

Course Title: The Insular Cases and Constitutional Law of U.S. Territories

Course Description

This course examines the constitutional framework governing U.S. territories—Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Northern Mariana Islands—through the lens of the Insular Cases, a series of Supreme Court decisions from 1901 to 1922 that established the doctrine of territorial incorporation. These cases legitimized U.S. imperialism by creating a distinction between "incorporated" and "unincorporated" territories, limiting the full application of the Constitution in the latter. Students will explore historical contexts, key legal doctrines, and contemporary implications, including congressional plenary power, equal protection, citizenship rights, and the racist underpinnings of the inherent powers doctrine. The course addresses why this area remains obscure in legal education, as highlighted by the American Bar Association's Resolution 300 (2021), which urges law schools to incorporate these topics to address structural inequalities. stetsonlawreview.org By analyzing primary cases, secondary scholarship, and policy debates, participants will critically assess how the U.S. Constitution applies selectively to territories and consider pathways for reform.

Learning Objectives

- Understand the historical origins of U.S. territorial expansion and the role of the Insular

Cases in shaping constitutional exceptionalism.

- Analyze core doctrines like territorial incorporation, plenary power under the Territorial Clause (U.S. Const. art. IV, § 3, cl. 2), and the selective application of constitutional rights.
- Evaluate the implications for citizenship, equal protection, and democratic theory in territories.
- Critique the racist foundations of these doctrines and their persistence in modern jurisprudence.
- Explore contemporary issues, such as territorial voting rights, economic disparities, and proposals for statehood or independence.
- Develop skills in constitutional interpretation through case analysis, simulations, and policy discussions.

Prerequisites

Basic familiarity with U.S. Constitutional Law (e.g., a prior course covering federalism, due process, and equal protection). No prior knowledge of territorial law is required.

Course Format

- Duration: 13 weeks (semester-long), with 3-hour weekly sessions combining lectures,

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discussions, and group activities.

• **Assessment:**

- Participation and weekly reading responses: 20%
- Midterm paper (8-10 pages analyzing a key Insular Case): 30%
- Final exam or policy memo (proposing reforms for territorial status): 40%
- Group presentation (e.g., legislative debate simulation): 10%

• **Required Texts:**

- Primary: Selected Supreme Court opinions (available via free online databases like Justia or SCOTUSblog).
- Secondary: "Reconsidering the Insular Cases: The Past and Future of the American Empire" (edited by Gerald L. Neuman and Tomiko Brown-Nagin, 2015). [jstor.org](#)
- "The Insular Cases and the Emergence of American Empire" by Christina Duffy Burnett and Burke Marshall (2006). [muse.jhu.edu](#)
- Supplemental articles and reports (provided via course portal).

• **Recommended Materials:**

- "Immigration and Citizenship: Process and Policy" (9th ed., T. Alexander Aleinikoff et al., 2021) for intersections with immigration law. [scholarship.law.gwu.edu](#)
- U.S. Government Accountability Office report: "Applicability of Relevant Provisions of the U.S. Constitution" (1991). [gao.gov](#)

Weekly Syllabus Outline

		Key Concepts & Discussions	Required Readings	Assignments/Activities	
Week	Topic				
1	Introduction to U.S. Territories: Overview of current territories (Puerto Rico, Guam, etc.)	- Excerpts from "The Insular Cases and the Emergence of American Empire" (2006)	- Excerpts from "The Insular Cases and the Emergence of American Empire" (2006)	Icebreaker discussion: What makes a territory "American"?	

1 Introduction to U.S. Territories: Overview of current territories (Puerto Rico, Guam, etc.) - Excerpts from "The Insular Cases and the Emergence of American Empire" (2006) Icebreaker discussion: What makes a territory "American"?

	History and Overview	Rico, Guam, American Samoa, U.S. Virgin Islands, Northern Mariana Islands); Spanish-American War (1898) and territorial acquisition; why this topic is under-taught in law schools.	Emergence of American Empire" (Ch. 1-2). muse.jhu.edu/stetsonlawreview.org - ABA Resolution 300 and accompanying report.	Submit 1-page response on preconceptions of territorial status.
2	The Territorial Clause and Plenary Power	Congressional authority under Art. IV, § 3, cl. 2; plenary power doctrine; comparisons to immigration plenary power (e.g., <i>Chae Chan Ping v. United States</i> , 130 U.S. 581 (1889)).	- U.S. Const. Art. IV, § 3, cl. 2. - "Plenary Power: Teaching The Immigration Law Of The Territories" (excerpt on plenary power). - Territories: Powers of Congress Thereover (Justia overview). scholarship.law.gwu.edu/law.justia.com	Group activity: Debate the limits of congressional power over territories.
3	Pre-Insular Foundations:	Northwest Ordinance (1787):	- Excerpts from "Constitutional Law	Reading response: How did early expansions foreshadow

	Early Territorial Law	Louisiana Purchase; Dred Scott v. Sandford (1857) and its territorial implications.	Outline" (section on empire and annexation). law.nyu.edu - "U.S. Territories' Right to Statehood Through Constitutional Liquidation" (excerpt on Ordinance rights). ndlawreview.org	the Insular Cases?
4	The Core Insular Cases: Tariff and Trade Disputes	DeLima v. Bidwell (1901); Goetze v. United States (1901); Dooley v. United States (1901); Armstrong v. United States (1901); Downes v. Bidwell (1901); Huus v. New York and Porto Rico Steamship Co. (1901). Focus on Uniformity Clause and taxation.	- Full opinions: DeLima v. Bidwell; Downes v. Bidwell. supreme.justia.com - Wikipedia summaries for context. en.wikipedia.org	Case briefing assignment: Summarize Downes v. Bidwell's holding.
5	Expanding the Doctrine: Jurisdictional	Dorr v. United States (1904):	- Full opinions: Dorr v. United States: supreme.justia.com	Discussion: Critique the "fundamental rights" vs. full

	Rights and Beyond	Balzac v. Porto Rico (1922); Fourteen Diamond Rings v. United States (1901); Crossman v. United States (1901). Jury trial rights in unincorporated territories.	Balzac v. Porto Rico. - "The Insular Cases: History and Significance" (ThoughtCo overview). usccr.gov thoughtco.com	Constitution distinction.
6	Incorporation Doctrine and Racist Underpinnings	Distinction between incorporated (e.g., Alaska) and unincorporated territories; inherent powers doctrine; racism in opinions (e.g., "alien races").	- "The Insular Cases Run Amok" (Yale Law Journal). yalelawjournal.org - "Originalism and the Insular Cases" (Jotwell, 2025). conlaw.jotwell.com	Guest lecture or video: On colonial legacies.
7	Citizenship in Territories: Birthright and Naturalization	Gonzales v. Williams (1904); Statutory citizenship (e.g., Jones Act 1917 for Puerto Rico); Non-citizen nationals in American Samoa (8 U.S.C. § 1408).	- Gonzales v. Williams; Tuaua v. United States (2015); Fitisemanu v. United States (2021). scholarship.law.gwu.edu - "Constitutional Citizenship in the U.S. Territories" (Lawfare). lawfaremedia.org	Midterm paper due: Analyze citizenship disparities.
8	Organic Acts and Territorial	Organic acts as "constitutions" for	- "Territorial Courts, Constitutions, and	Activity: Compare organic acts to state constitutions.

	Governance	territories; Education, courts, and local governance (e.g., Guam Organic Act; Revised Organic Act of 1917).	Organic Acts, Explained." statecourtreport.org - Excerpts from territorial organic acts.	
9	Intersections with Immigration Law	Plenary power in territories; Exceptions in American Samoa and CNMI; Unauthorized migration.	- Excerpts from "Immigration and Citizenship" (Ch. 1, 2, 4). scholarship.law.gwu.edu - CNMI Long-Term Resident Status (48 U.S.C. § 1806).	Simulation: Legislative debate on extending citizenship to American Samoans (adapted from sample exercise). scholarship.law.gwu.edu
10	Modern Supreme Court Rulings and Criticisms	United States v. Vaello Madero (2022); Financial Oversight and Management Board for Puerto Rico v. Aurelius Investment (2020); Calls to overrule Insular Cases.	- United States v. Vaello Madero opinion. supremecourt.gov - "Saying What Everyone Knows to Be True" (Columbia Human Rights Law Review). hrlr.law.columbia.edu	Group presentations: Argue for/against overruling the Insular Cases.
11	Current Issues: Puerto Rico	PROMESA (2016); Debt crises; Voting	- "Reexamining the Insular Cases."	Policy discussion: Statehood vs. independence.

	and Economic Disparities	rights in federal elections.	Again." (Harvard Law School). hls.harvard.edu - Excerpts from "American Empire: Puerto Rico and the United States Territories" course description. hls.harvard.edu	
12	Pacific Territories: Guam, American Samoa, and CNMI	Cultural preservation defenses; Military presence; Self-determination.	- "A Qualified Defense of the Insular Cases" (NYU Law Review). nyulawreview.org - "The Originalist Case Against the Insular Cases." scholarship.law.ufl.edu	Reading response: Balance cultural autonomy with constitutional rights.
13	Future of Territorial Law: Reforms and Democratic Theory	Proposals for incorporation, statehood, or independence; Role of international law; Final reflections on empire in constitutional law.	- "Including the U.S. Territories in the Constitutional Law Course" (full article). stetsonlawreview.org - "How We Study the Constitution: Rethinking the Insular Cases." yalelawjournal.org	Final exam or policy memo due; Course wrap-up discussion.