² Many Germanic-Roman generals, like Merobaudes, Stilicho, and Magnentius, married Roman wives as well, renewing fears over race mixing.⁴³ The poet Prudentius expressed anxiety over "barbarian" blood contaminating Romans:

One offspring is stitched together from two races as a
result of the mixing of blood...

Yet what is Roman and what is barbarian are as different
from each other as the four-footed creature is distinct
from the two-footed or the dumb from the speaking.⁴⁴

Senator Symmachus expressed more subtle contempt of Germanic-Roman senators by using flattery to point out failures in etiquette. Symmachus wrote to Bauto, a Frank awarded with the consulship:

No suspicion falls on you that you could be believed to
have intentionally been negligent of our friendship. Your
character is tenacious of its fidelity...For which reason, I
did not previously think that I was removed from the

⁴⁰ Victor, *De Caesaribus*, ch. 37.

⁴¹ M.R. Salzman, 'Symmachus and the 'Barbarian' Generals', *Historia: Zeitschrift Für Alte Geschichte*, vol. 55, no. 3, 2006, p. 366, <http://www.jstor.org/stable/4436821>, (accessed 8 February 2022).

⁴² Mathisen, 'Peregrini, Barbari, and Cives Romani', p. 1034.

⁴³ R.W. Mathisen, 'Provinciales, Gentiles, and Marriages between Romans and Barbarians in the Late Roman Empire', *The Journal of Roman Studies*, vol. 99, 2009, p. 145, <http://www.jstor.org/stable/40599743>, (accessed 8 February 2022).

⁴⁴ Prudentius, *Contra Symmachum*, as cited in Moralee, 'Maximinus Thrax and the Politics of Race in Late Antiquity', pp. 68-69; Salzman, 'Symmachus and the 'Barbarian' Generals', p. 352

number of those to whom you gave a consular gift at the beginning of the year...⁴⁵

Here, Symmachus refers to a delayed gift from Bauto, a serious breach of etiquette, but hides criticism as a compliment of Bauto's character, praising his "fidelity." Yet, by teaching Bauto the rules of etiquette, Symmachus asserts cultural superiority over Frank, even as he gives the impression of equality by addressing Bauto with the language of friendship. In essence, ennobled Germanic-Roman generals and their interracial marriages inspired backlash from hereditary aristocrats, such as ridicule, fear, and passive-aggressive criticism coded as praise.

The divide between old aristocrats and ennobled foreigners intensified, as Gothic tribes sought refuge in the Roman Empire. After six years of war, Emperor Theodosius concluded peace with the Goths in 382.⁴⁶ The Goths would provide soldiers for the Roman army and obey Roman law in exchange for land grants and peace. Theodosius considered the Goths worthy of citizenship and insisted that they become Roman.⁴⁷ Some historians viewed the Goths as foreign enemies of Rome because Gothic tribes once warred against the Romans. These historians wrongly refer to the Goths as "barbarians", defining them as aliens. Because they were once foreign, they remained foreign according to modern nationalist psychology. Nationalists today similarly consider refugees outsiders. However, the Romans followed a different mindset inherited from their founder Romulus, a leader who embraced enemies as comrades and united foreign tribes with the Roman people.⁴⁸ As Emperor Claudius stated, many nations were once enemies of Rome, before Rome admitted their leaders into the Senate and recruited their soldiers into one army.⁴⁹ From Theodosius' perspective, the Goths were not aliens, but simply more tribes becoming Roman. An orator claimed in 383 that the Goths were no longer deemed "barbarians" but Romans.⁵⁰ Additionally, Roman law classifies Gothic soldiers as Roman veterans by entitling Goths to the same privileges as army veterans.⁵¹ A Gothic historian writes that after submitting to Roman rule, the Goths

⁴⁵ Symmachus, *The Letters of Symmachus*, as cited in Salzman, 'Symmachus and the 'Barbarian' Generals', p. 357

⁴⁶ H. Sivan, 'On Foederati, Hospitalitas, and the Settlement of the Goths in A.D. 418', *The American Journal of Philology*, vol. 108, no. 4, 1987, p. 762, <https://doi.org/10.2307/294799>, (accessed 8 February 2022).

⁴⁷ Mathisen, 'Peregrini, Barbari, and Cives Romani', p. 1023.

⁴⁸ Tacitus, 'The Annals', book 11, ch. 24.

⁴⁹ Ibid.

⁵⁰ Mathisen, 'Peregrini, Barbari, and Cives Romani', p. 1023.

⁵¹ Ibid., p. 1026.

formed “one body with the imperial soldiery.”⁵² This implies the Goths qualified as Roman soldiers. Finally, under the Antonine Constitution, all the Goths inside the empire were Roman citizens.⁵³ By embracing former enemies as comrades, Theodosius’ administration began to integrate the Goths into Roman society.

The End of the Theodosian Peace

Theodosius entrusted the governance of the western half of the empire to Stilicho, an ennobled Germanic-Roman general who continued the policy of integration until his assassination by an anti-barbarian faction.⁵⁴ During Stilicho’s regency for Emperor Honorius, several Germanic-Roman generals, including successful Goths, held senatorial office and married into Roman families.⁵⁵ Many aristocrats from the old nobility, fearing loss of status to Germanic Romans, wanted the state to discontinue employing Goths, whom senators racialized as dangerous “barbarians.” When the Gothic general Alaric requested payment after his army completed an expedition under Emperor Honorius’ orders, the Senate favored war against Alaric.⁵⁶ One highborn senator said that giving Alaric gold signified slavery, not peace.⁵⁷ His comment reflected the general worry among the aristocracy of losing social standing to Germanic Romans, echoing the fear of being declassed by newly-made Gallic senators during the administration of Julius Caesar.

In his “historical” work written during Stilicho’s regency, the Aquitanian noble Sulpicius Severus reveals his perspective on the integration of Goths and the ennoblement of Germanic Romans:

Under [the] guidance [of Judah], matters were successfully conducted: there was the greatest tranquillity both at home and abroad... Then, as almost always happens in a time of prosperity, [the Hebrews] began to contract marriages from among the conquered, and by and by to adopt

⁵² Jordanes, *The Origin and Deeds of the Goths*, trans. C.C. Mierow, Princeton, Princeton University Press, 1908, ch. 28, <https://www.gutenberg.org/cache/epub/14809/pg14809.html>, (accessed 8 February 2022).

⁵³ Mathisen, ‘Peregrini, Barbari, and Cives Romani’, p. 1036.

⁵⁴ Moralee, ‘Maximinus Thrax and the Politics of Race in Late Antiquity’, pp. 68-69.

⁵⁵ H. Elton, ‘Fravitta and Barbarian Career Opportunities in Constantinople’, *Medieval Prosopography*, vol. 17, no. 1, 1996, pp. 99–102, <http://www.jstor.org/stable/44946209>, (accessed 8 February 2022).

⁵⁶ Zosimus, *New History*, trans. R.T. Ridley, Sydney, Australian Association for Byzantine Studies, 1982, book 5, ch. 29.

⁵⁷ Ibid.

foreign customs, yea, even in a sacrilegious manner to offer sacrifices to idols: so pernicious is all alliance with foreigners. God, foreseeing these things long before, had, by a wholesome precept, enjoined upon the Hebrews to give over the conquered nations to utter destruction. But the people, through lust for power, preferred (to their own ruin) to rule over those who were conquered. Accordingly, when, forsaking God, they worshipped idols, they were deprived of divine assistance, and, being vanquished and subdued by the king of Mesopotamia, they paid the penalty of eight years' captivity.⁵⁸

This text, a thinly veiled commentary on the writer's present, criticizes interracial marriage, the cultural inferiority of foreigners, and especially the integration of foreign nations. Severus' first two criticisms are consistent with Tacitus' idea of the subordinate alien, but the third differs starkly from Tacitus' approval of integrating Batavia. Not only do foreigners corrupt native culture, Severus warns, but they declass locals into captives. Thus, the adlection of foreigners and Theodosius' peace with the Goths deeply troubled the aristocratic elite, which feared losing status to people perceived to be harmful outsiders. For aristocrats still adhering to the ancient premise of the subordinate alien, the ennoblement of foreign-born Romans represented an unnatural inversion of social roles, an existential problem that demanded a correction. The optimistic attitude of Tacitus' era, which had commodified foreigners as useful resources, was long gone. Now, only the "utter destruction" of foreigners would satisfy nobles like Severus.

When Stilicho chose peace and compensated Alaric's soldiers, dissatisfied nobles and courtiers began conspiring against Stilicho, whom some considered a treacherous "half-barbarian."⁵⁹ They charged Stilicho with plotting to install his multiracial son Eucherius as an emperor, an accusation that reflected the general fear among traditional elites of being subordinated to racialized upstarts.⁶⁰ The accusation was probably fictitious since Stilicho loyally surrendered himself upon learning of the order for his death and none of Stilicho's associates confessed to his supposed treason when questioned under torture.⁶¹ During the purge of Stilicho's administration, soldiers massacred tens of thousands of Gothic

⁵⁸ S. Severus, *Chronica*, as cited in W. Goffart, 'Rome, Constantinople, and the Barbarians', *The American Historical Review*, vol. 86, no. 2, 1981, p. 276, <https://doi.org/10.2307/1857439>, (accessed 8 February 2022).

⁵⁹ Moralee, 'Maximinus Thrax and the Politics of Race in Late Antiquity', p. 69.

⁶⁰ Zosimus, *New History*, book 5, ch. 32.

⁶¹ *Ibid.*, ch. 34-35.

women and children in the cities and seized their property.⁶² Stilicho's opponents presumably ordered the massacre; one Roman historian suspects the soldiers were following a preconcerted signal. 30,000 Goths immediately defected to Alaric, who nevertheless sought peace.⁶³ Alaric offered to defend frontier provinces for Emperor Honorius and requested only provisions as compensation.⁶⁴ Alaric urged Honorius to restore peace, lest his aggrieved and hungry Goths plunder Rome.⁶⁵ Yet, the courtiers surrounding Honorius refused peace on any conditions, desiring the utter destruction of Alaric's Goths.⁶⁶ After years of failed negotiations with the court, Alaric's army, running out of food supplies, infamously sacked Rome.⁶⁷ Emperor Theodosius had enrolled the Goths as Romans, but anti-barbarian aristocrats rejected Theodosius' peace to protect their status and turned the Goths from comrades to enemies. By resisting Alaric's reconciliation efforts, the nobility made the "barbarian" menace real.

After the massacre of their women and children and Alaric's death, his Gothic soldiers, often called "Visigoths" by scholars, began plundering estates in Aquitania in 412.⁶⁸ Gothic raids forced landowners to flee their homes since the Visigoths would capture aristocrats for ransom.⁶⁹ For forty years, the Visigoths struggled to seize lucrative port cities, obstructed by siege warfare and the Roman army. The Visigoths finally captured Narbonne in 461 and Marseille and Arles in 476.⁷⁰ The Visigoths exiled Gallo-Roman nobles and confiscated their property, even executing some imperial loyalists.⁷¹ Some Aquitanian aristocrats fled the wrath of the Visigothic king Euric, but others maintained their status by collaborating or joining the clergy.⁷² By the 470s, the Visigoths had created an independent kingdom within Gaul.⁷³ Separatism was the result of the Roman failure to integrate the Visigoths.

⁶² Ibid., ch. 35.

⁶³ Ibid., ch. 35-36.

⁶⁴ Ibid., ch. 50.

⁶⁵ Ibid., ch. 50.

⁶⁶ Ibid., ch. 51.

⁶⁷ Jordanes, *The Origin and Deeds of the Goths*, ch. 30.

⁶⁸ R.W. Mathisen, 'Emigrants, Exiles, and Survivors: Aristocratic Options in Visigothic Aquitania', *Phoenix*, vol. 38, no. 2, 1984, pp. 160-63, <https://doi.org/10.2307/1088899>, (accessed 8 February 2022).

⁶⁹ Mathisen, 'Emigrants, Exiles, and Survivors', p. 164.

⁷⁰ V. Burns, 'The Visigothic Settlement in Aquitania: Imperial Motives', *Historia: Zeitschrift Für Alte Geschichte*, vol. 41, no. 3, 1992, pp. 371-373, <http://www.jstor.org/stable/4436252>, (accessed 8 February 2022).

⁷¹ Mathisen, 'Emigrants, Exiles, and Survivors', p. 167.

⁷² Ibid., p. 168.

⁷³ Ibid., p. 165.

Conclusion

Emperor Claudius once asked: “What was the ruin of Sparta and Athens but this, that mighty as they were in the war, they spurned from them as aliens those whom they had conquered?”⁷⁴ One may apply the same question to Rome. Although the imperial government, following the precedents of Romulus and the Antonine Constitution, tended to integrate foreigners fully, the aristocracy had always perceived foreigners as social inferiors. Senators during the early empire commodified foreigners as useful instruments, but as foreigners steadily gained rights, influence, and titles, senators during the late empire increasingly perceived foreigners as threats to their status. By antagonizing fellow citizens as inferior “barbarians”, senatorial elites instigated unnecessary conflicts that brought disaster upon the empire and themselves.

⁷⁴ Tacitus, ‘The Annals’, book 11, ch. 24.

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The American Handling of Puerto Rico and the Insular Cases: Irony and Cyclical Behavior

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Abstract

Over the last two centuries, the United States of America has strategically embraced its public image as the bastion of global democracy. This role, which has allowed the US to legitimize its international interventions, has led historians and policy experts to question the sincerity of the motives behind America's increased military and political involvement around the globe. Now more than ever, the history of American entanglements in global conflicts is being examined alongside the idealist message of international democracy that the US has advanced, and an evident contradiction has emerged. In the case of Puerto Rico and Spain, which this paper examines, the United States utilized Spain's imperial form of government to justify military intervention. The US then obtained complete control of Puerto Rico and, instead of expanding the democratic freedoms of the Puerto Rican people, implemented policies that limited their rights. Through an extensive chronological analysis of America's handling of Puerto Rico, beginning with the Spanish American War of 1898, this paper examines the discrepancies between American rhetoric and foreign policy with regard to upholding democratic ideals. Further, this paper presents the interpretations of Supreme Court decisions, namely the Insular Cases, to illustrate the disputes that have arisen as a result of the controversial status of the United States and Puerto Rico's political relationship. In a broad context, this essay explains how the American judiciary will be primarily responsible for determining the extent to which American freedoms are granted to the people of Puerto Rico.

Puerto Rico under Control

The island commonwealth of Puerto Rico has been bound by the limitations that the American government has placed upon its people, legal citizens of the United States, since 1898. As the Puerto Rican, former-Chief Judge of the US Court of Appeals, Juan Torruella has expressed, the relationship that the United States has had with “its citizens who reside in Puerto Rico” represents an “egregious violation of [their] civil rights.”¹ Since it acquired the island in 1898, the United States has altered Puerto Rico’s public legal status numerous times, without providing stability or equality for its citizens who reside away from the mainland. Instead, America’s experimentations in handling Puerto Rico have exacerbated and perpetuated its economic disorder while reflecting a colonial and possessive message – the opposite of the democracy that America has advocated within its borders. The media coverage generated by the horrors of Hurricane Maria in 2017, however, has increased public attention toward Puerto Rico’s plight. This has allowed the United States to discontinue outdated policies that resemble those of the “separate but equal” from the *Plessy v. Ferguson* Supreme Court decision in 1896.

Supporters of the American government’s handling of Puerto Rico have proposed that the status of the relationship between the two has become one of “territorial federalism.” Federalism, a term often applied to describe the division of powers between the American federal government and its fifty states, requires that both divisions of government wield political power. Without this fundamental aspect of true federalism, “territorial federalism is just another hollow and meaningless name for colonial inequality.” To avoid the continuation of these injustices, Torruella suggests that the United States must “give effect to the binding obligations that the United States has assumed.”² These primarily include providing inhabitants of Puerto Rico the same protections that the people of the fifty American states are afforded.

Foundations of American Imperialism

The roots of this inequality begin with America’s initial decision to become involved in the Spanish-American War: in taking control of Puerto Rico, America did not consider the effects of having the people

¹ Juan Torruella, “Why Puerto Rico Does Not Need Further Experimentation with Its Future: A Reply to the Notion of ‘Territorial Federalism,’” *Harvard Law Review*, January 2018, 68, https://harvardlawreview.org/wp-content/uploads/2018/01/vol131_Torruella.pdf.

² Torruella, “Why Puerto,” 104.

of its newly annexed territories become US citizens. Instead, American foreign policy largely focused on expanding the ideals it justified through its public mission to protect democracy.

During the late nineteenth and early twentieth centuries, Manifest Destiny, the American belief that God himself had ordained their ruling classes and race to expand territory and determine what was (and was not) in need of reform, was prevalent not only amid US westward expansion within the continent but also amid its international expansionary efforts. A single powerful distinction between these two movements of American expansion – continental versus international – required the United States to provide formal “constitutional” justification for the latter efforts, which had not been required for the prior. The US had to justify overtaking populations who inhabited the territories it desired.

Promoters of westward expansion during the nineteenth century faced internal opposition from the likes of William Channing and Mark Twain, who believed that the United States should limit its acquisitions. In an 1837 letter penned to the powerful politician and master compromiser Henry Clay, Channing, a preacher, wrote, “It is full time that we should lay on ourselves serious, resolute restraint. Possessed a domain, vast enough for the growth of ages, it is time for us to stop in the career of acquisition and conquest. Already endangered by our greatness, we cannot advance without imminent peril to our institutions, union, prosperity, virtue, and peace.”³

While US politicians, writers, preachers, and theorists’ concern that westward expansion was starting to resemble colonialism worried the United States government, the government did not have to worry about the positions or criticisms of international political powers. The dynamics of and opposition to American expansion changed when the inhabitants of the territories the United States desired were colonial subjects of other empires rather than free racial minorities like the continental Native American population. Objectors to American expansionary efforts now included not only concerned prominent US citizens but also the European empires that the US was fighting against to take over territory. No European power would take a passive position to America’s threat against their control.

While some Americans continued to criticize expansion for its undemocratic nature (coupled with the irony that the United States was a

³ *The Advocate of Peace (1837-1845)* 1, no. 2 (1837): 2, <http://www.jstor.org/stable/27886896>.

country promoting itself as a bastion of democracy), a new fear spread among the white population in America: the idea of racial and ethnic minorities becoming citizens of the United States.

A Brief History of Puerto Rican Independence

In the mid-nineteenth century, Puerto Ricans began the battle for independence from Spain that would continue until the end of the century. Although Puerto Rican political activists, inspired by the revolutionary efforts in both America and France, had managed to lift Puerto Rico into provincial status by 1812, this impressive step toward political freedom became short-lived when King Ferdinand's absolute monarchy, in 1814, seized control of the Spanish government and reversed Puerto Rico's status back to that of a colony bereft of any rights. Things remained that way until the Puerto Rican pro-independence movement, economically and politically repressed by their colonizers, carried out an armed rebellion in 1868. Despite Puerto Rican forces presenting more strength than the Spanish military had anticipated, the latter eventually overpowered the local rebels. Historical accounts of the rebellion written by Spanish citizens living in Puerto Rico described the unforeseen strength the Puerto Rican militia demonstrated. In 1872, historian and Spanish resident of Puerto Rico, José Pérez Moris published *Historia de la Insurrección de Lares*, a case history of the rebellion in which he argued "for the conservative cause on the island" by showing that "separatist forces were strong in Puerto Rico and thus a serious threat to the established order."⁴ Moris' account revealed the uprising's significant power. Although he vehemently opposed the Puerto Rican movement toward independence, Moris acknowledged the threat that Puerto Rico's pro-democracy coalition posed to the Spanish Empire.

Although the Puerto Rican pro-independence movement remained divided by ideology, both sides found strength and inspiration in the American Civil War that had concluded just years prior. Spain, and other comparable European empires, also felt the pressure of colonial independence intensify. Spain understood that progressive success in America, a mere 1,000 miles away from their colony, would likely serve as motivation for Puerto Rico's involved battle for independence and the abolition of slavery. Over a century later, experts continue to concur with historian Arthur Smith that "the American Civil War was a turning

⁴ Marisabel Bras, "Puerto Rico at the Dawn of the Modern Age: Nineteenth- and Early-Twentieth-Century Perspectives," in *Library of Congress*, 2, accessed February 15, 2022, <https://www.loc.gov/collections/puerto-rico-books-and-pamphlets/articles-and-essays/nineteenth-century-puerto-rico/rebellion-of-1868/>.

point, for it coincided with and stimulated the rise of reform sentiment in the Antilles and in Spain itself among the younger liberals.” In his 1960 publication for the University of Puerto Rico, Smith goes even further in claiming that “had there not been a Civil War in the United States, one wonders how long the slave problem would have continued to embarrass a vacillating Spanish government.”⁵ Spain’s grip on its colonies, including Puerto Rico, remained unstable as military coups and pro-democracy uprisings caused shifts in the ideology of the ruling power: Spain approved the complete abolition of slavery in 1873 upon a Republican government gaining power, only to see the monarchy regain control one year later, wiping out any progress in racial or social reform.

After more than two decades of the economic crisis in Puerto Rico, during which Spanish politicians had come together to further repress its population, Spain was forced to grant its colony increased autonomy to ultimately maintain control of the Antillian island: “Spain granted Cuba and Puerto Rico a broad array of rights including those under Title I of the Spanish Constitution, which bestowed all the rights of Spanish citizens and gave universal suffrage to all males more than twenty-five years old. November 25, 1897, saw Spain approve the *Carta Autonómica*, also known as *Constitución Autonómica*, which gave Puerto Rico the right of self-government.”⁶ These progressive advancements proved futile in the face of the United States military commandeering the island just one year later, marking a “painful and irreversible” defeat for the people of Spain.

In taking over Puerto Rico, the United States assured the continuation of the cycle of repressiveness in terms of its political influence on the island. The aforementioned sense of irony, that the promoter of and inspiration for democracy once known as the United States, now clouded America’s international political and military policies in its representation of the contrary to the people of Puerto Rico. After the conclusion of the Spanish-American War in 1898, an ideological question arose that, to this day, presents itself in American political debate: Does the Constitution follow the flag? In American politics and history, this question has invited deliberation related to several territories, and the United States mainland’s handling of Puerto Rico in this regard remains especially troubling.

⁵ Arthur F. Smith, “The Spanish Abolition Law of 1870: A Study in Legislative Reluctance,” Universidad de Puerto Rico, last modified March 1, 1960, accessed February 20, 2022, <https://revistas.upr.edu/index.php/rcs/article/view/9674/0>.

⁶ Bras, “Puerto Rico,” 6.

America's Handling of Puerto Rico: Foundations for Future Conflict

America's rule over Puerto Rico has been guided by three distinct, yet similar policies: the Foraker Act, 1900 to 1917; the Jones Act, 1917 to 1947; and the "Commonwealth" era of political progress in the 1950s. These pieces of legislation have served as the bases for the constitutional disputes that have taken place since America annexed Puerto Rico. Many experts on the island's situation, like Judge Juan Torruella and historian Jose Colon, also argue that the aforementioned policies have exacerbated Puerto Rico's economic instability, leading to its crippling financial debt.

The first piece of legislation that provided structure to Puerto Rico's relationship with the United States was the Foraker Act of 1900. The act gave the American federal government complete control over its newly acquired territory, declaring that the governor of Puerto Rico, his cabinet members, and the justices on Puerto Rico's Supreme Court were all to be handpicked by the President of the United States and confirmed by the American Senate. The lower house of the Puerto Rican legislature was to be elected by the people of the island, but, as Torruella explains, "all local legislation emanating from this body was not only subject to veto by the governor [selected by the American President] but also could be rejected by Congress."⁷ This implemented a tradition of limiting the power that came with the vote of the people of Puerto Rico. Ultimately, the American federal government would have, and utilize, the power to consider its interests when deciding on legislation for Puerto Rico's people.

The most ethically controversial part of the Foraker Act was its designation of the people of Puerto Rico as "citizens of Puerto Rico and nationals of the United States." This decision contrasted with America's message while fighting the war against Spain which led to the acquisition of Puerto Rico. Major General Nelson Miles, an American General who fought against Spain in Puerto Rico, had declared to the Puerto Rican people that the United States had involved itself in the conflict to "promote [their] prosperity, and bestow upon [them] the immunities and blessings of the liberal institutions of [its] Government."⁸ Instead, the

⁷ Juan Torruella, "Why Puerto Rico Does Not Need Further Experimentation with Its Future: A Reply to the Notion of 'Territorial Federalism,'" *Harvard Law Review*, January 2018, 70, https://harvardlawreview.org/wp-content/uploads/2018/01/vol131_Torruella.pdf.

⁸ US Army, Annual report of the major-General Commanding the Army to The Secretary of War 31–32 (1898).

federal government denied Puerto Ricans of American citizenship and, instead, classified them as “nationals.” According to the State Department, an American national is a person “owning permanent allegiance to the State.”⁹ Distinctions between American citizens and nationals include the ability to vote in American elections and run for public office. As Torruella clearly explains, “This statute set the scene for what were to become the Insular Cases and the doctrine of incorporation, pursuant to which Puerto Rico was declared an unincorporated territory [not an American state].”¹⁰ The dominance that the Foraker Act established over Puerto Rico’s population also created immediate friction between them and the American federal government, well before the Insular Cases. During President Taft’s administration, in 1909, the Puerto Rican House of Delegates, the lower (and only elected) house of the local legislature, carried out a peaceful protest against the American government over the lack of representation that Puerto Ricans had in their government. The House of Delegates, tasked with approving the annual appropriations for the Puerto Rican government, declined to approve that year’s appropriations bill in protest. This conflict, which became known as the “Appropriations Crisis of 1909,” caused more “dismay among President Taft’s administration” which was shocked that “tiny Puerto Rico immediately presented a hostile challenge” to the federal government, as described by history professor Truman Clark in his 2015 publication of the crisis.¹¹ Professor Clark further explains that the Appropriations Crisis caused Taft to publicly degrade the dignity of the people of Puerto Rico and further a colonial, possessive nature of the relationship. Taft declared that the United States had “gone too far in extending political rights for [the Puerto Ricans] own good who had shown too much irresponsibility in the enjoyment of this right.” To further restrict the House of Delegates’ powers, the federal government implemented the Olmstead Amendment to the Foraker Act, removing the legislative body’s right to block appropriations. The continuation of colonial control that the Foraker Act represented came to an end in 1917 when President Wilson’s administration partially granted democratic reforms to Puerto Rico.

⁹ “Certificates of Non-Citizen Nationality,” United States State Department, accessed April 13, 2022, <https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/us-citizenship/Certificates-Non-Citizen-Nationality.html>.

¹⁰ Torruella, “Why Puerto,” 71.

¹¹ Truman R. Clark, “President Taft and the Puerto Rican Appropriation Crisis of 1909,” Cambridge University Press, last modified December 11, 2015, accessed April 13, 2022, <https://www.cambridge.org/core/journals/americas/article/abs/president-taft-and-the-puerto-rican-appropriation-crisis-of-1909/544BC2CE1F036B65953F63292D08040F>.

The Jones Act of 1917 gave momentum to the political rights of Puerto Ricans, though the island continued to suffer a vast lack of representation at the federal level. Jones converted the Puerto Rican Senate to an elected legislative body, instead of being nominated by the President and confirmed by the Senate as had been previously required. The most notable alteration of political rights from the Jones Act was its granting of American citizenship to all Puerto Ricans. However, the federal government's granting the Puerto Ricans American citizenship did not include concurrent "constitutional incorporation as it had with Alaska and Hawaii." To this point, Torruella explains that Taft "now in his capacity as Chief Justice, wrote the opinion of the Supreme Court in *Balzac v. Porto Rico*, ruling that all the Jones Act did was "enable [Puerto Ricans] to move into the continental United States and becom[e] residents of any State there to enjoy every right of any other citizen of the United States, civil, social, and political."¹² Thus, while living in Puerto Rico, Puerto Rican American citizens would not be granted the same rights as residents of the mainland.

The Commonwealth period continued the precedent established by the prior two pieces of legislation by expanding certain local political rights for Puerto Ricans while limiting others, hampering the island's further social, economic, and political progress. For example, America's policy toward Puerto Rico, as Judge Torruella explains, demonstrated a certain hesitancy. The United States would create meaningful, legislative political progress for Puerto Rico's population, but simultaneously create legislation to diminish the effects of that change. During the "Commonwealth of Puerto Rico," the federal government implemented the Elective Governor's Act, which gave the people of Puerto Rico the right to elect its Governor for the first time in the island's history. To reinforce and further establish mainland American control over the island, however, the federal government included a clause in its "Work of the Senate Committee on Interior and Insular Affairs" report, stating that "Congress could at any time in the future revoke the Elective Governor's Act."¹³ The designation of Puerto Rico as a commonwealth did provide some political and economic success, but Judge Jose Cabranes and other experts on the matter have described the commonwealth designation as a "camouflage for the island's colonial status."¹⁴

¹² Torruella, "Why Puerto," 74.

¹³ Ibid.

¹⁴ José A. Cabranes, "The Status of Puerto Rico," *The International and Comparative Law Quarterly* 16, no. 2 (1967): 535, <http://www.jstor.org/stable/757389>.

The constitutional conflicts surrounding the designation and the rights of Puerto Rico and its people have stemmed from the policies that the American federal government has implemented since the beginning of the twentieth century. These three periods of political relationship, or dominance, comprise the foundation for the disputes and violations that have defined America's relationship with Puerto Rico to the present day.

Disputes Over Legal, Constitutional, and Ethical Violations

On December 10th, 1898, Spain and the United States signed the Treaty of Paris (1898), ceding Cuba, Puerto Rico, Guam, and the Philippines to the latter, and confirming the termination of Spain's status as a dominant global empire. The United States, on the other hand, was fulfilling its desire for the expansion of American ideology and democracy. As Puerto Rican historian Gervasio Luis Garcia explained in a 2000 journal published by the Oxford Press, "...after 1898, the United States could no longer withdraw from the international race for grandeur and thus put together its colonial empire."¹⁵ At the time the treaty was signed, few questioned the treatment of racial minorities in acquired territories. But historians and constitutional lawyers have since determined aspects of colonialism the treaty furthered – in part, due to the spreading belief in social Darwinism. The United States had no intention of integrating territories such as Puerto Rico and Guam into the Union. This ensured the colonial nature of America's relationship with such territories, greatly contributing to the racial and social discrimination of minorities.

During a 2014 panel at Harvard Law School, Torruella discussed the democratic violations that the Treaty of Paris, and more broadly the United States' way of managing the territories acquired from Spain, presented. Torruella cited the opinion of Yale professor Simeon Baldwin to demonstrate the derogatory beliefs toward the people of Puerto Rico that many Americans shared at the time of the island's acquisition. In 1899, Baldwin, echoing the discriminatory sentiments of many Americans, declared that "it would be unwise to give the ignorant and lawless brigands that infest Puerto Rico the benefit[s] of the Constitution."¹⁶

¹⁵ Gervasio Luis Garcia, "I Am the Other: Puerto Rico in the Eyes of North Americans, 1898," *The Journal of American History* 87, no. 1 (2000): 41, <https://doi.org/10.2307/2567915>.

¹⁶ Francis Torres, "Rejecting Colonial Justification: Puerto Rico and the Insular Cases," *Brown University Political Review*, last modified February 24, 2014, accessed February 22, 2022, <https://brownpoliticalreview.org/2014/02/rejecting-colonial-justification-puerto-rico-and-the-insular-cases/>.

Understanding the Insular Cases: An Analysis and the Oranges of Samuel Downes

In understanding the “judicial approval of Manifest Destiny [and the larger ideology it represented],” as Justice Torruella described, it is important to first understand the Insular Cases of the 1900s. In the introduction of his 2015 book, *Reconsidering the Insular Cases: The Past and Future of the American Empire*, Harvard Law School professor Gerald Neuman identifies these Supreme Court decisions to have “provided the legal framework for the governance of a colonial empire in the Atlantic and the Pacific, loosening the constraints of constitutional principle to facilitate rule over the subjected areas and their inhabitants.”¹⁷ More exactly, the Insular Cases as presented to the Supreme Court dictated the political and legal status of people living in American territories. For the people of the American mainland and territories alike, the cases were intended to answer the guiding question of this essay: does the Constitution follow the flag? Or, in a more literal sense, do the people living in American territories have the same rights under the Constitution as residents of the American states?

In *Downes v. Bidwell* (1901), widely held as the most significant of the Insular Cases, the Supreme Court declared that Congress held the power to discriminate between the mainland and the newly acquired territories when it came to matters of constitutional rights. This case involved an American merchant, Samuel Downes, who owned a company that imported oranges from Puerto Rico, which at the time was already a territory of the United States, to the American mainland. Downes sued George Bidwell, a US customs inspector from New York, after being forced to pay import taxes on his oranges. Modern intellectuals and interpreters of the law, including Judge Torruella, largely concur with Downes’ reasoning: because Puerto Rico was now part of the United States and under Article I, Section 8, of the US Constitution, “all duties, imposts, and excises shall be uniform throughout the United States,” he should be exempted from paying import taxes because transportation of goods at a national level was not subject to that tax within the United States. However, the Supreme Court disagreed via their 5 to 4 ruling in favor of Bidwell. Historians have tended to comprehensively study the context of American politics regarding territories at the time, the composition of the 1901 Supreme Court, and

¹⁷ Gerald Neuman, “Does the Constitution Follow the Flag?” *Harvard University Press*, May 2015, 1, accessed January 22, 2022, https://harvardpress.typepad.com/hup_publicity/2015/05/reconsidering-the-insular-cases.html.

the human rights and agreement violations that this case presented, rather than solely focusing on the decision.

The composition of the Supreme Court and the cases that the same court had previously decided upon are informative in understanding the ideology of the court. As Judge Torruella specifically noted, “The court that voted on *Downes v. Bidwell* was the same court that made a ruling in *Plessy v. Ferguson* (1896).”¹⁸ In adding this note, Torruella was alluding to the principles, with regards to race and the rights minorities had, that the court and most people held at the time of the judicial determination. Torruella’s perspective was that “the Insular Cases represent classic *Plessy v. Ferguson* legal doctrine and thought that should be totally eradicated from present-day constitutional reasoning.”¹⁹ In simple terms, Torruella was expressing his belief that the Insular Cases were a demonstration of the racist and nationalistic ideology that plagued American positions of power in the early 1900s.

In arguing that his company should not be subject to import taxes on his oranges, Samuel Downes cited Article I, Section 8 of the American Constitution: “All duties, imposts, and excises shall be uniform throughout the United States.” Downes’ basis for regarding Puerto Rico as part of the United States stemmed from the clear language used in Article 2 of the Treaty of Paris which read: “Spain cedes to the United States the island of Porto Rico.”²⁰ The majority opinion of the court challenged Downes’ reasoning using the Foraker Act of 1900 to support the notion that Puerto Rico was “a territory appurtenant and belonging to the United States, but not part of the United States.” The Foraker Act, which established a civil government in Puerto Rico, had already had its constitutionality questioned under the Uniformity Clause that Downes had previously referenced. Judge Torruella, at the Harvard Law School panel, and the four Supreme Court Justices who dissented, held that the Foraker Act violated this clause of the Constitution. They questioned how a territory that was part of the United States of America should be subject to duties, imposts, and excises different from those of the states.

¹⁸ Juan Torruella, “The Insular Cases: Constitutional Experts Assess the Status of Territories Acquired in the Spanish–American War,” *Harvard Law Today*, last modified March 18, 2014, accessed February 23, 2022, <https://today.law.harvard.edu/insular-cases-constitutional-experts-assess-status-territories-acquired-spanish-american-war-video/>.

¹⁹ Torruella, “The Insular,” *Harvard Law Today*.

²⁰ “Treaty of Peace between the United States and Spain,” December 10, 1898, accessed February 23, 2022, https://avalon.law.yale.edu/19th_century/sp1898.asp.

However, the controversy stirred by *Downes v. Bidwell* did not end with the finalization of the Supreme Court's vote. When Justice Horace Gray, one of the five men who had voted to support the limitation of Puerto Rico's rights, announced his retirement, President Roosevelt used his political power to assure the country that the Supreme Court would continue to vote in favor of the Insular Cases. "Senatorial courtesy," or obtaining the approval of the nominee's home state Senators, remains a common practice when it comes time for Presidents to nominate possible Supreme Court Justices. President Roosevelt used this to his benefit when considering the nomination of Oliver Wendell Holmes to the Supreme Court. Holmes, like Senator Henry Cabot Lodge, was from Massachusetts. Senator Lodge also happened to be a staunch supporter of the Insular Cases, so Roosevelt took the opportunity to have Lodge interview Holmes regarding his views on the recent and controversial Supreme Court ruling. After concluding that Holmes was in favor of the majority ruling in *Downes v. Bidwell*, Senator Lodge gave his approval and President Roosevelt went ahead with the nomination.

In a 1949 article published in the *New England Quarterly*, American historian John A. Garraty described Roosevelt's conviction on the issue with the striking expression: "To imperialists like Roosevelt and Lodge, this state of things was desirable, and they were very much afraid of any change of opinion in the precariously balanced court. Justice Gray had been one of those who had made up the all too uncertain majority. Therefore, his successor must have similar views on such matters." Garraty continued, "Holmes, Lodge thought, filled the bill and this to a great extent accounts for his support of the Chief Justice of his state [Lodge]."²¹ Garraty's position on the "imperialist" nature of Lodge and Roosevelt has been shared among many historians and politicians throughout the twentieth and twentieth centuries. Judge Torruella, being one notable figure who concurred, has stated that the appointment of Holmes was just a continuation of the preservation of racist and colonial ideals in American governance. This position was defended by evidence that Senator Lodge provided. In 1902, Lodge himself writes to President Roosevelt and explicitly states that he has vetted Holmes on his position of the cases and that if Holmes held the opposing position on these cases, he (Lodge) would not support his nomination: "I am absolutely for Holmes unless he should be averse to the Porto Rican cases, which I am informed he is not."

A string of tangential cases involving the applicability of social security benefits has also been affected by the decision made in the 1901

²¹ John A. Garraty, "Holmes's Appointment to the U. S. Supreme Court," *The New England Quarterly* 22, no. 3 (1949): 5, <https://doi.org/10.2307/361309>.

case. In 1978, three men filed a complaint in the District Court of Puerto Rico to challenge the exclusion of Puerto Rican residents from social security benefits. Gautier Torres, a Puerto Rican who had received social security benefits while living in Connecticut, sued the District Court when his Supplemental Security Income (SSI) payments for the aged, blind, and disabled were discontinued after he moved to Puerto Rico. The Supreme Court held that, following the precedent set in *Donnes v. Bidwell*, the constitutional right to SSI benefits did not apply to citizens of American territories, as these rights were determined by Congress.

Judge Torruella, at his Harvard Law School panel, expressed the incomprehensible nature of this American judgment: though a Chief Judge of the second highest court in the land, he was still not able to vote for the leaders that decide the rights that he is awarded simply because of his non-mainland residence status. The 1901 Supreme Court decision created a precedent for how America manages territorial subjects in Puerto Rico: by withholding some of the democratic protections it has publicly championed for over two hundred years.

Conclusion

In 1992, the United States Senate ratified the International Covenant on Civil and Political Rights (ICCPR) which obliges the US to “respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the [ICCPR], without distinction of any kind.” These rights, as expressed by the ICCPR, include universal and equal suffrage, including for the people of Puerto Rico, and the right to “competent judicial, administrative, or legislative” evaluation if a person believes their rights are being violated. Torruella, though, explains that “it is up to the courts, and only the courts, to decide whether the declaration has validity pursuant to the text and historical context of the treaty.”²² Therefore, the power to evaluate the United States’ handling of the Puerto Rican people in the larger context of the obligations set by the ICCPR has been vested in the American judicial system: the federal courts are tasked with determining which rights shall, and shall not, be granted to the people of Puerto Rico. In doing so, the judiciary must consider precedent, as set by the Insular Cases and similar cases on the matter, their constitutional interpretations regarding tax and suffrage laws, and the larger context of the United States’ relationship with Puerto Rico. Ultimately, the federal judiciary will determine whether or not the policies that the US enforces within its nation reflect America’s message of global democracy. To have American domestic policy, specifically in relation to the rights of Puerto Ricans, represent

²² Torruella, “Why Puerto,” 101.

the ideals that the United States promotes as the bastion of global democracy, the American judiciary must adopt policies such as those set forth by the ICCPR.

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