

1 In Balzac, the Court concluded finally that "[i]t is the locality that is
2 determinative of the application of the Constitution... and not the
3 [citizenship] status of the people who live in it."

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6 *Balzac v. Porto Rico*, 258 U.S. 298, 42 S. Ct. 343 (1922)

7 **Balzac v. Porto Rico**

8 **Summary**

9 In *Balzac v. Porto Rico*, 258 U.S. 298, 304-305, it was held that, **although the**
10 **Sixth Amendment of the Constitution with respect to the right of trial by jury**
11 **applied to the territories of the United States, it did not apply to territory**
12 **belonging to the United States which had not been incorporated into the**
13 **Union;** and that neither the Philippines nor Porto Rico was territory which
14 had been so incorporated or had become a part of the United States, as
15 distinguished from merely belonging to it.

16 Summary of this case from [Puerto Rico v. Shell Co.](#)

17 [See 19 Summaries](#)

18 **Opinion**

19 **ERROR TO THE SUPREME COURT OF PORTO RICO.**

20 **Nos. 178, 179.**

21 **Argued March 20, 1922. Decided April 10, 1922.**

22 **1. The Act of January 28, 1915, c. 22, 38 Stat. 803, amending § 246 of the**
23 **Judicial Code, and providing that writs of error from this court may be**
24 **prosecuted to the supreme courts of Porto Rico and Hawaii in the same classes**
25 **of cases as to the courts of last resort of the States under Jud. Code, § 237,**
26 **meant to assimilate the jurisdiction over those territorial courts to that over**
27 **the state courts and is to be construed as embracing subsequent changes in §**
28 **237 not obviously inapplicable, such as the amendments made by the Act of**
29 **September 6, 1916, c. 448, 39 Stat. 726. P. 300. 2. In prosecutions for criminal**
30 **libel in a district court of Porto Rico, defendant demanded a jury under the**

1 Sixth Amendment, which was denied him upon a construction of local
2 statutes, applicable to this and other misdemeanors.

3 **Held**, that the demand drew in question the validity of the statutes, within the
4 meaning of Jud. Code, § 237, as amended in 1916, and that judgments of the
5 Supreme Court of Porto Rico affirming the convictions were reviewable here
6 by writ of error. P. 302. 3. To present the constitutionality of a statute, it is not
7 essential that an assignment of error should mention the statute in question, if
8 the record definitely shows that its constitutionality was questioned and the
9 assignment is clearly directed to that controversy. P. 303. 4. The provisions of
10 the Constitution guaranteeing jury trial in all criminal prosecutions do not
11 apply to a territory belonging to the United States which has not been
12 incorporated into the Union; and Porto Rico was not so incorporated by the
13 Act of April 12, 1900, c. 191, 31 Stat. 77, which gave it a temporary
14 government. P. 304. *Dorr v. United States*, [195 U.S. 138](#). 5. The Organic Act for
15 Porto Rico of March 2, 1917, c. 145, 39 Stat. 951, known as the Jones Act, did
16 not have the effect of incorporating Porto Rico into the United States. P. 305.
17 6. Since the Spanish War, an intention of Congress to incorporate new
18 territory into the Union is not to be admitted without express declaration or
19 an implication so strong as to exclude any other view. P. 306. 7. The provisions
20 of § 5 of the Organic Act, *supra*, for extending federal citizenship to citizens
21 and certain residents of Porto Rico, did not extend the jury system there. P.
22 307. 8. Neither can incorporation into the United States be implied from the
23 organization of the United States District Court in Porto Rico, allowance of
24 review of cases from its Supreme Court involving the Constitution, admission
25 of Porto Ricans to the Military and Naval Academies, sale of United States
26 stamps in the Island, or extension to it of federal revenue, navigation,
27 banking, bankruptcy, employers' liability, safety appliance, extradition and
28 census laws. P. 311. 9. Published reflexions on the Governor of Porto
29 Rico, *held* libelous and not legitimate comment protected by the guaranty of
30 free speech and free press in the First Amendment of the Constitution. P. 314.
31 28 P.R. 139, 141 affirmed.

32 REVIEW of two judgments of the Supreme Court of Porto Rico which
33 affirmed judgments of the District Court for Arecibo imposing sentences to
34 imprisonment based on convictions of criminal libel.

1 *Mr. Jackson H. Ralston, with whom Mr. Stanley D. Willis and Mr. Wm. T.*
2 *Rankin were on the brief, for Balzac.*

3 *Mr. Grant T. Trent, with whom Mr. Arthur W. Beer was on the brief, for Porto*
4 *Rico.*

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6 **MR. CHIEF JUSTICE TAFT** delivered the opinion of the court.

7 **These are two prosecutions for criminal libel brought against the same**
8 **defendant, Jesus M. Balzac, on information filed in the District Court for**
9 **Arecibo, Porto Rico, by the District Attorney for that District. Balzac was the**
10 **editor of a daily paper published in Arecibo, known as "El Baluarte", and the**
11 **articles upon which the charges of libel were based were published on April 16**
12 **and April 23, 1918, respectively.**

13 **In each case the defendant demanded a jury.** The code of criminal procedure
14 of Porto Rico **grants a jury trial in cases of felony but not in misdemeanors.**
15 **The defendant, nevertheless, contended that he was entitled to a jury in such a**
16 **case, under the Sixth Amendment to the Constitution, and that the language**
17 **of the alleged libels was only fair comment and their publication was**
18 **protected by the First Amendment.**

19 **His contentions were overruled, he was tried by the court and was convicted**
20 **in both cases and sentenced to five months' imprisonment in the district jail in**
21 **the first, and to four months in the second, and to the payment of the costs in**
22 **each.** The defendant appealed to the Supreme Court of Porto Rico.

23 **That court affirmed both judgments. *People v. Balzac*, 28 P.R. 139, Second**
24 **Case, 28 P.R. 141.**

25 **The first question in these cases is one of jurisdiction of this court.**

26 **By § 244 of the Judicial Code, approved March 3, 1911, it was provided that**
27 **writs of error and appeals from the final judgments and decrees of the**
28 **Supreme Court of Porto Rico might be prosecuted to this court in any case in**
29 **which was drawn in question the validity of a treaty or statute of, or authority**
30 **exercised under, the United States, or wherein the Constitution of the United**
31 **States, or a treaty thereof, or an act of Congress was brought in question and**
32 **the right claimed thereunder was denied, and this without regard to**
33 **the amount involved.**

1 **By the Act of January 28, 1915, c. 22, 38 Stat. 803, § 244 of the Judicial Code**
2 **was repealed, but § 246 was amended and made to apply to the appellate**
3 **jurisdiction of this court in respect to the decisions of the Supreme Court not**
4 **only of Hawaii, as before, but also Porto Rico, and it was provided that writs**
5 **of error to those courts from this court could be prosecuted in the same class**
6 **of cases as those in which this court was authorized under § 237 of the Judicial**
7 **Code to review decisions of state courts of last resort.** Section 237 at that time
8 allowed a writ of error to final decisions in state courts of last resort where
9 was drawn in question the validity of a treaty, or a statute of, or an authority
10 exercised under, the United States, and the decision was against its validity; or
11 where was drawn in question the validity of a statute of, or an authority
12 exercised under any State, on the ground of its being repugnant to the
13 Constitution, treaties, or laws of the United States, and the decision was in
14 favor of its validity; or where any title, right, privilege or immunity was
15 claimed under the Constitution, or any treaty or statute of, or commission
16 held or authority exercised under, the United States, and the decision was
17 against the title, right, privilege or immunity especially set up or claimed by
18 either party under such Constitution, treaty, statute, commission or authority.

19 **By Act of January 28, 1915, 38 Stat. 803, 804, amending § 246, this court was**
20 **given power by certiorari to bring up for review all final judgments or decrees**
21 **in civil or criminal cases in the supreme courts of Porto Rico and Hawaii,**
22 **other than those reviewable here by writ of error because in the class similar**
23 **to that described in § 237 of the Judicial Code. By Act of September 6, 1916, c.**
24 **448, 39 Stat. 726, the jurisdiction of this court to review by writ of error,**
25 **under § 237, final judgments and decrees of state courts of last resort was cut**
26 **down by omitting cases (other than those involving the validity of a treaty,**
27 **statute or authority exercised under the United States or any State) wherein a**
28 **title, right, privilege, or immunity, was claimed under the Constitution, or any**
29 **treaty or statute of, or commission held, or authority exercised under, the**
30 **United States, and the decision was against such title, right, privilege or**
31 **immunity, and such cases, it was provided, could only be examined on review**
32 **in this court by certiorari.**

33 **The question now presented is whether the amendment to § 237 of the Judicial**
34 **Code by the Act of 1916 applies to, and affects, the appellate jurisdiction of**
35 **this court in reviewing decisions of the Supreme Court of Porto Rico. We**
36 **think it does. We think that the manifest purpose of the Act of 1915, amending**

1 § 246 of the Code, in its reference to § 237 of the Judicial Code, was to
2 assimilate the appellate jurisdiction of this court over the supreme courts of
3 Porto Rico and Hawaii to that over state courts of last resort, and that the
4 reference in amended § 246 to § 237 may be fairly construed to embrace
5 subsequent changes in § 237 that are not obviously inapplicable.

6 This brings us to the question whether there was drawn in question in these
7 cases the validity of a statute of Porto Rico under the Constitution of the
8 United States. The Penal Code of Porto Rico divides crimes into felonies and
9 misdemeanors. (Rev. Stats. and Codes of Porto Rico, 1911, Penal Code, § 13.)
10 A felony is described as a crime punishable by death or by imprisonment in
11 the penitentiary.

12 **Every other crime is declared to be a misdemeanor.** Penal Code, § 14. Section
13 178 of the Porto Rican Code of Criminal Procedure provided that issues of
14 fact in cases of felony should be tried by a jury when the defendant so elected,
15 but gave no such right in the case of misdemeanors. This was construed by the
16 Supreme Court to deny such right. *People v. Bird, 5 P.R. 387.*

17 By § 244 (5676) of the Penal Code (as amended by Act of March 9, 1911, p.
18 71), the publication of a libel is made punishable by a fine not exceeding
19 \$5,000, or imprisonment in jail for a term not exceeding two years, or both
20 such fine and imprisonment, and also the costs of the action in the discretion
21 of the court. It is, therefore, plain that libel under the Porto Rican law is a
22 misdemeanor, and a jury trial was not required therein. By the Act of July 22,
23 1919 (Laws of Porto Rico, 1919, No. 84, p. 684), a jury trial is now given in
24 misdemeanors, but that did not come into force until after these libels were
25 published and these trials had.

26 When the Penal Code and the Code of Criminal Procedure were first passed
27 in 1901, they both contained the provision that in all cases of libel the jury
28 should determine the law and the fact. It was held, however, by the Supreme
29 Court of Porto Rico in *People v. Bird, 5 P.R. 387, 405*, that this did not give a
30 jury trial but only made provision that, if and when a right of jury trial was
31 given in such cases, the jury should have the power to determine the law and
32 the fact. Thereafter the Act of March 10, 1904 (Laws of Porto Rico, 1904, p.
33 130), expressly repealed all reference to trials for libel in the jury act.

34 The effect of the Penal Code of Procedure, as construed by the Supreme
35 Court of Porto Rico, and of the Act of March 10th, repealing the jury act as to

1 libel cases, was a statutory denial of the right of jury trial in such cases. A
2 demand for a jury trial in this case, therefore, drew in question the validity of
3 the statutes upon which the court relied in denying the demand. This
4 necessarily leads to the conclusion that these cases are in the same class as
5 those which come to this court by writ of error under § 237, as amended by
6 the Act of 1916, and that jurisdiction by writ of error exists.

7 Was the issue properly saved in the record by the defendant? We think it was.
8 The demand for a jury trial, the statute to the contrary notwithstanding, was
9 made at the trial. It was renewed in the assignments of error in the Porto
10 Rican Supreme Court and here. Those assignments did not mention the
11 statutes whose validity was involved, but merely averred that the defendant
12 had been denied his right as an American citizen under the Sixth Amendment
13 to the Constitution. While this is informal, we think that it is sufficient when
14 the record discloses the real nature of the controversy and the specification of
15 the assignment leaves no doubt that it is directed to that controversy.

16 We have now to inquire whether that part of the Sixth Amendment to the
17 Constitution, which requires that, in all criminal prosecutions, the accused
18 shall enjoy the right to a speedy and public trial, by an impartial jury of the
19 State and district wherein the crime shall have been committed, which district
20 shall have been previously ascertained by law, applies to Porto Rico. Another
21 provision on the subject is in Article III of the Constitution providing that the
22 trial of all crimes, except in cases of impeachment, shall be by jury; and such
23 trial shall be held in the State where the said crimes shall have been
24 committed; but, when not committed within any State, the trial shall be at
25 such place or places as the Congress may by law have directed. The Seventh
26 Amendment of the Constitution provides that in suits at common law, where
27 the value in controversy shall exceed twenty dollars, the right of trial by jury
28 shall be preserved. It is well settled that these provisions for jury trial in
29 criminal and civil cases apply to the Territories of the United
30 States. *Webster v. Reid*, 11 How. 437, 460; *Reynolds v. United States*, [98 U.S.](#)
31 [145, 167](#); *Callan v. Wilson*, [127 U.S. 540, 556](#); *American Publishing Co.*
32 *v. Fisher*, [166 U.S. 464](#); *Thompson v. Utah*, [170 U.S. 343, 347](#); *Capital Traction*
33 *Co. v. Hof*, [174 U.S. 1](#); *Black v. Jackson*, [177 U.S. 349](#); *Rasmussen v. United*
34 *States*, [197 U.S. 516, 528](#); *Gurvich v. United States*, [198 U.S. 581](#).

1 But it is just as clearly settled that they do not apply to territory belonging to
2 the United States which has not been incorporated into the Union.

3 *Hawaii v. Mankichi*, [190 U.S. 197](#); *Dorr v. United States*, [195 U.S. 138, 145](#). It
4 was further settled in *Downes v. Bidwell*, [182 U.S. 244](#), and confirmed
5 by *Dorr v. United States*, [195 U.S. 138](#), that neither the Philippines nor Porto
6 Rico was territory which had been incorporated in the Union or become a
7 part of the United States, as distinguished from merely belonging to it; and
8 that the acts giving temporary governments to the Philippines, 32 Stat. 691,
9 and to Porto Rico, 31 Stat. 77. had no such effect. The *Insular Cases* revealed
10 much diversity of opinion in this court as to the constitutional status of the
11 territory acquired by the Treaty of Paris ending the Spanish War, but
12 the *Dorr Case* shows that the opinion of Mr. Justice White of the majority,
13 in *Downes v. Bidwell*, has become the settled law of the court. The conclusion
14 of this court in the *Dorr Case*, p. 149, was as follows:

15 "We conclude that the power to govern territory, implied in the right to
16 acquire it, and given to Congress in the Constitution in Article IV, § 3, to
17 whatever other limitations it may be subject, the extent of which must be
18 decided as questions arise, does not require that body to enact for ceded
19 territory, not made a part of the United States by Congressional action, a
20 system of laws which shall include the right of trial by jury, and that the
21 Constitution does not, without legislation and of its own force, carry such
22 right to territory so situated."

23 The question before us, therefore, is:

24 Has Congress, since the [Foraker Act of April 12, 1900](#), c. 191, 31
25 Stat. 77, enacted legislation incorporating Porto Rico **into the**
26 **Union**? Counsel for the plaintiff in error give, in their brief, an
27 extended list of acts, to which we shall refer later, which they urge as
28 indicating a purpose to make the Island a part of the United States,
29 but they chiefly rely on the [Organic Act of Porto Rico of March 2,](#)
30 [1917, c. 145, 39 Stat. 951, known as the Jones Act.](#)

31 The act is entitled "An Act To provide a civil government for Porto Rico, and
32 for other purposes." It does not indicate by its title that it has a purpose to
33 incorporate the Island into the Union. It does not contain any clause which
34 declares such purpose or effect. While this is not conclusive, it strongly tends

1 **to show that Congress did not have such an intention. Few questions have**
2 **been the subject of such discussion and dispute in our country as the status of**
3 **our territory acquired from Spain in 1899.**

4 The division between the political parties in respect to it, the diversity of the
5 views of the members of this court in regard to its constitutional aspects, and
6 the constant recurrence of the subject in the Houses of Congress, fixed the
7 attention of all on the future relation of this acquired territory to the United
8 States. Had Congress intended to take the important step of changing the
9 treaty status of Porto Rico by incorporating it into the Union, it is reasonable
10 to suppose that it would have done so by the plain declaration, and would not
11 have left it to mere inference. Before the question became acute at the close of
12 the Spanish War, the distinction between acquisition and incorporation was
13 not regarded as important, or at least it was not fully understood and had not
14 aroused great controversy. Before that, the purpose of Congress might well be
15 a matter of mere inference from various legislative acts; but in these latter
16 days, incorporation is not to be assumed without express declaration, or an
17 implication so strong as to exclude any other view.

18 Again, the second section of the act is called a "Bill of Rights", and included
19 therein is substantially every one of the guaranties of the Federal
20 Constitution, except those relating to indictment by a grand jury in the case of
21 infamous crimes and the right of trial by jury in civil and criminal cases. If it
22 was intended to incorporate Porto Rico into the Union by this act, which
23 would *ex proprio vigore* make applicable the whole Bill of Rights of the
24 Constitution to the Island, why was it thought necessary to create for it a Bill
25 of Rights and carefully exclude trial by jury? In the very forefront of the act is
26 this substitute for incorporation and application of the Bill of Rights of the
27 Constitution. This seems to us a conclusive argument against the contention of
28 counsel for the plaintiff in error.

29 The section of the Jones Act which counsel press on us is § 5. This in effect
30 declares that all persons who under the Foraker Act were made citizens of
31 Porto Rico and certain other residents shall become citizens of the United
32 States, unless they prefer not to become such, in which case they are to declare
33 such preference within six months, and thereafter they lose certain political
34 rights under the new government. In the same section the United States
35 District Court is given power separately to naturalize individuals of some

1 other classes of residents. We set out the section in full in the
2 margin. Unaffected by the considerations already suggested, perhaps the
3 declaration of § 5 would furnish ground for an inference such as counsel for
4 plaintiff in error contend, but under the circumstances we find it entirely
5 consistent with non-incorporation. When Porto Ricans passed from under the
6 government of Spain, they lost the protection of that government as subjects
7 of the King of Spain, a title by which they had been known for centuries. They
8 had a right to expect, in passing under the dominion of the United States, a
9 status entitling them to the protection of their new sovereign. In theory and in
10 law, they had it as citizens of Porto Rico, but it was an anomalous status, or
11 seemed to be so in view of the fact that those who owed and rendered
12 allegiance to the other great world powers were given the same designation
13 and status as those living in their respective home countries so far as
14 protection against foreign injustice went. It became a yearning of the Porto
15 Ricans to be American citizens, therefore, and this act gave them the boon.
16 What additional rights did it give them? It enabled them to move into the
17 continental United States and becoming residents of any State there to enjoy
18 every right of any other citizen of the United States, civil, social and political.
19 A citizen of the Philippines must be naturalized before he can settle and vote
20 in this country. Act of June 29, 1906, c. 3592, § 30, 34 Stat. 606. Not so the
21 Porto Rican under the Organic Act of 1917.

22 **Sec. 5. That all citizens of Porto Rico, as defined by section seven of the Act of**
23 **April twelfth, nineteen hundred, "temporarily to provide revenues and a civil**
24 **government for Porto Rico, and for other purposes", and all natives of Porto**
25 **Rico who were temporarily absent from that island on April eleventh,**
26 **eighteen hundred and ninety-nine, and have since returned and are**
27 **permanently residing in that island, and are not citizens of any foreign**
28 **country, are hereby declared, and shall be deemed and held to be, citizens of**
29 **the United States:**

30 *Provided, That any person* hereinbefore described may retain his present
31 political status by making a declaration, under oath, of his decision to do so
32 within six months of the taking effect of this Act before the district court in
33 the district in which he resides, the declaration to be in form as follows:
34 "I,, being duly sworn, hereby declare my intention not to become a
35 citizen of the United States as provided in the Act of Congress conferring

1 United States citizenship upon citizens of Porto Rico and certain natives
2 permanently residing in said island."

3 In the case of any such person who may be absent from the island during said
4 six months the term of this proviso may be availed of by transmitting a
5 declaration, under oath, in the form herein provided Page 308 within six
6 months of the taking effect of this Act to the executive secretary of Porto
7 Rico: *And provided further*, That any person who is born in Porto Rico of an
8 alien parent and is permanently residing in that island may, if of full age,
9 within six months of the taking effect of this Act, or if a minor, upon reaching
10 his majority or within one year thereafter, make a sworn declaration of
11 allegiance to the United States before the United States District Court for
12 Porto Rico, setting forth therein all the facts connected with his or her birth
13 and residence in Porto Rico and accompanying due proof thereof, and from
14 and after the making of such declaration shall be considered to be a citizen of
15 the United States.

16 In Porto Rico, however, the Porto Rican can not insist upon the right of trial
17 by jury, except as his own representatives in his legislature shall confer it on
18 him. The citizen of the United States living in Porto Rico can not there enjoy a
19 right of trial by jury under the Federal Constitution, any more than the Porto
20 Rican. It is locality that is determinative of the application of the Constitution,
21 in such matters as judicial procedure, and not the status of the people who live
22 in it.

23 It is true that, in the absence of other and countervailing evidence, a law of
24 Congress or a provision in a treaty acquiring territory, declaring an intention
25 to confer political and civil rights on the inhabitants of the new lands as
26 American citizens, may be properly interpreted to mean an incorporation of it
27 into the Union, as in the case of Louisiana and Alaska. This was one of the
28 chief grounds upon which this court placed its conclusion that Alaska had
29 been incorporated in the Union, in *Rasmussen v. United States*, [197 U.S. 516](#).
30 But Alaska was a very different case from that of Porto Rico. It was an
31 enormous territory, very sparsely settled and offering opportunity for
32 immigration and settlement by American citizens. It was on the American
33 Continent and within easy reach of the then United States. It involved none of
34 the difficulties which incorporation of the Philippines and Porto Rico

1 presents, and one of them is in the very matter of trial by jury. This court
2 refers to the difficulties in *Dorr v. United States*, [195 U.S. 138, 148](#):

3 "If the right to trial by jury were a fundamental right which goes wherever
4 the jurisdiction of the United States extends, or if Congress, in framing laws
5 for outlying territory belonging to the United States was obliged to establish
6 that system by affirmative legislation, it would follow that, no matter what the
7 needs or capacities of the people, trial by jury, and in no other way, must be
8 forthwith established, although the result may be to work injustice and
9 provoke disturbance rather than to aid the orderly administration of justice. .
10 . . Again, if the United States shall acquire by treaty the cession of territory
11 having an established system of jurisprudence, where jury trials are
12 unknown, but a method of fair and orderly trial prevails under an acceptable
13 and long-established code, the preference of the people must be disregarded,
14 their established customs ignored and they themselves coerced to accept, in
15 advance of incorporation into the United States, a system of trial unknown to
16 them and unsuited to their needs. We do not think it was intended, in giving
17 power to Congress to make regulations for the territories, to hamper its
18 exercise with this condition."

19 The jury system needs citizens trained to the exercise of the responsibilities of
20 jurors. In common-law countries centuries of tradition have prepared a
21 conception of the impartial attitude jurors must assume. The jury system
22 postulates a conscious duty of participation in the machinery of justice which
23 it is hard for people not brought up in fundamentally popular government at
24 once to acquire. One of its greatest benefits is in the security it gives the people
25 that they, as jurors actual or possible, being part of the judicial system of the
26 country can prevent its arbitrary use or abuse.

27 Congress has thought that a people like the Filipinos or the Porto Ricans,
28 trained to a complete judicial system which knows no juries, living in compact
29 and ancient communities, with definitely formed customs and political
30 conceptions, should be permitted themselves to determine how far they wish
31 to adopt this institution of Anglo-Saxon origin, and when. Hence the care with
32 which from the time when Mr. McKinley wrote his historic letter to Mr. Root
33 in April of 1900, Public Laws, Philippine Commission, pp. 6-9 — Act of July
34 1, 1902, c. 1369, 32 Stat. 691, 692, concerning the character of government to
35 be set up for the Philippines by the Philippine Commission, until the Act of

1 **1917, giving a new Organic Act to Porto Rico, the United States has been**
2 **liberal in granting to the Islands acquired by the Treaty of Paris most of the**
3 **American constitutional guaranties, but has been sedulous to avoid forcing a**
4 **jury system on a Spanish and civil-law country until it desired it. We can not**
5 **find any intention to depart from this policy in making Porto Ricans**
6 **American citizens, explained as this is by the desire to put them as individuals**
7 **on an exact equality with citizens from the American homeland, to secure**
8 **them more certain protection against the world, and to give them an**
9 **opportunity, should they desire, to move into the United States proper and**
10 **there without naturalization to enjoy all political and other rights.**

11 **We need not dwell on another consideration which requires us not lightly to**
12 **infer, from acts thus easily explained on other grounds, an intention to**
13 **incorporate in the Union these distant ocean communities of a different origin**
14 **and language from those of our continental people. Incorporation has always**
15 **been a step, and an important one, leading to statehood. Without, in the**
16 **slightest degree, intimating an opinion as to the wisdom of such a policy, for**
17 **that is not our province, it is reasonable to assume that when such a step is**
18 **taken it will be begun and taken by Congress deliberately and with a clear**
19 **declaration of purpose, and not left a matter of mere inference or**
20 **construction.**

21 **Counsel for the plaintiff in error also rely on the organization of a United**
22 **States District Court in Porto Rico, on the allowance of review of the Porto**
23 **Rican Supreme Court in cases when the Constitution of the United States is**
24 **involved, on the statutory permission that Porto Rican youth can attend West**
25 **Point and Annapolis Academies, on the authorized sale of United States**
26 **stamps in the Island, on the extension of revenue, navigation,**
27 **immigration, national banking, bankruptcy, federal employers' liability,**
28 **safety appliance, extradition, and census laws in one way or another to Porto**
29 **Rico. With the background of the considerations already stated, none of these**
30 **nor all of them put together furnish ground for the conclusion pressed on us.**

31 **The United States District Court is not a true United States court established**
32 **under Article III of the Constitution to administer the judicial power of the**
33 **United States therein conveyed. It is created by virtue of the sovereign**
34 **congressional faculty, granted under Article IV, § 3, of that instrument, of**
35 **making all needful rules and regulations respecting the territory belonging to**

1 the United States. The resemblance of its jurisdiction to that of true United
2 States courts in offering an opportunity to nonresidents of resorting to a
3 tribunal not subject to local influence, does not change its character as a mere
4 territorial court. Nor does the legislative recognition that federal
5 constitutional questions may arise in litigation in Porto Rico have any weight
6 in this discussion.

7 The Constitution of the United States is in force in Porto Rico as it is wherever
8 and **whenever the sovereign power of that government is exerted.** This has not
9 only been admitted but emphasized by this court in all its authoritative
10 expressions upon the issues arising in the *Insular Cases*, especially in
11 the *Downes v. Bidwell* and the *Dorr Cases*.

12 The Constitution, however, contains grants of power and limitations which in
13 the nature of things are not always and everywhere applicable, and the real
14 issue in the *Insular Cases* was not whether the Constitution extended to the
15 **Philippines or Porto Rico when we went there, but which of its provisions**
16 **were applicable by way of limitation upon the exercise of executive and**
17 **legislative power in dealing with new conditions and requirements.**

18 The **guaranties of certain fundamental personal rights declared in the**
19 **Constitution, as for instance that no person could be deprived of life, liberty**
20 **or property without due process of law,** had from the beginning full
21 application in the Philippines and Porto Rico, and, as this guaranty is one of
22 the most fruitful in causing litigation in our own country, provision was
23 naturally made for similar controversy in Porto Rico. Indeed provision is
24 made for the consideration of constitutional questions coming on appeal and
25 writ of error from the Supreme Court of the Philippines, which are certainly
26 not incorporated in the Union. Judicial Code, § 248.

27 On the whole, therefore, we find no features in the Organic Act of Porto Rico
28 of 1917 from which we can infer the purpose of Congress to incorporate Porto
29 Rico into the United States with the consequences which would follow.

30 This court has passed on substantially the same questions presented here in
31 two cases, *Porto Rico v. Tapia*, and *Porto Rico v. Muratti*, 245 U.S. 639. In the
32 former, the question was whether one who was charged with committing a
33 felonious homicide some twelve days after the passage of the Organic Act in
34 1917, could be brought to trial without an indictment of a grand jury as
35 required by the Fifth Amendment to the Constitution. The United States

1 District Court of Porto Rico on a writ of habeas corpus held that he could not
2 be held to answer and discharged him. In the other case, the felony charged
3 was alleged to have been committed before the passage of the Organic Act,
4 but prosecution was begun afterwards. In that, the Supreme Court of Porto
5 Rico held that an indictment was rendered necessary by the Organic Act. This
6 court reversed the District Court in the *Tapia Case* and the Supreme Court in
7 the *Muratti Case*, necessarily holding the Organic Act had not incorporated
8 Porto Rico into the United States. These cases were disposed of by a *per*
9 *curiam*. Counsel have urged us in the cases at the bar to deal with the
10 questions raised more at length in exposition of the effect of the Organic Act
11 of 1917 upon the issue, and we have done so.

12 A second assignment of error is based on the claim that the alleged libels here
13 did not pass the bounds of legitimate comment on the conduct of the Governor
14 of the Island against whom they were directed, and that their prosecution is a
15 violation of the First Amendment to the Constitution securing free speech and
16 a free press. A reading of the two articles removes the slightest doubt that they
17 go far beyond the "exuberant expressions of meridional speech," to use the
18 expression of this court in a similar case in *Gandia v. Pettingill*, [222 U.S. 452,](#)
19 [458](#). Indeed they are so excessive and outrageous in their character that they
20 suggest the query whether their superlative vilification has not overleapt itself
21 and become unconsciously humorous. But this is not a defence.

22 The judgments of the Supreme Court of Porto Rico are
23 *Affirmed*.

24 Mr. Justice HOLMES concurs in the result.

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1 **Summaries of**

2 **Balzac v. Porto Rico**

3 U.S.

4 Apr 10, 1922

5 258 U.S. 298 (1922)

6 In Balzac v. Porto Rico, 258 U.S. 298, 304-305, it was held that, although the
7 Sixth Amendment of the Constitution with respect to the right of trial by jury
8 applied to the **territories of the United States, it did not apply to territory**
9 **belonging to the United States which had not been incorporated into the**
10 **Union; and that neither the Philippines nor Porto Rico was territory which**
11 **had been so incorporated or had become a part of the United States, as**
12 **distinguished from merely belonging to it.**

13 Summary of this case from [Puerto Rico v. Shell Co.](#)

14 Describing the limited “civil, social, and political” rights that attach to United
15 States citizens residing in Puerto Rico

16 Summary of this case from [Sánchez v. United States](#)

17 In Balzac v. Porto Rico, 258 U.S. 298, 312, 42 S.Ct. 343, 348, 66 L.Ed. 627
18 (1922), the Supreme Court phrased the issue not as whether the Constitution
19 applied to "the Phillipines or Porto Rico when we went there, but which of its
20 provisions **were applicable by way of limitation upon the exercise of executive**
21 **and legislative power in dealing with new conditions and requirements."**

22 Summary of this case from [Water Isle Hotel & Beach Club, Ltd. v. Kon Tiki](#)
23 [St. Thomas, Inc.](#)

24 Noting the necessity that the Government be subject to the constraints of due
25 process in the territories

26 Summary of this case from [Ralpho v. Bell](#)

27 In Balzac v. People of Porto Rico, 1922, 258 U.S. 298, 42 S.Ct. 343, 66 L.Ed.
28 627, **the Court had before it the question whether the sixth amendment to the**
29 **federal constitution imposed upon Puerto Rico the obligation to provide a jury**
30 **in a criminal trial.**

1 Summary of this case from [Figueroa Ruiz v. Delgado](#)

2 In *Balzac v. People of Porto Rico*, 1922, 258 U.S. 298, 312, 42 S.Ct. 343, 348, 66
3 L.Ed. 627, we are told that the guaranties "of certain fundamental personal
4 rights declared in the Constitution, as, for instance, that no person could be
5 deprived of life, liberty, or property with out due process of law," had from
6 the beginning full application in Puerto Rico.

7 Summary of this case from [Figueroa v. People of Puerto Rico](#)

8 Explaining that "certain fundamental personal rights declared in the
9 Constitution, as, for instance, that no person could be deprived of life, liberty,
10 or property without due process of law" apply in the unincorporated
11 territories

12 Summary of this case from [Hueter v. Kruse](#)

13 In *Balzac* a unanimous Supreme Court provided that "the opinion of Mr.
14 Justice White of the majority, in *Downes v. Bidwell*, has become the settled
15 law of the court."

16 Summary of this case from [Fitisemanu v. United States](#)

17 **Describing Puerto Rico as a territory which has not been incorporated into**
18 **the United States as distinguished from merely belonging to it, even though**
19 **the Jones Act made citizens of Puerto Rico citizens of the United States; the**
20 **statutory framework provided for review in the United States Supreme Court**
21 **of Puerto Rico Supreme Court decisions in cases when the Constitution of the**
22 **United States was involved; a United States District Court in Puerto Rico had**
23 **been organized; and revenue, navigation, immigration, national banking,**
24 **bankruptcy, federal employers' liability, safety appliance, extradition, and**
25 **census laws had been extended in one way or another to Puerto Rico**

26 Summary of this case from [United States v. Lebrón-Caceres](#)

27 Noting that "**Article III** has been viewed as inapplicable to courts created in
28 **unincorporated territories** outside the mainland," yet holding that "[w]e do
29 not now decide, of course, whether the same conditions still obtain in each of
30 the present-day territories"

31 Summary of this case from [United States v. Santiago](#)

1 In Balzac, the Court stated that "[t]he United States District Court is not a
2 true United States court established under article 3 of the Constitution.

3 Summary of this case from [U.S. v. Cuevas-Arredondo](#)

4 **In Balzac, the United States Supreme Court explained that the "United States
5 District Court of Porto Rico" was not the same as an Article III federal court
6 in the United States because Puerto Rico was only a territory belonging to the
7 United States, and not a state that had been "incorporated into the Union."**

8 Summary of this case from [U.S. v. Carman](#)

9 **In Balzac, the Court concluded finally that "[i]t is the locality that is
10 determinative of the application of the Constitution... and not the [citizenship]
11 status of the people who live in it."**

12 Summary of this case from [Ballentine v. U.S.](#)

13 In Balzac v. Porto Rico, 258 U.S. 298, 312-313, 42 S.Ct. 343, 66 L.Ed. 627
14 (1922), the Court held that only "fundamental rights" applied to Puerto Rico.

15 Summary of this case from [Popular Democratic Party v. Com. of Puerto Rico](#)

16 In Balzac, a criminal slander prosecution for published "reflections" on the
17 then Governor of Puerto Rico, the Court held that Puerto Rico was an
18 **unincorporated Territory.**

19 Summary of this case from [Gautier Torres v. Mathews](#)

20 In Balzac, the Constitution of the United States was said to be in force in
21 Puerto Rico. **What was at issue** was the parts applicable by way of **limitation
22 upon the exercise of executive and legislative powers.**

23 Summary of this case from [Torres v. Delgado](#)

24 In Balzac v. Puerto Rico, 258 U.S. 298, 42 S.Ct. 343, 66 L.Ed. 627 (1922), the
25 Supreme Court held that the basic rights in the 5th Amendment had full
26 applicability to the Philippines and to Puerto Rico.

27 Summary of this case from [In re Storage Technology Corp.](#)

28 In Balzac v. People of Porto Rico, 258 U.S. 298, 304, 305, 42 S.Ct. 343, 66
29 L.Ed. 627 (decided in 1922), the view advanced by Mr. Justice White was
30 adopted as the unanimous view of the members of the court.

1 Summary of this case from [Alphonse Custodis Co. v. Molina](#)
2 In **Balzac v. Porto Rico**, 258 U.S. 298, 310, 42 S.Ct. 343, 66 L.Ed. 627 (1922),
3 the court held that "[t]he jury system postulates a conscious duty of
4 participation in the machinery of justice....

5 Summary of this case from [State v. Patterson](#)

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13 [https://casetext.com/case/balzac-v-porto-rico/how-](https://casetext.com/case/balzac-v-porto-rico/how-cited?citingPage=1&sort=relevance)
14 [cited?citingPage=1&sort=relevance](https://casetext.com/case/balzac-v-porto-rico/how-cited?citingPage=1&sort=relevance)

15 **Balzac v. Porto Rico**

16 **226 Citing cases**

17 1. [Harbury v. Deutch](#)

18 233 F.3d 596 (D.C. Cir. 2000) Cited 60 times

- 19 ○ [Motion to dismiss](#)
- 20 ○ [Criminal - Other](#)
- 21 ○ [Con. Law - Other](#)

22 7 more...

23 In **Harbury**, the Court of Appeals referred to **Balzac** as a situation where
24 foreign nationals were under "de facto U.S. political control."

25 First, courts have held that inhabitants of nonstate territories controlled by
26 the U.S. — such as unincorporated territories or occupation zones after war
27 — are entitled to certain "fundamental" constitutional rights. See **Examining**
28 **Bd. of Eng'rs., Architects Surveyors v. Otero**, 426 U.S. 572, 599 n. 30, 96 S.Ct.

1 2264, 49 L.Ed.2d 65 (1976); *Balzac v. Porto Rico*, 258 U.S. 298, 312-13, 42
2 S.Ct. 343, 66 L.Ed. 627 (1922); *United States v. Tiede*, 86 F.R.D. 227, 242-44
3 (U.S.Ct.Berlin 1979). Courts have also held that excludable aliens — aliens
4 apprehended outside the U.S. while attempting to cross the border and held
5 within the U.S. pending trial — likewise enjoy basic due process rights against
6 gross physical abuse. See *Amanullah v. Nelson*, 811 F.2d 1, 9 (1st Cir. 1987);
7 *Lynch v. Cannatella*, 810 F.2d 1363, 1374 (5th Cir. 1987).

8 2. [King v. Morton](#)

9 520 F.2d 1140 (D.C. Cir. 1975) Cited 40 times

- 10 ○ [Motion for summary judgment](#)
- 11 ○ [Motion to dismiss](#)
- 12 ○ [Con. Law - Other](#)
- 13 ○ [Con. Law - Due Process](#)

14 3 more...

15 Finding courts in American Samoa "competent to adjudicate claims of
16 Samoan litigants arising under the laws of the United States"

17 The Supreme Court of the United States has held that the constitutional right
18 to a jury trial does not extend to territories which were not incorporated into
19 the Union. *Balzac v. Porto Rico*, 258 U.S. 298, [42 S.Ct. 343, 66 L.Ed. 627]
20 (1922). King was tried in American Samoa on October 11 and 12, 1972.

21 3. [Fitisemanu v. United States](#)

22 1 F.4th 862 (10th Cir. 2021) Cited 6 times

- 23 ○ [Con. Law - Other](#)
- 24 ○ [Federal Government Agencies](#)
- 25 ○ [Government](#)

26 2 more...

27 Stating that "[t]he Citizenship Clause's applicability hinges [in part] on a
28 geographic scope clause—'in the United States' "

1 This flexible and pragmatic approach to the extension of the Constitution to
2 America's overseas territories "bec[a]me the settled law of the court." Balzac
3 v. Porto Rico, 258 U.S. 298, 305, 42 S.Ct. 343, 66 L.Ed. 627 (1922). The
4 proposition the Insular Cases came to stand for is that constitutional
5 provisions apply only if the circumstances of the territory warrant their
6 application.

7 **4. [Fitisemanu v. United States](#)**

8 No. 20-4017 (10th Cir. Jun. 15, 2021)

- 9 ○ [Con. Law - Other](#)
- 10 ○ [Federal Government Agencies](#)
- 11 ○ [Government](#)

12 **2 more...**

13 This flexible and pragmatic approach to the extension of the Constitution to
14 America's overseas territories "bec[a]me the settled law of the court." Balzac
15 v. Porto Rico, 258 U.S. 298, 305 (1922). The proposition the Insular Cases
16 came to stand for is that constitutional provisions apply only if the
17 circumstances of the territory warrant their application.

18 **5. [Igartúa-de la Rosa v. United States](#)**

19 417 F.3d 145 (1st Cir. 2005) Cited 77 times

- 20 ○ [Motion to dismiss](#)
- 21 ○ [Con. Law - Other](#)
- 22 ○ [Con. Law - Due Process](#)

23 **5 more...**

24 **Finding that customary international law and the international agreements**
25 **mentioned in the Complaint at bar do not create any legal obligations binding**
26 **as a matter of law**

27 **There was therefore great expectation in Puerto Rico when Congress passed**
28 **the Jones Act in 1917, which, in addition to providing Puerto Ricans with an**
29 **elected bicameral legislature, granted U.S. citizenship to the residents of**
30 **Puerto Rico. These hopes were soon deflated by the Supreme Court in Balzac**

1 v. Porto Rico, 258 U.S. 298, 42 S.Ct. 343, 66 L.Ed. 627 (1922), in which Chief
2 Justice William Howard Taft, at this point writing for a unanimous court,
3 held that no right to trial by jury attached to Balzac's new status as a U.S.
4 citizen because, even after the Jones Act, Puerto Rico remained an
5 unincorporated territory with only "fundamental rights" under the
6 Constitution applying. The right to trial by jury was not, the Court
7 reaffirmed, "a fundamental right."

8 6. [Ballentine v. U.S.](#)

9 Civ. No. 1999-130 (D.V.I. Oct. 15, 2001) Cited 7 times

- 10 o [Motion to dismiss](#)
- 11 o [Con. Law - Other](#)
- 12 o [Con. Law - Due Process](#)

13 The solution, arrived at by the same Court that gave us the now-repudiated
14 and overruled "separate but equal" doctrine in Plessy v. Ferguson, 163 U.S.
15 537 (1896), was to construct a new category of American constitutional
16 jurisprudence, the previously unknown doctrine of the "unincorporated"
17 territory. See Downes v. Bidwell, 182 U.S. 244 (1901) (White, J., concurring);
18 see also Balzac v. Porto Rico, 258 U.S. 298 (1922). Also known as the Insular
19 Tariff cases, nine Supreme court cases decided in 1901 make up the core
20 Insular cases: DeLima v. Bidwell, 182 US. 1 (1901); Goetze v. United States,
21 182 U.S. 221 (1901); crossman v. United States, 182 U.S. 221 (1902); Dooley v.
22 United States, 182 U.S. 222 (1901) (Dooley I); Armstrong v. United State, 182
23 U.S. 243 (1901); Downes v. Bidwell, 182 U.S. 244 (1901); Huus v. New York
24 Porto Rico Steamship co., 182 U.S. 392 (1901); Dooley v. United States, 183
25 U.S. 151 (1901) (Dooley II); and Fourteen Diamond Rings v. United States,
26 183 U.S. 176 (1901).

27 7. [United States v. Valentine](#)

28 288 F. Supp. 957 (D.P.R. 1968) Cited 37 times

- 29 o [Motion to dismiss](#)
- 30 o [Con. Law - Due Process](#)
- 31 o [Con. Law - Other](#)

1 In *United States v. Valentine*, 288 F. Supp. 957 (D.P.R., 1968) this Court
2 rejected various proffered classifications (the urban working class, the coastal
3 sugar plantation workers, and the "jibaros") because it found they "are based
4 only on occupation, and take no account of other factors, such as actual
5 income, personal history and family background."

6 No other federal district court is located in a state or territory in which the
7 primary language of a majority of the American citizens resident therein is
8 other than English. Indeed, Congress from the beginning has recognized that
9 Puerto Rico is unique, in that it is fully populated by a homogeneous Spanish-
10 speaking people "living in compact and ancient communities, with definitely
11 formed customs and political conceptions" (*Balzac v. People of Porto Rico*,
12 258 U.S. 298, 310, 42 S.Ct. 343, 347, 66 L.Ed. 627), and hence has never
13 attempted to force English upon the people of this island as the language in
14 which local government proceedings are to be conducted. It does not follow,
15 however, that because proceedings in local courts are conducted in Spanish,
16 proceedings in this court must also be conducted in that language.

17 8. [Commonwealth of the N. Mariana Islands v. Diaz](#)

18 2013 WL 7017963 (N. Mar. I. 2013)

19 o [Criminal - Other](#)

20 More specifically, he grounds this argument in a passage of *Boumediene*,
21 where the United States Supreme Court, in addressing the extraterritoriality
22 of the United States Constitution, casted doubt on the application of the
23 Insular Cases. This is important because the Insular Cases served as the
24 foundation for the holding in *Atalig*. The Insular Cases consisted of a series of
25 opinions addressing the question of whether the Constitution, by its own force,
26 applies in a United States territory that is not a State. E.g., *Balzac v. Porto*
27 *Rico*, 258 U.S. 298, 42 S. Ct. 343, 66 L. Ed. 627 (1922); *Dorr v. United States*,
28 195 U.S. 138, 24 S. Ct. 808, 49 L. Ed. 128 (1904); *Hawaii v. Mankichi*, 190 U.S.
29 197, 23 S. Ct. 787, 47 L. Ed. 1016 (1903); *Downes v. Bidwell*, 182 U.S. 244, 21
30 S. Ct. 770, 45 L. Ed. 1088 (1901); *Armstrong v. United States*, 182 U.S. 243, 21
31 S. Ct. 827, 45 L. Ed. 1086 (1901); *Dooley v. United States*, 182 U.S. 222, 21 S.
32 Ct. 762, 45 L. Ed. 1074 (1901); *De Lima v. Bidwell*, 182 U.S. 1, 21 S. Ct. 743,
33 45 L. Ed. 1041 (1901). To sort out whether *Boumediene* compels reversal of
34 *Atalig* and its progeny, a brief survey of the Insular Cases is appropriate.

1 **9. [Boumediene v. Bush](#)**

2 **553 U.S. 723 (2008) Cited 939 times 5 Legal Analyses**

- 3 o [Motion to dismiss](#)
- 4 o [Criminal - False Arrest](#)
- 5 o [Criminal - Other](#)

6 **4 more...**

7 **Holding that enemy combatants are entitled to the privilege of habeas corpus**

8 **As the Court later made clear, “the real issue in the Insular Cases was not**
9 **whether the Constitution extended to the Philippines or Porto Rico when we**
10 **went there, but which of its provisions were applicable by way of limitation**
11 **upon the exercise of executive and legislative power in dealing with new**
12 **conditions and requirements.” Balzac v. Porto Rico, 258 U.S. 298, 312, 42**
13 **S.Ct. 343, 66 L.Ed. 627 (1922). It may well be that over time the ties between**
14 **the United States and any of its unincorporated Territories strengthen in ways**
15 **that are of constitutional significance.**

16 **10. [Reid v. Covert](#)**

17 **354 U.S. 1 (1956) Cited 477 times 4 Legal Analyses**

- 18 o [Con. Law - Due Process](#)
- 19 o [Contract - Admiralty](#)

20 **1 more...**

21 **Holding that the United States Government must abide by the Constitution**
22 **when it prosecutes civilian dependents accompanying members of the armed**
23 **forces overseas**

24 **Moreover, in view of our heritage and the history of the adoption of the**
25 **Constitution and the Bill of Rights, it seems peculiarly anomalous to say that**
26 **trial before a civilian judge and by an independent jury picked from the**
27 **common citizenry is not a fundamental right. As Blackstone wrote in his**
28 **Commentaries: See, e. g., Balzac v. Porto Rico, 258 U.S. 298, 312-313 (Due**
29 **Process of Law); Downes v. Bidwell, 182 U.S. 244, 277 (First Amendment,**
30 **Prohibition against Ex Post Facto Laws or Bills of Page 9 Attainder); Mitchell**

1 **v. Harmony, 13 How. 115, 134 (Just Compensation Clause of the Fifth**
2 **Amendment); Best v. United States, 184 F.2d 131, 138 (Fourth Amendment);**
3 **Eisentrager v. Forrestal, 84 U.S.App.D.C. 396, 174 F.2d 961 (Right to Habeas**
4 **Corpus), rev'd on other grounds sub nom. Johnson v. Eisentrager, 339 U.S.**
5 **763; Turney v. United States, 126 Ct. Cl. 202, 115 F. Supp. 457, 464 (Just**
6 **Compensation Clause of the Fifth Amendment).**

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