THE BURDENS OF BEING WHITE: EMPIRE AND DISFRANCHISEMENT

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There was never any doubt that Alabama's 1901 constitutional convention would craft a scheme to disfranchise voters in large numbers—black men particularly. Because their plans clearly violated the Fifteenth Amendment, the delegates spent considerable time reassuring themselves that the North would not intervene. As a part of that exercise, the disfranchisers chased hints of external approval with messianic zeal, willing to go as far afield as the Pacific Rim and Caribbean Sea to find them. To many delegates, American expansion into those regions through the acquisition of Hawaii, Puerto Rico, and the Philippines seemed to be a fortuitous development. Delegate and future governor Emmett O'Neal of Florence told the gathering that the so-called race problem was "no longer confined to the States of the South."[1] Territorial expansion and its attendant problems, he opined, had triggered a sea change in inter-sectional relations, "and in the wise solution of this question we have the sympathy instead of the hostility of the North."[2] Richard Channing Jones, a former University of Alabama president and Wilcox County delegate, believed the spirit of sectional reconciliation that emerged during the Spanish-American War had ended the threat of federal intervention. The war "has brought about a change," he said, because the Republicans have "had a great deal of trouble" with islanders "outside of the Caucasian race."[3] The result, Jones sensed, was that "[t]housands and thousands of them who were our enemies are in full

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1. 3 OFFICIAL PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF ALABAMA, MAY 21ST, 1901, TO SEPTEMBER 3, 1901, at 2783 (1940) [hereinafter PROCEEDINGS].

2. *Id.*

3. *Id.* at 2886.

sympathy with us now."[4]

A few delegates viewed American imperialism as something more than a shield for disfranchisement and believed it offered Alabama the chance to achieve global renown. One of these was W.M. Banks of Hatchechubbee, who surmised that the question of how to govern nonwhite colonial populations was "one of the many problems that steam and electricity have propounded to the philosophers and statesmen of the twentieth century."[5] Alabama, like Britain, France, and Germany, faced the question of how to seize and maintain control of nonwhite populations, and Banks believed the state should offer itself as a model. When he spoke it remained to be seen whether Alabama would choose to provide a positive or negative example and he challenged his delegate brethren, asking if they would answer his call to "lay aside all passion, all prejudice and in the steady, clear light of reason and justice" resolve the issue "righteously and therefore permanently."[6] Banks took a dim view of the disfranchisement schemes already implemented in the constitutions of Louisiana, Mississippi, South Carolina, and North Carolina. Those states, he charged, took the low road and "temporized" the issue; yet he predicted that the race problem would "assume some other and perhaps more malignant form in the future."[7] Banks challenged the delegates gathered in Montgomery to offer western society an honorable solution. He asked rhetorically, "Will Alabama settle it? Let us hope so."[8]

Born in the minds of women and men, laws and constitutions are creatures of context that explain as much about the times in which they were created as the subsequent history they shape. As Oliver Wendell Holmes wrote, "[t]he felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious . . . have had a good deal more to do than the syllogism in determining the rules by which men should be governed."[9] One hundred years ago, Alabama's governing elite staged a constitutional convention to disfranchise black and lower-class white voters and hamstring Alabama's government, thus inoculating the state from the threat of reforms intended to achieve social justice. Disfranchisement was a flagrant violation of the Fourteenth and Fifteenth Amendments to the United States Constitution, a fact apparent at the time, and the delegates took great pains to assuage their anxieties and convince themselves that the federal government would not punish the state. Theirs was the task

4. *Id.*
5. *Id.* at 2816.
6. 3 PROCEEDINGS, *supra* note 1, 2816.
7. *Id.* at 2816-17.
8. *Id.* at 2817.
9. OLIVER WENDELL HOLMES, THE COMMON LAW 1 (Little, Brown & Co. 1923) (1881).

of synchronizing the incongruent, an elaborate exercise in contextualization. To fully understand that exercise and its resulting product, we have to view it in its context, of which territorial expansion was a vital part.

This study will show that the relationship between empire and disfranchisement was one-sided; the South needed a relationship—the North did not. Both sections framed the expansion debate as white versus "the other" and each alluded to the "White Man's Burden." However, there was no single definition of "the burden." It had many meanings and the debate came down to competing views of the burdens of being white. Southern lawmakers constructed disfranchisement in the midst of that debate, in the gap between public opinion and public policy, and did not know whether it would long survive. Using the evidence presented and debated by Alabama's disfranchisers, Congress, and a chorus of voices from Washington to San Juan, and from Honolulu to Montgomery, this study will venture far and wide to reassess the cultural and legal context of disfranchisement.

America's island empire was so far removed from Alabama that it may appear odd that delegates to the 1901 constitutional convention tried to connect the two. In fact, it was only natural for them to do so. Recent scholarship has shown that white Americans of the late nineteenth-century had an enormous appetite for anthropology. For Southerners, anthropologists' theories provided, according to historian Grace Hale of the University of Virginia, "the crucial means of ordering the newly enlarged meaning of America."[10] "A variety of interest groups," Duke University anthropologist Lee D. Baker found, "integrated anthropology into" public policymaking.[11] Territorial expansion, world's fairs, and museum exhibits heightened this appetite, and Southerners capitalized on the widespread interest, marshaling "the anthropological discourse on racial inferiority for propaganda and Jim Crow legislation."[12] Yale University historian Glenda Gilmore concluded that the "international image of self-restrained, yet virile, white manhood lent urgency to the white supremacists' task."[13] Embracing the rhetoric of empire, "a new generation of white men—educated, urban, and bourgeois"—co-opted it in their effort to "replace the white Democrats of their fathers' generation within the party structure and to recapture power from the Populist/Republican coalition," the supporters of which

10. GRACE ELIZABETH HALE, MAKING WHITENESS: THE CULTURE OF SEGREGATION IN THE SOUTH, 1890-1940, at 7 (1998).

11. LEE D. BAKER, FROM SAVAGE TO NEGRO: ANTHROPOLOGY AND THE CONSTRUCTION OF RACE, 1896-1954, at 22 (1998).

12. *Id.* at 25.

13. GLENDA ELIZABETH GILMORE, GENDER AND JIM CROW: WOMEN AND THE POLITICS OF WHITE SUPREMACY IN NORTH CAROLINA, 1896-1920, at 63 (1996).

were the black and poor white targets of disfranchisement.[14]

Hale, Baker, and Gilmore dealt with why Southerners attempted to make a connection between empire and disfranchisement, but failed to address why (or if) it mattered. It mattered because the South could only reach its goal of African-American oppression by the grace of the U.S. government—whether that permission be *de jure* or *de facto*. The situation was akin to that faced by the British in India where, as V.O. Key explained in *Southern Politics in State and Nation*, the white minority could "maintain its position only with the support, and by the tolerance of those outside—in the home country or in the rest of the United States."[15] Once the nation acquired an empire, the South had a vested interest in territorial expansion reflecting the section's model.[16] Policies that did not foster this model jeopardized the South's ability to maintain instruments of subjugation and segregation.

The first and most influential attempt to locate disfranchisement within the broader context of American expansion was C. Vann Woodward's magisterial *Origins of the New South*.[17] In the chapter entitled "The Mississippi Plan as the American Way," Woodward explained why, in his opinion, the U.S. government did not intervene in the disfranchisement phenomenon.[18] He argued that federal actions fueled the movement, finding the roots of national approbation in imperial expansion.[19] Woodward amassed a wide array of evidence, including the failure of Congressional efforts to enforce Southern compliance with the Fourteenth Amendment, Supreme Court decisions favorable to the disfranchisement movement, and imperial expansion.[20] The last of those was the only one that demonstrated an explicit Northern embrace of—rather than acquiescence in—the Southern model of race relations.[21] Alabama's 1901 Constitutional Convention was a turning point in his analysis, and he used it to propose a direct link between empire and disfranchisement.[22] To explain this linkage, Woodward advanced a sophisticated "North-South" thesis that posited that Southern segregation and disfranchisement and U.S. expansion were hewn from the same intellectual timber.[23] He constructed the thesis as follows: the problems

14. GILMORE, *supra* note 13, at 63.
15. V.O. KEY, JR., SOUTHERN POLITICS IN STATE AND NATION 5 (A.A. Knopf ed., 1st ed. 1949).
16. *See id.*
17. C. VANN WOODWARD, ORIGINS OF THE NEW SOUTH, 1877-1913 (Wendell Holmes Stephenson & E. Merton Coulter eds., 1951).
18. *Id.* at 321-49.
19. *Id.* at 324-26.
20. *Id.*
21. *Id.*
22. WOODWARD, *supra* note 17, at 324-26.
23. *Id.*

of empire validated white Southerners' claims of hardships caused by having to live alongside African-Americans and convinced the federal government to let disfranchisement stand.[24] Furthermore, Woodward wrote, Congress reproduced the Southern model in Hawaii, Puerto Rico, and the Philippines.[25] Quoting Emmett O'Neal's remark about a sympathetic North, Woodward concluded that "the work of writing the white man's law for Asiatic and Afro-American went forward simultaneously."[26]

The seminal study of Alabama's constitutional history, Malcolm Cook McMillan's *Constitutional Development in Alabama*, supports Woodward.[27] McMillan concluded that territorial expansion forced Northerners to "consider the race problem objectively, without any sentimental prejudices growing out of the Civil War."[28] The North, he wrote, could not support the literacy tests Southern states employed in the new territories "and deny the same privilege to Alabama."[29] In addition to the aforementioned studies from Hale, Baker, and Gilmore, Woodward's North-South thesis is supported by subsequent histories including Sheldon Hackney's *Populism to Progressivism in Alabama*,[30] Edward Ayers' *The Promise of the New South: Life After Reconstruction*,[31] and Michael Perman's *Struggle for Mastery: Disfranchisement in the South, 1888-1908*.[32]

The process of reconsidering the thesis began with University of Colorado historian Eric T.L. Love's dissertation.[33] Love was less concerned with the thesis itself than with scholars who, like Woodward, accepted that the racial attitudes driving disfranchisement and segregation in the South also drove U.S. colonial policy. Their conclusions imply, in his view, that Americans outside the South were not racist enough to handle the demands of imperial conquest and racial oppression; that once they migrated to the Southern position, they felt qualified to acquire colonies and subjugate the nonwhite natives.[34] He count-

24. *Id.*
25. *Id.*
26. *Id.* at 325-26.
27. MALCOLM COOK MCMILLAN, CONSTITUTIONAL DEVELOPMENT IN ALABAMA, 1798-1901: A STUDY IN POLITICS, THE NEGRO, AND SECTIONALISM 231 (University of North Carolina Press 1978) (1955).
28. *Id.*
29. *Id.*
30. SHELDON HACKNEY, POPULISM TO PROGRESSIVISM IN ALABAMA (1969).
31. EDWARD L. AYERS, THE PROMISE OF THE NEW SOUTH: LIFE AFTER RECONSTRUCTION (1992).
32. MICHAEL PERMAN, STRUGGLE FOR MASTERY: DISFRANCHISEMENT IN THE SOUTH 1888-1908 (2001).
33. Eric Tyrone Lowery Love, Race Over Empire: Racism and United States Imperialism, 1865-1900 (1997) (unpublished Ph.D. dissertation, Princeton University) (on file with the Princeton University Library).
34. *Id.* at 11.

ers them, showing that the policies adopted by the United States were not what expansionists desired; racial fears impeded expansion, and complicated efforts to acquire Cuba, the Dominican Republic, and Hawaii in the late nineteenth century.[35] Love identified a fundamental difference between paternalistic *racial ideologies* such as the Christian "mission," the "White Man's Burden" which entailed a duty to uplift nonwhites, and the simpler *racism* he defined as a "system of culturally sanctioned strategies designed to protect economic, political, and social privileges on the basis of race."[36] No apology is made for paternalism in Love's study or this one—it was ignorant, misguided, oppressive, and destructive—but it was not the same thing as simple racism.[37]

Love concentrated on the Northern end of the thesis, leaving the Southern end untouched.[38] However, the Southern end is seriously flawed as well. Taken at face value, the debates from Alabama's constitutional convention confirm Woodward's findings. But after examining those debates closely, and checking the accuracy of the delegates' assertions, cracks appear in the North-South thesis. It was based upon delegates' misuse of the historical record and is unsupported by the actual policies the U.S. employed overseas. As it turns out, the similarities between disfranchisement and U.S. policy were largely superficial. More precisely, Woodward is wrong about the chronology. Disfranchisement began in the late 1880s when Florida and Tennessee imposed new restrictions on voting, but the U.S. did not annex Hawaii until 1898, winning Puerto Rico and the Philippines from Spain that same year. Congress established governments for Hawaii and Puerto Rico in 1900, but disfranchisement did not occur in Alabama until 1901. Looking backward, condensing the passage of several years is easy, but "cause and effect" demand greater chronological precision; policies cannot reflect that which does not exist.[39]

Southerners were quick to remind the nation they had far more experience in living with nonwhites and no Northerner in their right mind

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35. *Id.*

36. *Id.* at 9.

37. "Paternalism" in this study is an ideology defined by a belief in the need and responsibility of whites to provide for the uplift and tutelage of nonwhites.

38. *See generally* Love, *supra* note 33.

39. There is some debate as to whether Florida's 1889 suffrage restrictions should be considered part of the disfranchisement movement. Most recently, Michael Perman concluded that Florida's electoral changes were intended to grant greater power to counties rather than stifle the Democrats' opponents. MICHAEL PERMAN, STRUGGLE FOR MASTERY: DISENFRANCHISEMENT IN THE SOUTH, 1888-1908, at 48-69 (2001). Perman locates the genesis of the disfranchisement movement in Tennessee's 1889 adoption of the Dortch Election Law. *Id.* For a detailed analysis of suffrage restriction in the North, and the U.S. Supreme Court's influence on disfranchisement, see Robert Volney Riser II, Between Scylla and Charybdis: Alabama's 1901 Constitutional Convention Assesses the Perils of Disfranchisement (unpublished M.A. thesis, The University of Alabama, 2000) (on file with Gorgas Library, The University of Alabama).

would argue otherwise. But even though *de facto* segregation and suffrage restriction were found north of the Mason-Dixon line, to claim that the North had chosen to follow the South's lead is a stretch. The literacy tests and similar devices used in Northern states and the American colonies were not the same as Southern disfranchisement. What distinguished the South from the rest of the nation was the *ex post facto* nature of suffrage restriction, the embrace of byzantine voter registration practices, and the adoption of discriminatory loopholes that only benefitted white voters. Abundant evidence shows that rather than embrace the South's model, the North chose haltingly to pursue an imagined obligation to improve the condition of nonwhite island populations.

The North-South thesis has endured because of its simplicity. America circa 1901 was a complicated and contradictory place, and the thesis offered an easy explanation for a period that defies easy explanations. On its face, Woodward's thesis appears to comply with Ockham's Razor.[40] But it does not. It overreaches and actually overlooks the correct and far simpler explanation: that Northern apathy—not approbation—encouraged the spread of disfranchisement.

The cultural context of disfranchisement can be viewed through the variety of responses to Rudyard Kipling's *The White Man's Burden*.[41] The glow of Queen Victoria's Diamond Jubilee inspired him to compose the ode, and the finished poem highlighted "responsibility and duty" according to Kipling biographer Harry Ricketts.[42] It was a call to action rather than a complaint and, because "Kipling felt that Britain had not yet shouldered the burden of its imperial responsibility," he set the poem aside rather than go against the prevailing mood of the Jubilee.[43] Kipling's poem embodied paternalism at its most idealistic, but his sentiments of responsibility and duty vanished in the whirl of *fin de siècle* American pop culture. The poem's title quickly became an overused, misunderstood, and tastelessly employed catch phrase, a descriptor for territorial expansion and disfranchisement, used interchangeably to describe the uplift of nonwhites and the "burden" Southerners endured by living alongside African-Americans. It was even used to hawk merchandise; *McClure's* Magazine ran a particularly crass pitch for

40. Ockham's Razor is embodied in the phrase *non sunt multiplicanda entia praeter necessitatem* (entities are not to be multiplied beyond necessity). According to Robert Wagner, "[t]his principle was stated by William of Ockham [(1285-1349)]". Robert Wagner, *Robert Wagner—About Ockham's Razor at* http://www.physik.tu-muenchen.de/~rwagner/me/ockhams_razor.html (last visited Aug. 7, 2001). "It is also called the 'Law of Economy' and the 'Law of Parsimony.'" *Id.*

41. HARRY RICKETTS, THE UNFORGIVING MINUTE: A LIFE OF RUDYARD KIPLING 233 (1999).

42. *Id.* at 231-35.

43. *Id.* at 233.

Pears' Soap in October 1899.[44]

Figure 1

44. Pears' Soap, *Lightening the White Man's Burden*, MCCLURE'S MAG., Oct. 1899, at cover inset [hereinafter Pears' Soap Advertisement]; *see also* Pears' Soap Advertisement, Anti-Imperialism in the United States, 1898-1935 *available at* http://www.boondocksnet.com/kipling/pears.html (last visited Aug. 7, 2001).

As seen above, the advertisement featured a series of illustrations including one that depicted a missionary, in the midst of the Lord's work, sharing the wonders of Pears' Soap with a grass-skirted native.[45] It proclaimed that "[t]he first step toward lightening The White Man's Burden is through teaching the virtues of cleanliness," and that "Pears' Soap is a potent factor in brightening the dark corners of the earth as civilization advances, while amongst the cultured of all nations it holds the highest place—it is the ideal toilet soap."[46]

Americans from the North and South drew parallels between African-Americans and colonial inhabitants, confident that both groups were, as Kipling's poem's first stanza said, "[h]alf devil and half child."

> Take up the White Man's Burden–
> Send forth the best ye breed–
> Go, bind your sons to exile
> To serve your captives' need;
> To wait, in heavy harness,
> On fluttered folk and wild–
> Your new-caught sullen peoples,
> Half devil and half child.[47]

This first stanza is all that anyone ever quotes, but in fact there are seven.[48] Kipling did belittle natives as "[h]alf devil and half child," and "sullen peoples," ascribing to them the vices of "sloth and heathen folly," but the poem was not a primer on nonwhite subjugation.[49] Misguided though it was, Kipling's was a call to sacrifice and suffering, a demand that Anglo-Saxons provide the tools of civilization to far-flung corners of the globe, giving their lives in the process. This was not a call for an unlimited supply of cheap, uneducated labor or for the proscription of the civil and political rights of hundreds of thousands of African-Americans. To the contrary, Kipling believed in preparing the colonials for the exercise of such rights. Empire was a thankless responsibility and Anglo-Saxons should not expect gratitude from the "uplifted," as he made clear in the fifth stanza:

> Take up the White Man's Burden,
> And reap his old reward–

45. *Id.*
46. *Id.*
47. Rudyard Kipling, *The White Man's Burden*, MCCLURE'S MAG., Feb. 1899, at 290.
48. *Id.*
49. *Id.*

The blame of those ye better
The hate of those ye guard–
The cry of those ye humor
(Ah, slowly!) toward the light:–
"Why brought ye us from bondage,
Our loved Egyptian night?[50]

Southerners had no interest in any burden that required the elevation of African-Americans. The only ones they cared about demanded a program of oppression. They and Kipling operated on racial assumptions that should affront the sensibilities of twenty-first century Americans, but it is important to understand the differences in their philosophies.

It was inevitable that Kipling's poem would attract attention and provoke extensive comment about the nature of "the Burden." A multitude of voices offered comment on the ode, and, with Kipling's death in the late spring of 1899, their tone tilted dramatically toward praise, serving to obscure to posterity the widespread excoriating criticism leveled against Kipling. The *Literary Digest* concluded that the poem's message was "a rank falsehood," and that "[t]he white races are the most consummate and self-complacent hypocrites in all the history of races."[51] The *San Francisco Call* reminded Kipling's admirers that the White Man needed to deal with his own house first: "It is not required of him to upset the brown man's house under pretense of reform and then whip him into subjugation whenever he revolts at the treatment."[52] Alice Smith-Travers mocked the poem, and used it to make an example of the South: "Take up the white man's burden!/ And go to the Southern land/ Where cities and towns are governed,/ By a fiendish, lawless band."[53] An author writing under the pseudonym X-Ray in the Washington, D.C. *Colored American*, was more blunt: "To h--- with the 'White Man's Burden!'/ To h--- with Kipling's verse!/ The Black Man demands our attention:/ His condition is growing worse."[54] Not to be left out, America's newspaper of record—the *New York Times*—also contributed to the parade of parodies: "Take up the White Man's burden;/ Send forth your sturdy sons,/ . . . Throw in a few diseases/ To

50. *Id.* at 291.

51. *The White Man's Burden*, LITERARY DIGEST, May 6, 1899, at 510, *available at* http://www.boondocksnet.com/kipling/nyage.html (last visited Aug. 7, 2001).

52. *The White Man's Burden*, SAN FRANCISCO CALL, Feb. 7, 1899, *available at* http://www.boondocksnet.com/kipling/sfcall.html (last visited Aug. 7, 2001).

53. Alice Smith-Travers, *The White Man's Burden*, THE FREEMAN (Indianapolis), Mar. 14, 1899, *available at* http://www.boondocksnet.com/kipling/smith.html (last visited Aug. 7, 2001).

54. X-Ray, *Charity Begins at Home*, COLORED AMERICAN (D.C.), Mar. 18, 1899, *available at* http://www.boondocksnet.com/kipling/xray.html (last visited Aug. 7, 2001).

spread in tropic climes,/ For there the healthy niggers/ Are quite behind the times."[55]

The strangest interpretive turn was Senator Ben "Pitchfork"[56] Tillman's announcement, on the floor of the U.S. Senate, that he was in love with Rudyard Kipling.[57] Tillman believed Southerners possessed special expertise in the handling of nonwhites and felt he had found a kindred spirit in Kipling.[58] In a February 1899 speech on the subject of the Philippine independence struggle, he quoted liberally from the poem, offering a critique wildly divergent from Kipling's intended meaning.[59] Explaining that he and others who "had to do with the colored race in this country . . . understand and realize what it is to have two races side by side that can not mix or mingle without deterioration and injury to both and the ultimate destruction of the civilization of the higher."[60] The people of the South, Senator Tillman declared, "have borne this white man's burden of a colored race in our midst since their emancipation and before."[61] If the Filipinos "mean to have their liberties, as they appear to do," he asked, "at what sacrifice will the American domination be placed over them?"[62] Utterly convinced that he and Kipling were two of a kind, an excited Tillman confessed: "I have fallen in love with this man."[63]

By choosing the title he did, Kipling embraced the impulse to pose the question as "white" versus "the other," giving an intellectual battle its name. The debate about expansion became a debate about the nature of the White Man's Burden. When the poem appeared in 1899, expansion was a *fait accompli*; the United States had an empire and the question became what to do with it. Every comment echoed one of three broad ideological themes concerning the responsibilities and demands of empire, responsibilities and demands identified collectively in this Article as The Burden.

Those who considered all nonwhites "negroes," and a burden on whites, followed the first theme. Their philosophical bent dictated "not only that Negroes were an innately inferior, immoral, and criminal race that could never catch up with the whites in civilization, but that in fact

55. SEAN DENNIS CASHMAN, AMERICA IN THE GILDED AGE: FROM THE DEATH OF LINCOLN TO THE RISE OF THEODORE ROOSEVELT 348 (3d ed. 1993) (providing a partial reproduction of the *New York Times* article).

56. Tillman earned this nickname after threatening to stick President Grover Cleveland, whom he detested, with a pitchfork.

57. 55 CONG. REC. S1531-32 (3d Sess. 1899) (statement of Sen. Tillman) [hereinafter CONG. REC.], *available at* http://www.boondocksnet.com/kipling/tillman.html (last visited Aug. 8, 2001).

58. *Id.*

59. *See id.*

60. *Id.* at S1532.

61. *Id.*

62. CONG. REC., *supra* note 57, at S1532.

63. *Id.*

freedom caused a reversion to barbarism."[64] Most of the disfranchisers belonged in this category and the First Lady of the late Confederate States of America, Varina Davis, joined them. She objected to burdening America with "several millions of negroes to our population when we already have eight millions of negroes in the United States" and believed that "[t]he problem of how best to govern these and promote their welfare we have not yet solved."[65] Writing under the pseudonym Americus Free, H. Gratten Donnelly asked whether Americans could embrace "a semi-civilized horde of mixed blood—of negritos, bolo men and Mahometans . . . people who are either not willing or not able to appreciate the priceless boon of living under the American flag?"[66]

Certain members of the United States Supreme Court shared this attitude. Justice Edward Douglass White, a Louisiana sugar planter, remarked privately of Filipinos that "we couldn't incorporate ten million black skinned people like that in the United States! Think what the consequences would be!"[67] White's colleague David Josiah Brewer of Kansas, the Turkish-born son of missionaries, expressed similar views in an 1899 address entitled "The Spanish War: A Prophecy or an Exception."[68] Brewer found the idea of statehood for the overseas possessions unsavory, asking "Who can tell how many centuries must pass before the savage and semi-civilized races of these islands become fit to assume the responsibilities of self-government?"[69] Drawing a parallel be-

64. AUGUST MEIER, NEGRO THOUGHT IN AMERICA, 1880-1915: RACIAL IDEOLOGIES IN THE AGE OF BOOKER T. WASHINGTON 161 (University of Michigan Press 1973) (1966). Many readers will recognize the philosophy Meier describes as paternalism, but I believe that it is more akin to simple racism.

65. Mrs. Jefferson [Varina] Davis, *The White Man's Problem*, 23 ARENA 1, 2 (1900). The nonwhite inhabitants of Puerto Rico, Hawaii, and the Philippines were frequently referred to as "negroes." They, of course, were not and this reflects a general attitude of "if they are not white, they are black."

66. H. GRATTAN DONNELLY, THE COMING EMPIRE: A POLITICAL SATIRE 6-7 (1900) (writing under the pseudonym Americus Free). I am unable to determine whether "Mahometans" refers to followers of Mohammed (Muslims) or the class of Buddhist wise men known as "Mahatmas."

67. Interview by Allan Nevins et al. with Frederic René Coudert, The Reminiscences of Frederic René Coudert, at 43 (Oct. 1949-1950) (Columbia University Oral History Project, 1972) (on file with Columbia University). Coudert served as lead counsel for the plaintiffs in several of the *Insular Cases*, which upheld the Foraker Act. He was a partner in the renowned law firm of Coudert Brothers, founded by his father and uncle. Coudert's father was offered and declined the seat on the Supreme Court eventually filled by Edward Douglass White. Though Coudert argued that the Foraker Act was unconstitutional and that territory was inherently part of the United States, he was not an advocate for the Puerto Rican, Hawaiian, and Filipino people. In an oral history dictated for the Columbia University Oral History project from 1949-1950, Coudert lamented that the U.S. had eradicated diseases in Puerto Rico that had previously "[kept] the population at a reasonable level, so that they could be supported, so now their overflow has come to New York. We now have two or three million of them at home and many coming here, corrupting all of New York by their living habits, the same as in Puerto Rico." *See generally id.* at 38-39.

68. David Josiah Brewer, The Spanish War; A Prophecy or an Exception?, Address Before the Liberal Club, Buffalo, New York 31 (Feb. 16, 1899) (transcript available in the Bounds Law Library, The University of Alabama School of Law and on file with the author).

69. *Id.*

tween overseas territories and the South, Brewer revealed sentiments that would have emboldened any disfranchiser who learned of his remarks.[70] "In the South we have the rapidly increasing colored population . . . elevated in ignorance to citizenship," and the entire region "trembles before the unsolved question of preserving intelligent self-government and at the same time guaranteeing rights of citizenship to an ignorant mass."[71] How, Brewer wondered, "[c]an we relieve against one problem of dealing with ignorant and unfit masses here by adding millions more to the problem?"[72]

Adherents to the second theme of Burden interpretation, like the first, opposed holding imperial possessions and questioned the so-called "uplift" of nonwhites. Unlike the first group, their opposition did not result from simple racism. Rather, they objected to the impulse to "Westernize" the entire world and believed that Uncle Sam should take care of his "home burdens" before gallivanting around the globe.

Figure 2

70. *Id.*
71. *Id.* at 31-32.
72. *Id.* at 32.

Among them was the renowned author Mark Twain, who was an outspoken critic of the methods employed to "uplift" nonwhites, including both the efforts of Christian missionaries in China and the United States' fight against Philippine independence. His most famous and controversial essay on the subject was *To the Person Sitting in Darkness*, a withering response to missionaries' conduct during the Boxer Rebellion.[73] Of those Westerners crusading to "bring light into the dark corners of the globe," Twain asked whether soldiers and missionaries should continue foisting western ideals on people everywhere or whether "we [should] give those poor things a rest?"[74] Instead of marching about looking for more of the unconverted, Twain suggested that the missionaries might first "see how much stock is left on hand in the way of Glass Beads and Theology, and Maxim Guns and Hymn Books, and Trade-Gin and Torches of Progress and Enlightenment" before deciding "whether to continue the business or sell out the property and start a new Civilization Scheme on the proceeds."[75] Twain, in his inimitable style, drew his readers' attention to the blurred line between evangelism and greed, and he reminded them that "racial uplift" never helped its intended beneficiaries.[76] "The most of those People that Sit in Darkness have been furnished with more light than was good for them or profitable for us. We have been injudicious."[77]

Similarly, Kelly Miller, a prominent African-American leader, considered the trend of imperial expansion "antagonistic to the feebler races."[78] In 1900, Miller described imperialism as "a revival of racial arrogance" and noted that "[i]t has ever been the boast of the proud and haughty race or nation that God has given them the heathen for their inheritance and the uttermost parts of the earth for their possession."[79] According to Miller, imperialists presumed that their perogative was to "rule [others] with a rod of iron and to dash them to pieces like a potter's vessel."[80]

The third theme was carried by those who believed the United States must not behave as an imperial power because they considered it immoral, cruel, and dangerous for a republic to hold colonies. Among this group was Tennent Lomax, who later served as a delegate to the 1901 constitutional convention. In 1898, Lomax delivered a com-

73. Mark Twain, *To the Person Sitting in Darkness*, 172 N. AM. REV. 161 (1901).
74. *Id.* at 164.
75. *Id.* at 165.
76. *Id.*
77. *Id.*
78. KELLY MILLER, *The Effect of Imperialism Upon the Negro Race*, *in* ANTI-IMPERIALIST BROADSIDE No. 11 (1900), *available at* http://www.boondocksnet.com/ailtexts/miller00.html (last visited Aug. 7, 2001).
79. *Id.* at 11.
80. *Id.*

mencement address at The University of Alabama entitled "An Imperial Colonial Policy: Opposition to it the Supreme Duty of Patriotism."[81] Lomax, "as a lover of my country and a devotee at the shrine of her liberty," denounced the prospect of an overseas American empire "as the entering wedge of the most dangerous and insidious assault ever made upon the liberties of the American people."[82] Characterizing imperialism as "strange and dangerous heresy," he asked if it was not perilous for the United States, "whose star of liberty was at once set in her sparkling diadem of free and independent States," to wield the "scalpel of a conqueror."[83] If the United States chose the imperial path, however, Lomax warned that the time would come "as surely as the darkness succeeds the setting of the sun, when our great representative system will take its place in the charnel house of dead republics, and free government will live only in the memories of men."[84]

Kentucky-born John Marshall Harlan, the Supreme Court colleague of David Brewer and Edward White, was also in this group. Harlan, who famously insisted in *Plessy* v. *Ferguson*[85] that the Constitution was color-blind, agreed with Lomax that the U.S. should not take colonies.[86] But he differed from Lomax in that he conceived of a paternalistic, republican mission for the Anglo-Saxon race and believed that Hawaiians, Puerto Ricans, and Filipinos could be prepared for U.S. citizenship. The scion of a slaveholding Kentucky family, Harlan was something of a "romantic racialist" and was prone to remembering benevolent masters and affectionate slaves.[87] On the other hand, he considered African-Americans and native islanders entirely capable of self-government. Harlan reconciled these apparently disparate beliefs, according to Linda Przybyszewski, "by identifying the peculiar genius of the Anglo-Saxon race as its willingness to extend civil rights and economic opportunities to people of other races."[88] He demonstrated this in a 1900 address about James Wilson at the University of Pennsylvania. Quoting Wilson's famous statement that "all men are by nature equal and free," Harlan lingered on the phrase, emphasizing that "all men—not some men, not men of any particular race or color, but '*all* men are

81. Tennent Lomax, An Imperial Colonial Policy: Opposition to it the Supreme Duty of Patriotism, Oration Before the Literary Societies of The University of Alabama, at the Sixty-Seventh Annual Commencement 6, 8-9, 18 (June 20, 1898) (transcript available in The University of Alabama Hoole Collection).

82. *Id.* at 6.

83. *Id.* at 8-9.

84. *Id.* at 18.

85. 163 U.S. 537 (1896).

86. LINDA PRZYBYSZEWSKI, THE REPUBLIC ACCORDING TO JOHN MARSHALL HARLAN 86 (1999).

87. *Id.*

88. *Id.*

by nature equal and free'—the same great principle subsequently embodied in the Declaration of Independence."[89] Harlan, Twain, Davis and their peers demonstrate Americans' varied responses to empire, underscoring why conclusions of national approval for disfranchisement are troublesome. Fortunately, we are not limited to rhetoric alone in our examination of the North-South thesis and now turn to an analysis of the actual imperial policies adopted by the United States.

In February of 1899, the United States Senate debated the Treaty of Paris that was signed at the close of the Spanish-American War. Anti-imperialist Southern senators led the opposition because, if there were no national empire, and no nonwhites for the North to govern, there would be no chance for Congress to ignore the Southern model. But the Senate approved the treaty and Southern leaders then faced a new battle. None were more prominent than South Carolina's Ben Tillman. Scholars studying Southern anti-imperialists, like Tillman, describe their subjects' frustration over expansion as a reaction to "the refusal of the Republican expansionists to admit the inconsistencies in their views of colored peoples."[90] Such an admission, according to Tillman biographer Francis Butler Simkins, would have been "at least by inference, a justification of the attitude of the white South toward the Negro."[91] Where Simkins and others erred was in assuming inconsistency by the North. Accepting that suggestion at face value requires us to believe the annexationists—the majority of whom were Republican—intended all along to maintain the new possessions as extra-national colonies, their inhabitants permanently relegated to a status similar to that of African-Americans in the South.

One of the best encapsulations of Southern anti-imperialist thought and its relationship to disfranchisement is Thomas Dixon's novel *The Leopard's Spots*.[92] For the benefit of Americans who endorsed the education and uplift of nonwhites abroad and blacks at home, Dixon provided counsel through the character of Reverend Durham. Dixon's benevolent minister is a veritable font of wisdom, spouting pithy pronouncements to a succession of well-intentioned but misguided whites who wanted to improve African-Americans.[93] Lecturing the novel's hero, Charlie Gaston—the minister's surrogate son and a member of

89. John Marshall Harlan, *James Wilson and the Formation of the Constitution*, 34 AM. L. REV. 481, 483 (1900).

90. Edwina C. Smith, *Southerners on Empire: Southern Senators and Imperialism, 1898-1899*, 31 MISS. Q. 89, 99 (1978).

91. *Id.* at 99 (quoting FRANCIS BUTLER SIMKINS, PITCHFORK BEN TILLMAN: SOUTH CAROLINIAN 356 (1944)).

92. THOMAS DIXON, JR., THE LEOPARD'S SPOTS: A ROMANCE OF THE WHITE MAN'S BURDEN–1865-1900 (A. Wessels Co. 1906) (1902).

93. *See id.* at 5.

North Carolina's Legislature who wanted his state to provide for the industrial education of African-Americans—Durham belittled the proposal, insisting that "[e]ven you are still labouring under the delusions of 'Reconstruction' . . . [t]he Ethiopian cannot change his skin, or the leopard his spots."[94] Educating African-Americans was foolish, Durham explained to Gaston, because doing so only exacerbated the off-cited race problem—"You can train him," the minister said of African-Americans, "but you can't make of him a horse. . . . Mate him with a horse, you lose the horse, and get a larger donkey called a mule, incapable of preserving his species."[95] "[R]ace prejudice," he explained, "is simply God's first law of nature—the instinct of self-preservation."[96] Durham had corrected his charge's ignorance, and Gaston later decried American expansion asking "[s]hall we repeat the farce of '67, reverse the order of nature, and make these black people our rulers? If not, why should the African here, who is not their equal, be allowed to imperil our life?"[97]

Dixon's novel was more than one man's angry polemic; it was a national best-seller, and the debates from Alabama's real-life constitutional convention testified to its intellectual authenticity. Thomas Heflin of Randolph County, a future congressman, professed his love for the "old-time Southern negro" and accepted that the "negro is here among us."[98] He wanted "him" to have his civil rights, but did not believe African-Americans were:

> entitled to political rights. He is of an inferior race. He is not capacitated to govern and rule the white man, and I want to say to you now that the white man has ruled this country from the beginning of the world, and that we are going to continue to do it until we are all dead.[99]

Heflin's thoughts were similar to those of Demopolis' Gesner Williams, who included an intimate reference to "Mammy" in his remarks.[100] He spoke as a member of a younger generation, "one of those

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94. *Id.* at 463.
95. *Id.* at 464.
96. *Id.*
97. DIXON, *supra* note 92, at 439. Strangely, Dixon sent a review copy of *The Leopard's Spots* to Booker T. Washington, noting that "I mail you to-day an advance copy." 6 THE BOOKER T. WASHINGTON PAPERS 413 (Louis R. Harlan & Raymond W. Smock eds., 1977). Dixon wrote that "[i]t is an historical study of the Race Question from 1865 to 1900. . . . I hope that you will enjoy it, and if you can find time to say a word in review I will appreciate it very much." *Id.* Whether Dixon was being serious or staging a prank is unclear. In any event, it does not appear that Washington replied, as none exists in his voluminous correspondence.
98. 3 PROCEEDINGS, *supra* note 1, at 2821, 2846.
99. *Id.* at 2821.
100. *Id.* at 2836.

who has nursed the breast, not of a slave, but of one who had been a slave, since the war."[101] Affection for his wet nurse aside, Williams insisted that negro blood could not produce any good.[102] He was convinced that any positive achievements African-Americans made resulted directly from miscegenation, stating "without fear of contradiction that if there is any good in the negro race—such as elevates a nation, or elevates his race—I say that good comes from the Caucasian blood that runs in his veins."[103]

Convention delegates studied overseas policy in pursuit of two ends. The first was to paint the delegates as vanguards, paving the way for national policymakers and offering a usable solution to the "race problem" for white men everywhere. The second and more pressing task was the construction of a usable precedent from policies established in 1900 for Hawaii and Puerto Rico. Though scant evidence was presented to buttress the confident pronouncements of Knox and others, it was upon these pronouncements that Vann Woodward concluded the North and South found common cause in the demands of empire. To test the delegates' conclusions we must leave the South and examine the policies implemented for Hawaii and Puerto Rico and the processes that shaped them.[104]

The Foraker Act,[105] often cited by historians to show that the nation was following the South's lead, established civil government for Puerto Rico and was the first U.S. policy imposed on an imperial holding.[106] Yet when examined closely, and weighed alongside the three versions of The Burden, the unavoidable conclusion is that the Foraker Act was philosophically different from the disfranchisement schemes adopted in the South. On April 12, 1900, the United States Congress approved the "[a]ct [t]emporarily to provide revenues and a civil government for Porto [sic] Rico, and for other purposes."[107] Named for its author, Ohio Senator Joseph Benson Foraker, Chairman of the Senate Committee for the Pacific Islands and Puerto Rico, the act was introduced as Senate Bill 2016.[108] Foraker's original legislation reflected the 1899 *Report on the Island of Porto* [sic] *Rico* and would have created a civil government for Puerto Rico, allowed Puerto Rico to send a delegate to Con-

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101. *Id.*

102. *Id.* at 2837.

103. 3 PROCEEDINGS, *supra* note 1, at 2837.

104. This study does not consider the example of U.S. policy in the Philippines because no policy had been established there at the time of Alabama's constitutional convention. The United States finally established organic law in the Philippines in 1902.

105. Foraker Act, ch. 191, § 7, 31 Stat. 77, 79 (1900) (codified at 48 U.S.C. §§ 733, 736, 738-40, 744 (1944)).

106. Foraker Act, ch. 191, § 7.

107. Foraker Act, ch. 191, § 7, at 86.

108. S.B. 2016, 56th Cong., 33 CONG. REC., pt. 1, at 630 (1900) (enacted).

gress, provided for free trade, extended United States constitutional protection to Puerto Rico, and offered citizenship to Puerto Ricans.[109] The commission, appointed by President McKinley, operated under the assumption that Puerto Rico was destined for statehood and its chair, Henry K. Carroll, expressed confidence that the Puerto Ricans were suited for self-government.[110] Together, they recommended giving the island territorial status such as that of Oklahoma, New Mexico, and Arizona—"Let Porto [sic] Rico have local self-government after the pattern of our Territories and she will gain by her blunders, just as cities and States in our own glorious Republic are constantly learning."[111] In an article written later that same year for the *Forum*, Chairman Carroll reiterated the report's recommendations and "unhesitatingly" affirmed "in full view of all that can be said on the other side, that the Puertoricans [sic] are fit for the measure of self-government involved in the territorial system."[112]

Carroll's report and Foraker's bill did not assert that Puerto Ricans were ready to govern themselves, only that they would someday be able to. They reflect an embrace of racial uplift, the "White Man's Burden," as Kipling intended. It was paternalistic to suggest that the Puerto Ricans (whom Spain had offered self-government in 1897) were the children of the United States, as yet unable to take care of themselves. While discredited racial ideology underlay the burden Carroll and Foraker felt for the nation's "new-caught" peoples, Foraker was not trying to remove the "incubus" of Puerto Ricans, a term many Southerners—Alabama's convention delegates included—frequently used to describe African-Americans.[113] It was not the negative, racist, fearful Burden that Tillman described, the "race problem" that a multitude of delegates to the Alabama convention identified, or the "shadow" haunting Confederate soldiers and their descendants memorialized by Thomas Dixon as "the shadow of the freed Negro . . . a possible Beast to

109. Foraker Act, ch. 191, § 7.

110. *See* HENRY K. CARROLL, REPORT ON THE ISLAND OF PORTO RICO 58 (1899).

111. *Id.*

112. M.K. Carroll, *How Shall Puerto Rico Be Governed?*, 28 FORUM 257, 263 (1899). The Foraker Act was not, of course, the first time Congress passed legislation governing a nonwhite population. For example, possessions acquired through the purchase of Alaska were treated as territories and managed as prescribed by the United States Constitution. Those acquired subsequent to Alaska (Puerto Rico, Hawaii, Guam, the Philippines, etc.) received a different, decidedly "extra-constitutional" treatment. An oft-repeated argument against giving the new possessions regular territorial status was the concern that it could take many years to prepare them for statehood. *See* ALFREDO MOTALVO-BARBOT, POLITICAL CONFLICT AND CONSTITUTIONAL CHANGE IN PUERTO RICO 25-26 (1997). This assertion is undermined by the fact that New Mexico had been a territory since the Compromise of 1850 was adopted and there was no movement to either cut New Mexico loose or grant it statehood.

113. Carroll, *supra* note 112, at 263.

be feared and guarded."[114]

Southerners were not alone in their anxiety about bringing new nonwhites into the national fold. The idea of millions of dark-skinned Filipinos (who then were engaged in a ferocious war against the United States) frightened Republican congressmen and the McKinley Administration, which resulted in a majority opposed to treating Puerto Rico like Florida, the Mexican Cession, and the Louisiana territory had been treated.[115] The organic law for Puerto Rico would set the precedent for the Philippines, which in Senator Foraker's words, "was, from the beginning, regarded as a far more serious and difficult problem than that presented by Porto [sic] Rico."[116] Whether motivated by a fear of Filipinos or not, few members of Congress shared Foraker's inclination to put Puerto Rico on track for statehood, striking provisions for free trade, U.S. citizenship, and full constitutional protection. Instead, they declared that Puerto Ricans are:

> citizens of Porto [sic] Rico, and as such [are] entitled to the protection of the United States, . . . and they, together with such citizens of the United States as may reside in Porto [sic] Rico, shall constitute a body politic under the name of The People of Porto [sic] Rico, with governmental powers as hereinafter conferred.[117]

Concerning suffrage rights, Congress established a local legislative assembly—a House of Delegates. To participate in legislative elections, voters had to be "bona fide residents for one year and . . . possess the other qualifications of voters under the laws and military orders in force on the first day of March, nineteen hundred, subject to such . . . regulations and restrictions as to registration as may be prescribed by the executive council."[118] This was an effort to allow only the "best qualified" to vote. However, Congress adopted none of the trickery, loopholes, and byzantine registration practices employed by the Southern states.[119]

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114. DIXON, *supra* note 92, at 5.

115. *See* JUAN R. TORRUELLA, THE SUPREME COURT AND PUERTO RICO: THE DOCTRINE OF SEPARATE AND UNEQUAL 33 (1985).

116. 2 JOSEPH BENSON FORAKER, NOTES OF A BUSY LIFE 85 (3d ed. 1917).

117. Foraker Act, ch. 191, § 7, 31 Stat. 77, 79 (1900) (codified at 48 U.S.C.A. §§ 733, 736, 738-40, 744 (1944)).

118. Foraker Act, ch. 191, § 29, 31 Stat. at 83.

119. According to Carroll, qualifications of voters imposed by General Davis during the military occupation were property and educational qualifications. *See* H.K. Carroll, *What Has Been Done for Porto* [sic] *Rico Under Military Rule*, 20 REV. OF REVS. 705, 709 (1899). Although these were certainly restrictive, it is important to see how they differ from what the southern states were doing. Constitutionally speaking, the problem with disfranchisement was not that suffrage rights were restricted. Suffrage restriction was underway nationwide and the Constitution does not

Senator Foraker did not see the Puerto Ricans as a threat and continued to champion the islanders' potential as Americans; furthermore, he worked to include a plank calling for U.S. citizenship for the islanders in the Republican Party platforms of 1908 and 1912. In a speech before the Union League of Philadelphia on April 21, 1900, Foraker explained the newly created government for Puerto Rico and showed his unabashed faith in the capabilities of Puerto Ricans, stating that the Republican party would make it "a success for Porto [sic] Rico and a success for the United States" and looked forward to handing over the reins of power to the Puerto Ricans.[120] Later that year, at the 1900 Republican National Convention, Foraker affirmed his faith in the islanders, telling the delegates that "[o]ur flag has a new glory."[121] To Foraker, it symbolized freedom at home for the "long-suffering patriots of Cuba" and the promise of self-government for Puerto Rico and the Philippines.[122] "What we have so gloriously done for ourselves," he continued, "we propose most generously to do for them. (Applause.)"[123] Foraker was joined at the Republican convention by Edward O. Wolcott of Colorado, Temporary Chairman, who contrasted U.S. policy toward the colonials with Southern treatment of blacks.[124] Wolcott revealed a prejudiced mindset with a reference to the "dusky races of the Philippines" but, more importantly, he distinguished between colonial policy and disfranchisement.[125] He proclaimed that "[t]he spirit of justice and liberty" that inspired the Founding Fathers "prompts us in our determination to give to the dusky races of the Philippines the blessings of good government and republican institutions, and finds voice in our indignant protest against the violent suppression of the rights of the colored man in the South (applause)."[126]

At first glance, the Foraker Act appears to be something Alabama's disfranchisers would love. Nevertheless, Congress' refusal to make Puerto Ricans U.S. citizens because of their race, language, and creed

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forbid restriction per se. It only says that it cannot be restricted on account of "race, color, or previous condition of servitude." U.S. CONST. amend. XV, § 1. The South deliberately established loopholes for whites to circumvent restriction—loopholes not available to African Americans. While the property and educational qualifications in Puerto Rico ensured that many could not vote, there was no attendant loophole that would, for example, open itself only to island residents born in Spain.

120. 2 FORAKER, *supra* note 116, at 81; EVERETT WALTER, JOSEPH BENSON FORAKER: AN UNCOMPROMISING REPUBLICAN 161-73.

121. Joseph Benson Foraker, Nominating Speech of Hon. J.B. Foraker, of Ohio (1900), *reprinted in* OFFICIAL PROCEEDINGS OF THE TWELFTH REPUBLICAN NAT'L CONVENTION, at 116 (1900).

122. *Id.*

123. *Id.*

124. E.O. Wolcott, Address of the Temporary Chairman (1900), *reprinted in* OFFICIAL PROCEEDINGS OF THE TWELFTH REPUBLICAN NAT'L CONVENTION, at 34 (1900).

125. *Id.*

126. *Id.*

meant little, in practical terms, to Alabama's disfranchisers. Although it shows a prejudiced mindset, it did not establish a usable precedent. In the *Civil Rights Cases*,[127] the *Slaughterhouse Cases*,[128] and *United States v. Cruikshank*[129] decisions, the Supreme Court limited the scope and protections of United States citizenship and drew a distinct line between federal and state rights—and the elective franchise was one of the latter. Although many disfranchisers seethed over the fact that the former slaves were United States citizens, citizenship was not the issue *per se*. The aim of the disfranchisers was not to deny the rights of United States citizenship. Their target—voting rights—was considered a privilege of state citizenship. In dealing with the tiny West Indies island, most U.S. policymakers showed no intent to relegate Puerto Ricans to a permanent secondary status. Driven by the ideology of racial uplift rather than simple racism, the Burden as Kipling intended it, they sought to tutor Puerto Rico in the ways of Republican self-government. Alabama's disfranchisers did not seek to do this for African-Americans. Their Burden was quite different and they schemed to "purify" the state's electoral system by stripping African-Americans of their political rights.

In the late Spring of 1901, Alabama's Constitutional Convention convened and the nation fixed its attention on Washington, where it expected the Supreme Court to issue its decisions in the *Insular Cases*, which were a series of tests of the Foraker Act.[130] The public mood was anxious and a large portion of the population "did not reflect a kindly attitude toward the inhabitants of Puerto Rico or the Philippines."[131] "In every aspect—cultural, social, political and economic—the inhabitants of the islands were different."[132] At the heart of the cases was the question of whether the United States Constitution permitted the creation of territories for any purpose other than preparation for eventual statehood.[133]

A series of decisions, the *Insular Cases*, handed the Supreme Court the burden of settling the legal and constitutional status of the island-

127. 109 U.S. 3 (1883).

128. 83 U.S. (16 Wall.) 36 (1872).

129. 92 U.S. 542 (1875).

130. JAMES E. KERR, THE INSULAR CASES: THE ROLE OF THE JUDICIARY IN AMERICAN EXPANSIONISM 36-39 (1982).

131. *Id.* at viii.

132. *Id.*

133. The widespread anxiety about statehood for Hawaii, Puerto Rico, and the Philippines is hard to understand except along racial lines. Territories were not necessarily placed on a fast-track for statehood. In 1900, U.S. territories included the future states of Arizona, Alaska, New Mexico, and Oklahoma, and there was no urgent demand that they be admitted to the Union. New Mexico, for example, had been a territory since Congress disposed of the Mexican Cession in the Compromise of 1850.

ers.[134] The first two, and most important of the cases, *Downes* v. *Bidwell*[135] and *De Lima v. Bidwell*,[136] challenged the tariff provisions of the Foraker Act.[137] Both 5-4 decisions were issued on May 27, 1901.[138] In *DeLima*, the Court held that the territories were part of the United States, but the Court concluded in *Downes* that the Constitution did not automatically follow the flag.[139] By creating a doctrine of incorporation—a construction so broad as to flirt dangerously with extra-constitutionality—the Court decided that Congress had the power to choose which constitutional protections to afford new territorial holdings.[140] Confusing matters further were the deep divisions between the Justices that produced different majorities in each case. Justice Henry Billings Brown voted with the majority in both cases and authored both opinions.[141] The theme of racial difference was laced throughout each. However, it was most obvious in *Downes* which dwelt on the "unsuitability" of "alien races, differing from us in religion, customs, laws, methods of taxation and modes of thought, [as well as] the administration of government and justice, according to Anglo-Saxon principles" for United States citizenship.[142]

Justice John Marshall Harlan, a swing vote in the cases, concurred with Brown in *DeLima* and dissented in *Downes*.[143] In a characteristically brilliant dissent, Harlan took issue with Brown's assertion that Puerto Ricans could not be Americans because they did not possess the amorphous "principles of natural justice inherent in Anglo-Saxon character."[144] "The wise men who framed the Constitution" and the patriots who ratified it, Harlan noted, "were unwilling to depend for their safety" on the Anglo-Saxon character.[145] In fact, he continued, "Anglo-Saxons across the ocean had attempted . . . to trample upon the rights of Anglo-Saxons on this continent."[146] He held the new "doctrine of incorporation" in even lower esteem, concluding that it "has some occult meaning which my mind does not apprehend . . . [i]t is enveloped

134. KERR, *supra* note 130, at 39.
135. 182 U.S. 244 (1901).
136. 182 U.S. 1 (1901).
137. The other *Insular Cases*, decided in the same year, were as follows: Goetze v. United States, 182 U.S. 221 (1901); Dooley v. United States (Dooley I), 182 U.S. 222 (1901); Dooley v. United States (Dooley II), 183 U.S. 151 (1901); Armstrong v. United States, 182 U.S. 243 (1901); Huus v. N.Y. and Porto Rico S.S. Co., 182 U.S. 392 (1901); Fourteen Diamond Rings v. United States, 183 U.S. 176 (1901).
138. *Downes*, 182 U.S. at 244; *De Lima*, 182 U.S. at 1.
139. *De Lima*, 182 U.S. at 200; *see Downes*, 182 U.S. at 285-87.
140. *See Downes*, 182 U.S. at 285-87.
141. *Downes*, 182 U.S. at 247; *De Lima*, 182 U.S. at 174.
142. *Downes*, 182 U.S. at 287; *see also De Lima*, 182 U.S. at 1.
143. *See De Lima*, 182 U.S. at 174; *Downes*, 182 U.S. at 367.
144. *Downes*, 182 U.S. at 381.
145. *Id.*
146. *Id.*

in some mystery which I am unable to unravel."[147] Puerto Rico and its inhabitants, as a result of the decisions, were deemed at once a part of, and separate from, the United States. This created what Ediberto Román recently deemed the "Alien-Citizen Paradox"—a condition that persists to this day.[148]

The Foraker Act and the *Insular Cases*—which endorsed the statute and established a second class of U.S. citizenship—only surfaced once during Alabama's constitutional debate, but that lone mention speaks volumes about the disfranchisers' understanding of colonial policy.[149] Thomas Coleman's[150] comment was occasioned by an amendment to the suffrage scheme that Senator John Tyler Morgan introduced through an intermediary.[151] The amendment expressly prohibited blacks from holding elective office and contained language so bad that few in the convention dared entertain it.[152] Arguing for the amendment's rejection, Coleman acknowledged the remote possibility that such language would withstand a court challenge and cited a case where the Supreme Court found that the Privileges and Immunities Clause of the Fourteenth Amendment did not cover state offices.[153] However, Coleman was not interested in testing the Court's limits. Most delegates did not intend for disfranchisement to produce Fourteenth Amendment test cases; it was preferable for the Court to say nothing rather than risk having them rule unfavorably. Coleman was a firm supporter of disfranchisement but he did not believe that U.S. colonial policy suggested the South could act at-will. He cautioned his more zealous colleagues and pointed to the *Insular Cases*, then barely a month old, warning that "[f]ollowing the decisions of the Supreme Court as we have, and considering the conclusions to which they have come recently, especially in the Puerto Rico and Philippine cases," it was uncertain how the Supreme Court would apply the Fourteenth Amendment when it came up "in a political aspect from the South."[154]

While they carefully ignored Puerto Rico, the delegates paid close

147. *Id.* at 391.

148. Ediberto Román, *The Alien-Citizen Paradox and other Consequences of U.S. Colonialism*, 26 FLA. ST. U. L. REV. 1 (1998).

149. 3 PROCEEDINGS, *supra* note 1, at 2392-93.

150. *Id.* Thomas Coleman was a resident of Eutaw (Greene County), and chairman of the Suffrage and Elections Committee. *Id.*

151. *Id.* at 2384.

152. *Id.* at 2382.

153. 3 PROCEEDINGS, *supra* note 1, at 2392-93. According to the convention journal, Coleman referenced the earlier opinion in "Taylor and Baker" but this appears to be a stenographic error or a misstatement on Coleman's part because no such Supreme Court opinion exists. *See id.* I believe that he was referring to *Taylor v. Beckham*, a case involving an election in Kentucky, in which the Court ruled that state offices were not covered by the Privileges and Immunities Clause of the Fourteenth Amendment. *See* 178 U.S. 548 (1900).

154. 3 PROCEEDINGS, *supra* note 1, at 2392-93.

attention to Hawaii.[155] The events immediately surrounding U.S. annexation began when Queen Liliouakalani, faced with a social conflict between ethnic Hawaiians and the small but powerful planter class, attempted to reassert ethnic Hawaiians' control of Hawaii.[156] In response, a cabal of planters staged a *coup d'etat* in 1893 and established a revolutionary government, claiming that Liliouakalani's stance endangered their lives and property.[157] Long before the Queen's overthrow, many U.S. policymakers had fixed their sights on acquiring the islands, and the revolt kick-started the push for annexation.[158]

President Benjamin Harrison supported annexation, but his predecessor and successor, Grover Cleveland, did not.[159] Upon his return to the White House in 1893, Cleveland dispatched former Georgia Congressman James Blount to the islands to report on the situation.[160] Hawaii's planter-rebels and mainland annexationists hailed his appointment—certain that Blount, a former Confederate—would find in favor of Hawaii's white elite.[161] They were wrong. In a clear signal to the revolutionaries, Blount's first act upon arriving in Honolulu was to order the U.S. flag removed from atop Iolani Palace.[162] Then, to their absolute horror, he advised against annexation, advocated withdrawal of support for the revolutionary government, and called for Queen Liliuoakalani's restoration.[163] Hawaiians, Blount believed, should rule Hawaii.[164] Critics assailed the report and Cleveland's policy in general, and Hawaii remained a subject of debate for the remainder of his administration.[165] Annexationists blasted the Cleveland Administrations' treatment of the "democratic" revolutionaries, and their expansion-minded opponents fumed over any U.S. involvement in the islands' affairs.[166] Typical of the latter was the *Christian Enquirer*, which re-

155. *See* 3 PROCEEDINGS, *supra* note 1, at 2922-23.

156. *See generally Hawaii's Last Queen* (WGBH television broadcast, 1997) (on file with the author); LILIOUAKALANI, HAWAII'S STORY BY HAWAII'S QUEEN 226-51 (Charles E. Tuttle Co. 1964); Julius W. Pratt, *The Hawaiian Revolution: A Reinterpretation*, 1 PAC. HIST. REV. 273-94 (1932); Richard D. Weigle, *Sugar and the Hawaiian Revolution*, 16 PAC. HIST. REV. 41-58 (1947).

157. *See* sources cited *supra* note 156.

158. *Id.*

159. *See generally* James R. Blount, *Rep. of the Commissioner to the Hawaiian Islands, reproduced in* PAPERS RELATING TO THE FOREIGN RELATIONS OF THE U.S. 553 (1894) [hereinafter BLOUNT REPORT]; *see also* ETHEL M. DAMON, SANFORD BALLARD DOLE AND HIS HAWAII (1957); *and* LILIUOAKALANI, *supra* note 156. For an excellent account of Blount's mission see TENNENT S. MCWILLIAMS, THE NEW SOUTH FACES THE WORLD 16-46 (1988).

160. MCWILLIAMS, *supra* note 159, at 16-46.

161. *Id.* at 17.

162. *Id.*

163. *See generally* sources cited *supra* note 156.

164. *Id.*

165. MCWILLIAMS, *supra* note 159, at 35-45.

166. *Id.*

marked in an editorial that "[s]tealing an island from a poor old colored woman is not a great national achievement; it belongs to the cheat-your-washer-woman style of diplomacy."[167] Fearing the annexation cause was lost, the revolutionaries formed the Hawaiian Republic and wrote a new constitution "dedicated to the principle that the dominant white American minority which had made the revolution and which owned the property was going to rule."[168] Blount reconfirmed his earlier impression and expressed to Secretary of State Walter Gresham, "I have never yet found an annexationist [in the islands] who did not insist that stable government could not be had without so large a restriction of the native vote as would leave political power in the hands of the whites."[169]

For a time, the issue of Hawaiian annexation subsided, until the formation of the Hawaiian Commission returned it to the fore. President William McKinley appointed the commission, also known as the "Cullom Commission" after its chairman, Illinois Senator Shelby M. Cullom, pursuant to the "Joint Resolution to provide for annexing the Hawaiian Islands to the United States."[170] This was the body whose findings Alabama's disfranchisers studied for guidance, an exercise that later figured prominently in C. Vann Woodward's North-South thesis.[171] In addition to Senators Cullom and Morgan, the remaining members were Representative Robert Hitt of Illinois, Hawaii Supreme Court Justice Walter Francis Frear, and President Sanford Ballard Dole of the Hawaiian Republic.[172]

The commission met in Honolulu, the seat of the nascent Republic and the late kingdom, and conducted an extensive fact-finding mission just as Representative Blount had done five years earlier.[173] The president of Alabama's Constitutional Convention, John Barnett Knox, later relayed carefully gleaned excerpts to delegates in Montgomery. "The principle of inherited capacity for citizenship," Knox explained, "is recognized by Senator Shelby M. Cullom, a distinguished Republican."[174] "The American idea of universal suffrage," Cullom wrote,

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167. Editorial, *Christian Enquirer* [approximately] 1893, *reprinted in* ERNEST R. MAY, IMPERIAL DEMOCRACY: THE EMERGENCE OF AMERICA AS A GREAT POWER 22 (1961).

168. Jamie W. Moore, *Ben Tillman and Government for Hawaii*, PROCEEDINGS OF THE S.C. HIST. ASS'N 7 (1973); *see also* Henry E. Chambers, *Constitutional History of Hawaii*, JOHNS HOPKINS UNIV. STUD. IN HIST. AND POL. SCI. 4, 33-34 (1896).

169. Letter from James Blount to Walter Gresham, Secretary of States (May 24, 1893), *reprinted in* BLOUNT REPORT *supra* note 159, at 532-33.

170. Joint Resolution to provide for annexing the Hawaiian Islands to the United States, Con. Res. 51, 55th Cong., 30 Stat. 750-51 (1898).

171. *See* WOODWARD, *supra* note 17, at 324. Though widely known as the "Cullom Commission," the commission Senator Cullom chaired was actually the "Hawaii Commission." Authors citing this report frequently alternate between these two names.

172. *See* Con. Res. 51. at 750-51.

173. *See id.*; WOODWARD, *supra* note 17, at 324.

174. 3 PROCEEDINGS, *supra* note 1, at 2922-23.

> presupposes that the body of citizens who are to exercise it in a free and independent manner have, by inheritance or education, such knowledge and appreciation of the responsibilities of free suffrage, and of a full participation in the sovereignty of the country, as to be able to maintain a republican government.[175]

The quotation was accurate, and Alabama's convention did, as Woodward noted, examine the commission's recommended suffrage requirements.[176] What is problematic is the inference that Alabama's constitutional convention followed the lead of U.S. policy in Hawaii. Cullom's report was just that—a report—and Knox only discussed a brief excerpt of it. Moreover, what he cited did not even come from the policies suggested by the Hawaiian Commission; they were no more than the personal observations of a single commissioner. Accepting the premise that Cullom's report gave license to Alabama's disfranchisers requires us to ignore the fact that the policy that was eventually established rejected the Hawaiian Commission's recommended citizenship and suffrage requirements.[177]

While the report spoke of an inherited capacity for self-government, it did not say that one could *only* attain it through blood. The actual language was, "[t]he American idea of universal suffrage presupposes that the body of citizens who are to exercise it in a free and independent manner have, by inheritance or education, such knowledge and appreciation of the responsibilities of free suffrage."[178] Later, the commissioners went further, finding that "the people of Hawaii are capable of self-government."[179] Further undermining assumptions that the Cullom Commission, and Senator John Tyler Morgan particularly, embraced suffrage qualifications based on race is the fact that Morgan vigorously condemned Alabama's proposed descendants clause,[180] dismissing it as

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175. S. DOC. NO. 55-16, at 3 (3d Sess. 1898).

176. WOODWARD, *supra* note 17, at 324.

177. For more information about Cullom's activities in Hawaii, see SHELBY M. CULLOM, FIFTY YEARS OF PUBLIC SERVICE: PERSONAL RECOLLECTIONS OF SHELBY M. CULLOM 285-91 (A.C. McClurg & Co. 1911). A defender of Knox might charge that the complete record of the Hawaiian Commission was unavailable to him, and therefore he could not have had the same information as this author. But Knox gave a citation for this document during his remarks, a citation I followed to uncover the material used here.

178. S. DOC. NO. 55-16, at 3 (3d. Sess. 1898).

179. *Id.* at 17.

180. The so-called "descendants clause" was Alabama's version of a grandfather clause, a device that allowed poor and illiterate whites to avoid proscription of their suffrage rights. Grandfather clauses typically turned on whether one had an ancestor who voted prior to Congressional Reconstruction. Alabama's descendants clause relied instead on military service, allowing any male descendant of a military veteran to register to vote. For more information on the descendant's clause see Robert Volney Riser II, Between Scylla and Charybdis: Alabama's 1901 Constitutional Convention Assesses the Perils of Disfranchisement at 27-32 (2000) (unpublished M.A. thesis, The University of Alabama) (on file with Gorgas Library, The University of Alabama).

an affront to Republican ideals and the memory of the Founding Fathers, viewing is as little more than an "ordinance of inheritable blood."[181]

Printed and bound with the Hawaiian Commission's report was legislation Cullom proposed for the establishment of a government and an organic law for Hawaii.[182] The Illinois senator's proposals went far beyond the recommendations of the various subcommittees, calling for restrictions very similar to those proposed in Alabama and exceeding them with citizenship qualifications based explicitly on race.[183] But the convention ignored Cullom's bill. The reason was that Congress did not follow the South's lead. The legislation breezed through the Senate Foreign Relations Committee with only minor changes and first encountered friction on the Senate floor. There, Southerners such as Ben Tillman, Stephen Mallory, Jr. of Florida and others donned Populist hats and tried to lure their colleagues into public endorsement of segregation and disfranchisement. Like the Southern states, the Senate proposed property and economic regulations that would restrict the suffrage. If they intended the qualifications as protection for whites' property interests, let race be the qualifying factor, Tillman & Co. argued, goading their colleagues with their past denouncements of the South. Unmoved, the Senate refused to acknowledge the "southernness" of Cullom's bill and sent it on to the House of Representatives.[184]

In the House, Cullom's bill came under heavy fire from the Populists—the genuine variety—who blasted away at protection for any economic elite. As finally passed by Congress on April 26, 1900, the Act to Provide a Government for the Territory of Hawaii resembled Cullom's proposal in name only. [185] Congress decided "all persons who

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181. Letter from John Tyler Morgan to Frank White (July 6, 1901), *reprinted in* 3 PROCEEDINGS, *supra* note 1, at 2863-64. Morgan's letter and his opposition to the descendant's clause were also cited in the *Montgomery Advertiser*. *Official Report of the Proceedings of the Constitutional Convention of Alabama*, MONTGOMERY ADVERTISER, Jul. 26, 1901, at 1. The *Birmingham Age-Herald* also reported on the letter. Frank Harvey Miller, *Grandfather Clause Still Main Topic*, BIRMINGHAM AGE-HERALD, Jul. 26, 1901, at 1. A subsequent editorial from the *Scottsboro Citizen*, reprinted by the *Age-Herald*, endorsed "what our peerless Senator John T. Morgan says about the 'grandfather clause' in our proposed new constitution. Eliminate it." *The Grandfather Clause*, BIRMINGHAM AGE-HERALD, Jul. 30, 1901, at 4. Later, the *Age-Herald* reprinted an editorial from the Washington (D.C.) *Evening Star* which found "Mr. Morgan's language . . . especially severe. He described the provisions as not only unconstitutional and unwise, but wholly out of keeping with all American principles of government." *The Grandfather Clause*, BIRMINGHAM AGE-HERALD, Aug. 3, 1901, at 4. Morgan was also a proponent of Hawaiian statehood. *See* John Tyler Morgan, *The Duty of Annexing Hawaii*, 25 FORUM 11, 11-16 (1898); *see also* JOSEPH A. FRY, JOHN TYLER MORGAN AND THE SEARCH FOR SOUTHERN AUTONOMY 180-84, 187 (1992); CULLOM, *supra* note 177, at 288; O. Lawrence Burnette, Jr., *John Tyler Morgan and Expansionist Sentiment in the New South*, 18 ALA. REV. 163, 163-82 (1965).

182. *See* S. DOC. NO. 55-16, at 22-43 (3d Sess. 1898).

183. *Id.*

184. *See* Moore, *supra* note 168, at 11-12.

185. An Act to Provide a Government for the Territory of Hawaii, ch. 339, 31 Stat. 141

were citizens of the Republic of Hawaii on August twelfth, eighteen hundred and ninety-eight, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii."[186] In addition, Congress gutted Cullom's proposed suffrage qualifications, requiring that voters be male, twenty-one years of age, a resident of at least one year, and literate in Hawaiian or English.[187] Literacy tests, taxes, and property requirements also were key elements of Southern disfranchisement, but congressional policies did not include byzantine registration procedures and the institutionalized trickery of grandfather clauses.[188] Tillman and others tagged this as hypocrisy, but it actually shows that Congress and the South bore different burdens. Even in defeat, Tillman kept up his stubborn attack on Hawaiian and Puerto Rican policy. He would not give up trying to have the nation endorse Jim Crow, warning in 1900 that overseas policy foretold doom and "we will ere long see the establishment of a despotism in the United States."[189] Showing the lengths to which he was willing to go, he invoked the name of the Great Emancipator, insisting that "[t]he Republic, to paraphrase Lincoln's words, cannot remain half subject and half free."[190]

Northern approbation, the oneness of the national mind so many have identified as a motivating factor in disfranchisement, had not taken shape by 1901. United States policy in Hawaii, like that in Puerto Rico, simply did not achieve ends that the disfranchisers could have used as inspiration; furthermore, United States policymakers did not follow the South's lead—the Mississippi Plan was not the American Way. Whatever resemblance it bore to disfranchisement—in Alabama and elsewhere—was the result of legislative compromise, not philosophical kinship. If we are to accept that "the work of writing the white man's law for Asiatic and Afro-American went forward simultaneously," with the "sections in rapport," there has to be some evidence that they were in fact doing the same things.[191] Reassessing the national context behind disfranchisement reveals that public opinion was divided and that public policy did not offer tangible support of the schemes employed by the South. At best, the disfranchisers could claim that a large minority sympathized with, or were at least indifferent to, their machinations. They could not, however, honestly assert that imperial policy endorsed their activities—although they tried anyway. One hundred years later

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(1900).

186. *Id.*

187. *Id.* at 151.

188. *See* PROCEEDINGS, *supra* note 1, at 1258-64.

189. Benjamin R. Tillman, *Causes of Southern Opposition to Imperialism*, 527 N. AM. REV. 439, 442 (1900).

190. *Id.*

191. WOODWARD, *supra* note 17, at 326.

we know that the disfranchisers won; that the United States did not intervene on the behalf of African-Americans until the middle of the twentieth-century. But in 1901, the Alabama constitutional convention did not know that, and so the disfranchisers' program carried with it an element of risk, undermining confident declarations that they had the "sympathy instead of the hostility of the North."[192]

192. PROCEEDINGS, *supra* note 1, at 2783.