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Foreign yet domestic liberties: the imperial imaginary of the ACLU and the U.S. colonial empire, 1920-1941

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Foreign Yet Domestic Liberties

The Imperial Imaginary of the ACLU and the U.S.

Colonial Empire, 1920-1941

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Foreign Yet Domestic Liberties

**The Imperial Imaginary of the ACLU and the U.S.
Colonial Empire**

1920-1941

Paul Brennan

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Part I: 1920-1929

Introduction

In the town of Ponce, Puerto Rico on March 21, Palm Sunday, when a prohibited march by a Nationalist Party organization known as the Cadets of the Republic nonetheless went forward, it was met by heavily armed police officers. This resulted in a tense standoff, which concluded with the officers opening fire on the gathering. The shooting and clubbing of unarmed civilians continued for an additional thirteen minutes. All told, there were twenty deaths.¹ According to historian Daniel Immerwahr this was the “bloodiest shooting by police in U.S. history.”²

When calls emanated from Puerto Rico calling for an outside “impartial agency” to conduct “a searching investigation” of the killings, the American Civil Liberties Union (ACLU) heeded the call and sent their general counsel Arthur Garfield Hays Jr. to lead an investigatory commission.³ Hays and the commission proceeded to conduct a ten-day investigation of the Ponce massacre and the suppression of civil liberties in Puerto Rico.⁴ Upon returning from his trip to Puerto Rico, Hays released his report: its findings were damning regarding U.S. colonial authorities, placing the blame for the massacre at Ponce “squarely upon” Governor Blanton Winship.⁵

¹ Ayala and Bernabe *Puerto Rico in the American Century*, 116; Denis, *War Against all Puerto Ricans*, 50.

² Daniel Immerwahr, *How to Hide an Empire: A Short History of the Greater United States* (New York: Farrar, Straus, and Giroux, 2019), 149

³ Miguel Guerra-Mondragón to Roger Baldwin, 5 April 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 115; Roger Baldwin to Earl Hanson, 12 April 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 120; ACLU Board of Directors Meeting Minutes, 10 May 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 131.

⁴ Denis, *War Against all Puerto Ricans*, 52-53.

⁵ ACLU News Release, 28 May 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 144.

Despite the acknowledgement of the Hays Commission's work within scholarship on Puerto Rico, it has gone curiously unappreciated within the scholarship of the ACLU and civil liberties. Nevertheless, this ACLU interest in Puerto Rico was part of a broader involvement in U.S. colonial affairs. For example, during the previous year, the ACLU played an important role in the passage of an organic act for the U.S. Virgin Islands, which, among other things, established a bill of rights for the islands. The ACLU further interested and involved itself in other U.S. colonies such as the Philippines, American Samoa, and even U.S. occupied Haiti. Yet, aside from some acknowledgement and analysis in the literature of the respective colonial territories themselves, the ACLU's interest and involvement in the U.S. colonial empire has not received the scholarly attention it deserves.

As the ACLU proudly boasted in 1935: "The Civil Liberties Union has taken part in efforts to protect civil rights in American colonies since it was founded in 1920."⁶ Why and how did the ACLU engage in the U.S. colonial empire between 1920 and the American entry into the Second World War in 1941? Of what significance was an imperial imaginary to their engagement? How did their involvement in the colonies relate to their more renowned work within the mainland states? And, finally, what were the results and consequences of this engagement for the ACLU, their imperial imaginary, and their resulting pursuit of their civil liberties commitments in the colonial sphere?

⁶ American Civil Liberties Union Weekly Bulletin, "Amnesty urged for Philippine Islands Political Prisoners," 8 November 1935, ACLU Papers (Digitized Microfilm) vo. 862, 49.

This study provides answers to these questions by delving into case studies based upon where in the U.S. colonial empire the ACLU most consistently and extensively involved themselves between 1920 and 1941. These were the formal and informal colonies of the U.S. Virgin Islands, the eastern Samoan Islands of Tutuila and Manu'a, the Philippines, Haiti, and Puerto Rico.⁷ The chapters of this study are accordingly structured around these parts of the U.S. empire.

The ACLU, the U.S. Colonial Empire, and Imperial Imaginary

In addressing the ACLU's involvement with the U.S. colonial empire between 1920 and 1941, *Foreign Yet Domestic Liberties* shows that the ACLU were committed to the defense of and advocacy for civil liberties such as freedom of speech, the press, and assembly throughout the U.S. colonial empire.⁸

⁷ There is a voluminous literature on the U.S. empire, with very little agreement both on the definition of empire and how it applies to the United States. However, Paul K. MacDonald has helpfully pointed out that the literature tends to fall into one of two camps: narrow definitions of empire, which "emphasize empire as sovereign political control by one state of over another polity" and broader definitions, which conceptualize empire more by a "general imbalance in power and influence." See Paul K. MacDonald, "Those Who Forget Historiography are Doomed to Republish it: Empire, Imperialism, and Contemporary debates about American Power," *Review of International Studies* 35 (2009), pp. 45-67, 50-51. This study adopts the narrower conception empire, specifically that offered by Michael Doyle, who defines empire as "effective control, whether formal or informal, of a subordinated society by an imperial society." See: Michael W. Doyle, *Empires* (Ithaca: Cornell University Press, 1986), 30. While there is great merit and an impressive literature that utilizes the broader conception empire regarding the United States (which identifies different manifestations of American power in the international realm as aspects of American imperialism and empire) this study holds to the narrow conception largely for the sake of clarity and internal consistency. In particular, this is due to the need to make clearly understood the necessary delineations between states and colonies, non-state and state actors, as well as the varying modes and application of U.S. law and governance throughout the U.S. empire; all of which are essential distinctions to the interpretations and arguments presented here. Doyle's definition also has the merit of not being so narrow that it excludes informal empire in the form of nominally independent states whose sovereignty has been so compromised by another more dominant state, that it comes to constitute being a part of the latter's informal empire.

⁸ As Laura Weinrib has pointed out, it is "often difficult to distinguish the institutional voice of the ACLU from that of its various constituents." See: Laura Weinrib, "The Liberal Compromise: Civil Liberties, Labor, and the

They did so with the purpose of checking abuses of state power and because they believed that these liberties were the essential means for the pursuit of peaceable change.

This study demonstrates that throughout the course of their engagement with the empire, the ACLU came to confront a great variety of colonial contexts that proved to be of great significance. Whether it was in the Philippines, the U.S. Virgin Islands, American Samoa, or Haiti, the ACLU encountered a colonial empire that varied greatly in terms of formal sovereignty, constitutional statuses, and governance regimes. Among the most foundational was the division of the U.S. colonial empire into formal colonies (i.e., under formal U.S. sovereignty and control) and informal colonies (i.e., under U.S. control but not under formal US sovereignty). Also of great relevance was the demarcation of the formal colonial sphere into constitutional statuses of incorporated and unincorporated territories. This binary division of statuses guaranteed the extension of constitutional protections to those colonies designated as falling within the former, but not the latter, category (this will be discussed extensively in the last section of Chapter 1). The respective colonies varied as well in terms of forms of governance regimes, with there being variations of colonial rule by the U.S. armed forces (typically the U.S. Navy) or civilian leadership. In terms of

Limits of State Power, 1917-1940," PhD. Diss., Princeton University (2011): 1. Nonetheless, while nominally made up of its Executive Committee, National Committee, and a broader base of a dues paying membership, most of the policy and decision making were made by the Roger Baldwin led Executive Committee. See: Walker, *In Defense of American Liberties: A History of the ACLU* (New York: Oxford University Press, 1990), 67. The organizational structure and hierarchy is further elaborated upon later in the Sources and Methodology section of this Introduction, as well as in even greater detail in Chapter 1.

modes of governance, the colonial empire also greatly varied in terms of citizenship, rights, and representational regimes (i.e., federal appointee, electoral, and/or varieties of limited franchise rights). As will be seen, these factors proved to be of great significance for how the ACLU both engaged with and perceived of the U.S. colonial empire.

In doing so, this study will demonstrate that the ACLU pursued their broad civil liberties commitments in the colonial empire in a varying, pragmatic, and ad-hoc manner. Under the leadership of executive director Roger Nash Baldwin, the ACLU both took the initiative themselves and were called upon by others to involve themselves in cases where civil liberties violations were deemed to have taken place. They also proactively advocated for different policy approaches and legislative reforms, lobbied colonial and federal administrations, and, on two occasions (first with respect to the eastern Samoan Islands and then the Philippines), even sought constitutional change of the colonial empire through supporting litigation efforts in the courts. Furthermore, based on demands emanating from specific colonies, and, mainly at the behest of the organization's executive director Roger Baldwin, the ACLU also addressed the issue of independence from the empire.⁹ And in the case of an informal colony – Haiti – they even went so far as to adopt an assertively anti-imperialist stance.

In terms of periodization, as scholarship on the ACLU and civil liberties have long recognized, the interwar years were critical for the ACLU's

⁹ Roger Nash Baldwin, his background, predominant role in the ACLU, and his extra-ACLU anti-imperialist activities are discussed in detail in Chapter 1.

development following the organization's formation in 1920.¹⁰ It was over the course of this period that the ACLU gradually transitioned from being an unpopular and unapologetically pro-labor organization into becoming an increasingly influential member of the liberal-left, an organization that played a critical role in securing robust constitutional protections for such civil liberties as the freedom of speech, press, and assembly within the mainland states.¹¹ While executive director Roger Baldwin initially sought to maintain the organization as a deeply state-sceptic, activist, and protest oriented one, over the course of the 1920s and 1930s, the ACLU increasingly reconciled themselves with defending and advocating for civil liberties through formal U.S. state institutions, particularly coming to specialize in doing so via the courts.¹²

The year 1941 represents the end of the period under consideration because it was that year which marked the end of the interwar years for the United States. Indeed, it was the Japanese attacks upon the U.S. colonial empire in Hawai'i, Guam, and the Philippines – with both of the latter being invaded and occupied (Guam between 1941 and 1944, the Philippines between 1942 and 1945) – that occasioned the United States' entry into the war. As the war absorbed the attention of a polity already on a war footing,

¹⁰ Charles L. Markmann, *The Noblest Cry: A History of the American Civil Liberties Union* (New York: St. Martin's Press, 1965); Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (New York, Oxford University Press, 1990); Robert C. Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union* (New York: Columbia University Press, 2000); Laura Weinrib, *The Taming of Free Speech: America's Civil Liberties Compromise*, (Cambridge, Harvard University Press, 2016).

¹¹ Paul L. Murphy, *The Meaning of Freedom of Speech: First Amendment Freedoms from Wilson to FDR* (Westport: Greenwood Publishing Company, 1972): 130-132; Walker, *In Defense of American Liberties*, 106-112; Judy Kutulas, *The American Civil Liberties Union & the Making of Modern Liberalism, 1930–1960* (Chapel Hill: University of North Carolina Press, 2006), 31-32.

¹² Weinrib, *The Taming of Free Speech*, 5-12, 130, 323-324.

no part of the American empire, metropolitan and colonial periphery alike, was left unaffected. As A.G. Hopkins has pointed out, “[T]he war jumbled fortunes everywhere.”¹³ This was naturally of great consequence for an organization like the ACLU which engaged with both spheres. However, its issues were largely situated within the mainland states – among the most notable of which included the draft, conscientious objection, wartime censorship, and, most notoriously of all, Japanese internment – that ended up consuming the majority of the ACLU’s time and concerns during the war.¹⁴ The interwar period between 1920 and 1941 then marks the most apt chronological framework in which to assess the early ACLU’s engagement with the U.S. colonial empire.

A key contention of this study is that an imperial imaginary on the part of the ACLU proved to be of great significance throughout their engagement with the colonial empire. The conceptual framework of “imperial imaginaries” was developed by historian Duncan Bell. By imperial imaginaries, Bell meant those “aspects of social imaginaries that pertain to the justification or governance of empire.”¹⁵ Bell distinguished between

¹³ A.G. Hopkins, *American Empire: A Global History* (Princeton: Princeton University Press, 2018), 538

¹⁴ Walker, *In Defense of American Liberties*, 135-169. Samuel Walker has asserted that “[A]lmost alone,” did the ACLU challenge “the wholesale violation of individual rights” that Japanese internment represented. They most notably did so by handling the *Hirabayashi v. United States* (1944) and *Korematsu v. United States* (1944) cases in the Supreme Court, albeit unsuccessfully so. See: *Ibid.*, 35.

¹⁵ Duncan Bell, *Reordering the World: Essays on Liberalism and Empire* (Princeton, Princeton University Press, 2016), 95. Duncan Bell himself adapted his conception of imperial imaginaries from the work of Charles Taylor and Manfred Steger. Charles Taylor in particular pioneered the notion of social imaginaries, describing them as “the ways people imagine their social existence, how they fit together with others, how things go on between them and their fellows, the expectations that are normally met, and the deeper normative notions and images that underlie these expectations.” See Charles Taylor, *Modern Social Imaginaries* (Durham: Duke University Press, 2004), p. 23. Manfred Steger has further compatibly articulated social imaginaries as constituting “the macromappings of and political space through which we perceive, judge, and act in the

imaginaries and ideologies, emphasizing that the former “are more basic” than the latter “insofar as they establish the background cultural and cognitive conventions that structure and animate them.”¹⁶ In adopting – as well as adapting – Bell’s framework it is essential to stress the distinction between imaginaries and ideologies; neither should the former be conflated with beliefs and/or even worldviews.¹⁷ Imaginaries are to be distinguished from the more willful, self-conscious, and/or deliberative constructions that ideologies and even beliefs tend to be. Imaginaries are much more deep-rooted, unconscious, and reflexive. They also happen to be more indeterminate and in flux.

The imperial imaginary of an actor and/or set of actors is an ever present (even if latent), dynamic, and contingent condition of an imperially embedded actor and/or set of actors. Among such imperially embedded actors, this framework is most relevant for metropolitan based actors who interest themselves in the colonial sphere. This is because no matter what a relevant actor’s attitude toward empire is – whether they regard themselves as agnostic, pro- or anti-imperial on colonial empire – they are situated and embedded within said empire and, accordingly, have preconceptions, views, and perspectives unavoidably preconditioned by this basis.¹⁸ As Alfred McCoy, Francisco Scarano, and Courtney Johnson have pointed out, “colonial

world.” See: Manfred B. Steger, *The Rise of Global Imaginary: Political ideologies from the French Revolution to the Global War on Terror* (Oxford: Oxford University Press, 2008), 6.

¹⁶ Bell, *Reordering the World*, 94.

¹⁷ In fact, one might go so far as to propose that it is imaginaries in combination with ideologies that are the making of worldviews.

¹⁸ Scholars have long noted a particularly American tendency toward forms of imperial anticolonialism. See: William A. Williams, *The Tragedy of American Diplomacy* (New York: W. W. Norton and Company, 2009).

rule” is “a resilient force for historical continuity, profoundly implicating all those caught in its grip whether core or periphery, colonizer or colonized.”¹⁹ In such a manner, then, imperial imaginaries can be thought of as the occupational hazard of all metropolitan-based actors concerned with colonial empire.

The imperial imaginary framework is an especially apt means through which to assess the ACLU’s engagement with the U.S. colonial empire. This study contends that the imperial imaginary of the ACLU was a foundational aspect of how they perceived spaces, peoples, events, and/or issues as being situated within the colonial realm or not. Such perception was critical to what they registered as residing within either the metropole or the colonial sphere (whether that be in the formal or informal sphere), or neither of the above and, accordingly, a part of a foreign realm. Relatedly, a very relevant aspect of their imaginary was not only how they distinguished between such categories, but also how they blurred the strict lines nominally demarcating them within their imaginary.

It was in their often undefined, opaque, and inconsistent perception of the lines between such categories and/or distinctions that much of the importance of the imperial imaginary of the ACLU can be seen. The ACLU were then partially prone to what Paul Kramer has elsewhere referred to as the “sovereignty blender”, a proclivity toward inadvertently “homogenizing

¹⁹ Alfred W. McCoy, Francisco A. Scarano, and Courtney Johnson, “On the Tropic of Cancer: Transitions in the U.S. Imperial State,” In *Colonial Crucible: Empire in the Making of the Modern State*, ed. Alfred W. McCoy and Francisco A. Scarano (Madison: University of Wisconsin Press, 2009): 7.

... radically different political spaces and modes of empire-building.”²⁰ In doing so, the ACLU were liable to imagine the metropolitan in the colonial sphere, as well as viewing various parts of the colonial empire as being foreign or domestic to varying degrees – and this was with respect to both the American empire’s formal and informal manifestations.²¹ In fact, they were even capable of identifying all of which (the domestic and foreign, metropolitan, and colonial) within the very same colonial space – all the while not perceiving the tensions, difficulties, and/or contradictions that accordingly resulted.²²

As this study demonstrates, the imperial imaginary of the ACLU facilitated a tendency to identify some colonies more with the metropolitan sphere (Alaska and Hawai’i), while identifying others more with the formally colonial (U.S. Virgin Islands and Guam). In contrast, were the cases of the Philippines and Puerto Rico, of which the ACLU had varied and inconsistent views regarding how to approach their ongoing formal colonial statuses while, at the same time, deliberating upon their potential endorsement of

²⁰ Kramer was directing this warning specifically toward historians, but historical actors can plainly be just as susceptible to doing so. Paul A. Kramer, “How Not to Write the History of the U.S. empire,” *Diplomatic History* 42, no. 5 (2018): 918.

²¹ This is partly to be expected. As Amy Kaplan has pointed out, the boundaries between the metropolitan and the colonial, as well as the foreign and domestic, are always to some extent porous under the conditions of empire. In fact, as Kaplan further points out, if anything, “notions of domestic and foreign mutually constitute one another in an imperial context.” See: Amy Kaplan, *The Anarchy of Empire in the Making of U.S. Culture* (Cambridge, Harvard University Press, 2002), 4. It is to be expected then that any imperially embedded actor should have fluid and blurred perceptions of the constituent elements and categories of said empire.

²² Duncan Bell has demonstrated the analogous phenomenon whereby the imperial imaginaries of British actors identified the constituent parts of the British empire in varying ways. For example, while most viewed alien rule regime colonies, such as India, as being within the British colonial empire; many viewed the settler colonies and dominions (i.e. Australia, New Zealand, and Canada) as being fundamentally different in kind – even to the point of seeing them as not being colonies at all and/or within the confines of the British colonial empire. See: Duncan Bell, *Reordering the World*, 211-361.

independence for either. They even had permeable and varied perceptions of the informal colonial sphere, identifying, for example, the eastern Samoan islands of Tutuila and Manu'a as being more within the formally colonial sphere while, in contrast, regarding Haiti more within the informal, even foreign realm.

The ACLU rarely, if ever, explicitly articulated upon the bases of such distinctions.²³ They were clearly influenced by the varied constitutional and sovereign statuses, as well as differing regime forms, of the colonies they encountered throughout the empire. However, it is evident that behind such distinctions lay their own unacknowledged racialized assumptions, preconceptions, and even prejudices. And while the ACLU never embraced, adopted, and/or conveyed the kinds of overtly and unapologetically racist discourses or attitudes so common among actors in other colonial contexts – on the contrary, they perceived themselves as largely in opposition to such²⁴ – their imperial imaginary nonetheless increasingly evoked the direct and indirect influence of such racialized thinking and attitudes.

This influence was often at its most discernable in their omissions. Such omissions were among their most evident in the very universal framing of their civil liberties commitments to freedom of speech, press, and assembly, which were themselves fundamentally rooted in the organization's

²³ In fact, Charles Taylor, in his work of social imaginaries, has spoken on the importance of the role that theory can play in penetrating and transforming social imaginaries. See: Taylor, *Modern Social Imaginaries*, 29. The fact that the ACLU engaged in the colonial sphere without such strongly held theories or conceptions of empire and/or well-defined goals was then another noteworthy feature of their engagement; one which accordingly left them even more susceptible to the influence of the conditions, contexts, institutions, and actors they confronted than might otherwise have been the case.

²⁴ Walker, *In Defense of American Liberties*, 60.

own metropolitan basis. As scholarship has long established, the ACLU and its leadership were a white majority organization centered in the northeast of the mainland United States.²⁵ Therefore, much of the universalism of their civil liberties commitments was unavoidably anchored in white American assumptions and perspectives that enabled them to reflexively identify and champion the former as a neutral and universal set of norms.²⁶

This narrow and unacknowledged metropolitan foundation of their civil liberties universalism contributed to a lack of prioritizing the need to seek out and/or cultivate allies and contacts among the colonial subject populations of the empire. This was of important consequence because their very ability to meet their civil liberties commitment to checking abuses of colonial state power depended to a significant extent upon such allies and contacts. This lack of contacts and allies throughout the colonial sphere relatedly left the ACLU inattentive and unattuned to the immense diversity of perspectives, experiences, and contexts of colonial subject peoples. Instead, the universalism of their imperial imaginary facilitated their perception of the latter's perspectives and goals as being essentially analogous, even synonymous, with their own, and therefore not in need of nuanced understanding and/or regular and intensive contact. These kinds of

²⁵ Ibid., 46-47, 51-54, 66-67.

²⁶ Even the seeming universalism of the ACLU's civil liberties within the metropolitan states was animated by particularistic concerns and priorities. As scholars have long noted (and will be discussed in greater detail in Chapter 1) the early ACLU was largely preoccupied with the cause and concerns of organized labor. Whatever unity existed throughout the variegated ranks of organized labor throughout this period was based to a significant extent upon (white) racial and ethnic identities. See: Paul L. Murphy, *The Meaning of Freedom of Speech: First Amendment Freedoms from Wilson to FDR* (Westport: Greenwood Publishing Company, 1972): 130-132, 137-156; Weinrib, *The Taming of Free Speech*, 1, 111-145. See: David R. Roediger, *The Wages of Whiteness: Race and the Making of the American Working Class: Revised Edition* (London, Verso, 2008).

omissions and conflation on the part of the ACLU's imaginary thereby facilitated the projection of their own metropolitan derived, if implicitly racialized, universalism upon colonial subjects.

An additional consequence of their projecting a metropolitan derived universalism onto the colonial sphere was that it left them all the more susceptible to the influence of colonial institutions, actors, and discourses. Indeed, this study argues that, as the ACLU increasingly interacted with the colonial empire, they absorbed, without seemingly being aware of it, the influence of colonial state institutions and actors, as well as the accompanying imperial discourses, tropes, and argumentation of the latter. Such tropes and argumentation included those relating to exceptionalism, tutelage, and the governing capacity of colonial subjects – all of which were unavoidably tied up with conceptions, ideas, and/or attitudes on race. The ACLU therefore began to further internalize the colonial mentalities they encountered. The corollary of this was that it came at the expense of their initially more neutral and universal civil liberties orientation. This proved to be of great significance for how their fluid and unstable imperial imaginary began to increasingly reinforce metropolitan and colonial distinctions.

Foreign Yet Domestic Liberties argues that a broad trajectory in the ACLU's engagement with the colonial empire can be observed. As the ACLU's early anti-statism began to wane – both within the metropolitan states and the colonies – they increasingly developed cooperative relations, and even reliance, on federal and colonial state actors over the course of the interwar years. This increasingly influenced the ACLU with respect to their priorities, perceptions, conduct, and objectives. In particular, it served to greatly

compromise whatever checks to the abuses of colonial state power that their civil liberties mandate sought to provide in the areas of freedom of speech, assembly, and the press. Relatedly, their imperial imaginary inhibited them from recognizing and, therefore, potentially addressing the lack of input, perspectives, cooperation, and/or membership from among the diverse subject populations of the colonial sphere. This was of great consequence. For the ACLU to have robustly affirmed their commitment to checking abuses of colonial state power, they would have needed to have secured and maintained such colonial subject contacts and allies.

These factors eventually led to their accommodation with a more varied and insecure form of civil liberties for the colonial sphere by the end of the 1930s. This more colonially particularist orientation happened to contrast greatly with the more universally framed form of civil liberties they were securing within the metropolitan states.²⁷ The ACLU even came to acknowledge that such a distinction existed when they later made a casual reference to there being “colonial civil liberty.”²⁸ In doing so, they came to reinforce the metropolitan and colonial dichotomy of the U.S. empire within their imaginary. It is a mark of the significance of the ACLU’s imperial imaginary that they were seemingly unaware of the fact that, by the end of the interwar years, their engagement in the colonial empire had resulted in

²⁷ From 1937 on the Supreme Court began to establish the first substantial body of constitutional law applicable throughout the mainland states devoted to civil liberties. See: Walker, *In Defense of American Liberties*, 106-112

²⁸ “Civil Liberties in American Colonies,” February 1939, ACLU Records and Publications. Reel 92, 19.

their tacit acceptance of a more particularist, foreign yet domestic, form of civil liberties made safe for colonial empire.

Historiography

This work engages with two specific strands of historical literature. First, it contributes to the literature on the ACLU and civil liberties by extending the analysis beyond the borders of the contiguous United States and into the U.S. colonial empire. Secondly, it engages with the literature on U.S. empire by contributing to an ongoing turn in the historiography that has emphasized and elaborated upon the ways in which the U.S. empire was and continues to be an immense and interconnected entity; a trend that has articulated upon the ways in which the metropolitan and colonial spheres have been much more connected, overlapping, and relevant to one another than has tended to be adequately appreciated.

The ACLU and Civil Liberties

As should be clear from the previous discussion, *Foreign Yet Domestic Liberties* contributes to two distinct historiographies: that of the ACLU and the civil liberties movement, and that of the U.S. empire. In the case of the former, much of the scholarly literature that has concerned itself with the ACLU and the civil liberties movement of the interwar years has traditionally come in one of two varieties. First, and most prominent, have been the works concerned with the legal and constitutional aspects of civil liberties, especially within the area of free speech. This has accordingly been largely

the domain of legal scholarship.²⁹ The other kind has been works of historical scholarship devoted to the organization of the ACLU, the person of Roger Baldwin, or some combination of both.³⁰ This is understandable given the prominence and inseparability of Baldwin, the organization, and the cause of civil liberties during the interwar years. Much of the initial work here was quite praising of either Baldwin, the ACLU, or both; with Markmann's *The Noblest Cry* the most unapologetically so.

An observably more critical turn in the historiography came in the aftermath of the Watergate-era revelations with the publication of the essay collection *The Pulse of Freedom: American Liberties: 1920-1970s*.³¹ The essays were significant for their more tempered and cautious tone throughout. This work also signaled a transition to more expressly critical works on the history of civil liberties. One trend was the emergence of more conservative oriented accounts of the civil liberties movement and especially that of the ACLU. This was most explicitly so in the case of William A. Donohue's two books *The Politics of the American Civil Liberties Union* (1985) and *Twilight of*

²⁹ Such examples include: Garrett Epps (ed.), *Freedom of the Press: The First Amendment, its Constitutional History and the Contemporary Debate* (Amherst: Prometheus Books, 2008), Elizabeth B. Hindman, "First Amendment Theories and Press Responsibility: The Work of Zechariah Chafee, Thomas Emerson, Vincent Blasi and Edwin Baker," *Journalism Quarterly* 69 (1992): 48-64; Ken I. Kersch, *Constructing Civil Liberties: Discontinuities in the Development of American Constitutionalist Law* (Cambridge: Cambridge University Press, 2004)

³⁰ Such works include: Charles L. Markmann, *The Noblest Cry: A History of the American Civil Liberties Union* (New York: St. Martin's Press, 1965); Walker, *In Defense of American Liberties*; Judy Kutulas, *The American Civil Liberties Union & the Making of Modern Liberalism, 1930-1960* (Chapel Hill: University of North Carolina Press, 2006); Peggy Lamson, *Roger Baldwin: Founder of the American Civil Liberties Union* (Boston: Houghton Mifflin, 1976); Robert C. Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union* (New York: Columbia University Press, 2000).

³¹ Alan Reitman, *The Pulse of Freedom: American Liberties: 1920-1970s* (New York: W. W. Norton and Company, 1975).

Liberty (1994).³² This trend was clearly informed by the onset of a newly powerful strain of political conservatism by the 1980s.

A more pessimistic turn also emerged from the left with a more liberal oriented set of critiques emerging. This was informed by a general disillusion with many of the results of the civil liberties movement's achievements and with the emergence of a newly expansive form of First Amendment jurisprudence by the Supreme Court, beginning with the *Buckley v. Valeo* decision of 1976. This decision marked the Supreme Court's first declaration that restrictions on spending for political campaigns and other forms of regulatory policy were unconstitutional on First Amendment (i.e. freedom of speech) grounds.³³ A notable work of legal and historical scholarship that reflected this backdrop was *Transforming Free Speech* by Mark Graber. In this work, Graber highlighted how prior to the First World War, commentators had paid greater attention to the interconnection between civil liberties, economic conditions, and the law. Graber stressed that what emerged from the increasingly mainstream civil liberties movement during the decades following the war was a commitment to a more neutral conceptualization of free speech; one, however, bereft of the early sensitivities to economic issues.³⁴

³² William A. Donohue, W.A., *The Politics of the American Civil Liberties Union* (New Brunswick: Transaction Books, 1985); William A. Donohue, W.A., *The Twilight of Liberty: The Legacy of the ACLU* (New Brunswick: Transaction Books, 1994).

³³ Walker, *In Defense of American Liberties*, 339

³⁴ Mark A. Graber, *Transforming Free Speech: The Ambiguous Legacy of Civil Libertarianism* (Berkeley: University of California Press, 1991); Another related but key and distinctive work that assesses the continuities and discontinuities of pre-First World War free speech writings and advocacy is David M. Rabban, *Free Speech in its Forgotten Years* (Cambridge: Cambridge University Press, 1997). This work was less self-evidently preoccupied with contemporaneous developments in First Amendment jurisprudence.

Very notable in this trend as well has been the scholarship of Emily Zackin and Laura Weinrib.³⁵ Both of these scholars have highlighted the significance of the ACLU's turn to the courts, the fact that this was a divisive turn within the movement, and that it was not a foregone conclusion. Zackin, deploys a political science approach to the topic that convincingly charts the transition throughout the 1920s of the ACLU leadership's move from a predominantly non-court-based strategy and tactics to a more litigation-based one.³⁶

Weinrib develops a complementary, but much broader and more elaborate argument about the implications of this evolution of the ACLU in *The Taming of Free Speech*. The significant takeaways from her book were that the ACLU was a much more radical, and overtly pro-organized labor organization than scholarship has typically acknowledged. This, in turn, informed a set of priorities, strategy and tactics that were more activist oriented, ad-hoc, and highly skeptical of state institutions, especially that of the courts.³⁷ Hence, Weinrib stresses the significance of their eventual turn toward a litigation-based emphasis and their successes through such means. According to Weinrib this also had the consequence of eventually severing the civil liberties movement from its more radical labor orientation, and replacing it with a more neutral and universalist civil liberties one.³⁸ *Foreign Yet Domestic Liberties* tracks a complementary and parallel trajectory in the

³⁵ Emily Zackin, "Popular Constitutionalism's Hard when You're Not Very Popular: Why the ACLU Turned to the Courts," *Law & Society Review* 42, No. 2 (2008), 367-396; Weinrib, *The Taming of free speech*.

³⁶ Zackin, "Popular Constitutionalism's Hard When You're Not Very Popular," 367-396.

³⁷ Weinrib, *The Taming of Free Speech*, 5-11, 130.

³⁸ *Ibid.*, 11-12, 323-324.

ACLU's engagement within the colonial periphery; especially in accounting for ACLU's similar reconciliation with colonial state institutions, albeit with consequences and implications distinct to the colonial sphere.

Weinrib's work, with its greater emphasis on the roles of organized labor and more conservative elements like the American Bar Association and influential business associations, can also be seen as the most significant in a more recent trend in the historiography of the civil liberties movement and the ACLU during the interwar years. This has called attention to the much broader scope of the ACLU's relationship to other developments, actors, commitments, and organizations includes the work of John Fabian Witt's, Leigh Ann Wheeler's *How Sex Became a Civil Liberty*, and Jeremy Kessler.³⁹ Notably absent from this more expansive scholarship on the civil liberties movement and the ACLU was their relationship and involvement in the U.S. colonies. This is significant, for even within the first year of the ACLU's existence in 1920, the organization had interested itself in the then recently acquired U.S. Virgin Islands.

The only real exception to this lack of attention was the earliest general history of the ACLU, *The Noblest Cry* by Charles Markmann. However, as well as being an overly hagiographic account of the organization (the book also lacks an adequate scholarly apparatus and referencing), this

³⁹ Witt, "Crystal Eastman and the Internationalist Beginnings of American Civil Liberties," 705-763, see also John F. Witt, *Patriots and Cosmopolitans: Hidden Histories of American Law*, (Cambridge: Harvard University Press, 2007); Wheeler, *How Sex Became a Civil Liberty*; Jennifer Luff, *Commonsense Anticommunism: Labor and Civil Liberties Between the World Wars*, (Chapel Hill: University of North Carolina Press, 2012); Jeremy Kessler, "The Administrative Origins of Modern Civil Liberties Law," *Columbia Law Review* 114, no. 5 (June 26, 2014): 1083-1166.

work merely provides a brief and scattered overview of the ACLU's engagement with U.S. colonial empire.⁴⁰ What is conveyed by Markmann is no more than a series of fragmentary highlights of the ACLU's engagement with the colonial sphere over the course of the first half of the twentieth century, with little in the way of interpretation, critical analysis and/or argumentation.⁴¹

An additional exception has been in the scholarship specializing on the U.S. Virgin Islands.⁴² While attention to the ACLU and their civil liberties work there has been largely marginal, there has been one very significant exception: Isaac Dookhan's *Civil Rights and Political Justice*.⁴³ Dookhan contributed a valuable account of how the ACLU involved themselves in the U.S. Virgin Islands, yet there were significant limitations to this work, especially when viewed through the lens of ACLU and civil liberties scholarship. Not investigated or assessed was why the ACLU involved themselves in the Virgin Islands, how this related to and/or contrasted with their contemporaneous work elsewhere throughout the U.S. colonial empire and the mainland states. It also did not address the broader relevance and significance of this engagement to the development of the cause and

⁴⁰ Markmann, *The Noblest Cry*, 408-414

⁴¹ Ibid.

⁴² William W. Boyer, *Civil Liberties in the U.S. Virgin Islands: 1917 – 1949* (St. Croix: Antilles, 1982); William W. Boyer, "Rothschild Francis and Freedom of the Press in the U.S. Virgin Islands," *Caribbean Affairs* 4, no 4 (1991), 129-143; Isaac Dookhan, *A History of the Virgin Islands of the United States*, (Kingston: Canoe Press, 1994); Isaac Dookhan, "The Search for Identity: The Political Aspirations and Frustrations of Virgin Islanders Under the United States Naval Administration, 1917-27," *The Journal of Caribbean History* 12 (January 1, 1979): 1-34; Marilyn F. Krigger, *Race Relations in the U.S. Virgin Islands: St. Thomas – A Centennial Retrospective* (Durham: Carolina Academic Press).

⁴³ Isaac Dookhan, *Civil Rights and Political Justice: The Role of the American Civil Liberties Union in the U.S. Virgin Islands, 1920-1936* (New York: American Civil Liberties Union, 1983).

conception of civil liberties in general.⁴⁴ *Foreign Yet Domestic Liberties* addresses this gap by accounting for and assessing the ACLU's involvement in the U.S. Virgin Islands within the broader context of their engagements throughout the U.S. empire and their more renowned work within the U.S. metropolitan states.

The United States Empire

Recent literature on U.S. empire has emphasized how and why the mainland states and the U.S. colonies can be considered as all being parts of a greater, more interconnected sphere. This is also the approach taken here.

For the first half of the twentieth century, there was little more than an, at best, modest preoccupation in the scholarship with the application of the concepts of empire and imperialism to the United States.⁴⁵ It was not until the late 1950s that there emerged a turn in the scholarship of American power and foreign policy that substantially engaged with this field. This was initiated with the publication in 1957 of William Appleman Williams' *Tragedy of American Diplomacy*.⁴⁶ This began what has become known as, alternately, the Wisconsin, New Left, or revisionist school of American foreign relations. Williams, alongside other revisionist scholars like Walter LaFeber, Lloyd Gardner, Gabriel Kolko and Thomas J. McCormick, stressed

⁴⁴ Ibid.

⁴⁵ A rare exception was Scott Nearing and Joseph Freeman, *Dollar Diplomacy: A Study in American Imperialism*, (New York: B.W. Huebsch and the Viking Press, 1925).

⁴⁶ William A. Williams, *The Tragedy of American Diplomacy* (New York: W. W. Norton and Company, 2009).

the continuity of the United States' imperialist ambitions and practices.⁴⁷ For example, whereas older scholarship and popular memory tended to regard the unapologetic imperialism of the seizure of the Philippines, Puerto Rico, and Guam as colonies in 1898 as something of an aberration in U.S. history,⁴⁸ these scholars countered that this was actually quite consistent with previous American expansion. A great deal of emphasis in these studies was placed on economic causes and the pursuit of overseas markets (the so-called 'Open Door') as being the central driver of American imperialist policy and development.

While in the decades following the Vietnam War there was a somewhat diminished attention given to the studies of the U.S. empire, there nonetheless continued to be further valuable and critical work. This scholarship highlighted often underappreciated yet significant dimensions of empire. Such work engaged in the relationship between the U.S. empire and issues of culture, ideology, racism, and gender.⁴⁹ The scholarship of U.S.

⁴⁷ See: William A. Williams, *Empire as a Way of Life: An Essay on the Causes and Character of America's Present Predicament, Along with a Few Thoughts About an Alternative* (New York: Oxford University Press, 1980); Walter LaFeber, *The New Empire: An Interpretation of American Expansion, 1860-1898* (Ithaca: Cornell University Press, 1963); Lloyd C. Gardner, *Economic Aspects of New Deal Diplomacy* (Madison: University of Wisconsin Press, 1964); Lloyd C. Gardner, *Architects of American Illusion: Men and Ideas in American Foreign Policy, 1941-1949* (Chicago: Quadrangle Books, 1970); Lloyd C. Gardner, *Imperial America: American foreign policy Since 1898* (New York: Harcourt Brace Jovanovich, 1976); Thomas J. McCormick, *China Market: America's Quest for Informal Empire, 1893-1901* (Chicago: Quadrangle Books, 1967); Gabriel Kolko, *The Roots of American Foreign Policy: An Analysis of Power and Purpose* (Boston: Beacon Press, 1969).

⁴⁸ Richard Hofstadter, "Cuba, the Philippines, and Manifest Destiny," In *The Paranoid Style in American Politics and Other Essays*, ed. Richard Hofstadter (New York: Alfred A. Knopf, 1965): 145-187.

⁴⁹ Such significant work included: Amy Kaplan, "'Left Alone with America': The Absence of Empire in the Study of American Culture" in *Cultures of United States imperialism*, eds. Amy Kaplan and Donald E. Pease (Durham: Duke University Press, 1993): 3-21; Giles Scott-Smith, *The Politics of Apolitical Culture: The Congress for Cultural Freedom, the CIA and Post-war American Hegemony* (London: Routledge, 2002); Richard Slotkin, *Gunfighter Nation: The Myth of the Frontier in Twentieth-century America* (New York: Maxwell Macmillan International, 1992); Cynthia H. Enloe, *Bananas, Beaches & Bases: Making Feminist Sense of International Politics* (Berkeley: University of California Press, 1990); Ann L. Stoler, "Tense and Tender Ties: The Politics of Comparison in North American History and (Post) Colonial Studies," *The Journal of American History* 88, no. 3

empire then experienced a great resurgence in the wake of the 9/11 attacks, the War on Terrorism and U.S. invasion of Iraq.⁵⁰ A distinctive feature of this turn in the historiography was the work of scholars who now embraced the application of the term empire to the United States as a positive and praiseworthy attribute. This work came in both liberal and conservative varieties. Liberal imperialist advocates included Geir Lundestad and Michael Ignatieff, while conservative perspectives were put forward by Niall Ferguson and Robert Kagan.⁵¹

Throughout this previous literature, there was a curious lack of attention to the more formal colonial aspects of U.S. empire, as well as the empire's overall interconnectedness.⁵² Much of the work on empire had focused upon the more diffuse, process driven, and/or ideological aspects of empire, with less interest for its more tangible and formal manifestations.

(Dec. 2001): 829-865; Gail Bederman, *Manliness and Civilization: A Cultural History of Gender and Race in the United States, 1880-1917* (Chicago: University of Chicago Press, 1995); Philip W. Kennedy, "Race and American Expansion in Cuba and Puerto Rico, 1895-1905," *Journal of Black Studies* 1, no. 3 (1971): 306-315; Rubin Weston, *Racism in U.S. Imperialism: The Influence of Racial Assumptions on American Foreign Policy, 1893-1946* (Columbia: University of South Carolina Press, 1972).

⁵⁰Chalmers Johnson, *Blowback: The Costs and Consequences of American Empire* (New York: Henry Holt and Company, 2000); Chalmers Johnson, *The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic* (New York: Metropolitan Books, 2004); Chalmers Johnson, *Nemesis: The Last Days of the American Republic* (New York, Metropolitan Books, 2007); Clyde Prestowitz, *Rogue Nation: American Unilateralism and the Failure of Good Intentions* (New York: Basic Books, 2003); Andrew J. Bacevich, *American Empire: The Realities and Consequences of U.S. Diplomacy* (Cambridge: Harvard University Press, 2004).

⁵¹ Geir Lundestad, *The United States and Western Europe Since 1945: From "Empire" by Invitation to Transatlantic Drift* (Oxford: Oxford University Press, 2005); Michael Ignatieff, *Empire Lite: Nation Building in Bosnia, Kosovo, and Afghanistan* (London: Vintage, 2003); Niall Ferguson, *Colossus: The Rise and Fall of American Empire* (New York: Penguin Press, 2004); Robert Kagan, "The Benevolent Empire," *Foreign Policy*, no 11(1998): 24-35.

⁵² Notable exceptions here have included: Robin W. Winks, "Imperialism," in *The Comparative Approach to American History*, ed. C. Vann Woodward (New York: Oxford University Press, 1968): 253-270, in which Woodward took up a comparative approach that encompassed the whole of the formal U.S. empire and contrast it with that of other European empires. Also see Lanny Thompson, "The Imperial Republic: A Comparison of the Insular Territories Under U.S. Dominion After 1898," *Pacific Historical Review* 71, no. 4, (2002): 535-574, in which Thompson focused upon the colonies annexed in 1898 (Hawai'i, Puerto Rico, Philippines, and Guam), and investigated the varied racial and cultural dynamics that influenced and conditioned the respective governing regimes that emerged in each.

Where such work has been done, it often maintained the strict colony/metropole dichotomy and/or was typically devoted to the respective colonies/territories themselves.⁵³ This has allowed many of the interconnections of the imperial experience, both within and between the states and colonies, to be missed and underappreciated. However, this lacuna has been called attention to, in different fashions, by recent scholarship.

One of the first major works of this turn was *Colonial Crucible*.⁵⁴ This collection of valuable empirical studies, with contributions by such esteemed scholars as Alfred McCoy, Francisco Scarano, Anne Foster, and Paul Kramer, focused upon the formal American empire of the colonies and its inseparable relevance to, and interconnectivity with, the mainland states. What is more, these essays further highlighted many of the unappreciated influences that the colonial sphere had upon the metropole itself, bringing to the fore the importance of metropolitan and colonial relations for the development of the military, intelligence gathering, policing, drug policy, the census, and the management of the natural world and resources. In similar spirit, *Foreign Yet Domestic Liberties* very much aims to provide its own

⁵³ Invaluable works here have included: Pedro A. Cabán, *Constructing a Colonial People: Puerto Rico and the United States, 1898-1932*, (Boulder, Westview Press, 2009); Cesar J. Ayala. and Rafael Bernabe, *Puerto Rico in the American Century: A History Since 1898*, (Chapel Hill: University of North Carolina Press, 2007); Stanley Karnow, *In Our image, America's Empire in the Philippines*, (New York, Random House, 1989); Luis Francia, *A History of the Philippines: From Indios Bravos to Filipinos* (New York: The Overlook Press, 2010); Dookhan, *A History of the Virgin Islands of the United States*; William W. Boyer, *America's Virgin Islands: A History of Human Rights and Wrongs* (Durham: Carolina Academic Press, 2010).

⁵⁴ Alfred W. McCoy and Francisco A. Scarano (eds.), *Colonial Crucible: Empire in the Making of the Modern State* (Madison: University of Wisconsin Press, 2009).

complementary contribution through the lens of the ACLU's activities in the U.S. empire.

Other very notable works in this turn have included Paul Frymer's *Building an American Empire*, in which Frymer argues that the westward expansion and settlement by the United States should be seen as a process of white settler colonialism, largely directed through federally directed land policy.⁵⁵ There has also been Brooke Blower's work that has emphasized the continuities between earlier American outposts and factors during the period of westward expansion and the later overseas military bases.⁵⁶ Blower has also asserted that 'U.S. historians have not thought carefully enough about how to define foreign territory.'⁵⁷

However, whereas Blower basically defines all that was outside of the mainland states themselves as foreign,⁵⁸ Daniel Immerwahr has alternatively called for conceptualizing both the states and colonies/territories themselves as all being parts of one "Greater United States."⁵⁹ This much broader conceptual frame has informed his argument on the need of historians to see the underappreciated interconnections, interactions, and influences running between the all too often rigidly demarcated spheres of metropole and colony. As Immerwahr demonstrates in his book *How to Hide*

⁵⁵ Paul Frymer, *Building an American Empire: The Era of Territorial and Political Expansion* (Princeton: Princeton University Press, 2017)

⁵⁶ Brooke L. Blower, "Nation of Outposts: Forts, Factories, Bases, and the Making of American Power," *Diplomatic history*, Vol. 41, No. 3 (2017), 439-459

⁵⁷ *Ibid.*, 442.

⁵⁸ *Ibid.*, 443.

⁵⁹ Daniel Immerwahr, "The Greater United States: Territory and Empire in U.S. history," *Diplomatic History* 40, No. 3 (2016), 373-391.

an Empire, this allowed him to highlight such unappreciated developments emerging from state and colonial interactions such as treatments for hookworm, birth control, and developments in architecture and technology.⁶⁰

Paul Kramer had also argued earlier for something of a similar approach and deployed such a methodology in his book *The Blood of Government*.⁶¹ In this work he demonstrated that the highly contested, fluid, and unstable configurations of race were not strictly constructed either in the colony of the Philippines or in the metropole of the states but, rather, between the dynamic and contingent interactions across both spaces.

Another key work in this turn has been A.G. Hopkins' *American Empire: A Global History*.⁶² Hopkins set out to better integrate the United States into global history and, in particular, to better situate the U.S. and its empire in relationship with that of other contemporaneous European empires.

Especially compelling and relevant in this work was Hopkins' account of the United States' rule over its formal, overseas colonies following the 1898 Spanish-American War, and specifically on how political party contestation in the metropole around the issue of free trade versus protectionist tariffs resulted in a distinctly capricious and unstable form of American imperial rule over the colonial periphery.

This study further contributes to this turn in the historiography by bringing the attributes of the imperial imaginary framework to bear on the

⁶⁰ Immerwahr, *How to hide an empire*.

⁶¹ Paul A. Kramer, *The Blood of Government: Race, Empire, & the Philippines* (Chapel Hill: University of North Carolina Press, 2006).

⁶² A.G. Hopkins, *American Empire: A Global History* (Princeton: Princeton University Press, 2018).

subject of the U.S. colonial empire. This is a framework is ideal for investigating and interrogating the agency and perspectives of actors who happen to bridge the metropolitan and colonial spheres. In fact, the imperial imaginaries framework is essential for grasping how metropolitan based actors like the ACLU, however critical of or in opposition to colonial empire they might have been, remained inextricably embedded within said American empire.

Sources and Methodology

Foreign Yet Domestic Liberties draws from a wide variety of primary sources. The core of the material utilized comes from the American Civil Liberties Union Papers stored in the Seeley G. Mudd Library at Princeton University. The extensive material there relating to the ACLU's engagement with the U.S. colonial empire during the organization's first two decades of existence (i.e., the central preoccupation of this study) has largely remained neglected by scholarship on the ACLU and civil liberties. Indeed, with the exception of scholarship devoted to or touching upon the U.S. Virgin Islands and the 1937 Ponce massacre in Puerto Rico, this material has been greatly underutilized. Among the contributions of this study then is as a necessary work of excavation that documents this long unappreciated engagement by the ACLU in the U.S. colonies.

This store of material is rich and varied. There is the voluminous correspondence, both internal and external to the ACLU, which in many ways makes up the heart of the material consulted. The correspondence of the

ACLU is vital for grasping such essential aspects, details, and issues as the basic operations of the Union itself; their internal deliberations; where the power, decision-making, and agency within the organization lay and/or varied over time; how they related with actual or prospective allies, contacts, individual actors, organizations, and institutions; and, inversely, how they related to those they had more antagonistic relations with. Internal memoranda generated within the organization has also been consulted. This source material is critical for determining how the ACLU and their imperial imaginary perceived the U.S. colonial empire and its constituent elements; as well as the accompanying means and goals they developed and pursued. Naturally, as the ACLU became renowned for their litigation work, legal documentation such as briefs, legal records, opinions, and other related material are present in the archive and duly consulted throughout this study. These are also critical for ascertaining the priorities, goals, and/or perceptions of the ACLU in their engagement with the colonial empire.

Just as essential for the ACLU were their publicity efforts. Consulted and utilized throughout this study are ACLU press releases and pamphlets, as well as their efforts, largely via correspondence, to secure favorable coverage by other news publications. Relatedly, the ACLU papers contain a robust selection of press and other relevant publication clippings and copies. These are essential to further account for the ACLU's own distant and limited grasp and understanding of conditions and developments within the respective colonies, as well as what kinds of issues, occurrences, conditions and/or actors piqued their interest and/or involvement in the first place.

They also happen to provide valuable historical evidence, information, and detail in and of their own right.

Another essential source was ACLU executive director, Roger Nash Baldwin's extensive interviews he provided for the Columbia University Oral History Project. While they must be treated with caution in terms of the potential for selective memory and willful distortion (they were recorded intermittently between November 1953 and January 1954 and were hence at significant remove of time from the events concerned with here), they provide essential accounts and details by the organization's most prominent individual regarding the ACLU's interests and involvement in the U.S. colonial empire. They also provide important, if often indirect, evidence of the ways in which Baldwin's own extra-ACLU activities (of which there were many) overlapped with, influenced, and/or were in tension with his role as ACLU executive director – not least of which were his personal anti-imperialist activities.

The National Association for the Advancement of Colored People's (NAACP) papers were also consulted for this study. This is because, as will be seen, there were many occasions in which either their interests and involvement in the colonial overlapped with the ACLU or both organizations cooperated with one another. Consulted here were the relevant materials of correspondence, internal memoranda, press releases, and other publicity. Additional sourcing consulted included the *New York Times* and *The Nation*. The former because by the interwar years the *New York Times* was essentially the paper of record within the United States and consulted by a large segment of the American public, including the ACLU, its leadership,

members, and other civil liberties supporters. The latter, because it was the only relatively prominent and nationwide periodical concerned with, as well as critical of, the U.S. colonial empire. Also relevant here was the fact that the ACLU leadership had relations and even (as will be seen) worked on occasion with the editors of *The Nation*, Oswald Garrison Villard (who also owned the paper) and Ernest Gruening. This provides valuable sourcing to further grasp the scope and nature of the ACLU's perception and understanding of the U.S. colonial empire.

A methodological issue in need of addressing before proceeding is the application of the imperial imaginary framework to an organization like the ACLU – that is, to a collective, rather than an individual, actor. It is worth noting that when Duncan Bell applied his imperial imaginaries framework, it was to individual actors.⁶³ This does not, however, negate the framework's application here, it just requires careful qualification. Despite being a collectivity that plainly held a variety of views and priorities, the leadership of the early ACLU evidently shared enough in common to champion the cause of civil liberties, and this cause was undoubtedly conditioned by their metropolitan basis. Additionally, (as already pointed out) this was a leadership that largely had a shared profile of being white, male, and northeastern U.S. based. There are other factors that focus the application of the framework here. First, (as will be further detailed in Chapter 1) decision-making within the ACLU was largely centered on the New York-based

⁶³ Duncan Bell, *Reordering the World*.

Executive Committee, with a National Committee that provided only periodic, albeit relevant, oversight and input. The Executive Committee itself was dominated by the person and priorities of Roger Nash Baldwin. And while his prominence and control were not absolute, if any individual's imperial imaginary can be said to have been of most relevance and significance to the early ACLU, then it was undoubtedly Baldwin's. Careful consideration will be exercised in acknowledging the role and influence of Baldwin's own imperial imaginary upon the ACLU, while not conflating the former with the latter.

Foreign Yet Domestic Liberties is separated into two parts. Part I covers the ACLU's interest and involvement in the U.S. colonial empire during the first decade of the organization's existence throughout the 1920s; Part II picks up from 1929 and carries on through the Great Depression and New Deal of the 1930s until the United States' entry into the Second World War. The first section is made up of three chapters. The first chapter breaks down the origins, key figures and personnel, motivations, and structure of the ACLU itself. This chapter then provides a broad and brief overview and analysis of how the ACLU and the cause of civil liberties evolved between 1920 and 1929 within the metropolitan states – all the while also touching upon how this intersected and related to their engagement with the U.S. colonial empire. This first chapter then concludes by discussing some of the essential preconditions and contexts of the U.S. colonial empire that were of foundational importance to the ACLU in their engagement within this sphere. In particular, that of the series of infamous Supreme Court decisions known as the Insular Cases which established the doctrine of incorporation.

Chapter 2 is devoted to the ACLU's interest and involvement in the U.S. Virgin Islands. The ACLU's engagement with the Virgin Islands happened to be their earliest, most extensive, and consistent involvement in the American colonial empire during the first decade of the organization's existence. This chapter shows how this involvement began upon the personal initiative of executive director Roger Baldwin, who got the organization help a Virgin Islands-based ally in attaining a printing press. From this minor collaboration onwards, the ACLU's involvement expanded. In doing so, the ACLU initially made little distinction within their imperial imaginary of the U.S. Virgin Islands being a colony as distinct from that of the metropolitan sphere. They accordingly framed their civil liberties commitments within the same kind of universalism as they did within the metropolitan states. However, as this chapter will demonstrate, as the ACLU's engagement with the U.S. Virgin Islands increased, they determined that the most immediate and feasible means by which they could secure more robust civil liberties protections was to join a preexisting movement calling for civil government in the form of an organic act. In doing so, though, the ACLU pragmatically compromised the universalism of their initial orientation toward the Virgin Islands, as the form of civil liberties protections that could be secured through such a route was much more particular to the colony, as well as more insecure. Furthermore, by the second half of the decade, the ACLU began to convey evidence that their engagement was resulting in their imperial imaginary identifying the Virgin Islands much more explicitly within the colonial sphere than they had initially done so.

Chapter 3 addresses the other, much more limited, intermittent, and inconsistent interests and involvement of the ACLU in Pacific Ocean based colonies of the American empire during the 1920s. Throughout this period, this was effectively limited to the U.S. Navy-ruled eastern Samoan Islands and the Philippines. The eastern Samoan Islands of Tutuila and Manu'a fell under a U.S. Navy controlled regime.⁶⁴ In the second half of the decade, the ACLU supported a strategic litigation challenge that represented an ambitious and tangible attempt to secure the kind of robust and universal civil liberties protections throughout the U.S. colonial empire that they also championed within the metropole. However, as additionally argued in Chapter 2, the ACLU's imperial imaginary obscured from them additional, more provocative, implications of this effort – not least of which was the fact that, as the eastern Samoan Islands were not formal territorial possessions of the United States at that time, such an effort might double as an indirect attempt to formally annex the islands to the United States. While this effort ultimately proved unsuccessful, it nonetheless demonstrated that within their imperial imaginary they perceived of a part of the informal empire as essentially synonymous with the formal, and, in turn, sought to include both within a civil liberties dispensation that would be equally operative throughout the metropolitan and colonial realms alike.

⁶⁴ For the purposes of this study, the Samoan Islands under American naval control will be referred to as the eastern Samoan Islands of Tutuila and Manua'a until the U.S. acquisition of the islands was formalized by Congress in 1929. Only thereafter will they be referred to by the more familiar designation as American Samoa. This is not meant to be taken as a form of implicit sanctioning of this development by this study but rather for the purpose of clarity and to avoid an inadvertent teleological understanding of this development. See: Kennedy, *The tropical frontier: America's South Sea colony*, 173.

In the case of the Philippines, the ACLU addressed the issue of independence within the colonial sphere for the first time. Chapter 3 will demonstrate that the ACLU leadership was divided on how to approach this issue, with members of the Executive and National Committees split between those, like Roger Baldwin, who wanted to explicitly support Philippine independence, versus those who opposed doing so on various grounds. It is argued that over the course of the decade, via the periodic occasions in which they addressed the issue, they eventually came to formulate a compromise position – that they would merely defend the right of advocacy for independence – compatible enough with their more metropolitan oriented civil liberties mandate.

Part II of *Foreign Yet Domestic Liberties* concerns itself with the ACLU's interest and involvement in the U.S. colonial empire during the Great Depression and New Deal of the 1930s. In doing so, Part II opens with a preface that briefly provides an account of the ACLU's simultaneous engagement in the metropolitan states and colonial periphery of the United States over the course of this period. Two developments in 1929 were important contexts for the ACLU's engagements with the empire as they entered the new decade: Roger Baldwin's organizational expansion plan and the onset of the Great Depression. Baldwin's expansion plan of 1929 proved to be of significant relevance to the ACLU's engagement with the U.S. occupation of Haiti later that year (the subject of Chapter 4). Among the proposals Baldwin put forward (albeit unsuccessfully) was that the ACLU adopt an expressly anti-imperialist stance.

Chapter 4 demonstrates that because of Baldwin's anti-imperialist commitments he pushed the ACLU to engage with the U.S. occupation of Haiti. And while the ACLU evidently regarded Haiti as foreign in a formal sovereignty sense, they nonetheless proceeded on to convey an underlying tension between the metropolitan derived universalism of their civil liberties commitments, on the one hand, and an increasingly open anti-imperialist orientation, on the other. Chapter 4 demonstrates that the ACLU proved willing to compromise on the former for the sake of an unapologetic anti-imperialist stance calling for the full restoration of sovereign independence to Haiti. This chapter demonstrates that this example of overt anti-imperialism nonetheless proved short-lived. With the onset of President Roosevelt's Good Neighbor policy, the ACLU eventually came to reconcile themselves with the ongoing U.S. financial control regime in Haiti in exchange for a scheduled withdrawal of the U.S. military, as the latter removed the most egregious and explicit aspect of American imperial control over Haiti. This indicated that, as far as their imperial imaginary was concerned, any ongoing preoccupation with the American informal empire essentially ceased.

The last three remaining chapters of *Foreign Yet Domestic Liberties* are concerned with the three formal colonies of the U.S. empire that the ACLU devoted the most amount of attention to during the 1930s: the U.S. Virgin Islands, the Philippines, and Puerto Rico. Chapter 5 demonstrates that, within the U.S. Virgin Islands, there was a sharp decline in the advocacy for civil government reform following the 1927 citizenship act in wake of the

devastation wrought by the San Felipe Segundo hurricane in 1928 and the onset of the Great Depression in 1929. However, from 1931 onwards, with the replacement of the U.S. Navy controlled government by a civilian governed one, an increasing erosion of the ACLU's previous antagonistic relations occurred with respect to colonial state actors there. So much so that when the prospects for civil government reform improved by the end of 1932, the ACLU sought this legislation almost exclusively in cooperation with colonial state actors. This chapter argues that this inclination to work with colonial state actors served to condition and compromise them in their advocacy, contributing to their imperial imaginary increasingly identifying with extant American colonial discourses and rule regarding the Virgin Islands. Chapter 5 argues and demonstrates that this development was most evident in their final compromise with the resulting organic act of 1936.

Chapter 6 is on the ACLU's engagement with the Philippines between 1930 and 1941. This chapter demonstrates that during the first half of the decade, the ACLU sought a litigation challenge to the Philippine Sedition Act by providing legal aid to Filipino Communist party members who had been charged under the latter. When the litigation effort had faltered by 1933, the ACLU began to rely upon the newly appointed governor-general (a former metropolitan-based civil liberties ally) as their main intermediary. Chapter 6 argues that such reliance left the imperial imaginary of the ACLU even more susceptible to the discourses and influence of colonial state actors and institutions. With the inauguration of the Philippine Commonwealth in 1935, Chapter 6 demonstrates how this newfound status confounded and

complicated the imperial imaginary of the ACLU in their apprehension of the distinctions of the domestic, foreign, colonial, and metropolitan. In doing so, this chapter argues that, despite the ACLU's nominal support for independence, their proceeding conduct and messaging ended up inadvertently providing unwelcome reminders of the islands' ongoing colonial position.

The seventh and final chapter of this study is concerned with the ACLU's engagement in Puerto Rico. Once again, the issue of independence arose. The ACLU's position regarding Puerto Rican independence during the early 1930s amounted to no more than expressions of support for independence in private correspondence. It was only with the escalation of hostilities between colonial state authorities and the Puerto Rican Nationalist Party from 1936 on that the ACLU began to tangibly engage with Puerto Rico. In doing so, the ACLU proved themselves more willing there than elsewhere in the empire to incur antagonistic relations with colonial state authorities in their commitment to check abuses of colonial state power. Chapter 7 argues that this was largely due to the influence of local Puerto Rican contacts and allies who provided a critical countervailing influence upon the ACLU's imperial imaginary. This more oppositional stance toward colonial state actors and institutions, however, proved to be short lived.

In those final years of the interwar period, Chapter 7 demonstrates that what remained of the ACLU's interest was directed toward resolving the status of Puerto Rico. However, the ACLU by this point no longer worked closely with Puerto Rico based actors but instead with metropolitan based

ones (both non-state and state). This meant that whatever propositions and means developed would undoubtedly be the products of metropolitan based imperial imaginaries that received little input from those based in colonial Puerto Rico. When these efforts had faltered on the eve of the Second World War, the ACLU were left at a loss about how to go forward. By this point, the ACLU had then essentially resigned themselves to accepting for Puerto Rico the particularistic, insecure, and inefficacious civil liberties dispensation of the colonial sphere – a dispensation which starkly contrasted with the much more universalist, robust, and durable form of civil liberties increasingly gaining a foothold within the metropolitan realm of the U.S. empire. Hence, they inadvertently reinforced the metropolitan and colonial dichotomy of the colonial empire.

Chapter 1: The ACLU and Civil Liberties Between 1920-29: Metropolitan and Constitutional Contexts

Introduction

While the ACLU's interest and involvement in the colonial empire coincided with the first year of the organization's existence, their main field of interest and activity remained the U.S. metropolitan states. To adequately grasp the scope and nature of the organization's engagement with the U.S. colonial empire it is then necessary to first understand the origins, makeup, and evolution of the ACLU within the mainland states.

In doing so, this chapter first sets out the ACLU's origins during the First World War in the form of its precursor organization, the National Civil Liberties Bureau (NCLB), and the emergence of the novel cause of civil liberties. Next, the relevant membership and personnel of the ACLU are discussed. Especially notable here was ACLU executive director, Roger Nash Baldwin, who was the most important driver of ACLU policy and priorities over this period and is, accordingly, discussed in the most detail. While doing so, Baldwin's individual engagements with the issues of empire and anti-imperialism outside of the ACLU are also discussed. As the organization itself was also very much dependent upon the actions, decisions, influence, and priorities of other key members, they are duly discussed here as well.

This chapter then provides a broad overview and analysis of how the ACLU and the cause of civil liberties evolved between 1920 and 1929. Doing so provides the necessary context for their contemporaneous involvement in

the U.S. colonial empire. Discussed and demonstrated is how the ACLU began to shift from initially being an unpopular, assertively pro-labor, activist, and largely anti-statist organization into becoming a more legal defense and strategic litigation oriented one that was more reconciled with formal state institutions. Throughout the course of this account, it will be highlighted how such developments had a bearing upon and/or related to the ACLU's simultaneous engagement with the U.S. colonial empire.

The final section of this chapter sets out the necessary constitutional contexts of the U.S. colonial empire that the ACLU confronted. Most foundational here were the series of Supreme Court decisions that followed in the aftermath of the Spanish-American War of 1898, known as the Insular Cases, and the resulting doctrine of incorporation. For these cases resulted in a bifurcation of the constitutional statuses of the U.S. colonies that, in turn, facilitated the great variety of governing regimes throughout U.S. colonial empire. This was of great relevance to the ACLU as the doctrine of incorporation proved to be a critical context and conditioning factor for the Union's interest and involvement in the U.S. colonial empire.

First World War Origins of the ACLU

Contrary to popular imagination, there were few broad based and robust protections for civil liberties throughout the United States prior to the First

World War.⁶⁵ And while there were notable precedents and examples of defenders and advocates of free speech such as the free speech fights of the International Workers of the World (IWW), Theodore Schroeder and his Free Speech League (the most relevant prewar analogue to the ACLU), and the controversies surrounding advocacy for birth control by figures such as Margaret Sanger and Emma Goldman, there was no organization devoted to the broader and more novel cause of civil liberties.⁶⁶ It was the severe wave of domestic suppression following the American entry into the First World War that was the catalyst for the formation of just such an organization. Most emblematic of this was the Espionage Act of June 15, 1917 (as well as its later and even more suppressive 1918 amendment, the Sedition Act).⁶⁷ When combined with preexisting state-level legislation along such lines, what resulted was nothing less than one of the most sweeping waves of domestic suppression of free speech, the press, and assembly that the United States had ever experienced.⁶⁸

⁶⁵ As briefly acknowledged in the introduction, the Supreme Court had long interpreted the Fourteenth Amendment in so narrow a fashion that the Bill of Rights were not deemed as binding upon state governments. At the state level, the doctrine of police powers gave the respective states near unlimited scope to regulate the economy, society and morality outside of whatever limits had been self-imposed via the respective state constitutions. See: Gary Gerstle, *Liberty and Coercion: The Paradox of American Government from the Founding to the Present* (Princeton: Princeton University Press, 2018): 3. And while there were free speech, press, and assembly protections at the federal level due to the First Amendment, not even these were completely secure, as the examples of the Comstock Act (prohibiting obscene publications) and customs bans on controversial literature demonstrated. See: Reuel E. Schiller, "Free Speech and Expertise: Administrative Censorship and the Birth of the Modern First Amendment," *Virginia Law Review* 86 no. 1 (2000): 1-102, 38-43.

⁶⁶ Eric Foner, *The Story of American Freedom*, (New York: W. W. Norton & Company, 1998):164-168; Rabban, *Free Speech in its Forgotten Years*, 23-127.

⁶⁷ Both were particularly concerned with preventing attempts to disturb the proceeding of the draft and the military operations of the war itself. Yet the language of both laws was so broad that they gave officials great scope and latitude in terms of interpretation and application. See: Paul L. Murphy, *World War I and the Origin of Civil Liberties in the United States* (New York: W.W. Norton & Company, 1979 1979): p. 80, p. 83.

⁶⁸ At least two thousand prosecutions resulted from the Espionage Act alone. See: Murphy, *World War I and the Origin of Civil liberties in the United States*, 80.

Such was the context in which an embryonic civil liberties movement grew. This emerged from within the ranks of the American Union Against Militarism (AUAM), an antiwar and internationalist organization established prior to American entry into the war by a group of veteran Progressive Era reformers.⁶⁹ With the American declaration of war, a group of AUAM members, led by the most antiwar and internationalist of its leadership, Crystal Eastman, formed the National Civil Liberties Bureau (NCLB) on October 1, 1917. As they announced shortly thereafter, the newfound organization sought “the maintenance in war-time of the constitutional rights of free speech, free press, peaceful assembly, and liberty of conscience and freedom from unlawful search and seizure.”⁷⁰ Also prominent among their concerns were the rights of conscientious objectors (C.O.s).⁷¹ The choice of attaching the term “civil liberties” to the organization at this point was both novel and significant. For all of the term’s seemingly domestic roots, it had actually emerged via the transatlantic internationalism that Eastman was so committed to.⁷² As John Fabian Witt has highlighted, the appropriation of the term civil liberties came to be valuable in the long run as it had just

⁶⁹ David M. Kennedy, *Over Here: the First World War and American Society* (Oxford, Oxford University Press, 1980): 33; John F. Witt, “Crystal Eastman and the Internationalist Beginnings of American Civil Liberties,” *Duke Law Journal* 54, (2004): 705-763, 724.

⁷⁰ “National Civil Liberties Bureau,” December 1917, ACLU Records and Publications. Reel 90. Also see NCLB pamphlets: “Constitutional Rights in Wartime,” July 1917, ACLU Records and Publications. Reel 90; “The Conscientious Objector: A Special Statement by the Civil Liberties Bureau,” August 1917, ACLU Records and Publications. Reel 90.

⁷¹ Samuel Walker, *In Defense of American Liberties: A History of the ACLU* (New York: Oxford University Press, 1990): 19-20.

⁷² While the term “civil liberty” was a well-established phrase within American political discourse, “civil liberties” in the plural was entirely of recent import. The phrase had first gained notice across the Atlantic with the British National Council for Civil Liberties. Crystal Eastman’s husband, Walter Fuller, also happened to be closely associated with the latter organization. See: Witt, “Crystal Eastman and the Internationalist Beginnings of American Civil Liberties,” 748.

enough of the ring of familiarity to be claimed traditional, while, in reality, it was also both novel and, given its plural phraseology, potentially expansive enough to facilitate further creative appropriation of an increasing repertoire of causes and commitments.⁷³

A severe decline in Crystal Eastman's health happened to coincide with the ascent of Roger Baldwin within the NCLB. Throughout the course of the war the NCLB mainly preoccupied themselves with the task of addressing the influx of inquiries and requests for legal advice, as well as providing legal defense aid in matters touching upon conscription and prosecutions filed under the Espionage Act – establishing a network of 150 cooperating attorneys throughout the country while doing so.⁷⁴ However, these efforts resulted in little to no success. The NCLB also increasingly incurred antagonistic relations with the government, which climaxed with federal agents raiding NCLB offices.⁷⁵

Despite the largely disappointing results of the NCLB's efforts during the war, the tumultuous events of 1919 – which included a vast wave of violent labor conflicts, race riots, bombings, and the notorious Palmer raids – all served as evidence of the need for a peace time organization, analogous to the NCLB, that would be devoted to the advocacy and protection of civil

⁷³ Ibid., 748-9.

⁷⁴ Walker, *In Defense of American Liberties*, 24; Laura Weinrib, *The Taming of Free Speech: America's Civil Liberties Compromise* (Cambridge: Harvard University Press, 2016): 53.

⁷⁵ Robert C. Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union* (New York: Columbia University Press, 2000): 78.

liberties.⁷⁶ Accordingly, on January 19, 1920, the American Civil Liberties Union was formed.⁷⁷

Roger Nash Baldwin and the American Civil Liberties Union

Legal scholar and historian Laura Weinrib has highlighted the challenge of distinguishing the “institutional voice of the ACLU from that of its various constituents.”⁷⁸ Nonetheless, while nominally comprised of its Executive Committee, National Committee, and a broader base of dues paying membership, the overwhelming majority of policy and decision making were made by the Roger Baldwin dominated Executive Committee.⁷⁹ The National Committee was essentially, as Samuel Walker has asserted, little more than a “letterhead group” of sixty noteworthy reformist figures “created to give the ACLU an air of respectability,” which nevertheless, on rare occasions, did decisively weigh in on ACLU policy direction.⁸⁰

It has long been understood that throughout the first three decades of its existence, the ACLU was largely dominated by the person and priorities of its executive director, Roger Nash Baldwin. Born on January 21, 1884, Baldwin was brought up in a wealthy Massachusetts family with a proud reformist lineage. Following his graduation from Harvard, Baldwin based

⁷⁶ Walker, *In Defense of American Liberties*, 24; Weinrib, *The Taming of Free Speech*, 42-46.

⁷⁷ *Ibid.*, 47.

⁷⁸ Laura Weinrib, “The Liberal Compromise: Civil Liberties, Labor, and the Limits of State Power, 1917-1940,” PhD. Diss., Princeton University (2011): 1.

⁷⁹ Walker, *In Defense of American Liberties*, 67.

⁸⁰ *Ibid.*

himself in St. Louis, Missouri, where for the following decade he devoted himself to social work and other Progressive Era reform causes and organizations.⁸¹ Over the course of these experiences, Baldwin came to be greatly disillusioned progressive reformism due to the often disappointing, as well as occasionally counterproductive, results of the reform causes he involved himself in such as juvenile court reform and the adoption of initiative, referendum, and recall processes.⁸² It was also due to the increasing influence upon him of Emma Goldman, whose brand of anarchism appealed to Baldwin in the midst of his increasing disillusion with incremental reform sought through formal state institutions. The war, alongside Baldwin's growing anti-statism and disillusion with mainstream reform motivated his decision to move to New York and join the AUAM in 1917. Once there his organizational ability made its mark. However, on September 12, 1918, Baldwin was served notice to register for the draft, which he refused as a conscientious objector, and was subsequently sentenced to eleven months in prison, serving nine in total and was released on July 19, 1919.⁸³

By the time Baldwin joined with other former NCLB members in 1920 to establish the ACLU, he had essentially adopted something of an anarchist-inspired, anti-statist attitude toward reform.⁸⁴ He was determined to see that

⁸¹ Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 27.

⁸² Peggy Lamson, *Roger Baldwin: Founder of the American Civil Liberties Union* (Boston: Houghton Mifflin, 1976): 47; Walker, *In Defense of American Liberties*, 32-37.

⁸³ Lamson, *Roger Baldwin*, 113.

⁸⁴ Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 125-126; Walker, *In Defense of American Liberties*, 46, 52-53; Weinrib, *The Taming of Free Speech*, 105-107. In fact, Baldwin went so far as to

the Union prioritize aiding organized labor's efforts at building up their own strength via direct action in the name of such civil liberties as freedom of speech and assembly; as these were deemed essential for the attainment of peaceable change in the long run.⁸⁵ Yet it has also long been noted that the committed civil libertarian Baldwin directed the ACLU as something of an autocrat.⁸⁶ While nominally subject to the oversight and approval of the Executive Committee (a body he had largely recruited to begin with) Baldwin tended to get his way through such tactics as withholding the introduction of initiatives until weekly committee attendance were better aligned with his purposes or by taking up cases and commitments unilaterally, and only then gaining approval for them retroactively.⁸⁷ Also of note, even at this most state-sceptic phase of his life, Baldwin continued to maintain a partiality toward trying to work through influential state actor contacts when opportunities arose – presumably a byproduct of his quite entitled background.⁸⁸

briefly join the International Workers of the World (IWW) after his release from prison. Walker, *In Defense of American Liberties*, 46. An embrace of anarchistic ideas was a common proclivity of dissident thinkers and activists during the era. And even if Baldwin's ideas and commitments often seemed inconsistent here, this was only in line with many other self-identified anarchist and anarchist adjacent actors and organizations. As historian Tim Harper has usefully pointed out in his discussion of its appeal in contemporaneous Asia, anarchism was often "encountered through a broad spectrum of thought, as a path not a doctrine, and – for its followers – as the antithesis of a creed or dogma." See: Tim Harper, *Underground Asia: Global Revolutionaries and the Assault on Empire* (Cambridge: Harvard University Press, 2021): 86, 87-90.

⁸⁵ Walker, *In Defense of American Liberties*, 46, 52-53.

⁸⁶ Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 126-7; Walker, *In Defense of American Liberties*, 69.

⁸⁷ Walker, *In Defense of American Liberties*, 67; Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 151.

⁸⁸ Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 126-127; Weinrib, *The Taming of Free Speech*, 125.

An irrepressible coalition builder, and one who fancied himself something of an all-around man of the left, the scope of Baldwin's reformist and activist activity was not limited to the ACLU. And it is hardly immaterial to the ACLU's engagement with the U.S. colonial empire that the executive director's extracurricular activities touched upon the issues of empire and imperialism abroad, and that he proactively participated in anti-imperialist causes and organizations. During the First World War and his subsequent prison term, Baldwin became acquainted with Indian nationalists and, under their influence, committed to the cause of Indian independence.⁸⁹ Upon completion of his prison term, Baldwin involved himself with an association known as the Friends of Freedom for India.⁹⁰

Another relevant organization that Baldwin helped found in 1920 was the International Committee for Political Prisoners (ICPP). Initially motivated to address situations arising from the deportation of radical and dissident figures during the notorious Palmer Raids of 1919 and 1920, the ICPP concerned themselves with the rights and conditions of deportees and other political prisoners abroad.⁹¹ While serving as the organization's chairman, Baldwin corresponded with governmental officials, solicited funds for the relief of prisoners, published a news bulletin, and issued reports on the conditions of political prisoners in various countries.⁹² The ICPP also sought

⁸⁹ Details are scarce on Baldwin's participation here in the extant scholarship and in need of further research. Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 169.

⁹⁰ *Ibid.*, 169-170.

⁹¹ *Ibid.*, 178.

⁹² *Ibid.*, 178-180. Roger Baldwin to Friends of ICPP, 12 May 1927, Papers of Roger Nash Baldwin, Reel 9, Box 11; Roger Baldwin to Friends of ICPP, 10 August 1927, Papers of Roger Nash Baldwin, Reel 9, Box 11, Reel 9; Roger Baldwin to Friends of ICPP, 7 November 1927, Papers of Roger Nash Baldwin, Reel 9, Box 11.

and succeeded in having the contents of their reports printed in such publications as *The Nation*.⁹³ As the ICPP not only concerned themselves with prisoners in states such as France, Hungary, Bulgaria, and (however inconsistently) the Soviet Union but also those within colonial possessions like India, this activity also touched upon Baldwin's concern with the issues and dilemmas of empire.⁹⁴

However, in many ways the culmination of these pursuits and activities on the part of Baldwin was his eventual participation in the 'First International Congress against Colonialism and Imperialism' at the Palais d'Egmont in Brussels between 10 and 15 of February, 1927, at which was established the League Against Imperialism and Colonial Oppression (LAI).⁹⁵ A truly ambitious transnational, anti-imperialist initiative that saw the presence of noteworthy participants from China, India, Indonesia, South Africa, Algeria, and Egypt. While the prime movers behind the conference and organization were Communist and Comintern members, at its outset the LAI was made up of a coalition of communists, socialists, and anti-colonial nationalists – all of whom were united in their internationalist commitment

⁹³ "Civil Liberties in Poland," 20 April 1927, *The Nation*; "Violence in Bulgaria," 30 March 1927, *The Nation*.

⁹⁴ Also of relevance was Baldwin's role as executive secretary of the American Fund for Public Service or, as it was more popularly known, the Garland Fund, a private, philanthropic foundation. The Garland Fund financed a great deal of leftist and reformist literary, educational, and legal defense projects (including ACLU and NAACP work) over the course of its ten-year existence. Not least of its initiatives was the founding of Vanguard Press which published notable anti-imperialist literature during the decade. See: Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 130-131; Walker, *In Defense of American Liberties*, 70-71.

⁹⁵ Michele Louro, Carolien Stolte, Heather Streets-Salter and Sana Tannoury-Karam, "The League Against Imperialism: Lives and Afterlives." In Michele Louro, Carolien Stolte, Heather Streets-Salter and Sana Tannoury-Karam (ed.), *The League Against Imperialism: Lives and Afterlives* (Leiden, Leiden University Press, 2020): 17-18; Markmann, *The Noblest Cry*, 408.

to anti-imperialism.⁹⁶ As the manifesto of the Brussels Congress asserted: “representatives of the oppressed people all over the world and the representatives of the proletariat of the imperialist countries have entered into a safe and fraternal alliance for the protection of their elementary rights and to safeguard their free development.”⁹⁷ For Baldwin, it was precisely this vision of a transnational alliance between metropolitan-based working classes and anti-imperialist activists within the colonies – all of whom sought a world freed from both capitalist and imperial exploitation – that appeared to motivate his involvement. As Baldwin publicly asserted in the pages of *The Nation*: “[I]n the union of the workers of the imperialist countries and the natives of the colonies a common war can be waged against common exploiters.”⁹⁸ Yet, from the outset, the LAI struggled to hold its broad and varied coalition together due to tensions and distrust from among its Communist and non-Communist members.⁹⁹ Nonetheless, Baldwin’s active participation within the LAI as a member of its executive committee between 1927 and 1930 can be seen as the high point of his extracurricular anti-imperialist activities during the interwar years.¹⁰⁰

⁹⁶ Under researched for decades, scholars have increasingly devoted more attention to this remarkable event and organization and has accordingly been charting its significance and legacies for internationalism, anti-imperialism, and transnational activism. See: Michele Louro, Carolien Stolte, Heather Streets-Salter and Sana Tannoury-Karam (ed.), *The League Against Imperialism: Lives and Afterlives* (Leiden, Leiden University Press, 2020); Michele L. Louro, *Comrades Against Imperialism: Nehru, India and Interwar Internationalism* (Cambridge: Cambridge University Press, 2018).

⁹⁷ “To all oppressed peoples and classes! Manifesto of the Brussels Congress against Imperialism,” Appendix to “The Brussels Congress: Against Imperialism and for National Independence: Held from 10th to 15th February 1927 at the Palais d’Egmont, Brussels: Abstract of the speeches, chief decisions and resolutions,” Undated (Likely sometime in the Spring of 1927), Papers of Roger Nash Baldwin, Reel 8, Box 8.

⁹⁸ Roger Baldwin, “A League of Nations Oppressed,” 13 April 1927, *The Nation*.

⁹⁹ Louro, *Comrades Against Imperialism*, 141-142.

¹⁰⁰ Ibid., 68, 116, 141-142, 175; Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*; Markmann, *The Noblest Cry*, 408.

Given such circumstances, therefore, it is hardly surprising that (as will be demonstrated in the proceeding chapters) Baldwin periodically sought to push the ACLU toward proactive support for independence for certain U.S. colonies and strike anti-imperialist stances with respect to the U.S. empire. That he was ultimately unable to do so highlights the fact that for all of Baldwin's dominance of the early ACLU, there nonetheless were significant limits as to what direction he could take the Union, especially in matters relating to the colonial empire and anti-imperialism, that did not have to carry consensus support.

Baldwin's overbearing directorship notwithstanding, the fact that he did not always get his way with the organization points to the importance of the roles, influence, and actions of other notable figures within the early ACLU. Such included the ACLU Chairman Harry Ward, a leading figure in religious and social reform, and head of the Northwestern University Settlement, who had grown significantly more radical and pro-labor in his activism by the 1920s.¹⁰¹ While his role as ACLU Chairman did not entail anything resembling the day-to-day operational responsibilities of Baldwin, Ward nonetheless was an important voice and actor within the ACLU over the course of its first 20 years. Furthermore, (as will be shown) he also appears to have shared some of Baldwin's anti-imperialist sensibilities. Two other key figures in the early ACLU were the well-established lawyers, Albert De Silver and Walter Nelles who served as, respectively co-director and

¹⁰¹ Walker, *In Defense of American Liberties*, 21, 101; Weinrib, *The Taming of Free Speech*, 127.

general counsel to the organization. Like Baldwin, they were holdovers from the NCLB experience. Nelles, however, contrasted with Baldwin in regard to the law and the courts; while also skeptical of them, he nevertheless tended to advocate for a more conventional legal defense approach to be maintained by the ACLU.¹⁰² He also, in general argued for keeping the scope of the ACLU's activities and interests much more narrow and focused; which included, as will be seen, Nelles' calls for keeping the ACLU's involvement in the U.S. empire more limited.

Other key personnel included ACLU field secretary Lucille Milner who, nearly as much as Baldwin, provided a consistent thread of continuity within the organization, and took up much more initiative, particularly in dealing with correspondents, than her official designation might suggest.¹⁰³ Another important member to mention for present purposes was Forest Bailey. While ultimately not a central figure to the whole of the ACLU's evolution, there nonetheless was a brief period from late 1926 and till the end of 1927 in which, as will be shown, Bailey served as executive director of the ACLU while Baldwin was on extended leave in Europe pursuing his extra-ACLU activities (including attending the Brussels conference that established the LAI). It was at this time that the more moderate Bailey exercised a great deal of importance and influence on the interests and initiatives of the ACLU.¹⁰⁴

¹⁰² Ibid., 53.

¹⁰³ Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 122.

¹⁰⁴ Ibid., 184-185.

The Experiences and Evolution of the ACLU During their First Decade

The Early Years of the ACLU

In the first year of their existence, the ACLU claimed, in what were likely overinflated numbers, to have a thousand correspondents and eight hundred cooperating attorneys.¹⁰⁵ In these early years, the organization was largely made up of a combination of veteran Progressive Era reformers, social workers, religious reformist figures, pacifists, and even a modest amount of more conservative, but individual rights committed, lawyers.¹⁰⁶ While the ACLU was later famed as being among the country's preeminent practitioners in strategic litigation and legal defense aid, in its early years the organization was highly distrustful of state institutions – especially that of the judiciary – and was much more activist in their orientation.¹⁰⁷ As Laura Weinrib has highlighted, the “ACLU’s early program, modeled on the direct action espoused by the I.W.W., disavowed law of all kinds: legislative and administrative as well as judge-made.”¹⁰⁸ Instead, they asserted that the civil liberties priorities they advocated for were the essential means by which peaceable change could be attained.¹⁰⁹ This was the immediate context (as shown in Chapter 2) in which the ACLU first tentatively involved itself in the

¹⁰⁵ Walker, *In Defense of American Liberties*, 52.

¹⁰⁶ Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 61.

¹⁰⁷ Walker, *In Defense of American Liberties*, 47; Paul L. Murphy, *The Meaning of Freedom of Speech: First Amendment Freedoms from Wilson to FDR* (Westport: Greenwood Publishing Company, 1972): 130-132; Weinrib, *The taming of free speech*, 1, 111-145.

¹⁰⁸ *Ibid.*, 11.

¹⁰⁹ *Ibid.*, 114.

colonial empire by aiding an ally in the U.S. Virgin Islands in securing a printing press to help facilitate such advocacy.

As they asserted in a 1921 pamphlet, their “chief activity necessarily is publicity in one form or other” and that their “most effective publicity” was that which resulted from their “dramatizing the issues of civil liberty by demonstrations in areas of conflict.”¹¹⁰ In these early years they were most likely to be seen participating and assisting in free speech rallies, protests, and strikes; the most prominent examples occurring in Passaic and Paterson in New Jersey, Pittsburg and other mining areas of Pennsylvania, as well as the Mingo and Logan regions of West Virginia.¹¹¹ Throughout the course of such activities, they typically adopted an oppositional stance toward state authorities – much the same as they did so with colonial state authorities in the Virgin Islands during the same period.¹¹² They remained throughout this period an understaffed, under-resourced, and deeply unpopular organization with little success to show for their efforts.¹¹³ Such factors limited the scope of their actions and efficacy, not only with regard to the colonial empire, but throughout the metropolitan states – largely confining their field of action to northeastern and mid-Atlantic states. What they did garner, on the other

¹¹⁰ “The Fight for Free Speech”, September 1921, ACLU Records and Publications. Reel 90, 1-31, 8.

¹¹¹ Murphy, *The Meaning of Freedom of Speech*, 137-156, 163; Weinrib, *The Taming of Free Speech*, 111-115, 129-133; “The Fight for Free Speech”, September 1921, ACLU Records and Publications. Reel 90, 8-9. “The Shame of West Virginia” (ACLU Pamphlet), 1923, ACLU Records and Publications. Reel 90.

¹¹² Even early on, however, they were not entirely averse to trying gain satisfaction through contacts in the government. Perhaps most compromisingly so in a meeting with future FBI director J. Edgar Hoover, whom Baldwin misread as being sympathetic with their cause. See: Cottrell, *Roger Nash Baldwin and the American Civil Liberties*, 139-143.

¹¹³ Walker, *In Defense of American Liberties*, 51-52, 69-71; Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 124-125.

hand, was a reputation of being deeply radical, unpatriotic, and possibly even a Communist front, the latter a view typically circulated by their most conservative leaning critics.¹¹⁴

Early on, the ACLU were mainly occupied with civil liberties campaigns and issues associated with organized labor, they did continue to interest themselves in the plight of the still imprisoned C.O.s and those charged under the Espionage Act during the First World War.¹¹⁵ In the case of the ACLU's advocacy on behalf of that most prominent of civil liberties causes - free speech - they actually kept their mandate quite narrow in scope throughout the 1920s. This likely stemmed, as scholars like David Rabban have argued, from a remaining residue of Progressive Era attitudes that stressed a more instrumentalist approach to free speech; one which prioritized that which was deemed to be of political and economic import.¹¹⁶ This was most plainly demonstrated by the ACLU in their free speech fights involving organized labor at the time.

As for opposition to censorship of the arts and defense of speech on purely free expression grounds, this did not greatly concern the ACLU during the first decade of their existence.¹¹⁷ Left unchallenged, for example, were the mail and customs prohibitions and penalties placed upon literature

¹¹⁴ Murphy, *The Meaning of Freedom of Speech*, 194-195, 204; Walker, *In Defense of American Liberties*, 51

¹¹⁵ This turned out to be a long and frustrating campaign that saw intermittent commutations and pardons by the proceeding presidential administrations; a long drawn-out process that was only finally completed at the end of 1933 under President Roosevelt. See: Murphy, *The Meaning of Freedom of Speech*, 134-137; Walker, *In Defense of American Liberties*, 56.

¹¹⁶ Rabban, *Free Speech in its Forgotten Years*, 302-303.

¹¹⁷ Walker, *In Defense of American Liberties*, 82.

and periodicals deemed to be in violation of obscenity law.¹¹⁸ Also notably neglected throughout this period were causes long associated with free speech advocacy: birth control and sexual education.¹¹⁹ While many of the predominantly male members of the early ACLU were personally sympathetic and supportive regarding such issues, they did not proactively devote much attention to free speech on behalf of sexual education, birth control, or other matters involving civil liberties and sexuality until the turn of the decade.¹²⁰ A notable counterpoint to this, then, was the fact that over the course of this decade, as shown in Chapter 3, the ACLU considered publicly and proactively supporting the cause of Philippine independence; thereby potentially expanding the scope of their civil liberties mandate. Yet, despite support for which by prominent ACLU figures like Baldwin and Ward, the issue proved too divisive among the rest of the leadership to adopt.

Of great significance and relevance to the ACLU as they engaged in both the metropolitan states and colonial periphery of the United States was how they engaged with the issues of race and racism in both spheres. Within the scope of their metropolitan activities, unlike most other predominantly white membership reform organizations, the ACLU from the outset was neither blind nor apathetic to the issues of race and racism, in particular

¹¹⁸ Reuel E. Schiller, "Free Speech and Expertise," 38-43; Rabban, *Free Speech in its Forgotten Years*, 302-303.

¹¹⁹ Weinrib, *The Taming of Free Speech*, 170-172.

¹²⁰ Leigh A. Wheeler, "Where else but Greenwich Village? Love, lust, and the Emergence of the American Civil Liberties Union's Sexual Rights Agenda, 1920-1931," *Journal of the History of Sexuality* 21, no. 1, (January 2012): 60-92.

those pertaining to African-Americans. They publicly condemned examples of racism and racially motivated violence throughout the country, and on occasion took up and/or supported cases inextricably related to these matters.¹²¹ However it would be inaccurate to say that they placed the issues of race and racism as among their priorities. Rather, the ACLU maintained a collaborative working relationship with the National Association for the Advancement of Colored People (NAACP) – a fellow burgeoning pioneer in legal defense provision and strategic litigation – to whom they passed on cases touching upon African-American rights for their first approval of taking on.¹²² The ACLU also consistently sought to have ranking NAACP members serving on their board, including NAACP executive secretary James Weldon Johnson.¹²³ Nonetheless, as the *raisons d'être* of both organizations did differ, occasions arose in which the racial justice priorities of the NAACP clashed with the civil liberties ones of the ACLU, such as when the latter defended the right of the Ku Klux Klan to engage in non-violent marching.¹²⁴ The resulting tensions, however, never threatened to sever the ties between both organizations given their broad alignment on most other issues.

¹²¹ Walker, *In Defense of American Liberties*, 60; William Pickens, "Lynching and Debt-Slavery," ACLU Pamphlet, May 1921, ACLU Records and Publications. Reel 90; Albert De Silver, "The Ku Klux Klan," ACLU Pamphlet, Reprint from *The Nation*, 14 September 1921, ACLU Records and Publications. Reel 90; "Black Justice," May 1931, ACLU Records and Publications. Reel 91, 1-27.

¹²² Walker, *In Defense of American Liberties*, 60. As they explained in a later pamphlet devoted to the denial of civil rights for African Americans, the ACLU "felt obligated to present to our friends so striking an aspect of the violations of civil liberty. But this is not a field of activity in which the Union operates, because another organization already covers it [the NAACP]." See: "Black Justice," May 1931, ACLU Records and Publications. Reel 91, 1-27, 7.

¹²³ *Ibid.*, 60, 68.

¹²⁴ *Ibid.*, 60.

Nonetheless, just because the ACLU was more conscientious of the issues of race and racism than most other contemporaneous reform actors and organizations of the period does not mean that there was not the likely presence of prejudicial and/or even racist viewpoints within the organization. And while the likely presence never such that it came to direct the overall approach or stances of the ACLU or prevent them from increasingly taking on matters concerning racism within the mainland states, their being an overwhelmingly white member led organization surely led to a lack of understanding, sensitivity, prioritization and/or even concern with many other matters regarding race. Furthermore, this narrow leadership and membership profile certainly facilitated more of a white male centric orientation on the part of the early organization that could end up, even if at an unconscious level, reframing otherwise unavoidably race related matters and issues within a civil liberties universalism not necessarily apt for the circumstances in question.¹²⁵ It could also lead to a largely complacent orientation that inhibited them from more proactively seeking out more diverse membership, voices, and or input for the organization – a dynamic

¹²⁵ The individual most influential in driving the ACLU during its first decades, Roger Baldwin, is worth noting here. Baldwin had long been aware of and concerned about the presence and severity of the issues of race and racism in the United States. A signal event in his burgeoning civil liberties commitment was witnessing a referendum that secured an ordinance implementing racial residential segregation in St. Louis during his social work years there. See: Roger Baldwin, “The Reminiscences of Roger Nash Baldwin” (Microfiche), 41. Nonetheless, Baldwin, as befit his militantly pro-labor orientation at the time, interpreted the issues of race through the lens of class, thinking that addressing the latter was the surest means of resolving the former and, accordingly, best served through the cause of organized labor. Walker, *In Defense of American Liberties*, 89.

also observable in their contemporaneous engagement with the colonial empire.¹²⁶

As is demonstrated in the proceeding chapters of this study, there was significant overlap and parallels between how they approached the issues of race and racism within the mainland states and how they did so throughout the colonial empire. If anything, these issues were arguably of even more consequence in the colonial sphere as the ACLU predictably tended to interpret their priorities through the metropolitan-based, universalizing orientation of their imperial imaginary. For example, the ACLU were willing and did publicly condemn racism in the empire, but ultimately did little to tangibly challenge it through direct, explicit and/or programmatic means. Nor, for all their concern with the circumstances, conditions, and happenings in the colonial periphery, did they accordingly match this desire with a proactive and thorough-going effort to better enlist on-the-ground input, participation, and/membership from among the vast diversity of subject peoples of the colonial periphery – a pursuit that would surely have brought more of the issues touching upon race and racism to the fore. As well, they typically held to a civil liberties universalism that could, depending on the differing circumstances and contexts, vary from being inattentive and insensitive, even oblivious on matter of race and racism to

¹²⁶ In fact, Baldwin later claimed that the motivation for trying to always have a Black member on the ACLU board was so that there was “evidence of our inclusiveness in covering all civil rights,” rather than as a firmly held conviction of the necessity for doing so. See: Roger Baldwin, “The Reminiscences of Roger Nash Baldwin,” 319. With such an attitude, it is not surprising that the ACLU did not proactively seek to thoroughly diversify its membership and leadership along such lines.

being inadvertently complicit with some of the prevailing imperial discourses surrounding race propounded by the colonial state regimes that they increasingly came to interact with throughout the empire.

Mid-decade transition of the ACLU

As discussed, the ACLU had little faith in the courts and mainly only engaged in litigation either for publicity purposes or as a last line of defense against abuses of state authority. Nonetheless, influential legal figures from within the organization like Walter Nelles and Walter Pollack, as well as influential National Committee member Felix Frankfurter, had consistently argued for the organization to take the litigation work seriously in and of itself.¹²⁷ Two court cases in 1925 were to make the year a crucial one in the evolution of the organization's attitude and approach to the courts. The first of which was the famed Scopes "monkey" trial, regarding the teaching of evolution in public schools in Tennessee.¹²⁸ While the ACLU did not win the case itself, the trial proved to be a major publicity coup for them, playing a significant role in improving their reputation among more educated, middle-class elements throughout the country.¹²⁹

The other was the Supreme Court decision in *Gitlow v. New York*. This resulted from the appeal of a conviction under the New York Criminal

¹²⁷ Weinrib, *The Taming of Free Speech*, 140-141; Walker, *In Defense of American Liberties*, 53.

¹²⁸ "The Tennessee Evolution Case" (ACLU Pamphlet), July 1925, ACLU Records and Publications. Reel 91

¹²⁹ Walker, *In Defense of American Liberties*, 72-73; Murphy, *The Meaning of Freedom of Speech*, 163-164; Weinrib, *The Taming of Free Speech*, 168-170.

Anarchy Act of 1902. While the Supreme Court actually ruled against the defendant in question, the majority did concede to ACLU attorney Walter Pollack's broader and more substantive constitutional argument that the First Amendment protections of freedom of speech and press were binding upon the states as well as the federal government through the Equal Protection clause of the Fourteenth Amendment.¹³⁰ And while this was not understood as such at the time, this precedent became the opening act of what became known as the incorporation of the Bill Rights, the highly significant, long-term jurisprudential development whereby the contents of the first ten amendments of the Constitution became increasingly binding upon the states as well as the federal government.¹³¹ In more immediate terms, though, what this decision did signal to the ACLU was that the courts themselves might now not only serve as a source of publicity, or even as a venue of last resort legal defense, but as an actual medium for substantive and constitutional change via the use of strategic litigation. And it just so happened (as will be shown in chapter 3) that in the very year that followed the *Gitlow* decision, the ACLU backed their first strategic litigation effort that sought constitutional change within the colonial empire through a case emanating from the U.S. Navy governed eastern Samoan Islands.

Yet for all the encouragement that the *Gitlow* decision gave, in practice, the courts did not prove immediately amenable to providing more

¹³⁰ Murphy, *The Meaning of Freedom of Speech*, 261-262.

¹³¹ Gerstle, *Liberty and Coercion*, 280-281.

protection to free speech or other civil liberties claims.¹³² Nonetheless, it was over the course of this period, as so convincingly detailed by scholar Emily Zackin, that the ACLU became an organization increasingly staffed by lawyers and that came to place much more of a priority upon legal defense and strategic litigation work.¹³³ Another byproduct of this development, is that it marked the early stages of the gradual erosion of the ACLU's largely state-skeptic orientation toward mainland state institutions that, as well, had consequences with respect to their engagement with the colonial periphery. For in the latter sphere, as will be shown in the following chapters, this had a discernable effect upon the imperial imaginary of the ACLU which, in turn, began to affect and alter the manner and means of their engagement with colonial state actors and institutions of the empire by the end of the decade.

By the end of their first decade, the ACLU had approximately 2,500 members.¹³⁴ With an increased general support for civil liberties, the potential of greater receptivity by the courts, and an overall receding of the more reactionary atmosphere of the early 1920s, in 1929 Roger Baldwin felt that the timing was propitious enough to pursue an ambitious expansion.¹³⁵ 1929 also happened to be the year the Great Depression began, which thoroughly altered the political, economic, and social conditions of the United States – both within the metropole and the colonial periphery. All of which were of immense relevance for the ACLU and their civil liberties

¹³² Weinrib, *The Taming of Free Speech*, 139-140.

¹³³ Zackin, "Popular Constitutionalism's Hard When You're Not Very Popular", 367-396.

¹³⁴ Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 125.

¹³⁵ Walker, *In Defense of American Liberties*, 86-87.

mandate in the colonial periphery in the coming decade; the subject of Part II of this study.

A Tale of Two Incorporations

If within the metropolitan states the constitutional context that turned out to be of most relevance to the ACLU was the question of the incorporation of the Bill of Rights, then within the colonial empire there was another matter of constitutional incorporation that proved to be foundational for the Union's engagement within the latter sphere. This was the doctrine of incorporation – the jurisprudential precedent that was developed in the aftermath of the Spanish-American War to address the constitutional status of the U.S. colonies.

The Spanish-American War of 1898, for all of its ensuing controversies, was recognized both at the time and since as a significant moment in the development of the U.S. empire; most notably in representing a transition from a former emphasis on settler colonialist expansionism to the acquirement of overseas colonies to be held in perpetuity.¹³⁶ However, by seizing and annexing such territories as the Philippines, Puerto Rico, and Guam and placing them on the seemingly permanent and indefinite status as

¹³⁶ This study aligns itself with the scholarly consensus on U.S. empire that has come to reconceptualize the long term, discontinuous, and exceptionally violent process of US expansion as settler colonialism. As defined by Paul Kramer, settler colonialism was the process distinguished by 'the seizure of land and natural resources from indigenous populations, the politico-legal production of "territory," and governance through the rule of colonial difference'; all of which can accurately be applied to describe the expansion of the United States between the late-18th and late-19th centuries. See: Paul A. Kramer, "Power and Connection: Imperial Histories of the United States in the World," *The American Historical Review* 116, no. 5 (2011): 1348-1391, 1360-1361.

colonies raised a great deal of additional dilemmas and questions. These included what was meant by, as well as included within, the term “United States,” what was the extent of the application of Constitution to the territories, and what distinctions, if any could be drawn between the different territories, especially if all were now no longer assumed to be on the path to statehood.¹³⁷ All of these issues were understood to have highly consequential constitutional implications in need of addressing. This provoked a heated and contentious debate within legal circles about how best to address these constitutional questions; resulting in a series of influential law review articles between 1898 and 1900.¹³⁸ These issues were finally addressed in a series of Supreme Court decisions that have come to be known collectively as the Insular Cases.

These cases were triggered in response to immediate dilemmas relating to trade restrictions and the taxing powers of the United States government with respect to the recently acquired territories. The resulting Insular Cases themselves began with *De Lima v. Bidwell* (1901) and ended with *Huus v. New York & Porto Rico Steamship Co* (1901).¹³⁹ They were, for

¹³⁷ Christina D. Burnett, “The Constitution and Deconstitution of the United States,” in *The Louisiana Purchase and American Expansion, 1803-1898*, ed. Sanford Levinson and Bartholomew Sparrow (Lanham: Rowman & Littlefield Publishers, 2005): 183-198.

¹³⁸ Juan R. Torruella, “Ruling America’s Colonies: The *Insular Cases*,” *Yale Law & Policy Review* 32 no. 1 (Oct. 2013): 65. For the contemporaneous debate, see: Elmer B. Adams, “The Causes and Results of Our War with Spain from a Legal Stand-point,” *Yale Law Journal* 8, no. 3 (1898) 119-133; Carman F. Randolph, “Constitutional Aspects of Annexation,” *Harvard Law Review* 12, no. 5 (1898) 291-315; Simeon E. Baldwin, “The Constitutional Questions Incident to the Acquisition and Government by the United States of Island Territory,” *Harvard Law Review* 12, no. 6 (1899), 393-416; John K. Beach, “Constitutional Expansion,” *Yale Law Journal* 8, no. 5 (1899), 225-234; C.C. Langdell, “Status of Our New Territories,” *Harvard Law Review* 12, no. 6 (1898), 365-392; Abbott L. Lowell, “The Status of Our New Possessions – a Third View,” *Harvard Law Review* 13, no. 3 (1899) 155-176.

¹³⁹ The Other Insular Cases Were: *Goetze v. United States* (1901), *Dooley v. United States* (1901), and *Armstrong v. United States* (1901), and *Downes v. Bidwell* (1901)

the most part, very close 5-4 majority decisions that hinged around such questions as to whether the territories acquired could be treated as areas of exception with respect to trade, taxation and other constitutional provisions or not. These decisions eventually came to coalesce around the newfound doctrine “incorporation.” This was an argument first presented in Professor Abbot Lawrence Lowell’s 1899 law review article, that was then introduced in Justice McKenna’s *De Lima* dissent, and finally given its most salient - as well as its most provocative - expression by Justice Edward Douglass White in his assenting opinion in *Downes v. Bidwell*.¹⁴⁰

The doctrine of incorporation established the precedent that there were two fundamental distinctions in status among the territories of the United States. Whereas formerly it had been essentially taken for granted that all U.S. territories maintained the same, uniform constitutional status as one another, the doctrine of incorporation now introduced a division between those territories that were, on the one hand, eligible for, and evidently in the process of moving toward, statehood and, on the other, those that were not.¹⁴¹ The former were designated as “incorporated

¹⁴⁰ It should be reemphasized that they were mostly very close decisions (all except one of them were one person majority decisions) and therefore it was not inevitable that this was to be the form of constitutional law that would come to define territorial status and relations with the US federal government from then until the present. Furthermore, while the decisions were formally concerned with economic issues, there was nonetheless the undeniable presence, at varying times implicit or explicit, of racist logic and attitudes plainly playing a significant role in how the justices in question decided the Insular Cases. Efrén Rivera has further argued that the construction of “alien peoples” was essential to establishing this dichotomy of incorporated and unincorporated territories. See: Efrén R. Ramos, “The Legal Construction of American Colonialism: The *Insular Cases* (1901-1922),” *Revista Jurídica Universidad de Puerto Rico* 65 (1996): 225-328. It should also be noted that many of the justices presiding over these cases were the same that decided *Plessy v. Ferguson* decision that sanctioned segregation under the doctrine of “separate but equal.” See: Immerwahr, *How to Hide an Empire*, 85-86.

¹⁴¹ A.G. Hopkins, *American Empire: A Global History* (Princeton: Princeton University Press, 2018): 515

territories”; the latter as “unincorporated territories.”¹⁴² It was only for the incorporated territories that such basic constitutional guarantees of citizenship, certain minimal constitutional rights and protections, and exemptions from trade barriers and differing taxation policies were extended to.¹⁴³ For the unincorporated territories, on the other hand, all such rights, protections, and exemptions, as well as their very governing structures, were now solely the prerogative of Congress to concede or withhold.¹⁴⁴

Despite their distinctive status, the unincorporated territories were not to be regarded as foreign or outside of the United States. It was Justice White who most aptly, if ominously, expressed their paradoxical status when he asserted in his *Downes* opinion that while Puerto Rico was “not a foreign

¹⁴² Sanford Levinson, “Why the Canon Should be Expanded to Include the *Insular Cases* and the Saga of American Expansionism,” *Constitutional Commentary* 17, no. 241 (2000): 246.

¹⁴³ There has been some question about what, if to any, extent did the rights and protections of the constitution apply to the territories prior to the doctrine of incorporation. In recent decades, the emphasis has been placed upon the essentially colonial nature of the U.S. territories all along and how the plenary powers of Congress effectively operated in the territories with little to no limit in the territories. See: Christina D. Burnett and Burke Marshall, “Between the Foreign and Domestic: The Doctrine of Territorial Incorporation, Invented and Reinvented,” *Foreign in a Domestic Sense: Puerto Rico, American Expansion, and the Constitution*, in ed. Christina D. Burnett and Burke Marshall (Durham: Duke University Press, 2001): 4-5; Paul Frymer, *Building an American Empire: The Era of Territorial and Political Expansion* (Princeton: Princeton University Press, 2017). The consensus now appears to be that there were only some very minimal sets of protections and rights operative in the earlier territories and the eventual incorporated ones. See: Burnett and Marshall, ‘Between the Foreign and Domestic,’ 11.

¹⁴⁴ Efrén R. Ramos, “The *Insular Cases*: What is There to Reconsider?,” in *Reconsidering the Insular Cases: The Past and Future of the American Empire*, ed. Gerald L. Neuman and Tomiko Brown-Nagin (Cambridge: Harvard University Press, 2015): 29-37. As Gerald L. Neuman has pointed out, though, Justice White did make the allowance that Congressional power was not entirely absolute regarding the unincorporated territories, but were limited by “inherent, although unexpressed, principles which are the basis of all free government ... restrictions of so fundamental a nature that they cannot be transgressed.” Justice White left these apparently inalienable rights unspecified. Nonetheless, this allowance did leave open the potential for the Supreme Court to articulate and give such “principles” tangible form. See: Gerald L. Neuman, “Constitutionalism and Individual Rights in the Territories,” *Foreign in a Domestic Sense: Puerto Rico, American Expansion, and the Constitution*, in ed. Christina D. Burnett and Burke Marshall (Durham: Duke University Press, 2001): 188.

country,” it “was foreign to the United States in a domestic sense.”¹⁴⁵ Scholar Amy Kaplan has perspicaciously highlighted how Justice White and fellow deciding members of the Court were animated by concerns that imperial expansion threatened to unravel such seemingly conventional dichotomies of the American polity as the foreign and domestic, on the one hand, and metropolitan and colonial, on the other. As Kaplan argued: “the language of this case demonstrates the slipperiness of these distinctions and expresses anxiety and ambivalence about the nature of the American Empire.”¹⁴⁶ Kaplan convincingly demonstrated the extent to which racist and xenophobic fears of the so-called “alien” peoples of the colonies pervaded the opinions of the Justices, particularly those relating to the potential scenario of immigration from the colonies to the metropole.¹⁴⁷ Indeed, much of the conceptual architecture of the doctrine of incorporation appears to have been concerned with more securely demarcating metropolitan and colonial space from one another so as to neutralize the perceived threat that the presence of such foreign “alien” peoples constituted to the American empire.¹⁴⁸ However, as Kaplan pointed out, the resulting irony was that “the discourse of the Court also heightens the very confusion it is meant to allay. Its attempt to disentangle the meaning of the domestic and foreign, to draw clear

¹⁴⁵ Torruella, “Ruling America’s Colonies,” 71.

¹⁴⁶ Amy Kaplan, *The Anarchy of Empire in the Making of U.S. Culture*, 2. As Kaplan pointed out, this was not anomaly, but an foundational/integral and unavoidable aspect of the American imperial expansion: ‘As this Supreme Court case makes evident, imperialism does not emanate from the solid center of a fully formed nation; rather, the meaning of the nation itself is both questioned and redefined through the outward reach of empire.’ Ibid., 12.

¹⁴⁷ Ibid., 7-12.

¹⁴⁸ Ibid., 7-9.

boundaries between them, only further entangles them by creating a hybrid liminal space that is neither fully outside the United States nor comfortably a part of it.’¹⁴⁹ It was evident then that the presiding Supreme Court Justices of the insular case were themselves in possession of imperial imaginaries that had unstable, uncertain, and blurred perceptions of the American empire itself.

The Supreme Court’s bifurcation of the territories into the statuses of incorporated and unincorporated had immediate tangible and practical consequences. In terms of the former, it was determined that the territories of Alaska, Hawaii, New Mexico, and Arizona were incorporated territories, and, therefore, were on the path to statehood (which was extended to both New Mexico and Arizona in 1912). This was most likely because they, unlike unincorporated territories, were regions that had population demographics and densities deemed more encouraging for intensive white settlement.¹⁵⁰

However, with respect to the more novel and unprecedented situation of the colonies designated as unincorporated – the Philippines, Puerto Rico, Guam, (and, as of 1917, the U.S. Virgin Islands) - not only did their statuses differ greatly from that of the incorporated territories but, as already alluded to, their forms and modes governance differed greatly from another as well. The unincorporated territories varied in terms of forms of rule by U.S. armed forces (usually conducted by the U.S. Navy) or civilian appointees

¹⁴⁹Ibid., 11-12.

¹⁵⁰ Lanny Thompson, “The Imperial Republic: A Comparison of the Insular Territories Under U.S. Dominion After 1898,” *Pacific Historical Review* 71, no. 4, (2002): 543-545.

- the latter operating under the remit of the Bureau of Insular Affairs within the War Department.¹⁵¹ Whatever rights protections that happened to exist for these colonies were those that had been granted through acts of Congress and were typically attached to so-called organic acts.¹⁵² Such organic acts were also the means by which some (usually highly limited) forms of local representation were granted in the forms of municipal councils, assemblies, committees, commissions, and even bicameral legislatures (as eventually were the case for Puerto Rico and the Philippines).¹⁵³ The proceeding chapters duly open with more detailed discussion of the key distinguishing features of colonial governance of each of the colonies engaged with by the ACLU.

All told, the resulting constitutional dispensation established by the doctrine of incorporation was of immense relevance to the ACLU's involvement in the U.S. colonies. First and most immediate of all, the doctrine of incorporation meant that the colonial regimes they confronted could vary so greatly. As the proceeding chapters of this study will demonstrate, the fact that the ACLU confronted such differing constitutional statuses, forms of colonial governance, and rights regimes proved to be critical in conditioning, as well as constraining, the scope and means of their interests, priorities, and engagements towards the colonial empire. And this

¹⁵¹ Guam and the eastern Samoan Islands (and later the U.S. Virgin Islands) were placed under naval rule while the Philippines and Puerto Rico (from 1909) were held under the nominal authority of the Bureau of Insular Affairs. See: Hopkins, *American Empire*, 523; Colin D. Moore, *American Imperialism and the State, 1893-1921* (Cambridge: Cambridge University Press, 2017): 226-230.

¹⁵² Thompson, "The Imperial Republic," 559.

¹⁵³ *Ibid.*, 558-560.

in turn had a significant effect on the scope, make-up, and development of the imperial imaginary of the ACLU, very much conditioning both their perception of the varied colonies of the empire and their resulting conduct and priorities toward each. Finally, and relatedly, as the doctrine of incorporation was itself largely the product of the imperial imaginaries of Supreme Court Justices who themselves had unstable, uncertain, and blurred conceptions of the American empire, this meant that it was hardly surprising that an actor like the ACLU would themselves encumber their own unstable, uncertain, and blurred perceptions of the U.S. colonial empire as they interacted with the latter and its varied constitutional dispensation under the doctrine of incorporation. As the proceeding chapters will demonstrate, all the above proved be of great consequence for the ACLU's subsequent engagement with the U.S. colonial empire.

Conclusion

As discussed, the ACLU were a metropolitan based and focused actor from their foundation in 1920. Beginning as a largely anti-statist, pro-labor, and activist-oriented organization, by the end of its first decade, the ACLU had become more accommodating with respect to state institutions, most importantly that of the courts. This had the corollary of tempering some of their earlier activism.

While such activities and developments within the U.S. metropole were what most plainly preoccupied the ACLU, they were simultaneously, if more inconsistently and modestly involved in U.S. colonial empire. This factor,

however, was not the only highly significant one effecting the nature and scope of their engagement with the colonial sphere. For also critical was the constitutional context of the Insular Cases and the doctrine of incorporation that facilitated the establishment of the greatly varying governmental and rights regimes throughout the colonial empire. Hence, the statuses and resulting colonial regimes of the respective U.S. colonies were essential preconditions that very much conditioned the scope and means of the ACLU's interests, priorities, and efforts towards each, as will become ever more evident in the chapters that follow.

Chapter 2: First Engagement with the U.S. Colonial Empire and the U.S. Virgin Islands, 1920-29

Introduction

Rothschild Francis arrived in New York in early 1921. A Black Virgin Islander from the island of St. Thomas, Francis had traveled to the metropolitan states as part of his role as president of the Federal Labor Union (an AFL affiliate in the Virgin Islands)¹⁵⁴ Francis devoted much of his trip to publicizing the conditions of the Virgin Islands under U.S. colonial rule, as well as to raise funds to secure a printing press so that he might establish a newspaper of his own.¹⁵⁵ It was during this trip that Francis met ACLU executive director Roger Baldwin for the first time.¹⁵⁶ From this initial meeting began a durable partnership between Francis and the ACLU, which eventually saw the latter increasingly interested and involved in the U.S. Virgin Islands.

As their engagement with the U.S. Virgin Islands represented the earliest and most robust engagement by the ACLU in the U.S. colonial empire, this gives rise to a set of related questions. How and why did the ACLU interest and involve themselves in the U.S. Virgin Islands during the 1920s? What role and/or influence did their imperial imaginary play in their

¹⁵⁴ Roger Baldwin to Alice Lewisohn, 5 February 1921, ACLU Papers (Digitized Microfilm), vol. 227, 16.

¹⁵⁵ Dookhan, *Civil Rights and Political Justice*, 1.

¹⁵⁶ Roger Baldwin to Oswald G. Villard, 18 April 1921, ACLU Papers (Digitized Microfilm), vol. 227, 10; Roger Baldwin to Caroline O'Day, 16 March 1921, ACLU Papers (Digitized Microfilm), vol 227, 13; Roger Baldwin to Mary Burnham, 12 March 1921, ACLU Papers (Digitized Microfilm), vol 227, 13.

involvement? What were the consequences and broader implications of their engagement, both in general and for their imperial imaginary?

In addressing these questions, this chapter will demonstrate that the ACLU's engagement began upon the initiative of executive director Roger Baldwin. This resulted in the organization coming to aid Rothschild Francis with securing the necessary means for conducting advocacy through the press in the islands. From this modest collaboration onwards, the ACLU's involvement in the U.S. Virgin Islands further grew. As to why and to what overall purpose they did so, it is argued here that this stemmed from their commitment to civil liberties (i.e., freedom of speech, press, and assembly) as the essential means by which peaceable change could be secured within both the U.S. metropole and the colonial sphere. In doing so, the ACLU initially made little distinction within their imperial imaginary of the U.S. Virgin Islands being a colony distinct from that of the metropolitan sphere. They accordingly framed their civil liberties commitments toward islands within the same kind of universalism as they did with respect to the metropolitan states. However, as will be shown, their involvement was increasingly conditioned, in terms of the scope, means, and immediate goals, by the colonial particularist conditions and contexts they encountered. The most significant of these was the unincorporated constitutional status of the U.S. Virgin Islands and the colony's lack of an organic act.

The consequence of this was that they concluded that the most immediate and feasible means by which they could secure civil liberties protections was by lending their support to preexisting calls for civil

government reform via an organic act. This also, however, entailed the ACLU tempering some of their state-sceptic orientation. With respect to the colonial state authorities of the U.S. Virgin Islands (overwhelmingly U.S. Navy-based at this time), the ACLU nonetheless maintained antagonistic relations throughout the 1920s, as befit the state-skepticism of their civil liberties commitments.

However, as to the results and implications of the ACLU's involvement in the U.S. Virgin Islands, it is argued that, outside of helping to secure legislation that extended American citizenship throughout the islands and the provision of legal defense aid, little was accomplished by the end of the decade. This chapter further argues that their modest yet increasing contact and interaction with state institutions and actors (albeit at this point largely only metropolitan based ones) had an increasingly discernible influence upon their imperial imaginary. This intimated that their imperial imaginary was coming to identify the U.S. Virgin Islands more with the insecure and varied particularism of the American colonial sphere.

U.S. Virgin Islands by 1920

Following the coerced purchase of the Virgin Islands from Denmark in March of 1917, the islands' status was determined to be that of an unincorporated territory. Most of the governmental and legal framework under the new American regime remained largely the same in essentials as had been

established under the Danish Colonial Law of 1906.¹⁵⁷ The colonial governor was appointed by the President of the United States from within the Department of the Navy.¹⁵⁸ The court system was largely the same as under Danish rule, with the whole of the colonial judiciary, headed by a district judge, appointed by the governor; and thereby slanted favorably toward the Naval regime.¹⁵⁹ Its federal appeals jurisdiction was the Third Circuit Court in Philadelphia. Also carried over from the Danish era Colonial Law of 1906 was a bill of rights that entailed a set of provisions that would later be regarded as civil liberties, namely freedom from religious discrimination, freedom of the press and peaceable assembly (but not freedom of speech or petition).¹⁶⁰ These provisions, however, were subject to significant qualifications that left them vulnerable to circumvention.¹⁶¹

There were also two Colonial Councils in the U.S. Virgin Islands: one for the island of St. Croix and another for both the islands of St. Thomas and St. John. The franchise for the councils touched upon one of the most contentious issues on the islands. It was a highly restrictive franchise that only granted males who were 25 years or older and with the necessary

¹⁵⁷ Willaim W. Boyer, *Civil Liberties in the U.S. Virgin Islands: 1917 – 1949* (St. Croix: Antilles Graphics Arts, 1982): 48-52.

¹⁵⁸ Isaac Dookhan, *A History of the Virgin Islands of the United States* (Kingston: Canoe Press, 1994): p. 266.

¹⁵⁹ Isaac Dookhan, "The Search for Identity: The Political Aspirations and Frustrations of Virgin Islanders Under the United States Naval Administration, 1917-27," *The Journal of Caribbean History* 12 (January 1, 1979): p. 5

¹⁶⁰ "Colonial Law of April 1906," from *Virgin Islands: America's Caribbean Outpost: The Evolution of Self-Government*, in ed. James A. Bough and Roy C. Macridis (Wakefield: Walter F. Williams Publishing Company, 1970): 27-29.

¹⁶¹ Section 78 states that [E]very person has the right to publish thoughts in print under, responsibility, however, before the Courts of Justice.' Section 79 on right of peaceable assembly further allows that "The police has the right of being present at public assemblies. Assemblies in the in the open air may be prohibited, when danger to the public peace may be apprehended from them." Quoted from "Colonial Law of April 1906," from Bough and Macridis, *Virgin Islands: America's Caribbean Outpost*, 28-29.

annual incomes (the figures varied between the two councils) the right to vote. This, for example, resulted in 1920 there only being 729 voters in the Virgin Islands out of a population of 26,000.¹⁶² Also very restrictive was citizenship, with the overwhelming majority of the population being left without clear citizenship status following the transfer of rule.

Disfranchisement itself fell along racial lines in the Virgin Islands which, like so many of the other Caribbean islands, had historically been a predominantly slave plantation based society and economy.¹⁶³ The abolition of slavery on the islands in 1848 had done little to remedy the long lasting legacy of oppression and exclusion that had been experienced by the enslaved and continued to deeply affect their descendants.¹⁶⁴ Hence, those possessing the right to vote for and take office in the Colonial Councils came overwhelmingly from the white Danish descended minority who held the majority of what remained of the material wealth of the islands by the time of the American acquisition of the islands.

Initial interest and involvement by the ACLU

Where and when did the ACLU first involve themselves in the U.S. colonial empire? It was in the U.S. Virgin Islands in the fall of 1920. How was it then that the ACLU first came to be interested in the Virgin Islands? This arose

¹⁶² Dookhan, "The Search for Identity," 3.

¹⁶³ Ibid.

¹⁶⁴ Marilyn F. Krigger, *Race Relations in the U.S. Virgin Islands: St. Thomas – A Centennial Retrospective* (Durham: Carolina Academic Press, 2017): 43.

due to the personal initiative of ACLU executive director Roger Baldwin. That Baldwin was able to do so of his own accord, and without awaiting prior approval of the Executive Committee, was typical (as discussed in chapter 1) of his early leadership and of the kinds of circumstances in which he could direct policy more unilaterally (i.e. by acting and then gaining retroactive approval).¹⁶⁵ His interest in the Virgin Islands was first piqued upon reading an article on the islands' conditions by a Rothschild Francis in the *New York Call* on September 20, 1920.¹⁶⁶ Francis' article so interested Baldwin that he decided to reach out to the executive secretary of the National Urban League, Eugene Kinckle Jones, to get into contact with Francis.¹⁶⁷ From this point of contact onwards, Rothschild Francis was to become the ACLU's earliest and most consistent ally regarding the U.S. Virgin Islands.

Francis, a Black resident of the island of St. Thomas from a greatly disadvantaged background, had shown great ambition from early on. A shoemaker by trade and largely self-educated, Francis channeled all of his energies into improving the conditions that surrounded him and, in doing so, came into contentious relations with the American authorities from very early on in their rule of the islands.¹⁶⁸ Francis was also a committed partisan of organized labor as president of the Federal Labor Union of St. Thomas.¹⁶⁹ Not, strictly speaking, an anti-colonial activist himself – he appears to have

¹⁶⁵ Cottrell *Roger Nash Baldwin and the American Civil Liberties Union*, 151.

¹⁶⁶ Isaac Dookhan, *Civil Rights and Political Justice: The Role of the American Civil Liberties Union in the U.S. Virgin Islands, 1920-1936* (New York: American Civil Liberties Union, 1983): 1.

¹⁶⁷ Ibid.

¹⁶⁸ William W. Boyer, 'Rothschild Francis and Freedom of the Press in the U.S. Virgin Islands,' *Caribbean Affairs*, 4, no 4 (1991): 132-133; Krigger, *Race Relations in the U.S. Virgin Islands*, 77-78.

¹⁶⁹ Krigger, *Race Relations in the U.S. Virgin Islands*, 77.

taken seriously and at face value much of American republican discourse – Francis nonetheless sought and advocated for a greater representative, rights protective, and more just settlement for the Virgin Islands within the overall ambit of the United States.¹⁷⁰

Shortly after the initial communication between Baldwin and Francis, they agreed to meet in person during the latter's upcoming visit to the U.S. mainland states as a part of his role as president of the Federal Labor Union.¹⁷¹ Francis's visit was broadly devoted to publicizing the worrying conditions of the Virgin Islands under U.S. rule, as well as to raise funds for the procurement of a printing press to establish a newspaper of his own in the Virgin Islands.¹⁷² It was in this latter effort that Baldwin and the ACLU first came to aid Francis and, hence, tentatively began the former's involvement the U.S. Virgin Islands.¹⁷³ This does beg the question: why and to what purpose did the ACLU do so?

As Baldwin made clear while soliciting for financial support for the printing press, the ACLU did not regard this merely as a form of incidental aid on their part but as an integral aspect of their civil liberties mandate on behalf of free speech and press.¹⁷⁴ As he stressed in the call for funds he

¹⁷⁰ Boyer, "Rothschild Francis and Freedom of the Press in the U.S. Virgin Islands," 132.

¹⁷¹ Roger Baldwin to Alice Lewisohn, 5 February 1921, ACLU Papers (Digitized Microfilm), vol. 227, 16.

¹⁷² Dookhan, *Civil Rights and Political Justice*, 1.

¹⁷³ Roger Baldwin to Oswald G. Villard, 18 April 1921, ACLU Papers (Digitized Microfilm), vol. 227, 10; Roger Baldwin to Caroline O'Day, 16 March 1921, ACLU Papers (Digitized Microfilm), vol. 227, 13; Roger Baldwin to Mary Burnham, 12 March 1921, ACLU Papers (Digitized Microfilm), vol. 227, 13.

¹⁷⁴ Roger Baldwin to (Unnamed), 29 December 1920, ACLU Papers (Digitized Microfilm), vol. 227, p. 17; Roger Baldwin to Mary Burnham, 12 March 1921, ACLU Papers (Digitized Microfilm), vol. 227, 13; Roger Baldwin to Clendower Evans, 19 January 1921, ACLU Papers (Digitized Microfilm), vol. 227, 17.

circulated: “This appeal is in direct line with our work for a free press ... [T]here is more involved than merely the small amount of money.”¹⁷⁵ Hence, Baldwin was making it clear that he regarded their support and interest here as a part of his and the ACLU’s struggles on behalf of civil liberties. For they intended this contribution to help establish the conditions within the U.S. Virgin Islands upon which free speech and the press might come flourish; as per their broader faith in the importance of civil liberties as the essential means for the pursuit of peaceable change.¹⁷⁶ It is notable that Baldwin gave no impression that colonial and metropolitan distinctions had any bearing upon his decision to initiate ACLU interest in the US Virgin Islands. Instead, he appears to have remained animated by metropolitan oriented civil liberties considerations. It is also noteworthy that there appears to have been no cognizance or pushback from within the organization that the ACLU was now setting an early precedent of engaging with the colonial empire, as if both the colonial and metropolitan spheres were imagined as one vast and undifferentiated domestic realm. In that sense, it was then no more remarkable to them that it was the Virgin Islands, rather than elsewhere in the empire, that their first durable contact was established.

With the help of the contributions gained, Francis was able to establish his paper, *The Emancipator*. Baldwin was well impressed with what he observed of Francis’ early efforts with the paper, congratulating him “on a publication” that had “much punch and life and real feeling in it” and

¹⁷⁵ Roger Baldwin to Clendower Evans, 19 December 1921, ACLU Papers (Digitized Microfilm), vol. 227, 17.

¹⁷⁶ Weinrib, *The Taming of Free Speech*, 114.

encouraged him to continue to “follow the fearless course of championing the rights of the workers and of the black people of the islands, of the Negro against white exploitation.”¹⁷⁷ Therefore Baldwin also saw their support of free speech for the islands as indirectly addressing the interlinked issues of political rights, organized labor, and race in the Virgin Islands. The assertion also underlined his and the ACLU’s tendency of only making mention of or highlighting the issues of race without substantively engaging in them to any significant degree. It is also evident from this communication that Baldwin imagined the conditions and relevant issues of the islands largely through a metropolitan orientation, one that projected the framing and priorities of the latter vis-à-vis organized labor, race, and political rights onto the former.

Given the great relevance of the racial dynamics in the Virgin Islands, it is unsurprising to see that Rothschild Francis also sought out support from the National Association for the Advancement of Colored People (NAACP). He even went so far as to prepare a detailed report for them in 1922, which stressed that it was the “hope of the people that the N.A.A.C.P. will also do its bit in granting publicity to these intrusions.”¹⁷⁸ Little however followed on from this, aside from intermittent interest on the part of the NAACP. This left the ACLU as the only notable metropolitan based organization concerned with the U.S. Virgin Islands.¹⁷⁹ Indeed, as Francis acknowledged in

¹⁷⁷ Roger Baldwin to Rothschild Francis, 6 June 1921, ACLU Papers, (Digitized Microfilm), vol. 227, 127.

¹⁷⁸ Rothschild Francis, “Social, Political & Economic Conditions in the Virgin Islands, Written Especially for the N.A.A.C.P.” (Undated. Most likely sometime in 1922), NAACP Papers, Part 11: Special Subject Files, 1912-1939. Series B: Harding, Warren G. through YWCA, Reel 32, 261.

¹⁷⁹ James W. Johnson to A. Warner, 18 March 1925, NAACP Papers, Part 11: Special Subject Files. Series B. Reel 32, 322.

his report to the NAACP, the ACLU had proceeded on with efforts of their own to publicize the conditions of the Virgin Islands under US Naval rule and the pressing need to ameliorate them.¹⁸⁰ Such efforts on the ACLU's part also presented no difficulty to their generally state-sceptic orientation during these early years.

The publication activities of Francis with *The Emancipator* turned out to be the catalyst for the ACLU's first interactions with colonial state actors in the islands in the spring of 1922. Even more significantly, this interaction elicited the ACLU's first broad statement of purpose regarding the colonial sphere of the U.S. empire. This exchange was further significant as it did not remain private but was publicized shortly thereafter in *The Emancipator* and elsewhere.¹⁸¹ And while scholar Isaac Dookhan has provided an able account of this exchange, he did not acknowledge or engage with its broader significance – specifically the statement's implications for the ACLU's overall civil liberties mandate, not only with respect to the U.S. Virgin Islands, but regarding the whole of the U.S. colonial empire itself.¹⁸²

This all stemmed from an article published in *The Emancipator* on March 15, 1922 that criticized the violent conduct of U.S. marines during

¹⁸⁰ Rothschild Francis, R. "Social, Political & Economic Conditions in the Virgin Islands" (Undated Most likely sometime in 1922), NAACP Papers, Part 11: Special Subject Files. Series B. Reel 32, 261; Dookhan, *Civil Rights and Political Justice*, 2; ACLU News Release, 2 March 1923), ACLU Papers (Digitized Microfilm), vol. 227, 58.

¹⁸¹ "American Civil Liberties Bureau Gets Letter from U.S. Representative", *The Emancipator* (Date unclear, possibly 8 July 1922), ACLU Papers (Digitized Microfilm), vol. 227, 88; Roger Baldwin to Rothschild Francis, 12 June 1923, ACLU Papers (Digitized Microfilm), vol. 246, 201; Roger Baldwin to Rothschild Francis, 6 July 1922, ACLU Papers (Digitized Microfilm), vol. 227, 107.

¹⁸² Dookhan, *Civil Rights and Political Justice*, 5-7.

their occupation of the Dominican Republic.¹⁸³ Its publication provoked a stern letter to Francis from the then acting government secretary B.H. Clarke, insinuating that colonial state action might ensue if further coverage of this kind continued.¹⁸⁴ After being informed of Clarke's communication, Baldwin decided to object to the government secretary on behalf of the ACLU.¹⁸⁵ In his communication to Clarke, Baldwin asserted that they expected the government not to interfere with "liberty of opinion," a "right which every American must cherish as one of the privileges of his citizenship."¹⁸⁶ Baldwin thereby not only asserted on behalf of the ACLU that the people of the U.S. Virgin Islands were not only entitled to all the rights of American citizenship, but also intimated that he imagined as them as already being in effective possession of said rights and citizenship. This suggested that, as far as the imperial imaginary of Baldwin was concerned, at the least with respect to the U.S. Virgin Islands, the metropolitan and colonial spheres were essentially indistinguishable from one another from a rights and citizenship standpoint.

In a personal reply, Secretary Clarke countered that, not only was the "freedom to publish" compatible with the right of officials to criticize publications themselves, but, as far as he was aware, the Constitution did not extend "the same privileges to residents of a Colonial possession as to

¹⁸³ "Native Leader Evangelista Lured into Captivity Under False American Flag of Truce and Shot to Death," *The Emancipator*, 15 March 1922, ACLU Papers (Digitized Microfilm), vol. 246, 173.

¹⁸⁴ B.H. Clarke to Rothschild Francis, 17 March 1922, ACLU Papers (Digitized Microfilm), vol. 199, 199.

¹⁸⁵ Roger Baldwin to Rothschild Francis, 11 May 1922, ACLU Papers (Digitized Microfilm), vol. 246, 196.

¹⁸⁶ Roger Baldwin to B.H. Clarke, 11 May 1922, ACLU Papers (Digitized Microfilm), vol. 227, 29-30.

citizens of the United States.”¹⁸⁷ In this latter assertion, as per the *Insular Cases* and the Virgin Islands’ unincorporated territory status, Clarke was, constitutionally speaking, correct.

Neither satisfied nor deterred, Baldwin responded that, while Clarke may have been essentially correct from a constitutional standpoint, he retorted that they could not subscribe to the position that “Constitutional privileges do not extend to [a] Colonial possession” and that, as far as they were concerned, “the press of the Virgin Islands has the same right to publish” as any “paper in the United States.”¹⁸⁸ He further stressed that the ACLU were prepared to take whatever recourse necessary to uphold this stance.¹⁸⁹ Baldwin did not leave it at that point but proceeded to assert that “American institutions ought to mean the same thing at home and abroad, whatever the legal status of the people under these institutions.”¹⁹⁰ This was a bracing and sweeping assertion that carried all manner of significant, even provocative, implications for the ACLU’s civil liberties mandate.

On the one hand, given that the ACLU were committed to the civil liberties of free speech, press, and assembly as an essential means by which peaceable change could be sought and attained, it is understandable that they might have desired seeing all of these uniformly secured throughout the whole of the U.S. empire. On the other hand, the very sweeping nature of Baldwin’s assertion also conveyed telling intimations of the substance of his

¹⁸⁷ B.H. Clarke to Roger Baldwin, 7 June 1922, ACLU Papers (Digitized Microfilm), vol. 227, 28-29.

¹⁸⁸ Roger Baldwin to B.H. Clarke, 23 June 1922, ACLU Papers (Digitized Microfilm), vol. 227, 27-28.

¹⁸⁹ *Ibid.*, 28.

¹⁹⁰ *Ibid.*, 27.

and the ACLU's imperial imaginary toward the colonial realm. This was particularly evident in the way that little (if any) thought appears to have been given to the likelihood that the seeming universalism of their civil liberties mandate might take on a different character, when redirected from the metropole toward the colonial empire. For while they certainly evoked an ambition to reign in empire to provide a space for advocacy, this also indicated an imperial imaginary that envisioned a collapse of all distinctions between the colonial and metropolitan spheres – irrespective of the actual varied and particularist conditions, contexts, and/or desires of the subject peoples situated throughout the empire. This appeared to imply that, as far as Baldwin (and presumably much of the ACLU leadership) were concerned, what was right for the metropole was right for the colonial sphere by default, because, in the end, all were essentially aspects of one vast domestic realm.

If the ACLU were earnestly committed to securing robust civil liberties protections throughout the whole of the U.S. colonial empire, then there really was only one plausible way they might attain this ambitious goal. This was to mount a constitutional challenge in the courts to the doctrine of incorporation as established by the Insular Cases. It is significant then that at this time the ACLU do not appear to have seriously contemplated taking up such an ambitious effort. There were three likely reasons they did not seek to do so. First, given the contemporaneous state of the jurisprudence and the makeup of the Supreme Court at the time, there was little to be encouraged about regarding the potential for a constitutional reappraisal of

the doctrine of incorporation.¹⁹¹ Second was the early organization's lack of resources, finances, and staff. Yet probably the most important reason of all was the early ACLU's deep skepticism regarding redress via state institutions. And during this period there was no institution that they were more skeptical and wary of than the judiciary.¹⁹² That is, the very state institution through which any such challenge to the prevailing incorporation doctrine would need to be pursued.

Civil Government Advocacy

The exchange between Baldwin and Clarke indirectly highlighted the critical factor limiting civil liberties protections in the U.S. Virgin Islands: as an unincorporated territory they were without any guaranteed constitutional rights. And while, as discussed earlier, the transfer treaty between Denmark and the United States did carry over some rights in the way of press and peaceable assembly (though not of freedom of speech or petition), these were nonetheless subject to such qualifications so as to be highly insecure provisions.¹⁹³ But if the ACLU were not going to adopt a strategic litigation challenge to the doctrine of incorporation, this then posed the question: by what means outside of the courts could they feasibly secure those civil

¹⁹¹ Under the Chief Justiceship of William Howard Taft, Supreme Court of the 1920s was well recognized for its highly conservative jurisprudence. See: Murphy, *The Meaning of Freedom of Speech*, 254-256.

¹⁹² Weinrib, *The Taming of Free Speech*, 125-127.

¹⁹³ Luther H. Evans, *The Virgin Islands: From Naval Base to New Deal* (Westport: Greenwood Press, 1975): 205-206; William W. Boyer, *America's Virgin Islands: A History of Human Rights and Wrongs* (Durham: Carolina Press, 2010): 126-128; "Colonial Law of April 6, 1906," from Bough and Macridis, *Virgin Islands: America's Caribbean Outposts*, 27-29.

liberties protections for the Virgin Islands that they regarded as essential for the pursuit of peaceable change?

Given that the U.S. Virgin Islands were not only an unincorporated territory but were without an organic act, then pursuing a form of the latter presented itself as a plausible route for attaining the civil liberties commitments they prioritized. Furthermore, as there already existed demands for civil government reform via an organic act for the Virgin Islands, both from within the islands themselves and among the Virgin Islands diasporic community based in New York, the ACLU had a set of potential allies they could work alongside.¹⁹⁴ However, obtaining such an act would also naturally encumber more than solely the provision of minimal rights and liberties, but would also mean advocating for a whole new scheme of colonial government. Such might plausibly entail additional provisions along the lines of establishing civilian rule, introducing a more representative form of governance, and/or extending American citizenship to all the people of the Virgin Islands – hence much that were not self-evidently the kinds of civil liberties issues the ACLU was championing at the time. Yet, given the novelty and conceptual fluidity of civil liberties at the time, as well as the fact that none of these other provisions were overtly in conflict with their core civil liberties commitments (i.e. freedom of speech, press, petition, and assembly), the ACLU were able to reconcile their civil liberties mandate with advocacy for an organic act; for this was deemed the

¹⁹⁴ Dookhan, *Civil Rights and Political Justice*, 9; Dookhan, “The Search for Identity,” 9-18.

most immediate and practical means by which they could secure something in the way of more civil liberties protections.¹⁹⁵

To proactively advocate for such an act, however, also meant that they would need to pragmatically temper some of their state-sceptic orientation and pursue this goal through the relevant formal U.S. metropolitan institution: the United States Congress. Naturally, pursuing legislation in Congress entailed lobbying. The circumstance of the ACLU being a metropolitan based, non-state actor meant they were well situated to do so. It is notable that the scholarship on the ACLU and the civil liberties movement in general has not recognized that this effort represented a very early and significant example of the organization pursuing a major piece of federal legislation; in fact well predating that of their later celebrated effort, beginning in 1925, to restrict the judiciary's powers within the states to issue injunctions during labor conflicts.¹⁹⁶ Therefore, this effort can be seen as a very early anticipation of the ACLU's later turn within the U.S. metropole whereby, as Judy Kutulas has noted, they increasingly abandoned their former direct action tactics and increasingly "lobbied" legislators "to change laws."¹⁹⁷

¹⁹⁵ Isaac Dookhan argued that it was in response to the dissolution of the St. Thomas-St. John Colonial Council on September 1, 1922 that precipitated the ACLU's decision to pursue civil government reform. However, Baldwin himself had already floated the idea of doing so as early as February, 1921. See: Dookhan, *Civil Rights and Political Justice*, 7; Roger Baldwin to Rothschild Francis, 10 February 1921, ACLU Papers (Digitized Microfilm), vol. 227, 139.

¹⁹⁶ Walker, *In Defense of American Liberties*, 55. This latter effort eventually produced their first major federal legislative victory with the Norris-La Guardia Act of 1932. See: Walker, *In Defense of American Liberties*, 87.

¹⁹⁷ Kutulas, *The American Civil Liberties Union & the Making of Modern Liberalism*, 31.

Their key contact with respect to the Virgin Islands based effort was clearly Francis Rothschild, who himself went on to become a Colonial Council member in 1924.¹⁹⁸ Through Rothschild, the ACLU was connected with a loosely aligned set of Virgin Islands-based advocates for civil government reform; including the pioneering labor leader of St. Croix, activist journalist (editor of St. Croix newspaper *Herald*), and then colonial council member David Hamilton Jackson; St. Croix labor leader Morris Davis; and local businessman, writer, and lecturer Adolph Sixto.¹⁹⁹ The ACLU were also able to cooperate with allies from among the Virgin Islands diasporic community of New York, the most important of which initially was Ashley L. Totten and Elizabeth Hendrickson's Virgin Islands Protective League.²⁰⁰ Another significant group came to be the New York based Virgin Islands Committee, formed at the behest of Rothschild Francis in 1924, that sought legislation for the economic reconstruction of the islands alongside an organic act, and solicited financial contributions within the United States.²⁰¹ One other notable ally the ACLU collaborated with was the New York-based lawyer, Adolf Berle, who had previous experience in the Caribbean representing sugar industry interests. Initially, the ACLU requested that Berle

¹⁹⁸ Boyer, *America's Virgin Islands*, 133.

¹⁹⁹ Rothschild Francis to Roger Baldwin, 2 July 1922, ACLU Papers (Digitized Microfilm), vol. 227, 108; Boyer, *America's Virgin Islands*, 75-76, 128-133, 148; Dookhan, "The Search for Identity," 10, 12, 14.

²⁰⁰ The League was eventually renamed the Virgin Islands Civil Rights Association. Dookhan, "The Search for Identity," 15.

²⁰¹ The Virgin Islands Committee, 20 March 1924, NAACP Papers, Part 11: Special Subject Files. Series B. Reel 32, 292; The Virgin Islands Committee, 21 March 1924, NAACP Papers, Part 11: Special Subject Files. Series B. Reel 32, 293; Dookhan, 'The Search for Identity,' 16.

develop a draft of the civil government plan that would replace the U.S. Navy administration on the islands.²⁰²

As Isaac Dookhan has highlighted in his detailed in his invaluable account of the effort that ensued, the ACLU were able to contribute such things as publicity, consistent representation in Washington D.C., and act as an intermediary between the metropolitan and Virgin Islands-based actors and organizations.²⁰³ Of course, it can equally be observed that the ACLU themselves benefitted from the preexistence of such advocates for civil government in the colonial realm and the metropole; and especially from the fact that much of the latter were located in the same city as the ACLU leadership itself. As Dookhan has asserted, “[T]hrough the ACLU and the various Virgin Islands organizations in the United States a whole nexus of political relationships was established.”²⁰⁴ The lack of such conveniently located allies and contacts (as will be shown in the following chapters) was to be a major constraining factor for them elsewhere in the colonial empire; very much limiting the scope and potential efficacy of their interest and involvement, as well as their grasp of the respective conditions, throughout the colonial empire. Furthermore, as will also be demonstrated, such

²⁰² Roger Baldwin to Adolf Berle, 11 August 1922, ACLU Papers (Digitized Microfilm), vol. 227, 35; Adolf Berle to Roger Baldwin, 19 August 1920, ACLU Papers (Digitized Microfilm), vol. 227, 34.

²⁰³ Dookhan, *Civil Rights and Political Justice*, 7-11, 20-33, 34-36. See also: Dookhan, “The Search for Identity,” 17-18, 24, 14. William Boyer also provides a brief, but succinct and able, account of the broader movement on behalf of securing an Organic Act for the Virgin Islands. See: Boyer, *America’s Virgin Islands*, 146-149, 183-188. Neither Dookhan or Boyer, however, engage with how the ACLU’s pursuit of which related to their broader interests, activities, and/or evolution, either throughout the US empire or metropolitan states. Dookhan also, on occasion, inaccurately refers to organic act advocacy as being an effort to secure “constitutional liberties” and “constitutional reform,” which, since such could only be statutorily based, plainly was not of constitutional consequence. See: Dookhan, *Civil Rights and Political Justice*, 9, 23.

²⁰⁴ Dookhan, “The Search for Identity,” 17-18.

contacts and allies were critical in providing a countervailing influence that largely limited the potential identification of their imperial imaginary with colonial state institutions, actors, and discourses for the time being.

Despite such favorable factors, the ACLU's initial effort to secure an organic act did not proceed encouragingly. The main issue, as has been well noted by the extant scholarship on the effort, was the appearance of there being a deep division of opinion within the Virgin Islands itself regarding civil government reform.²⁰⁵ The issue of a lack of unity in the Virgin Islands was especially a problem, for as Baldwin consistently stressed, it was imperative to present "practically a united opinion" to Congress to gain any progress there.²⁰⁶ Especially resistant were the predominantly white wealthier merchants of St Thomas and the large land owners of St. Croix who preferred and profited from the Naval administration.²⁰⁷ This opposition was only further exaggerated by the dominance of such elements within the Colonial Councils due to their aforementioned highly unrepresentative franchises.²⁰⁸ And, again, while the ACLU acknowledged these racial dynamics intermittently, they did not expressly or proactively address them in any compelling or focused way.

Nonetheless, by the winter of 1924, the ACLU, Berle, and Francis did manage to get an organic act draft prepared which Senator George P. McLean

²⁰⁵ Ibid., 24; Boyer, *America's Virgin Islands*, 144-145.

²⁰⁶ Roger Baldwin to Rothschild Francis, 22 January 1923, ACLU Papers (Digitized Microfilm), vol. 227, 101; Roger Baldwin to Rothschild Francis, 6 May 1924, ACLU Papers (Digitized Microfilm), Volume 269, p. 114.

²⁰⁷ Dookhan, "The Search for Identity" 24.

²⁰⁸ Boyer, *America's Virgin Islands*, 144-145.

introduced into the Senate as S. 2786.²⁰⁹ This proposed bill would have supplied greater devolved powers to the Virgin Islands, as well as a more ample provision of rights.²¹⁰ The ACLU accordingly threw their full support behind it, engaged in publicity, a fund-raising drive, and lobbied through their Washington representative, Helena Weed.²¹¹ In spite of these efforts, though, joint resolutions sent by both of the Colonial Councils gave just enough of an impression of opposition from within the islands to undermine Congressional support for the bill to prevent its passage.²¹²

At this point of disappointment, however, it is important to point out that this effort saw the ACLU increasingly interacting and working with one of the central metropolitan institutions of the U.S. government (i.e., Congress). In doing so, this subtly and ever so gradually influenced their imperial imaginary in a way that, as will be seen, was to facilitate the conditioning and narrowing of the means and ambitions of their advocacy and engagement. It was through such similar means that, as Laura Weinrib has compatibly argued regarding the ACLU's increasing resort to the courts within the U.S. metropole, the "ACLU's leaders could not escape law's pull,"

²⁰⁹ Joseph Freeman to Senator George P. McLean, 15 March 1924, ACLU Papers (Digitized Microfilm), volume 269, 99; Senator George P. McLean to Joseph Freeman, 17 March 1924, ACLU Papers (Digitized Microfilm), vol. 269, p. 100; Boyer, *America's Virgin Islands*, 147

²¹⁰ Ibid.

²¹¹ ACLU News Release Draft, 15 April 1924, ACLU Papers (Digitized Microfilm), vol. 269, 105; Roger Baldwin to Rothschild Francis, 15 April 1924, ACLU Papers (Digitized Microfilm), vol. 269, 105; Dookhan, *Civil Rights and Political Justice*, 9-10.

²¹² Rothschild Francis to Roger Baldwin, 6 April 1924, ACLU Papers (Digitized Microfilm), vol. 269, 105; Roger Baldwin to Rothschild Francis, 15 April 1924, ACLU Papers (Digitized Microfilm) vol. 269, 105; Roger Baldwin to Rothschild Francis, 6 May 1924, ACLU Papers (Digitized Microfilm), vol. 269, 114; Dookhan, *Civil Rights and Political Justice*, 10.

and that “as they change the law, the law changed them.”²¹³ In their continued activities of lobbying for legislative change for the colonial sphere, a similar conditioning effect was increasingly discernable. Not least of which was the fact that at no point in their advocacy did they express cognizance of the fact that attainment of an organic act, no matter how robust in rights and representation, would only reaffirm the colonial particularism of the U.S. Virgin Islands within the colonial empire – and do so at the expense of the more universalist civil liberties orientation of their (metropolitan-rooted) imperial imaginings.

An eventual and unquestioning identification by the ACLU with the U.S. colonial state institutions, actors, and discourses, however, was not a foregone conclusion at this time for two reasons. First, the ACLU’s more accommodating relations with state institutions were limited to the metropole (i.e., in this case the U.S. Congress), notable, as they still continued to maintain less than accommodating, and even antagonistic, relations with the colonial state actors of the Virgin Islands. Second, there was the critical countervailing influence of their non-state actor allies and contacts, both within the Virgin Islands and among the Virgin Islands community within the metropole (i.e., New York), that largely held in check the potential of their imperial imaginary to otherwise identify the Virgin Islands more unequivocally with the particularism of the colonial sphere.

²¹³ Weinrib, *The Taming of Free Speech*, 11.

Further pursuit of civil government

A significant setback to the ACLU's advocacy for civil government reform occurred when their main Virgin Islands' ally and contact Rothschild Francis had charges brought against him in early 1925 due to his publishing activities in *The Emancipator*.²¹⁴ Upon getting word of this, the ACLU recognized the civil liberties implications of the case, especially the freedom of the press aspects of the libel charge against the publication.²¹⁵ The ACLU then agreed to pay the expenses of an appeal to the Philadelphia Third Circuit Court, in which Adolf Berle would represent Francis *pro bono*.²¹⁶ Francis' legal position was further exacerbated due to the publication of an editorial in *The Emancipator* which heavily criticized the trial procedure and judge (albeit unnamed) of the ongoing libel case.²¹⁷ A contempt of court charge followed and Francis was again found guilty.²¹⁸ This verdict, too, was appealed with the aid of the ACLU.

Eventually, the Philadelphia Circuit Court of Appeals presided over both appeals and delivered its verdict on February 26. The results were that

²¹⁴ Roger Baldwin to Rothschild Francis, 20 January 1925, ACLU Papers (Digitized Microfilm), vol. 293, 46; Roger Baldwin to Howard B. Gill, 22 April 1925, ACLU Papers (Digitized Microfilm), vol. 309, 523-524.

The publication of an article providing an account of the violent behavior of an unnamed police officer in Charlotte Amalie had resulted in a libel charge being filed by the officer against Francis under the Compiled Code of the Municipality of St. Thomas and St. John. The charge was transferred from the government attorney and police court judge to the district court, with District Judge George Washington Williams then presiding. Judge Williams proceed on to deny Francis a trial by jury and found him guilty in January 1925. See: Boyer, *Civil Liberties in the U.S. Virgin Islands*, 117; Dookhan, *Civil Rights and Political Justice*, 14-15.

²¹⁵ Roger Baldwin to Rothschild Francis, 20 January 1925, ACLU Papers (Digitized Microfilm), vol. 293, 46.

²¹⁶ Ibid. The NAACP were also kept abreast of the case as developments unfolded. See: Rothschild Francis to James Weldon Johnson, 30 April 1925, NAACP Papers, Part 11: Special Subject Files. Series B. Reel 32, 330.

²¹⁷ "Trial Per Testes and its Aftermaths," *The Emancipator*, 11 April 1925, ACLU Papers (Digitized Microfilm), vol. 293, 65.

²¹⁸ Rothschild Francis to Roger Baldwin, 30 April 1925, ACLU Papers (Digitized Microfilm), vol. 293, 66.

Francis' libel charge was overturned but his contempt one was upheld.²¹⁹

This was not the end of the matter, though, for Francis' situation only worsened when, alongside another contempt charge, an even more concerning embezzlement charge was filed against him.²²⁰ The ACLU's Forest Bailey was then obligated to inform Francis that the ACLU could not represent him in that case due to it not touching upon any clear civil liberties issues; although he did recognize what was occurring as "plain persecution."²²¹ These last two charges of contempt and embezzlement were the beginning of difficult times for Francis, leading to a cycle over the following years in which he was in and out of prison for the different charges and at varying lengths of time.²²²

²¹⁹ Rothschild Francis to Forest Bailey, 22 February 1926, ACLU Papers (Digitized Microfilm), vol. 309, 464.

²²⁰ Rothschild Francis to ACLU, 10 April 1926, ACLU Papers (Digitized Microfilm), vol. 309, 680-681.

²²¹ Forest Bailey to Rothschild Francis, 26 April 1926, ACLU Papers (Digitized Microfilm), vol. 309, 683.

²²² Alphonse Blaine to Roger Baldwin, 27 December 1927, ACLU Papers (Digitized Microfilm), vol. 350, 716; Boyer, "Rothschild Francis and freedom of the press in the U.S. Virgin Islands," 141.

There was one other case that the ACLU took an interest in during the decade with potential civil liberties implications. This involved Leander Holder, a Virgin Islander who had been living for years in New York and had decided to take a trip back to the Virgin Islands. The problem arose when she was prevented from returning to New York by a steamship company due to a newfound problem with her citizenship status. This turned out to be a byproduct of the recently passed Johnson-Reed Immigration Act of May 1924. The new law had apparently left Virgin Islanders residing within mainland the states without any recognized status for the immigration authorities. Upon hearing of this case, the ACLU agreed to take it up and make inquiries into the matter. This also happened to be the only occasion with respect to the Virgin Islands in which the idea of a test case in the courts was floated (by Adolf Berle) that could have challenged the doctrine of incorporation. However, this appears not to have been given much, if any, serious consideration – presumably this was because of the ACLU's still strongly held skepticism of seeking amelioration through the courts at the time. See: Adolf Berle to Roger Baldwin, 18 October 1924, ACLU Papers (Digitized Microfilm), volume 270, 130; Roger Baldwin to Adolf Berle, 20 October 1924, ACLU Papers (Digitized Microfilm), vol. 270, 131.

In the end, it appears that Holder had to resort to the drastic measure of applying for entry to New York through the Immigration Act's quota system. She understandably justified this by simply stating that she 'was very thankful to get back under any condition.' Nonetheless, this case notably highlighted the fact that the outstanding issue of citizenship for the overwhelming majority of the people of the Virgin Islands was still greatly in need of redress. See: Rothschild Francis to Roger Baldwin, 12 July 1924, ACLU Papers (Digitized Microfilm), vol. 270, 132; Adolf Berle to Roger Baldwin, 18 October 1924, ACLU Papers (Digitized Microfilm), volume 270, 130; Roger Baldwin to Adolf Berle, 20 October 1924, ACLU Papers (Digitized Microfilm), vol. 270, 131; Leander Holder to Roger Baldwin, 26 February 1925, ACLU Microfilm, vol. 292, 121-122. For an exemplary and more extensive account of this case, one that further embeds it within the broader dynamics of migration, race, gender, and empire, consult the scholarship of Amalia Flood. See: Amalia Flood, "Neither Citizen Nor

As the ACLU's key ally, Rothschild Francis, was increasingly detained by his legal troubles, how did the ACLU's efforts to help secure an organic act proceed? From this point on, as Francis ceased to be able to play much of a role, the ACLU itself proceeded to cooperate with and rely on other allies and intermediaries in pursuit of civil government reform. These included Colonial Council members Jean B. Hestres (St. Thomas council member) and Halvor Berg (St. Croix council member).²²³ Another newfound metropolitan-based ally that emerged was Lucius Malmin, a former district judge of the Virgin Islands who had been forced out by the colonial governor. Whilst Malmin's motives do not appear to have been altogether selfless (he was also hoping to eventually gain an appointment as either governor or district judge of the Virgin Islands), he was nevertheless able to provide the ACLU and their allies with valuable assistance and information due to his own contacts throughout the government.²²⁴ Also of importance were the ACLU's new Washington representatives, Howard Gill and Isabelle Kendig, who were essential in their efforts to lobby members of Congress and other governmental officials on behalf of the Virgin Islands reform.²²⁵

Especially notable from this point forward, though, was Casper Holstein. A Virgin Islands émigré who had moved to New York in his youth, Holstein had risen from being a Manhattan porter to becoming one of the

Alien": Migration, Territoriality, and Malfunctioning Empire in the U.S. Virgin Islands,' *Journal of Transnational American Studies* vol. 11, no. 1, (Summer, 2020): 205-229.

²²³ Dookhan, *Civil Rights and Political Justice*, 22.

²²⁴ Forest Bailey to Lucius Malmin, 1 April 1926, ACLU Papers (Digitized Microfilm) vol. 309, 581-2.

²²⁵ Roger Baldwin to Howard Gill, 23 April 1925, ACLU Papers (Digitized Microfilm), vol. 309, 523-524; Forest Bailey to Isabelle Kendig, 9 July 1925, ACLU Papers (Digitized Microfilm), vol. 293, 140.

wealthiest individuals in Harlem on the basis of a numbers gambling operation.²²⁶ Holstein then leveraged these earnings into a banking enterprise that served the island communities in Harlem; going on to become the most influential member of the approximately 8,000 Virgin Island émigré community in New York. A significant philanthropist in his own right, Holstein was a particularly generous patron of two causes: the interwar African American arts and literature movement known as the Harlem Renaissance and the reform of the U.S. Virgin Islands.²²⁷ The ACLU was included among the recipients of these contributions due to their activities regarding the Virgin Islands, which they accordingly redirected toward their efforts there.²²⁸

From the summer of 1925 there were reinvigorated efforts to lobby Washington for a new civil government bill. Colonial Council members Hestres and Berg arrived in July to help make a push.²²⁹ Yet nothing tangible resulted from which.²³⁰ Nonetheless, these efforts represented further involvement by the ACLU with the key formal metropolitan institution that was the U.S. Congress. Is there evidence that the ACLU's pursuit of an organic act through Congress was having an influence upon their imperial imaginary? Specifically, was there evidence that such an effort was beginning to condition, alter, and/or possibly even compromise, their means and

²²⁶ David L. Lewis, *When Harlem was in Vogue* (New York: Oxford University Press, 1997): 129-130.

²²⁷ Lewis, *When Harlem was in Vogue*, 129-130; Dookhan, 'The Search for Identity,' 16.

²²⁸ Casper Holstein to Roger Baldwin, 20 April 1924, ACLU Papers (Digitized Microfilm), vol. 270, 115; Casper Holstein to Forest Bailey, 31 October 1926, ACLU Papers (Digitized Microfilm), vol. 309, 450; Forest Bailey to Casper Holstein, 3 November 1926, ACLU Papers (Digitized Microfilm), vol. 309, 451.

²²⁹ Dookhan, *Civil Rights and Political Justice*, 22.

²³⁰ Ibid.

immediate goals?

There is indeed some modest yet compelling evidence that such an influence was beginning to have such an effect. The first of which can be found following the failure to secure passage of an organic act in 1925. In the late fall of that year, the ACLU entertained a striking proposal: to incorporate the U.S. Virgin Islands into Puerto Rico. This likely originated among the white Danish descended population.²³¹ It also appears to have been an adaptation of an earlier proposal to integrate the court systems of both territories.²³² Those who supported the proposal argued that this would clear up much of the legal ambiguities of the Virgin Islands. Another apparent selling point was that this was thought to be a more readily attainable goal than an organic act for the Virgin Islands.²³³ Yet there were obvious objections to the proposal. The most prominent of these was the fact that this proposal likely had even less united support for it than the civil government bills – while it apparently had strong support from within St. Croix, more opposition to it emerged from St. Thomas.²³⁴ The proposal even sowed some division among the allies of civil government reform. David Hamilton Jackson, Halvor Berg, and Lucius Malmin came to support it. Rothschild Francis however adamantly opposed it.²³⁵ Malmin appeared to strongly support the proposal and tried to convince Francis to come

²³¹ Dookhan, 'The Search for Identity,' 33.

²³² Forest Bailey to Rothschild Francis, 18 November 1925, ACLU Papers (Digitized Microfilm) vol. 293, 87.

²³³ Forest Bailey to Lucius Malmin, 18 December 1925, ACLU Papers, (Digitized Microfilm), vol. 293, 39-40.

²³⁴ Dookhan, 'The Search for Identity,' 33.

²³⁵ Lucius Malmin to Forest Bailey, 6 January 1926, ACLU Papers (Digitized Microfilm), vol. 309, 547; Forest Bailey to Rothschild Francis, 8 January 1926, ACLU Papers (Digitized Microfilm), vol. 309, 459.

around.²³⁶ Bailey also brought the ACLU to tentatively support the proposal, albeit only discreetly so.²³⁷

It is notable that the ACLU considered so expedient a scheme without really contemplating its implications. This provides evidence of an imperial imaginary that, for all its initial universalist orientation, nonetheless had an unstable perception of the colonial sphere, one that was receptive to much of the colonial particularism of the empire itself. For this can be seen in the way in which the remaking of colonial jurisdictional boundaries could be posited with little, if any, hesitation. It certainly provides evidence of the way in which their increasing engagement in the colonial sphere was facilitating an imperial imaginary that enabled them to reimagine and contemplate the remaking of the contours of colonial space and jurisdiction. Be that as it may, however, by the opening of the new year in 1926, with prospects for the organic act starting to look more encouraging again, the proposal was abandoned.²³⁸

Another expedient measure considered by the ACLU around this time was a bill introduced into Congress that would have extended voting rights more extensively throughout the Virgin Islands, albeit attached to a mandatory literacy test.²³⁹ When Laurence Todd of the Federated Press (an organized labor publication and ally of the ACLU) got wind of the proposal, unaware of the ACLU's quiet support, he published a severely critical article.

²³⁶ Lucius Malmin to Rothschild Francis, 6 January 1926, ACLU Papers (Digitized Microfilm), vol. 309, 545-546.

²³⁷ Lucius Malmin to Forest Bailey, 6 January 1926, ACLU Papers (Digitized Microfilm), vol. 309, 547.

²³⁸ Forest Bailey to Rothschild Francis, 8 January 1926, ACLU Papers (Digitized Microfilm), vol. 293, 259.

²³⁹ Adolf Berle to Laurence Todd, 1 March 1926, ACLU Papers (Digitized Microfilm), vol. 309, 482-484.

This then prompted responses from both Berle and Bailey informing Todd of the ACLU's discrete support for the bill and highlighting their pragmatic reasoning behind doing so.²⁴⁰ Berle stressed that, due to the very high literacy levels on the islands, such a literacy test would have had little effect in limiting the extension of the vote.²⁴¹

Having been informed, Todd apologized for the misunderstanding but nonetheless pushed back about the about potential risks of such a short-sighted approach and its deeply worrying implications. He stressed that he was surprised to hear that the ACLU would support a bill that “punishes the misfortune of illiteracy.”²⁴² The main concern for Todd was that there could be additional unintended consequences for lending support to such a measure. For, as he argued, “In the surrounding Latin Republics illiteracy is the lot of the great majority. American imperialism is seeking control of their politics. Is the American Civil Liberties Union to offer this instrument to the dictators we shall set up over these countries, when military coercion falls into comparative disrepute.”²⁴³ Todd was therefore warning the ACLU that, however altruistic their motivations may have been, they were at risk of unintentionally contributing to legitimizing U.S. imperial ambitions throughout the region. Todd's critique then pointed to another potential aspect of their increasing acceptance and internalization of colonial particularism: the ACLU's civil liberties engagement might inadvertently

²⁴⁰ Forest Bailey to Laurence Todd, 1 March 1926, ACLU Papers (Digitized Microfilm), vol. 309, 485; Adolf Berle to Laurence Todd, 1 March 1926, ACLU Papers (Digitized Microfilm), vol. 309, 482-484.

²⁴¹ Adolf Berle to Laurence Todd, 1 March 1926, ACLU Papers (Digitized Microfilm), vol. 309, 482-484.

²⁴² Laurence Todd to Adolf Berle, 2 March 1926, ACLU Papers (Digitized Microfilm), vol. 309, 486.

²⁴³ Laurence Todd to Forest Bailey, 2 March 1926, ACLU Papers (Digitized Microfilm), vol. 309, 486.

serve more to legitimate the U.S. empire than provide a check to colonial state power.

Yet regarding this warning about the risk of further enabling the U.S. empire, the ACLU never offered any well-considered response. And given that they not only supported the measure, but did not heed, or even acknowledge, the substance of Todd's warning further speaks to the condition of the metropolitan-rooted imperial imaginary of the ACLU that likely inhibited them from even comprehending some of the potential implications of their involvement in the colonial sphere. As will be seen in the proceeding chapters, Todd's was to prove a prescient warning. For as the ACLU further engaged themselves with colonial state institutions and actors, this increasingly resulted in them internalizing a more colonial particularistic orientation toward the U.S. empire. An orientation leaving the ACLU less likely to constrain, than enable colonial state power.

With respect to civil government reform of the Virgin Islands, further lobbying efforts proceeded throughout 1926; with much of the same difficulties as before obstructing progress.²⁴⁴ Then in December, Senator Hiram Bingham introduced a bill, S. 4550. Rather than being regarded as an encouraging development, the ACLU and their allies were dismayed about the fact that it also sought to maintain the naval administration and the same judicial system as before – they accordingly opposed it.²⁴⁵ Their success in blocking the bill also turned out to foreclose the opportunity for civil

²⁴⁴ Dookhan, 'The Search for Identity,' 33.

²⁴⁵ Dookhan, *Civil Rights and Political Justice*, 25-26.

government reform for the time being.²⁴⁶ Therefore, the goal of securing civil liberties protections came to an impasse.

The one encouraging result of these efforts was that it seemed to reveal something of a consensus among all the interested parties in granting U.S. citizenship to the people of the Virgin Islands. Following additional efforts on this more narrow line, there resulted the introduction of a bill that was passed on February 25, 1927.²⁴⁷ Whilst certainly something of an advance for the vast majority of Virgin Islanders who had been left without citizenship following the onset of American rule, as well as something of a tangible success for the ACLU and its allies, the bill nonetheless had one very notable shortfall - it did not extend citizenship Virgin Islanders residing within the U.S. states. It also only came in the form of “statutory citizenship”; meaning that, as it had been attained via legislation and not guaranteed by the Constitution, it could (no less than the proposed organic act) be withdrawn through the very same means.²⁴⁸ Hence, this represented a very particularist and insecure form of citizenship. Yet this was a form of citizenship that was very much analogous to the kind of civil liberties protections that their imperial imaginary appeared to have become reconciled with for the U.S. Virgin Islands. It remained to be seen whether this accommodation with a more colonially particularist civil liberties settlement – one that came at the expense of their initially more

²⁴⁶ Ibid., 26.

²⁴⁷ Ibid.

²⁴⁸ Immerwahr, *How to Hide an Empire*, 86.

metropolitan inflected and universalist orientation – was limited to the U.S. Virgin Islands or was indicative of the general direction of travel for their civil liberties engagement with the U.S. colonial empire.

Conclusion

As Chapter 1 demonstrated, the ACLU first became involved in the U.S Virgin Islands upon the personal initiative of its executive director, Roger Baldwin. This began with the modest effort of aiding a sympathetic, locally based actor with gaining the means to exercise free speech and the press there. ACLU involvement only deepened from there. This chapter argued that the ACLU's purpose in doing so was as a part of their commitment to civil liberties as the essential means by which peaceable change could be pursued and attained. It was demonstrated that the ACLU initially made little distinction within their imperial imaginary of the U.S. Virgin Islands being a colony as distinct from that of the metropolitan sphere. They accordingly framed their civil liberties commitments within the same kind of universalism as they advocated for the metropolitan states.

However, as was argued, preexisting contexts and conditions in the Virgin Islands – most notably its unincorporated constitutional status and lack of an organic act – significantly conditioned the scope of the ACLU's engagement. The organization determined that the most immediate and feasible means for securing greater civil liberties protections for the islands was by lending their support and advocacy to preexisting calls for civil government in the form of an organic act. In doing so, though, the ACLU

pragmatically compromised the universalism of their initial orientation toward the Virgin Islands, as the form of civil liberties protections that such an organic act could secure would be colonially particularist, as well as fundamentally insecure. This also entailed the ACLU having to moderate some of their state-sceptic orientation. As further argued in this chapter, a byproduct of this effort was that they increasingly interacted with formal state institutions and actors, which, in turn, increasingly conditioned how they perceived the scope, means, and more immediate goals of their involvement in the colonial sphere within their imperial imaginary.

By the end of the 1920s, despite the efforts of the ACLU and their allies, all that had resulted was legislation that extended American citizenship. However, it was additionally argued that there was increasingly discernible evidence that the ACLU was coming to identify the Virgin Islands more with the insecure particularism of the colonial realm. This carried significant implications for the ACLU as they proceeded to engage with more aspects and regions of the U.S. colonial empire over the coming decade.

It is of further note that the ACLU's activity regarding the U.S. Virgin Islands happened to be the only real interest and involvement that they took in the U.S. empire in the Caribbean during the 1920s. This was likely due to their limited resources, finances, and personnel of the period, as well as their pragmatic and ad-hoc nature at this time. However, these factors did not deter the ACLU from taking an interest in two other Pacific-based U.S. colonies, albeit in an even more fleeting and inconsistent fashion. It is this engagement that Chapter 3 addresses.

Chapter 3: The ACLU and the U.S. Colonial Empire in the Pacific, 1920-29

Introduction

On August 15, 1921, Samuel Ripley arrived by ship in Tutuila, the largest of the islands within the eastern Samoan island group under U.S. Navy rule. An American citizen, California resident, and First World War veteran, Ripley nonetheless found himself deported back to the mainland states, by way of Australia, on the orders of Governor Waldo Evans.²⁴⁹ Upon his return to the states, Ripley pursued legal action against Evans.²⁵⁰ The ensuing litigation effort eventually enlisted the support of the ACLU.²⁵¹ Yet the implications and potential ramifications of the case went beyond the question of an American citizen's right of access to territory under U.S. Navy control – touching upon the issues of the doctrine of incorporation, the potential application of the Bill of Rights to the colonial sphere, and the informal colonial status of Samoan Islands under U.S. Navy rule.

The ACLU's involvement in this case and the eastern Samoan Islands did not represent the whole of their interest in the Pacific Ocean based colonial empire of the United States during the 1920s. For the ACLU also took up the issue of Philippine independence over the course of the decade. Hence, the subject of inquiry of this chapter: where, why, and how did the

²⁴⁹ Joseph Kennedy, *The Tropical Frontier: America's South Sea Colony* (Mangilao: Micronesia Area Research Center, University of Guam, 2009): 145.

²⁵⁰ Madge Ripley to Forest Bailey 25 June 1926, ACLU Papers (Digitized Microfilm), vol. 309, 199.

²⁵¹ ACLU News Release, 18 October 1926, ACLU Papers (Digitized Microfilm), vol. 309, 302-303.

ACLU interest and involve themselves in the U.S. colonial periphery of the Pacific over the course of the 1920s? Also engaged in here is the corollary and subsidiary question of what role and/or influence did their imperial imaginary play in this engagement? And, finally, what were the consequences and/or broader implications of their doing so?

As is demonstrated in this chapter, the ACLU's interest and involvement in the United States' Pacific based colonial empire was essentially limited to the U.S. Navy controlled eastern Samoan Islands and the Philippines. However, their engagement with both colonies turned out to have been much more fleeting, inconsistent, and ad-hoc than it was in the Virgin Islands. This chapter argues that this disparity in the consistency and depth of their involvement stemmed mostly from the distinct difficulties these colonies presented to the ACLU stemming from their Pacific Ocean basis. The great distance between these colonies and the New York-based ACLU seriously limited the communication of reliable and timely information. This also made the forming of cooperative relations with locally based allies and contacts very difficult. This latter issue was only further exacerbated by the fact that the Philippines and Samoa did not have the same kind of sizable communities based in New York as the U.S. Virgin Islands did, which could have facilitated more regular and cooperative relationships with the ACLU.

In the case of the eastern Samoan Islands of Tutuila and Manu'a, they came upon a U.S. Navy controlled regime. This chapter shows that while the ACLU reaffirmed their expansive civil liberties mandate, and even sketched

out a preliminary plan that sought to compel Congressional action, they did not match this broad and ambitious commitment with substantive action during the first part of the decade. By the second half of the decade, however, the ACLU did come to participate in a strategic litigation effort to challenge the doctrine of incorporation. This chapter argues that the timing of this case, emerging in the year after 1925, was a key factor in the organization supporting the effort. This was a critical year in the ACLU's gradual shift away from a court sceptic orientation to an increasing embrace of the courts and litigation.

However, the corollary of such a strategic litigation effort was that, given the islands' informal status vis-à-vis the U.S. empire, it was tantamount to calling for the formal acquisition of the Samoan islands by the United States. This chapter argues that the ACLU's imperial imaginary played a significant role in obscuring from them the potential implications of this pursuit of their metropolitan rooted civil liberties mandate with little consideration being given to the greatly differing contexts of the colonial empire. Not least was the risk that, if successful, this might have resulted in an identification of their civil liberties mandate with the formal acquisition, or even annexation, of territory. While the case proved ultimately anticlimactic in resolution, it nonetheless provocatively intimated that the ACLU's imperial imaginary might very well consent, or even seek, to formalize the acquisition of other regions subjected to U.S. informal colonial rule.

The circumstances of the Philippines, on the other hand, differed greatly from those of the eastern Samoan islands. For regarding the island archipelago, U.S. Congress had officially declared a commitment to independence in the Jones act of 1916 (however inconclusive a commitment this proved to be). This chapter shows that some prominent ACLU figures sought to push the organization to express both direct and indirect support for Philippine independence. The issue of Philippine independence, however, proved too divisive for the ACLU internally, as well as among their metropolitan based allies. This chapter argues that, as a result of the intermittent occasions in which they addressed the issue, they eventually formulated a more narrowly framed position that was more compatible with their metropolitan oriented and universally framed civil liberties mandate.

The ACLU and The U.S. Navy Controlled Eastern Samoan Islands of Tutuila and Manu'a

The Eastern Samoan Islands of Tutuila and Manu'a and the U.S. Navy by 1920

The U. S. Navy was first drawn to the Samoan islands due to their interest in Pago Pago Bay as a potential site for a naval base. There followed shortly thereafter a treaty between the United States and the local Samoan chiefly authorities in 1878.²⁵² Following the end of the Spanish-American War in

²⁵² David A. Chappell, "The Forgotten Mau: Anti-Navy Protest in American Samoa, 1920-1935," *Pacific Historical Review*, vol. 69, no. 2 (May, 2000): 220.

1898, American interest and involvement in Samoa deepened.²⁵³ In doing so, they confronted the competing ambitions of the Britain and Germany. A desire to stabilize the relations and ambitions of these three imperial powers regarding the Samoan islands produced the Tripartite Convention 1899.²⁵⁴ This effectively partitioned the islands between the United States and Germany on an east/west axis, with the former taking control of the eastern islands that included Tutuila and Manu'a.²⁵⁵

In the wake of this agreement among imperial powers, Samoan chiefly authorities in Tutuila submitted the Deed of Cession to American Naval authorities upon their own initiative in 1900.²⁵⁶ While the Samoan leaders had seemingly presented the island of Tutuila as a gift to the United States in the deed, this document had no legal or constitutional basis as it was not ratified by the U.S. Senate.²⁵⁷ Therefore, unlike the colonies seized during the Spanish-American War, Samoa was never formally acquired or annexed to the United States. Also unlike the Philippines and Puerto Rico, American Samoa was not placed under the remit of the War Department's Bureau of Insular Affairs but (same as Guam and, later, the U.S. Virgin Islands), remained under the control of the U.S. Navy.²⁵⁸ This was established via executive order by President McKinley. There was then established

²⁵³ Chappell, "The Forgotten Mau," 220.

²⁵⁴ John A.C. Gray, *Amerika Samoa: A History of American Samoa and its United States Naval Administration*, (Annapolis: United States Naval Institute, 1960): 101.

²⁵⁵ Gray, *Amerika Samoa*, 101.

²⁵⁶ A similar concession was extracted from the chiefly authorities of Manu'a shortly thereafter by the resident US Navy commander. See: Joseph Kennedy, *The Tropical Frontier*, 70-71.

²⁵⁷ Kennedy, *The Tropical Frontier*, 68-70.

²⁵⁸ Hopkins, *American Empire: A Global History*, 523; Kennedy, *The Tropical Frontier*, 69

something of a form of indirect rule, where a U.S. Navy Commander occupied the role of governor who then governed with the cooperation local Samoan chiefly authorities.²⁵⁹ The Samoan chiefs maintained their authority within their own villages and districts under their customary form of rule, the *fa'a Samoa*.²⁶⁰

The regime managed to remain relatively stable for the first two decades of the twentieth century. The ever-deepening involvement of the Naval authorities in local affairs nevertheless had the longer term consequence of fostering discontent throughout the Samoan population of the islands.²⁶¹ This eventually catalyzed a response in the form of a widespread Samoan movement that later became known as the *Mau*.²⁶² The term *Mau* referred to the Samoan custom of public opposition (literally translated as “to hold fast”).²⁶³ The *Mau* movement had emerged out of a series of *fono* (council meetings at the village and district levels) among the Samoan chiefs.²⁶⁴ It seems to have been provoked by a set of short- and long-term issues and grievances. These included the fact that recent laws were not being translated into the Samoan language, the lack of transparency on the islands’ revenues, poor road maintenance and schooling provision, and a recent prohibition on intermarriage between Samoan and non-Samoan

²⁵⁹ Chappell, “The Forgotten Mau,” 222.

²⁶⁰ Ibid.

²⁶¹ I.C. Campbell, “Chiefs, Agitators, and the Navy,” *Journal of Pacific History* 44, no. 1 (June, 2009): 4, 8-9.

²⁶² Campbell, “Chiefs, Agitators, and the Navy,” 44.

²⁶³ Chappell, “The Forgotten Mau,” 258.

²⁶⁴ Ibid., 232.

couples.²⁶⁵ A series large meetings ensued, with petitions arranged and sent on to American authorities, including one addressed to the President.²⁶⁶

A combination of coercion and minor concession on the part of the American naval authorities managed to take some of the steam out of the *Mau*; splitting the higher Samoan chiefs – the *matai* – off from other more militant, middle ranking chiefs – the *tulafale* (or “talking chiefs”).²⁶⁷ But while the higher Samoan chiefs had ceased to support the *Mau* movement by 1921, many of the *tulafale* remained discontented enough with the Naval administration for *Mau* agitation to continue to be a considerable force to be reckoned with for the remainder of the decade.²⁶⁸

Initial Contact and Offer of Aid by ACLU

Where and when did the ACLU first interest themselves in the Pacific Ocean based colonial empire of the United States? It was concerning American Samoa in the fall of 1922. How and why did this come about? This appears to have stemmed from a written account forwarded on to Union detailing the conditions under Naval rule by a Henry Johnson, who had personally witnessed them during a trip there.²⁶⁹ Especially stressed in Johnson's account was the iniquitous rule of the “Naval[.] Autocracy,” which he further

²⁶⁵ Gray, *Amerika Samoa*, 195.

²⁶⁶ *Ibid.*, 198.

²⁶⁷ Kennedy, *The Tropical Frontier*, 144-145, 148-149.

²⁶⁸ Gray, *Amerika Samoa*, 200-210; Chappell, “The Forgotten Mau,” 217-26, 239-252.

²⁶⁹ Henry Johnson to Robert Trowbridge, 3 November 1922, ACLU Papers (Digitized Microfilm), vol. 246, 137-139.

stressed would be unable to “stand the limelight of publicity and they know it.”²⁷⁰ Roger Baldwin reached out to Johnson shortly thereafter to communicate the ACLU’s interest in the situation in the Samoan islands as they were concerned with “the problems of civil rights wherever American institutions are involved.”²⁷¹ In doing so, Baldwin not only then reaffirmed the same kind of universalist civil liberties mandate he had made earlier that same year regarding the U.S. Virgin Islands, but now seemingly extended it to a region that, unlike the Virgin Islands, had not been formally acquired or annexed by the United States.

As discussed in the previous section, neither the Tripartite Agreement nor the Deed of Cession had resulted in the formal acquisition of the eastern Samoan Islands by the United States. The only official basis for U.S. Navy control of the islands was President McKinley’s executive order of February 19, 1900, but this operated neither under Congressional authorization nor confirmation by the Supreme Court.²⁷² Therefore, Baldwin indicated that he had now seemingly extended the ACLU’s civil liberties mandate outside the confines of the formal U.S. empire. It is very notable that Baldwin did not at this time express awareness of this critical detail regarding the Samoan island’s political status. This suggests that as far as the imperial imaginary of Baldwin and the ACLU were concerned, the eastern Samoan islands already effectively resided within the U.S. formal colonial empire. Among the

²⁷⁰ Ibid., 138.

²⁷¹ Robert Baldwin to Henry Johnson, 20 November 1922, ACLU Papers (Digitized Microfilm), vol. 246, 140.

²⁷² President McKinley’s Executive order placed the Samoan island group “under the control of the Department of the Navy for a coaling station.” See: Kennedy, *The Tropical Frontier*, 68.

reasons this was plausibly the case, two stand out. First, U.S. Navy rule of the islands long predated the formation of the ACLU itself, essentially in operation by February 1900 at the latest. This plausibly contributed to something of a naturalization of American rule over the islands within their imaginary. Secondly, there existed no explicit demands or movement calling for full sovereign independence emanating from either the islands or within the U.S. metropole.²⁷³ What did exist by this point, however, was a movement, the *Mau*, that demanded amelioration of conditions under the prevailing naval regime.²⁷⁴

It just so happened to be via the correspondence with Henry Johnson that the ACLU were put into contact with two noteworthy participants of the *Mau* movement: Samuel and Madge Ripley.²⁷⁵ From this point on they became the ACLU's only significant contacts with respect to the Samoan islands for the remainder of the decade. Samuel Ripley was an '*afakasi* (a Samoan partly of white European descent²⁷⁶) veteran of the First World War. His wife, Madge, was a white Californian graduate of the University of California.²⁷⁷ Following the war, the California-based couple began to take an increasing interest in Samoan affairs out of what appears to be both political and personal business reasons.²⁷⁸ In doing so, they became involved in the *Mau*.

²⁷³ Kennedy, *The Tropical Frontier*, 144

²⁷⁴ Ibid.; Gray, *Amerika Samoa*, 195.

²⁷⁵ Henry Johnson to Robert Trowbridge, 3 November 1922, ACLU Papers (Digitized Microfilm), vol. 246, 137-139.

²⁷⁶ Malama Meleisea, *The Making of Modern Samoa: Traditional Authority and Colonial Administration in the Modern History of Western Samoa* (Suva: Institute of Pacific Studies, 1987): 155.

²⁷⁷ Gray, *Amerika Samoa*, 193.

²⁷⁸ Chappell, "The Forgotten Mau," 239-240.

As discussed in the prefatory section, the *Mau* movement had emerged out of a series of *fono* (council meetings at the village and district levels) among the Samoan chiefs.²⁷⁹ The American Naval authorities had responded to the *Mau* with deportations, the imprisonment of seventeen leading participants, the reshuffling of naval personnel, and a modicum of reforms in such areas as health service and educational provision.²⁸⁰ This had resulted in splitting the higher Samoan chiefs – the *matai* – off from other more militant, middle ranking chiefs – the *tulafale* (or ‘talking chiefs’).²⁸¹ It was from among those remaining disaffected *tulafale* that the Ripleys allied with regarding their ambitions toward the Samoan Islands.²⁸²

Their involvement in the *Mau* was of further significance as naval authorities at the time (as well as some later scholarship²⁸³) tried to attribute the source of the protest to the outside agitation of ambitious ‘*afakasi*’.²⁸⁴ While there certainly was the involvement of ‘*afakasi*’ in the *Mau*, this could hardly account for the whole of the movement. Rather, as Joseph Kennedy has convincingly pointed out, the “markers of overt dissatisfaction” with the Naval administration were well evident long before 1920.²⁸⁵ As Samuel Ripley himself basically fit the naval authorities profile – he had even apparently

²⁷⁹ Ibid., 232.

²⁸⁰ Kennedy, *The Tropical Frontier*, 142-148. Unlike the later *Mau* movement in neighboring Western Samoa, the movement in American Samoa was neither as large-scale or intense, nor was it met with as aggressive a response as that enacted by the New Zealand mandate authorities. See: Susan Pedersen, *The Guardians: The League of Nations and the Crisis of Empire* (Oxford: Oxford University Press, 2015): 169-192. Also see: Meleisea, *The Making of Modern Samoa*, 126-154.

²⁸¹ Kennedy, *The Tropical Frontier*, 144-145, 148-149.

²⁸² Ibid., 122-124, 130-131, 145

²⁸³ Gray, *Amerika Samoa*, 190-210; Campbell, “Chiefs, Agitators, and the Navy,” 41-60.

²⁸⁴ Chappell, “The Forgotten Mau,” 231-232.

²⁸⁵ Kennedy, *The Tropical Frontier*, 105.

even been granted the rather vague position of agent for the “Samoan Government” by the *tulafale* he was allied with – he came to draw a great deal of their ire.²⁸⁶ Furthermore, as it does appear that the Ripleys’ political activity intersected with their business ambitions to acquire land to engage in copra production, they were viewed with distrust by not only the naval authorities but even to some degree by higher ranking *matai*.²⁸⁷ This came to a head in August 25, 1921 when (as discussed in the chapter introduction) Samuel Ripley traveled to Samoa only to be greeted by Governor Waldo Evans and eventually deported back to the mainland states.²⁸⁸ From that point on Samuel and Madge Ripley continued on as best they could in pursuit of their intersecting political and business ambitions regarding the Samoan Islands.²⁸⁹

It is notable that the ACLU throughout their communications did not engage with the broader context of the *Mau* movement, nor with Samuel and Madge Ripley’s active participation in the latter.²⁹⁰ And this was remarkable not only due to their having been some measure of newspaper coverage on

²⁸⁶ Gray, *Amerika Samoa*, 196-197.

²⁸⁷ Kennedy, *The Tropical Frontier*, 122-124.

²⁸⁸ *Ibid.*, 142, 145.

²⁸⁹ Chappell, “The Forgotten Mau,” 240.

²⁹⁰ There are little more than some general allusions to the Ripleys being politically active regarding Samoa in their correspondence. Within a letter from Henry Johnson to the ACLU, Samuel Ripley is offhandedly referred to as “the representative of the Samoan people in the United States.” Within their proceeding communications, however, the ACLU appear do not appear to have followed up on the meaning of this unclear designation of Ripley. See: Henry Johnson to ACLU, 9 December 1922, ACLU Papers (Digitized Microfilm), vol. 227, 162; Roger Baldwin to Henry Johnson, 20 December 1922, ACLU Papers (Digitized Microfilm), vol. 246, 141; Roger Baldwin to Samuel Ripley, 4 January 1923, ACLU Papers (Digitized Microfilm), vol. 246, 142; Madge Ripley to Roger Baldwin, 29 January 1924, ACLU Papers (Digitized Microfilm), vol. 269, 43; Roger Baldwin to Madge Ripley, 8 April 1924, ACLU Papers (Digitized Microfilm), vol. 269, 79. When later discussing the Ripleys’, the ACLU merely described the Ripleys as “Americans who have become interested in the plight of the Samoans.” See: Eugene Lyons to Editor of *The New Republic*, 21 November 1923, ACLU Papers (Digitized Microfilm), vol. 246, 150.

the *Mau* within the mainland states, but also due to the fact that the *Mau* – with its reliance on such peaceable means as public gatherings and petitions – was seemingly just the sort of protest movement that the ACLU was committed to defending with their civil liberties mandate.²⁹¹ This more than likely speaks to their lack of contacts based in the Samoan islands. As the Ripleys were based in California, this meant that their only substantive contacts and intermediaries with the Samoan islands were themselves metropolitan based. The organization was then without any direct contact with the islands. This context greatly contrasted with the much more robust set of allies and intermediaries that the ACLU were able to call upon and work with who were based in the U.S. Virgin Islands over the same period. The fact that they never proactively sought out more firmly based local contacts spoke to the lack of resources and personnel of the ACLU at the time, as well to an imperial imaginary on their part that likely insulated them from being overly concerned about the limitations and/or implicit biases likely to ensue from this lack of contacts.

With the ACLU having expressed earnest interest in the conditions of the Samoan islands, how then did the ACLU first intend on pursuing their civil liberties mandate there? In January of 1923 Baldwin sketched out something of a loose plan for Samuel Ripley. This involved, first, sending a

²⁹¹ Including a series of articles in *The Nation* (a publication the ACLU possessed some measure of contacts with) laying out differing positions on the conditions in the Samoan Islands and on the *Mau* (including one contributed by Samuel Ripley). See: “From the ‘Loyal’ Chiefs,” *The Nation*, 15 March 1922, 325; “A Counterblast,” *The Nation*, 15 March 1922; 326; Samuel S. Ripley, “Our Naval Autocracy in Samoa,” *The Nation*, 15 March 1922, 309; Governor Waldo Evans, “American Law and Order,” 15 March 1922; “To Whom it May Concern,” *The Nation*, 15 March 1922.

communication to the Navy Department protesting “against the methods of naval rule in Samoa,” and then having additional copies of which sent on to “the whole of liberal press in the country.”²⁹² From there, they would also send copies on to interested Senators with the aim of getting this onto the Congressional record, with the broader goal of possibly making “it the subject of an inquiry together with similar conditions in our other Colonial possessions.”²⁹³ Hence, Baldwin had sketched out something of a preliminary plan that would have involved them publicizing the iniquitous conditions in Samoa under US Navy rule – all with the purpose of leveraging this into a possible response from Congress. One that additionally had the potential of establishing some linkage between the conditions then existing among the other U.S. colonies.

Left unarticulated here though was just what sort of response from Congress was being sought by the ACLU; presumably they desired more robust protections for the civil liberties commitments they so prioritized (i.e. free speech, press, and assembly). However, formally speaking, Congress did not possess jurisdiction over the eastern Samoan island group – for Congress to do so would have required the ratification of the Deeds of Cession as treaties by legislature itself. Any calls for Congressional legislative action regarding the Samoan islands was then tantamount to calling for the formalization of the U.S. acquisition of the eastern Samoa islands. Yet Baldwin and the ACLU at this point do not appear to have given

²⁹² Roger Baldwin to Samuel Ripley, 4 January 1923, ACLU Papers (Digitized Microfilm), vol. 246, 142.

²⁹³ Roger Baldwin to Samuel Ripley, 4 January 1923, ACLU Papers (Digitized Microfilm), vol. 246, 142.

any consideration to the consequences that such a position might have upon the status of the Samoan islands itself, nor upon that of their civil liberties mandate within the US colonial empire. This likely spoke to an imperial imaginary on their part that obscured from them the potential unintended implications and/or consequences that might ensue when they pursued their metropolitan derived civil liberties universalism with little nuanced account being taken of the greatly differing conditions and contexts of the colonial empire.

However, having set out this ambitious – and potentially provocative – preliminary plan, nothing tangible resulted. For shortly thereafter, Baldwin cautioned the Ripleys against placing too high a hope in getting a prompt response from Washington.²⁹⁴ Baldwin now expressed great pessimism about being able to arouse ‘public opinion’ in the metropolitan states to “move any of the officials at Washington when it comes to an issue of a subject people.”²⁹⁵ Therefore, within the space of a mere month Baldwin had managed to move on from enthusiastically setting out an ambitious and proactive strategy, to making a non-committal and tepid expression of continued interest.

To further emphasize his pessimism, Baldwin also highlighted the cautionary examples of contemporary Puerto Rico and Haiti. For in both cases, in spite of such favorable factors as the “enormous” publicity received

²⁹⁴ Roger Baldwin to Madge Ripley, 23 January 1923, ACLU Papers (Digitized Microfilm), vol. 246, 147-148.

²⁹⁵ *Ibid.*, 147.

and “contacts between New York and those islands” being quite close, conditions were “just as bad as they were.”²⁹⁶ Baldwin continued on to contrast these examples with the even more discouraging circumstances of Samoa, stressing that the islands were simply “too remote to expect to get attention, except through a few of the liberal journals.”²⁹⁷ Baldwin was then highlighting that, however great were the difficulties with respect to confronting American imperialist abuses in the Caribbean, they were only manifoldly more so with respect to the Samoa islands due to their much greater distance away in the Pacific Ocean, the lack of direct sympathetic contacts in New York, and the lack of broader public interest and concern throughout the mainland United States – all of which plainly informed their own lack of more focused attention and tangible engagement with the Pacific-based colonies.

It is notable that in this exchange Baldwin left unmentioned the fact that the ACLU had not themselves taken up matters stemming from Puerto Rico nor with the U.S. occupation of Haiti by this point. It is further notable, however, that, despite this lack of involvement, this exchange conveyed the impression that the ACLU’s imperial imaginary was expansive enough to encompass other informal colonies such as Haiti, even if they had not explicitly included the latter within their actual civil liberties activities at the time. This implied that their concern with an informal colony like the eastern Samoan islands was no aberration and that they might very well bring

²⁹⁶ Ibid.

²⁹⁷ Ibid.

themselves to take on other aspects of the U.S. informal empire in the foreseeable future. However, as there was no acknowledgement by Baldwin of the differing sovereignty statuses of the colonies referred to, this further suggested a blurred and overlapping perception of American colonial space – one in which the distinctions between informal and formal colonies were unstable and unclear within his imperial imaginary. In the event of tangible engagement with the informal imperial sphere by the ACLU, such blurred and unclear perceptions of the varying the aspects of the empire held out the potential that any proceeding engagement was quite likely to be incoherently conceived, inconsistent, and/or ripe for unintended consequences.

Turn to Litigation

In what way, if at all, did the ACLU continue to interest themselves in eastern Samoan Islands? The ACLU continued to stay in contact with the Ripleys over the course of the decade. Madge Ripley kept them updated on Samoan developments, including informing them of a concerning murder trial from a procedural standpoint.²⁹⁸ However, as it had already resulted in the execution of the Samoan defendant in question, there was no recourse left to pursue.²⁹⁹ It proved to be a court case involving Samuel Ripley himself in 1926 that eventually drew tangible ACLU involvement – a case that carried even

²⁹⁸ Madge Ripley to Roger Baldwin, 29 January 1924, ACLU Papers, (Digitized Microfilm), vol. 269, 43.

²⁹⁹ Ibid.; Walter Nelles to Roger Baldwin, 7 April 1924, ACLU Papers (Digitized Microfilm), vol. 269, 78; Roger Baldwin to Madge Ripley, 8 April 1924, ACLU Papers (Digitized Microfilm), vol. 269, 79.

broader and significant implications for American colonial rule, both for the Samoan islands as well as for the U.S. colonial empire as a whole.

This case stemmed from the earlier referred to incident in August 1921, in which Samuel Ripley had attempted to return to the Samoan islands to meet with members of the *Mau* movement only to be stopped upon arrival and deported on the orders of Governor Waldo Evans.³⁰⁰ Upon his return to the metropolitan states, Ripley initiated litigation against Governor Evans due to the latter's denial of entry to an American citizen; a charge that eventually was eventually carried forward in the District Court of Northern Illinois in Chicago.³⁰¹ Upon the recommendation of ACLU legal counsel Albert DeSilver, Samuel Ripley enlisted the law firm of Urion, Drucker, Reichmann and Boutell to handle his case.³⁰² Yet ACLU participation did not remain limited to facilitating Ripley's legal representation. For in June 1926, Madge Ripley, due to the large expenses the case required, applied to the ACLU for financial aid.³⁰³ Baldwin responded that he would take up the matter of financial aid with the Executive Committee. While he cautioned that this case was "not still strictly within our field," it was "closely enough related for us to talk about it anyhow."³⁰⁴ After the necessary deliberation, the case was

³⁰⁰ Gray, *Amerika Samoa*, 202-203. While the emerging court case is very briefly acknowledged by Gray in his book, like Joseph Kennedy's brief discussion of which, there is no mention of ACLU involvement. See: *Ibid.*; Kennedy, *The Tropical Frontier*, 152, 169.

³⁰¹ The case was first brought forward in California State Courts in 1922, then transferred to California District Court only to be denied on the grounds that Evans was only passing through California under orders and therefore could not be serviced with papers. Ripley then initiated another proceeding against Evans in the Northern Illinois District Court. See: Madge Ripley to Forest Bailey 25 June 1926, ACLU Papers (Digitized Microfilm), vol. 309, 199.

³⁰² Madge Ripley to Forest Bailey, 25 June 1926, ACLU Papers (Digitized Microfilm), vol. 309, p. 199.

³⁰³ *Ibid.*, 199-200.

³⁰⁴ Roger Baldwin to Mage Ripley, 5 August 1926, ACLU Papers (Digitized Microfilm), vol. 309, 204.

deemed related enough to a civil liberties issue for the committee to approve of financial aid by the end of August.³⁰⁵

This begs the question, why had the ACLU agreed to do so? Of important note here was the broader context of the timeframe in which this decision occurred. For this followed upon the pivotal year of 1925 in which the ACLU (as discussed in Chapter 1), in the wake of the publicity coup of their involvement in the Scopes trial and the pivotal Supreme Court decision of *Gitlow v. New York*, began a gradual transition in their approach and attitudes towards the courts and litigation. This transition saw them moving on from engaging in the courts for either publicity purposes or as a last resort form of defense, to proactively pursuing substantive constitutional change through them.³⁰⁶

The ACLU's communications with Samuel Ripley's attorneys indeed confirm that, that they were now embracing the formal institutional framework of the courts not only as a means of immediate redress – nor even solely as a check to perceived abuses of state authority – but now as a venue through which substantive constitutional change could be pursued via strategic litigation. For as Ripley attorney, Henry Union, highlighted to Forest Bailey, not only were the charges filed against Evans to secure damages for Ripley, but because the case itself raised “larger proposition as to whether ... the ‘Bill of Rights’ of our Federal Constitution applies in a territory so

³⁰⁵ Forest Bailey to Madge Ripley, 31 August 1926, ACLU Papers (Digitized Microfilm), vol. 309, 206.

³⁰⁶ Emily Zackin specifically locates the beginning of the ACLU intentionally engaging in test cases at the end of 1924. See: Zackin, “Popular Constitutionalism’s Hard When You’re Not Very Popular,” 380.

organized.”³⁰⁷ Urien was then stressing to the ACLU that they believed that the Ripley case represented an opportunity to mount a challenge to the doctrine of incorporation. Bailey responded that “it was those issues which really constitute our excuse for feeling an interest in case.”³⁰⁸ Hence, the ACLU were explicit that it was because the case represented an opportunity to mount a challenge to the doctrine of incorporation that most appealed to them. Having agreed to the terms of their support, the ACLU then released a news release on October 18 publicizing their involvement in the Ripley case.³⁰⁹

The ACLU’s support for this case, therefore, was an early example of the sort of strategic litigation that the ACLU would increasingly pioneer over the coming years within the metropolitan states. Hence, litigation success in the metropolitan sphere (i.e., the *Gitlow* decision) that laid the groundwork for their first attempt to do so with regarding the American colonial empire. Left unacknowledged, however, was the fact that a successful challenge to the doctrine of incorporation, and an accompanying extension of aspects of the Bill of Rights to the Samoan islands, would also have, by implication, entailed (similar to a demand for Congressional legislative action) formalizing the acquisition of the eastern Samoan islands by the United States. Setting aside the question as to whether the Supreme Court would

³⁰⁷ Henry Urien to Forest Bailey, (September 3, 1926), ACLU Papers (Digitized Microfilm), vol. 309, 232; Henry Urien to Forest Bailey, 1 October 1926, ACLU Papers (Digitized Microfilm), vol. 309, 239-40.

³⁰⁸ Forest Bailey to Henry Urien, 8 September 1926, ACLU Papers (Digitized Microfilm), vol. 309, 234; Forest Bailey to Henry Urien 4 October 1926, ACLU Papers (Digitized Microfilm), vol. 309, 242.

³⁰⁹ ACLU News Release, 18 October 1926, ACLU Papers (Digitized Microfilm), vol. 309, 302-303.

plausibly consider assuming an explicit prerogative of Congress (i.e., the formal acquisition of territory), by seeking to extend US federal jurisdiction over informal colonial territory, this represented an implicit and indirect attempt by the ACLU to effectively formalize American rule over informal imperial space. What then accounts for the ACLU supporting such a measure?

One possible explanation for this may be that the ACLU were simply not cognizant of the Samoan islands' informal status within the US colonial empire. This could then be interpreted as a byproduct of their metropolitan-based imperial imaginary which at this time tended to universalize the greatly varied and particularist contexts and governing statuses that existed throughout the U.S. colonial empire. As alluded to in the previous chapter regarding Baldwin's broad assertion of ACLU interest in the colonial empire, this would then be the sort of unintended consequences that might result from an incautious pursuit of their metropolitan derived civil liberties commitments in the colonial sphere. Indeed, in the communications between the ACLU and Ripley's attorneys, there was little appreciation or concern expressed regarding the formal sovereignty status of the Samoan islands.³¹⁰

³¹⁰ While at one point attorney Henry Urien refers to the Samoan Islands as being as "unorganized territory without legislation or other congressional action providing for the government thereof," he nonetheless states that the US had "acquired jurisdiction" through the "treatise with the Samoan chiefs." Yet, the US had not acquired jurisdiction over the islands via treaty as the Senate had not ratified any such treaty with Samoan chiefly authorities at that time. See: Henry Urien to Forest Bailey, 3 September 1926, ACLU Papers (Digitized Microfilm), vol. 309, 232; Henry Urien to Forest Bailey, 1 October 1926, ACLU Papers (Digitized Microfilm), vol. 309, 239-40; Forest Bailey to Henry Urien, 8 September 1926, ACLU Papers (Digitized Microfilm), vol. 309, 234; Forest Bailey to Henry Urien, 4 October 1926, ACLU Papers (Digitized Microfilm), vol. 309, 242.

Instead they were entirely preoccupied with how their litigation effort might address the issue of the Bill of Rights in the colonial sphere.³¹¹

If, on the other hand, the ACLU were aware of the informal status of the Samoan Islands within the empire, this suggests that they viewed the question of the formal acquisition of the eastern Samoan islands of Tutuila and Manu'a as something just short of an accomplished fact, essentially a *fait accompli*, given the ongoing and entrenched reality of U.S. Navy control of islands. A control, for that matter, that was not (as was similarly the case in contemporaneous Virgin Islands) being fundamentally opposed by any kind of independence movement (such as existed regarding the Philippines), either within the islands or the U.S. metropole.³¹² Given such circumstances, the ACLU may have concluded that they were merely facing up to the reality of a situation in which, no matter what position they adopted, American control of the islands would continue on indefinitely, and that to not take up an opportunity to challenge the doctrine of incorporation would be to accept the ongoing status quo as largely dictated by the U.S. Navy government there.

The trial in Chicago eventually went forward in November, with, as per the goal of the legal strategy, the ruling going against Ripley. According to Ripley's attorney Urion, with them having gotten all of the relevant material on the record, this had left them in "the best possible situation" for their

³¹¹ Ibid

³¹² As discussed above, nowhere in the preexisting demands of the *Mau* had there been either explicit calls for either annexation or independence, rather, demands were for more just and equitable conditions in the islands. See: Kennedy, *The Tropical Frontier*, 144; Gray, *Amerika Samoa*, 195.

appeal to gain a “determination of the civil rights in American Samoa and the application of the federal constitution to American Samoa.”³¹³ Therefore, as of the fall of 1926, as far as they were concerned, all seemed well placed in the appeal process for their strategic litigation campaign. This makes even more remarkable the anticlimactic resolution of the case. In May 1927, the Ripley’s were advised by their attorneys that the necessary printing costs had dramatically increased. After appealing to the ACLU for additional support, the Ripleys were then informed by the organization that they would be unable to aid them.³¹⁴ With the Ripleys unable to raise the additional funding for the printing, the appeal effort was unable to proceed any further.³¹⁵

It just so happened that at this very time in 1927, Baldwin had temporarily stepped aside from his duties as executive director of the ACLU and was travelling through Europe engaged with other international issues – among the most prominent of which was that of anti-imperialism (as will be further discussed toward the end of this chapter). When Baldwin was informed of these developments the following year by Madge Ripley, he exclaimed being at a loss as to how they received no more communications after the printing cost issue arose.³¹⁶ In spite of additional inquiries being made it remained unclear as to how this very disappointing conclusion came

³¹³ Henry Urien to Forest Bailey, 5 November 1926, ACLU Papers (Digitized Microfilm), vol. 309, 255.

³¹⁴ Madge Ripley to Roger Baldwin, 19 March 1928, ACLU Papers (Digitized Microfilm), vol. 350, 698.

³¹⁵ Ibid.

³¹⁶ Roger Baldwin to Madge Ripley, 30 March 1928, ACLU Papers (Digitized Microfilm), vol. 350, 702.

about.³¹⁷ The extended absence of the notoriously controlling Baldwin from the ACLU during the period in question may have contributed to such a significant organizational lapse.³¹⁸

The anticlimactic resolution of the case notwithstanding, this effort nonetheless remained a significant precedent on the part of the ACLU. This represented the first tangible attempt by the organization to support a strategic litigation effort that sought to challenge the doctrine of incorporation. However, by implication, this also represented a *de facto* effort on their part to formalize the acquisition of informal colonial territory by the United States. While the issue of the Samoan cession ultimately proved moot (as the Senate formalized the acquisition of the islands in the following year on February 20, 1929³¹⁹), this nonetheless suggested that the ACLU might pursue their civil liberties mandate to similar ends elsewhere in the U.S. informal empire – no small matter given the ongoing American military occupation of Haiti and interventions in Nicaragua, among others. If in the foreseeable future the ACLU decided to engage with any of the United States' contemporary Caribbean military interventions and occupations, this left open the question as to whether they would so single mindedly pursue

³¹⁷ There is a large gap in the archival record of the ACLU with respect to their engagement with the Samoan islands, as well as for the entirety of the year of 1927, which does not pick back up again until 1928. The relevant correspondence appears to have been lost sometime over the course of the year itself, as the ACLU were unable to locate it in 1928 themselves. See: Forest Bailey to Morris Ernst, 27 March 1928, ACLU Papers (Digitized Microfilm), vol. 350, 700; Forest Bailey to Ernest Reichmann, 31 March 1928, ACLU Papers (Digitized Microfilm), vol. 350, 703; Ernest Reichmann to Forest Bailey, 4 April 1928, ACLU Papers (Digitized Microfilm), vol. 350, 704.

³¹⁸ Baldwin did indeed complain of Forest Bailey's interim performance as acting director. See: Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 184-185.

³¹⁹ Kennedy, *The Tropical Frontier*, 173.

their civil liberties commitments that they might come to support similar moves – possibly even go as far as endorsing annexation. In such circumstances it would almost certainly mean that the ACLU’s civil liberties mandate could serve as much as an enabler of, rather than a constraint and defense against, U.S. colonial state power.

The ACLU and The Philippines

The Philippines Under American Colonial Rule by 1920

The United States took formal possession of the Philippines with the Treaty of Paris of 1898 following the American defeat of Spain. A brief and fragile peace between the American forces and Filipino nationalists gave way to a devastating insurrectionary war that lasted intermittently for nearly a decade.³²⁰ The initial form of governance established by United States came in the guise of an executive appointed Philippine Commission. As armed conflict began to reside, there began a very limited devolution of governance to a select group of Filipino elites known as the *ilustrados*. This was largely limited to the Christian regions of Luzon and operated on a very restrictive electoral system of male suffrage.³²¹ The US maintained a powerful, presidentially appointed colonial executive all throughout, first in the form

³²⁰ Alfred W. McCoy, *Policing America’s Empire: The United States, the Philippines, and the Rise of the Surveillance State* (Madison: University of Wisconsin, 2009): 59-158; Paul A. Kramer, *The Blood of Government: Race, Empire, the United States, & the Philippines* (Chapel Hill: University of North Carolina 2006): 87-158.

³²¹ In the non-Christian regions in the North of Luzon and throughout the predominantly Muslim south of Mindanao and the Sulu archipelago, there was no semblance of an electoral system and were in effect ruled by American military officers. See: Kramer, *The Blood of Government*, 162.

of a military governor, which lasted until 1902 when it was converted into the position of governor-general – in both cases a colonial executive well-endowed in appointive and coercive capacities.³²²

The seeming stabilization of the U.S. colonial regime there by 1907 led to the establishment of the Philippine Assembly, which essentially acted as the lower legislative house to the preexisting and appointment based Philippines Commission.³²³ The first Assembly election saw the rise of the *Nacionalista* Party, which demanded immediate independence for the Philippines.³²⁴ From 1907 on Philippine politics was then largely dominated by the great tension between, on the one hand, the Philippine *Nacionalista* Party demanding greater Filipino representation throughout the government (which came to be known as the policy of “Filipinization”) and, on the other, American authorities within the Commission and governors-general who prioritized the need for more material improvements (i.e., the building of roads, bridges, and port infrastructure).³²⁵ This tension also led to the strengthening of the preexisting Sedition Act and a newly enacted Flag Law (alongside the continued maintenance of a severe Libel Law) to maintain the

³²² Leia Castañeda Anastacio, *The Foundations of the Modern Philippine State: Imperial Rule and the American Constitutional Tradition in the Philippine Islands* (New York: Cambridge University Press, 2016): 9, 119-121.

³²³ Luis H. Francia, *A History of the Philippines: From Indios Bravos to Filipinos*, (New York: Overlook Press, 2010), p. 167; Sidney Fine, *Frank Murphy: The New Deal Years* (Chicago: University of Chicago, 1979): 5-6.

³²⁴ Vince Boudreau, “Methods of Domination and Modes of Resistance: The U.S. colonial state and Philippine mobilization in comparative perspective,” in *The Colonial State in the Philippines: Global Perspectives*, ed. Anne Foster and Julian Go (Durham: Duke University Press, 2003): 268.

³²⁵ Kramer, *The Blood of Government*, 287-288.

colonial regime's oversight, and if needs be, the suppression of the Filipino press and public.³²⁶

The emphasis on material development dominated the American approach to the Philippines until the Woodrow Wilson administration appointed Francis Burton Harrison as governor-general. Under Harrison, the priority was now placed on the Filipinization of the Philippines administration.³²⁷ At the same time, with a Democratic Party majority in Congress, legislation was pursued that sought to fundamentally alter, and possibly even end, the terms American rule of the Philippines. This resulted in the passage of the compromised Second Jones Bill on August 29, 1916.³²⁸ The final bill merely entailed a commitment by the U.S. Congress to extend independence as soon as a "stable government" in the Philippines had been achieved.³²⁹ The Jones Act additionally replaced the Philippines Commission with a Senate, and thereby established a bicameral legislature under the control of Filipino office holders.³³⁰

With the return of a Republican presidential administration in 1921 under Warren G. Harding, however, there came a rejection of Harrison's

³²⁶ McCoy, *Policing America's Empire*, 175.

³²⁷ Fine, *Frank Murphy*, 6.

³²⁸ Kramer, *The Blood of Government*, 354-355.

³²⁹ Frank A. Ninkovich, *The United States and Imperialism* (Maiden: Blackwell Publishers, 2001): 75.

³³⁰ Dissolution of the commission also led to the creation of a new Bureau of Non-Christian Tribes to preside over the government of the so-called "special provinces" of northern Luzon and southern Mindanao and Sulu islands. While this move did more to integrate the 'special provinces' into the rest of the Philippines, the American governor-general, and not the Philippines legislature, maintained jurisdiction over these provinces and was empowered to appoint proportional representatives from these provinces to the legislature. Furthermore, direct U.S. control was retained over the departments of education, forestry, health, the military, and prisons. See: McCoy, *Policing America's Empire*, 232, 269; Thompson, "The Imperial Republic," 571; Francia, *A History of the Philippines*, 168.

approach entirely. Under his replacement, Leonard Wood, a reversal of the Filipinization policy and a return to more centralized control by the governor-general proceeded.³³¹ With this development, the prospects for Philippines independence dimmed, at least in the short-term.

First Engagement with Philippine Independence

Aside from the eastern Samoan islands, the one other Pacific Ocean based part of the U.S. empire that the ACLU engaged with during the 1920s was the Philippines. How did the ACLU first engage themselves there? It was regarding Philippine independence that the ACLU first substantively engaged with the island archipelago. That it was regarding the issue of independence was not altogether surprising as alone among the U.S. colonies (as discussed above) that Congress had officially committed itself via the 1916 Jones Act (however indeterminately) to independence for the Philippines. The question of Philippine independence, however, (as will be seen) was to become a source of some significant division among the ACLU's leadership, its membership, and other metropolitan based allies.

The ACLU first engaged with the issue of independence for the Philippines following an invitation by Grace E. Boyd of the Fellowship of Reconciliation in January, 1924 for them to participate in a mass meeting in

³³¹ Stanley Karnow, *In Our Image: America's Empire in the Philippines*, (New York: Random House, 1989): 249-250.

support of Philippine Independence.³³² The ACLU readily agreed to this and affirmed that they would send two delegates.³³³ A month later a more proactive initiative was taken up when ACLU chairman Harry Ward sent out a circular letter to fellow ACLU members and allies, requesting signatures for a resolution calling for Philippine independence that was to be sent to Congress and then made public.³³⁴

The petition asserted that the very unanimity of the Filipino peoples' demand for independence had been an irrefutable demonstration of "their ability to conduct their affairs," and, "irrespective of their competence for self-government," called for "their right to independence."³³⁵ Ward further asserted in his circular that the present situation of the Philippines called for "an expression from American citizens interested in the principle of civil liberty as applied to the Philippine demand for independence."³³⁶ The conflation of civil liberty and independence here pointed to the novelty and fluidity of civil liberties as a concept and cause at the time.

How and why did the ACLU come about distributing a petition explicitly endorsing independence for a U.S. colony? As Ward qualified in the petition itself, the ACLU would not take official responsibility for having issued the resolution itself.³³⁷ It appears that internal division about taking

³³² Grace Boyd to Roger Baldwin, 14 January 1924, ACLU Papers (Digitized Microfilm), vol. 269, 7.

³³³ Roger Baldwin to Grace Boyd, 18 January 1924, ACLU Papers (Digitized Microfilm), vol. 269, 7.

³³⁴ Harry Ward, ACLU Letter, 23 February 1924, ACLU Papers (Digitized Microfilm), vol. 269, 11.

³³⁵ "Proposed Resolution to be submitted to committees of Congress concerning Philippine Independence" (Undated), ACLU Papers (Digitized Microfilm), vol. 269, 5.

³³⁶ Harry Ward, ACLU Letter, 23 February 1924, ACLU Papers (Digitized Microfilm), vol. 269, 11.

³³⁷ Ibid.

up the issue of Philippine independence within the ACLU had prevented them from issuing the petition under their own heading, and thereby officially and publicly endorsing independence for the Philippines. As Baldwin later admitted, the ACLU had not done so in large part because, “strange to say, some of our best friends on the National Committee are shaky about immediate independence.”³³⁸ Given that, as discussed in Chapter 1, Baldwin was by this point already well committed to the cause of Indian independence in his extra-ACLU activities, it is more than likely that he, alongside Ward, had been one of the prime movers behind this initiative to get the ACLU to take up the cause of independence for the Philippines.³³⁹

This petition calling for Philippine independence, however, not only proved divisive within the ACLU, but also to the collection of metropolitan based reform figures and organizations that they circulated it around to. Indeed, as the respondents were either National Committee members, dues paying members, or presumably at the very least civil liberties sympathetic allies of the ACLU, their responses to the initiative provide additional insightful into what likely prevented the ACLU from proactively and explicitly embracing independence for the Philippines in the first place. While, on the one hand, the circular did receive a great deal of affirmative responses from such notable figures and organizations as John Haynes

³³⁸ Roger Baldwin to Henry Mussey, 28 April 1924, ACLU Papers (Digitized Microfilm), vol. 269, 34.

³³⁹ Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 169-170. Baldwin also happened to express his intent to get the ACLU to take some unspecified “action” on the Philippines ‘in the near future’ in January of 1924. See: Roger Baldwin to Evelyn Hughan, 18 January 1924, ACLU Papers (Digitized Microfilm), vol. 269, 8.

Holmes, Oswald Garrison Villard of *The Nation*, James Weldon Johnson of the NAACP, and Paul Jones of The Fellowship of Reconciliation.³⁴⁰ On the other hand, there were also very notable refusals. Some did so because they felt that they lacked the necessary knowledge of the Philippines situation to weigh in on the matter.³⁴¹ Whereas, there were those such as sociologist E.A. Ross and Paul Kellogg, editor of *The Survey*, who objected to the notion of unqualified support for Filipino independence, and continued to believe that such questions relating to “capacity” for self-government were relevant for determination of whether they could support independence and self-government for the Philippines.³⁴² There were also other respondents that were upfront about their belief that the Philippine peoples lacked the necessary capacity for self-government – with one respondent asserting that they “had not yet been trained in self government for a single generation.”³⁴³ With such respondents’ acceptance, even embrace, of such racialized and civilizational tropes regarding the relevance of the governmental capacity of the Philippine people, they evoked imperial imaginaries and rationales indicative of the apologists of empire elsewhere who rejected the demands

³⁴⁰ John H. Holmes to Harry Ward, 25 February 1924, ACLU Papers (Digitized Microfilm), vol. 269, 14; Oswald G. Villard to Harry Ward, 25 February 1924, ACLU Papers (Digitized Microfilm), vol. 269, 14; James Weldon Johnson to Harry Ward, 25 February 1924, ACLU Papers (Digitized Microfilm), vol. 269, 12; Paul Jones to Harry Ward, 25 February 1924, ACLU Papers (Digitized Microfilm), vol. 269, 11.

³⁴¹ Warren Stone to Harry Ward, 27 February 1924, ACLU Papers (Digitized Microfilm), vol. 269, 18; Felix Frankfurter to Harry Ward, 10 March 1924, ACLU Papers, (Digitized Microfilm), vol. 269, 27.

³⁴² E.A. Ross to Harry Ward, 28 February 1924, ACLU Papers (Digitized Microfilm), vol. 269, 20; Paul Kellogg to Harry Ward, 4 March 1924, ACLU Papers (Digitized Microfilm), vol. 269, 23.

³⁴³ Adelbert Moot to Harry Ward, 24 March 1924, ACLU Papers (Digitized Microfilm), vol. 269, 28; Unidentified (Signature not legible) to Harry Ward, 7 March 1924, ACLU Papers (Digitized Microfilm), vol. 269, 24.

of independence and self-governance by other colonial subject peoples on similar discursive grounds.³⁴⁴

As noted above, while many of the respondents to the petition were not members of the National Committee of the ACLU, they were nonetheless at the very least ACLU civil libertarian allies and can therefore be taken as expressing views indicative of other civil libertarian supporters who might otherwise have been wary and/or opposed to explicitly supporting independence for the Philippines. Therefore, the feedback the ACLU received on the petition of support for Philippines independence indicates some of the likely division existing within the ACLU on the question of extending independence to a U.S. colony. It demonstrated that right alongside those who enthusiastically supported Philippine independence were those in possession of imperial imaginaries that identified to varying degrees with the ongoing discourses of the US colonial empire, especially those related to governing capacity and race. Such division plainly served to limit any other efforts on the part of ACLU figures like Baldwin and Ward to greater engage with, and possibly even explicitly support, the cause of independence. These objections and tensions aside, copies of the signed petition were nonetheless sent on in April to the Speaker of the House of Representatives and to Senator Hiram Johnson, Chairman of the Committee on Territories and Insular Possessions.³⁴⁵

³⁴⁴ Adelbert Moot to Harry Ward, 24 March 1924, ACLU Papers (Digitized Microfilm), vol. 269, 28; Unidentified (Signature not legible) to Harry Ward, 7 March 1924, ACLU Papers Microfilm, vol. 269, 24.

³⁴⁵ Petition to Speaker of the House of Representatives, 11 April 1924, ACLU Papers (Digitized Microfilm), vol. 269, 32; Petition to Senator Hiram Johnson, 17 April 1924, ACLU Papers (Digitized Microfilm), vol. 269, 33.

Independence as a Civil Liberty?

The next occasion in which the issue of Filipino independence was broached by the ACLU was upon the initiative of Roger Baldwin in 1925. Baldwin proposed that ACLU chairman Harry Ward, who happened to be in China at the time, could possibly go on to the Philippines and address some independence meetings there to express the “comradeship of thousands of Americans” who also shared “their aspirations.”³⁴⁶ He suggested that if agreed to, Ward could represent both the ACLU and the Fellowship of Reconciliation.³⁴⁷ Baldwin argued that this would “be helpful not only to the movement in the Islands to establish this bond on the part of dis-interested American groups, but it will have some effect here as well.”³⁴⁸ For Baldwin, who, along with Ward, was plainly among those within the ACLU leadership more sympathetic to the calls for Philippine independence, this represented a circuitous route by which he might get the ACLU to express sympathy, and possibly even indirect support, for independence without getting the organization to make an explicit endorsement.

Yet even before Baldwin could receive a reply from Ward, fellow Executive Committee member and ACLU legal counsel, Walter Nelles strenuously objected to the proposal. In doing so, he revealed some further grounds of concern evidently existing among the ACLU leadership regarding

³⁴⁶ Roger Baldwin to Harry Ward, 26 February 1925, ACLU Papers (Digitized Microfilm), vol. 292, 96.

³⁴⁷ Ibid.

³⁴⁸ Ibid.

the issue of Philippine independence. Nelles opposed Baldwin's proposal because it struck him as "potentially incendiary."³⁴⁹ He highlighted the fact that their critics within the mainland states had long accused the ACLU of doing more than merely defend freedom of expression and advocacy. While he readily conceded that the line between defense of advocacy and incitement was largely indeterminate, Nelles nonetheless stressed that this appeared "to fall on the side of incitement."³⁵⁰ As far as Nelles was concerned, then, the ACLU had moved dangerously into the territory of the instigation and advocacy of particular views, rather than solely defense of their advocacy.³⁵¹ In so stating his position, Nelles demonstrated that, for all of the novelty and fluidity of their conception of civil liberties at the time, metropolitan considerations placed significant limits upon the adaptability of civil liberties regarding the colonial sphere, at least as far as a ranking member of the ACLU was concerned.

Nelles stressed that they should limit their "opposition to the possibilities of curtailment of advocacies or implications relating to public policy."¹ Therefore, Nelles highlighted the fact that the ACLU tended at this time, as scholar David Rabban has convincingly demonstrated, to limit their defense of civil liberties, in particular regarding free speech, to that which they deemed to be of political and economic policy import.³⁵² And while Nelles' position was plainly much more narrow than Baldwin would have

³⁴⁹ Walter Nelles to Roger Baldwin, 16 March 1925, ACLU Papers (Digitized Microfilm), vol. 292, 99.

³⁵⁰ Ibid.

³⁵¹ Ibid.

³⁵² Rabban, *Free speech in its forgotten years*, 302-303.

desired, it was certainly wholly consistent with the ACLU's metropolitan derived stance that civil liberties were an essential means by which peaceable change could be pursued and attained. While, in the end, it turned out that Ward was unable to make the additional trip on to the Philippines, this exchange nonetheless revealed some additional grounds of division from within the ACLU.³⁵³ Therefore, alongside the (above discussed) likely influence of racialized and civilizational discourse upon some of the membership and leadership of the ACLU regarding the supposed capacity, or lack thereof, of the Philippine people, metropolitan-rooted concerns about expanding their civil liberties commitments and conceptualizations too far evidently gave pause to some of the ACLU leadership. For in this exchange, Executive Committee member Nelles gave voice to a concern that the ACLU and the cause civil liberties might become too identified with other specific causes or issues and thereby undermine the nominally nonpartisan identification the ACLU sought to project within the U.S. metropole. Such factors plainly limited what positions and actions prominent ACLU figures like Baldwin and Ward could strike regarding the U.S. colonies at the time, in particular those in relation to the question of advocacy for independence.

Indeed, it does appear that Walter Nelles' views on independence advocacy won out within the ACLU. For when the issue of independence for the Philippines came up again in August 1926, the ACLU's official reticence on the issue was now even more pronounced. This arose due to a Manuel

³⁵³ Harry Ward to Roger Baldwin, 11 April 1925, ACLU Papers Microfilm, vol. 292, 101.

Gomez of the All-American Anti-Imperialist League reaching out to the ACLU. The All-American Anti-Imperialist League (or *Liga Antiimperialista de las Americas*) was a largely Comintern initiated organization founded in Mexico in 1925 that sought to oppose imperialism throughout the whole of the Americas.³⁵⁴ Manuel Gomez (one of the many aliases of a Charles Shipman) headed the U.S. section of the League based in New York.³⁵⁵ As Gomez explained to the ACLU, the League was preparing a publicity campaign on behalf of independence for the Philippines and was seeking to organize a nation-wide conference devoted to such in Washington D.C. in October.³⁵⁶ He inquired as to whether the ACLU might participate in the conference.³⁵⁷

Baldwin had already long been acquainted with Gomez.³⁵⁸ Notable as well was the fact that, Baldwin was not only associated in some manner with the All-American Anti-Imperialist League, but that around this time he was also playing a role in the organization of what would eventually be the “First International Congress against Colonialism and Imperialism,” held at the

³⁵⁴ As Colleen Woods has highlighted, while the All-American Anti-imperialist League itself was not officially a Communist organization or even front, individual Communists had indeed played a central role initiating it. See Colleen Woods, *Freedom Incorporated: Anticommunism and Philippine Independence in the Age of Decolonization*, (Ithaca: Cornell University Press, 2020): 24.

³⁵⁵ Charles Shipman, *It Had to be Revolution: Memoirs of an American Radical* (Ithaca: Cornell University Press, 1993): 133.

³⁵⁶ Manuel Gomez to Harry Ward, 13 August 1926, ACLU Papers (Digitized Microfilm), vol. 309, 113.

³⁵⁷ Manuel Gomez to Roger Baldwin, 13 August 1926, ACLU Papers (Digitized Microfilm), vol. 309, 115.

³⁵⁸ It is unclear to what extent Baldwin was knowledgeable of Gomez/Shipman’s varying monikers and/or Communist organizational work and ties. In his memoir, Shipman speaks of knowing Baldwin at least as far back as the First World War due to the legal advice he had sought from Baldwin in his capacity as director of the National Civil Liberties Bureau regarding prosecution that had resulted from Shipman’s resistance to military conscription. See: Shipman, *It Had to be Revolution*, 36-37.

Palais d'Egmont in Brussels between 10 and 15th of February 1927.³⁵⁹ As discussed in Chapter 1, at this Congress was established the ambitious transnational, anti-imperialist organization, the League Against Imperialism and Colonial Oppression (LAI).³⁶⁰ It was also as a result of this Congress that Baldwin was selected to join as a member of the executive committee of the LAI.³⁶¹ In fact, Baldwin's active participation with the LAI was to mark the high point of his extra-ACLU, anti-imperialist activities during the interwar years.

Given these broader circumstances, it might have been expected that Baldwin would again try to push for the ACLU to take part in such an initiative as Gomez proposed. Instead, the opposite occurred. Baldwin

³⁵⁹ According to Shipman, Baldwin and future ACLU general counsel, Arthur Garfield Hays, allowed the All-American Anti-Imperialist League to print their names on the League's letterhead despite their not being actual members. See: Shipman, *It had to be* revolution, 157. Baldwin was among signees of the invitation and agenda of the Congress. See "Invitation to the International Congress Against Colonial Oppression and Imperialism," December 15, 1926.

<https://access.iisg.amsterdam/universalviewer/#?manifest=https://hdl.handle.net/10622/ARCH00804.1?location=view:manifest> (Accessed 20-10-23). While it is unclear how Baldwin came to take part in the congress, Baldwin's later oral history interview seems to suggest that this was related to, and at least partly an outgrowth of, his work on behalf of Indian independence. See Roger Baldwin, "The Reminiscences of Roger Nash Baldwin" (Microfiche), 356, 419-429.

³⁶⁰ As discussed in Chapter 1, the LAI was a remarkable transnational and anti-imperialist initiative that saw the presence of noteworthy participants from China, India, Indonesia, South Africa, Algeria, and Egypt. Made up of a international coalition of socialists, communists, liberals, and anti-imperialist nationalists who were all committed to a transnational anti-imperialism as both a means and ends. See: Louro, Stolte, Streets-Salter and Tannoury-Karam, "The League Against Imperialism," 17-51. The congress and resulting formation of the LAI saw such notable participants and members as organizer and Comintern operative Willi Munziburg; Haya de la Torre from Peru, James Maxton; German socialist Georg Ledebour; British member of Parliament Ellen Wilkin-son; former Mexican education minister (and representative for Puerto Rico at the congress) Jose Vasconcelos; Chinese delegate Liao Huanxing; Dutch labor leader Edo Fimmen; South African representative from the ANC Josiah Tshangana Gumede, Gabrielle Duchene from the Women's International League for Peace and Freedom; and Indian Independence leader and future Indian Prime Minister, Jawaharlal Nehru (with whom Baldwin forged a close and cooperative working relationship). See: Louro, Stolte, Streets-Salter and Tannoury-Karam, "The League Against Imperialism," 16-18; Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 197.

³⁶¹ In the early months of which, Baldwin and his non-communist allies on the committee were optimistic that an ecumenical approach to anti-imperialism could be maintained by the LAI, in spite of some early concerns regarding the sizable communist presence within which. See: Louro, *Comrades Against Imperialism*: 116.

informed Gomez that the Executive Committee had discussed the matter and settled upon the following positions. First, the ACLU could not “endorse Philippine Independence because political independence is not civil liberty as we define it.”³⁶² Second, the ACLU could not organize or formally lend their name to the conference as they felt that this “would be misconstrued as an advocacy of independence.”³⁶³ Alternatively, Baldwin proposed that they “would be glad to send some speakers on the topic of the ‘right of agitation in the Islands and here.’”³⁶⁴ In his reply, then, Baldwin was now not only explicitly disassociating the civil liberties mandate of the ACLU from any conflation with explicit and direct independence advocacy, but was also stressing that they sought to avoid even the mere appearance of indirect support; that is, indirect support of the very kind that ACLU counsel Nelles had so strenuously opposed in the guise of the proposed visit of Chairman Ward to the Philippines.³⁶⁵

In settling upon this position, the ACLU had thereby seemingly reconciled their civil liberties mandate with the issue of independence: they would defend the advocacy of, but would not themselves advocate for, independence. Stemming in large part from how divisive the question of Philippine independence had already proven to be for the organization, the

³⁶² Roger Baldwin to Manuel Gomez, 18 August 1926, ACLU Papers (Digitized Microfilm), vol. 309, 120.

³⁶³ Ibid.

³⁶⁴ Ibid.

³⁶⁵ The proposed conference itself became derailed due to the exposure of many of its organizers, including Gomez, as being Communists. This provoked the withdrawal of the Fellowship of Reconciliation’s participation in which. See: William Holly to Roger Baldwin, 9 October 1926, ACLU Papers (Digitized Microfilm), vol. 309, 155.

ACLU had then decided that they would hold to this much narrower conception of their civil liberties mandate. Additionally, given Baldwin's extra-ACLU anti-imperialist activities at the time, this can also be seen to represent something of a point of departure for him as he now increasingly channeled his anti-imperialist impulses away from the formal empire of the United States. This latter development itself (as will be seen in Chapter 4 on ACLU engagement with US occupied Haiti) turned out to be of some consequence for the ACLU as well.

It should be noted that the question of independence was not the only way in which the ACLU engaged with the Philippines during the 1920s. For there also arose some cases in which the ACLU proffered their services of legal defense assistance. However, in none of these cases did the ACLU come to provide any actual aid – outside of some minor publicity.³⁶⁶ Their inquiries and communications regarding the cases in questions also exhibited a

³⁶⁶ Their first offer of legal defense aid in the Philippines involved a seditious libel case (very likely learned of through their clipping service) against a Gregario Perfecto, a Philippines based lawyer and newspaper editor. This arose due to an editorial published in his paper, *La Nacion*, on September 7, 1920, that concerned the theft of evidence relevant to a Philippines Senate investigation of the oil industry. In his editorial, Perfecto had heavily criticized the lack of a response by the Senate to the theft from their own lockers. In the end, ACLU assistance proved unnecessary, as Perfecto was to inform the ACLU in October 1922 that he had gained an acquittal on appeal from the Supreme Court of the Philippines. See: Gregario Perfecto to ACLU, 22 February 1921, ACLU Papers (Digitized Microfilm), vol. 172, 134; J.P. Melencio to Roger Baldwin, 13 April 1921, vol. 172, 136; Gregario Perfecto to ACLU, 18 October 1922, ACLU Papers (Digitized Microfilm), vol. 226, 175.

The other case of interest to the ACLU in the Philippines that came to their attention through the Associated Press in 1926 involved a sedition charge against a councilman-elect for Manila, Antonio D. Pagua. This had stemmed from Pagua having apparently directed insulting words during an election campaign against the Governor-General of the Philippines, which was then construed as an attack upon the United States government itself. However, after the ACLU informed Pagua that they could only provide material support if his case moved from the Philippine courts to higher federal court of appeal, they received no further communications from Pagua. See: Forest Bailey to I. Gabaldon, 9 January 1926, ACLU Papers (Digitized Microfilm), vol. 309, 175; ACLU News Release, 20 February 1926, ACLU Papers (Digitized Microfilm), vol. 309, 174; Forest Bailey to Antonio Pagua, 20 February 1926, ACLU Papers (Digitized Microfilm), vol. 309, 180; Lucille Milner to Antonio Pagua, 26 March 1926, ACLU Papers (Digitized Microfilm), vol. 309, 190.

significant lack of allies or contacts within the Philippines itself. So much like their situation with the Samoan islands, they had little in the way of direct and reliable information on developments there. It would then strain credulity to believe that they were aware of much in the way of the free speech, press, and/or assembly matters throughout the vast island archipelago. That they never sought to better compensate for this lack of reliable allies, contacts, or information emanating from within the Philippines, testifies to an imperial imaginary on their part that insulated them from being greatly concerned with the lack of relevant information and perspectives this absence likely caused them. Throughout the decade the ACLU then did little in the way of tangibly providing a check to abuses of colonial state power.

Yet, for the duration of 1920s the ACLU had maintained their state sceptic orientation and had not engaged in relations with any of the relevant colonial state actors of the Philippines as contacts or allies. This accordingly limited the extent to which their very modest engagement with the Philippines might have resulted in their imperial imaginary coming under the influence of colonial state actors, institutions, and their accompanying discourses. It therefore remained an open question as to whether they might yet come to provide a more robust check to colonial state power in the Philippines.

This latter point touches upon the relationship of their metropolitan derived civil liberties commitments and the issue of independence in the colonial sphere. For while the issues of independence advocacy and a

commitment to the defense of civil liberties were not, strictly speaking, mutually exclusive, there nonetheless was a dormant tension between both commitments that had the potential to arise. If, on the one hand, circumstances were to change and real momentum were to form behind Philippine independence, would the ACLU alter their position and come to proactively support independence? Or, alternatively, would they more proactively seek to pursue and defend their metropolitan derived civil liberties commitments to freedom of speech, the press, and assembly there? Relatedly, might the ACLU acquire significant non-state actor allies and contacts from among the Filipino people or, alternatively, would they come to develop more amiable and cooperative relations with colonial state actors there? What bearing would either of these potential developments have upon how they pursued their civil liberties commitments and/or addressed the issue of independence going forward? These remained open questions at the outset of the 1930s.

Conclusion

Chapter 3 demonstrated that the ACLU's involvement in the Pacific-based colonies of the American empire during the 1920s was limited to the U.S. Navy ruled eastern Samoan islands of Tutuila and Manu'a and the Philippines. This chapter further demonstrated that these engagements were of a much more fleeting and ad-hoc variety than their efforts regarding the U.S. Virgin Islands. It was argued that this was largely a byproduct of the distinct difficulties that the Pacific-based colonies presented to the ACLU.

These were the immense geographical distance of the Philippines and American Samoa from the New York-based ACLU, which limited the organization's ability to engage in consistent and reliable communication with potential allied actors from within these colonies. Relatedly, there was the lack of robust diasporic Filipino and Samoan communities in New York, in contrast with that of the Virgin Islander community, who had played a key role in compensating for the ACLU's contemporaneous lack of personnel, resources, and finances, which otherwise limited their ability to engage in the colonial realm.

Regarding the U.S. Navy ruled eastern Samoan islands of Tutuila and Manu'a, Chapter 3 demonstrated that the ACLU initially offered to pursue their civil liberties mandate via an ambitious preliminary plan. It was further demonstrated that no tangible effort on behalf of this resulted during the early years of the decade. Only by the second half of the decade did the ACLU the substantively engaged with American rule of the Samoan Islands. This was through supporting a strategic litigation effort that sought to challenge the doctrine of incorporation. It was argued that a key factor for the ACLU supporting this effort was the timing of the case, for 1926 followed the critical year of 1925, in which the ACLU began their well-documented gradual transition from being a largely court sceptic organization into becoming one that increasingly specialized in strategic litigation and legal defense work. However, it was further argued that, given the Samoan Islands' informal colonial status within the U.S. empire, such a litigation effort was also an implicit attempt to formalize the acquisition of

the islands by the United States. It was argued that the ACLU's imperial imaginary obscured from them the provocative implications of their litigation effort. Not least of which was the risk that, if successful, this might well have resulted in an identification of their civil liberties commitments with the formal acquisition, possibly even annexation, of territory. And even though the case ended abruptly and confusedly, it nonetheless suggested that the ACLU's imperial imaginary might consent, or even seek, to formalize the acquisition of other informal colonial territory.

Chapter 3 demonstrated that the Philippines during the 1920s presented the ACLU with distinct challenges. The most prominent of which was the U.S. Congress' declared, if indefinite, commitment to Philippine independence in the Jones Act of 1916. Chapter 3 demonstrated how ACLU leadership were divided on how to approach the issue, with members of the Executive and National Committees split between those, like Roger Baldwin, who wanted to explicitly call for Philippine independence, versus those who opposed doing so on various grounds. It was demonstrated how over the course of the decade that the Union intermittently developed a formula that more aligned with their metropolitan orientation civil liberties mandate.

Part II: 1930-1941

Preface: The ACLU, Great Depression, and The New Deal

Introduction

Much as was the case in the 1920s, to understand the ACLU's engagement with the U.S. colonial empire during the 1930s, it is necessary to understand the additional broader metropolitan contexts and developments they were embedded within; all of which significantly effected, influenced, and/or conditioned their involvement in the colonial sphere. Broadly speaking, the most significant of which were the 1929 ACLU expansion plan; the onset of the Great Depression; and President Franklin Delano Roosevelt's New Deal. As the proceeding the chapters will demonstrate, these were all critical factors in how they engaged with the U.S. colonial empire over the course of the 1930s.

The ACLU's 1929 Expansion Plan

Early in 1929 ACLU executive director Roger Baldwin distributed among the ACLU National Committee an ambitious expansion plan. On the agenda was a commitment to increase their support for the civil rights of Black Americans and Native Americans; a greater commitment to due process protections; a broader challenge to ongoing forms of censorship throughout the country; and opposition to "control of weaker nations by the United

States ... as a violations of their civil liberties.”³⁶⁷ Baldwin in the last of his propositions then plainly sought to attach an anti-imperialist commitment to the ACLU’s civil liberties mandate.³⁶⁸

Broadly speaking, the responses to Baldwin’s plan were largely supportive, with some more enthusiastic than others. Nonetheless most opposed one or more of the measures. The grounds of opposition included concern that so expansive a set of commitments would dilute their conception of civil liberties, as well as more practical concerns that such commitments would spread the still quite modestly staffed, financed, and resourced ACLU much too thin for the organization to remain effective.³⁶⁹ On the basis of this opposition, Baldwin then agreed to retract those regarding the issues of due process matters related to third-degree tactics, unlawful searches and seizures, opposition to compulsory military training, and the anti-imperialist plank opposing the American military occupation of foreign nations.³⁷⁰

However – as Chapter 4 will demonstrate – Baldwin did not take the National Committee’s rejection of his anti-imperialist plank as the final word in this matter. For when opportunity arose following the outbreak of mass

³⁶⁷ Roger Baldwin to National Committee, 14 February 1929, ACLU Papers (Digitized Microfilm), vol. 360, 66-67.

³⁶⁸ Any doubts about the deliberate anti-imperialist intent of which can dispelled by the fact that a matter of days after disseminating the proposal, Baldwin directly connected point nine with anti-imperialism in private correspondence. See: Roger Baldwin to John Codman, 19 February 1929, ACLU Papers (Digitized Microfilm), vol. 360, 63.

³⁶⁹ John Codman to Roger Baldwin, 15 February 1929, ACLU Papers (Digitized Microfilm), vol. 360, 62; John Sayre to Roger Baldwin, 15 February 1929, ACLU Papers (Digitized Microfilm), vol. 360, 68-69; Edward Tittmann to Roger Baldwin, 20 February 1929, ACLU Papers (Digitized Microfilm), vol. 360, 98; Felix Frankfurter to Roger Baldwin, 16 February 1929, ACLU Papers (Digitized Microfilm), vol. 360, 71-72.

³⁷⁰ Roger Baldwin to National Committee, 5 April 1929, ACLU Papers (Digitized Microfilm), vol. 360, 58-59.

protest throughout Haiti in the fall of 1929, Baldwin pushed the ACLU to take up the matter amid the domestic and international condemnation provoked by the violent response of the military occupational authorities to the protests. In doing so, Baldwin not only succeeded in getting the organization to engage with an issue they had so recently rejected, but, (as will be further be shown in Chapter 4) he also eventually succeeded in getting the Union to adopt an anti-imperialist orientation regarding a facet of the American empire for the first time – albeit, in this case, only within the informal sphere.

Onset of The Great Depression

The outbreak of mass unrest in Haiti was not the only important catalyst for ACLU development in the fall of 1929. The onset of the Great Depression in the wake of the October stock market crash proved to be of foundational significance to the ACLU over the coming decade. Amid surging unemployment, the early years of the economic crisis saw a sharp upturn in labor conflicts and violence, as well as of free speech and assembly related prosecutions – all of which naturally piqued the interest and involvement of the ACLU.³⁷¹

During this renewed unrest throughout the United States during the early Depression, civil liberties litigation managed to score some highly

³⁷¹ Weinrib, *The Taming of Free Speech*, 184; Walker, *In Defense of American Liberties*, 95.

significant successes. The most notable of which were the Supreme Court decisions *Near v Minnesota* (1931) and *Stromberg v. California* (1931); both of which gave real substance to the freedom of speech and press clauses of the First Amendment that had been promised by the *Gitlow v. New York* decision of 1925.³⁷² It also happens to have been around this time that the ACLU, both directly and indirectly, participated in a set of cases and issues that began to see them extend the scope of their activities and conceptions of civil liberties into matters regarding free expression and sexuality.³⁷³ The catalyst here was the prosecution of Mary Ware Dennett due to her private distribution of a sexual education pamphlet, “The Sex Side of Life.” With her legal defense being independently provided for by prominent attorney (and soon to be ACLU legal counsel) Morris Ernst, the Union decided to form the Mary Ware Dennett Defense Committee for the purposes of fundraising and publicity on Dennett’s behalf.³⁷⁴ The subsequent appeal effort not only resulted in the Second Circuit Court overturning Dennett’s conviction in March of 1930, but also represented the beginning of the narrowing of the scope of obscenity law by the judiciary.³⁷⁵ Furthermore, following upon the heels of efforts they had taken up to oppose censorship of the theatre, the ACLU folded the Dennett Defense Committee into a newly formed

³⁷² The *Stromberg v. California* decision on May 18, 1931 overturned a California state law that prohibited the display of red flags on the basis that it violated the First Amendment by threatening free political discussion. The *Near v. Minnesota* decision on September 1, 1931 overturned a Minnesota state law on the basis that it represented a prior restraint on the freedom of the press. Murphy, *The Meaning of Freedom of Speech*, 8; Walker, *In Defense of American Liberties*, 90-92.

³⁷³ Wheeler, *How Sex Became a Civil Liberty*, 40-43, 51.

³⁷⁴ *Ibid.*, 40-43.

³⁷⁵ Walker, *In Defense of American Liberties*, 84-86

committee, the National Council on Freedom from Censorship.³⁷⁶ Thus marked the onset of a more proactive stance on their part against censorship regimes throughout the United States on behalf of free expression and an increasing engagement with matters relating to sexuality that came to further flourish over the decades to come.³⁷⁷

The ACLU's contemporaneous engagement with the U.S. occupation of Haiti during the first few years of the 1930s increasingly took on more of an unapologetically anti-imperialist orientation. It too was around this time that the ACLU made a discreet overture in which they intimated that they would support Puerto Rican independence. Hence, during the first years of the decade, some aspects of the ACLU's engagement with the American empire appeared to be propitious grounds upon which their still novel civil liberties conception and mandate might potentially expand to explicitly embrace anti-imperialism.

A countervailing tendency on their part, however, was also observable at the time. For, with respect to the Philippines, despite the evident increasing momentum in Congress forming behind support for Philippine independence, the ACLU remained almost solely preoccupied with their more metropolitan rooted civil liberties commitments by seeking to challenge the Philippine Sedition Act via legal aid.³⁷⁸ Also notable was the U.S. Virgin Islands, where, following the Hoover Administration's replacement of

³⁷⁶ Wheeler, *How Sex Became a Civil Liberty*, 49-52.

³⁷⁷ Wheeler, *How Sex Became a Civil Liberty*, 49-52.

³⁷⁸ Golay, *Face of Empire*, 280-282; Francia, *A History of the Philippines*, 171.

the U.S. Navy governed regime by a civilian led one, the Union ceased to have as overtly oppositional relations with colonial state actors there as they had over the previous decade. This development, therefore, contrastingly intimated that their imperial imaginary was becoming more receptive to colonial state institutions, actors, and their accompanying discourses.

The tension emanating from these disparate impulses were most vividly observable at this time in their 1933 pamphlet on the U.S. colonial empire.³⁷⁹ As will be discussed in the following chapters (in most detail in Chapter 5), the pamphlet gave a highly misleading impression of the scope and scale of the ACLU's interest and engagement in the colonial empire. Within the pamphlet the ACLU also proffered their views and stances toward U.S. colonial possessions that they had not tangibly engaged with up until this point, including Hawai'i, Guam, Alaska, and the Panama Canal Zone.³⁸⁰ As well as representing their most comprehensive statement to date with respect to the colonies, it also embodied the blurred and varied perceptions of the ACLU's imperial imaginary regarding the U.S. colonial empire. The pamphlet provides vivid evidence that the ACLU's imperial imaginary was increasingly perceiving of the empire less through the lens of their initially more metropolitan oriented universalism and were now, instead, coming more to internalize the varied particularism of the colonial sphere.

³⁷⁹ "Civil Liberties in American Colonies: A Survey of Interference with Civil Rights of Natives; and of the Forms of Control; with Proposed Remedies," March 1933, ACLU Records and Publications. Reel 91, 1-31.

³⁸⁰ Ibid.

The New Deal

The commencement of the New Deal under President Franklin D. Roosevelt in 1933 was a pivotal development for the ACLU. The New Deal saw the appointment to important federal administration positions figures who had ACLU membership, most notably of Harold Ickes as Secretary of the Interior, as well as other officials with strong civil libertarian sympathies and records.³⁸¹ As ACLU secretary Lucille Milner later claimed “we found an open door to all of the Federal Departments” for “President Roosevelt’s official family read like a roster of the Civil Liberties Union.”³⁸² Hence, they unsurprisingly took up more cooperative relations with government officials over the course of this period – a development that (as the following chapters will show) was largely paralleled in their involvement in the U.S. colonial empire. For not only did the aforementioned Ickes as Interior Secretary have at least nominal authority over many of the U.S. colonies, but there were also increasingly other civil liberties allies occupying key positions throughout the U.S. colonial empire. It was from around this time that the ACLU’s imperial imaginary conveyed compelling evidence of the influence resulting from these interactions and periodic collaborations with such seemingly aligned colonial state actors.

³⁸¹ Arthur M. Schlesinger Jr., *The Age of Roosevelt: The Politics of Upheaval* (Cambridge: Houghton Mifflin Company, 1960): 91-92; T.H. Watkins, *Righteous Pilgrim: The Life and Times of Harold L. Ickes: 1874-1952* (New York: Henry Holt & Company, 1990): 545; Walker, *In Defense of American Liberties*, 96-97; Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 219.

³⁸² Quoted from Schlesinger Jr., *The Age of Roosevelt: The Politics of Upheaval*, 91-92.

These factors also very much informed their response to the great political and structural transformation of the United States wrought under the New Deal through the expansion the federal government into the economic sphere. This development presented the ACLU with a dilemma regarding what remained of their state-sceptic orientation and, accordingly, caused a good deal of internal division among the ACLU leadership and members.³⁸³ The early legislation of the New Deal was viewed with concern as potentially creating worryingly powerful state-supported monopolies.³⁸⁴ Division within the ACLU about how best to respond to these developments finally came to a head in 1935 about whether to support the National Labor Relations Act (or Wagner Act).³⁸⁵ In the end, due to the division the law had provoked within their ranks, the ACLU decided to abstain from either supporting or opposing the bill.³⁸⁶

The debate regarding the 1935 Wagner Act nonetheless marked a key turning point in the ACLU's gradual conciliation with state actors and institutions.³⁸⁷ As the proceeding chapters of Part II show, the early New Deal years between 1933 and 1935 also proved to be pivotal for the ACLU's engagement with the empire due to a parallel increase in accommodation with, as well as reliance upon, colonial state actors throughout the US empire. This, in turn, resulted in an imperial imaginary on their part that

³⁸³ Lamson, *Roger Baldwin*, 193-194.

³⁸⁴ *Ibid.*, 193; Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 220-221.

³⁸⁵ Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 229.

³⁸⁶ Walker, *In Defense of American Liberties*, 101.

³⁸⁷ *Ibid.*, 103

now came increasingly under the influence of, as well as further identify with, the discourses of colonial state institutions and actors. Such was particularly evident (as demonstrated in Chapter 5) in their compromise with the resulting form of legislation that the 1936 organic act for the U.S. Virgin Islands took. It was also discernible (as argued in Chapter 6) in their conflicting approach to the Philippines following the establishment of the Philippine Commonwealth. This too can be observed (as shown in Chapter 4) in the resolution of their engagement with the Haitian occupation and their accommodation with the Roosevelt administration's Good Neighbor Policy. For while the latter did see the end of the military occupation of Haiti, it also saw the continued maintenance of the financial control regime there. Furthermore, the cessation of the ACLU's preoccupation with Haiti also happened to mark the end of their engagement with the U.S. informal empire, making an embrace of an explicit anti-imperialism within their civil liberties mandate directed at the formal empire of the United States also highly unlikely.

The New Deal era had one more major development of consequence in store for the ACLU. By the mid-1930s, for all the groundbreaking accomplishments of the New Deal, its legislative program was under threat due to a Supreme Court that remained intransigent to economically interventionist policies. In response to this, the Roosevelt administration resorted to the controversial measure of attempting to appoint additional, presumably more compliant, Supreme Court justices. While the so-called "court-packing plan" collapsed in the face of the immense opposition it

received, Roosevelt's failed measure nonetheless marked the beginning of the transformation of the Supreme Court (both in terms of the individual justices and resulting jurisprudence). With a Supreme Court that from 1937 on that was now not only more accommodating regarding economically interventionist policies, but also more sympathetic to civil liberties protections and priorities, the ACLU itself essentially completed its own fundamental re-orientation, and thereby made the transition into becoming the country's preeminent practitioner of legal defense and strategic litigation.³⁸⁸

All told, these developments combined to mark an immense shift in the priorities and makeup of the organization. Whereas the ACLU had formerly been an unpopular, state-sceptic, and overtly pro-labor organization, they had now become a more accepted member of a liberal mainstream. By the end of the 1930s they had gained some measure of influence within governing circles and had become inextricably identified with their renowned, but much more narrowly focused, legal defense and strategic litigation work.³⁸⁹ The ACLU's more amiable relations with authorities in government also significantly reduced their former willingness to strike overtly oppositional positions with respect to government and administration authorities, since doing so might compromise many hard won relationships. And, as the proceeding chapters of Part II demonstrate,

³⁸⁸ Between 1937 and 1949, the Supreme Court established the first substantial body of constitutional law devoted to civil liberties. See: Walker, *In Defense of American Liberties*, 106-112.

³⁸⁹ Kutulas, *The American Civil Liberties Union and the Making of Modern Liberalism*, 31-32.

much of these developments were paralleled in their contemporaneous engagement with the colonial sphere.

These circumstances, however, make the ACLU's contemporaneous involvement in Puerto Rico seem something of an outlier for the organization. For (as discussed in Chapter 7) in the wake of increasing tension and escalating violence between colonial state authorities and the Nationalist Party in Puerto Rico – culminating in the Ponce massacre of 1937 – and despite their having civil liberties allies and contacts being in key positions of authority, the ACLU proved willing to incur antagonistic relations with colonial state actors there. Nonetheless, as will also be shown in Chapter 7, their engagement in Puerto Rico proved to be no more than a brief exception. For the ACLU eventually again became more inclined toward the general direction of travel of their imperial imaginary by that point. That is, an imaginary that had come to essentially internalize, and therefore, reaffirm the metropolitan and colonial binary of the U.S. empire by the end of the interwar years.

Chapter 4: The ACLU and The U.S. Occupation of Haiti, 1929-1934

Introduction

On October 31, 1929, a change of scholarship policy by the Service Technique, a vocational education program concerned with improving agricultural techniques throughout Haiti, provoked a student walkout in the northern town of Damiens on October 31.³⁹⁰ This walkout inspired additional sympathy strikes throughout the whole of Haiti over the proceeding weeks.³⁹¹ The unrest that ensued climaxed on December 6 when a confrontation between approximately 1,500 demonstrators and US marines in Aux Cayes resulted in the latter opening fire on the crowd, killing an estimated 12 people.³⁹²

Notable among the international outcry that denounced the American occupation of Haiti in the wake of these events was the ACLU. For unlike many of the other U.S. metropolitan-based organizations, such as the NAACP and Women's International League for Peace and Freedom (WILPF), this represented the ACLU's first engagement with the American military occupations in the Caribbean basin. The fact that the ACLU now decided to engage with the Caribbean based informal empire of the United States raises

³⁹⁰ Alan L. McPherson, *The Invaded: How Latin Americans and Their Allies Fought and Ended U.S. Occupations* (New York: Oxford University Press, 2014): 243.

³⁹¹ Hans Schmidt, *The United States Occupation of Haiti: 1915-1934* (New Brunswick: Rutgers University Press, 1995):196-197.

³⁹² McPherson, *The Invaded*, 246.

significant questions: (a) How and why did they come to do so? (b) How did this relate to their civil liberties mandate? (c) What role did their imperial imaginary play in this engagement? (d) Finally, what ultimately resulted from this engagement by the ACLU?

As this chapter argues, the ACLU initially came to take an interest in the ongoing American occupation of Haiti occupation in mainly due to Roger Baldwin's desire to compensate for his frustrated previous attempt to get the Union to broaden their mandate to include an anti-imperialist commitment to oppose the American military occupations of foreign, sovereignly independent states. His effort was then an indirect attempt to get the organization to embrace some of the anti-imperialism of his extra-ACLU activities. However, the ACLU only came to publicly engage with the occupation following the outbreak of mass protest in Haiti by the end of October. This chapter argues that it was then a combination of circumstances and timing that were critical in their decision of when and how they involved themselves. This chapter argues that their initial intervention intimated that they might embrace an overtly anti-imperialist position that called for the restoration of full independent sovereignty to Haiti. However, it was nonetheless also evident from the outset that, as a byproduct of their imperial imaginary, they projected aspects of their metropolitan-rooted, universally oriented civil liberties commitments onto occupied Haiti in a manner that was in some tension with an unequivocal anti-imperialist stance.

This chapter further demonstrates that from this point on an observable trend emerged whereby the ACLU gradually evolved in their demands as conditions changed and more powers were delegated to Haitian state actors by the U.S. occupational authorities. In doing so, it is argued that the ACLU increasingly deprioritized their more customary civil liberties commitments (i.e. free speech, press, and assembly) to make way for an increasing embrace of an anti-imperialist stance. As the ACLU embraced this anti-imperialist activism, they did so as part of a loose coalition of other U.S. metropolitan-based, non-state actors, most notably so in close collaboration with the NAACP.

However, with the onset the Good Neighbor policy under the Roosevelt administration, the ACLU eventually came to reconcile themselves with the scheduled withdrawal of the U.S. military from Haiti by 1934. This chapter argues that the Good Neighbor Policy appealed to the imperial imaginary of the ACLU by ending the most objectionable aspects of American power and interventions throughout the region. Yet, at the same time, (as this chapter points out) the end of the Haitian occupation was also something of an exception within the Good Neighbor Policy. For Haiti was alone among the formally independent states in the region that was forced to remain under a U.S. financial control regime. It is further argued then that the abandonment of the ACLU's concern with Haiti at this time, in turn, conveyed the misleading impression that American informal imperialism had ceased to operate in the region. This meant that the ACLU came to inadvertently

contribute to the very legitimacy that the Good Neighbor Policy hoped to secure from U.S. based critics of American empire.

Haiti and the American Invasion and Occupation

As the first independent Black majority republic in the region, Haiti had long exercised a prominent place in American imaginaries, being either a source of fear or inspiration, depending on the observer.³⁹³ Yet it was not until the turn of the twentieth century that the United States began to intervene more tangibly and intensively in Haiti.

The pretense for the invasion of 1915 was to restore order after factional political violence had resulted the killing of Haitian President Vilbrun Guillaume Sam in July 1915.³⁹⁴ In reality, the invasion had been motivated by a set of concerns and ambitions that were, broadly speaking, a combination of the geopolitical (preoccupation with the Windward Passage, fear of the increasing involvement by German nationals in Haitian affairs, and the outbreak of the First World War) and the economic (mainly financial, but also partly industrial, due to the existence of a railroad concern).³⁹⁵

Following the landing of the U.S. marines on July 27, violent conflict was to continue sporadically for six months; further and more intense

³⁹³ Mary A. Renda, *Taking Haiti: Military Occupation and the Culture of U.S. Imperialism, 1915-1940* (Chapel Hill: University of North Carolina Press, 2001): 29-30.

³⁹⁴ Henry L. Suggs, "The Response of the African American Press to the United States Occupation of Haiti, 1915-1934" from *The Journal of African American History* 87, no. 1 (Winter, 2002): 70-71.

³⁹⁵ Schmidt, *The United States Occupation of Haiti*, 42-63.

hostilities broke out again in 1918 before being seemingly contained by 1919.³⁹⁶ After control of Haiti was established, American authorities extracted a new Haitian-American treaty in September 1915 and then a new Haitian constitution in 1918. Between them were established essential features of U.S. rule under the occupation, including the office of Financial Advisor, which established American control over the whole of Haitian finances and an American trained and controlled Gendarmerie.³⁹⁷ As additional details of occupation, as well as accounts of the violence that it entailed, became public, outcry emerged from within the U.S. – with the NAACP and *The Nation* leading the charge – and resulted in a Senate inquiry.³⁹⁸ This all played a significant role in motivating the 1922 reorganization of the American occupation by President Warren G. Harding's administration and the establishment of the office of High Commissioner.³⁹⁹ While there continued to be the presence of the Haitian President Louis Borno, an ambitious but ultimately pliant leader of a Haitian political faction, the real authority in Haiti lay with the High Commissioner, who was answerable to the State Department.⁴⁰⁰

The American occupation of Haitian proceeded on from 1922 with something of a surface level calm. High Commissioner John Russell governed in a technocratic fashion, pursuing a program of modernization

³⁹⁶ Ibid., 83.

³⁹⁷ McPherson, *The Invaded*, 32; Schmidt, *The United States Occupation of Haiti*, 75-77, 86, 99.

³⁹⁸ Schmidt, *The United States Occupation of Haiti*, 118-121.

³⁹⁹ Ibid., 123-124.

⁴⁰⁰ Donald B. Cooper, "The Withdrawal of the United States from Haiti, 1928-1934," *Journal of Inter-American Studies* 5, no. 1 (Jan. 1963): 83.

that initially met with little overt resistance. Priorities here included public works projects, training the Gendarmerie, the establishment of a vocational education program known as the Service Technique, and the payment of Haitian debt.⁴⁰¹ Not sought out was the input and/or cooperation of the Haitian people themselves. Indeed, the lack of appointments of Haitian citizens throughout the government and its public services was inextricably related to the pervasive racism among the American authorities and military personnel there.⁴⁰² Martial law and press censorship were also maintained and severely inhibited the expression of discontent with the U.S. occupation, which was nonetheless steadily on the rise.⁴⁰³

The ACLU's Initial Involvement in Haiti

When, why, and how did the ACLU first involve themselves in the U.S. military occupations in the Caribbean Basin? Relatedly, why, when they did so, was it specifically with respect to Haiti? As highlighted in the Preface to Part II, among the proposals that Roger Baldwin had sought and failed to secure in his ACLU expansion plan included a commitment to oppose the American military occupations of independent states. This explicitly anti-imperialist proposal turned out to be one of the most rejected by the National Committee.⁴⁰⁴ They did so on the grounds that this might dilute

⁴⁰¹ Schmidt, *The United States Occupation of Haiti*, 189.

⁴⁰² *Ibid.*, 189

⁴⁰³ *Ibid.*, 190.

⁴⁰⁴ John Codman to Roger Baldwin, 15 February 1929, ACLU Papers (Digitized Microfilm), vol. 360, 62; John Sayre to Roger Baldwin, 15 February 1929, ACLU Papers (Digitized Microfilm), vol. 360, 68-69; Edward

their conception of civil liberties; that it would overextend their already limited resources; and that there were plenty of other more suitable organizations dedicated to this issue.⁴⁰⁵ Most prominent of all, though, was the objection that this was more a matter of foreign affairs far outside their remit.⁴⁰⁶ Hence, many prominent figures within the ACLU made it clear that they regarded the U.S. military occupations of the informal empire as occurring in lands that were foreign in a sovereignty sense to the United States and therefore not convincingly within their civil liberties mandate.

As to Baldwin's motivation for including the proposal in the expansion plan, while it is not possible to conclusively determine his reasoning, the most plausible explanation was that Baldwin sought to push the ACLU to embrace some of his own personal anti-imperialist commitments. As noted in Chapter 3, the period from 1927 on marked the highpoint of Baldwin's anti-imperialism with his participation on the Executive Committee of the League Against Imperialism (LAI).⁴⁰⁷ Additionally, Baldwin conceded in private correspondence that this proposal indeed represented an anti-imperialist commitment.⁴⁰⁸ Baldwin's proposal was then more than likely a

Tittmann to Roger Baldwin, 20 February 1929, ACLU Papers (Digitized Microfilm), vol. 360, 98; Felix Frankfurter to Roger Baldwin, 16 February 1929, ACLU Papers (Digitized Microfilm), vol. 360, 71-72.

⁴⁰⁵ Ibid.

⁴⁰⁶ Ibid.

⁴⁰⁷ The LAI itself, however, was by this time becoming so riven by factional disputes between the communist and non-communist members that, within the Executive Committee, Baldwin was preoccupied with his increasingly strained attempts to maintain an ecumenical anti-imperialism. See: Louro, *Comrades Against Imperialism*, 141-142.

⁴⁰⁸ In response to criticism of the proposal, Baldwin acknowledged that the proposal was in line with other "efforts for anti-imperialism." See: Roger Baldwin to John Codman, 19 February 1929, ACLU Papers (Digitized Microfilm), vol. 360, 63. Another National Committee member explicitly identified it as an anti-imperialist commitment too. See: A.J. Muste to Roger Baldwin, 19 February 1929, ACLU Papers (Digitized Microfilm), vol. 360, 91.

newfound attempt to get the ACLU to embrace something of an anti-imperialist stance toward the informal colonial sphere following his failed efforts in the formal sphere to get the organization to endorse Philippine independence.

The National Committee's rejection of Baldwin's anti-imperialist proposal then makes it even more remarkable to see the ACLU taking up the issue of the ongoing military occupation of Haiti by the end of that very same year. How did this come about? In the fall of 1929, Baldwin appears to have sought to get the ACLU to take up the U.S. occupation of Haiti.⁴⁰⁹ The most plausible explanation for this is that, in lieu of his failed attempt earlier in the year to get the ACLU to expand their mandate in this direction, this represented an indirect way in which he could pursue his broader anti-imperialist ambitions. For following a meeting in September 1929 between Baldwin and Perceval Thoby of the *Union Patriotique* – the most prominent political opposition group within Haiti – Baldwin claimed that he had brought the ACLU around to taking up the issue of the Haitian occupation.⁴¹⁰ As Baldwin emphasized shortly thereafter, Thoby's visit “has stirred us up to plan definite action against the violation of civil rights of Haitians by the

⁴⁰⁹ Roger Baldwin to Paul Douglas, 12 October 1929, ACLU Papers (Digitized Microfilm), vol. 378, 1133; Roger Baldwin, “Memo for the Executive Committee,” 14 October 1929, ACLU Papers (Digitized Microfilm), vol. 378, 1120.

⁴¹⁰ Perceval Thoby to Roger Baldwin, 25 September 1929, ACLU Papers (Digitized Microfilm), vol. 378, 1108; Roger Baldwin to Paul Douglas, 12 October 1929, ACLU Papers (Digitized Microfilm), vol. 378, 1133. The *Union Patriotique* had been formed in 1920, on the encouragement of the then visiting NAACP executive secretary, James Weldon Johnson, in the aftermath of the outcry surrounding the occupation of Haiti in 1920. The *Union Patriotique* had continued to oppose and criticize the U.S. occupation as best they could under the highly constrained circumstances of the martial law and press censorship carried on throughout the 1920s. See: Schimdt, *The United States Occupation of Haiti*, 120-121.

Occupation.”⁴¹¹ It is not clear, however, whether Baldwin had actually brought the rest of the ACLU leadership around to taking up the issue of the Haitian occupation by this point. Rather, it appears that he was again resorting to his tactic of unilaterally taking up an issue and then seeking retroactive approval from the Executive Committee.

This poses the question: why Haiti and not elsewhere in the U.S. informal empire? As the cession of the eastern Samoan islands (discussed in Chapter 3) had been formalized earlier that very year by the Senate, this Pacific Ocean-based colony had ceased to remain within the U.S. informal empire. This meant that what largely remained of the informal empire were the U.S. military occupations in the Caribbean and Central America which had garnered a great deal of news coverage and outcry over the course of the previous decade. As to the reasoning and motivation behind this newfound interest in Haiti, Baldwin emphasized that it was felt that “the Haitian situation is one which is easier to work upon than any other in the Central American and Caribbean area and one which demands action.”⁴¹² Hence, Baldwin suggested that the ACLU was more conducive to engaging with Haiti due to certain contingent, circumstantial, and contextual factors. While not specifically articulated by him, these factors plausibly included the combined longevity, continuity, and intensity of the American military occupation there (as compared, for example, with the contemporaneous yet

⁴¹¹ Roger Baldwin to Paul Douglas, 12 October 1929, ACLU Papers (Digitized Microfilm), vol. 378, 1133.

⁴¹² Roger Baldwin to Charles Thomson, 8 October 1929, ACLU Papers (Digitized Microfilm), vol. 378, 1121.

more intermittent military interventions in Nicaragua).⁴¹³ There was also the preexistence of other notable opponents and critics of the military occupation, both within Haiti and the metropolitan U.S. itself, that made engaging with Haiti likely appear all the more feasible.⁴¹⁴ Further appealing to Baldwin was likely the fact that, by establishing the precedent of taking on the Haitian occupation, it might pave the way for further ACLU engagement with other aspects of U.S. imperialism. Other potential examples included the military interventions in Nicaragua and the American financial supervision and control regimes established throughout Latin America.⁴¹⁵

How Baldwin initially envisioned that the ACLU would address the Haitian occupation was summed up in a memo that he circulated in October around the Executive Committee. In it, he asserted that “a considerable campaign can be worked up in short order” if the ACLU sought the assistance of other groups.⁴¹⁶ He thereby stressed the key role the ACLU could play in mobilizing a coalition of other aligned metropolitan-based reform organizations. Baldwin also emphasized that the ACLU would take

⁴¹³ The US military occupation of Nicaragua, begun in 1912, had intensified again following the outbreak of civil war in 1927. The proceeding pursuit of the irreconcilable commander Augusto Cesar Sandino by U.S. armed forces provoked condemnation by anti-imperialists throughout Latin America and from within the United States. See: Lester Langley, *The Banana Wars: United States Intervention in the Caribbean, 1898-1934* (Lexington: SR Books, 1985): 183-197; Emily S. Rosenberg, *Financial Missionaries to the World: The Politics and Culture of Dollar Diplomacy, 1900-1930* (Cambridge: Harvard University Press, 1999): 233-234. The earlier American military occupation of the Dominican Republic that had been initiated the year after the invasion of Haiti in 1916 had ended by September 1924. See: Lester Langley, *The Banana Wars*, 133-136, 165.

⁴¹⁴ Such anti-imperialist actors included the NAACP, Women’s International League for Peace and Freedom (WILPF), National Council for the Prevention of War (NCPW), and the Fellowship of Reconciliation (FOR). It is of note as well that almost all of which had associations and relationships with the ACLU. See: Robert D. Johnson, *The Peace Progressives and American Foreign Relations* (Cambridge: Harvard University Press, 1995): 223, 200-223; McPherson, *The Invaded*, 200-206; Rosenberg, *Financial Missionaries to the World*, 125-130.

⁴¹⁵ Rosenberg, *Financial Missionaries to the World*, 122-147.

⁴¹⁶ Roger Baldwin, “Memo for the Executive Committee,” 14 October 1929, ACLU Papers (Digitized Microfilm), vol. 378, 1120.

the lead in “aspects of the Haitian problem which affect civil liberties directly,” specifically those dealing with “the right to conduct propaganda against the regime” and calling for the “withdrawal of the marines” due to “the Occupation” having denied “the civil rights of the Haitian people.”⁴¹⁷ Baldwin therefore initially framed their prospective involvement in Haiti not so much in anti-imperialist terms (as he gestured toward in his expansion proposal) but, rather, in terms more compatible with the ACLU’s metropolitan derived civil liberties universalism – in particular those in line with their commitment to the latter as the essential means by which peaceable change could be attained.

However, before the Baldwin could get the ACLU to implement any of his preliminary plan, circumstances within Haiti fundamentally changed. For the long simmering discontent among the Haitian populace finally erupted into the open. As discussed in the introduction, the immediate catalyst was a change in the scholarship policy of the vocational education program, the Service Technique, which provoked a student walkout in the northern town of Damiens on October 31.⁴¹⁸ This walkout inspired additional sympathy strikes throughout the whole of Haiti, continuing well into November.⁴¹⁹ These events also provoked a great outcry and denunciation of the American occupation from outside of Haiti itself, both internationally and from within the U.S. mainland itself as well.⁴²⁰

⁴¹⁷ Ibid.

⁴¹⁸ McPherson, *The Invaded*, 243.

⁴¹⁹ Schimdt, *The United States Occupation of Haiti*, 196-197.

⁴²⁰ McPherson, *The Invaded*, 247.

As strikes and protests spread throughout Haiti from the end of October into November, Baldwin finally succeeded in getting the ACLU to take the initiative and issue a public letter to the Secretary of State, Henry Stimson, on the 9th of December. In doing so, the ACLU issued a communication that projected blurred conceptions of the foreign and domestic upon occupied Haiti. The statement denounced the conduct of the American military occupation and, in line with their metropolitan derived civil liberties preoccupations, called for an end of censorship of the Haitian press and “[F]reedom of political organization,” as well as for new elections.⁴²¹ However, in seeking to underpin their entry into the U.S. informal empire, this statement also contained the most sweeping assertion of their civil liberties mandate to date. For the ACLU proceeded on to make the expansive assertion that “[I]t should be axiomatic that wherever control by the United States extends, it should be accompanied by the civil and political liberties which we profess.”⁴²²

While this striking formula may have been deployed with the more immediate purpose of qualifying a civil liberties basis for their involvement, it was evidently the product of an imperial imaginary that was projecting aspects of their metropolitan derived universalism upon the (informal) colonial sphere. This appeared to imply that they were calling for a uniformity of American governance and rule throughout the empire with no

⁴²¹ ACLU to Henry Stimson, 9 December 1929, ACLU Papers (Digitized Microfilm), vol. 378, 1123-1125.

⁴²² Ibid., 1125.

thought or consideration given to the differing contexts of the latter, in this case doing so even irrespective of the question of sovereignty.

This was a highly provocative assertion in terms of its potential ramifications. Maybe most provocative of all was the fact that such an expansive stance implied a rationale that was as likely to further enable colonial state power, or even underpin additional American intervention in the region, as it was to restrain the state from potential abuses of power. Indeed, (as discussed in Chapter 3) there had already been the precedent of their support for a litigation effort which represented an implicit attempt to formalize American rule over the eastern Samoan islands. The fact that they did not grasp the provocative implications contained within such a stance was indicative of an imperial imaginary unattuned to the unintended consequences that might ensue from pursuit of their metropolitan derived civil liberties commitments in contexts outside of the U.S. metropole – especially so regarding space outside of U.S. formal sovereign territory.

Yet, their public letter, containing this most expansive assertion of their civil liberties mandate to date, also happened to carry within it an internal tension. For it also endorsed a previous call to end the occupation and restore full sovereign independence to Haiti.⁴²³ This meant that the ACLU's first public position regarding Haiti was also their first, albeit indirect, endorsement of an anti-imperialist stance toward either the formal or informal empire of the United States. Analogous with their engagement

⁴²³*Ibid.*, 1124.

with the Philippines then (as alluded to at the end of Chapter 3 and as will be discussed in detail in Chapter 6), it remained to be seen whether their metropolitan derived civil liberties commitments might come into tension with an anti-imperialist advocacy for independence. If this were to prove the case, would they be able to find a balance of approach between these two potentially contrasting commitments? Or, would one be come to be prioritized at the cost of the other? Either way, how the ACLU perceived of Haiti within their imperial imaginary was likely to prove critical.

Forbes Commission

By the time the ACLU had issued their communication to the Secretary State, the worst incident of the Haitian unrest had already come to pass. On December 6 in Aux Cayes, a confrontation between approximately 1,500 demonstrators and American marines resulted in the latter opening fire on the crowd, killing an estimated 12 people.⁴²⁴ This event compelled a response by President Herbert Hoover. The result was a message to Congress the day after the massacre that called for the formation of a commission to address the occupation of Haiti. While it appears that Hoover had already intended to reappraise the occupation as part of a general reset of American policy throughout the region, the outbreak of strikes and protests throughout Haiti, as well as the international and domestic outcry against the violent response the protests were met with, plainly played a critical part in the president's

⁴²⁴ McPherson, *The Invaded*, 246.

final decision to call for the commission. As historian Alan McPherson has argued, the “transnational resistance was crucial in sustaining Hoover’s determination.”⁴²⁵

How did the ACLU respond to Hoover’s announcement calling for a commission? The proposed commission was initially met with skepticism by the ACLU leadership, with both Baldwin and Forest Bailey being especially doubtful about the likelihood that anything of substance result from it; Bailey in particular was concerned that it would produce no more than a “very thorough job of white-washing.”⁴²⁶ They nonetheless maintained an interest in the commission’s make up and intentions.⁴²⁷ The announcement of the membership of the commission followed on February 7, 1930, becoming thereafter known as the Forbes Commission due to its now being chaired by former governor-general of the Philippines, Cameron W. Forbes.⁴²⁸ With this announcement, the ACLU set aside their skepticism and decided to try and influence the commission itself.⁴²⁹

They sought to influence the commission so not by striking an expressly anti-imperialist stance – such as demanding an immediate end to the occupation – but by keeping more in line with their more metropolitan oriented commitment to civil liberties as the essential means by which peaceable change could be pursued and attained. They went about this in

⁴²⁵ Ibid., 247-248.

⁴²⁶ Forest Bailey to Emily Balch, 25 December 1929, ACLU Papers (Digitized Microfilm), vol. 378, 1161.

⁴²⁷ Roger Baldwin to Dorothy Detzer, 28 January 1930, ACLU Papers (Digitized Microfilm), vol. 440, 65.

⁴²⁸ Cooper, “The Withdrawal of the United States from Haiti,” 92.

⁴²⁹ Roger Baldwin to Dorothy Detzer, 11 February 1930, ACLU Papers (Digitized Microfilm), vol. 440, 67.

two ways. First, the ACLU issued a public letter to President Hoover that called for two measures in particular: the cessation of press censorship and the reestablishment of the freedom of political organization.⁴³⁰ As they emphasized to the President, these were essential to make “any fair appraisal of Haitian opinion or Haitian ability to control their own political life.”⁴³¹ Hence, both policy recommendations conveyed little in the way of an anti-imperialist position or tenor on their part. Instead, they remained more comfortably in line with how they had pursued their civil liberties mandate within the U.S. metropole and formal colonial sphere up until that point. Alongside this communication, the ACLU’s other response was to reach out and lobby members of the Forbes Commission – including Forbes himself and famed Progressive Era journalist William Allen White – emphasizing the imperatives of freedom of the press and political organization for the commission to be a success in its conduct.⁴³² In response, they received cordial but non-committal replies.⁴³³

The Forbes Commission traveled to Haiti to conduct their investigation on February 28th.⁴³⁴ They arrived to be greeted by 6,000 Haitian demonstrators who opposed the US occupation, many of whom welding placards.⁴³⁵ The commission proceeded on to hold public hearings that

⁴³⁰ ACLU to President Herbert Hoover, 5 February 1930, ACLU Papers (Digitized Microfilm), vol. 440, 79.

⁴³¹ Ibid.

⁴³² ACLU to Cameron Forbes, 11 February 1930, ACLU Papers (Digitized Microfilm), vol. 440, 63; Roger Baldwin to Harry Ward, 17 February 1930, ACLU Papers (Digitized Microfilm), vol. 440, 62; William A. White to Harry Ward, 13 February 1930, ACLU Papers (Digitized Microfilm), vol. 440, 63.

⁴³³ Cameron Forbes to Harry Ward, 22 February 1930, ACLU Papers (Digitized Microfilm), vol. 440, 64.

⁴³⁴ McPherson, *The Invaded*, 251-252.

⁴³⁵ Schmidt, *The United States Occupation of Haiti*, 208.

allowed for any person to speak or submit written petitions or depositions.⁴³⁶ As freedom of political organization had been an overriding concern for the ACLU, then much of their concerns may possibly have been allayed by the extent of participation and input by Haitian opposition groups and other actors over the course of the Commission's investigation. A coalition of anti-occupation elements known as the Sacred Union had been formed prior to the commission's arrival.⁴³⁷ The consensus view which had developed emphasized the imperative of removing President Borno from office.⁴³⁸ While in Haiti, the Forbes Commission determined that it would be necessary to find a means for the transfer of political power that would be deemed as acceptable by both the political opposition and President Borno.⁴³⁹ It was decided that a temporary and neutral appointment would be needed to replace Borno, one who would only hold office until legislative elections were conducted some months later.⁴⁴⁰ As interim president, Eugène Roy was regarded as satisfactory by all involved.⁴⁴¹

While the ACLU offered no input throughout the course of the Forbes Commission investigation, upon its completion, Baldwin reached out to William Allen White to applaud him on the conduct of their investigation, its findings, and recommendations. Acknowledging that he personally desired

⁴³⁶ Magdaline W. Shannon, *Jean Price-Mars, the Haitian elite, and the American Occupation, 1915-1935*, (New York: St. Martin's Press, 1996): 90.

⁴³⁷ The Sacred Union was made up of such groups as the *Union Patriotique*, the *Ligue des Droits de l'Homme et du Citoyen*, the *Union Sociale*, the *Ligue de la Jeunesse Patriote*, the *Ligue Defense Nationale*, and the *Parti National Travailleiste*. See: Shannon, *Jean Price-Mars, the Haitian elite and the American occupation*, 90.

⁴³⁸ Shannon, *Jean Price-Mars, the Haitian elite and the American occupation*, 90

⁴³⁹ Shannon, *Jean Price-Mars, the Haitian Elite and the American Occupation*, 91.

⁴⁴⁰ Cooper, "The Withdrawal of the United States from Haiti, 1928-1934," 93.

⁴⁴¹ *Ibid.*, 83-101.

“repudiation of our whole policy toward Haiti,” he conceded that “the Commission did the best it could in light of a policy already settled by ...a long series of errors and tragedies.”⁴⁴² On behalf of the ACLU, then, Baldwin offered qualified satisfaction with the conduct of the commission vis-à-vis their civil liberties stance that Haitian political opinion had been given adequate space to express itself regarding the occupation, the Borno administration, and demands for the restoration of full Haitian sovereign independence.

This impression appears further confirmed in the way the ACLU largely ceased to engage in Haitian related matters for the remainder of the year – whether in the form of public pronouncements, private correspondence, and/or discreet lobbying efforts. As momentum had evidently appeared to swing behind the restoration of governance to Haitian political actors, it may have appeared unnecessary for the ACLU to further weigh in on the matter, at least for the time being. Once Eugene Roy had temporarily taken up the Haitian Presidency in April, most attention in Haiti focused upon the scheduled fall elections. The fall elections occurred on October 14, with an opposition coalition, known as the Cartel, winning definitively throughout the country. The resulting National Assembly was overwhelmingly anti-occupation; the presidency itself went to veteran opponent of the U.S. occupation, Sténio Vincent.⁴⁴³ Coinciding with the election results as well, High Commissioner John Russell was replaced by

⁴⁴² Roger Baldwin to William A. White, 29 April 1930, ACLU Papers (Digitized Microfilm), vol. 440, 85.

⁴⁴³ McPherson, *The Invaded*, 256-257.

Dana G. Munro as civilian minister to Haiti. As civilian minister, Munro maintained some of the responsibilities of the former High Commissioner but transferred a great deal of which to the Vincent administration.⁴⁴⁴ Nevertheless, President Vincent's administration immediately came into conflict with Munro over the issue of the so-called "Haitianization" (i.e. the appointment of Haitian citizens throughout Haitian government and public services) of the government in Haiti. The disagreement itself, though, for all its contentiousness, was more regarding the pace of the policy, rather than about the overall goal.⁴⁴⁵

ACLU Reengagement with the Occupation of Haiti

In early 1931, the ACLU reengaged with the occupation of Haiti. What compelled them to do so? By the beginning of 1931, what remained of the earlier momentum and optimism following the Forbes Commission had seemingly receded.⁴⁴⁶ It was such an impression that likely, at least in part, accounts for Roger Baldwin's motivation to reach out to *Union Patriotique* members Henry Rosemond and Jean Lamothe in February 1931 for any updates that they might have on the Haitian situation and to consider how the ACLU might reengage with the issue.⁴⁴⁷ Based in part on Henry

⁴⁴⁴ Schmidt, *The United States Occupation of Haiti*, 220.

⁴⁴⁵ Ibid., 221-222.

⁴⁴⁶ Shannon, *Jean Price-Mars, the Haitian Elite, and the American Occupation*, 107-108.

⁴⁴⁷ Roger Baldwin to Henry C. Rosewood, 3 February 1931, ACLU Papers (Digitized Microfilm), vol. 501, 122; Roger Baldwin to Jean G. Lamothe, 3 February 1931, ACLU Papers (Digitized Microfilm), vol. 501, 123; Jean G. Lamothe to Roger Baldwin, 10 February 1931, ACLU Papers (Digitized Microfilm), vol. 501, 122.

Rosemond's feedback, Baldwin determined that a practical program arousing American support ought to be directed at three more immediate goals: the renegotiation of a new treaty with the Haitian government; the withdrawal of the marines before 1936; and the immediate Haitianization of public services.⁴⁴⁸

As there was much less of a self-evident civil liberties basis to these goals as compared to what they had pursued in the previous year, it suggests that Baldwin was again seeking to get the ACLU to embrace more of an expressly anti-imperialist position toward Haiti. Baldwin's own motivation here may well have stemmed from the fact that his extra-ACLU anti-imperialist work with the LAI had come to an end in the previous year.⁴⁴⁹ He may then have been aiming to compensate for this by trying to redirect his anti-imperialist commitments by driving the ACLU to address what remained of the American occupation of Haiti.

Toward pursuing these ends, Baldwin reached out to the executive secretary of the NAACP, Walter White.⁴⁵⁰ The NAACP had had struck a staunchly anti-imperialist position toward the American occupation of Haiti from the outset – the all-encompassing racism underpinning American rule over the Black majority republic had compelled their involvement.⁴⁵¹ The

⁴⁴⁸ Henry C. Rosemond to Roger Baldwin, 7 March 1931, ACLU Papers (Digitized Microfilm), vol. 501, 124-6; Roger Baldwin to Henry C. Rosemond, (March 31, 1931), ACLU Microfilm, Volume 501, p. 127.

⁴⁴⁹ Louro, M.L., *Comrades against imperialism*, 175.

⁴⁵⁰ Roger Baldwin to Walter White, (Date cut off, likely 13 April 1931), ACLU Papers (Digitized Microfilm), vol. 501, 127.

⁴⁵¹ Brenda G. Plummer, "The Afro-American Response to the Occupation of Haiti, 1915-1934," *Phylon* 43, No. 2 (1982): 131-135; Leon Pamphile, "The NAACP and the American Occupation of Haiti," *The Atlanta University Review of Race and Culture* 47, no. 1 (Mar. 1, 1986): 91-100.

events of 1929 had, as it had done for other anti-imperialist actors and organizations within the United States, renewed and revitalized the NAACP's efforts toward ending the U.S. occupation of Haiti.⁴⁵²

The initial communication between the ACLU and NAACP was devoted to Walter White's recent trip to Haiti and the fact that he had been in close touch with Dantés Bellegarde, the Haitian Minister to the U.S., and with Haitian President Stenio Vincent.⁴⁵³ Such was also indicative of the more ample network of contacts that the NAACP had in Haiti as compared to the ACLU. Baldwin then proposed that pressure would best be applied toward attaining the three principle goals of the withdrawal of the marines, the drafting of a new treaty, and the settlement of the foreign debts.⁴⁵⁴ He felt that "sufficient sentiment" could be channeled toward such ends, assuming that the Haitian people would demand the same; further emphasizing that they should seek to coordinate their activities with the latter.⁴⁵⁵ Therefore, Baldwin was suggesting that they, as two increasingly influential U.S. metropolitan-based reform organizations, would be best situated in aiding the Haitian people by mobilizing and coordinating a coalition of other interested U.S. based organizations so as to spur popular opinion behind ending the occupation.

⁴⁵² Rosenberg, *Financial Missionaries to the World*, 239; McPherson, *The invaded*, 247.

⁴⁵³ Roger Baldwin to Walter White, (Date cut off, likely 13 April 1931), ACLU Papers (Digitized Microfilm), vol. 501, 127; Walter White to Roger Baldwin, 16 April 1931, ACLU Papers (Digitized Microfilm), vol. 501, 128.

⁴⁵⁴ Roger Baldwin to Walter White, 2? April 1931, ACLU Papers (Digitized Microfilm), vol. 501, 130.

⁴⁵⁵ Ibid.

It is also of note that this letter was the first time that Baldwin broached the financial dimensions of the Haitian occupation. While this, in part, pointed to the continued novelty and fluidity of their civil liberties mandate, it was also likely that Baldwin determined that if they engaged with such issues as part of a broader coalition, it might gloss over the fact that they were otherwise dramatically expanding their mandate into an area – that relating to finance and economic issues – that the ACLU had otherwise studiously avoided elsewhere in the U.S. metropolitan and colonial spheres. This was also likely further indicative of Baldwin's efforts to get the ACLU to embrace a more thorough going anti-imperialist stance toward Haiti.

Yet in May, when the ACLU did issue a public statement regarding Haiti, it was much more narrow and less potentially anti-imperialist in scope and tenor than what Baldwin had been proposing throughout the first part of the year. It called upon their "Friends" to "induce the State Department to make good on American pledges to get out of Haiti" due to the fact progress had ceased to be made toward securing the recommendations set out by the Forbes Commission.⁴⁵⁶ The release also coincided with the ACLU issuing a public letter the following day to President Hoover that further took up these issues.⁴⁵⁷ In the public letter, the ACLU stressed that – pursuant the end of American control – the immediate withdrawal of the marines needed to be secured and "the replacement of American officials by Haitians"

⁴⁵⁶ Harry Ward to Friends, 7 May 1931, ACLU Papers (Digitized Microfilm), vol. 501, 130.

⁴⁵⁷ ACLU to President Herbert Hoover, 8 May 1931, ACLU Papers (Digitized Microfilm), vol. 501, 132.

needed to be greatly accelerated.⁴⁵⁸ Presumably Baldwin's suggestion of engaging with the financial dimension of the occupation had proven too explicitly an anti-imperialist issue without a convincing civil liberties basis for ranking members of the ACLU to endorse. Be that as it may, these public communications did indicate that Baldwin had some measure of success in pushing the ACLU closer toward adopting something resembling an overtly anti-imperialist stance toward Haiti.

For the duration of the summer of 1931, however, there was little further follow up by the ACLU on the Haitian situation, neither through their own initiative, nor in putting into action the preliminary plan to mobilize a coalition of U.S. metropolitan-based reform organizations.⁴⁵⁹ There is, however, evidence of the extent to which Baldwin had succeeded in getting the organization to increasingly embrace an anti-imperialist orientation toward the Haitian occupation – as well as of the implications this might likely have for their more metropolitan-rooted civil liberties commitments in the colonial sphere. This was in response to news that reached them about the suppression of Haitian newspapers. Upon receiving word of this, Baldwin reached out to the Haitian Minister to the United States, Dantés Bellegarde, to inquire about the jailing of three newspaper editors in Port-au-Prince for protesting the occupation.⁴⁶⁰ As Baldwin noted after, Bellegarde had informed him that it had been “a purely internal Haitian affair not in any

⁴⁵⁸ Ibid.

⁴⁵⁹ Roger Baldwin to Walter White, 2 July 1931, ACLU Papers (Digitized Microfilm), vol. 501, 145; Walter White to Roger Baldwin, 8 July 1931, ACLU Papers (Digitized Microfilm), vol. 501, 146.

⁴⁶⁰ Roger Baldwin to Dantés Bellegarde (Undated), ACLU Papers (Digitized Microfilm), vol. 501, 147.

way dictated by the American Occupation.”⁴⁶¹ The Haitian government had apparently found “certain incitements” published to have been “embarrassing in the negotiations with the American authorities.”⁴⁶² Accepting the minister’s explanation, the ACLU then expressed no further public or private objections.

Remarkably then, the ACLU had tacitly accepted suppression of the Haitian press. A key factor for them was plainly the fact that this suppression had been directed by Haitian, and not American authorities. And indeed, in their communication to the Secretary of State in 1929, they had stressed that it was “wherever control by the United States extends, it should be accompanied by the civil and political liberties which we profess.”⁴⁶³ Hence they presumably perceived of this suppression of “civil and political liberties” as having been conducted by Haitian state actors operating outside of direct American control. This nonetheless marked a rather ironic development whereby the ACLU’s increasingly anti-imperialist orientation toward Haiti had come to trump one of their foundational civil liberties commitments: freedom of the press. The fact that they proved willing to compromise on so core a civil liberties commitment as providing a check to abuses of state authority indicates that, for all of Haiti’s ongoing (informal) colonial subjugation, the ACLU had come to view Haiti within their imperial imaginary as an essentially foreign and sovereign polity. One in

⁴⁶¹ Roger Baldwin, “Memorandum,” 11 July 1931, ACLU Papers (Digitized Microfilm), vol. 501, 147.

⁴⁶² Ibid.

⁴⁶³ Ibid., 1125.

which those they viewed as local, non-colonial state actors were empowered to exercise whatever autonomy they had regained from the United States as they saw fit, even if it happened to be in conflict with one of the ACLU's core commitments.

One other related and relevant implication of this exchange was that it suggested the likelihood that an explicitly anti-imperialist orientation on their part might come into tension, if not outright conflict, with their more metropolitan-rooted civil liberties preoccupations. As will be seen in Chapter 6 regarding their engagement with the Philippines during the 1930s, this ambiguous and potentially conflicting relationship between their metropolitan derived civil liberties concerns and support for independence will result in a great deal of tension and difficulty for the organization.

In August 1931 a significant agreement between US and Haitian officials was announced.⁴⁶⁴ As discussed, the issue of the pace of Haitianization had been quite a contentious one between American and Haitian officials since the fall of 1930. Throughout the course of 1931, pressure by the Vincent administration, other Haitian nationalists and their allies had nonetheless resulted in more appointments of Haitian citizens throughout the Haitian government.⁴⁶⁵ The resulting agreement committed the State Department to expedite the pace of Haitianization. Also very

⁴⁶⁴ Schmidt, *The United States Occupation of Haiti*, 222.

⁴⁶⁵ *Ibid.*, 221-222.

significant was the fact that this agreement declared the official ending of martial law.⁴⁶⁶

An Anti-Imperialist ACLU

The August announcements represented modest but real progress in resolving the U.S. occupation of Haiti. Yet, for the ACLU, while the official ending of martial law was plainly progress from a civil liberties standpoint, it also meant that the most overt basis of their civil liberties mandate in Haiti had thereby been removed. This then left open the related questions: (a) would the ACLU continue interest themselves in the occupation of Haiti? And (b) if so; on what basis would they do so and (c) in pursuit of what goals and by what means would they do so?

Any doubts as to whether this new development would discourage the ACLU's continued involvement were quickly dispelled in a communication they had with Haitian minister Dantés Bellegarde.⁴⁶⁷ As they no longer had an overtly civil liberties basis for their continued interest there, this had signaled that they had now essentially embraced an unmistakably anti-imperialist position toward Haiti. Indeed, from this point forward they conveyed the impression that they regarded Haiti within their imperial imaginary as a foreign, fully sovereign, and self-governing state; one that was

⁴⁶⁶ Cooper, "The Withdrawal of the United States from Haiti," 95-96; Schmidt, *The United States Occupation of Haiti*, 222.

⁴⁶⁷ Roger Baldwin to Dantés Bellegarde, 7 August 1931, ACLU Papers (Digitized Microfilm), vol. 501, 152.

merely awaiting the removal of what remained of what they regarded as unjustifiable American interference in the guise of the latter's ongoing financial and military presence there. This was highly significant because this marked the first time that they had explicitly embraced such an anti-imperialism anywhere throughout the U.S. empire (informal or formal). Such a precedent further held out the possibility that they might eventually extend a similar anti-imperialist orientation to elsewhere in the informal, or even formal empire of the United States.

Limiting the likelihood for such a development for the time being, though, was the fact that they did not frame this expressly anti-imperialist stance toward the Haitian occupation in a fashion that might have convincingly encompassed it within their conception of civil liberties. Furthermore, the limited scope of their anti-imperialism, in practical terms, became immediately clear. For their anti-imperialist activity essentially hinged upon either the publicity they could generate as part of a coalition of metropolitan based organizations, on the one hand, and the lobbying of metropolitan-based state actors, on the other.

In the case of the former, the ACLU and NAACP committed themselves to collaborating more determinedly to further mobilize a coalition of other concerned metropolitan-based U.S. reform organizations. In doing so, they sought to tackle the outstanding need for the withdrawal of the marines, the ending of U.S. financial control, and the negotiation of a new treaty - effectively laying out the anti-imperialist program they would continue to

pursue from here on out.⁴⁶⁸ In putting forward these positions, the Baldwin returned to the financial control aspect of the occupation, appearing to have brought the ACLU itself around to agreeing to do so by this time.⁴⁶⁹ Yet, again, he did not acknowledge how unprecedented it was for them to touch upon an explicitly economic issue well outside of how they had pursued their civil liberties mandate up until that point. As posited earlier, the fact that they would be engaging with such an issue as part of a coalition may have eased the matter here.

In their having now determined to work in much greater cooperation with one another, how did the ACLU and NAACP go about doing so? Did they differ in priorities and/or approaches? If so, why? It was mainly Roger Baldwin of the ACLU and Walter White of the NAACP that deliberated about how best to go forward. An initial suggestion was to organize a conference on Haiti to be attended by all American organizations sympathetic with aiding the Haiti situation.⁴⁷⁰ This proposal came to naught due to conflicting schedules.⁴⁷¹ They also cooperated in the drafting, and circulation of a memorial to the President himself.⁴⁷² In doing so, Baldwin and White also discussed among themselves what organizations would be most suitable and

⁴⁶⁸ Roger Baldwin to Dantés Bellegarde, 7 August 1931, ACLU Papers (Digitized Microfilm), vol. 501, 152.

⁴⁶⁹ Ibid.

⁴⁷⁰ Roger Baldwin to Walter White (Undated), ACLU Papers (Digitized Microfilm), vol. 501, 154; Walter White to Roger Baldwin, 14 August 1931, ACLU Papers (Digitized Microfilm), vol. 501, 153.

⁴⁷¹ Walter White to Roger Baldwin, 14 August 1931, ACLU Papers (Digitized Microfilm), vol. 501, 153; Forest Bailey to Dantés Bellegarde, 17 September 1931, ACLU Papers (Digitized Microfilm), vol. 501, 163.

⁴⁷² In their usage of the term 'memorial, they essentially meant the same thing as a memorandum. Walter White to Roger Baldwin, 7 October 1931, ACLU Papers (Digitized Microfilm), vol. 501, 166; NAACP and ACLU Letter, 21 November 1931), ACLU Papers (Digitized Microfilm), vol. 501, 169; Roger Baldwin to NAACP (Undated), ACLU Papers (Digitized Microfilm), vol. 501, 171.

willing to sign such a memorial. They settled upon such notable U.S. based reform organizations as the Women's International League for Peace and Freedom (WILPF), American Friends Service Committee, the Fellowship of Reconciliation (FOR), and National Council for the Prevention of War (NCPW).⁴⁷³ All told, they assembled a coalition of nine organizations, that included themselves, for the memorial. It is of note that some of the organizations, most notably the WILPF, FOR and NCPW, were already veterans of the anti-imperialist efforts directed against the U.S. informal empire in the Caribbean basin during the 1920s. Walter White also kept Haitian minister Bellegarde in the loop throughout the drafting of which.⁴⁷⁴ This memorial, however, was only finally issued in December, seemingly due to complications in putting it together, garnering input, making adjustments, and gaining the necessary signatures.⁴⁷⁵

The area where the ACLU and NAACP were to most differ on, though, was about how best to lobby their federal governmental contacts in addressing the interlinked issues of U.S. financial control and the ongoing military occupation of Haiti. For while both sought to end the financial control regime there, the ACLU stressed that, from their standpoint, the linkage between financial control and the military occupation needed to be emphasized; while the NAACP, on the other hand, were more willing to

⁴⁷³ Walter White to Roger Baldwin, 14 August 1931, ACLU Papers (Digitized Microfilm), vol. 501, 153; Roger Baldwin to Walter White, 14 August 1931, ACLU Papers (Digitized Microfilm), vol. 501, 152.

⁴⁷⁴ Walter White to Dantés Bellegarde, September/October 1931, NAACP Papers, Part 11: Special Subject Files. Series B. Reel 10, 403.

⁴⁷⁵ Walter White to Roger Baldwin, 9 December 1931, ACLU Papers (Digitized Microfilm), vol. 501, 173; Edwin Wilson (Division of Latin Affairs, Department of State) to Arthur Kramer, 10 December 1931, ACLU Papers (Digitized Microfilm), vol. 501, 174.

broaden out the scope through which this issue was engaged in. Presumably their differing *raisons d'être* informed this distinction, with the former likely aiming to keep the scope of their approach as close as possible to their civil liberties preoccupations, whereas for the latter, the finance issue was among the most egregious aspects of what remained of American racist rule over Haiti. And yet while both may have differed on the more immediate means of lobbying government regarding Haiti, they were nonetheless both unhesitant in seeking to utilize state actor relations in pursuit of anti-imperialist goals. This was indicative of a broader trend by the ACLU (as will be discussed in the following chapters) whereby they increasingly turned to rely upon state actor relations and contacts – a development that contrasted with their more state-sceptic orientation of the previous decade. This suggested that in whatever way an anti-imperialism on the part of the ACLU might develop, it was likely to be quite accommodating of state actor relations and interactions of a kind likely to have some impact upon their imperial imaginary.

An early example of the distinction between the two organizations' approaches and priorities was when the NAACP sought to get the issue of the financial control of Haiti before the Senate Finance Committee toward the end of 1931 by broaching the interrelated, but broader, issue of American bank loans issued to the Haitian government during the occupation.⁴⁷⁶ By December, they had prepared a memorandum to file, with

⁴⁷⁶ Shannon, *Jean Price-Mars, the Haitian Elite and the American Occupation*, 115.

the tacit approval of Senator Reed Smoot, requesting that the Senate Finance Committee include the Haitian loans in their investigation on foreign loans issued and held from within the United States.⁴⁷⁷ Roger Baldwin was skeptical of this effort from the outset. His main concern was that the foreign loans issue, while highly relevant, could all too easily be separated from the American occupation itself, and be framed solely as an issue of private finance, as well as more susceptible to being “buried under” under other controversial issues of the Finance Committee – not a small concern especially given the broader context of the Great Depression at the time.⁴⁷⁸ There was also the unspoken implication here that if the financial dimensions of the occupation came to be decoupled from the military then the ACLU’s ongoing engagement with Haiti cease to be tenable.

As an alternative, based upon sources from within the State Department, Baldwin proposed that they should see if they could get a resolution passed by one of the houses of Congress that might help move things forward.⁴⁷⁹ Toward such an end, Baldwin had reached out to Senator William King and tried to convince him that the time had come to introduce a resolution that would call on the President to re-negotiate a new treaty and end both the financial control and the military occupation of Haiti.⁴⁸⁰ Walter White and the NAACP leadership, however, were very skeptical about how

⁴⁷⁷ Herbert Seligmann to Roger Baldwin, 21 December 1931, ACLU Papers (Digitized Microfilm), vol. 501, 176.

⁴⁷⁸ Roger Baldwin to Walter White, 14 January 1932, ACLU Papers (Digitized Microfilm), vol. 587, 129.

⁴⁷⁹ Roger Baldwin to Herbert Seligmann, 19 December 1931, ACLU Papers (Digitized Microfilm), vol. 501, 175.

⁴⁸⁰ Roger Baldwin to Senator William King, 13 January 1932, ACLU Papers (Digitized Microfilm), vol. 587, 127.

sincere the State Department were about the latter's apparent desire to get out of Haiti based upon to their own dealings with them.⁴⁸¹

Ultimately, neither of the lobbying efforts with the Finance Committee or Senator King produced anything in the way tangible of results.⁴⁸² At this juncture both Baldwin and White expressed being at a loss as to how best to go forward regarding Haiti. In fact, Baldwin even went so far as to assert to White that it seemed that the only way to get any real attention applied to Haiti was "through some response down there."⁴⁸³ He then added, either seriously or facetiously (unclear from the text) to "Get the students to demonstrate."⁴⁸⁴ Whatever the seriousness of the comment, it represented Baldwin conceding to a fundamental weakness and constraint on the part of the ACLU with respect to the colonial sphere as a whole (formal and informal alike). That is, for all the advantages and assets they possessed as metropolitan-based, non-state actors in terms of governmental contacts and publicity, they were deeply lacking in robust contacts within Haiti itself and, accordingly were engaged in a metropolitan-based form of anti-imperialism fundamentally detached from whatever developments and local initiatives emanating from within Haiti. The fact that they never sought to address this any further than to rely on indirect contacts through the NAACP was indicative of an imperial imaginary essentially unconcerned about their lack

⁴⁸¹ Walter White to Roger Baldwin, 12 January 1932, ACLU Papers (Digitized Microfilm), vol. 587, 127.

⁴⁸² Roger Baldwin to Dorothy Detzer, 13 February 1932, ACLU Papers (Digitized Microfilm), vol. 587, 131.

⁴⁸³ Roger Baldwin to Walter White, 24 February 1932, ACLU Papers (Digitized Microfilm), vol. 587, 131.

⁴⁸⁴ *Ibid.*

of deep and durable contacts and relations from among the Haitian people themselves.

On September 3, 1932, however, a very significant development in US and Haitian relations occurred with the signing of a treaty between representatives of both in Port-au-Prince. While this agreement did move forward the scheduled ending of the military occupation, it maintained the American financial control regime.⁴⁸⁵ The treaty was accordingly met with a great deal of criticism.⁴⁸⁶ When it came up for a vote in the Haitian National Congressional Assembly on September 15, the treaty was resoundingly defeated.⁴⁸⁷

The Roosevelt Administration and the Good Neighbor Policy

Following the rejection of the US-Haiti treaty and as the fall of 1932 approached, interest turned toward the upcoming American presidential election between Herbert Hoover and Franklin Delano Roosevelt. While advocates of immediate U.S. withdrawal had ceased to have much faith in Hoover, they also had serious doubts regarding Roosevelt. This was in large part due to his less than stellar performance regarding Haiti during his tenure as Assistant Secretary of the Navy, and especially due to his infamous (as well as fallacious) claim during the 1920 election to have written the

⁴⁸⁵ McPherson, *The Invaded*, 258.

⁴⁸⁶ Shannon, *Jean Price-Mars, the Haitian Elite and the American Occupation*, 117-118.

⁴⁸⁷ *Ibid.*, 118.

Haitian constitution himself.⁴⁸⁸ Walter White even issued a letter – which incorporated feedback from Baldwin – to then New York Governor Roosevelt for clarification on the matter.⁴⁸⁹ By the time of the election, however, most anti-occupation activists viewed the increasingly likely Roosevelt presidency with, at best, an undecided skepticism.⁴⁹⁰

How then did the ACLU direct their anti-imperialist efforts on behalf of Haiti following Roosevelt's electoral victory? For the proceeding months they did not take any further direct actions regarding Haiti. This was even more striking, given that, from this point on (and as will be shown in the proceeding chapters) the ACLU began to discernably move away from what remained of their state skeptic-orientation, and increasingly utilize and work through prominent Roosevelt administration figures – a number of which had membership in or a history of cooperative relations with the ACLU – throughout the formal U.S. colonial empire.

What they did do of relevance at this time, though, was to complete and issue a pamphlet entitled “Civil liberties in American colonies” in March of 1933.⁴⁹¹ This pamphlet is very significant as it represented their first broad and detailed statement regarding their overall orientation and

⁴⁸⁸ Walter White to Roger Baldwin, 22 September 1932, ACLU Papers (Digitized Microfilm), vol. 587, 135; Roger Baldwin to Walter White, 27 September 1933, NAACP Papers, Part 11: Special Subject Files. Series B. Reel 11, 228; Felix Frankfurter to Walter White, 1 October 1932, NAACP Papers, Part 11: Special Subject Files. Series B. Reel 11, 251; Ernest Gruening to Walter White, 6 September 1932, NAACP Papers, Part 11: Special Subject Files. Series B. Reel 11, 155; Cooper. “The Withdrawal of the United States from Haiti,” 96.

⁴⁸⁹ Walter White to Governor Franklin D. Roosevelt, 28 September 1932, NAACP Papers, Part 11. Series B. Reel 11, 223; Walter White to Roger Baldwin, 28 September 1932, NAACP Papers, Part 11: Special Subject Files. Series B. Reel 11, 227.

⁴⁹⁰ Shannon, *Jean Price-Mars, the Haitian Elite and the American Occupation*, 119.

⁴⁹¹ “Civil Liberties in American Colonies: A Survey of Interference with Civil Rights of Natives; and of the Forms of Control; with Proposed Remedies,” March 1933, ACLU Records and Publications. Reel 91, 1-31.

positions toward the U.S. colonial empire.⁴⁹² It accordingly revealed much about the imperial imaginary of the ACLU vis-à-vis the respective colonies of the United States (as will be discussed in further detail over the course of the proceeding chapters). For present purposes, it is significant that Haiti was the only informal, *de facto* U.S. colony included in the pamphlet. In their entry on Haiti, while the ACLU acknowledged that progress had been made since the completion of the Forbes Commission in the way of “nominal restoration of independence,” they nonetheless stressed the remaining need to end American financial control, withdraw the marines, and negotiate a treaty restoring complete sovereignty to Haiti.⁴⁹³ In returning to these three demands, the ACLU thereby demonstrated that they had held firm to the same anti-imperialist stance that they had adopted ever since the 1931 agreement.

As to why they had only addressed Haiti among their interventions in Caribbean basin, they asserted that it was only in Haiti that “American control has been continuous and complete over a long period of time.”⁴⁹⁴ While they did acknowledge the “analogous” situation of Nicaragua, they rather briskly dismissed any engagement with the American intervention there due to the fact that U.S. marines had been removed by this time.⁴⁹⁵

⁴⁹² The ACLU appears to have intended to organize such a pamphlet on the colonies as early as 1922. See: Roger Baldwin to Lewis Gannett, 21 December 1922, ACLU Papers (Digitized Microfilm), vol. 227, 161.

⁴⁹³ “Civil liberties in American colonies: A survey of interference with civil rights of natives; and of the forms of control; with proposed remedies,” March 1933, ACLU Records and Publications. Reel 91, 30.

⁴⁹⁴ *Ibid.*, 2.

⁴⁹⁵ They also rather vaguely disregarded engaging in the ongoing U.S. control exercised over Liberia, ‘because of the complications involved in its relation to the League of Nations and to foreign investors.’ See: *Ibid.* The U.S. State Department had helped broker a loan from the Firestone rubber company to the Liberian government in 1926 that had entailed supervision by financial advisors appointed by the US government. The

Therefore, for all of their assertively anti-imperialist orientation with regarding Haiti by this point, they appear to have concurrently decided to restrict the scope of their mandate from concerning themselves with elsewhere in the U.S. informal empire. In doing so, they gave the impression that within their imperial imaginary the occupation Haiti was the only relevant example of the U.S. informal empire remaining. This further indicated that it was unlikely that they would make a determined effort to expand their civil liberties mandate to embrace an anti-imperialism elsewhere in the U.S. informal empire.

Such may have appeared both more unlikely and unnecessary given the early public messaging coming from the Roosevelt administration regarding the hemisphere. As Roosevelt announced in March 4 in his inaugural address: “In the field of World policy, I would dedicate this nation to the policy of the good neighbor, the neighbor who ... respects the rights of others – the neighbor who respects his obligations and respects the sanctity of his agreements in and with a world of neighbors.”⁴⁹⁶ This statement is often understood as heralding the onset of the so-called Good Neighbor policy, the foreign policy approach in which the U.S. publicly forswore further military intervention and interference so as to pursue more constructive and cooperative relations throughout the Caribbean, Central

loan failed to bring the Liberian economy much relief and had increasingly drawn the ire of the Liberian government and American based anti-imperialists. In 1932 the Liberian government declared a moratorium on its debt repayments and dismissed the American financial advisors. See: Rosenberg, *Financial missionaries to the world*, 120, 238, 250; Greg Mittman, *Empire of Rubber: Firestone’s Scramble for Land and Power in Liberia* (New York: The New Press, 2021): Chapters 2-4.

⁴⁹⁶ President Franklin D. Roosevelt, “First Inaugural Address of Franklin D. Roosevelt,” 4 March 1933, https://avalon.law.yale.edu/20th_century/froos1.asp (Accessed on 20-10-23).

and South America.⁴⁹⁷ With regard to Haiti, the Roosevelt administration moved expeditiously to resolve the military occupation of Haiti, as it remained the last of the major military occupations by the United States within the region. Over the proceeding months the Roosevelt administration engaged in negotiation with the Vincent administration.⁴⁹⁸

How did the ACLU respond to the seemingly more encouraging tenor and policy approach of the Roosevelt administration toward the Americas? Aside from a rebuke they issued to Roosevelt regarding a disarmament address – in which Roosevelt failed to acknowledge the ongoing military occupation of Haiti – they did little until the results of the negotiations between the Roosevelt and Vincent administration became public by the end of the summer.⁴⁹⁹ On August 7 was announced what became known as the Executive Agreement.⁵⁰⁰ The agreement itself turned out to be much the same as the earlier rejected treaty of September 1932.⁵⁰¹ While it now committed the United States to removing the marines by October 1934, it would nonetheless sustain U.S. financial control.⁵⁰²

Deeply dissatisfied by the substance of the agreement, the ACLU organized another memorial, co-signed by another coalition of allied

⁴⁹⁷ Scholarship has highlighted that much of the Good Neighbor Policy was put into motion during the Hoover administration. See: William L. Leuchtenburg, *Herbert Hoover* (New York: Times Books, 2009): 120-122; Alan L. McPherson, “Herbert Hoover, Occupation Withdrawal, and the Good Neighbor Policy,” *Presidential Studies Quarterly* 44, no. 4 (2014): 623-639; Earl R. Curry, *Hoover’s Dominican Diplomacy and the Origins of the Good Neighbor Policy* (New York: Garland, 1979).

⁴⁹⁸ Cooper, “The Withdrawal of the United States from Haiti,” 96-97.

⁴⁹⁹ Harry Ward, Arthur Garfield Hays (and other signees) to President Franklin D. Roosevelt, 29 May 1933, ACLU Microfilm, vol. 616, 19.

⁵⁰⁰ Cooper, “The Withdrawal of the United States from Haiti,” 97

⁵⁰¹ Ibid.

⁵⁰² Schimdt, *The United States Occupation of Haiti*, 225.

organizations, and sent it out to the President on September 29.⁵⁰³ In it, they strenuously objected to the prolongation of “American financial control” which committed the United States “to remain the dictators of Haitian public finance until 1944.”⁵⁰⁴ They also objected to the fact that it had been secured without the “approval of the legislative bodies of either country” and asserted that if the administration sought to dispel the “widespread suspicion” that the U.S. government is still committed to “the policy of ‘dollar imperialism,’” then all remaining forms of American control over Haiti needed to promptly end.⁵⁰⁵ The emphatic anti-imperialist tenor of the coalition was unmistakable in its constitutionally and geopolitically grounded opposition to the Executive Agreement.

Such was the stance that the ACLU and their allies sought carry over onto the upcoming Pan-American Conference in Montevideo of November and December 1933; an event which came to represent a significant benchmark in the Good Neighbor Policy. During the previous two Pan-American Conferences of 1923 and 1928, representatives of Latin American states had proven increasingly assertive and confrontational on the question of U.S. interventions and influence throughout the region.⁵⁰⁶ And while the President and Secretary of State Cordell Hull had only intended for the conference to serve as a modest step toward establishing more stable,

⁵⁰³ ACLU to President Franklin D. Roosevelt, 29 September 1933, ACLU Papers (Digitized Microfilm), vol. 616, 46.

⁵⁰⁴ Ibid.

⁵⁰⁵ Ibid.

⁵⁰⁶ Langley, *The Banana Wars*, 199-200.

amiable, and cooperative relations with their southern neighbors, many of the other participants had more ambitious goals.⁵⁰⁷ In the case of Haitian nationalists and many of their other allies, the conference was regarded as a great opportunity to apply additional pressure on the United States to end the occupation of Haiti once and for all.⁵⁰⁸

How then did the ACLU engage with the Montevideo conference? They did so through public and private communications with U.S. state actors, this time to Secretary of State Hull. Thus, early into the Montevideo conference proceedings, the ACLU made use of the dramatic resignation of the Haitian Minister to the United States, Dantés Bellegarde, to send a letter (endorsed by their coalition partners) to Secretary State Cordell Hull.⁵⁰⁹ Within it they asserted that the recent resignation of the Haitian Minister over the ongoing “financial dictatorship” of Haiti had brought into focus the imperative of replacing the Executive Agreement with a treaty securing the immediate withdrawal of the marines, ending U.S. financial control, and adjusting the Haitian debt.⁵¹⁰ The resignation of Bellegarde also signaled the end of the tenure of their longest running, regular Haitian contact. The NAACP and ACLU also shortly thereafter sent off additional individual telegrams to Cordell Hull just as the Secretary of State was about to depart for the

⁵⁰⁷ Edward O. Guerrant, *Roosevelt's Good Neighbor Policy* (Albuquerque: University of New Mexico Press, 1950): 6-7.

⁵⁰⁸ Schimdt, *The United States Occupation of Haiti*, 227.

⁵⁰⁹ ACLU to Cordell Hull, 3 November 1933, ACLU Papers (Digitized Microfilm), vol. 616, 85.

⁵¹⁰ *Ibid.*, 85.

conference itself, calling upon him to reconsider the Executive Accord and commit the US to ending the ongoing financial control of Haiti.⁵¹¹

Once Hull arrived at the conference, however, he succeeded in keeping it largely focused on establishing better relations and goodwill among the participating states. Nonetheless, mainly due to pressure from the other attending states, Hull was brought around to committing the United States to the principle of nonintervention, albeit in a non-binding manner (with the notable exception of occasions where international law clearly condoned the use of force).⁵¹² And while Hull also made ambiguous comments implying support for withdrawal of all American control of Haitian finances, he avoided making any real kind of commitment.⁵¹³ Upon his return from Montevideo, Hull subsequently walked back any suggestion that the administration was reconsidering their position vis-à-vis American control of Haitian finances.⁵¹⁴

This disappointing result from the Montevideo Conference marked the last of the ACLU's anti-imperialist engagement regarding Haiti. Following the completion of the conference, they appeared to be at a loss of about how best to go forward, especially about ending the American financial control regime.⁵¹⁵ The imminent completion of the militarily coercive aspect of

⁵¹¹ Telegraph from Walter White to Cordell Hull, 9 November 1933, ACLU Papers (Digitized Microfilm) vol. 616, 87; Telegraph from ACLU to Cordell Hull, 11 November 1933, ACLU Papers (Digitized Microfilm), vol 616, 88.

⁵¹² Frederick B. Pike, *FDR's Good Neighbor Policy: Sixty Years of Generally Gentle Chaos* (Austin: University of Texas, 1995): 173.

⁵¹³ Schmidt, *The United States occupation of Haiti*, 227-228.

⁵¹⁴ Ibid.

⁵¹⁵ Roger Baldwin to Dorothy Detzer, 13 November 1933, ACLU Papers (Digitized Microfilm), vol. 616, 89.

American control in Haiti removed whatever remained of the tenuous civil liberties basis for the ACLU's involvement in there. By the end of 1933 then, the ACLU appear to have tacitly, if begrudgingly, accepted the scheduled withdrawal of the marines in 1934 (as per the timetable set out by the Executive Agreement), while also quietly abandoning much in the way of any further efforts directed at the financial control issue.

Thus ended this novel endeavor of anti-imperialism by the ACLU. Yet, they were not alone in abandoning such, as it was around this time onward that most prominent U.S. based partisans, including veterans of the 1920s campaigns, also essentially ceased to concern themselves with an anti-imperialism directed at the U.S. informal empire.⁵¹⁶ As Robert David Johnson has highlighted, following the "Montevideo Conference and subsequent policy moves," effectively all notable American anti-imperialists had become "enthusiastic champions of the Good Neighbor Policy" – so much so, that "[B]y 1935, anti-imperialism as a movement in the 1920s sense had ceased to exist."⁵¹⁷ Indeed, much of this fluid and disparate movement would split over the rising global tensions that would eventually lead to the Second World War.⁵¹⁸ Even Roger Baldwin was indicative of this trend. By this point he was directing more of his former anti-imperialist activism toward anti-fascism and Popular Front coalition building – as was most embodied in his

⁵¹⁶ Johnson, *The Peace Progressives and American Foreign Relations*: 282, 287.

⁵¹⁷ *Ibid.*, 287.

⁵¹⁸ Rosenberg, *Financial Missionaries to the World*, 150.

membership in the American League Against War and Fascism (eventually renamed the American League for Peace and Democracy).⁵¹⁹

Much of the influence and efficacy of the Good Neighbor Policy plainly lay in the fact that it appealed to the imperial imaginaries of metropolitan based anti-imperialist actors like the ACLU by taking the most direct and explicitly coercive aspects of American control and intervention in the region out of the equation. As the Good Neighbor Policy had resulted in the public renunciation of, as well as tangible end, to the remaining U.S. military interventions and occupations throughout the hemisphere, it did seem to herald a new and more benign hemispheric dispensation had come into being.⁵²⁰ Therefore the erosion of anything resembling a U.S. metropolitan-based anti-imperialist movement contesting the American informal empire can be taken as tangible evidence of the legitimacy seemingly attained by the Good Neighbor Policy.

This was very relevant in immediate terms because while, in one sense, the end of the Haitian occupation could plausibly be considered part of the Good Neighbor Policy, it was something of an outlier. This was because Haiti alone among the formally independent states of the region was forced to continue to submit to a U.S. financial control regime.⁵²¹ While the financial

⁵¹⁹ Louro, *Comrades Against Imperialism*, 221-222. There was notable continuity in membership between the LAI and the League Against War and Fascism, not least of which was key LAI organizer and Comintern operative Willi Munzenberg. See: Louro, *Comrades Against Imperialism*, 221-222.

⁵²⁰ Guerrant, *Roosevelt's Good Neighbor Policy*, 1-18; Schmidt, *The United States Occupation of Haiti*, 231.

⁵²¹ Haiti (like the Dominican Republic, Nicaragua, and Cuba) also had to cope with the long-term legacy of the ongoing existence of American trained security forces (in their case the Gendarme), which were to play crucial roles in its authoritarian drift over the course of the following years. See: George Black, *The Good Neighbor*:

control issue still occupied a place in the ACLU's imperial imaginary for the time being, it plainly came to increasingly fade into the background and no longer remain be of pressing concern to them. The abandonment of concern by the ACLU and their allies with Haiti implicitly, even if unintentionally, conveyed the impression that all was now well outside of the formal colonial empire of the United States – that an informal empire had effectively either ceased to exist and/or that all other manifestations of American power throughout the region were no longer matters worthy of disquietude. This meant that the ACLU themselves had, from this point forward, managed to contribute, even if inadvertently and very modestly, to the very legitimization sought by Roosevelt administration with the Good Neighbor Policy.

One final aspect of consequence of this anti-imperialist interlude by the ACLU was that, as they had now abandoned any further preoccupation with the U.S. informal empire, they had also effectively decoupled their mandate and conception of civil liberties from embracing an assertive anti-imperialism concerned with informal empire in its varying manifestations. Yet just because the ACLU ceased to engage with the informal colonial sphere did not mean that the issues and dilemmas of anti-imperialism and independence advocacy ceased to be matters of concern for the organization. As will be seen in Chapters 6 and 7, the lack of a consistent, well thought out, and convincing position that addressed the relationship between their metropolitan derived civil liberties concerns and independence

advocacy was to present them with a great deal of difficulties and tensions when addressing them elsewhere within the formal colonial empire of the United States.

Conclusion

This chapter assessed how the ACLU interested and involved itself in Haiti between the years of 1929 and 1934. This chapter argued that the ACLU came to engage in the occupation in Haiti in large part due to Roger Baldwin seeking to compensate for his frustrated attempt in early 1929 to get the ACLU to officially adopt a commitment to anti-imperialism. In lieu of this, Baldwin succeeded in getting the ACLU to engage with the U.S. occupation of Haiti following the outbreak of mass protest in October 1929.

This chapter argued that, while the ACLU evidently regarded Haiti as foreign in a formal sovereignty sense, they nonetheless proceeded to convey an underlying tension between the metropolitan derived universalism of their civil liberties commitments, on the one hand, and an increasingly open anti-imperialist orientation, on the other. This chapter demonstrated that over the proceeding years the ACLU's engagement in Haiti followed an observable trajectory whereby they increasingly deprioritized their more metropolitan rooted civil liberties commitments (i.e. freedom of speech, press, and assembly) and came around to embracing their first assertively anti-imperialist stance toward the U.S. empire. It was further shown that in doing so, the ACLU engaged in their anti-imperialist activism by mobilizing

and coordinating, alongside the NAACP, a loose coalition of other U.S. metropolitan-based, non-state actors.

With the onset of the Good Neighbor policy under the Roosevelt administration, however, the ACLU and their coalition partners eventually came to accommodate themselves with the scheduled removal of U.S. armed forces by 1934 and the perpetuation of an American financial control regime. Chapter 4 argued that the Good Neighbor Policy appealed to the imperial imaginary of metropolitan based critics of the empire like the ACLU due to its explicit commitment to the cessation of the most aggressive forms of American intervention in the region. This chapter further highlighted how the dissolution of the ACLU's active concern for Haiti also represented the end of the Union's novel experiment in an assertive anti-imperialism, as well as engagement with the U.S. informal empire. In their doing so, Chapter 4 additionally argued that the ACLU came to both reflect and inadvertently contribute to the legitimation sought by the Good Neighbor Policy itself. By coming to abandon any further preoccupation with the U.S. informal empire – and thereby restricting their mandate to the remaining formal colonies – the ACLU ended up conveying the misleading impression that an American empire had ceased to operate within region outside of its formal configuration.

Chapter 5: Renewed Advocacy for Civil Government Reform of the U.S. Virgin Islands, 1930-1936

Introduction

In 1928, the Caribbean basin was struck by the San Felipe Segundo hurricane (also known as the Okeechobee). The U.S. Virgin Islands was among the more severely struck of the regions, seeing both a great loss of life and immense economic damage.⁵²² In the wake this devastation, among the casualties of San Felipe Segundo was the civil government reform movement. Only further exacerbating the economic destruction caused by the hurricane was the onset of the Great Depression the following year.⁵²³ Given the material destruction and personal suffering wrought by these combined developments, it is hardly surprising to see that agitation within the islands increasingly turned more toward addressing the social and economic woes of the islands than the kind of political reform embodied by civil government reform.⁵²⁴ Considering these developments, how then did the ACLU continue to interest and involve themselves in the U.S. Virgin Islands as the new decade of the 1930s began? Did they continue to pursue their broader goal of attaining civil government reform via an organic act for the Virgin Islands? What role did their imperial imaginary continue to play in their interest and involvement? What were the consequences and results?

⁵²² Evans, *The Virgin Islands*, 159-169; Dookhan, *A History of the Virgin Islands*, 270.

⁵²³ Boyer, *Civil Liberties in the U.S. Virgin Islands*, 67.

⁵²⁴ Ibid.

As this chapter shows, the ACLU took little action in the years that immediately followed. This chapter argues that this was largely due to advocacy for civil government reform dissipating in the wake of more pressing economic needs following the combined devastation of the San Felipe Segundo hurricane and Great Depression. However, as this chapter will further show, circumstances began to alter with the replacement of the islands' U.S. Navy government by a civilian administration. This development did not stem from the efforts of civil government reform advocates, such as the ACLU, but was more due to internal U.S. executive branch motivations. Nonetheless, it is additionally argued that the appointment of a civilian governor and administration marked the tentative beginning of more amiable relations between the ACLU and colonial state authorities, in contrast to their more antagonist relations with the previous naval authorities. It is further argued that from this point on, these increasingly agreeable relations had an accompanying discernable influence upon the imperial imaginary of the ACLU. This development, though, was initially quite limited due to the new colonial government's overriding preoccupation with economic reform of the islands.

It was only toward the end of 1932 that substantial momentum for civil government reform began to gather. As this chapter argues, by this point, the ACLU engaged almost exclusively with federal and colonial administrative actors in pursuit of the act. This resulted in an increasing reliance on lobbying, as well as more direct communication and collaborative working relationship with the governor of the Virgin Islands. This working

relationship, in turn, saw a parallel decrease of the ACLU's former cooperation and communication with Virgin Islands based allies of the kind that the organization had previously been more inclined to work alongside. These tendencies were only to increase with the onset of Roosevelt's New Deal administration shortly thereafter. This chapter further argues that, because of the ACLU's increasing engagement, and even reliance, on colonial state actors, they began to evoke discernable evidence of an imperial imaginary that was increasingly identifying with the discourse and rationale of U.S. colonial state actors. As this chapter demonstrates and argues, this was most evident in the ACLU's compromise with the resulting organic act in 1936.

Final Years of U.S. Navy Rule

Following the passage of the 1927 citizenship act, how did the ACLU continue to interest and involve themselves in the U.S. Virgin Islands? Did they continue to advocate for civil government reform via an organic act? In terms of their pursuit of an organic act, there followed a sharp decrease in their activity on behalf of which over the proceeding years. What accounts for this? One significant factor for the ACLU was that at this time they were deprived of their most consistent and persistent Virgin Islands' based ally, Rothschild Francis. As demonstrated in chapter 3, Francis had been integral to the ACLU's involvement from the outset, especially in terms of keeping them reliably and promptly abreast of developments there, as well as well as for his role in facilitating cooperation between other advocates of civil

government reform. In fact, the ACLU's main preoccupation for the remainder of the 1920s regarding the Virgin Islands was in aiding Francis contest his legal troubles and imprisonment (as discussed in Chapter 3) – a situation which only worsened over the proceeding years.⁵²⁵ In the end, the ACLU found that there was not a great deal they could do for him, with Forest Bailey at one point even declaring that he could “see no hope for Francis excepting as some kind of intervention from without can be brought about.”⁵²⁶ Eventually, when it became clear that the persecution by the colonial authorities had effectively made his life untenable there, Francis departed the Virgin Islands, with the aid of Roger Baldwin, and resettled in New York.⁵²⁷

Yet, while the loss of Francis' contributions plainly played a role in the resulting lack of proactive activity on the ACLU's part, more determinative was the broader decline of advocacy on behalf of civil government reform within the Virgin Islands. Isaac Dookhan has attributed this largely to the apparently more benign atmosphere established under the administration of Governor Waldo Evans.⁵²⁸ While a plausible factor, this unlikely wholly accounts for the decline of civil government advocacy. More likely was that former advocates had begun to re-prioritize their own pursuits in the wake of two pivotal occurrences that followed in short succession of one another.

⁵²⁵ Forest Bailey to Rothschild Francis, 3 January 1928, ACLU Papers (Digitized Microfilm), vol. 350, 723; Forest Bailey to Alphonse Blaine, 25 January 1928, ACLU Papers (Digitized Microfilm), vol. 350, 726.

⁵²⁶ Forest Bailey to Arthur Warner, 14 January 1928, ACLU Papers (Digitized Microfilm), vol. 350, 729.

⁵²⁷ Forest Bailey to Arthur Warner, 21 February 1930, ACLU Papers (Digitized Microfilm), vol. 440, 43; Herbert Francis to Forest Bailey, 22 February 1930, ACLU Papers (Digitized Microfilm), vol. 440, 43.

⁵²⁸ Dookhan, *Civil Rights and Political Justice*, 27. Waldo Evans was the very same former Governor of Samoa whose deportation of Samuel Ripley became the basis of the litigation challenge discussed in Chapter 3.

The first was the highly destructive San Felipe Segundo hurricane (also known as the Okeechobee) that struck in 1928.⁵²⁹ The second, as emphasized by William Boyer, was the onset of the Great Depression in 1929.⁵³⁰ Given the material destruction and personal suffering that had ensued, it is hardly surprising to see that agitation within the islands increasingly turned more toward addressing the social and economic woes of the islands.⁵³¹ Such economic matters, however, were also plainly outside of the ACLU's civil liberties mandate as conceived of it at the time.

There were nonetheless faint signals that changes were on hand for the colonial regime itself, as rumors began to spread that Governor Waldo Evans was going to be replaced.⁵³² Yet no tangible moves were made in that direction over the course of the year.⁵³³ Similar rumors continued into the next year, some even going so far as to suggest that the U.S Navy might be willing concede control over the islands.⁵³⁴ In the end, though, the dissolution of the naval government was not the result of non-state activist pressure emanating from either the colonial periphery or metropole but was instead due to the differing priorities and disagreements between the executive branch and the naval administration.⁵³⁵

⁵²⁹ Evans, *The Virgin Islands*, 159-169; Dookhan, *A History of the Virgin Islands*, 270.

⁵³⁰ Boyer, *Civil Liberties in the U.S. Virgin Islands*, 67.

⁵³¹ Ibid.

⁵³² Forest Bailey to Casper Holstein, 5 February 1929, ACLU Papers (Digitized Microfilm), vol. 378, 1177.

⁵³³ Casper Holstein to Forest Bailey, 8 February 1929, ACLU Papers (Digitized Microfilm), vol. 378, 1179; Forest Bailey to Casper Holstein, 13 February 1929, ACLU Papers (Digitized Microfilm), vol. 378, 1178.

⁵³⁴ Lucius Malmin to Forest Bailey, 1 December 1930, ACLU Papers Microfilm, vol. 440, 44.

⁵³⁵ James Bough and Roy Macridis partly attribute this development to the ACLU. It is clear, however, that the ACLU played no discernable role in the Hoover administration's eventual decision to transfer the Virgin Islands to the Interior Department. See: James A. Bough and Roy C. Macridis (ed.), *Virgin Islands: America's Caribbean Outpost: The Evolution of Self Government* (Wakefield: Walter F. Williams Publishing Company, 1970): 121.

Following a visit to the islands, head of the Bureau of Efficiency, Harry D. Brown, convinced President Herbert Hoover by the end of 1930 of the pressing need for economic regeneration of the Virgin Islands. The aforementioned combination of the great damage done by the San Felipe Segundo hurricane and the onset of the Great Depression had left the islands' economy in a dire condition.⁵³⁶ Brown persuaded the president that it was not advisable to try addressing the situation via the existing form of colonial rule under the U.S. Navy.⁵³⁷ Upon Brown's recommendations, control of the Virgin Islands were then transferred from the Department of the Navy to that of the Interior through an executive order by President Hoover, thereby establishing the beginning of U.S. civilian rule over the Virgin Islands.⁵³⁸

In spite of the glowing (even hyperbolic) praise that the ACLU received from the New York-based Virgin Islands advocate and financial doner Casper Holstein regarding this development, it needs to be emphasized that, even conceding their record of largely antagonistic relations with the naval authorities on the islands over the previous decade, they had not played any significant role in ending the latter's regime there.⁵³⁹ Indeed, Bailey acknowledged as much to Holstein, but nonetheless reaffirmed the organization's commitment to securing civil government via an organic act.⁵⁴⁰

⁵³⁶ Boyer, *America's Virgin Islands*: 150.

⁵³⁷ Dookhan, *A History of the Virgin Islands of the United States*, 271-272.

⁵³⁸ Executive Order 5566, President Herbert Hoover (February 27, 1931), See: <https://www.doi.gov/sites/doi.gov/files/uploads/Executive-Order-5566.pdf> (Accessed on 20-10-23); Krigger, *Race Relations in the U.S. Virgin Islands*, 81-82.

⁵³⁹ Casper Holstein to Forest Bailey, 4 February 1931, ACLU Papers (Digitized Microfilm), vol. 501, 261.

⁵⁴⁰ Forest Bailey to Casper Holstein, 5 February 1931, ACLU Papers (Digitized Microfilm), vol. 501, 262.

It remained to be seen, though, just how the ACLU would engage with the newly established civilian regime.

First Years of Civilian Government

How did the ACLU respond to the appointment and the establishment of a civilian governor and government? Did this development revitalize their interest in the U.S. Virgin Islands and civil government reform via an organic act? The appointment of a civilian government does appear to have modestly reinvigorated the ACLU's interest in the Virgin Islands. A relevant factor contributing to this was the fact that newly appointed governor Paul M. Pearson, a former professor of public speaking at Swarthmore College, also happened to have been an old friend of ACLU Chairman Harry Ward.⁵⁴¹ Baldwin, always more than happy to tap prior relationships in pursuit of personal and organizational goals, reached out to Governor Pearson in March to congratulate him on the appointment and emphasize the pressing need for self-government in the Virgin Islands.⁵⁴²

Yet, for all the encouragement of their initial communications, the Pearson administration prioritized economic development on the islands, relegating civil government reform to the backburner for the time being.⁵⁴³

⁵⁴¹ Krigger, *Race Relations in the U.S. Virgin Islands*, 81; Forest Bailey to Casper Holstein, 5 February 1931, ACLU Papers (Digitized Microfilm), vol. 501, 262.

⁵⁴² Roger Baldwin to Governor Paul Pearson, 24 March 1931, ACLU Papers (Digitized Microfilm), vol. 501, 263.

⁵⁴³ This was indicated in the report that Governor Pearson forwarded on President Hoover in August 1931 on all the work being done in the Virgin Islands. For the proposed organic act was relegated to point 17 among the 24 predominantly economically oriented measures being taken. See: Governor Paul Pearson to President Herbert Hoover, 31 August 1931, See: https://history.house.gov/Records-and-Research/Listing/c_038/

Governor Pearson's administration went about trying to achieve the aims of economic rehabilitation by focusing on such areas as education, land (through a homesteading program), the renovation of port facilities, sought an exemption of the islands from coastwise laws, and engaged in efforts to develop and promote tourism.⁵⁴⁴ He also began to appoint a significant number of Virgin Islanders to administration positions.⁵⁴⁵

With this increasing emphasis upon economic reform by the Pearson administration, how did this effect the ACLU's engagement with the administration? In terms of the ACLU's dealings with Governor Pearson, despite their differing priorities, they did manage to develop something of an amiable and constructive working relationship in seeking reform for the Virgin Islands. Indeed, with the establishment of civilian rule, the ACLU's dealings with the officials of the islands' administration ceased to be as acrimonious as they had been under naval regime (as highlighted in Chapter 2) and became increasingly cooperative. Governor Pearson and the ACLU specifically managed to work together in addressing the previously discussed oversights of the 1927 legislation that extended American citizenship to the people of the Virgin Islands.⁵⁴⁶

This, however, was the kind of dynamic through which the ACLU's imperial imaginary might come to further identify with the priorities and/or

(Accessed 20-10-23); Krigger, *Race Relations in the U.S. Virgin Islands*, 85-88; Dookhan, *A History of the Virgin Islands of the United States*, 271-272.

⁵⁴⁴ Krigger, *Race Relations in the U.S. Virgin Islands*, 87-89; Dookhan, *A History of the Virgin Islands of the United States*, 272-273; Boyer, *America's Virgin Islands*, 135.

⁵⁴⁵ Krigger, *Race Relations in the U.S. Virgin Islands*, 88.

⁵⁴⁶ Governor Paul Pearson to Ida Epstein, 17 February 1932, ACLU Papers (Digitized Microfilm), vol. 588, 56.

perspectives of colonial state actors. In fact, it does appear that Pearson had something of a *quid pro quo* relationship in mind with the ACLU, for he sought their support for a coastwise shipping law amendment in Congress. Baldwin nonetheless respectfully declined to do so as this was too much of an explicitly economic issue without a convincing civil liberties basis.⁵⁴⁷ This nonetheless demonstrated that even a colonial state actor saw value in working alongside the ACLU, indicating the extent to which their formerly unpopular and radical reputation within the U.S. metropole had decreased. This carried the further implication that in their efforts to influence and persuade colonial state actors, there was the potentiality that the influence could very well run in the opposite direction.

A revised citizenship bill for the Virgin Islands gained momentum with its introduction into Congress in the spring 1932.⁵⁴⁸ Lobbying efforts by the ACLU ensued, with them informing Senator Hiram Bingham, the Chairman of the Territories and Insular Affairs Committee, that, in line with the support they have long given to “legislation aimed at giving the Virgin Islanders the same rights as other American citizens, whether in the Island or on the mainland,” that they supported the proposed legislation.⁵⁴⁹ Hence, they very much framed their support for the citizenship amendment as being well in line with the civil liberties universalism they imagined that their efforts were

⁵⁴⁷ Governor Paul Pearson to Roger Baldwin, 17 March 1932, ACLU Papers (Digitized Microfilm), vol. 588, 59; Governor Paul Pearson to Roger Baldwin, 21 March 1932, ACLU Papers (Digitized Microfilm), vol. 588, 68; Roger Baldwin to Governor Paul Pearson, 26 March 1932, ACLU Papers (Digitized Microfilm), vol. 588, 73.

⁵⁴⁸ Dookhan, *Civil Rights and Political Justice*, 29.

⁵⁴⁹ Roger Baldwin to Senator Hiram Bingham, 1 March 1932, ACLU Papers (Digitized Microfilm), vol. 588, 56.

helping secure throughout the empire. Upon receiving news of a substitute bill proposed by Governor Pearson and submitted to Congress, the ACLU reviewed it and signaled their own approval and support.⁵⁵⁰ The revised citizenship bill was eventually passed in Congress on June 28, 1932.⁵⁵¹

Amended citizenship legislation was nonetheless a long way short of the robust civil government reform act they had long claimed was an imperative. That they goal no longer appeared to be prioritizing this goal drew a rebuke from surprising quarters. It just so happened that around this time Rothschild Francis, their longest running and most consistent ally among Virgin Islanders, reached out to Baldwin to voice his concerns about the current state of civil government reform advocacy. This provoked an exchange that evoked compelling evidence of the way in which increasingly amiable interactions with a prominent colonial state actor was having some significant influence upon the imperial imaginary of Baldwin and the ACLU. And while scholar Isaac Dookhan has given a brief account of the exchange that followed between Francis and Baldwin, he neither acknowledged the broader significance of the exchange itself nor highlighted the pertinence of Francis' criticisms therein.⁵⁵²

⁵⁵⁰ Roger Baldwin to Governor Paul Pearson, 13 April 1932, ACLU Papers (Digitized Microfilm), vol. 588, 85; Governor Paul Pearson to Roger Baldwin 2 May 1932, ACLU Papers (Digitized Microfilm), vol. 588, 86; Roger Baldwin to Governor Paul Pearson, 3 May 1932, ACLU Papers (Digitized Microfilm), vol. 588, 89.

⁵⁵¹ Evans, *The Virgin Islands*, 64.

⁵⁵² Dookhan, *Civil Rights and Political justice*, 29-30.

Having come to settle in New York after his earlier ordeal, Francis had reengaged with the broader goal of civil government reform.⁵⁵³ Greatly disappointed with the lack of progress since, as well as with what he deemed to be the disappointing performance of Governor Pearson thus far, Francis reached out to the ACLU to voice his concerns about the situation as it stood and convince them to put further effort into getting a bill introduced into Congress that would extend “permanent government” for the Virgin Islands “compatible with American concepts.”⁵⁵⁴ Roger Baldwin’s response, however, greatly shocked Francis, as it suggested an almost complete reversal of his and the ACLU’s commitments to such. For Baldwin now asserted that it was “not the function” of the ACLU “to prepare organic acts,” and that the organization confined itself to “issues of civil rights and are not interested in forms of government except the general principle of civil versus military rule.”⁵⁵⁵ Yet these descriptions of the ACLU’s actions and advocacy with respect the Virgin Islands were simply not accurate, as the organization had long advocated for (as was demonstrated in Chapter 3) specific provisions of civil government reform. And as if to reinforce this apparent reversal, Baldwin proceeded on to emphasize Governor Pearson’s line that it was the economic problems of the islands that should be given priority over all else.⁵⁵⁶ Therefore, Baldwin’s response provides ample evidence of the

⁵⁵³ Interior Department to Rothschild Francis, 29 March 1932, ACLU Papers (Digitized Microfilm), vol. 588, 74; Representative Butler Hare to Rothschild Francis, 29 March 1933, ACLU Papers (Digitized Microfilm), vol. 588, 75; Senator Hiram Bingham to Rothschild Francis, 1 April 1932, ACLU Papers (Digitized Microfilm), vol. 588, 75.

⁵⁵⁴ Rothschild Francis to Forest Bailey, 12 May 1932, ACLU Papers (Digitized Microfilm), vol. 588, 89.

⁵⁵⁵ Roger Baldwin to Rothschild Francis, 18 May 1932, ACLU Papers (Digitized Microfilm), vol. 588, 91.

⁵⁵⁶ *Ibid.*

influence upon his imperial imaginary that the increased cooperative interactions with a colonial state actor were resulting in – for this reply suggested that he was increasingly identifying with and/or internalizing the perspectives and priorities of the latter.

Plainly rattled by Baldwin's sudden seeming reversals, Francis recognized Baldwin's greater identification with the positions of colonial state authorities when he pointedly observed that, by emphasizing the imperative of the economic issues, Baldwin himself had repeated "the words and contention of the Navy men."⁵⁵⁷ And as far as Baldwin's assertion that the ACLU merely advocated for the general principle, but not specific provisions, of civilian rule, Francis responded that, although the naval administration had been replaced by a civilian one, "the same systems and laws obtain."⁵⁵⁸ Francis then posed the question, that, as the governor has "the same civil, military, and judicial power" that existed under the naval regime, what guarantee was there that "the same outrages will not be perpetuated as heretofore?"⁵⁵⁹ In such circumstances, as Francis' arguments implied, if the ACLU were now merely committed to the broad principle, but not the specific provisions, of civilian government for the Virgin Islands, then this meant that they were essentially consenting to a form of governance that differed no more than superficially than colonial rule under a branch of the U.S. armed forces.

⁵⁵⁷ Rothschild Francis to Roger Baldwin, 25 May 1932, ACLU Papers (Digitized Microfilm), vol. 588, 93.

⁵⁵⁸ *Ibid.* 94.

⁵⁵⁹ *Ibid.*

In response to Francis' penetrating arguments, Baldwin neither acknowledged his own earlier contradictory statements nor engaged with Francis' very pointed criticisms. Instead, Baldwin blithely claimed he was in complete agreement with all that Francis had said and that it was all just a question of how best to go forward.⁵⁶⁰ Francis replied in a more conciliatory manner as well.⁵⁶¹ After their exchange, Baldwin and Francis seem to have resigned themselves to awaiting the next Congress in the hope of getting an organic act back on the agenda.⁵⁶²

Yet, Baldwin's seeming reversal remains striking, especially as it contradicted years' worth of the ACLU's publicly proffered positions and activities toward the Virgin Islands. At the very least it suggested a waning of commitment by the most organization's most prominent figure to robust civil government reform of the Virgin Islands. The most convincing explanation was that this was a byproduct of the ACLU's increasingly cooperative relations with a colonial state actor like Governor Pearson. Indeed, it is notable that the ACLU were by this point much more likely to be engaged with colonial state actors regarding the Virgin Islands, than with locally based, non-state allies, such as had been the case up until the late 1920s. It certainly provides further evidence of the likely influence that colonial state actors were having upon the imperial imaginary of Baldwin

⁵⁶⁰ Roger Baldwin to Rothschild Francis, 27 May 1932, ACLU Papers (Digitized Microfilm), vol. 588, 96.

⁵⁶¹ Rothschild Francis to Roger Baldwin, 3 June 1932, ACLU Papers (Digitized Microfilm), vol. 588, 96.

⁵⁶² Roger Baldwin to Rothschild Francis, 6 June 1932, ACLU Papers (Digitized Microfilm), vol. 588, 98.

and the ACLU, as well as upon their accompanying approach to the U.S. colonial empire.

One final point regarding this exchange that is worth dwelling on is the fact that Rothschild Francis himself does not appear to have fully thought through the substance and implications of his own critique here. For, while civil government reform via an organic act would surely provide an expedient route by which a more representative and rights protective form of governance for the Virgin Islands might be secured, this would not have provided the sort of “guarantee” he so emphasized. Since (as previously discussed) such civil government reform would only be statutorily based, it was ultimately dependent upon the disposition of the U.S. Congress and was not therefore secure in the fashion that Francis so desired. This speaks to an imperial imaginary on the part of advocates of civil government reform for the Virgin Islands, including the ACLU, Baldwin, and Francis himself, accommodating of a position that remained inextricably colonial in substance – however much it might provide an improvement from a rights and representation standpoint. Therefore, whatever their differences, both Baldwin and Francis shared an imperial imaginary seemingly reconciled with an ultimately insecure and colonially particularist civil liberties and civil government dispensation for the Virgin Islands.

Improved Prospects for Civil Government Reform

Following the sharp criticisms of Rothschild Francis, did the ACLU again take up the mantle of civil government reform in the form of an organic act? In

the immediate months that followed, the ACLU did not take up any proactive efforts in this direction. However, during the latter part of the year, Governor Pearson had Lieutenant Governor, Lawrence W. Cramer, prepare a draft of an organic act for the Virgin Islands with the aid of the members of the unrepresentative and racially exclusionary Colonial Councils.⁵⁶³ This became the basis of a bill that Senator Hiram Bingham introduced in the Senate in December 1932.⁵⁶⁴

Having received copies of the bill before the Congressional Committee, the ACLU's first response was to pool the opinions of other non-state advocates for civil government reform such as Casper Holstein, Rothschild Francis, and Adolf Berle on it.⁵⁶⁵ It should be noted, though, that as Francis was now based in New York, they appeared to no longer have been receiving (nor seeking out) much in the way feedback from anyone based within the Virgin Islands. Holstein and Rothschild Francis supported it; with the latter emphasizing that the "draft grants a Bill of Rights compatible with American concepts" and was satisfied to see "general suffrage is assured."⁵⁶⁶ Adolf Berle found the draft sound as well, albeit expressing dissatisfaction with the fact that term limits had not been placed upon the governorship.⁵⁶⁷

⁵⁶³ Evans, *The Virgin Islands*, 249.

⁵⁶⁴ *Ibid.*

⁵⁶⁵ ACLU to Casper Holstein, 5 January 1933, ACLU Papers (Digitized Microfilm), vol. 616, 118; ACLU to Rothschild Francis, 5 January 1933, ACLU Papers (Digitized Microfilm), vol. 616, 118; ACLU to Adolf Berle, 4 January 1933, vol. 616, 117.

⁵⁶⁶ Casper Holstein to Roger Baldwin, 6 January 1933, ACLU Papers (Digitized Microfilm), vol. 616, 119; Rothschild Francis to Roger Baldwin, 9 January 1932, ACLU Microfilm, vol. 616, 121.

⁵⁶⁷ Adolf Berle to Roger Baldwin, 11 January 1933, ACLU Papers (Digitized Microfilm), vol. 616, 124.

Baldwin himself criticized the bill for continuing the practice of appointing “too many American officials to the Virgin Islands.”⁵⁶⁸

Baldwin and the ACLU then compiled all of their remaining criticisms with the proposed bill and addressed them to Senator Hiram Bingham (Chairman of the Territories and Insular Affairs Committee), Governor Pearson and the Lieutenant Governor Lawrence Cramer.⁵⁶⁹ The ACLU informed them that they called for four changes to the bill: the establishment of a non-voting resident commissioner for the Virgin Islands in the House of Representatives; the term of Governorship should be limited to four years; the removal of veto powers from both Congress and the President; and a reduction in federally appointed officials in the Islands.⁵⁷⁰ On this latter issue, they stressed that this not only impaired “self-government for the Islands,” but, more to the point, they regarded it as “untenable the theory” that the islands should be ruled by Washington appointees “most of whom doubtless will be ... white men, who are unfamiliar with the problems of the Islands and too often moved by assumptions of the superiority of the white races.”⁵⁷¹ Hence, the ACLU were explicit about the practice of appointing of white American officials as further exacerbating the issue of racial exclusion in the Virgin Islands. This

⁵⁶⁸ Roger Baldwin (Document unsigned but almost certainly was from Baldwin) to Adolf Berle, 12 January 1933, vol. 616, 126.

⁵⁶⁹ ACLU (Signed by Harry Ward, Arthur Garfield Hays, and Roger Baldwin) to Senator Hiram Bingham, 17 January 1933, ACLU Papers (Digitized Microfilm), vol. 616, 259-260; Roger Baldwin to Lt. Governor Lawrence Cramer, 10 January 1933, ACLU Papers (Digitized Microfilm), vol. 616, 256; Roger Baldwin to Governor Paul Pearson, 26 January 1933, ACLU Microfilm, Vol. 616, 261.

⁵⁷⁰ ACLU (signed by Harry Ward, Arthur Garfield Hays, and Roger Baldwin) to Senator Hiram Bingham, 17 January 1933, ACLU Papers (Digitized Microfilm), vol. 616, 259-260.

⁵⁷¹ Ibid.

represented a rare example of the ACLU explicitly addressing the racial iniquities so at the heart of the U.S. colonial empire itself, and not solely confining themselves to their more universally framed civil liberties orientation.

In response to the ACLU's feedback, while Governor Pearson was quite receptive to the points raised, Lieutenant Governor Lawrence Cramer was markedly less so.⁵⁷² Mainly differing with them on the issue of appointments, Cramer argued instead for qualifying examinations, as apparently through such apolitically meritocratic means the contentious 'questions of race preferences ... could be largely obviated.'⁵⁷³ Cramer hence argued for addressing the issue through a more universalist and race-neutrally framed measure. That is, the very kind of argument that might potentially to appeal to the metropolitan-rooted universalism of the ACLU's imperial imaginary. And Baldwin indeed responded by downplaying their substantive differences of opinion and struck a conciliatory note, claiming that he ultimately did not feel that their differences in these matters were great, and suggested that Governor Pearson and himself should go ahead and work out the details of the proposed act, at which point the ACLU could

⁵⁷² Governor Paul Pearson to Roger Baldwin, 28 January 1933, ACLU Papers (Digitized Microfilm), vol. 616, 262; Lt. Governor Lawrence Cramer to Roger Baldwin, 2 February 1933, ACLU Papers (Digitized Microfilm), vol. 616, 263-264.

⁵⁷³ Lt. Governor Lawrence Cramer to Roger Baldwin, 2 February 1933, ACLU Papers (Digitized Microfilm), vol. 616, 263.

then look over the results.⁵⁷⁴ The bill, however, failed in the post-1932 elections lame duck Congress by February 4, 1933.⁵⁷⁵

The ACLU's more amiable, near collaborative, exchanges with Governor Pearson and Lieutenant Governor Cramer with respect to the organic act also provide further evidence of the ACLU's effective abandonment of their antagonism toward colonial state institutions and actors. This, in turn, served to further condition the means and priorities of their engagement toward the colonial sphere of the United States. These more agreeable relations between the organization and colonial state actors were also a byproduct of U.S. metropolitan developments. For the deliberations on the Senate bill happened to coincide with the electoral victory of Franklin Delano Roosevelt and the onset of the New Deal. As noted in the Preface to Part II, the new administration contained a relevant number of figures who were either current or former members of the ACLU, as well as those who had constructive past working relationships with whom.⁵⁷⁶ This notably included Adolf Berle, who had joined the Roosevelt campaign as one of the three members of the President's so-called "Brain Trust."⁵⁷⁷

This being the case then raises the question: did the onset of the New Deal administration produce a discernible effect in the ACLU's pursuit of civil government reform and/or engagement with the Virgin Islands in

⁵⁷⁴ Roger Baldwin to Lt. Governor Lawrence Cramer, 3 February 1933, ACLU Papers (Digitized Microfilm), vol. 616, 264.

⁵⁷⁵ Dookhan, *Civil Rights and Political Justice*, 31.

⁵⁷⁶ Walker, *In Defense of American Liberties*, 96-97.

⁵⁷⁷ William E. Leuchtenburg, *Franklin D. Roosevelt and the New Deal: 1932-1940* (New York: Harper & Row, 1963): 32-33.

general? The first interaction the ACLU had with the administration regarding the U.S. Virgin Islands stemmed from word that the new administration was considering the transferal of the islands back to U.S. Navy control.⁵⁷⁸ Unsurprisingly, the ACLU strongly opposed such a measure. Reflecting how the ACLU now had ample contacts within the Roosevelt administration, they immediately reached out to Adolf Berle and Secretary of Interior, as well as ACLU member, Harold Ickes, to convince them to oppose the move.⁵⁷⁹ In the end, it appears that President Roosevelt, due to additional pressure along these lines, opted not to do so.⁵⁸⁰ And while, on the one hand, the presence of civil libertarian allies within the New Deal administration was plainly a more favorable circumstance than had previously been the case, it also further facilitated the development of the ACLU's more accommodating relations with state authorities.

March of 1933 also saw the ACLU issue their pamphlet "Civil Liberties in American Colonies."⁵⁸¹ As briefly discussed in chapter 4, within this pamphlet, the ACLU provided an overview of the civil liberties situations as they understood them in each of the U.S. colonies, as well as briefly setting out their own stances and recommended measures toward each. This pamphlet can then be taken as their first detailed and broad statement on the U.S. colonial empire. It is necessary to then devote some discussion to its

⁵⁷⁸ Kitty Gellhorn to Roger Baldwin, 27 March 1933, ACLU Papers (Digitized Microfilm), vol. 616, 158.

⁵⁷⁹ ACLU to Adolf Berle, 29 March 1932, ACLU Papers (Digitized Microfilm), vol. 616, 159; Roger Baldwin to Harold Ickes, 17 March 1933, ACLU Papers (Digitized Microfilm), vol. 616, p. 152; Weinrib, *The Taming of Free Speech*, 195.

⁵⁸⁰ Dookhan, *Civil Rights and Political Justice*, 32.

⁵⁸¹ "Civil Liberties in American Colonies: A Survey of Interference with Civil Rights of Natives; and of the Forms of Control; with Proposed Remedies," March 1933, ACLU Records and Publications. Reel 91, 1-31.

contents (discussion of the Philippines and Puerto Rico entries, though, will be reserved for the following two chapters respectively). As alluded to in Chapter 4, the ACLU's pamphlet on the colonies conveyed a misleading, even exaggerated, impression of the scale and scope of the ACLU's interest and involvement throughout the US colonial empire. Relatedly, the pamphlet conveys convincing evidence of that the ACLU's imperial imaginary was increasingly internalizing the particularism of the U.S. colonial empire. The pamphlet thus contains indications that U.S. colonial discourse, most notably that relating to race, was, at an unconscious level at the very least, playing some role in their determination of where and at what scale they involved themselves in the empire, as well as of how they perceived of said empire and its constituent aspects.

With regard to the entry on Virgin Islands, the pamphlet provides an accurate account of the scope and details of the ACLU's preoccupations there.⁵⁸² Within which they continued to stress that "any satisfactory solution" could only be secured by extending "much greater autonomy" to the people of the Virgin Islands and that this would be best attained via an organic act which would "guarantee civil liberties."⁵⁸³ The entry on the Virgin Islands compared most directly with the pamphlet's entries on another two formal colonies without organic acts: American Samoa and Guam. As is evident from the pamphlet, the ACLU identified all three as unequivocally colonial within their imperial imaginary. As they pointed out of Guam, the

⁵⁸² Ibid., 26-27.

⁵⁸³ Ibid., 27.

colonial laws from the period of Spanish rule were still operative and neither ‘the Constitution nor the laws of the United States have ever been extended.’⁵⁸⁴ As they further asserted, since the ‘general situation is much the same as in Samoa’ then ‘much the same remedies are called for.’⁵⁸⁵ Hence in the entries on American Samoa and Guam they call for the replacement of the U.S. Navy governments in the two colonies by civil government reform – that is, reform that (much the same as for the US Virgin Islands) would nonetheless serve to reinforce the particularism of the colonial empire.⁵⁸⁶

Where the similarity ends, though, is in the stark contrast of tangible effort expended by the ACLU in pursuit of civil government reform for either American Samoa or Guam as compared with that which they devoted to the U.S. Virgin Islands. For despite the content of the pamphlet entries, they in no way matched this with the same level of effort as they did regarding the Virgin Islands.⁵⁸⁷ There is evidence within the sourcing that points to the

⁵⁸⁴ *Ibid.*, 25

⁵⁸⁵ *Ibid.*

⁵⁸⁶ *Ibid.*, 24-25.

⁵⁸⁷ In the case of eastern Samoan Islands of Tutuila and Manu’a, as was shown in chapter 4, the ACLU had supported an unsuccessful strategic litigation to challenge to the doctrine of incorporation. By the 1930s, however, it is notable that less, not more, interest and effort was devoted to addressing American Samoa by the ACLU. And this was all the more curious given that they had otherwise expanded the scope of their efforts throughout the US colonial empire over the course of this decade. In fact, it was only from 1934 on, that an effort by the ACLU to pursue civil government reform for American Samoa emerged. This effort was almost solely limited to lobbying Congressional members and federal administration figures. In these tentative efforts, the ACLU acknowledged throughout the role that such factors as the lack of necessary financing, allies, and broader public interest had in limiting whatever efforts they could take in pursuit of such a goal. By 1937, such efforts by the ACLU appear to have ceased for the remainder of the decade. See: J.K. Taussig (Acting Chief of Navy Operations) to Roger Baldwin, 22 May 1934, ACLU Microfilm, Volume 758, p. 126; Roger Baldwin to Senator Homer Bone, 27 November 1933, ACLU Papers (Digitized Microfilm), vol. 675A, 212; Roger Baldwin to Senator Millard Tydings, 19 December 1935, ACLU Papers (Digitized Microfilm), vol. 953, 55; Roger Baldwin to Ernest Gruening, 21 February 1936, ACLU Papers (Digitized Microfilm), vol. 953, 58; Roger Baldwin to Representative Leo Kocialkowski (Chairman of Insular Affairs Committee), 2 March 1936, ACLU Papers (Digitized Microfilm), vol. 953, 59; Arthur Garfield Hays to Senator Royal Copeland, 28 March 1936, ACLU Papers (Digitized Microfilm), vol. 953, 61; Roger Baldwin to Senator Millard Tydings (Document undated), ACLU Papers (Digitized Microfilm), vol. 1062, 92; Roger Baldwin to Margaret Marsh, 29 July 1935, ACLU Papers

great distance of these colonies from the ACLU's New York base and their lack of resources, finances, personnel, and contacts all being a critical factors accounting for this disparity of interest and involvement on their part.⁵⁸⁸

Yet, if in the cases of the U.S. Virgin Islands, American Samoa, and Guam the ACLU could at least point to some measure of tangible effort expended, that is much more than can be said of two other prominent colonial possessions: Hawai'i and Alaska. Given this lack of interest and involvement, their pamphlet's entry on Hawai'i was probably its most misleading. For within this entry, they expressed their opposition to the proposed transference of Hawai'i to the War Department and recommended legislation addressing the abusive contract labor system operative there; thereby conveying the impression that the ACLU were well abreast of and involved in developments there.⁵⁸⁹ Yet, as ACLU correspondence makes

(Digitized Microfilm), vol. 862, 81; Roger Baldwin to Dorothy Detzer, 4 June 1934, ACLU Papers (Digitized Microfilm), vol. 758, 128; Roger Baldwin to Ernest Gruening, 11 January 1935, ACLU Papers (Digitized Microfilm), vol. 862, 76.

In the case of Guam, it was not until 1937, that the ACLU devoted any kind of interest in the long neglected Pacific Ocean based colony, and this was only devoted to some very modest effort in support for a bill that had been introduced to Congress in February which would have extended citizenship to the Chamorros people of Guam. In doing so, they readily acknowledged that even their own efforts of publicity toward which had been largely ineffectual. This endeavor had largely faltered and ceased as well before the end of the decade. See: Roger Baldwin to B.J. Bordallo, 21 June 1937, ACLU Papers (Digitized Microfilm), vol. 862, 5; B.J. Bordallo to Roger Baldwin, 23 June 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 18; Roger Baldwin, "Note on Guam," July 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 18; ACLU News Release, 15 November 1937, ACLU Papers (Digitized Microfilm), Vol. 1062, 20-21; Roger Baldwin to Senator Millard Tydings, 24 December 1937, ACLU Papers (Digitized Microfilm), vol. 2053, 8; Roger Baldwin to B.J. Bordallo, 7 July 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 18; Roger Baldwin to Senator Millard Tydings, 24 December 1937, ACLU Papers (Digitized Microfilm), vol. 2053, 8.

⁵⁸⁸ Roger Baldwin to Margaret Marsh, 29 July 1935, ACLU Papers (Digitized Microfilm), vol. 862, 81; Roger Baldwin to Dorothy Detzer, 4 June 1934, ACLU Papers (Digitized Microfilm), vol. 758, 128; Roger Baldwin to Ernest Gruening, 11 January 1935, ACLU Papers (Digitized Microfilm), vol. 862, 76.

⁵⁸⁹ "Civil liberties in American colonies: A survey of interference with civil rights of natives; and of the forms of control; with proposed remedies," March 1933, ACLU Records and Publications. Reel 91, 20-23.

abundantly clear, they were neither involved in addressing, nor were even minimally well informed about, conditions there.⁵⁹⁰ Maybe even more significant regarding their Hawai'ian entry, though, was the fact that they distinguished the Pacific island group as being an "integral part of the United States", going so far as to praise its "judicial system" as appearing to "function better than the average in this country."⁵⁹¹ This suggested that Hawai'i occupied something of a liminal position within the ACLU's imperial imaginary. For while they plainly still recognized the Pacific islands as an American colony, they also seemed to have, at least in part, identified Hawai'i with the metropolitan states in a kind of implicit, if inchoate, manner.

Something similar, albeit distinct, can be observed regarding the pamphlet's treatment of Alaska.⁵⁹² The ACLU did not even devote a full entry to the vast colony, instead they briskly dismissed engaging in any depth with the circumstances there, as well as those in the Panama Canal Zone, due to the fact that the "populations of these dependencies are largely American and the problems of civil liberty are much the same as in the United States."⁵⁹³ The racialized connotations of the notion of "American" deployed

⁵⁹⁰ With respect to the preparation of the Hawai'ian entry of the pamphlet, the ACLU had relied upon the work of a researcher from the Foreign Policy Association, who himself confessed to lacking both depth and first-hand knowledge of the Islands' conditions. See: Roger Baldwin to Maxwell Stewart, 6 September 1933, ACLU Papers (Digitized Microfilm), vol. 675A, 91; Maxwell Stewart to Roger Baldwin, 7 September 1933, ACLU Papers (Digitized Microfilm), vol. 675A, 92; Lucille Milner to Library of Congress, 30 October 1933, ACLU Papers (Digitized Microfilm), vol. 675A, 101.

⁵⁹¹ Ibid., 20-21.

⁵⁹² Ibid., 2.

⁵⁹³ Ibid. The United States had acquired the Panama Canal Zone in 1903 following President Theodore Roosevelt's intervention on behalf of Panamanian secessionists from Columbia. This concession had been extracted from newly formed state of Panama for purposes of building of the Panama Canal. The ten-mile-

here were unavoidable – for the only plausible interpretation of who was being designated as being “American” was that of white American settlement communities. This intimates some of the underlying importance of race within the ACLU’s imperial imaginary for how they perceived the colonial sphere and, accordingly, determined their engagement with which – even if in largely indeterminate ways. More to the point, this plausibly suggests that in the case of Alaska, as well as likely Hawai’i, ACLU made an implicit distinction between colonies in which some measure of white American settler colonialism had been established and those less subjected to which.⁵⁹⁴

The pamphlet as a whole then gives the impression, both in terms of the diversity of the stances adopted and perceptions conveyed within, that this text was the product of an imagination that had come to internalize much of the particularism of the colonial empire. On the one hand, they were coming to perceive of certain colonies (i.e., Alaska and Hawai’i) as essentially occupying a kind of liminal space between that of the metropolitan states and U.S. colonies – albeit evidently projecting something more of an metropolitan identification upon them. On the other hand, and in

wide zone, operating under the purview of the Department of War, became, according to Daniel Immerwahr, “one of the most intensively governed spots on the planet” for the purpose of building the Panama Canal. Given extent to which the canal’s construction, as well as the general maintenance of the Canal Zone, was highly dependent upon regional contract labor, it was highly misleading for ACLU to refer to population of which being largely “American.” See: Immerwahr, *How to Hide an Empire*, 280-283; Jonathan M. Katz, *Gangsters of Capitalism: Smedley Butler, the Marines, and the Making and Breaking of America’s Empire* (New York: St. Martin’s Press, 2021): 159-168.

⁵⁹⁴ It does need to be pointed out, however, that the obvious corollary of such a reading – treating both colonies as *de facto* US states – did not occur either. If anything, the ACLU maintained less interest and involvement in either colony than they did other colonies or states of the United States. It is altogether plausible that additional banal factors such as the lack of resources, finances, personnel, and contacts, as well as the vast distance of Alaska and Hawai’i were also critical factors behind their lack of focused and engaged interest and involvement in either.

stark contrast, no such liminality was extended to the U.S. Virgin Islands, Guam, and American Samoa which they plainly regarded as all being essentially colonial. In fact, there were only two outliers among the formal colonies to this dichotomy of metropolitan and colonial identification in the pamphlet: the Philippines and Puerto Rico. And, as will be discussed and demonstrated in Chapters 6 and 7, these happened to be the two formal colonies in which they engaged with the issue of independence – albeit (as will be further demonstrated) in ways that came more in the end to indirectly reinforce the metropolitan and colonial binary of the empire.

Aside from their “Civil liberties in the American colonies” pamphlet, for the remainder of 1933 and into 1934, the ACLU took surprisingly little further action with respect the Virgin Islands; aside from periodically checking in for an update on the likelihood of further progress with a civil government bill.⁵⁹⁵ This was likely a by-product of the predominantly economic emphasis of the New Deal, an imperative, as noted, already well committed to by Governor Pearson. Indeed, Pearson’s colonial administration expanded its economic program through such flag ship New Deal measures as the Public Works Administration (PWA) and the establishment of a Civilian Conservation Corp (CCC) camp on St. Thomas.⁵⁹⁶ This period also saw the appointment of Walter White of the NAACP to an

⁵⁹⁵ Roger Baldwin to Oscar Chapman, 15 January 1934, vol. 758, 133; Roger Baldwin to Governor Paul Pearson, 15 January 1934, ACLU Papers (Digitized Microfilm), vol. 758, 134; Oscar Chapman to Roger Baldwin, 17 January 1934, ACLU Papers (Digitized Microfilm), vol. 758, 134; Governor Paul Pearson to Roger Baldwin, 31 January 1934, ACLU Papers (Digitized Microfilm), vol. 758, 135.

⁵⁹⁶ Krigger, *Race Relations in the U.S. Virgin Islands*, 88.

advisory council, created to assist with the implementation of the economic program by President Roosevelt.⁵⁹⁷ Governor Pearson himself, though, derived little political benefit from these measures, as over the course of the year he came to confront strong opposition from within the Islands. This appears to have been as much motivated by internal divisions and political partisanship, as due to his actual performance in office.⁵⁹⁸ The increasing scope of the opposition brought Pearson's hold on the governorship into question.

In lieu of any encouraging signs concerning civil government legislation, Baldwin decided to follow up on the suggestion of ACLU legal counsel, Morris Ernst, who had proposed that a more immediate measure worth pursuing would be trying to get the franchise further extended in the Virgin Islands.⁵⁹⁹ The ACLU executive director contacted the former anti-imperialist journalist and editor of *The Nation*, ACLU member, and recently appointed director of the newly created Division of Territories and Island Possessions (DTIP), Ernest Gruening.⁶⁰⁰ While Gruening stated that he agreed

⁵⁹⁷ President Franklin D. Roosevelt to Walter White, 23 February 1934, NAACP Papers, Part 11: Special Subject Files. Series B. Reel 32, 972. After a year's participation on the advisory council, however, Walter White was to tender his resignation to President Roosevelt due to the latter's silence on the filibuster deployed in the Senate to oppose anti-lynching legislation. See: NAACP Press Release, May 1935, NAACP Papers, Part 11: Special Subject Files. Series B. Reel 33, 94; Kenneth R. Janken, *White: The Biography of Walter White, Mr. NAACP* (New York: The New Press, 2001): 227.

⁵⁹⁸ Krigger, *Race Relations in the U.S. Virgin Islands*, 88-90.

⁵⁹⁹ Morris Ernst to Roger Baldwin and Walter White, 13 February 1935, ACLU Papers (Digitized Microfilm), vol. 862, 103-104; Robert D. Johnson, "Anti-imperialism and the Good Neighbour Policy: Ernest Gruening and Puerto Rican Affairs, 1934-1939," *Journal of Latin American Studies* 29, no. 1 (February, 1997): 89-94.

⁶⁰⁰ Effectively functioning as the colonial office within the Interior Department, DTIP had been established by President Roosevelt in May 29, 1934 and eventually came to entail within its remit the colonies of Alaska, Hawai'i, Puerto Rico, and the Virgin Islands. Gruening himself had been deliberately appointed by Roosevelt as its first director due to his anti-imperialist credentials as it was thought that this would lend greater credibility to the department among the critics of American imperialism among the President's base. See: Robert D.

in principle, he appears to have made no real effort, despite of Baldwin's continued pursuit of him upon the matter.⁶⁰¹ The ACLU appear to have left matters at that and thereby limited their efforts to lobbying an administration contact.

This increasing reliance upon allied state actors was a formula that was likely to condition the ACLU's engagement with the colonial empire and result in an imperial imaginary which increasingly identified with the former. There was also the issue of how such a reliance might compromise a fundamental commitment of their civil liberties mandate in the empire: providing a check to abuses of state authority. And seeing as though conditions within the Virgin Islands were relatively benign from a colonial coercion standpoint, this did not result in much in the way of tension and/or conflicts of interest on their part. When, however, conditions were not as benign (as will be seen in the next chapter in contemporaneous Philippines) such tensions and potential conflicts of interest were near unavoidable.

A New Governor and the Final Push for Civil Government

Opposition to Governor Pearson had continued to worsen until it had gotten to the point that it had become clear that he would be replaced. Word

Johnson, *Ernest Gruening and the American Dissenting Tradition* (Cambridge: Harvard University Press, 1998): 114; Roger Baldwin to Ernst Gruening, 11 February 1935, ACLU papers (Digitized Microfilm), vol. 862, 103.

⁶⁰¹ Roger Baldwin to Ernst Gruening, 14 February 1935, ACLU Papers (Digitized Microfilm), vol. 862, 106; Ernst Gruening to Roger Baldwin, 13 February 1935, ACLU Papers (Digitized Microfilm), vol. 862, 104-105 Roger Baldwin to Ernst Gruening, 15 May 1935, ACLU Papers (Digitized Microfilm), vol. 862, 112; Ernst Gruening to Roger Baldwin, 21 May 1935, ACLU Papers (Digitized Microfilm), vol. 862, 112.

started to spread again that the governorship would be returned to U.S. Navy control under Admiral William V. Pratt. Upon hearing of this, both the ACLU and NAACP, demonstrating a measure of continuity from their collaboration regarding Haiti, made their opposition to this appointment clear to the president. The NAACP focused their opposition to Admiral Pratt on the grounds that he had been quoted as seeming to approve of lynch law.⁶⁰² The ACLU, for their part, did not engage in the racism issue of the appointment and instead, as per their more universally framed civil liberties mandate, focused their objection upon their longstanding opposition to naval control of islands.⁶⁰³ The NAACP also tapped additional contacts to broaden the scope of the opposition to the appointment.⁶⁰⁴ In the end, President Roosevelt decided to continue with civilian control and promoted the Lieutenant Governor, Lawrence W. Cramer, as governor.

Upon his ascent to the governorship, Baldwin congratulated Cramer and then immediately proceeded to push him on the remaining need for civil government for the Virgin Islands.⁶⁰⁵ From there, Baldwin and Governor Cramer essentially picked up where they had left off earlier in debating on how best to pursue an organic act and, more contentiously, what provisions

⁶⁰² Walter White to President Franklin D. Roosevelt, 15 July 1935, ACLU Papers (Digitized Microfilm), vol. 862, 114.

⁶⁰³ Telegram from ACLU (Signed Harry Ward, Arthur Garfield Hays, Roger N. Baldwin) to President Franklin D. Roosevelt, 17 July 1935, ACLU Papers (Digitized Microfilm), vol. 862, p. 115; ACLU News Release, 18 July 1935, vol. 862, 116.

⁶⁰⁴ Walter White to A. Totten, 20 March 1933, NAACP Papers, Part 11: Special Subject Files. Series B. Reel 32, 682; Walter White to Paul Douglas, 17 March 1933, NAACP Papers, Part 11: Special Subject Files. Series B. Reel 32, 667; Paul Douglas to Walter White, 23 March 1933, NAACP Papers, Part 11: Special Subject Files. Series B. Reel 32, 733.

⁶⁰⁵ Roger Baldwin to Governor Lawrence Cramer, 7 August 1935, ACLU Papers (Digitized Microfilm), vol. 862, 116.

should the act contain. In their exchanges, Cramer regularly returned to his argumentation about the purported importance of the “capacity” of the colonially subjugated, so typical of imperial authorities elsewhere and with all its unavoidable racial and civilizational connotations. He did so to consistently reject provisions that would have further democratized and/or extended greater autonomy to the islands.⁶⁰⁶ Indeed, it was on these very principles of the greater or lesser degree of democratization and autonomy for the Virgin Islands that much of the remaining debate on civil government was to hinge upon for the ACLU.

Over the following months, upon the request of Senator Millard Tydings, Governor Cramer had the Virgin Islands’ Colonial Councils assemble another organic act draft.⁶⁰⁷ This time around, however, the ACLU responded more proactively themselves. For, at the request of their long-running ally Casper Holstein, the ACLU sought to have an alternative civil government draft prepared.⁶⁰⁸ As consultant for the preparation of the draft bill, the ACLU turned to an old ally from the organization’s earliest years, Theodore Schroeder. The former head of the Free Speech League (an important organizational precursor to the ACLU), Schroeder had essentially ceased to champion free speech by the time of the First World War and had eventually settled in the Virgin Islands for health reasons.⁶⁰⁹ While this

⁶⁰⁶ Governor Lawrence Cramer to Roger Baldwin, 22 August 1935, ACLU Papers (Digitized Microfilm), vol. 862, 117.

⁶⁰⁷ Boyer, *America’s Virgin Islands*, 185; Dookhan, *Civil Rights and Political Justice*, 35.

⁶⁰⁸ Casper Holstein to Roger Baldwin, 31 October 1935, ACLU Papers (Digitized Microfilm), vol. 862, 120; Roger Baldwin to Casper Holstein, 8 November 1935, ACLU Papers (Digitized Microfilm), vol. 862, 121.

⁶⁰⁹ While the scholarship on the ACLU, free speech and civil liberties movement has long acknowledged the significance of Theodore Schroeder to the history of free speech, as well as the civil liberties movement as a

contact had initially been devoted to aiding Rothschild Francis with his earlier legal troubles, it came to expand from there.⁶¹⁰

Between November and December of 1935, Schroeder completed and forwarded his draft of an organic act for the Virgin Islands to the ACLU in December, which Baldwin duly passed on to Holstein.⁶¹¹ Schroeder's draft greatly contrasted with that which had been produced thus far by the colonial administration of the Virgin Islands – most notably in its greater commitment to democratization and the extension of autonomy. It would have ended all federal appointments (excepting those of the Governor and the Colonial Secretary) and limited the powers of the Governor itself in those key areas of appointment and legislative veto.⁶¹² The Virgin Islands' Councils were now to have the power of appointment of all local officers. Other exclusionary provisions, such as the maintenance of property qualifications for the franchise and exclusive male suffrage, were eliminated. If implemented, this scheme then held out the promise of a more robustly democratic, representative, and autonomous form of governance for the people of the Virgin Islands.⁶¹³ The fact that this draft resulted from the

whole, it has not recognized that the ACLU began to communicate and cooperate with Schroeder again in 1928 regarding the US Virgin Islands. See: Rabban, *Free Speech in the Forgotten Years*, 44-75; Walker, *In Defense of American Liberties*, 22-23.

⁶¹⁰ Theodore Schroeder to Forest Bailey, 28 January 1928, ACLU Papers (Digitized Microfilm), vol. 350, 727-728; Theodore Schroeder to Forest Bailey, 3 February 1928, ACLU Papers (Digitized Microfilm), vol. 350, 730; Theodore Schroeder to Forest Bailey (Undated), ACLU Papers (Digitized Microfilm), vol. 350, 731; Forest Bailey to Theodore Schroeder, 10 February 1928, ACLU Papers (Digitized Microfilm), vol. 350, 732.

⁶¹¹ Theodore Schroeder to Ida Epstein, 12 December 1935, ACLU Papers (Digitized Microfilm), vol. 862, 132; Roger Baldwin to Casper Holstein, 13 December 1935, ACLU Papers (Digitized Microfilm), vol. 862, 132.

⁶¹² "Proposed 'Organic Act' for the Government of the Virgin Islands," December 1935, ACLU Papers (Digitized Microfilm), vol. 862, 133.

⁶¹³ Ibid.

work of a sympathetic non-state actor – one who had no input from the deeply unrepresentative and racially exclusionary Colonial Councils of the Virgin Islands – was hardly a coincidence. However, as this scheme – no different from that of the colonial administration sponsored bills – remained a legislatively based organic act, what it could not do is fundamentally alter fact that this would still result in an ultimately colonially particularistic and insecure civil liberties, rights, and governance regime for the U.S. Virgin Islands.

It was on those lines of democratization and autonomy that continued to be most divisive for the ACLU and the Cramer administration going forward. For when Baldwin also forwarded a copy of Schroeder's draft to Governor Cramer, while the latter conceded to some of its merits, he nonetheless objected to the provisions that touched on those areas.⁶¹⁴ The governor did so on the grounds that "the degree of democracy should depend somewhat on the capacity of the population to exercise it."⁶¹⁵ Governor Cramer again deployed the racialized trope of a subject peoples' lack of "capacity" necessitating the ongoing restriction of their exercise of democracy, a trope deeply steeped in racialized imperial thought. Baldwin responded by again trying to minimize the differences of their positions; offering the counter to Cramer's incapacity preoccupation that surely "responsibility, along with considerable autonomy and democracy, would

⁶¹⁴ Governor Lawrence Cramer to Roger Baldwin, 21 February 1936, ACLU Papers (Digitized Microfilm), vol. 953, 135.

⁶¹⁵ Ibid.

develop the capacities latent in any population.”⁶¹⁶ So while he may have reversed the logic of ‘capacity’ posited by Cramer (i.e. stressing that further responsibility developed capacity, not that lack of capacity precluded responsibility), Baldwin nonetheless indicated here an acceptance of the premise of a peoples’ capacity being a relevant factor for self-governance. This implied (similar to Rothchild and Baldwin’s earlier contentious exchange) that Baldwin’s increased interactions with colonial state actors were resulting in him increasingly internalizing aspects of customary imperial discourse by colonial state actors (i.e., those related to the necessary capacity for self-governance) within his imperial imaginary.

Shortly after the exchange, Governor Cramer sent Baldwin a copy of the prepared draft of an organic act that had been forwarded onto the respective chairmen of the Congressional committees on insular affairs.⁶¹⁷ Baldwin continued to object to the large amount of remaining federal appointees provided for in the draft bill.⁶¹⁸ Cramer was uncooperative in reply, countering that Congress fully intended to retain control over federally funded officeholders.⁶¹⁹ He additionally confidently asserted that such provisions would be retained, with or without their opposition, in what

⁶¹⁶ Roger Baldwin to Governor Lawrence Cramer, 2 March 1936, ACLU Papers (Digitized Microfilm), vol. 953, 136.

⁶¹⁷ Governor Lawrence Cramer to Roger Baldwin, 14 March 1936, ACLU Papers (Digitized Microfilm), vol. 953, 137.

⁶¹⁸ Roger Baldwin to Governor Lawrence Cramer, 13 April 1936, ACLU Papers (Digitized Microfilm), vol. 953, 149.

⁶¹⁹ Governor Lawrence Cramer to Roger Baldwin, 16 April 1936, ACLU Papers (Digitized Microfilm), vol. 953, 150.

increasingly looked to be the likely impending passage of an organic act for the Virgin Islands.⁶²⁰

With the introduction in the Senate of S. 4524 by Senator William King a month later, the passage of the organic act looked imminent.⁶²¹ In response to this development, and after further deliberation, the ACLU sharply reversed themselves and came out in support of the legislation as it then stood.⁶²² Baldwin informed Governor Cramer, the ACLU's Board of Directors, in 'light of your letter of April 16th' and a report received from Washington, had agreed to support the entirety of the bill as it then stood.⁶²³ And while he said that they still did not like the provisions that continued to limit the autonomy of the islands, they had decided that they would, instead, place their faith in potentially later amending the law so as to extend greater self-government to the people of the Virgin Islands.⁶²⁴

Having come around to approving of the bill without any further qualifications, the ACLU threw themselves into advocating for its passage.⁶²⁵ The organic act secured successful passage on June 22, 1936. Historian William Boyer was neither inaccurate nor hyperbolic when he described the

⁶²⁰ Ibid., 150-151. Around this time as well the ACLU and NAACP sought to collaborate in presenting testimony during the hearings on the legislation. In doing so, Baldwin forwarded Schroeder's draft to NAACP special counsel Charles Houston to use as the basis of legislation they sought. However, after Houston had briefed Walter White for the latter to provide testimony, the hearings failed to accord the necessary time to White to testify. See: Roger Baldwin to Charles Houston, 11 March 1936, NAACP Papers, Part 11: Special Subject Files. Series B. Reel 33, 163; Walter White to Governor Lawrence Cramer, 7 April 1936, NAACP Papers, Part 11: Special Subject Files. Series B., Reel 33, 178.

⁶²¹ Boyer, *Civil liberties in the Virgin Islands*, 68.

⁶²² Roger Baldwin to Governor Lawrence Cramer, 21 May 1936, ACLU Papers (Digitized Microfilm), vol. 953, 152.

⁶²³ Ibid.

⁶²⁴ Ibid.

⁶²⁵ ACLU to U.S. House of Representatives, 22 May 1936, ACLU Papers (Digitized Microfilm), vol. 953, 172.

resulting legislation as representing, “an historic and unprecedented advance toward self-government.”⁶²⁶ The act converted the colonial councils into municipal councils and removed their former exclusionary property, income, and suffrage qualifications.⁶²⁷ A bill of rights was established that secured freedom of speech, press, assembly, petition, religion, equal protection, and due process rights, among others.⁶²⁸ Yet, as already acknowledged, much of the Virgin Islands’ autonomy continued to be heavily circumscribed, with the governor and government secretary remaining presidential appointments, and the appointment of all other federally and locally funded positions being the prerogatives of, respectively, the Secretary of the Interior and the governor.⁶²⁹ Veto provisions were also retained for the governor, president and U.S. Congress.⁶³⁰ And, finally, as the organic act was itself only statutorily and not constitutionally based, it could (as previously discussed) just as easily be rescinded by the same means via Congress. Therefore, as far as the U.S. Virgin Islands’ position and status within the empire, it essentially provided a more representative, autonomous, and rights protective regime; albeit a fundamentally insecure one due to its metropolitan legislative, not constitutional, basis.

⁶²⁶ Boyer, *America’s Virgin Islands*, 188.

⁶²⁷ An English literacy qualification was nonetheless maintained. Given the high literacy rates in the islands, though, this had little restrictive consequences for the people of the Virgin Islands. It did, however, serve to exclude the increasing Spanish-speaking Puerto Rican population present on the Islands, who appear to have been the intended target of the literacy requirement. See: Boyer, *America’s Virgin Islands*, 187; “Virgin Islands Organic Act of 1936” from Bough and Macridis, *Virgin Islands: America’s Caribbean Outpost*, 42, 48.

⁶²⁸ “Virgin Islands Organic Act of 1936” from Bough and Macridis, *Virgin Islands: America’s Caribbean Outpost*, 55-56.

⁶²⁹ *Ibid.*, 49-51.

⁶³⁰ *Ibid.*, 47.

With respect to the ACLU's willingness to compromise on the organic act, however, there is additional evidence indicating they had come to internalize some key colonial discursive tropes within their imaginary, and that this, in turn, had played a significant role in facilitating their acceptance of the resulting act. This emerges from further communication on the matter between Roger Baldwin and Theodore Schroeder, in which Baldwin indicates that he and the ACLU had come to accept a form of colonial discourse that they had consistently rejected.⁶³¹ As he stated:

Governor Cramer makes an argument which is difficult to refute, namely, that the narrow suffrage in the Islands for so many years has not developed the capacity for self-government ... I talked to some Congressmen about it and they seemed to think that we could not get a decrease in officials appointed from Washington until after the Islands have had a chance at something like popular participation in government.⁶³²

In stating this, Baldwin conveyed the unavoidable impression that he and the organization had now come to accept an overtly imperialist line of argumentation, one steeped in negative racial connotations, and that had long been deployed by colonial state actors to reject self-government for colonially subjugated peoples in various other colonial contexts. As to whether this statement was more a reflection of pragmatism on their part in

⁶³¹ It is further notable that in scholar Isaac Dookhan's account of the ACLU's eventual support for the bill that he did not refer to Baldwin's *volte-face* and thereby provided an overly generous account of the ACLU's efforts on behalf of which. See: Dookhan, *Civil Rights and Political Justice*, 35-36.

⁶³² Roger Baldwin to Theodore Schroeder, 20 May 1936, ACLU Papers (Digitized Microfilm), vol. 953, 129.

the final push to secure civil government reform or did in fact represent a genuine reversal of their previous attitude, remains unclear. What this does suggest, however, was that the imperial imaginary of Baldwin and the ACLU had come to increasingly internalize extant aspects of American colonial discourse related to race. And this was in stark contrast to the metropolitan rooted universalism of their attitudes and orientation toward matters relating to race which had thus far been more the norm for them. This turn was then almost certainly a by-product of their increasing reliance on colonial state actors as contacts and interlocutors regarding the Virgin Islands. For, as charted throughout the course of this chapter, the ACLU increasingly did so at the expense of the formerly more robust contacts and allies they had maintained during the previous decade among Virgin Islands based advocates of civil government reform. For without the countervailing influence of the latter, the ACLU were left much more susceptible to the influence and underlying rationale of such seemingly allied colonial state actors like Governors Pearson and Cramer.

The broader implications of this greater receptivity of their imperial imaginary to extant colonial discourses, institutions, and actors of the US empire had important implications for the ACLU's ongoing engagement with the empire. This suggested not only a further internalization of the colonial particularism on their part regarding their civil liberties commitments toward the empire, but also a greater receptivity toward their doing so in more overtly colonial terms. This suggested an imperial imaginary increasingly shorn of what was remaining of their civil liberties universalism

and in which the metropolitan and colonial binary of the U.S. empire were reinforced.

Among the potential consequences of such an orientation, most significant of which, from a civil liberties standpoint at least, maybe fact that it likely lessened their ability to perceive of, and hence check, abuses of colonial state power (i.e., one of the foundational commitments of their civil liberties mandate toward the American empire). This may have been less of a pressing concern for the ACLU regarding those regions of the colonial empire, such as the U.S. Virgin Islands, where the conditions of colonial coercion were relatively benign. However, where the issues of colonial coercion were much more severe, as in the case of contemporaneous Philippines (the subject of the following chapter), then the likelihood of conflicts of interest arising vis-à-vis their civil liberties mandate in the colonial sphere became near unavoidable.

Conclusion

As this chapter demonstrated, following the passage of the 1927 citizenship act, the ACLU's advocacy for civil government reform for the U.S. Virgin Islands sharply declined. This chapter argued that this was partly because the ACLU's key Virgin Islands based ally, Rothschild Francis, had become detained by legal troubles for the remainder of the decade. However, it was further argued that this was more a product of the precipitous drop in advocacy for civil government reform in general throughout the Virgin Islands in the wake of the destruction wrought by the combination of the

San Felipe Segundo hurricane in 1928 and onset of the Great Depression in 1929.

As this chapter further demonstrated, circumstances only began to alter with the replacement of the islands' naval run administration with that of a civilian controlled regime. This development did see the beginnings of more amicable relations between the ACLU and colonial state authorities than had formerly existed. While this proved to be quite limited for the time being due to the new administration's priority being the economic revitalization of the Virgin Islands, this chapter stressed that their interactions began to have a discernable effect upon the ACLU's imperial imaginary. It was only when prospects for civil government reform improved by the end of 1932 that a sustained effort by the ACLU reemerged. As this chapter demonstrated, though, this effort starkly contrasted with their efforts during the previous decade (as accounted for in Chapter 2) due to their neglect of input and cooperation with non-state, Virgin Islands' based actors and allies, and their now near exclusive pursuit of which in cooperation with colonial state actors. This greater engagement with colonial state actors had an increasing influence upon the imperial imaginary of the ACLU. As was argued throughout the chapter, by time of the passage of the organic act in 1936, it had become evident that the imperial imaginary of Baldwin and the ACLU had come to significantly internalize and identify with extant aspects of American colonial discourses and rule. It was emphasized that this was most unmistakably discernible in the ACLU's final compromise

on the resulting organic act with its continuing curtailment of the U.S. Virgin Islands' governmental autonomy.

Chapter 6: The ACLU, Colonial State Actor Relations, and the Philippine Commonwealth, 1930-1941

Introduction

With the formation of the *Partido Komunista sa Pilipinas* (PKP) in August 26, 1930, colonial authorities in the Philippines became increasingly concerned about the rise of communism throughout the islands.⁶³³ Rising tensions culminated in 1931 with the funeral of leading PKP figure Antonio Ora, which attracted unprecedented levels of public support for communism. A procession of approximately ten to thirty thousand people passed through the streets of Manila, many of whom waved red flags. This was followed by provocative speeches by PKP leaders Crisanto Evangelista and Jacinto Manahan.⁶³⁴ The response by colonial authorities was swift. Governor-General of the Philippines, Dwight Davis, declared that all the “Red leaders” would be prosecuted. Arrests ensued, including of Evangelista and Manahan, and charges under the Sedition Act followed.⁶³⁵

Within months of these charges the ACLU decided to provide legal defense aid to PKP members charged under act. What drew the ACLU to

⁶³³ Anne L. Foster, “Secret Police Cooperation and the Roots of Anti-Communism in Interwar Southeast Asia,” *The Journal of American-East Asian Relations* 4, no. 4, (Winter 1995): 333-341; James A. Richardson, “The Genesis of the Philippine Communist Party,” PhD Diss., University of London (1984): 225-228.

⁶³⁴ Norman Lorimer, “Philippine Communism – An historical overview,” *Journal of Contemporary Asia* 7, no. 4, (January 1, 1977): 468.

⁶³⁵ *Ibid.*, 228-229.

involve themselves in these cases? How did this involvement relate to other issues, such as independence, emanating from the Philippines over the course of the 1930s? What role did the imperial imaginary of the ACLU play in their engagement with the Philippines during this period? And, finally, what were the consequences of the ACLU's interest and involvement by the time of American entry in the Second World War?

As discussed in Chapter 4, by the mid-1920s the ACLU had settled upon the position regarding Philippine independence that they would defend the right of advocacy for independence, but not actually advocate for it themselves. As this chapter demonstrates, during the early years of the decade, the ACLU did not reappraise their approach to the issue of Philippine independence. Regarding the question as to why the ACLU chose to support the PKP defendants, this chapter demonstrates that they did so not merely to gain relief for the defendants in question, but because the cases represented a potential opportunity to challenge the constitutionality of the Sedition Act itself, and, by implication, the doctrine of incorporation. This was an effort then (similar to their litigation support of the Ripley case, as discussed in Chapter 3) in line with the metropolitan-rooted universalist orientation of their civil liberties commitments.

To provide support for the PKP defendants, the ACLU came to rely almost exclusively upon the services of a series of temporarily based, white American missionaries as their local representatives due to the vast distance of the island archipelago from their base in New York, as well as their lack of on the ground allies and contacts there. However, given this

unrepresentative and *de facto* racially exclusive basis, this reliance failed to compensate for much for their ignorance of local contexts. It is further argued that their imperial imaginary inhibited their awareness of the significant limitations and inherent biases that such an arrangement would likely to result in. In doing so, the ACLU effectively cut themselves off from potentially gaining essential local Filipino contacts and allies.

When their eventual efforts to challenge the law in the Supreme Court confronted great difficulties, the ACLU took the appointment to the governor-generalship of the Philippines of a former civil liberties ally as reason to cease pursuing a litigation challenge of the Sedition Act. This, if anything, became even more problematic for the ACLU, not only from a representational standpoint, but from a foundationally civil libertarian one. For by now coming to rely almost exclusively upon the governor-general for aid, redress, and/or information, the ACLU enabled a conflict of interest for themselves in terms of their potential to provide a check on colonial state power. This chapter argues that their inability to recognize this as a likely issue was a product of their imperial imaginary which was increasingly susceptible to amiable and collaborative relations with seemingly allied colonial state actors.

In the meantime, while momentum had been building in Congress for extending independence to the Philippines over the course early 1930s, the ACLU did little more than come to express indirect and generalized support. However, upon the establishment of the Philippine Commonwealth in 1935, which initiated a substantially more autonomous and Filipino governed

polity – one formed with the explicit intent to transition the Philippines into a foreign, sovereign independent state – the ACLU struggled to develop a consistent approach. For the remainder of the decade, the ACLU's interest and involvement in the islands became even more fleeting, sporadic, and inconsistent. As this chapter demonstrates, what did emerge was a deep tension in their statements and conduct; a tension that hinged upon their desire, on the one hand, to support the Commonwealth's autonomy and eventual realization of independence, and, on the other, an ongoing commitment to their metropolitan derived civil liberties concerns (i.e., free speech, press, and assembly) that intermittently compelled the ACLU to seek to restrict the legislative and administrative autonomy of the Philippine Commonwealth.

In great contrast to their stance in the informal imperial sphere toward Haiti (as discussed in Chapter 4), this chapter demonstrates that they were more inclined to prioritize their customary civil liberties commitments over their nominal support for full sovereign independence for the Philippines. It is argued that this can in large part be traced to their imperial imaginary, which inhibited them from recognizing that ongoing and incautious pursuit of their civil liberties commitments in the Commonwealth might come into tension, if not outright conflict, with support for independence. Consequently, by periodically following through on their metropolitan based impulses, the ACLU came to provide inconvenient reminders of just how ultimately circumscribed, contingent, and fragile the goal of full Philippine

independence was and thereby reinforced the ongoing colonial position of the Commonwealth.

The PKP Sedition Act Cases

How did the ACLU address the Philippines during the 1930s? As discussed in Chapter 4, by the mid-1920s, the ACLU had settled upon the position regarding Philippine independence that they would defend the right of advocacy for independence, but not actually advocate for it themselves. As the new decade opened, the ACLU retained this essentially passive position toward the issue. This is somewhat striking given that at this very time there were indications from Congress that momentum was forming behind Philippine independence.⁶³⁶ As Congress debated the terms of what would eventually become the Smoot-Hawley Tariff of 1930, some prominent Senators attempted to (albeit unsuccessfully) attach Philippine independence amendments to the tariff legislation.⁶³⁷ The onset of the Great Depression also saw a discernable rise in anti-immigration sentiment directed against Filipino migrants in the west coast U.S. states, as well as increasing pressure from metropolitan-based beet and cane sugar producers to restrict the access of Philippines-based sugar producers to U.S. markets. Both elements came to increasingly view Philippine independence as a plausible means

⁶³⁶ Frank H. Golay, *Face of Empire: United States-Philippine Relations, 1898-1946* (Madison, University of Wisconsin-Madison, 1998): 280-282, 293.

⁶³⁷ Golay, *Face of Empire*, 280-282.

towards their ends and duly began to apply further pressure upon Congress.⁶³⁸

Rather than engage with the evident momentum forming behind Philippine independence, it was instead the indictment of several prominent Filipino communists under the Philippine Sedition Act in the spring of 1931 that piqued ACLU interest.⁶³⁹ These indictments occurred in the context of the rising tensions between the authorities and Filipino communists following the formation of the *Partido Komunista sa Pilipinas* (PKP) in August 26, 1930.⁶⁴⁰ According to Colleen Woods, while there had been plenty of anti-colonialist formations and constituencies within the Philippines, Filipino communists were deemed especially concerning as “their critique situated the United States of America as part of the oppressive world-wide system of white colonial rule over non-white peoples.”⁶⁴¹ Yet it was to take two events in January 1931 to provoke a severe response by colonial authorities.⁶⁴² The first was a brief agrarian uprising in the town of Tayug in Central Luzon, which left six participants and five Philippine Constabulary officers dead. While the PKP itself had not been involved in the rising, rumors nonetheless

⁶³⁸ Mae M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004): 116-119; Hopkins., *American Empire*, 626.

⁶³⁹ “Memorandum of the Philippine Sedition Cases,” 26 June 1931, ACLU Papers (Digitized Microfilm), vol. 501, 213. The Sedition Act was rooted in the repressive legislation of the early years of US colonial regime in the Philippines and had been carried over in the 1916 Jones Act. See: McCoy, *Policing America’s Empire*, 99; Golay, *Face of empire*, 77.

⁶⁴⁰ Foster, “Secret police cooperation and the roots of Anti-Communism in Interwar Southeast Asia,” 333-341; Richardson, “The Genesis of the Philippine Communist Party,” 225-228. The PKP itself was largely formed from within the ranks of the *Partido Obrero* (formed in 1924), following the latter’s break with the Philippines’ largest labor federation, the *Congreso Obrero de Filipinas* over the issues of organized labor strategy, communism, and anti-imperialism. See: Lorimer, “Philippine Communism – An historical overview,” 468.

⁶⁴¹ Colleen Woods, “Seditious Crimes and Rebellious Conspiracies: Anti-communism and US empire in the Philippines,” *Journal of Contemporary History* 53, no. 1, (2018), 62.

⁶⁴² Richardson, “The Genesis of the Philippine Communist Party,” 228.

spread implicating them.⁶⁴³ The second episode was the funeral of leading PKP figure Antonio Ora. As discussed in the chapter introduction, following a procession of somewhere between ten to thirty thousand people, PKP leaders Crisanto Evangelista and Jacinto Manahan gave fiery, provocative speeches.⁶⁴⁴ Colonial authorities were prompt and severe in their response. Several arrests, which included Evangelista and Manahan, and charges under the Sedition Act ensued over the following weeks.⁶⁴⁵

The ACLU appear to have become aware of the sedition charges against the Filipino Communists by the late spring.⁶⁴⁶ They followed this up by reaching out to a contact they had in the Philippines: Professor Harold Fey, a missionary and lecturer at Union Theological Seminary in Manila.⁶⁴⁷ Shortly thereafter, the ACLU got in touch with the local defense attorneys of the PKP defendants, and over the course of the summer determined that they would support the defendants with an initial contribution of \$500 in legal defense aid, designating Harold Fey as their local correspondent.⁶⁴⁸ They then went ahead and publicized their condemnation of the conviction of Filipino Communists under the sedition law.⁶⁴⁹

⁶⁴³ Ibid.

⁶⁴⁴ Ibid.

⁶⁴⁵ Ibid., 228-229.

⁶⁴⁶ Roger Baldwin to Harold Fey, 1 May 1931, ACLU Papers (Digitized Microfilm), vol. 501, 229.

⁶⁴⁷ Ibid.

⁶⁴⁸ Vincente Sotto to ACLU, 17 June 1931, ACLU Papers (Digitized Microfilm), vol. 501, 213; Roger Baldwin to Vincente Sotto (Undated cut off document), ACLU Papers (Digitized Microfilm), vol. 501, 222; Roger Baldwin to Harold Fey (Undated, likely date around 13 August 1931), ACLU Papers (Digitized Microfilm), vol. 501, 223.

⁶⁴⁹ ACLU News Release, 7 October 1931, ACLU Papers (Digitized Microfilm), vol. 501, 237.

What drew the ACLU to involve themselves in these cases? The civil liberties grounds for their providing legal defense aid were straightforward – as they highlighted in their press release, the Philippines was the only place within “United States jurisdiction where the Communist Party is treated as an illegal conspiracy.”⁶⁵⁰ They also stressed that the unique severity of the law within the U.S. empire as being part of the basis of their involvement.⁶⁵¹ Yet it appears that the ACLU had more in mind than solely this. As Baldwin privately emphasized to Harold Fey, “[M]ere defense of cases is not our prime object,” rather, the main aim was to “use the defense to help stop the prosecutions, to make clear our principles of freedom of agitation anywhere within American jurisdiction and particularly if the opportunity offers to test out in the higher courts the points of constitutionality or of procedure involved in the cases.”⁶⁵² At the outset then, the ACLU’s interest in these cases stemmed more from opportunity they offered toward challenging a highly punitive and repressive piece of legislation – through constitutional change if possible – rather than gaining relief for the defendants as such. A successful overturning of the Sedition Act would then not only be in line with their commitment to civil liberties as an essential means by which peaceable change could be pursued but would also have entailed a successful challenge of the doctrine of incorporation. Such an effort and goal then resembled the strategic litigation effort during the Samuel Ripley case in 1926 regarding Samoa. For (as was discussed in Chapter 3) with their legal

⁶⁵⁰ Ibid.

⁶⁵¹ Ibid.

⁶⁵² Roger Baldwin to Harold Fey (Undated), ACLU Papers (Digitized Microfilm), vol. 501, 223.

defense aid in the Ripley case, they sought (albeit unsuccessfully) a constitutional challenge of the doctrine of incorporation.

The ACLU's decision to support these cases was also likely encouraged by the fact that this was the same year in which the Supreme Court (as discussed in the Preface to Part II) had robustly expanded the scope of First Amendment in *Stromberg v. California* and *Near v. Minnesota*, which combined to now make the freedom of speech and press clauses as binding upon the states as they had been upon the federal government itself.⁶⁵³ Civil liberties scholarship has viewed these decisions as important milestones in the ACLU's increasing turn toward the courts, as well as to their overall broader accommodation with U.S. state institutions.⁶⁵⁴ It is quite plausible that these two watershed decisions – both of which had resulted in the overturning of restrictive state legislation through a partial extension of the Bill of the Rights – encouraged the ACLU to see whether they might have similar success in the colonial sphere. This would potentially make such civil liberties protections universally binding upon the colonies and metropolitan states of the US empire. Thus, this effort intimated an imperial imaginary inextricably rooted in their metropolitan basis. Furthermore, by prioritizing a potential challenge of the Sedition Act, the ACLU conveyed an imaginary animated less by Philippine independence and more fixated with their

⁶⁵³ It was with these two decisions that substance was given to what until then had been merely the promise of the 1925 *Gitlow v. New York* decision. The latter had asserted that the First Amendment was now binding upon the states through the due process protection clause of the Fourteenth Amendment. See: Murphy, *The Meaning of Freedom of Speech*, 269; Walker, *In Defense of American Liberties*, 90-92.

⁶⁵⁴ Murphy, *The Meaning of Freedom of Speech*, 245-246.

metropolitan-based civil liberties concerns – especially striking as they were doing so at the very time when support independence was increasingly rising within Congress.⁶⁵⁵

To engage with the sedition cases the ACLU came to rely upon temporarily Philippine-based missionaries like Harold Fey as, not only as their intermediaries with the PKP defendants and their local legal representatives, but also as effectively their sole points of contact in the Philippines as a whole. This was plainly an ad-hoc means on their part to work around the difficulties that the vast distance between the Philippines and their base in New York presented them in the way keeping abreast of developments with the cases. However, this highly narrow profile of representation largely served to further limit the extent of the ACLU contacts and reach within the Philippines. And despite the evident limitations of this, the ACLU did not make any serious efforts to acquire firmly-based local, Filipino actors and/or organizations as allies or contacts, such as they had attained in Caribbean based U.S. colonies. Such a circumstance as this was not only unlikely to greatly compensate for their ignorance of local contexts,

⁶⁵⁵ In fact, there is even an argument that challenging the doctrine of incorporation might even run counter to Philippine independence itself. As scholar Christina Duffy Burnett has highlighted, part of the motivation behind the *Insular Cases* themselves had been to settle the question of whether the United States could secure the so-called ‘deannexation’ of territory (a relevant question given the Civil War was living memory to many of the justices). As Burnett emphasized: “The doctrine of incorporation made the dissolution of domestic territory not only conceivable, but constitutional. It did so by crafting a constitutional theory of territorial deannexation.” Therefore, dismantling the doctrine of incorporation carried the additional implication of plausibly threatening the constitutionality of granting independence to a U.S. territory. See Christina D. Burnett, “The Constitution and Deconstitution of the United States,” in *The Louisiana Purchase and American Expansion, 1803-1898*, ed. Sanford Levinson and Bartholomew H. Sparrow (Lanham: Rowman & Littlefield Publishers, 2005): 181-183.

given the very narrow profile of the missionaries in question (invariably white American males), this left the ACLU at risk of racially inflected omissions and/or more overtly prejudicial outcomes in their engagement with the Philippines. It is likely that their imperial imaginary inhibited them from even perceiving of the value of addressing the inherent limitations and/or risks of depending upon such narrow and unrepresentative actors as their only points of contact with respect to the Philippines.

An early example of how this arrangement came to reinforce non-Filipino representation and perspectives with the ACLU occurred when their first such correspondent, Harold Fey, was instructed by Baldwin to dispense with the ACLU's legal defense aid as he best thought fit.⁶⁵⁶ Fey replied by advising caution about transference any of the funds to the defense attorney Vincente Sotto, in part, due to the postponement of trials themselves, but also because he did not trust the attorney, as he had been informed that Sotto had been 'using the Communists for his own ends.'⁶⁵⁷ The ACLU proceeded to follow Fey's advice in refusing to transfer aid to Sotto.⁶⁵⁸ And while Sotto does appear to have been less than trustworthy (communications by Sotto to the ACLU consistently see the latter trying to extract unagreed

⁶⁵⁶ Roger Baldwin to Harold Fey (Undated, likely some date around 13 August 1931), ACLU Papers (Digitized Microfilm), vol. 501, 223.

⁶⁵⁷ Telegram from Harold Fey to Roger Baldwin, 15 July 1931, ACLU Papers Microfilm, vol. 501, 220.

⁶⁵⁸ Roger Baldwin to Vincente Sotto (Undated), ACLU Papers (Digitized Microfilm), vol. 501, 222.

upon financial compensation), they were doing so at this point solely upon the word of a temporarily based, white American.⁶⁵⁹

The limitation of this arrangement was further demonstrated in October when Fey informed the ACLU that he was leaving the Philippines and that they would need to secure a new locally based correspondent.⁶⁶⁰ It is striking that the ACLU at this point did not themselves proactively seek to broaden the social base of their contacts among the Filipino peoples themselves. Instead, Fey helped them locate as a replacement a fellow missionary named Willard Palmer and thereby further remained dependent upon the voluntary services of temporarily situated American missionaries.⁶⁶¹ While Baldwin did make the offhand suggestion that Palmer himself might try and form a small committee in the Philippines to help facilitate the expression of “disinterested middle-class opinion on issues which need other than partisan sponsorship,” he effectively passed the responsibility for this onto Palmer to extend the reach of their contacts and allies within the islands.⁶⁶² And while such a committee would likely have been of aid to the ACLU, the very narrow profile for it proposed by Baldwin meant that it was very unlikely to expand much in the way of scope their contacts. Nor, for that matter, did he make a point of calling for the enlistment from among the Filipino people themselves, thereby retaining the

⁶⁵⁹ Vincente Sotto to Harold Fey, 26 August 1931, ACLU Papers (Digitized Microfilm), vol. 501, 223; Vincente Sotto to Harold Fey, 17 September 1931, ACLU Papers (Digitized Microfilm), vol. 501, 225; Vincente Sotto to Roger Baldwin, 5 September 1931, ACLU Papers (Digitized Microfilm), vol. 501, 234-235.

⁶⁶⁰ Harold Fey to Roger Baldwin, 15 October 1931, ACLU Papers (Digitized Microfilm), vol. 501, 238-239.

⁶⁶¹ Ibid.; Roger Baldwin to Willard Palmer, 11 November 1931, ACLU Papers (Digitized Microfilm), vol. 501, 243.

⁶⁶² Roger Baldwin to Willard Palmer, 12 March 1932, ACLU Papers (Digitized Microfilm), vol. 588, 3.

de facto racially exclusionary basis of their representation within the islands. And most certainly this did nothing to extend their points of contact outside of Manila and its surrounding area within the island of Luzon.⁶⁶³

The fact that this issue was not felt to be of great relevance or importance was plainly the sort of omission stemming from an imperial imaginary so rooted in their distant metropolitan basis. Additionally, (as the contrasting example of Chapter 7 will show) without the feedback, perspectives, and/or cooperation of firmly locally based allies, such a situation was one in which their imperial imaginary would significantly lack in the valuable countervailing influences of those thoroughly based and rooted in the colonial sphere. In the end, the ACLU's near negligible cooperation with Palmer did not last long, for they again had to secure a new representative to replace him the following year and did so, again, through the recommendation of their old correspondent, Fey, by enlisting another missionary.⁶⁶⁴ Something of a feedback loop had been established then, with replacements – who were invariably white missionaries – being recommended from within the community of missionaries itself.⁶⁶⁵

All told, by the time of Fey's departure, the ACLU had transferred \$500 in legal defense aid to the PKP defendants via Fey.⁶⁶⁶ Eventual verdicts of the

⁶⁶³ Relatedly, at no point did the ACLU express concern with or cognizance of conditions and/or developments within the Visayan archipelago, Mindanao, or the Sulu Islands.

⁶⁶⁴ Harold Fey to Roger Baldwin, 10 February 1933, ACLU Papers (Digitized Microfilm), vol. 617, 126.

⁶⁶⁵ Harold Fey to Roger Baldwin, 15 October 1931, ACLU Papers (Digitized Microfilm), vol. 501, 238-239; Harold Fey to Roger Baldwin, 10 February 1933, ACLU Papers (Digitized Microfilm), vol. 617, 126.

⁶⁶⁶ These funds were later to be a source of controversy with a civil suit being filed by Sotto against his client Crisanto Evangelista, on the grounds that the latter had illegitimately appropriated the funds to himself. The ACLU determined that Sotto had misrepresented the facts for his own gain, thereby seemingly vindicating their

PKP defendants were handed down on September 1931, with twenty five of the thirty-two being found guilty; of which, five were given four to sixteen month prison sentences and the remaining twenty given six month to two year prison terms, to be followed by supervised internal exile within Luzon for eight years and a day.⁶⁶⁷ From that point, as Baldwin explained to their new correspondent Willard Palmer, the ACLU's chief concern then remained the appeal of the sedition cases because they thought "that the law and the convictions can both be upset in the higher courts."⁶⁶⁸ Hence, Baldwin's interest in the cases very much remained fixed upon the opportunity they provided to fulfill their commitment to civil liberties in colonial sphere by challenging the doctrine of incorporation.

By July 1932, the sedition cases reached the Philippines' Supreme Court. Determining that they had no real chance of having their convictions overturned there, the Communist appellants refused legal representation and PKP leader, Crisanto Evangelista, instead lectured the presiding judges on the nature of empire and Communist doctrine.⁶⁶⁹ When their convictions were upheld, this left the U.S. Supreme Court as the last avenue of appeal. As this brought the cases more directly within U.S. federal court jurisdiction, this presented the ACLU with the opportunity to involve themselves more

initial distrust of the attorney. See: Harold Fey, "Statement of disbursements," 5 September 1931, ACLU Papers (Digitized Microfilm), vol. 617, 143; Harold Fey to Lucille Milner, 21 June 1933, ACLU Papers (Digitized Microfilm), vol. 617, 142.

⁶⁶⁷ Richardson, "The Genesis of the Philippine Communist Party," 231-232.

⁶⁶⁸ Roger Baldwin to Willard Palmer, 11 November 1931, ACLU Papers (Digitized Microfilm), vol. 501, 243.

⁶⁶⁹ Richardson, "The Genesis of the Philippine Communist Party," 232.

proactively and tangibly in the appeal effort, and they accordingly proceeded to organize the appeal.⁶⁷⁰

Alongside this opportunity, though, came an additional set of challenges and complications. These included a delay of five to six weeks for them to receive mail from the Philippines and the need to translate the record from Spanish – especially challenging given the pending deadline for the petition for writ of certiorari.⁶⁷¹ Most significant of all, though, was that the material and record forwarded onto them from the PKP defendants’ defense counsel proved “fragmentary” and “incomplete”.⁶⁷² The principal problem of which stemmed from the fact that the relevant constitutional issues had not been raised during the earlier trial proceedings – essential if they wanted to raise these issues before the Supreme Court.⁶⁷³ The weight of these complications combined to convince the ACLU that additional effort to bring the cases before the Supreme Court was likely now futile.⁶⁷⁴

There was, however, one additional development that proved critical in this decision: President Roosevelt’s appointment Frank Murphy as governor-general of the Philippines. As ACLU secretary Lucille Milner made clear, the appointment of Murphy proved to be a key consideration in their eventual decision to abandon their Supreme Court appeal effort.⁶⁷⁵ The ACLU had a

⁶⁷⁰ Lucille Milner to Walter Gellhorn, 8 April 1933, ACLU Papers (Digitized Microfilm), vol. 617, 61; Lucille Milner to Walter Gellhorn, 10 April 1933, ACLU Papers (Digitized Microfilm), vol. 617, 62.

⁶⁷¹ Lucille Milner to Walter Gellhorn, 8 April 1933, ACLU Papers (Digitized Microfilm), vol. 617, 61; Lucille Milner to Walter Gellhorn, 10 April 1933, ACLU Papers (Digitized Microfilm), vol. 617, 62.

⁶⁷² H. Thomas Austern to Lucille Milner, 4 April 1933, ACLU Papers (Digitized Microfilm), vol. 617, 72.

⁶⁷³ Ibid.

⁶⁷⁴ Lucille Milner to H. Thomas Austern, 10 May 1933, ACLU Papers (Digitized Microfilm), vol. 617, 73.

⁶⁷⁵ Ibid.

shared history with Murphy that went back to his time as mayor of Detroit, in which capacity he had acquired a reputation as a committed civil libertarian.⁶⁷⁶ Therefore, alongside the aforementioned difficulties that greatly constrained the ACLU's ability to bring an appeal to the highest court of appeal – the distance between the ACLU and the Philippines; their lack of robust, consistent, and reliable contacts; the apparently poor quality of legal representation – the appointment of a recognized ally to head the colonial executive proved critical in influencing the ACLU's decision to redirect their energies and approach.

By doing so, this also meant that the ACLU had abandoned hope that these cases might provide an opportunity to challenge the constitutionality of the Sedition Act. So much like their appeal effort with respect to the eastern Samoan Islands, this failure to reach the Supreme Court meant that the ACLU did not get the opportunity to challenge the doctrine of incorporation via the kind of litigation they were contemporaneously pioneering within the U.S. metropole.

Of additional relevance was the fact that a key determinant in ending their appeal effort was the appointment of a potentially sympathetic ally as governor-general. This demonstrated how their broader accommodation with state actors and institutions took on something of a distinct character within colonial sphere that contrasted with this development in the metropolitan. For instead of increasingly prioritizing litigation efforts (i.e., as they were

⁶⁷⁶ Walker, *In Defense of American Liberties*, 97; Fine, *Frank Murphy*, 84.

doing within the metropolitan states) in the colonies, the ACLU's reconciliation with state institutions in the colonial sphere translated into a greater reliance on working through seemingly allied colonial state actors. Indeed, the arrival of a former civil libertarian ally as governor-general proved irresistible for them to work with; resulting in a dynamic that (as will be seen in the following section) proved to have a great deal of influence upon their imperial imaginary and their resulting conduct toward the Philippines.

The Tenure of Governor-General Frank Murphy

By the end of 1932, real momentum was forming behind Philippine independence in Congress. This was evident from the results of the so-called OsRox mission, wherein Filipino representatives Sergio Osmena and Manuel Roxa went to Washington D.C. to lobby for independence.⁶⁷⁷ There then followed the passage in Congress of the Hare-Hawes-Cutting Act in December 1932, which committed the United States to granting the Philippines independence in 10 years.⁶⁷⁸ Yet the bill also required ratification by the Philippine Senate. Manuel Quezon, President of the Senate, having become concerned that the bulk of credit for securing independence was likely to go to fellow *Nacionalista* party members Osmena and Roxa, brought all the pressure he could muster to see that the act was not ratified by the

⁶⁷⁷ Francia, *A History of the Philippines*, 171.

⁶⁷⁸ Karnow, *In Our Image*, 253-254.

upper chamber.⁶⁷⁹ Complicated political maneuvering notwithstanding, it had become clear that it was only a matter of time before American legislative commitment to Philippine independence would be secured.

Given these developments, did the ACLU return the question of Philippine independence? Did the ACLU alter their approach or priorities at this point? For the ACLU, again, these developments did not mark the occasion for proactive support for Philippine independence, nor even make it an overriding concern of theirs. It is notable that (as discussed in the previous section) instead, it was pursuit of their more metropolitan oriented civil liberties concerns (most evidently here in the guise of the Sedition Act) that animated them regarding the Philippines, not the possibility that independence might now be imminent.

Something of this sense of contrasting priorities can be observed within their entry on the Philippines in their 1933 pamphlet on the American colonies.⁶⁸⁰ This pamphlet did represent something of an alteration of their position regarding Philippine independence, moving to a position of indirect support for which. They now called for the carrying out the pledges of the 1916 Jones Act that had nominally committed the U.S. to extending independence to the Filipino people.⁶⁸¹ The momentum emerging from Congress toward Philippine independence had presumably brought the ACLU to at least adjust their position on the issue to indirect support. The

⁶⁷⁹ Kramer, *The Blood of Government*, 424.

⁶⁸⁰ "Civil Liberties in American Colonies: A Survey of Interference with Civil Rights of Natives; and of the Forms of Control; with Proposed Remedies," March 1933, ACLU Records and Publications. Reel 91, 10-15.

⁶⁸¹ *Ibid.*, 15.

actual contents Philippines section of the pamphlet, however, betrayed more of a preoccupation with the ongoing persecution of Filipino Communists and the Sedition Act, calling for the repeal or overturning of the latter, and highlighted their own efforts towards such an end.⁶⁸² Hence, while the pamphlet definitely represented a recalibration of their public position on Philippine independence, given the overall tenor and substance of the entries, this could hardly be said to represent the ACLU having adopted the same sort of assertive and unequivocal anti-imperialist stance that they had contemporaneously embraced regarding Haiti.

Instead, in terms of conduct, they continued to focus upon addressing the Sedition Act so as to secure the civil liberties grounds upon which peaceable change could be pursued, as well as their related but distinct hope to secure relief for the PKP defendants. What did change, though, was how they sought to do so now that the route of a constitutional challenge had been foreclosed. As alluded to in the previous section, it was to be the New Deal era appointment of Frank Murphy to the General-Governorship of the Philippines that marked a reorientation on their part.⁶⁸³ Similar to what occurred over the same period in the U.S. Virgin Islands then (as demonstrated in the previous chapter), such a development saw the ACLU

⁶⁸² Ibid., 13-15.

⁶⁸³ Lucille Milner to H. Thomas Austern, 10 May 1933, ACLU Papers (Digitized Microfilm), vol. 617, 73.

adopting more amiable and collaborative relations with a colonial state actor in the Philippines – a development that correspondingly left their imperial imaginary susceptible to the influence of the latter.

Indeed, after hearing of the appointment, Baldwin immediately reached out to Murphy before he departed to arrange a meeting where they could discuss the ACLU's outstanding areas of concern in the islands, particularly those "involving freedom of speech and press."⁶⁸⁴ Regarding the sedition cases, as they had abandoned their court appeal efforts, Baldwin now sought to convince the new Governor-General to extend executive clemency to those convicted.⁶⁸⁵ Baldwin also tried to convince Murphy to see what he could do about addressing the Sedition Act itself.⁶⁸⁶ As a rationale for doing so, Baldwin offered the argumentation that "the prestige of the United States in Colonial administration would be greatly enhanced by showing tolerance towards such left-wing groups which are so sternly repressed in British and French possessions."⁶⁸⁷ And while Baldwin qualified that he was merely offering this argument out of expediency – stressing that he personally disliked "such patriotic argument" but did so only because it made for "awfully good politics in international affairs" – he was presenting an argument thoroughly couched in American imperial exceptionalist logic and terms.⁶⁸⁸ Therefore, Baldwin's advocacy here, which effectively identified

⁶⁸⁴ Roger Baldwin to Governor-General Frank Murphy, 10 April 1933, ACLU Papers (Digitized Microfilm), vol. 675A, 119.

⁶⁸⁵ Lucille Milner to Cipriano Navarro, 25 May 1933, ACLU Papers (Digitized Microfilm), vol. 617, 137; Roger Baldwin to Governor-General Frank Murphy, 19 July 1933, ACLU Papers (Digitized Microfilm), vol. 675A, 144.

⁶⁸⁶ Ibid.

⁶⁸⁷ Ibid.

⁶⁸⁸ Ibid.

a civil liberties concern of theirs with American imperialist calculations, was a demonstration (as was similarly evident at the time regarding the U.S. Virgin Islands), of the increasing extent to which Baldwin's imperial imaginary was internalizing extant aspects of American imperialist perspectives and discourses. In making such an argument – which essentially sold civil liberties as offering little more than a device to legitimate the American colonial project due its alleged superiority to alternative forms of empire – Baldwin undermined the very notion of civil liberties protections providing an effective means by which peaceable change could be attained in the colonial sphere. Instead, within the very terms of the rationale Baldwin himself provided, they were more likely to merely legitimate the persistence of American colonial rule over the Philippines.

In the meantime, back in Washington there was additional movement toward Philippine independence, with a breakthrough finally occurring in early 1934 with the passage of the Tydings-McDuffie Act on March 24. Essentially containing the same provisions as the previous Hare-Hawes-Cutting bill, the act set out a ten-year transition period and empowered the Philippines legislature to call a constitutional convention to establish the Commonwealth of the Philippines.⁶⁸⁹ The Commonwealth itself was to remain under U.S. supervision, with its autonomy restricted in critical ways. For example, to be maintained were U.S. military installations, a presidential veto power over specific forms of Philippines legislation, control of foreign

⁶⁸⁹ Kramer, *The Blood of Government*, 424.

policy, and, potentially most relevant to the ACLU, the U.S. Supreme Court's prerogative of judicial review over the Commonwealth's courts.⁶⁹⁰ The Philippines Commonwealth was to also lose some of the seemingly more beneficial features of their former association with the United States in terms of now being subject to a highly restrictive immigration quota and a new trade tariff regime that, unsurprisingly, overwhelmingly favored U.S. metropolitan based interests.⁶⁹¹

Following this development, of which the ACLU again played no proactive part in, Roger Baldwin reached back out to Murphy in the late spring to check in with some outstanding concerns. In the communication, he advocated for the repeal or amendment of the Sedition Act as well as the same for another provision that empowered the Director of Posts to bar publications from the mails.⁶⁹² But no headway was gained with these concerns. It is further notable that at this point the ACLU had largely moved on from relying on correspondents that were white American missionaries to Governor-General Murphy. And while the issues of the greatly unrepresentative and temporary character of the former have been highlighted, they did at the very least did represent non-state actors whose disposition toward the colonial government could, hypothetically, be regarded as impartial, whereas the latter was not only a colonial state actor, but, as governor-general, occupied the position of chief executive authority

⁶⁹⁰ Ibid., 424-425.

⁶⁹¹ Francia, *A History of the Philippines*, 172-173.

⁶⁹² Roger Baldwin to Governor-General Frank Murphy, 10 May 1934, ACLU Papers (Digitized Microfilm), vol. 758, 64.

within the colony. This represented a near unavoidable conflict of interest with the ACLU's commitment to providing a check to abuses of colonial state power – especially in the context of their aforementioned lack of firmly situated, locally based Filipino allies and/or contacts.

Two episodes exemplified this. First occurred in the fall of 1934, when the ACLU got word of a strike by Filipino cigar workers in Manila that had turned violent. They were informed that, of the cigarmakers that took part, 19 had been wounded, 5 killed, and 22 of the leaders arrested.⁶⁹³ Governor-General Murphy was even accused of having ordered the militia to shoot down the strikers.⁶⁹⁴ The ACLU duly contacted Governor-General Murphy for an explanation.⁶⁹⁵ Murphy responded that he had greatly regretted the occurrence of the incidence and forwarded them copies of reports on it. Murphy also claimed that he had already appointed a fact-finding committee, made up of members of both parties of the dispute, to look into employer worker relations before the incident, which had apparently been successful since in getting work to resume “pending a settlement of the points of difference.”⁶⁹⁶ In response, Baldwin and the ACLU were uncritical in expressing their satisfaction with Murphy's account of his handling of the

⁶⁹³ Maximo Manzon to ACLU, 25 September 1934, ACLU Papers (Digitized Microfilm), vol. 758, 58.

⁶⁹⁴ Ibid.

⁶⁹⁵ Radiogram from ACLU to Governor-General Frank Murphy, 28 September 1934, ACLU Papers (Digitized Microfilm), vol. 758, 59.

⁶⁹⁶ Governor-General Frank Murphy to Roger Baldwin, 2 October 1934, ACLU Papers (Digitized Microfilm), vol. 758, 59.

incident.⁶⁹⁷ They appear to have done so on no more of a basis than the word of the governor-general.

The second incident was the suppression of the Philippine-based Sakdalista opposition party. In May 1935, a violent uprising, possibly involving as many as sixty thousand partisans, had occurred throughout at least fifteen towns and villages throughout Laguna, Cavite, and Bulacan Provinces and was eventually violently suppressed by the Philippine Constabulary – ending with the loss of 59 lives.⁶⁹⁸ Rejecting the substance of the Tydings-McDuffie Independence Act, and demanding complete and unequivocal Philippine independence, for two days Sakdalista partisans seized colonial government buildings and obstructed communication and travel.⁶⁹⁹ As this incident was the largest uprising since the Philippine War itself, it garnered a great deal of coverage in the American press.⁷⁰⁰ This motivated the ACLU to inquire about it with Frank Murphy.⁷⁰¹ In reply, the governor-general asserted that there had been no such suppression, that he had already pardoned 74 participants – but not their leaders, whom he

⁶⁹⁷ Roger Baldwin to Governor-General Frank Murphy, 6 November 1934, ACLU Papers (Digitized Microfilm), vol. 758, 60.

⁶⁹⁸ Golay, *Face of Empire*, 340; Francia, *A History of the Philippines*, 174; Immerwahr, *How to Hide an Empire*, 166.

⁶⁹⁹ The name party's name itself had originated in the opposition newspaper, *Sakdal* – meaning 'to accuse. See: Richardson, "The Genesis of the Philippine Communist Party," 236; Daniel Immerwahr, "Philippine Independence in U.S History: A Car, Not a Train," *Pacific Historical Review* 91, no. 2 (2022): 230.

⁷⁰⁰ Immerwahr, "Philippine Independence in U.S history," 230; Samuel Weinman, "Behind the Sakdalista Uprising," 29 May 1935, *The Nation*, 29 May 1935, 625.

⁷⁰¹ Roger Baldwin to Governor-General Frank Murphy, 18 July 1935, ACLU Papers (Digitized Microfilm) vol. 862, 36.

claimed had incited the violence – and that the controversy had been greatly exaggerated.⁷⁰²

Baldwin responded satisfied, stating that he was “delighted to know that the facts are far more favorable to the government than I had supposed them to be even with you as the executive.”⁷⁰³ Therefore, once again, Baldwin demonstrated his propensity to be easily influenced by seemingly allied and sympathetic government officials. This was even more problematic as, by accepting the governor-general’s account, the ACLU were essentially providing a *de facto* vindication of it. And this was despite reporting that severe restrictions on free speech, assembly, and press had been key background contexts to the rising itself and that Governor-General Murphy himself had a great deal of responsibility for what occurred.⁷⁰⁴ There had then been substantial grounds for the ACLU to have taken a much more critical and focused interest into what occurred. However, given their lack of cultivation of firmly situated, non-state allies and contacts from within the Philippines, they had left themselves without any reliable counterpoints to Murphy’s response. As will be shown in Chapter 7, this was to contrast greatly with later events in Puerto Rico, where the ACLU did not hesitate to condemn colonial state abuses, even in spite of there being allied colonial state actors situated in key positions there as well. The key differential being

⁷⁰² Governor-General Frank Murphy to Roger Baldwin, 6 September 1935, ACLU Papers (Digitized Microfilm), vol. 862, 41.

⁷⁰³ Roger Baldwin to Governor-Governor Frank Murphy, 11 October 1935, ACLU Papers (Digitized Microfilm), vol. 862, 43.

⁷⁰⁴ Samuel Weinman, “Behind the Sakdalista Uprising,” 29 May 1935, *The Nation*, 29 May 1935, 625.

the presence of a relatively more robust set of locally based Puerto Rican allies and contacts who proved to be key in influencing the ACLU to take more direct action in seeking to provide a check to abuses by colonial state power.

Indeed, the Baldwin himself inadvertently acknowledged the compromised relationship that had emerged between the ACLU and the governor-general when he rebuked the Philippine-based lawyer Vincente Sotto for misrepresenting himself as the ACLU's representative in the islands.⁷⁰⁵ Baldwin emphasized that Sotto was not their representative, but merely a cooperating attorney. He proceeded on to explain that the ACLU “felt that anyone who would speak for us on occasion ought to be freed from partisan connections” and not “involved in politics.”⁷⁰⁶ Yet, as has been shown, the ACLU had hardly been consistent in their apparent commitment to nonpartisanship. And, indeed, recognizing their own contradictory conduct in this matter, Baldwin further qualified to Sotto that “[F]ailing that at the moment we must work through others” and acknowledged the fact that the organization had proceeded to “work directly through” Governor-General Frank Murphy, as they already had a past relationship with him.⁷⁰⁷ Baldwin himself had then inadvertently called attention to the deeply compromised nature of the relationship between the ACLU and the governor-general. He also conveyed the impression that the ACLU's civil

⁷⁰⁵ Vincente Sotto to Lucille Milner, 8 June 1935, ACLU Papers (Digitized Microfilm), vol. 862, 31.

⁷⁰⁶ Roger Baldwin to Vincente Sotto, 18 July 1935, ACLU Papers (Digitized Microfilm), vol. 862, 36.

⁷⁰⁷ Ibid.

liberties mandate was essentially one and the same as the interests of the most prominent colonial state actor in the Philippines at the time. This further provided evidence of an imperial imaginary that increasingly did not perceive of the unavoidable conflict of interest this relationship presented in the way of them providing a check on abuses of colonial state power.

As their relationship with Governor-General Murphy was vividly revealing, the ACLU's imperial imaginary was proving to be both a cause and consequence of their increased interactions with colonial state actors. That is, their increasing inability to see a conflict of interest in their cooperative relationships with colonial state actors, on the one hand, and their coming to increasingly, albeit intermittently, identify with the means, perspectives, and discourses of such actors, on the other, were becoming mutually reinforcing developments. That the influence of colonial state actors upon the imperial imaginary of the ACLU was increasingly discernable on the eve of the establishment of the Commonwealth of the Philippines lent an additional measure of uncertainty as to how the Union would approach the newly emergent polity. This was especially so given that complicated questions regarding Philippine governmental autonomy and independence would inevitably rise more to the fore now.

Commonwealth of the Philippines

In the fall of 1935, following the six months it had taken to draft a new constitution during the Constitutional Convention, took place the inauguration of the Commonwealth of the Philippines on November 15,

1935.⁷⁰⁸ Yet, as Leia Castañeda Anastacio has pointed out, continuity rather than change characterized the resulting governmental dispensation; especially as seen in the maintenance of a strong executive in the guise of the presidency that replaced the office of the governor-generalship.⁷⁰⁹ Following victory in the elections set out by the new constitution, Manuel Quezon took office as President of the Commonwealth. With the office of the governor-general duly dissolved, Frank Murphy took up the newly created position of U.S. High Commissioner. And while historians Paul Kramer and Daniel Immerwahr have cautioned against viewing the establishment of the Commonwealth as an earnestly committed to act of decolonization on the part of U.S. policy makers, it nonetheless established a newly autonomous and more comprehensively Filipino-governed polity; one that, as Alfred McCoy has pointed out, President “Quezon and his aides administered ... as if it would run full-term and yield a Republic.”⁷¹⁰

With the inauguration of the Commonwealth, how did this effect the ACLU’s interest and involvement in the Philippines? Did its establishment cause them to adjust their priorities, stances, and/or means? Relatedly, did it have any discernable influence upon their imperial imaginary? If any of the above, what were the consequences? While the establishment of the Commonwealth appears to have been regarded by the ACLU as a generally

⁷⁰⁸ Leia Castañeda Anastacio, *The Foundations of the Modern Philippine State: Imperial Rule and the American Constitutional Tradition in the Philippine Islands* (New York: Cambridge University Press, 2016): 249-50.

⁷⁰⁹ Anastacio, *The Foundations of the Modern Philippine State*, 257.

⁷¹⁰ Kramer, *Blood of Government*, 424; Immerwahr, “Philippine Independence in U.S History,” 4; Alfred W. McCoy, “Quezon’s Commonwealth: The Emergence of Philippine Authoritarianism.” In *Philippine Colonial Democracy*, ed. Ruby R. Paredes (New Haven: Yale University South East Asia Studies, 1988): 118

positive development, nevertheless, the continued existence of significant aspects of American control, presented the organization with additional challenges in terms of implementing a consistent approach. From this point on, their interest and involvement became more fleeting, with them no longer remaining heavily reliant upon either white American missionaries or their relationship with the former governor-general. What their sporadic interest and involvement did exhibit from this point on, though, was a tension that now hinged upon their nominal support for Philippine independence, on the one hand, and a continued pursuit of their metropolitan derived civil liberties commitments (i.e., freedom of speech, press, and assembly), on the other. The latter impulse periodically drew them to seek to constrain the autonomy of the now largely Filipino governed polity. It is argued that, on the occasions in which they sought the latter, they provided unwelcome reminders of what remained of American control and reinforced the ongoing colonial position of the Philippines within the empire.

It is further argued that the ACLU's imperial imaginary obscured from them the ways in which pursuit of their more universalist oriented, yet metropolitan rooted, civil liberties commitments in the Commonwealth might come into tension, if not outright conflict with their nominal support for full Philippine independence. The ACLU hence sought to keep abreast of, as well as consider and occasionally intervene in, what they deemed to be civil liberties matters of concern to them. In doing so then, their engagement with the Philippine Commonwealth starkly contrasted with their previous

involvement in Haiti. For (as demonstrated in Chapter 4) in that case, the ACLU proved to be more willing to compromise on their more customary civil liberties preoccupations for the sake of the restoration of autonomy to nominally sovereign Haitian state authorities. The explanation for this most likely lies in the distinction of the latter being part of the informal U.S. empire, while the Philippine Commonwealth remained, however now attenuated, within that of the formal sphere. This suggests that the ACLU had more come to internalize the formal and informal distinctions of the U.S. colonial empire by this point.

An early intimation of how the ACLU would engage with the Philippine Commonwealth occurred when, to coincide with the inauguration of the Commonwealth, the ACLU decided to urge their allies to do as they would and send cablegrams to President Manuel Quezon and High Commissioner Murphy, calling upon them to issue amnesties to all of those who had been convicted under the Sedition Act for nonviolent charges.⁷¹¹ Telegrams were accordingly sent onto President Quezon and Commissioner Murphy, signed by Baldwin and ACLU legal counsels Arthur Garfield Hays Jr. and Morris Ernst.⁷¹² The ACLU thereby signaled at the outset of the Commonwealth that, at the very least, they intended to maintain a generalized interest in the civil liberties situation and developments there.

⁷¹¹ ACLU Letter (Signed by Roger Baldwin), 29 October 1935, ACLU Papers (Digitized Microfilm), vol. 862, 45.

⁷¹² Telegram from ACLU to President Manuel Quezon, 30 October 1935, ACLU Papers (Digitized Microfilm), vol. 862, 46; Telegram from ACLU to High Commissioner Frank Murphy, ACLU Papers (Digitized Microfilm), 30 October 1935, vol. 862, 46.

Shortly thereafter, though, the ACLU were given significant cause for concern due to an early initiative announced by the Quezon administration: a program of compulsory military training. Modeled on the example of the Swiss citizen army, and aiming to train 40,000 Filipino conscripts a year over a ten year period, President Quezon had engaged in this project in consultation with advisor to the Philippine government, Major-General Douglas MacArthur.⁷¹³ It was to be MacArthur's responsibility to train and establish a reserve army capable of functioning as an effective deterrent to any potential invasions.⁷¹⁴ The ACLU's former Philippines-based correspondent, Harold Fey reached out to Baldwin to suggest that the ACLU should look into bringing this to the attention of the public at large, maybe even sending an open letter signed by some prominent figures to the Secretary of War – a suggestion to which Baldwin responded encouragingly.⁷¹⁵ For his part, Fey himself put together an article condemning the initiative in the pages of *The Nation*.⁷¹⁶ The ACLU went further and looked into challenging the very constitutionality of the compulsory military training program itself. In doing so, Baldwin reached out to attorney Kenneth Walser to have him look into seeing whether a constitutional test case could be organized, as “American courts have jurisdiction on constitutional question during the period of transition.”⁷¹⁷ Having done so, though, Walser was to

⁷¹³ Golay, *Face of Empire*, 351.

⁷¹⁴ Alfred W. McCoy, “Quezon's Commonwealth,” 141.

⁷¹⁵ Harold Fey to Roger Baldwin, 4 November 1935, ACLU Papers (Digitized Microfilm), vol. 862, 47; Roger Baldwin to Harold Fey, 8 November 1935, ACLU Papers (Digitized Microfilm), vol. 862, 51.

⁷¹⁶ Harold Fey, “Militarizing the Philippines,” *The Nation*, 10 June 1936, 736-737.

⁷¹⁷ Roger Baldwin to Kenneth Walser, 22 May 1936, ACLU Papers (Digitized Microfilm), vol. 952, 125.

confess to being at a loss as to what could be done to challenge the law in the courts as the U.S. Constitution, alongside the relevant Supreme Court precedents, suggested that the compulsory service law would hold up constitutionally.⁷¹⁸

While this consideration of challenging the compulsory service act came to naught, it nevertheless signaled that the ACLU were not content with solely monitoring developments in the Philippine Commonwealth but might be inclined to continue pursuing legal action there if deemed necessary and feasible. Left unacknowledged, though, was the fact that such an effort of constitutional challenge, however convincingly framed in civil liberties terms, would have entailed limiting the legislative and administrative autonomy of the now Filipino governed Commonwealth. And this impulse conveyed the impression that, as far as the imperial imaginary of the ACLU was concerned, for all their nominal support for independence, the Philippines itself remained a formal colonial possession of the United States. This was in plain contrast with their approach and orientation toward Haiti where, as was shown in Chapter 6, the ACLU were willing to quietly consent to suppression of the press so long as it had been initiated by local Haitian authorities, who were themselves as well, then nominally on the path to comprehensive sovereign independence.

⁷¹⁸ Kenneth Walser to Roger Baldwin, 23 May 1936, ACLU Papers (Digitized Microfilm), vol. 952, 126; Kenneth Walser to Roger Baldwin, 6 July 1936, ACLU Papers (Digitized Microfilm), vol. 952, 132.

Maybe most overtly highlighting their lack of clarity and consistency with respect to the Commonwealth's legislative and administrative autonomy, however, was their position regarding the issue of postal censorship of publications by the burgeoning polity. This was initially broached in September 1936 when Herbert Goldfrank of the American Friends of the Soviet Union reached out to inform them that the Philippines branch of their organization had their monthly publication, "Socialism Today," barred from the mails by the Director of Posts, and requested that they take the "necessary steps" to see that the publication's mailing privileges be restored.⁷¹⁹ Baldwin replied that, since the establishment of the Commonwealth, the organization did not feel justified addressing Filipino government officials regarding issues within their jurisdiction.⁷²⁰ Only where "American authority" existed, Baldwin claimed, would they act, for to do otherwise would be "presumptuous" on their part.⁷²¹ Hence, did it appear that Baldwin had issued a firm and clear statement as to where the ACLU delimited the extent of their civil liberties mandate with respect to the Philippines Commonwealth – that is, where Filipino control had been established, they would defer to their administrative and legislative prerogatives.

But, almost as if to further underline the ACLU's continued uncertainty, lack of consistency, and conflicting impulses with respect to the

⁷¹⁹ Herbert Goldfrank to ACLU, 28 September 1936, ACLU Papers (Digitized Microfilm), vol. 952, 149.

⁷²⁰ Roger Baldwin to Herbert Goldfrank, 1 October 1936, ACLU Papers (Digitized Microfilm), vol. 952, 150.

⁷²¹ Ibid.

Philippine Commonwealth, when they were again contacted during the next year about the mail ban on the “Socialism Today,” they responded much more cooperatively and eagerly. This time, they were contacted by the Philippine Socialist Party leader, Pedro Abad Santos, who asked if they could use whatever influence they had with President Quezon to see if they could convince him to have the ban lifted.⁷²² ACLU counsel A.L. Wirin responded that they would look into it and maybe even try to get together a delegation to approach Quezon.⁷²³ In fact, Wirin was even to go so far as to contact ACLU general counsel Morris Ernst about trying to get a potential test case programmed.⁷²⁴ However, upon Santos’ reply that, as a lawyer himself, he neither had any faith in the Philippine courts nor could afford a Supreme Court appeal, Wirin accepted his judgement with disappointment.⁷²⁵ Nonetheless, while not resulting in a tangible effort to challenge the Commonwealth’s exercise of postal censorship, the fact that serious consideration had been given to doing so vividly conveys the very mixed signaling by the ACLU and blurred perception of their imperial imaginary regarding the purported demarcation of their civil liberties mandate toward the Commonwealth.

⁷²² Pedro Abad Santos to ACLU (May 8, 1937), ACLU Microfilm, Volume 1062, p. 74; Ken Fuller, *Forcing the Pace: The Partido Komunista ng Pilipinas: From Foundation to Armed Struggle* (Quezon City: University of the Philippines Press, 2007): 96.

⁷²³ A.L. Wirin to Pedro Abad Santos, 26 May 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 74.

⁷²⁴ A.L. Wirin to Morris Ernst, 27 May 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 75; A.L. Wirin to Conrado Benitez, 16 June 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 75.

⁷²⁵ Pedro Abad Santos to A.L. Wirin, 21 June 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 76; A.L. Wirin to Pedro Abad Santos, 9 July 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 76.

Where the ACLU did feel confident and consistent was with respect to U.S. federal executive based appointments to the Philippine Commonwealth. When question of the nomination for Murphy's former position of High Commissioner of the Philippines arose in early 1937, the ACLU were unhesitant about publicly opposing the nominee, former Governor of Indiana Paul McNutt. In the communications they sent to U.S. Senators, they did so on the grounds that throughout his tenure as governor, McNutt had denied labor rights through martial law and had demonstrated an overall militaristic attitude.⁷²⁶ While their opposition failed to prevent McNutt's appointment, it is notable that they at least did so in this case with a clarity and consistency of approach and purpose that contrasted starkly with how they had otherwise engaged with the issues emanating from the Philippines during Commonwealth period.

Looming War and the Authoritarian Drift of the Quezon Administration

With the Japanese invasion of China in 1937, the threat of war came to unavoidably hover over all Philippine affairs. In response, the Quezon administration sought to keep the Philippines from being drawn into conflict with Japan.⁷²⁷ Recognizing the inadequacy of the MacArthur's defense plan, President Quezon himself decided to engage in discreet diplomacy with

⁷²⁶ Telegram from ACLU (Signed by Harry Ward, Arthur Garfield Hays and Roger Baldwin) to U.S. Senate, 23 February 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 80.

⁷²⁷ Karnow, *In Our Image*, 276; Immerwahr, *How to Hide an Empire*, 162-163.

Japan to manage their relations – little assurance resulted from this effort.⁷²⁸

The Philippines' position was doubly vulnerable as Washington's policy toward Japanese aggression was outside of their control. Complicating matters further was the fact that the rising tensions with Japan were also becoming the grounds upon which U.S. based, unapologetic imperialist advocates were emphasizing the apparent need to retain U.S. rule over the Philippines, possibly even rescind the American commitment to extending independence.⁷²⁹ This emerged not only from familiar imperial apologists and Philippines-based sugar exporters, but was also in large part due to the realization that the Philippines possessed minerals essential for steel production that would be of vital importance for a potentially impending war.⁷³⁰

Alongside his efforts to navigate these tumultuous geopolitical circumstances, it became increasingly evident that President Quezon himself was bristling under his six year term limit as stipulated in the Commonwealth constitution.⁷³¹ As a report in *The Nation* asserted in early 1937, it was evident that Quezon was “erecting the framework of dictatorial power.”⁷³² These efforts began to raise concerns, both within the Philippines

⁷²⁸ Golay, *Face of Empire*, 392.

⁷²⁹ Immerwahr, “Philippine Independence in U.S history,” 231; Golay, *Face of Empire*, 370-379.

⁷³⁰ Megan Black, *The Global Interior: Mineral Frontiers and American Power* (Cambridge: Harvard University Press, 2018): 75-76; Golay, *Face of Empire*: 370-379.

⁷³¹ Ibid., 387

⁷³² James S. Allen, “Manuel Quezon – Philippine Dictator,” *The Nation*, 20 March 20, 1937, 321.

and the U.S. mainland, as to the direction that Philippine politics was heading in.

Given these developments and increasing geopolitical tensions, how did the ACLU continue to engage with the Philippines? The ACLU's interest toward the Philippine Commonwealth continued to be characterized by an inconsistency of approach and signaling. However, from their perspective, one fortuitous development did arise. In the fall of 1938, a R. Marino Corpus contacted the ACLU to inform them that he was the secretary treasurer of a newly formed group calling themselves the Civil Liberties Union of the Philippines (or C.L.U. of the Philippines).⁷³³ While the organization did not pursue direct affiliation with the ACLU, they did request pamphlets, reports, and additional details from the ACLU to assist them in setting up an organization that had been inspired to some extent by the example of the Union itself.⁷³⁴ They nonetheless did hold out hope for "collaboration in any matter affecting civil liberties" in the future.⁷³⁵ Baldwin responded encouragingly to this Filipino led initiative and provided the relevant requested material.⁷³⁶ Thus had the ACLU seemingly attained just the sort of firmly locally based, allied non-state Philippine actor that had so eluded them up until this point – and no less than in the form of an independently organized civil liberties organization at that.

⁷³³ R. Marino Corpus to ACLU, 25 September 1938, ACLU Papers (Digitized Microfilm), vol. 2053, 18.

⁷³⁴ Ibid.

⁷³⁵ Ibid.

⁷³⁶ Roger Baldwin to R. Marino Corpus, 28 October 1938, ACLU Papers (Digitized Microfilm), vol. 2053, 18.

How did the relationship between the ACLU and the C.L.U. of the Philippines develop from this initial contact on? The C.L.U. of the Philippines proceeded on to forward updates, documentation, and clippings on potentially relevant issues to the ACLU. Their regular, consistent, and extensive reports and other correspondence made an increasingly favorable impression upon the ACLU. So much so, in fact, that they even managed to eventually convince Baldwin to intervene on behalf of the ACLU on what, at least according to their own stated standards, might otherwise have been regarded as an internal Philippines matter.⁷³⁷

When President Quezon's *Nacionalista* Party had bundled a series of constitutional amendments into one for the purposes of an upcoming plebiscite, this had garnered a good deal of criticism, in particular from the newspaper *The Tribune*, as a cynical and expedient measure by the party to further consolidate their power.⁷³⁸ The *Nacionalista* dominated Philippine Assembly responded by passing a resolution against the *Tribune* and fellow publication the *Vanguardia* (both of whom shared the same ownership), which ended up resulting in public apologies from both newspapers.⁷³⁹

In response to this incident, the C.L.U. of the Philippines publicly condemned not only the Philippines Assembly for threatening the press, but

⁷³⁷ R. Marino Corpus to Roger Baldwin, 4 April 1940, ACLU Papers (Digitized Microfilm), vol. 2250, 104-105.

⁷³⁸ These amendments would have permitted the reelection of the incumbent Philippine President, the reestablishment of a Philippine Senate, an increase in the salaries of members of both houses, and an increase of the total number of elected assemblymen. The package of amendments was subsequently endorsed in the plebiscite held in June. See: R. Marino Corpus to Roger Baldwin, 4 April 1940, ACLU Papers (Digitized Microfilm), vol. 2250, 104-105; Golay, *Face of Empire*, 389, 397.

⁷³⁹ R. Marino Corpus to Roger Baldwin, 4 April 1940, ACLU Papers (Digitized Microfilm), vol. 2250, 104-105

also both newspapers for issuing their apologies.⁷⁴⁰ The C.L.U of the Philippines forwarded on extensive documentation on the matter, including ongoing news coverage, to the ACLU.⁷⁴¹ Their ample documentation on the incident convinced Baldwin to issue a rebuke to the Speaker of the Philippines Assembly. He asserted that the Assembly's resolution represented an illegitimate interference with functioning of the free press.⁷⁴² It is notable that within the letter, entrusted to the C.L.U. of the Philippines to issue, Baldwin implicitly acknowledged that they were effectively contradicting their nominal policy that they did not intervene on matters falling within the jurisdiction of the Filipino state actors. This statement had the further distinction of also representing the first time that the ACLU had so directly and overtly challenged the *Nacionalista* Party in its conduct.

Their willingness to intervene in this matter indicated that now that the ACLU had a firmly Philippine-based contact – one presumably as committed to civil liberties as they were – they were likely more able and willing to intervene in internal Commonwealth matters to provide a check to abuses of state authority. There nonetheless is something of an irony to be observed in the fact that they were now doing so with respect to a Filipino governed polity nominally approaching independence. The contrast between their interactions here and those during the tenure of Governor-General Murphy are stark and unavoidably lend something of an additional racial

⁷⁴⁰ Ibid.

⁷⁴¹ Ibid.

⁷⁴² Roger Baldwin to Speaker of Philippine National Assembly, 13 May 1940, ACLU Papers (Digitized Microfilm), vol. 2250, 107.

inflection, even if inadvertently, to such attempts on their part to check abuses of colonial state authority.

The fact that they were seemingly now more willing to challenge the administrative and legislative autonomy of the *Nacionalista* dominated government served to further underline the dormant tension of their approach to the Commonwealth. As noted, the ACLU had not adeptly threaded the needle between their purported respect for the autonomous development of the Commonwealth on its path to independence, on the one hand, and their efforts to provide a check to abuses of state power in the realm of civil liberties, on the other. Furthermore, in being so inconsistent and uncareful in their approach, there was the risk that their criticisms of Commonwealth governance might provide aid or encouragement to the demands of American imperialist elements they presumably opposed.

As discussed earlier, by this time voices from within the United States had become increasingly vocal in expressing their skepticism, and even outright hostility, to the notion of granting independence to the Philippines, irrespective of the explicit American legislative commitment.⁷⁴³ That the ACLU's positions and engagement with the Philippines might play into the hands of those calling for the continued maintenance of American imperial control over the Philippine Islands might have given pause to their approach, especially given their nominal support for Philippine independence. The fact that the ACLU were not wary of being associated with such elements spoke

⁷⁴³ Immerwahr, "Philippine Independence in U.S History," 8-9.

to the consequences of an imperial imaginary now long conditioned from their previous interventions in the colonial sphere in pursuit of their civil liberties commitments. Additionally, given this broader context, there was an increased possibility that their ensuing communications and conduct with respect to the Philippine Commonwealth might now inadvertently come more to reinforce the colonial status of the islands within the U.S. empire.

The tensions and conflicting impulses of the ACLU toward the Philippine Commonwealth were most exemplified in a series of communications they issued in 1940, all a mere matter of months apart, regarding the administration of President Manuel Quezon. The first of which was in response to those increasingly vocal American voices who questioned and/or opposed extending full independence to the Philippines. In February the ACLU issued a press release asserting their “whole-hearted endorsement” of President Quezon’s pledge that reaffirmed a commitment to the attainment full Philippine independence by 1945. Qualifying that while “[T]he right of a people to determine its own political status” is “not specifically within our charter of civil liberties” it is nonetheless “implied in our whole philosophy and outlook.”⁷⁴⁴ The ACLU still made a late, if by this point unconvincing, gesture of relating their civil liberties conception and mandate with self-determination and independence. They went on to further promise that they would proactively oppose “any movement or attempts to compromise the pledge made to the Philippines” by the United States.⁷⁴⁵ Yet,

⁷⁴⁴ ACLU News Release, 2 February 1940, ACLU Papers (Digitized Microfilm), vol. 2250, 111.

⁷⁴⁵ Ibid.

even though this statement represented a robust expression of support for Philippine independence on their part, a good deal of their own advocacy and conduct regarding the Commonwealth could be interpreted as compromising that very “pledge” made to the Philippines. None more so than when they considered legal action that sought to constrain the autonomy the emergent polity.

Accordingly, it took merely a matter of months before they again conveyed the contradictory tensions of their nominal commitment to independence and their continued concern about the civil liberties situation of the islands. This stemmed from the fact that the ACLU had become increasingly concerned about reports of President Quezon’s attempt to gain emergency powers from the Philippine Assembly as a purported precautionary measure in the event of conflict with Japan.⁷⁴⁶ Particularly concerning had been a speech given by Quezon at the University of the Philippines in which he attacked the very notion of having a political opposition and called for restrictions upon personal freedom.⁷⁴⁷

In response to these developments, the ACLU decided to issue a public letter to President Quezon highlighting their worries about what appeared to be the increasingly anti-democratic and authoritarian drift of his

⁷⁴⁶ “Two-party Attack Pushed by Quezon,” Clipping from *New York Times*, 20 July 1940, ACLU Papers (Digitized Microfilm), volume 2250, 112; “Quezon Demands Economic Powers,” Clipping from *New York Times*, 20 July 1940, ACLU Papers (Digitized Microfilm), vol. 2250, 112.

⁷⁴⁷ “Two-party Attack Pushed by Quezon,” Clipping from *New York Times*, 20 July 1940, ACLU Papers (Digitized Microfilm), volume 2250, 112; “Quezon Demands Economic Powers,” Clipping from *New York Times*, 20 July 1940, ACLU Papers (Digitized Microfilm), vol. 2250, 112; McCoy, “Quezon’s Commonwealth,” 147.

administration, and called for a reversal of these tendencies.⁷⁴⁸ Within which they made the assertion that after the many years of “association” with the U.S. there was the reasonable expectation that “the methods of political democracy would have become firmly implanted in Philippine practice,”⁷⁴⁹ This notion of “political democracy” being “implanted” in the Philippines, betrayed something of their imperial imaginary at the time. It implied that the Philippine Commonwealth and its political leadership were somehow failing to meet a kind of colonial political capacity criteria – a capacity criteria, for that matter, which bore a resemblance to that which had arose (as seen in Chapter 5) in the exchanges between Baldwin and U.S. Virgin Islands Governor Lawrence Cramer. Such a potential failure of democratic implantation seemingly called into question the very wisdom of Philippine independence itself. They then proceeded on to conclude with the implicit threat that they hoped that it would not be necessary for them to assist in appeals to U.S. federal court due to an “abrogation of civil liberties” stemming from such “emergency powers.”⁷⁵⁰ The ACLU then once again signaled their willingness to seek to limit, via legal action, the autonomy of the Commonwealth, that is, a polity theoretically in the final stages of its transition to full sovereign independence. This communication was even more notable due its having been directed at the polity’s nominal head of state.

⁷⁴⁸ ACLU (signed by Roger Baldwin, John Haynes Holmes, and E.A. Ross) to President Manuel Quezon, 26 August 1940, ACLU Papers (Digitized Microfilm), vol. 2250, 118.

⁷⁴⁹ Ibid.

⁷⁵⁰ Ibid.

Among the most notable aspects of the ACLU publicly issuing such a threat of legal action (however unlikely of actual implementation or success) to the Commonwealth's leading political figure was that this provided an unwelcome reminder of just how provisional and fragile the autonomy and goal of full independence remained for the Philippine Commonwealth. This is even more striking when noting that, in so doing, they do not seem to have recognized that they might be providing indirect aid to unapologetic imperialists seeking to hinder or deny Philippine independence (i.e., those very same elements that, earlier in the year, the ACLU had asserted that they would oppose). And while the authoritarian drift of Quezon's administration was plainly a concern from a civil liberties standpoint, the fact that they did not solely protest these developments but promised to appeal to the authority of an overriding metropolitan institution – the Supreme Court – betrayed an imperialistic impulse on their part, one that operated through the frame of a metropolitan derived universalistic commitment. This was an impulse, if successfully followed through on, likely to reinforce, in both appearance and substance, the ongoing colonial relationship between the Commonwealth and U.S. metropole. The fact that they did not appear to be aware of such implications emanating from their dispatches only further spoke to the blurred, inconsistent, and even occasionally contradictory perceptions and impulses their imperial imaginary had regarding the Philippine Commonwealth.

Nor did the imperialistic undertone and implications of their dispatches and stances toward the Commonwealth go unnoticed. For in the

very next year, just as war between Japan and the United States appeared imminent, President Quezon made an incendiary speech against those he deemed responsible for constraining his ability to adequately prepare for a potential conflict with Japan – among whom he included the ACLU, as well as unapologetic American imperialists.⁷⁵¹ He asserted that such actors had convinced President Roosevelt to constrain the Commonwealth President's ability to assume the necessary emergency power for the preparation of civilian defense of the Philippines.⁷⁵² Therefore, President Quezon associated the ACLU with explicitly imperialist actors in the apparent restriction of his administration's autonomy. And while it is more than likely that Quezon cynically did so, this did not negate the fact that (as discussed) the ACLU had left themselves open to the charge due to much of the substance, tenor, indelicacy, and overall inconsistency of their dispatches and conduct toward the Philippine Commonwealth.

In response, Baldwin publicly denied that the ACLU had interfered with the defense program, stressing that they had only concerned themselves with the potential suspension of civil and political rights.⁷⁵³ He also asserted that in their previous communications between the organization and the Quezon administration, they had maintained a clear the demarcation between what were issues of civil rights/liberties and what

⁷⁵¹ "Quezon Accuses U.S. on Defenses," Clipping from *New York Times*, 29 November 1941, ACLU Papers (Digitized Microfilm), vol. 2346, 59.

⁷⁵² Ibid.

⁷⁵³ "Quezon's Charges Denied by Baldwin," Clipping from *New York Times*, 30 November 1941, ACLU Papers (Digitized Microfilm), vol. 2346, 59.

were executive prerogatives in security matters.⁷⁵⁴ In actual fact, as already discussed in both this and the previous section, the ACLU had not maintained a consistent demarcation between what did and did not fall within their civil liberties mandate. Nor had they settled into a fully consistent line of policy and/or conduct regarding where the jurisdictional and/or conceptual lines of their mandate lay with respect to the Commonwealth.

Such a clarity and consistency of approach would have been critical for them to prevent their more metropolitan oriented civil liberties commitments to checking abuses of state power and supporting Philippine independence from coming into tension, in both appearance and substance, with one another. That they had neglected to do so was most likely a byproduct of an imperial imaginary that had blurred and inconsistent perceptions of the Philippine Commonwealth. Yet however blurred may have been their perception of the Philippine Commonwealth, it is what remained indicatively colonial of the latter's relations with the U.S. metropole that appears to have been most pronounced in the ACLU's imperial imaginary. And in this, the stark contrast of their imaginary and resulting conduct toward contemporaneous Haiti unavoidably comes to mind. For in the case of latter, the ACLU eventually gave way on their more metropolitan derived civil liberties preoccupations to unequivocally endorse full sovereign independence for Haiti. Whereas in the case of the Philippines, the ACLU

⁷⁵⁴ Ibid.

appear to have never fully dispensed with an essentially colonial disposition toward the Commonwealth. This led them to continue to interest themselves in the civil liberties conditions there – even if it meant seeking to restrict the governing autonomy of the now Filipino governed polity. The very ambiguity of the status of the Commonwealth within the ACLU's imperial imaginary then contributed to a situation in which their impulse to secure civil liberties protections more often tended to trump, if not always in public pronouncements, then certainly in conduct, whatever measure of support for independence they provided. In doing so, the ACLU served most of all to reinforce the ongoing colonial subordination of the Philippines within the U.S. colonial empire.

How the increasing antagonism between the ACLU and the Quezon administration would have developed will remain unknown because on December 7 the long-feared war with Japan began with the invasion of the Philippines and attack on Pearl Harbor. What can be said with more certainty is that by the time of U.S. entry in the Second World War, the ACLU's purported dual commitments regarding the Philippines, that is, its pursuit of its civil liberties mandate to check abuses of state power, on the one hand, and its support for Philippine independence, on the other, had proven to be more awkward bed fellows than the ACLU had anticipated. And in this, their blurred and unsettled perceptions of the Philippine Commonwealth within their imperial imaginary only served to further exacerbate the tension and contradictions of their resulting conduct.

Conclusion

Chapter 6 demonstrated that, with respect to the Philippines in the early 1930s, the ACLU did not focus upon the issue of Philippine independence but were instead more concerned with a set of cases involving members of the Philippine Communist Party, the PKP, who had been charged under Philippine Sedition Act in 1931. This chapter showed that the ACLU decided to provide legal defense aid less with the purpose of securing relief for the PKP defendants and more out of a desire to challenge the constitutionality of the Sedition Act and, accordingly, the doctrine of incorporation. This chapter argued that in their effort to do so, the ACLU never adequately overcame the difficulties that their great distance from the Philippines presented. To compensate for this, the ACLU came to rely upon the services of temporarily based, white American missionaries. This chapter argued that their imperial imaginary inhibited them from recognizing the inherent limitations and racially prejudicial biases likely to ensue from relying upon so narrow a base of contacts as both their main intermediary with respect to the sedition cases and as their primary source of general updates and information. By coming to rely upon such actors, the ACLU came to reinforce their disconnect with local Filipino actors and were hence left without essential Filipino perspectives and representation.

This chapter further demonstrated and argued that the ACLU only came to exacerbate their lack of representation and/or contacts among the Philippine islands by coming to rely upon Governor-General Frank Murphy as their main contact and interlocutor from 1933. As their appeal effort

faltered, the ACLU decided to abandon the endeavor upon the news of Murphy's appointment. In doing so, this chapter argued that the ACLU came to engage in a working relationship much more problematic in terms of their foundational civil liberties commitments than their former reliance on missionaries. For in coming to rely upon the governor-general as their primary intermediary with the Philippines, the ACLU came to engender a near unavoidable conflict of interest regarding their commitment to civil liberties as a check to abuses of state power. It was the contention of this chapter that this was largely a product of their imperial imaginary that by this time had become much more acclimated to colonial state institutions, actors, and discourses.

This chapter further demonstrated that the inauguration of the Philippine Commonwealth in 1935 presented the ACLU with newfound problems in terms of developing and maintaining a consistent position and approach to which. Chapter 6 argued that this stemmed from the fundamental tension between the ACLU's ostensible support for full Philippine autonomy and independence, on the one hand, and their more metropolitan derived civil liberties commitments, on the other. This was because their latter set of commitments periodically compelled them to seek to restrict the legislative and administrative autonomy of the Commonwealth. This chapter further argued that this latter impulse was largely the product of an imperial imaginary that clouded their perception of the tensions and contradictions otherwise evident in their messaging and conduct toward the Commonwealth. This inhibited them from recognizing

that the ways in which they intermittently pursued their civil liberties mandate toward the Philippine Commonwealth ended up providing inopportune reminders of just how insecure the U.S. commitment to full Philippine independence was. By so doing, the ACLU indirectly reinforced an ongoing colonial conception of the Philippine Commonwealth within the U.S. empire.

Chapter 7: Defense of Civil Liberties in Puerto Rico, 1930-1941

Introduction

With the killing of Police Commissioner Francis E. Riggs by Nationalist Party members Hiram Rosado and Elías Beauchamp on February 23, 1936, tensions that had long been escalating between the pro-independence Puerto Rican Nationalist Party and colonial state authorities had come to a head. Rosado and Beauchamp were apprehended shortly thereafter by the Puerto Rican police and shot dead while in custody.⁷⁵⁵ The U.S. Justice Department then moved decisively against the Nationalist leadership itself.⁷⁵⁶ This led to charges of conspiracy to overthrow the government being brought against such prominent Nationalist Party figures as Pedro Albizu Campos, Juan Antonio Corretjer, Luis Velazquez, and six other members of the party.⁷⁵⁷

These cases marked the first of the ACLU's tangible engagement with Puerto Rico. Given this late engagement with Puerto Rico (at least as compared with their engagements elsewhere in the U.S. colonial empire) this raises the question: how and why did the ACLU interest and involve themselves in Puerto Rico during the 1930s? How did they address the issue of independence for Puerto Rico as it increasingly rose to the fore throughout the course of the decade? Of what significance was their imperial imaginary throughout their involvement? What were the results and

⁷⁵⁵ Johnson, *Ernest Gruening and the American Dissenting Tradition*, 132.

⁷⁵⁶ Ayala and Bernabe, *Puerto Rico in the American Century: A history Since 1898*, 110.

⁷⁵⁷ Meyer, "Pedro Albizu Campos, Gilberto Concepción de Gracia, and Vito Marcantonio's Collaboration in the Cause of Puerto Rico's Independence," 92; Ayala and Bernabe, *Puerto Rico in the American Century*, 110.

consequences of their engagement with Puerto Rico? This chapter shows that, for the first half of the decade, the ACLU only interested themselves in Puerto Rico sporadically and fleetingly; mainly by reaching out to contacts to express sympathy for the cause of Puerto Rican independence. Yet no tangible support followed on from these communications.

By the mid-1930s, in the wake of the escalating hostilities between the colonial authorities and the militantly pro-independence Nationalist Party, the ACLU took a more determined interest in Puerto Rico. In doing so, they not only initially sought to work through allied New Deal era state actors but also came to proffer legal defense aid to prominent Nationalist Party members. As this chapter shows, unlike their collaborative, even deferential, relations with colonial state authorities in post-U.S. Navy regime Virgin Islands and pre-Commonwealth Philippines, the ACLU proved more willing to encumber contentious and even antagonistic relations regarding Puerto Rico. It is argued here that this was not only a product of the severity of the incidents that arose but also due to the additional local Puerto Rican contacts the ACLU had there who provided a countervailing influence upon their imperial imaginary.

This chapter further demonstrates that by the end of 1936, the ACLU began to develop a proactive civil liberties initiative regarding Puerto Rico. This entailed the formation of an investigatory commission that would travel to Puerto Rico to focus upon violations of civil rights and liberties within the island colony. This was eventually realized in the guise of the Hays Commission, formed in the aftermath of the 1937 Ponce massacre – the

most violent episode in Puerto Rico to date to under American colonial rule. And while the Hays Commission's investigation and final report garnered a great deal of attention and coverage – as well as making relations between the ACLU and colonial state actors much more difficult– it ultimately had little tangible impact upon improving civil liberties conditions there.

In the final years of the decade, the ACLU's interest and efforts toward Puerto Rico were largely channeled through two non-state enterprises associated with the organization: the Puerto Rican Civil Liberties Association (PRCLA) and the Committee for Fair Play Puerto Rico. The Puerto Rican based PRCLA, though, proved short-lived and dissolved itself following a successful legal defense endeavor in cooperation with the ACLU. This left the U.S. metropolitan-based Committee for Fair Play to Puerto Rico as the ACLU's sole significant initiative regarding Puerto Rico. Out of an apparent desire to avoid accusations of partisan bias, the Committee intentionally sought to avoid association with any of the political formations situated within Puerto Rico. However, this stance – in combination with the dissolution of the PRCLA – resulted in the Committee suffering from a stark lack of membership, representation, and/or input by Puerto Rican based actors. This meant that whatever program they developed and means engaged in would be the products of metropolitan based imperial imaginaries operating without feedback from actors based in Puerto Rico. This chapter shows that by the outbreak of the Second World War, the ACLU and Committee for Fair Play had little to show for their efforts and were left unsure of how to proceed. Given that the civil liberties provisions already present within the

Puerto Rican organic act had provided no protection against the colonial state actions directed against the Nationalist Party, this meant that the ACLU had essentially accommodated themselves to the ongoing particularistic and insecure civil liberties dispensation of Puerto Rico.

Puerto Rico Under U.S. Colonial Rule by 1930

Puerto Rico had been seized from Spain by the United States in the war of 1898. Unlike the Philippines, however, a violent independence struggle did not follow. While designated as an unincorporated territory, the beginnings of a circumscribed civilian rule followed the passage of the Foraker Act of 1900 – albeit with highly restricted Puerto Rican participation. Established were a governor, executive council, a Supreme Court, a non-voting Resident Commissioner in Congress (all appointed by the President), and an elective House of Delegates.⁷⁵⁸ Upon these grounds a limited party politics developed.⁷⁵⁹

In 1917, following the introduction of the contemporaneous devolutionary scheme introduced in the Philippines by the Wilson administration, the Foraker Act was replaced by the Jones Act, which extended American citizenship to those born in Puerto Rico, established a

⁷⁵⁸ Cesar J. Ayala and Rafael Bernabe, *Puerto Rico in the American century: A History Since 1898*, (Chapel Hill: University of North Carolina Press, 2007), 28.

⁷⁵⁹ Truman R. Clark, *Puerto Rico and the United States, 1917-1933* (Pittsburgh: University of Pittsburgh Press, 1975): 7-10.

Senate and made the resident commissioner elective.⁷⁶⁰ This new organic act also set out a bill of rights that included provisions protecting freedom of speech, the press and assembly.⁷⁶¹ By the 1920s the party political landscape of Puerto Rico had become split between the Union party, which sought to push autonomy to its furthest extent; the nominally pro-statehood (but in practice status-quo oriented) Republican Party; and the pro-labor but largely accommodationist Socialist Party.⁷⁶² It was to take the Great Depression to rupture this political status quo. The economic crisis, following on the heels of the devastation wrought by hurricane San Felipe Segundo in September 1928 (which destroyed 32 percent of the island's sugar crop), was especially severe for Puerto Rico, causing mass unemployment and devastated the island's largely sugar based economy.⁷⁶³ It was in the midst of the upheaval and suffering which ensued that questions about Puerto Rico's ongoing political status rose increasingly to the fore.⁷⁶⁴

Initial ACLU Interest in Puerto Rico

How and to what purpose did the ACLU first interest and involve themselves in Puerto Rico? As acknowledged in Part I, the ACLU did not involve themselves in Puerto Rico during the 1920s. This was most likely due to

⁷⁶⁰ Pedro A. Cabán, *Constructing a Colonial People: Puerto Rico and the United States, 1898-1932* (Boulder: Westview Press, 1999): 205-209; Ayala and Bernabe, *Puerto Rico in the American Century*, 57-59.

⁷⁶¹ Cabán, *Constructing a Colonial People*, 205.

⁷⁶² Ayala and Bernabe, *Puerto Rico in the American Century*, 73.

⁷⁶³ Clark, *Puerto Rico and the United States, 1917-1933*, 114; Arturo M. Carrión, *Puerto Rico: A Political and Cultural History* (New York: W.W. Norton & Company, 1983): 212, 216.

⁷⁶⁴ Carrion, *Puerto Rico*, 212.

their noted lack of resources, finances, and personnel during the organization's first decade. There is also reason to believe that the seeming surface level of stability in Puerto Rico over the course of the 1920s might have facilitated a complacent orientation on the part of the ACLU. As historian Truman R. Clark has indicatively described the period between 1917 and 1933, it was a "time of drift" for Puerto Rico.⁷⁶⁵ For their part, the ACLU later claimed that the rights within Puerto Rico had been "well maintained in the past."⁷⁶⁶ Such a perception then likely encouraged a lack of concern about Puerto Rico over this period on their part.

It was not until late 1931 that the ACLU demonstrated any real interest in Puerto Rican developments. For the first half of the decade, their interest was only sporadic, minimal, and mostly regarded the issue of Puerto Rican independence. As discussed in the opening section, independence had only emerged as a prominent issue in Puerto Rico in the aftermath of the San Felipe Segundo hurricane and the onset of the Great Depression. It is altogether plausible that the New York based ACLU first came upon the issue from among the robust community of Puerto Ricans based in the city.

Potentially also of relevance (as shown in Chapter 4) was the fact that Baldwin around this time had managed to push the ACLU to adopt an anti-imperialist stance toward the occupation of Haiti by the early 1930s. It is then not altogether surprising that he might have again sought to do so

⁷⁶⁵ Clark, *Puerto Rico and the United States*, 166.

⁷⁶⁶ "Civil Liberties in American Colonies: A Survey of Interference with Civil Rights of Natives; and of the Forms of Control; with Proposed Remedies," March 1933, ACLU Records and Publications. Reel 91, 18.

within the U.S. formal empire around the same time. And while – as shown in Chapters 3 and 6 – Baldwin had ceased attempting to push the ACLU to adopt an anti-imperialist and expressly pro-independence stance regarding the Philippines during this period, he nonetheless made discreet overtures indicating that the ACLU intended to lend support to independence efforts for Puerto Rico. This, however, was largely done via private communications and could in no way be mistaken for the assertively anti-imperialist orientation they had to adopted toward Haiti.

The first example of which occurred when Roger Baldwin contacted the leader of the Nationalist Party, Pedro Albizu Campos, in the fall of 1931. The Nationalist Party, had been founded in 1922 by members of the Union Party who had withdrawn to form a separate party wholly committed to the cause of Puerto Rican independence.⁷⁶⁷ While small in number, they had increasingly gained a great deal of attention due to the highly vocal and militant posture of their demands for immediate independence.⁷⁶⁸ By the time Baldwin had reached out to Albizu Campos, the party was on the cusp of abandoning electoral politics entirely the following year and concentrating on public education and advocacy on behalf of Puerto Rican independence, as well as upon the drilling and discipline deemed necessary to secure such.⁷⁶⁹ Baldwin contacted Albizu Campos to inform him that he had heard

⁷⁶⁷ Thomas Mathews, *Puerto Rican Politics and the New Deal* (Gainesville: University of Florida Press, 1960): 16.

⁷⁶⁸ Immerwahr, *How to Hide an Empire*: 145.

⁷⁶⁹ Nelson A. Denis: *War Against all Puerto Ricans: Revolution and Terror in America's Colony* (New York: Nation Books, 2015): 38.

from friends about the Nationalist leader and his efforts on behalf of Puerto Rican Independence, of which, the ACLU were “in entire sympathy.”⁷⁷⁰ Baldwin added that if there was anything they could do to support this cause, they would gladly be of aid.⁷⁷¹ Hence, Baldwin plainly gave the impression to the Nationalist Party leader that the ACLU supported independence for Puerto Rico.⁷⁷² While nothing of substance resulted from this communication, it does seem to have initiated the first of further communications and interactions between the ACLU and prominent figures within the Nationalist Party.

In March of 1933, the ACLU issued their previously discussed pamphlet, “Civil Liberties in American Colonies.”⁷⁷³ Within it they expressed relative satisfaction with the general civil liberties situation of Puerto Rico as it then stood.⁷⁷⁴ They pointed out that “political and civil rights are guaranteed by the organic act.”⁷⁷⁵ Left unspoken, though, was the fact that these rights – which included free speech, press, and assembly provisions – were (like those stipulated in the U.S. Virgin Islands’ 1936 organic act) not constitutionally guaranteed but only legislatively based. It was only in the Puerto Rican section’s closing segment on proposed remedies that the topic of Puerto Rican independence was touched upon. For, as well as calling for greater autonomy being granted to the Puerto Rican people, they called for

⁷⁷⁰ Roger Baldwin to Pedro Albizu Campos, 30 October 1931, ACLU Papers (Digitized Microfilm), vol. 501, 250.

⁷⁷¹ Ibid.

⁷⁷² Ibid.

⁷⁷³ “Civil Liberties in American Colonies: A Survey of Interference with Civil Rights of Natives; and of the Forms of Control; with Proposed Remedies,” March 1933, ACLU Records and Publications. Reel 91, 16-19.

⁷⁷⁴ Ibid., 18.

⁷⁷⁵ Ibid., 18.

“[U]ltimate independence for the islands as demanded in the platforms of the leading political parties.”⁷⁷⁶ While notable as a public, if indirect, expression of support and sympathy by the ACLU for Puerto Rican independence (similar to that expressed in their entry on the Philippines), it could hardly be regarded as the same kind of assertive and unapologetic anti-imperialist position that they had contemporaneously adopted toward Haiti.

Later in the year, the ACLU again broached the topic of independence in response to an inquiry about Puerto Rico by one of their allies from their Haitian efforts, Dorothy Detzer of the Women’s International League for Peace and Freedom (WILPF). Baldwin stressed to Detzer that two initiatives should be taken: first, support ought to be given for the demands of Puerto Rican independence; second, support should be given for measures granting greater autonomy (i.e. an elected governor and locally appointed commissioner of education) as steps toward the end goal of independence.⁷⁷⁷ Therefore, Baldwin once again clearly indicated that the ACLU were eager and willing to back independence for Puerto Rico. Yet, while Baldwin was presumably suggesting that a kind of collaborative effort along the lines that the ACLU had engaged in with the WILPF regarding Haiti could be arranged with respect to Puerto Rico, nothing of substance emerged following this exchange either.

⁷⁷⁶ Ibid., 19.

⁷⁷⁷ Roger Baldwin to Dorothy Detzer, 20 November 1933, ACLU Papers (Digitized Microfilm), vol. 616, 103.

In fact, despite Baldwin's signaled intentions to aid the cause of Puerto Rican independence, nothing tangible appears to have been arranged or pursued by the ACLU. When in the spring of 1934, they were contacted by Nationalist Party member Filiberto Vazquez, Baldwin responded that, while he agreed with their demand for independence, unless "that campaign is interfered with by American officials, there is no action which the American Civil Liberties Union can officially take."⁷⁷⁸ It is of note that Baldwin was here now tempering, even seemingly reversing, their earlier enthusiasm for supporting Puerto Rican independence – now suggesting that they had come to adopt the very same narrow approach to Puerto Rican as they had toward the Philippines by the mid-1920s. It too is hardly without relevance that by the end of that same year the ACLU had effectively abandoned their assertive anti-imperialist stance regarding Haiti in the wake of the Good Neighbor Policy. Therefore, by 1934, the likelihood that the ACLU might expand their civil liberties conception and mandate to encompass an explicit anti-imperialist demand for independence within the U.S. formal colonial empire was greatly lessened. It nonetheless remained to be seen whether in Puerto Rico they might yet find cause to pursue their more metropolitan-rooted civil liberties commitments in Puerto Rico; either as an essential means by which peaceable change could be pursued or as a defense against abuses of colonial state authority.

⁷⁷⁸ Roger Baldwin to Filiberto Vazquez, 14 April 1934, ACLU Papers (Digitized Microfilm), vol. 758, 84.

The Nationalist Party Conspiracy Cases

By the mid-1930s tensions between the Nationalist Party members and the colonial authorities only further escalated.⁷⁷⁹ In early 1934 an immense agricultural strike spread to cripple island's sugar economy and led to a doubling of workers' wages. As the Nationalist Party had played a role in the strike, they now came under intense scrutiny by colonial authorities.⁷⁸⁰ Additionally exacerbating tensions was Albizu Campos' initiative in the same year to organize a paramilitary wing of the Nationalist Party, the Cadets of the Republic, whose membership took to wearing black shirts and the marching in military-style formations with wooden rifles.⁷⁸¹ Colonial authorities responded by significantly increasing the size of the Insular Police, placing suspected Nationalist Party members under constant surveillance, and imprisoning many under the charge of "incitement to riot."⁷⁸²

Did this escalation of antagonism between the colonial authorities and the Nationalist Party elicit a response by the ACLU? Despite two years of evident escalation, the ACLU did not take up any initiatives, nor even demonstrate much in the way of interest in these developments, aside from (the previously discussed) private expressions of sympathy with the cause of

⁷⁷⁹ Immerwahr, *How to Hide an Empire*, 147.

⁷⁸⁰ Denis, *War Against all Puerto Ricans*, 43.

⁷⁸¹ The wearing of black shirts represented the *luto*, or 'mourning' for Puerto Rico's colonial subordination. Gerald J. Meyer, "Pedro Albizu Campos, Gilberto Concepción de Gracia, and Vito Marcantonio's Collaboration in the Cause of Puerto Rico's Independence," *Centro Journal* XXIII, no. 1 (Spring, 2011): 89; Denis, *War Against all Puerto Ricans*: 37.

⁷⁸² Denis, *War Against all Puerto Ricans*, 43.

Puerto Rican independence.⁷⁸³ In fact, it was only in early 1936 that they finally addressed the worsening situation in Puerto Rico. This stemmed from a set of events set in motion by the killing of Police Commissioner Francis E. Riggs by Nationalist Party members Hiram Rosado and Elías Beauchamp on February 23, 1936. Rosado and Beauchamp were apprehended shortly thereafter by the Puerto Rican police and were shot to death while in custody.⁷⁸⁴ The Justice Department, already in the midst of conducting an investigation on the party, decided to move decisively against the Nationalist leadership itself.⁷⁸⁵ This led to charges of conspiracy to overthrow the government being filed by the U.S. Justice Department on April 4 against such prominent Nationalist Party figures as Albizu Campos, Juan Antonio Corretjer, Luis Velazquez, and six other members of the party.⁷⁸⁶

It was these events and developments that finally garnered the direct attention of the ACLU. A catalyst in spurring a response from them was the fact that the conspiracy charges fell within direct U.S. federal jurisdiction. This contrasted with the PKP sedition cases which, as discussed in the previous chapter, had been filed under Philippine colonial, not federal, law. This factor, alongside the fact that, unlike as was the case in the Philippines at that time, they had influential state actor contacts within the Roosevelt administration to call upon, plainly motivated a more immediate and direct

⁷⁸³ Roger Baldwin to Pedro Albizu Campos, 30 October 1931, ACLU Papers (Digitized Microfilm), vol. 501, 250; Roger Baldwin to Filiberto Vazquez, 14 April 1934, ACLU Papers (Digitized Microfilm), vol. 758, 84.

⁷⁸⁴ Johnson, *Ernest Gruening and the American Dissenting Tradition*, 132.

⁷⁸⁵ Ayala and Bernabe, *Puerto Rico in the American century: A history since 1898*, 110.

⁷⁸⁶ Meyer, "Pedro Albizu Campos, Gilberto Concepción de Gracia, and Vito Marcantonio's Collaboration in the Cause of Puerto Rico's Independence," 92; Ayala and Bernabe, *Puerto Rico in the American Century*, 110.

response on their part. Their first impulse then was to reach out and try work through state actor contacts they had previous history with. Once again, their imperial imaginary was by now so acclimated to such relations that they were not given pause to consider whether any potential conflicts of interest that might ensue from reaching out to such seemingly allied state actor contacts. Specifically, they reached out to DTIP director Ernest Gruening and Secretary of the Interior Harold Ickes. DTIP director Gruening proved to be wholly unsympathetic and of no aid in the matter; at the time he was preoccupied with his own agenda of trying to transform the Puerto Rican economy through the Puerto Rican Reconstruction Administration (PRRA) and had come to regard the Nationalist Party as a threat to these goals.⁷⁸⁷

In addressing Secretary Ickes, Baldwin expressed hope that the Nationalist prosecutions cases would be discontinued, even urging the Interior Secretary to bring his influence upon the Attorney General toward securing such an end.⁷⁸⁸ The ACLU then issued a press release on their communication to the Secretary of the Interior, underlining the fact that they had called for the dismissal of the indictments against the Nationalist Party members.⁷⁸⁹ When the notoriously prickly Ickes replied to Baldwin, he took exception with the fact that the ACLU had publicized the letter before he had an opportunity to reply, as well as with the notion that he was being called

⁷⁸⁷ Johnson, "Anti-imperialism and the Good Neighbour Policy," 102-103.

⁷⁸⁸ Roger Baldwin to Harold Ickes, 18 May 1936, ACLU Papers Microfilm, vol. 953, 10; Roger Baldwin to Harold Ickes, 6 July 1936, ACLU Papers (Digitized Microfilm), vol. 953, 15.

⁷⁸⁹ ACLU News Release, 9 July 1936, ACLU Papers (Digitized Microfilm), vol. 953, 16.

upon to dismiss the charges against the Nationalists.⁷⁹⁰ Ickes stressed that he headed an executive department that was entirely separate from the judicial process.⁷⁹¹ ACLU secretary Lucille Milner responded by clarifying that they had not actually called upon Ickes himself to dismiss the charges but only to use his influence to try and convince the Attorney General to pursue only criminal, and not political, charges.⁷⁹² While Secretary Ickes responded satisfied enough with the ACLU's explanation, he continued to differ on the wisdom of the prosecutions pursued.⁷⁹³

Therefore, as in the case of the Philippines following the appointment of Frank Murphy as Governor-General, when there was a former civil liberties ally in a position of authority and/or influence over a matter of concern in the colonial periphery, their response was to seek satisfaction through them. It is notable, however, that this also happened to be the first of more strained relations between the ACLU and otherwise more aligned and cooperative administration figures with respect to Puerto Rico. This intimated that the ACLU's imperial imaginary had not rendered them entirely compliant in their dealings with colonial state actors.

At the end of July, verdicts were handed down after a one-day trial for the Nationalist Party defendants, with Albizu Campos and his co-defendants all being found guilty. Their sentences varied from having to serve from six

⁷⁹⁰ Harold Ickes to Roger Baldwin, 22 July 1936, ACLU Papers (Digitized Microfilm), vol. 953, 21.

⁷⁹¹ Ibid.

⁷⁹² Lucille Milner to Harold Ickes, 30 July 1936, ACLU Papers (Digitized Microfilm), vol. 953, 23.

⁷⁹³ Harold Ickes to Roger Baldwin, 15 August 1936, ACLU Papers (Digitized Microfilm), vol. 953, 32.

to ten years in Atlanta penitentiary.⁷⁹⁴ The day after the verdicts were issued, Miguel Guerra-Mondragón, a Puerto Rican lawyer employed by the PRRA, contacted the ACLU to inform them of some highly concerning details regarding the trial itself.⁷⁹⁵ In particular, Guerra-Mondragón, stressed that the jury had been deeply prejudiced against the defendants and contained only two Puerto Rican members (the rest of which were white Americans), and called upon the ACLU to take up the appeal of the defendants' cases.⁷⁹⁶ Baldwin responded that their general counsel, Arthur Garfield Hays Jr., had agreed to do so and was going to offer the ACLU's services to the Nationalist defendants.⁷⁹⁷ In so doing the ACLU were then seeking to fulfill their civil libertarian role of providing a check on abuses of state power. The fact that the ACLU were willing to act here highlights the importance of colonial based contacts and allies of the kind and depth that they were so sorely lacking at the same time in the Philippines. For the presence of Guerra-Mondragón, alongside other Puerto Rican based contacts and allies, provided an essential countervailing influence upon the ACLU's imperial imaginary; an imaginary which, (as has been demonstrated in the preceding chapters) had been increasingly conditioned by their noted increasing reliance upon colonial state actors. Further facilitating a more proactive response on their

⁷⁹⁴ Meyer, "Pedro Albizu Campos, Gilberto Concepción de Gracia, and Vito Marcantonio's Collaboration in the Cause of Puerto Rico's Independence," 93.

⁷⁹⁵ Guerra-Mondragon was a political ally of Liberal Party leader Luis Munoz-Marin and appears to have known Baldwin and the ACLU since at least the fall of 1931. See: Roger Baldwin, Internal Memo, 4 November 1931, ACLU Papers (Digitized Microfilm), vol. 501, 250.

⁷⁹⁶ Miguel Guerra-Mondragon to Roger Baldwin, 31 July 1936, ACLU Papers (Digitized Microfilm), vol. 953, 25.

⁷⁹⁷ Roger Baldwin to Miguel Guerra-Mondragon, 7 August 1936, ACLU Papers (Digitized Microfilm), vol. 956, 31.

part was the fact that, unlike the PKP cases, these charges were under federal law and fell wholly within U.S. federal court jurisdiction.

However, following the intervention of U.S. House Representative Vito Marcantonio,⁷⁹⁸ it was agreed that a legal defense team of Gilberto Concepción de Gracia and Isadore Polier would handle the cases, with the ACLU providing a brief as *amicus curiae* and provide any other supplementary aid they could.⁷⁹⁹ Within the ACLU's brief of *amicus curiae*, they asserted that the defendants had been denied a fair trial – specifically focusing on the troubling aspects of the jury selection and the introduction of evidence.⁸⁰⁰ In contrast to the PKP sedition cases, their preoccupation was then on the conduct of the trial itself and not upon the constitutionality of the relevant legislation.⁸⁰¹

The eventual proceedings were held in the Boston Circuit Court of Appeals. Verdicts were delivered on February 12, 1937 with the lower court

⁷⁹⁸ Vito Marcantonio as House of Representatives member represented the East Harlem district that happened to contain the single largest Puerto Rican constituency within the mainland of the United States. See: Meyer, "Pedro Albizu Campos, Gilberto Concepción de Gracia, and Vito Marcantonio's Collaboration in the Cause of Puerto Rico's Independence," 90-91.

⁷⁹⁹ Telegram from Representative Vito Marcantonio to ACLU, 6 August 1936, ACLU Papers (Digitized Microfilm), vol. 953, 30; Lucille Milner to Alfred Garfield Hays, 7 August 1936, ACLU Papers (Digitized Microfilm), vol. 953, 30; Meyer, "Pedro Albizu Campos, Gilberto Concepción de Gracia, and Vito Marcantonio's Collaboration in the Cause of Puerto Rico's Independence," 94-95; Roger Baldwin to Representative Vito Marcantonio, 9 September 1936, ACLU Papers (Digitized Microfilm), vol. 953, 33; Roger Baldwin to Gilberto Concepción de Gracia, 5 October 1936, ACLU Papers (Digitized Microfilm), vol. 953, 40.

⁸⁰⁰ ACLU News Release, May 1937, ACLU Papers (Digitized Microfilm), vol. 1063, 44.

⁸⁰¹ As an internal ACLU memo also made clear, these cases had no bearing upon doctrine of incorporation, for the terms of the conspiracy legislation were unambiguous about the fact of their application to the territories as well as the mainland states of the US. As stated in the memo: "unless we disregard the plain terms" and "meaning thereof as interpreted by the courts, there would be no ground for holding these acts inapplicable to Porto Rico." Among the implications of this was that these cases did not provide an opportunity to challenge the doctrine of incorporation via litigation given the fact that the legislation effectively applied uniformly throughout all areas within US jurisdiction. See: ACLU, "Memo in re: Campos Case" (Undated), ACLU Papers (Digitized Microfilm), vol. 1063, 55.

convictions being upheld against the Nationalist Party appellants.⁸⁰² This left the last remaining appeal option a petition for writ of certiorari to try and get their case before the Supreme Court. The ACLU again agreed to contribute a brief as *amicus curiae*.⁸⁰³ However, in June arrived the greatly disappointing news that the Supreme Court had refused to grant a writ of certiorari, thus exhausting all remaining avenues of litigation.⁸⁰⁴

While it was certainly disappointing to them that this effort had not resulted in an overturning of the convictions, the ACLU had made an earnest effort to fulfill their acknowledged civil libertarian role of providing a check on abuse of state power; had even proved willing to disturb their otherwise amiable relations with allied colonial state actors in the course of doing so. And even though they did not take up the full burden of the legal defense itself, their level of direct involvement and proactivity here contrasted with that of their earlier support for the PKP cases in the Philippines. For in the latter cases, they were only able to provide financial aid through an intermediary to the local defense counsel, with more direct involvement on their part having to await an appeal effort to the U.S. Supreme Court. As was argued and demonstrated in the previous chapter, this was in large part due

⁸⁰² Meyer, "Pedro Albizu Campos, Gilberto Concepción de Gracia, and Vito Marcantonio's Collaboration in the Cause of Puerto Rico's Independence," 95.

⁸⁰³ ACLU News Release, May 1937, ACLU Papers (Digitized Microfilm), vol. 1063, 44.

⁸⁰⁴ ACLU Board of Directors Meeting Minutes, 4 June 1937, ACLU Papers (Digitized Microfilm), vol. 1063, 45. Following these developments, the ACLU determined that the only real option left was to try and secure a pardon from the President. It was not until January 25, 1939 that a petition for pardon was sent to the President, with sixty-six signatures. See: Excerpt from an ACLU News Release, 4 June 1937, ACLU Papers (Digitized Microfilm), vol. 1063, 45; A.L. Wirin to Isadore Polier, 8 June 1937, ACLU Papers (Digitized Microfilm), vol. 1063, 46; A.L. Wirin to Gilberto Concepcion de Gracia, 16 June 1937, ACLU Papers (Digitized Microfilm), vol. 1063, 46; Harry Ward to President Franklin D. Roosevelt, 25 January 1939, ACLU Papers (Digitized Microfilm), vol. 2143, 148-150.

to the great distance of the New York-based ACLU from the Philippines, their lack of direct and firmly locally based contacts there, and the fact that, until the final appeal effort, the cases themselves remained within the Philippine court's jurisdiction. And while none of these latter factors should necessarily have prevented greater involvement on their part, they nonetheless evidently combined to limit the ACLU's ability in engage in more proactive and direct involvement.

Be that as it may, where the contrasts between their involvement in these two sets of cases cease is in the results and efficacy of the ACLU's contributions. For in neither example, were the ACLU able to successfully prevent the convictions and imprisonment of either set of defendants. In fact, this result discreetly and indirectly conveyed some of the vulnerability of their civil liberties mandate in the colonial sphere. For even though Puerto Rico had seemingly robust civil liberties protections formalized in their organic act, the Nationalist Party leadership derived no relief from this legislative. This result then also indirectly highlighted the inefficacy and insecurity of colonially particularistic forms of civil liberties protections such as those embodied within the organic acts of the U.S. colonial empire.

The Ponce Massacre and Hays Commission

Upon involving themselves in the Nationalist conspiracy cases, did this serve as the basis for further interest and involvement by the ACLU in Puerto Rico? It appears that this did indeed. By the end of 1936, the ACLU began to try and arrange a proactive civil liberties initiative with respect to Puerto Rico.

This initiative entailed the formation of an investigatory committee concerned with the denial of civil rights in Puerto Rico; the purpose of which was to hopefully motivate the securing of more robust civil liberties protections within the island.⁸⁰⁵ And while they did express some minor concern that relevant administration members Ernest Gruening and Harold Ickes were nominally members of the ACLU, they nonetheless stressed that the potential for alienating such figures would not deter them.⁸⁰⁶ This demonstrated that their imperial imaginary had not come to unquestionably identify their interests as one and the same as those of colonial state actors – even those they had a shared history with. This spoke both to the influence of the, relatively speaking, more extensive allies and contacts they had in Puerto Rico (in significant contrast to the Philippines) and the severity of conditions and antagonism existing between Puerto Rican actors and organizations – specifically the Nationalist Party – and the colonial authorities (in contrast to the U.S. Virgin Islands).

One of the individuals the ACLU consulted about putting together this initiative, Professor Rupert Emerson of the Department of Government in Harvard University, however, expressed deep skepticism as to just what sort of effect a civil rights/liberties investigation may have. While conceding that an independent, rather than an official, investigation would be preferable, Professor Emerson stressed that Puerto Rico's problems did not so much

⁸⁰⁵ Roger Baldwin, Memo, 28 December 1936, ACLU Papers (Digitized Microfilm), vol. 1065, 51; Roger Baldwin to Rupert Emerson, 8 January 1937, ACLU Papers (Digitized Microfilm), vol. 1065, 51.

⁸⁰⁶ Ibid. Nature of their membership is unclear, although neither Ickes or Gruening appears to have been Executive or National Committee members.

stem from a “violation of civil liberties in the narrower sense but much more of a general imperialistic scheme of things under which nominal civil rights can have no substantial content.”⁸⁰⁷ Professor Emerson thereby made the most succinct of statements regarding the inefficacy of the ACLU’s pursuit of their metropolitan derived civil liberties commitments within the context of colonial empire. That is, within a broadly imperial context, no rights or liberties can reliably be protected and would, instead, remain insecure, vulnerable, and subject to either change or circumvention. Indeed, as their contemporaneous experience with the Nationalist conspiracy cases demonstrated, even with the preexistence of an organic act in Puerto Rico that explicitly laid out civil liberties provisions offered little in the way of protection.

And yet, in response to Professor Emerson’s penetrating critique, Baldwin offered little, aside from weakly stressing that “some progress” on addressing “restraints on agitation.”⁸⁰⁸ Baldwin’s seemingly oblivious response to the substance of Emerson’s feedback intimates the extent to which his and the ACLU’s underlying imperial imaginary had come insulate them from conceding, or even potentially perceiving, of the likely inefficacy and insecurity that any kind civil liberties reform was likely to attain within the colonial sphere. In fact, given the preexistence of civil liberties provisions within the Puerto Rico’s organic act, it is telling that they themselves never did articulate what kind of reform they sought to achieve through such an

⁸⁰⁷ Rupert Emerson to Roger Baldwin, 18 January 1937, ACLU Papers (Digitized Microfilm), vol. 1065, 53.

⁸⁰⁸ Roger Baldwin to Rupert Emerson, 22 January 1937, ACLU Papers (Digitized Microfilm), vol. 1065, 54.

investigatory commission. Any potential adjustment or change to the organic act would not address the issue of its colonial particularism as it would remain legislatively, not constitutionally, based.

Relatedly, it is also noteworthy that they did not articulate the intent or aspiration to seek more robust civil liberties protections by challenging the doctrine of incorporation. For such was the only real alternative and plausible route for securing the more robust and universal form of civil liberties that they nominally championed. Indeed, they had not tangibly sought to do so in the colonial sphere since their involvement in the Philippine PKP Sedition cases (as discussed in Chapter 6). That they did not even broach this potential route at this time presumably spoke to an imperial imaginary on their part that had come to internalize much of the colonial particularism of the U.S. empire.

Undeterred by Professor Emerson's comments, the ACLU nonetheless pressed on with trying to arrange an investigatory commission. In looking to gather more specific information regarding the civil liberties situation in Puerto Rico, the ACLU were put in touch with an Earl P. Hanson.⁸⁰⁹ Hanson, an engineer and disillusioned former PRRA official, was able to provide the ACLU with a detailed memorandum on the civil liberties situation in Puerto Rico as he saw it; emphasizing that suppression there was less a function of overt policy or laws, and more upon "psychological" factors and other

⁸⁰⁹ Luis Munoz Marín to Roger Baldwin, 15 January 1937, ACLU Papers (Digitized Microfilm), vol. 1065, 52.

“intangibles.”⁸¹⁰ Baldwin shortly thereafter conveyed the contents of Hanson’s memorandum to DTIP director Ernest Gruening. In doing so, though, Baldwin conceded that they made poor cases “for anything tangible” – a view that Gruening was only more than willing to concur with.⁸¹¹

It just so happened, though, that at about the same time the ACLU determined that they lacked the necessary civil liberties grounds for an investigatory commission, an event took place that suddenly made such an initiative appear of the utmost urgency. On March 21, Palm Sunday, there occurred what A.W. Maldonado has described as “bloodiest event in Puerto Rican history.”⁸¹² In the town of Ponce, when a march by Nationalist Cadets of the Republic was prohibited but proceeded nonetheless, it was met by an armed police force. The proceeding standoff ended when the officers opened fire into the gathering, continuing to shoot and assault unarmed civilians for thirteen minutes; resulting in the loss of twenty lives.⁸¹³ In the incident’s aftermath, colonial authorities proceeded on to press charges against eleven surviving Nationalist Party members with responsibility for the massacre itself.⁸¹⁴

⁸¹⁰ Earl Hanson to Roger Baldwin, 25 January 1937, ACLU Papers (Digitized Microfilm), vol. 1065, 57; Earl Hanson to Roger Baldwin, 2 February 1937, ACLU Papers (Digitized Microfilm), vol. 1065, 60-61.

⁸¹¹ Roger Baldwin to Ernest Gruening, 9 March 1937, ACLU Papers (Digitized Microfilm), vol. 1065, 64; Ernest Gruening to Roger Baldwin, 27 March 1937, ACLU Papers (Digitized Microfilm), vol. 1065, 64.

⁸¹² A.W. Maldonado, *Luis Munoz Marin: Puerto Rico’s Democratic Revolution* (San Juan: La Editorial Universidad de Puerto Rico, 2006): 152.

⁸¹³ Ayala and Bernabe *Puerto Rico in the American Century*, 116; Denis, *War Against all Puerto Ricans*, 50.

⁸¹⁴ Maldonado, *Luis Munoz Marin*, 152; Mathews, *Puerto Rican Politics and the New Deal*, 314.

Shortly thereafter, the ACLU received a copy of a preliminary report on the killings by Ponce based attorney, Ernesto Ramos Antonini.⁸¹⁵ They were also again contacted by Miguel Guerra-Mondragón of the PRRA who, in an unofficial capacity, informed them of his understanding of the massacre, and added that circumstances required “a searching investigation” by an outside “impartial agency” – of which the ACLU would surely be most suitable.⁸¹⁶ The ACLU promptly concurred and decided that their general counsel Arthur Garfield Hays Jr. ought to represent them in leading an investigatory commission of the matter.⁸¹⁷ Hays seemed altogether a suitable figure to do so, as previously upon his own capacity he had conducted an investigation of the Reichstag fire in Germany in 1933.⁸¹⁸ Here again was then demonstrated the critical importance of locally based contacts and allies among Puerto Rican state and non-state actors to the ACLU – as such provided the necessary countervailing influence against their proclivity to defer to state and colonial state actors contacts.

Indeed, the contrast here with the ACLU’s response to the Sakdalista rising in the Philippines in 1935 (as discussed in Chapter 7) is most striking. For in that case, despite extensive metropolitan newspaper coverage of the Philippine constabulary’s suppression of the uprising, the ACLU merely accepted at face value the explanation of the governor-general. And while, in

⁸¹⁵ Ernesto R. Antonini to Arthur Garfield Hays, 29 March 1937, ACLU Papers Microfilm, vol. 1062, 111.

⁸¹⁶ Miguel Guerra-Mondragón to Roger Baldwin, 5 April 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 115.

⁸¹⁷ Roger Baldwin to Earl Hanson, 12 April 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 120; ACLU Board of Directors Meeting Minutes, 10 May 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 131.

⁸¹⁸ See: Arthur Garfield Hays, “The Burning of the German Reichstag,” *The Nation*, 22 November 1933, 586-589.

the case of Governor Blanton Winship, they did not have had the same kind of previous relationship with him as they had with Governor-General Frank Murphy, they did have their (aforementioned) relationships with other relevant state actors Ickes and Gruening. In accounting for this disparity of responses, the key distinguishing factor was surely the fact that they had a great deal more contacts and allies within Puerto Rico than in Philippines.

While there has been much scholarship that has either discussed or at least acknowledged the Hays Commission following the Ponce massacre,⁸¹⁹ none has recognized that the investigatory commission was also in part the realization of an earlier ACLU initiative. For, as discussed, the ACLU had hoped to leverage the findings of such a commission to attain more robust (albeit unarticulated) civil liberties protections to establish the conditions in which peaceable change might be pursued in Puerto Rico. Indeed, as they publicized in their news release, the ACLU stressed that they were not conducting the investigation from a particular “partisan position,” but were concerned with securing the protection of “American law to all groups to carry on political propaganda without interference.”⁸²⁰ Nor, as they made clear, would they limit the commission’s inquiry to the immediate Ponce incident itself, but that they would also address “the political situation which caused it.”⁸²¹

⁸¹⁹ Mathews, *Puerto Rican Politics and the New Deal*, 311-15; Carrion, *Puerto Rico*, 311-314; Denis, *War Against all Puerto Ricans*, 52-54; Maldonado, *Luis Munoz Marin*, 160.

⁸²⁰ ACLU News Release, 11 May 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 131.

⁸²¹ Ibid.

Recognizing that this tragedy was connected to a series of “clashes” regarding the independence issue, the ACLU asserted that they were “committed to legislation which would allow Puerto Rican voters to decide upon the political status of Puerto Rico.”⁸²² Therefore, while the ACLU effectively maintained their earlier position (as Baldwin had communicated to Nationalist party member Vasquez) of not explicitly advocating for Puerto Rican independence, they had seemingly moved on to publicly adopt the position that circumstances now called for the Puerto Rican people to be provided with the opportunity to determine their political status vis-à-vis the United States.

Arthur Garfield Hays and the commission proceeded on to conduct a ten-day investigation of the Ponce massacre and the suppression of civil liberties in Puerto Rico.⁸²³ Upon returning from his trip to Puerto Rico, Hays released his report: its findings were damning regarding U.S. colonial authorities. The report placed blame for the massacre at Ponce “squarely upon” Governor Blanton Winship.⁸²⁴ It alleged that this was due to his refusal “to permit a group of nationalist cadets ... to engage in a peaceful parade.”⁸²⁵ For when the latter attempted to march nonetheless, they were confronted by over fifty armed policemen who “opened fire on them and the crowd.”⁸²⁶ It was further found that the broader civil liberties of the Puerto Rican people

⁸²² Ibid.

⁸²³ Denis, *War Against all Puerto Ricans*, 52-53.

⁸²⁴ ACLU News Release, 28 May 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 144.

⁸²⁵ Hays Commission Report quoted from ACLU News Release, 28 May 1937, ACLU Papers Microfilm, vol. 1062, p. 144.

⁸²⁶ Ibid.

had been denied when they sought to hold parades or demonstrations that touched upon politically contentious issues.⁸²⁷ And finally, the committee declared that Governor Winship should “make a public announcement that hereafter the right of the people to civil liberties shall be recognized and that he will observe their rights as expressed in the Puerto Rican Organic Act.”⁸²⁸

It is telling, however, that, despite how unequivocal the report was in its condemnation of U.S. colonial authorities that it did little more than assert that those very same colonial authorities in Puerto Rico needed to respect and enforce the civil liberties protections already in place within the organic act. That Hays and fellow commission members could propose of no more substantial a remedy than that colonial authorities hold themselves accountable to the very same legislation they had already flouted with such impunity suggested a kind of willful denial on their part. Only an imperial imaginary that projected a metropolitan-rooted commitment to civil liberties could have failed to perceive of such a critical flaw which left it to the discretion of colonial state authorities to check their own potential abuses of colonial state power.

The report was not well received by the Puerto Rican colonial government, nor by many of the major American newspapers, who tended to toe the government’s line on the Ponce massacre.⁸²⁹ Even among their

⁸²⁷ Ibid.

⁸²⁸ Ibid.

⁸²⁹ So much so that Hays himself ended issuing telegrams to the editors of the *New York Times*, Scripps Howard Newspaper Alliance, *New York Evening Post*, North American Newspaper Alliance, and Chicago Tribune Newspaper Syndicate to request that fairer coverage be extended. See: Telegram from Arthur Garfield Hays to E.L. James, 11 June 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 152; Telegram from Arthur Garfield

Washington based allies in government, there was little regard or sympathy for the report.⁸³⁰ In particular, the former staunch anti-imperialist and editor of the *Nation*, now DTIP director, Ernest Gruening proved to be wholly unsympathetic and uncooperative in addressing the Ponce massacre, its aftermath and the Hays Commission's report.⁸³¹ Having gotten word that Gruening was dissatisfied with the commission and its report, Hays confidentially reached out to Gruening to lay to rest whatever doubts he may have had as to the reliability of the report.⁸³² In spite of Hays' personal appeal to a long running member, friend and ally of the ACLU, Gruening refused even to see either Hays or Baldwin on the matter, effectively ending what remained of their long running association.⁸³³ Therefore, while it plainly pained the leadership to do so, the ACLU proved willing to sacrifice more amiable and collaborative (even long running) relations with otherwise allied state actors for the sake of condemning what they deemed be an inexcusable atrocity and the gross disregard shown for civil liberties by colonial authorities as seen in Puerto Rico.

The fact that their imperial imaginary did not preclude or inhibit them (in stark contrast to their contemporaneous involvement in the Philippines)

Hays to Lee G. Miller, 11 June 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 152; Note on telegrams to editors, 11 June 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 153. Hays himself wrote an article on the commission report for *The Nation*. See: Arthur Garfield Hays, "Defending Justice in Puerto Rico," *The Nation*, 5 June 1937, 647-648.

⁸³⁰ An exception appears to have been Interior Secretary Harold Ickes. He was in bad health at time, though, and was unable to make his influence felt. See: Mathews, *Puerto Rican Politics and the New Deal*, 313-314; T.H. Watkins, *Righteous Pilgrim: The Life and Times of Harold L. Ickes, 1874-1952* (New York: Henry Holt & Company, 1990): 523-526.

⁸³¹ Johnson, *Ernest Gruening and the American Dissenting Tradition*, 145.

⁸³² Arthur Garfield Hays to Ernest Gruening, June 1937, ACLU Papers (Digitized Microfilm), vol. 1062, 150.

⁸³³ Johnson, *Ernest Gruening and the American Dissenting Tradition*, 147.

from an unwavering commitment to their civil libertarian commitment to providing a check to abuse by colonial state authority, spoke to the centrality that locally based contacts and allies played for the ACLU. It also spoke to the appalling nature of the Ponce massacre for them, which further compelled a more proactive response on their part. Nonetheless, while the Hays Commission certainly represented a robust effort in that regard, it nonetheless (as discussed above) put forward no calls for more robust civil liberties protections for Puerto Rico – neither in the form of a new policy commitment or legislation. Nor was the commission even successful in extracting even the minimal gesture of an apology from Governor Winship and an accompanying commitment to uphold civil liberties protections.

Even if they had secured some kind of result along these lines, it is not clear how this would have produced a situation significantly more secure from a civil liberties standpoint given the ongoing insecure colonial particularism that any such reform would have represented. For, as they had pointed out in their own 1933 pamphlet, political and civil rights were already nominally provided for in the bill of rights within the Puerto Rican organic act. That the repression of civil liberties, the Ponce massacre, and the ultimate lack of any accountability for the responsible colonial state authorities all occurred despite the provisions of the organic act makes Professor Emerson's critical remarks about the inefficacy of civil rights and liberties within the overall "imperialistic" context of the U.S. colonial empire appear all that more perspicacious.

The Puerto Rican Civil Liberties Association

Following the completion of the Hays Commission, how did the ACLU continue to engage with Puerto Rico? For the remainder of 1937, the ACLU largely channeled their interest and engagement toward Puerto Rico through a newly founded and allied organization: Puerto Rican Civil Liberties Association. This enterprise owed its existence to Arthur Garfield Hays' investigatory commission. While Hays had been in Puerto Rico, he received a great deal of feedback and petitions calling for the formation of an organization that, like the ACLU, would be devoted to civil liberties within Puerto Rico.⁸³⁴ This convinced Hays to get approval to form a branch, as well as to contribute \$1000 from the Ellen Hays Fund toward its initial expenses.⁸³⁵ ACLU support and encouragement notwithstanding, Hays emphasized that it was their idea that the Puerto Rican organization "should be wholly independent and handle its own affairs in every way," but did allow that ample opportunity for cooperation between the two groups could occur when relevant cases emerged.⁸³⁶ This group formally constituted itself as the Puerto Rican Civil Liberties Association (PRCLA) in June.⁸³⁷

Upon the formation of PRCLA, how did the ACLU relate to the new association in pursuit of their civil liberties mandate in Puerto Rico? For the

⁸³⁴ Miguel Guerra-Mondragón to Roger Baldwin, 24 May 1937, vol. 1064, 47.

⁸³⁵ Telegram from Roger Baldwin to Arthur Garfield Hays, 20 May 1937, ACLU Papers (Digitized Microfilm), vol. 1064, 44; Arthur Garfield Hays to "American Civil Liberties Union of Porto Rico," 24 May 1937, ACLU Papers (Digitized Microfilm), vol. 1064, 47.

⁸³⁶ Arthur Garfield Hays to "American Civil Liberties Union of Porto Rico," 24 May 1937, ACLU Papers (Digitized Microfilm), Volume 1064, p. 48.

⁸³⁷ Tomas Blanco and Vicente Geigel Polanco to Miguel Guerre-Mondragón, 4 June 1937, ACLU Papers (Digitized Microfilm), vol. 1064, 57.

PRCLA, the most immediately pressing issue was the upcoming trial for the eleven Nationalist Party members who had been charged with responsibility for the Ponce massacre. As President of the PRCLA, Tomas Blanco, informed the ACLU, they were themselves taking up the main burden of the defense for the cases, with three attorneys from within the association taking on the necessary legal defense work, and the association itself providing financial backing as well.⁸³⁸ To aid in the pursuit of which, ACLU contributed \$300 in legal defense aid to the PRCLA.⁸³⁹

However, while both organizations kept in regular contact during the initial months, particularly with regard to the Ponce cases, little further correspondence continued between the PRCLA and the ACLU from the end of the summer until the end of the year.⁸⁴⁰ The trial itself proceeded over the fall and winter of 1937, only to be prematurely ended due to the illness of a juror in December.⁸⁴¹ Following the reopening of the trial in January 20, communications between the PRCLA and ACLU modestly picked up again.⁸⁴² Then in February came the gratifying news of the acquittal of all the Ponce massacre defendants.⁸⁴³ With the defense having been handled by PRCLA members, and with the additional assistance of ACLU financial aid, this was

⁸³⁸ Tomas Blanco to Roger Baldwin, 26 June 1937, ACLU Papers (Digitized Microfilm), vol. 1064, 71-72; Tomas Blanco to Roger Baldwin, 17 July 1937, ACLU Papers (Digitized Microfilm), vol. 1064, 74.

⁸³⁹ Roger Baldwin to Tomas Blanco, 1 February 1938, ACLU Papers (Digitized Microfilm), vol. 2053, 29.

⁸⁴⁰ Roger Baldwin to Vicente Geigel Polanco, 5 November 1937, ACLU Papers (Digitized Microfilm), vol. 1064, 79; Roger Baldwin to Alberto Sanchez, 28 December 1937, (Digitized Microfilm), vol. 2053, 24.

⁸⁴¹ ACLU Internal Memo (Undated), ACLU Papers (Digitized Microfilm), vol. 2053, 25.

⁸⁴² Roger Baldwin to Tomas Blanco, 1 February 1938, ACLU Papers (Digitized Microfilm), vol. 2053, 29; Tomas Blanco to Felipe C. Diaz, 6 February 1938, ACLU Papers (Digitized Microfilm) vol. 2053, 30-31.

⁸⁴³ ACLU Board of Directors Meeting Minutes, 14 February 1933, ACLU Papers (Digitized Microfilm), vol. 2053, 31.

understandably regarded by the ACLU and their allies as a signature victory for them and for the cause of civil liberties in Puerto Rico – they accordingly publicized it as such.⁸⁴⁴

Indeed, when seen in the broader context of all that has been covered over the preceding chapters of the ACLU involvement in the U.S. colonial empire, this represented a rare example of tangible success in their commitment to providing a check to abuses of state power in the colonial sphere. For not only had they played a constructive and proactive role in the establishment of a locally based civil liberties association, but they were able to materially support the latter's successful defense of victims of an overt form of legalized persecution by colonial state authorities. And while this might be regarded as their only unmitigated and tangible success of this period in Puerto Rico, the two years between 1936 and 1937 of the ACLU's engagement there represented the most consistent, direct, and proactive in which they pursued their commitment to providing a civil libertarian check to abuses of colonial state power. Plainly critical in this, was the greater set of Puerto Rican non-state actor allies and contacts that they could draw upon, as well as the greater severity of incidents in question. Indeed, when viewed in succession, their briefs of *amicus curiae* for the Nationalist defendants, the Hays Commission investigation, and their material support for the formation and legal defense work of the PRCLA seemingly promised

⁸⁴⁴ Telegram from Roger Baldwin to Felipe C. Díaz, 14 February 1938, ACLU Papers (Digitized Microfilm), vol. 2054, 117; ACLU News Release 18 February 1938, ACLU Papers (Digitized Microfilm) 2053, 32.

that further and even greater commitment by the ACLU in pursuit of their civil liberties mandate with respect to Puerto Rico.

This, however, did not prove to be the case, as completion of the Ponce trial also happened to mark the end of any further cooperation and communication between the ACLU and the PRCLA. When Baldwin tried to contact the association again in the spring, he received no response – only getting word in the following year that the PRCLA was “moribund.”⁸⁴⁵ The most plausible conclusion to draw was that the urgency of the Ponce massacre trial had provided the necessary conditions that had bound the association together in the first place. However, with the trial’s successful completion, thus was removed the central factor that had both bound the PRCLA itself together and motivated their collaboration with the ACLU.

The cooperation between the ACLU and PRCLA also demonstrated that, while the Union’s contacts and allies in Puerto Rico were certainly much more present and robust than in the Philippines (as demonstrated in Chapter 7), they were not securely firm or of truly great depth themselves. Nonetheless, however modest did the results of the collaboration between the PRCLA and the ACLU prove to be, they nonetheless reaffirmed the importance that such locally based, non-state actor allies were in checking the ACLU’s inclination toward an overreliance on colonial state actors.

⁸⁴⁵ Roger Baldwin, to Felipe C. Diaz, 8 March 1938, ACLU Papers (Digitized Microfilm), vol. 2054, 117; Roger Baldwin, to Felipe C. Diaz, (May 10, 1938), ACLU Papers (Digitized Microfilm), vol. 2054, 118; Elmer Ellsworth to Roger Baldwin, 4 January 1939, ACLU Papers (Digitized Microfilm), vol. 2145, 55.

The Committee for Fair Play to Puerto Rico

With the end of the PRCLA, how did the ACLU engage with Puerto Rico over the course of the final years of the decade? Around the same time as the verdicts were being handed down in the Ponce Massacre trials, the ACLU took part in the inauguration of another initiative regarding Puerto Rico. In February was initiated, under the auspices of the ACLU, the first meeting of the Committee for Fair Play to Puerto Rico.⁸⁴⁶

What motivated the formation of the Committee for Fair Play? The idea for the committee had originated in an earlier suggestion by engineer and former PRRA official Earl Hanson, in September 1937 to form a committee of “friends of PR, to keep the aspirations of PR independence group before the public here.”⁸⁴⁷ After further deliberation, it was decided that the group would be named the Committee for Fair Play to Puerto Rico, with the committee’s goals refined to three: to help develop policy that would settle the status of Puerto Rico, engage in efforts to secure civil rights there, and a general aim to “promote the widest possible understanding” of Puerto Rico’s problems throughout the United States.⁸⁴⁸ While not necessarily averse to Puerto Rican independence then, the committee plainly conveyed more of an agnosticism regarding the issue.

⁸⁴⁶ ACLU News Release, 25 February 1938, ACLU Papers (Digitized Microfilm), vol. 2054, 18.

⁸⁴⁷ Earl Hanson to Roger Baldwin, 11 September 1937, ACLU Papers (Digitized Microfilm), vol. 1064, 85.

⁸⁴⁸ Memorandum of Conference on Puerto Rico, Held on 2 November 1937, ACLU Papers (Digitized Microfilm), vol. 1064, 94.

As for the committee's relationship to the ACLU, it was agreed that it would operate under the auspices of the ACLU, and that the Union itself would cover expenses and provide all of the necessary secretarial and legal work incurred.⁸⁴⁹ Having finally attained the necessary membership, as committee chairman was chosen Oswald Villard Garrison, the former owner and editor of *The Nation* (which under Garrison's tenure had engaged a great deal of critical and even anti-imperialist coverage of the American colonial empire). Earl P. Hanson was made the committee's secretary. The Committee for Fair Play to Puerto Rico was then established and its first meeting set for February 25, 1938.⁸⁵⁰

With the establishment of the Committee for Fair Play and its preliminary program, how did the Committee go about pursuing their objectives? It was initially hoped that the PRCLA might complement the Committee's work and they accordingly sought to include the Puerto Rican based association in their deliberations. However, as the end of the Ponce cases saw the severing of communications with the ACLU, this came to naught. While the collapse of the PRCLA had plainly been outside of their control, it is nonetheless very significant that from this point forward the committee did not attempt to supplement this absence with any other Puerto Rican based organizations, contacts, and/or allies. In fact, the Committee for Fair Play's own approach came to further exacerbate this

⁸⁴⁹ Ibid.

⁸⁵⁰ Roger Baldwin to Oswald G. Villard, 19 January 1938, ACLU Papers (Digitized Microfilm), vol. 2054, 11; ACLU News Release, 25 February 1938, ACLU Papers (Digitized Microfilm), vol. 2054, 18.

absence by seeking to maintain a staunchly non-partisan orientation toward Puerto Rico, a stance that avoided association with any prominent Puerto Rican political formations. This position resulted from the need, according to Committee secretary Hanson, to avoid accusations of being “tools” of prominent Puerto Rican political leaders like Luis Munoz Marin or Antonio Barcelo.⁸⁵¹ A metropolitan rooted concern then for avoiding accusations of partisan bias caused the Committee to avoid actual, or even suspected, association with political actors, parties, and/or factions within Puerto Rico. However, such a self-conscious, and even self-limiting, attempt to avoid the suspicion of overt partisanship on their part also served to severely limit their potential acquirement and/or maintenance of regular contacts and cooperation with Puerto Rican actors and organizations (especially in the wake of the collapse of the PRCLA). An additional byproduct of this stance, as will be seen, was that it also left the Fair Play Committee all the more susceptible to the proclivities of their U.S. metropolitan based imperial imaginary.

In view of this, the Fair Play Committee initially determined that securing either a Congressional or executive administration investigation on the conditions in Puerto Rico would be the most apt route for them to gain

⁸⁵¹ As Hanson further elaborated: ‘Whatever potential strength our Committee has lies in the presence of such men as Villard and Hays, whose uncompromising stand on freedom is very well known, but who, while they know the general situation in Puerto Rico, cannot possibly know all the specific details.’ Hanson therefore stressed (almost counterintuitively) that being too informed and/or having too great an understanding of local Puerto Rican issues and developments might bring the Committee for Fair Play’s purported impartiality under suspicion, thereby undermining whatever constructive contributions they might make regarding Puerto Rican related matters within the US metropolitan states. See: Earl Hanson to Walter M. Jones, 20 March 1938, ACLU Papers (Digitized Microfilm), vol. 2054, 28.

some headway on settling the political status of Puerto Rico and/or improve the civil liberties and rights situation there.⁸⁵² In doing so, it is striking that they did not reflect upon the ultimately ineffectual result of the Hays Commission from the previous year. And while, admittedly, there was a distinction to be drawn between the Hays Commission being an independent, non-state sanctioned initiative, and the newly proposed one being an official metropolitan state directed one, the latter, if anything, might have been viewed with more skepticism on their part. For such a Congressional or administration investigation was much more susceptible to being compromised in its findings vis-à-vis criticizing the policies and behavior of colonial state actors in Puerto Rico. The fact that this scheme was so enthusiastically latched onto by the Fair Play Committee spoke to a sense of detachment not altogether surprising find within an association solely made up of sympathetic, but nonetheless distant, metropolitan based actors. An association, for that matter, that was operating little, if any, Puerto Rican participation and/or input.

Little headway was made with this initiative in the months that followed though.⁸⁵³ Some effort was expended advocating for either Congress or the Executive branch to initiate such an investigation, with Oswald Garrison Villard himself personally addressing President Roosevelt, Interior Secretary Ickes, and Senator (as well as Chairman of the Senate Committee

⁸⁵² The Committee for Fair Play to Puerto Rico Meeting Minutes, 25 February 1938, ACLU Papers (Digitized Microfilm), vol. 2054, 19; Resolution of Committee for Fair Play to Puerto Rico, 5 May 1938, ACLU Papers (Digitized Microfilm), vol. 2054, 41.

⁸⁵³ Roger Baldwin to Walter M. Jones, 12 April 1938, ACLU Papers (Digitized Microfilm), vol. 2054, 35.

on Insular Affairs) Millard Tydings.⁸⁵⁴ Yet, aside from encouraging statements from Senator Tydings touching upon this, no tangible progress was made with the proposed investigation.⁸⁵⁵

At the end of 1938, however, a surprising proposal found its way to the ACLU and Fair Play Committee that reengaged them with the issue of Puerto Rican independence. This stemmed from a meeting between Baldwin and Senator Millard Tydings, in which the latter surprised Baldwin by informing him that he supported independence for Puerto Rico, and asked if they would be willing to prepare a draft of an independence bill that he could introduce to the Senate.⁸⁵⁶ It was subsequently agreed that the ACLU, and not the Fair Play Committee, would arrange for lawyers to draft an independence bill; upon its completion, the Fair Play Committee would then consider it before forwarding the draft on to Senator Tydings.⁸⁵⁷

It is of note that the ACLU, did not themselves expressly address or qualify the fact that, in agreeing to draft the bill, it certainly conveyed the appearance that they now gave at least tacit support to the cause of Puerto Rican independence. Yet, as notable a step as this may have appeared, such preparatory work as this could hardly be taken to mean that the ACLU had

⁸⁵⁴ Earl Hanson to Roger Baldwin, 29 April 1938, ACLU Papers (Digitized Microfilm), vol. 2054, 38-39; Oswald G. Villard to President Franklin D. Roosevelt, 26 May 1938, ACLU Papers (Digitized Microfilm), vol. 2054, 43; Oswald G. Villard to Harold Ickes, 26 May 1938, ACLU Papers (Digitized Microfilm), vol. 2054, 44; Oswald G. Villard to Senator Millard Tydings (Undated), ACLU Papers (Digitized Microfilm), vol. 2054, 44.

⁸⁵⁵ Earl Hanson to Roger Baldwin, 29 April 1938, ACLU Papers (Digitized Microfilm), vol. 2054, 38-39.

⁸⁵⁶ Roger Baldwin to Committee for Fair Play to Puerto Rico, 11 January 1939, ACLU Papers (Digitized Microfilm), vol. 2145, 33.

⁸⁵⁷ The Committee for Fair Play to Puerto Rico Meeting Minutes, 17 February 1939, ACLU Papers (Digitized Microfilm), vol. 2145, vol. 2145, 16-17.

now adopted the same kind of assertive anti-imperialist stance that they had earlier adopted toward Haiti. Furthermore, as the ACLU eventually acquired the services of attorneys David Grant and Louis Gurss to prepare the draft, it is notable that the ACLU made little attempt, or placed much consideration, in canvassing input from Puerto Rican-based actors and/or organizations in the assemblage and drafting of an independence bill.⁸⁵⁸ Presumably they did not do so out of concern with preventing the resulting draft legislation from being vulnerable to accusations of being the product of specific partisan positions emanating from Puerto Rican political actors, parties, or factions.⁸⁵⁹ This nonetheless meant that so central a matter as the terms of Puerto Rican independence would almost entirely be the product of metropolitan based imperial imaginaries.

Yet, despite their being able to successfully arrange for a completed draft of the independence bill by May, Senator Tydings eventually informed Baldwin that it was too late to introduce the bill. Instead, he said they would try to do so once the next Congressional session began.⁸⁶⁰ With the outbreak of the Second World War in September 1939, however, whatever remained of efforts to resolve the political status of Puerto Rico had largely dissipated. Within the Committee for Fair Play, for example, chairman Oswald Garrison Villard, a life-long pacifist, became much more preoccupied by his deep

⁸⁵⁸ Roger Baldwin to David Grant, 30 March 1939, ACLU Papers (Digitized Microfilm), vol. 2145, 41.

⁸⁵⁹ They had, however, discreetly forwarded on to Grant an earlier memorandum by prominent Puerto Rican politician Luis Munoz Marin, which offered feedback on previous draft independence legislation. See: Roger Baldwin to David Grant, 30 March 1939, ACLU Papers (Digitized Microfilm), vol. 2145, 41.

⁸⁶⁰ Roger Baldwin, Internal Memo, 15 June 1939, ACLU Papers (Digitized Microfilm), vol. 2145, 51.

fear that the United States would enter into the war.⁸⁶¹ And as far as Washington and the colonial authorities were concerned, whatever priorities remained with respect to Puerto Rico were those largely of a military nature.⁸⁶² The prospects then for attaining any kind resolution of Puerto Rico's circumstances, particularly those regarding to the island's political status, were far from encouraging.

For the Committee for Fair Play, this pessimistic outlook was further confirmed in early 1940 following a meeting with Senator Tydings on the prospects of the independence bill for Puerto Rico. The Committee for Fair Play concurred with Tyding's assessment.⁸⁶³ In doing so, Baldwin seemingly returned to their earlier 1934 passive position with respect to Puerto Rico's status that "[W]hatever moves in this direction are likely to have any effect must, in our judgement, originate in the Island."⁸⁶⁴ The onus for settling the island colony's political status was once again then placed entirely upon the agency of the Puerto Rican people themselves; a stance that did little more than reaffirm the ongoing colonial status quo of Puerto Rico itself.

By the end of the spring, with the lack of prospects on any front with respect to Puerto Rico, the Committee for Fair Play appear to have become

⁸⁶¹ Anthony Gronowicz, "Introduction," in *Oswald Garrison Villard: The Dilemmas of the Absolute Pacifist in Two World Wars*, ed. Anthony Gronowicz (New York: Garland, 1983): vx.

⁸⁶² Ayala and Bernabe, *Puerto Rico in the American Century*, 189.

⁸⁶³ Roger Baldwin to Senator Millard Tydings, 31 January 1940, ACLU Papers (Digitized Microfilm), vol. 2252, 47.

⁸⁶⁴ *Ibid.*

utterly demoralized.⁸⁶⁵ Indicatively, from that point on, neither did the Committee for Fair Play to Puerto Rico nor the ACLU come contribute in any meaningful way toward a resolution of the political status of Puerto Rico or toward the maintenance of civil liberties and rights there. However, as the two previous chapters have demonstrated, Puerto Rico was not alone among the formal colonies that the ACLU's civil liberties engagement served more to reflect and reinforce the colonial particularism of the empire. In fact, for all of their blurred and varying perceptions of the U.S. colonial empire, it was evident that the ACLU's imperial imaginary by the end of the 1930s was inclined toward identifying the constituent formal colonies of the empire somewhere between a binary of the metropolitan and colonial spheres; with most being identified with the insecure particularism indicative of the latter.

This was most vividly on display in the *Civil Liberties in American Colonies* pamphlet that the ACLU prepared and released during the previous year of 1939.⁸⁶⁶ A significantly revised update to their 1933 pamphlet on the colonies, this edition can also be taken as something of an implicit referendum on the ACLU's by then near twenty-year engagement in the U.S. colonial empire. In regarding it as such, it is evident that not only was their record, on their own terms, at best mixed, it also conveys the impact, influence, and effects that nearly two decades of contact and involvement with the colonial empire had upon their imperial imaginary. This was

⁸⁶⁵ In fact, so much so that that it was decided that even going forward with their spring meeting was not worthwhile. See: Roger Baldwin to Oswald G. Villard, 17 May 1940, ACLU Papers (Digitized Microfilm), vol. 2251, 9.

⁸⁶⁶ "Civil Liberties in American Colonies," February 1939, ACLU Records and Publications. Reel 92, 1-32.

especially discernable in the greater presence throughout pamphlet of civilizational, racial, governmental capacity, and tutelary tropes. Furthermore, within the text were inadvertent admissions on their part of the inefficacy and insecurity of the very particularistic civil liberties measures they advocated for throughout the colonial empire.⁸⁶⁷

At first glance there is much continuity between the 1933 and 1939 pamphlets. They again called for civil government reform and the extension of American citizenship to American Samoa and Guam.⁸⁶⁸ They again excluded focusing on Alaska and the Panama Canal Zone on the alleged basis that their populations being predominantly American – with all the unavoidably racialized connotations that this notion of “American” conveyed.⁸⁶⁹ Yet the implicit sanctioning of the settler colonialism that had already appeared evident with respect to Alaska and the Panama Canal Zone, was now even much more explicit and detailed in the 1939 entry on Hawai’i. For here was conveyed a greater blurring of Hawai’i’s status within their imaginary – one that further appeared to situate the islands within their imagination as somewhere between that of a colony and a mainland state in all but name – only now they strongly leaned more toward the latter conception. The ACLU referred to the Hawai’ian islands as an “integral part of the United States,” with “no special condition” differing them from mainland states.⁸⁷⁰ In fact, they now went so far as to now assert that

⁸⁶⁷ Ibid.

⁸⁶⁸ Ibid., 7.

⁸⁶⁹ Ibid., 2

⁸⁷⁰ Ibid., 32.

‘Hawai’i has become too closely tied to the United States, politically and economically, to be viewed now as a colony.’⁸⁷¹ They accordingly regarded Hawai’ian statehood as a near inevitability and called for a vote to facilitate this.⁸⁷² With this precedent of explicitly endorsing statehood, the ACLU thereby demonstrated that their imperial imaginary projected an implicitly racialized metropolitan identification upon Hawai’i; a projection that distinguished the islands from elsewhere in the formal colonial empire (aside from Alaska and the Panama Canal Zone) which, in turn, represented something of an implicit endorsement of the doctrine of incorporation’s distinctions between incorporated and unincorporated territories.

Yet, maybe most striking of all within their 1939 pamphlet were the doubts they themselves inadvertently expressed throughout about the efficacy and security of those most foundational of civil liberties (i.e. freedom of speech, press, and assembly) in the colonial sphere. For example, despite the fact that they devoted by far the most amount of attention in the pamphlet to Puerto Rico, they offered little in the way of constructive

⁸⁷¹ Ibid. In fact, the ACLU had entered an exchange with Governor of Hawai’i, Lawrence Judd, in response to the claims of their 1933 pamphlet, including their description of Hawai’i as a colony. Throughout the course of which Governor Judd adamantly rejected the characterization of Hawai’i as a colony and instead continually referred to Islands as an integral part of the United States. These exchanges may have had some measure of influence upon the ACLU’s perception of the islands. See: Governor Lawrence Judd to Roger Baldwin, 22 August 1933, ACLU Papers (Digitized Microfilm), 85-89; Roger Baldwin to Governor Lawrence Judd, 5 September 1933, ACLU Papers (Digitized Microfilm), 91; Roger Baldwin to Governor Lawrence Judd, 24 November 1933, ACLU Papers (Digitized Microfilm), 106-107; Governor Lawrence Judd to Roger Baldwin, 15 December 1933, ACLU Papers (Digitized Microfilm), 113-116.

⁸⁷² In fact, statehood for both Hawai’i and Alaska proved to be anything but inevitable, with the racial configuration of both remaining a major issue for opponents of which. It was only within the altered context of Cold War politics that the necessary support for statehood for both territories were garnered. See: Roger Bell, *Last Among Equals: Hawaiian Statehood and American Politics* (Honolulu: University of Hawaii Press, 1984), 37, 44-57; Giles Scott-Smith, “From Symbol of Division to Cold War Asset: Lyndon Johnson and the Achievement of Hawaiian Statehood in 1959,” *History*, 89 (2004), 257-258; Hopkins, *American Empire*, 652; Walter L. Hixson, *American Settler Colonialism: A History* (New York: Palgrave Macmillan, 2013), 163-165.

proposals, aside from stressing that the Puerto Rican people ought to be given a chance to vote on independence or statehood.⁸⁷³ With regard to what they deemed to be the dire civil liberties situation there, they revealingly admitted that “[I]n spite of a liberal organic act and Bill of Rights,” the maintenance of civil liberties ultimately depended upon the discretion of whatever colonial administration happened to be in place at the time, and recommended no more than that a new administration be secured through the appointment of more civil libertarian supportive officials.⁸⁷⁴ Hence they implicitly undermined the very kinds of civil liberties protections they so championed by acknowledging that their maintenance, in the end, remained dependent upon the disposition of colonial appointees by the U.S. executive branch.

The ACLU not only conceded this to be the case with respect to the colony they deemed to be functioning under the worst civil liberties conditions at the time. For even in the case of the colony where they had seemingly achieved their greatest legislative success, the U.S. Virgin Islands, they again acknowledged the fundamental insecurity of civil liberties there – pointing out that their “organic act gives no guarantee” that “favorable” circumstances will “continue” since it “leaves so much authority to Washington.”⁸⁷⁵ In doing so they ominously implied that the civil liberties situation there could deteriorate just as precipitously under another

⁸⁷³ “Civil Liberties in American Colonies,” February 1939, ACLU Records and Publications. Reel 92, 7.

⁸⁷⁴ *Ibid.*, 7-8.

⁸⁷⁵ *Ibid.*, 19.

administration as it had done in neighboring Puerto Rico. They thereby acknowledged the fragility of their civil liberties mandate throughout the colonial empire.

In fact, the ACLU even inadvertently conceded that there essentially existed another secondary and more insecure tier of civil liberties outside of the metropolitan states when they casually made reference to there being relatively better conditions of “colonial civil liberty” within the Virgin Islands than elsewhere in the U.S. colonial empire.⁸⁷⁶ Such a formulation was as direct a confirmation as the ACLU made during the interwar years that they had reconciled themselves with a dichotomous civil liberties dispensation for the U.S. empire. That is, on the one hand, there existed a more universalist and robust form of civil liberties protections for the metropolitan sphere and, on the other, a more particularist and insecure form for the colonial. That they could so casually concede to the existence of a secondary tier of “colonial civil liberty” in the pamphlet was indicative of the extent to which the ACLU had internalized within their imperial imaginary a fundamental division of the American empire along a metropolitan and colonial binary division.

Appearing to further confirm this development was the fact that nowhere among the measures recommended in the pamphlet did the ACLU signal the intention to achieve more robust and universalist civil liberties protections throughout the U.S. empire by challenging the doctrine of

⁸⁷⁶ Ibid.

incorporation through litigation.⁸⁷⁷ Indeed, their last effort to do so in the colonial sphere had been the support they (as discussed in Chapter 6) had provided during the PKP sedition cases in the Philippines. However, this effort eventually gave way to the more cooperative relations the ACLU pursued with a prominent colonial state actor. As these kinds of more amiable relations with colonial state actors also proved to be the general direction of travel for the ACLU, this proclivity (as posited in Chapter 6) more than likely played a significant role in the resulting lack of litigation challenges to the doctrine of incorporation from that point forward. And, relatedly, their lack of non-state actor allies within the colonial periphery (with the partial exception of Puerto Rico) also limited the likelihood of their becoming aware of other suitable and viable test cases that might have provided them with the basis of potential strategic litigation challenges. The fact that they made no such attempts during the second half of the 1930s can be taken as further evidence of a *de facto* acceptance by the ACLU of a varied, particularist, and vulnerable civil liberties dispensation for the colonial empire.

Given this acceptance, it was unlikely that such fragile and circumscribed civil liberties conditions might aid in the peaceable attainment of the kinds of “political and economic reforms” that the ACLU vaguely referred to in the pamphlet.⁸⁷⁸ Such also provided little more than very insecure grounds for the provision of legal defense aid throughout the

⁸⁷⁷ Ibid., 7.

⁸⁷⁸ Ibid., 7.

colonial empire. And the very fact that the ACLU did not recognize this – even despite their inadvertent admissions throughout their 1939 pamphlet – is a testament to the importance of the ACLU’s imperial imaginary for their perception and conduct toward the U.S. colonial empire prior to the American entry in the Second World War.

Conclusion

Chapter 7 showed that in the early years of the 1930s, the ACLU only intermittently took an interest in Puerto Rico. When they did so, it was mainly regarding the issue of Puerto Rican independence. And while they did express sympathy, and even seeming support, this chapter demonstrated that they were noncommittal in the matter.

The ACLU, however, began to take a much more focused interest and engagement in Puerto Rico due to the escalating conflict between island’s colonial authorities and the Nationalist Party midway through the decade. In doing so, this chapter demonstrated that the ACLU came to incur much more contentious relations with colonial state authorities than they had in the U.S. Virgin Islands or the Philippines. Chapter 7 argued that this contrast can be accounted for due to the severity of the incidents that ensued and, probably most critically, the countervailing influence upon the ACLU of the Puerto Rican allies and contacts they had within the island. For, as this chapter argued, the latter was essential for checking the ACLU’s otherwise increasing reliance on colonial state actors and a concomitant imperial imaginary that had been increasingly identifying with the extant colonial state institutions,

actors, and discourses. The highpoint of the ACLU's effort to provide a civil libertarian check to colonial state abuse of authority turned out to be the Hays Commission's investigation and report that followed the 1937 Ponce massacre. Yet, in the end, this effort failed to bring colonial state actors to account, as well in its broader goal of leading to more robust civil rights and liberties protections for Puerto Rico.

This chapter demonstrated that the ACLU's willing embrace of more contentious relations state actors proved to be short lived. In the final years of the 1930s, following their successful collaboration with the short-lived Puerto Rican Civil Liberties Association in the legal defense of the Ponce massacre defendants, the ACLU effectively ceased to cultivate Puerto Rican contacts within the island. Instead, they came to channel what remained of their engagement with Puerto Rico through an associated, metropolitan based enterprise: the Committee for Fair Play to Puerto Rico. This chapter showed that the Committee for Fair Play adopted the self-limiting policy of seeking to avoid any suspicions of being under the influence of local Puerto Rican political actors or organizations. In doing so, though, this meant that the Committee ended up essentially conducting itself without the membership, representation, and/or input of Puerto Rican allies and contacts. By doing so, as this chapter argued, the Committee and the ACLU were then left without the critical countervailing influence upon their imperial imaginary that such actors might have provided against their noted proclivity to rely upon state actor contacts. In so doing, Chapter 7 argued that the Fair Play Committee and the ACLU effectively returned to their

earlier ineffectual stance from 1934 regarding the issue of independence; one in which they once again placed the onus entirely upon the Puerto Rican people themselves to resolve. A position that implicitly conceded to the ongoing status quo of Puerto Rico under American colonial rule.

As this was a status quo that entailed an organic act that they themselves recognized in their 1939 pamphlet as being inefficacious and insecure, this meant that the ACLU had essentially come to accept a particularistic and insecure form of civil liberties for Puerto Rico. A form of civil liberties which starkly contrasted with the more robust and universally oriented form of civil liberties protections they were increasingly having success in securing within the metropolitan states. In doing so, they indirectly and inadvertently came to reinforce metropolitan and colonial binary of the U.S. empire.

Conclusion

Tokyo, Japan, April 1947

On April 12, 1947, after having checked into Tokyo's prestigious Imperial Hotel, Roger Nash Baldwin was escorted by limousine to the U.S. Army headquarters and provided with an office, secretary, and interpreter.⁸⁷⁹ On the following day, he entered the American Embassy and lunched with General Douglas MacArthur, Supreme Commander of the Allied Powers in Japan, and his wife Jean.⁸⁸⁰ General MacArthur made it clear during the conversation that he wanted Baldwin's observations on all civil liberties aspects of the American military occupation of Japan.⁸⁸¹ He further stressed: "I want you to see everybody, go everywhere; every door is open to you."⁸⁸²

This remarkable arrangement had been put into motion following a letter from the War Department's Special Staff to the ACLU in January, which suggested that General MacArthur sought Baldwin's service as a civil liberties consultant to observe the conditions of American occupied Japan and Korea.⁸⁸³ Once all the necessary details had been settled – which had included

⁸⁷⁹ "Mr. ACLU and the General," Robert Cottrell, 16 April 2019, <https://www.aclu.org/issues/free-speech/mr-aclu-and-general> (Accessed on 27-10-2023).

⁸⁸⁰ Ibid.

⁸⁸¹ Memo from Roger Baldwin to ACLU, 1 May 1937, <https://www.aclu.org/documents/roger-baldwin-memo-japan-about-macarthur> (Accessed on 27-10-2023), 2.

⁸⁸² Quote from Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*, 316.

⁸⁸³ By way of explanation of this offer, Baldwin later claimed in his oral history interview that: "Months later my colleagues in the Civil Information and Education Section in Tokyo, who had known or belonged to the ACLU, told me they had engineered it." See: Roger Baldwin, "The Reminiscences of Roger Nash Baldwin" (Microfiche), 434-5; Major D.D. Klous to Roger Baldwin, 9 January 1947, <https://www.aclu.org/letter/letter-inviting-baldwin-japan> (Accessed on 27-10-2023); Cottrell: *Roger Nash Baldwin and the American Civil Liberties Union*: 313-314.

Baldwin's insistence that he would only engage in this work as a private observer and at his own expense – the way was cleared for his trip in April.⁸⁸⁴ During his three months in Japan, Baldwin's days were occupied with such activities as interviews and meetings with various Japanese and American figures.⁸⁸⁵ He observed election meetings in Tokyo as well as elsewhere in the country.⁸⁸⁶ He sat in with the Allied Council, attended War Crimes trial proceedings, and played a role in initiating three associations in the country concerned with the respective issues of civil rights, the United Nations, and Japanese Americans.⁸⁸⁷ Baldwin even spent an agreeable forty minutes with the Japanese Emperor Hirohito.⁸⁸⁸ Baldwin was to speak of this experience as being the “most stirring of my life in years.”⁸⁸⁹ Aside from minor criticisms of civil liberties violations, such as film censorship and restrictions placed upon the local Communist party and labor unions, Baldwin was near hyperbolic in his praise of the American military occupation in general, and of General MacArthur in particular.⁸⁹⁰ As Baldwin informed General MacArthur upon his departure: “I leave with consciousness of the amazing

⁸⁸⁴ “Mr. ACLU and the General,” Robert Cottrell, 16 April 2019, <https://www.aclu.org/issues/free-speech/mr-aclu-and-general> (Accessed on 27-10-2023).

⁸⁸⁵ Roger Baldwin Memo to ACLU, May 1 1937, <https://www.aclu.org/documents/roger-baldwin-memo-japan-about-macarthur> (Accessed on 27-10-23), 2.

⁸⁸⁶ Ibid.

⁸⁸⁷ Ibid.

⁸⁸⁸ Roger Baldwin, “Shogun and the Emperor” (Undated), <https://www.aclu.org/documents/roger-baldwins-shogun-and-emperor> (Accessed on 27-10-23), 3-4.

⁸⁸⁹ Roger Baldwin, quoted from Walker, *In defense of American liberties*, 205.

⁸⁹⁰ Walker, *In defense of American liberties*, 205.

experiment in democracy here made possible and so promising chiefly by your spirit and vision.”⁸⁹¹

The willing and enthusiastic praise by Roger Baldwin, the United States’ preeminent civil libertarian, of the American military occupation of another country was viewed by many at the time as incongruous, if not in outright conflict, with all that he and the ACLU had long stood for. By way of explanation, historians have since emphasized such continuities and connections as Baldwin’s susceptibility to the flattery by powerful and influential contacts, his shift toward anti-Communism in the wake of the Nazi-Soviet pact of 1939, the long noted autocratic-streak of his executive directorship of the ACLU, and even his increasing work on behalf of international human rights throughout the post-war period.⁸⁹² What has not been considered was the importance of Baldwin and the ACLU’s experiences of engagement with the U.S. colonial empire. When viewed alongside the findings of *Foreign Yet Domestic Liberties* on the ACLU’s interest and involvement in the U.S. colonial empire during the interwar years, this episode appears much less (if at all) anomalous and becomes much more explicable.

Roger Nash Baldwin’s trip to occupied Japan, in fact, exemplifies many of the findings and arguments of *Foreign Yet Domestic Liberties*. The fact that General MacArthur’s invitation was met with ready acceptance by

⁸⁹¹ Roger Baldwin to General Douglas MacArthur, 8 June 1947, <https://www.aclu.org/letter/roger-baldwins-farewell-letter-douglas-macarthur> (Accessed on 27-10-23), 1.

⁸⁹² Walker, *In defense of American Liberties*, 205; “Mr. ACLU and the General,” Robert Cottrell, 16 April 2019, <https://www.aclu.org/issues/free-speech/mr-aclu-and-general> (Accessed on 27-10-23).

Baldwin was indicative not only of the latter's susceptibility to flattery but, more substantively, of his and the ACLU's long-since eroded anti-statism and their accompanying accommodation with state actors and institutions by the end of the 1930s. As *Foreign Yet Domestic Liberties* has demonstrated, this was a development not only limited to the metropolitan states but was also the case with their engagement in the colonial sphere. As has been accounted for throughout this study, Baldwin and the ACLU increasingly encumbered more cooperative and amicable relations with colonial state actors. This accordingly increased the latter's influence upon the former and was of great consequence for their engagement with the American colonial sphere. Indeed, their significantly decreased oppositional relations with colonial state actors and institutions very likely contributed to the ease with which the ACLU'S executive director came to work and interact so agreeably with the U.S. military in their occupation of Japan.

Another observable parallel and throughline was Baldwin's neglect of proactively seeking out more contrasting and critical perspectives from among the Japanese people of the American occupation. For all of Baldwin's nominal independent and non-partisan status, it is evident that much of his understandings of occupied Japan, as well as that of the Japanese people themselves, was filtered through and conditioned by a reliance on U.S. state actors – the U.S. armed forces no less. Indeed, he inadvertently conveyed just how myopic his impressions of Japan were when he claimed that, in spite of his travels throughout the island, “[F]or my purposes Tokyo is Japan” – that

is, at the very center of the American occupational authorities themselves.⁸⁹³

This closely resembles the ACLU's greater neglect of non-colonial state actors throughout the colonial sphere by the end of the 1930s.

These continuities most insightfully align with that key dynamic explicated throughout by *Foreign Yet Domestic Liberties*: the influence of an imperial imaginary on the part of Baldwin and the ACLU. For alongside his and the organization's eventual embrace of a tempered anti-Communism, the condition of their imperial imaginary by the end of the 1930s was also central to their accommodation with U.S. state actors and apparatuses. Baldwin's impressions, reports, and correspondence as an observer in Japan convey evocative evidence of the state of his imperial imaginary by the early postwar period. In fact, it is evident that the identification of his imperial imaginary with the institutions, actors, and discourses of the American empire had, if anything, by this point increased. Baldwin projected aspects of the metropolitan and domestic upon occupied Japan. He was awed by the fact that the "U.S. has been literally transplanted" in Japan. He further did so when he exclaimed the American occupation as an "amazing experiment in transplanting democracy."⁸⁹⁴ Yet, as demonstrated all throughout this study, such metropolitan projections were unstable. For his usage of the terminology of transplantation was not his only conveyance of imperial discursive imaginings. For when he praised General MacArthur's

⁸⁹³ Roger Baldwin Memo to ACLU, 1 May 1937, <https://www.aclu.org/documents/roger-baldwin-memo-japan-about-macarthur> (Accessed on 27-10-23), 3.

⁸⁹⁴ Ibid.

understanding of democracy and his “almost missionary spirit of promoting it,” he evidently analogized the role of the general bringing democracy to the undemocratic with that of missionaries bringing religion to the purportedly uncivilized and irreligious.⁸⁹⁵ And finally, without providing any convincing evidence to substantiate such, he stressed that the Japanese people “look upon the general as a liberator from their militarists.”⁸⁹⁶ In doing so, Baldwin provided an additional reminder of the Japanese people’s subordination to American military rule, all the while rationalizing it as a form liberation.

Finally, this episode exemplifies and reinforces the argument of *Foreign Yet Domestic Liberties* that the ACLU had reconciled themselves to a highly insecure and particularist form of civil liberties for the colonial empire by the time of American entry into the Second World War. The fact that the ACLU’s civil liberties commitments had proven themselves to be quite compatible with formal colonial rule provides the most convincing explanation as to why U.S. occupational authorities had even considered acquiring the services of the organization’s most prominent figure. The motivation of the U.S. armed forces is explicable here only in terms of the legitimacy that the approval a renowned civil libertarian like Baldwin might lend to the ongoing occupation. For the occupational authorities to acquire

⁸⁹⁵ Roger Baldwin, “Shogun and the Emperor” (Undated), <https://www.aclu.org/letter/roger-baldwins-shogun-and-emperor> (Accessed on 27-10-23), 2.

⁸⁹⁶ Ibid. If anything, it appears that Baldwin became even more unapologetic in these assertions. In his later oral history interview, he asserted that: “I was not opposed to the concept that democracy might be imported by a conqueror; Napoleon had done a fair job in Europe for a while, and considerable of it survived his defeat. There were other historical analogies persuasive enough, I thought, to answer those friends who scoffed at the notion of the military democratizing anybody anywhere.” See: Roger Baldwin, “The Reminiscences of Roger Nash Baldwin” (Microfiche), 433.

such approval, it required little more than providing a largely cosmetic and verbal gesturing toward civil libertarian sensitivities. This adjustment presented no threat to the operations of the occupation itself. And this they could feel relatively confident about. All they had to do was consult the evidence of the ACLU's first two decades of engagement with the American colonial empire to feel assured of this.

The ACLU, Imperial Imaginaries, and U.S. Colonial Empire

The fact that Roger Baldwin, the ACLU, and their commitment to the cause of civil liberties came to be viewed as more of a compliment than a challenge to the conduct of American occupational authorities of Japan was not foreordained. Scholarship on the ACLU and the civil liberties movement has amply accounted for the indirect, contingent, and even counterintuitive, path by which the ACLU transformed from being a unpopular and under resourced, radical, anti-statist and overtly pro-labor organization into becoming an influential member of a liberal-left mainstream and the preeminent practitioner of legal defense and strategic litigation.⁸⁹⁷ *Foreign Yet Domestic Liberties* complementarily charts the long neglected colonial dimensions of the ACLU's evolution over those same first two decades of their existence.

⁸⁹⁷ Notable works on which include: Murphy, *The meaning of freedom of speech*; Walker, *In Defense of American Liberties*; Cottrell, *Roger Nash Baldwin and the American Civil Liberties Union*; Weinrib, *The Taming of Free Speech*.

Foreign Yet Domestic Liberties demonstrated that the ACLU were committed to the defense of and advocacy for civil liberties such as freedom of speech, press, and assembly throughout the U.S. colonial empire. They did so with the purpose of checking the abuses of state authority and because they were deeply committed to the notion that these liberties were the essential means for the pursuit of peaceable change. It was further shown that the ACLU encountered greatly varying sovereignty and constitutional statuses, governmental forms, and rights regimes throughout the respective colonies of the U.S. empire.

A central argument of this study was that the great differentiation of the empire had a critical conditioning effect upon their preexisting imperial imaginary. This study argued that the ACLU had an unstable and unfirm apprehension of the colonial empire within their imperial imaginary from the outset. This led to blurred perceptions of how they distinguished between the metropolitan, colonial, domestic and foreign aspects of the empire. And this, in turn, had an indirect but important influence upon how they pursued their already highly pragmatic, ad-hoc and largely circumstance based approach to the colonial empire.

As this study demonstrated, while the ACLU initially maintained a largely state-sceptic orientation toward colonial state institutions and actors, this began to increasingly erode by the end of the 1920s. It was contended that, while this was largely due to metropolitan developments (such as successful civil liberties litigation in the courts), also critical to this development was the lack of robust and durable non-state contacts and

allies within the respective colonies. The ACLU's neglect of more proactively seeking out and maintaining such allies and contacts can be sourced to the influence of their metropolitan-rooted, if inadvertently racialized, universalism of their imperial imaginary which insulated them from being overly concerned with the potential consequences of this lack. As the ACLU came to increasingly interact, cooperate, and even rely on colonial state institutions and actors, this led to the increasing susceptibility of their imperial imaginary to the influences and discourses of said institutions and actors. In doing so, much of their initially metropolitan-sourced civil liberties universalism began to wane and give way to a colonial particularism. In doing so, their imperial imaginary came more to internalize the metropolitan and colonial binary of the U.S. colonial empire.

Foreign Yet Domestic Liberties concludes by arguing that the ACLU's imperial imaginary impeded their recognition of the ways in which their engagement with the empire by the end of the interwar years had not only done little toward checking the abuses of colonial state authority, but that it had also not provided much in the way of a means through which peaceable change might be pursued throughout the colonial empire. Instead, the ACLU appeared unable to acknowledge the uncomfortable truth that their civil liberties mandate in the colonial sphere had come to so lack in efficacy that it did little more than reflect the variegated and insecure status quo of the U.S. colonial empire and thereby reinforce its metropolitan and colonial distinctions.

The Imperial Imaginary Framework

The findings and arguments of *Foreign Yet Domestic Liberties* have underlined the value of the imperial imaginaries framework initiated by Duncan Bell. As he asserted: “[P]erhaps the most consequential element of the modern imperial imaginary is the way in which the world is envisioned as a space of inequality and radical difference.”⁸⁹⁸ And indeed, something akin to this assertion can be observed through the way the imperial imaginaries framework provided a vital means of grasping how (as was argued throughout this study) the ACLU came to increasingly, if largely unconsciously, internalize, the greatly differentiated and insecure dispensation of the American colonial empire. This study has further emphasized and demonstrated the great value of the imperial imaginary framework as an essential way to account for and assess how actors bridged the metropolitan and colonial spheres of the empire – facilitating a much greater appreciation of such issues as the continuities and discontinuities of these spheres, how they did and did not overlap, and how perceptions of one, when rooted in one sphere, might lead to disconnection, conflation, misunderstanding, unintended implications and consequences in the other.

In that regard, does this study, among other things, reaffirm the value of Daniel Immerwahr’s call for a new “unit of analysis, one that counts *all* of the land over which the United States claims sovereignty as part of the

⁸⁹⁸ Bell, *Reordering the World*, 96.

country, and as part of its history.”⁸⁹⁹ For only by regarding the U.S. empire as a vast, varied, and inextricably interconnected realm – by appreciating the ongoing ties and relationships that often defy a seemingly strict division between the states and colonies – can accounts such as the ACLU’s engagement with the U.S. colonial empire emerge. The fact that scholarship has long neglected to register that one of the country’s most renowned reform organizations was concerned with the colonial empire over the course of its first twenty years is an argument in and of itself for such a broader frame. *Foreign Yet Domestic Liberties* demonstrates that, by doing so, the otherwise familiar story of the American Civil Liberties Union’s rise and evolution becomes that much more complete, enriched, profound, and significant.

Yet the relevance of *Foreign Yet Domestic Liberties* is wider than an account of the early travails of a single American reform organization. Among other things, this study underlines the critical importance of investigating and interrogating how the histories of both the states and colonies of the United States become so much more deepened when their inseparable relations, and often overlapping connections, are better understood and considered. In doing so, however, it needs to be emphasized that *Foreign Yet Domestic Liberties* does not make the corollary argument that the states and colonies of the United States should then be reductively regarded as all being part of one homogenous and undifferentiated imperial

⁸⁹⁹ Immerwahr, “The Greater United States,” 377.

sphere. Rather, what is stressed is that both the metropolitan states and colonies of the United States must be recognized and engaged with as inextricably connected but distinct.

One final point to make about the imperial imaginary framework. There is something of a reflexive quality to the imperial imaginary framework worthy of contemplation by all current scholars, writers, thinkers, and even critics on the phenomenon of empire. This is because they themselves are also to greater and lesser degrees unavoidably embedded within and/or affected by the existence of empire and imperialism in its manifold manifestations. It is worth pointing out that Duncan Bell's initial development and application of the imperial imaginary was for the purposes of intellectual history. Indeed, many of the figures he applied it to, such as L.T. Hobhouse, T.H. Green, John Robert Seeley, and E.A. Freeman, were scholars themselves.

Hence, the intriguing potential of applying the imperial imaginary framework to the scholarship of empire, imperialism, and colonialism. This could sharpen the theories and analysis of empire, as well as bring to light new dimensions and/or tensions within such work. By way of example, the famed scholars of the Wisconsin school would make for a fascinating subject of research through this framework. As their work – which laid much of the foundation of the scholarly field of American empire – was itself the product of scholars embedded within the metropole of the very empire they were assessing at the height of its power during the Cold War, it would likely be of

great insight and benefit to analyze the influence of imperial imaginaries evident within their work. This is just one viable route among many others.

The merits and values of extending the imperial imaginary framework to scholarship on empire would not be limited to a kind metahistorical form of analysis (albeit a genuinely valuable contribution this would be in its own right). This could lead to a greater form of historical and contemporaneous mindfulness in approaching the topic of empire and the inextricably related issues of imperialism, colonialism, and/or anti-imperialism. Such a reflexive mindfulness on the part of scholars would only further deepen and enrich the scholarship on empire going forward.

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Summary

Foreign Yet Domestic Liberties seeks to answer the questions: Why and how did the American Civil Liberties Union (ACLU) engage in the U.S. colonial empire between 1920 and the American entry into the Second World War in 1941? Of what significance was an imperial imaginary to their engagement? How did their involvement in the colonies relate to their more renowned work within the mainland states? And, finally, what were the results and consequences of this engagement for the ACLU, their imperial imaginary, and their resulting pursuit of their civil liberties commitments in the colonial sphere?

In addressing the ACLU's involvement with the U.S. colonial empire between 1920 and 1941, *Foreign Yet Domestic Liberties* shows that the ACLU were committed to the defense of and advocacy for civil liberties such as freedom of speech, the press, and assembly throughout the U.S. colonial empire. They did so with the purpose of checking abuses of state power and because they believed that these liberties were the essential means for the pursuit of peaceable change.

This study demonstrates that throughout the course of their engagement with the empire, the ACLU came to confront a great variety of colonial contexts that proved to be of great significance. For whether it was in the Philippines, the U.S. Virgin Islands, American Samoa, or Haiti, the ACLU encountered a colonial empire that varied greatly in terms of formal sovereignty, constitutional statuses, and governance regimes. These factors

proved to be of great significance for how the ACLU both engaged with and perceived of the U.S. colonial empire.

This study demonstrates that the ACLU pursued their broad civil liberties commitments in the colonial empire in a varying, pragmatic, and ad-hoc manner. The ACLU both took the initiative themselves and were called upon by others to involve themselves in cases where civil liberties violations were deemed to have taken place. They also proactively advocated for different policy approaches and legislative reforms, lobbied colonial and federal administrations, and, on two occasions even sought constitutional change of the colonial empire through supporting litigation efforts in the courts. Furthermore, based on demands emanating from specific colonies, and largely at the behest of the organization's executive director Roger Baldwin, the ACLU also addressed the issue of independence from the empire. And in the case of an informal colony – Haiti – they even went so far as to adopt an assertively anti-imperialist stance.

A key contention of this study is that an imperial imaginary on the part of the ACLU proved to be of great significance throughout their engagement with the colonial empire. The conceptual framework of “imperial imaginaries” was developed by historian Duncan Bell. By imperial imaginaries, Bell meant those “aspects of social imaginaries that pertain to the justification or governance of empire.” Bell distinguished between imaginaries and ideologies, emphasizing that the former “are more basic” than the latter “insofar as they establish the background cultural and cognitive conventions that structure and animate them.” Imaginaries are to

be distinguished from the more willful, self-conscious, and/or deliberative constructions that ideologies and even beliefs tend to be.

The imperial imaginary of an actor and/or set of actors is an ever present (even if latent), dynamic, and contingent condition of an imperially embedded actor and/or set of actors. And among such imperially embedded actors, this framework is most relevant for metropolitan based actors who interest themselves in the colonial sphere. The imperial imaginary framework is then an especially apt means through which to assess the ACLU's engagement with the U.S. colonial empire. This study contends that the imperial imaginary of the ACLU was a foundational aspect of how they perceived spaces, peoples, events, and/or issues as being situated within the colonial realm or not. Such perception was critical to what they registered as residing within either the metropole or the colonial periphery (whether that be the formal or informal spheres), or neither of the above and, accordingly, a part of a foreign realm. Relatedly, a very relevant aspect of their imaginary was not only how they evidently distinguished between such categories, but also how they blurred the lines nominally demarcating them within their imaginary.

Foreign Yet Domestic Liberties argues that a broad trajectory in the ACLU's engagement with the colonial empire can be observed. As the ACLU's early anti-statism began to wane – both within the metropolitan states and the colonies – they increasingly developed cooperative relations, and even reliance, on federal and colonial state actors over the course of the interwar years. This increasingly influenced the ACLU with respect to their priorities,

perceptions, conduct, and objectives. In particular, it served to greatly compromise whatever checks to the abuses of colonial state power that their civil liberties mandate sought to provide in the areas of freedom of speech, assembly, and the press. Relatedly, their imperial imaginary inhibited them from recognizing, and therefore potentially addressing, the lack of input, perspectives, cooperation and/or membership from among the diverse subject populations of the colonial sphere. This was of great consequence. For the ACLU to have robustly affirmed their commitment to checking abuses of colonial state power, they would have needed to have secured and maintained such colonial subject contacts and allies.

These factors eventually led to their accommodation with a more varied and insecure form of civil liberties for the colonial sphere by the end of the 1930s. This more colonially particularist orientation happened to contrast greatly with the more universally framed form of civil liberties they were securing within the metropolitan states. The ACLU even came to acknowledge that such a distinction existed when they later made casual reference to there being “colonial civil liberty.” In doing so, they came to reinforce the metropolitan and colonial dichotomy of the U.S. empire within their imaginary. It is a mark of the significance of the ACLU’s imperial imaginary that they were seemingly unawares of the fact that, by the end of the interwar years, their engagement in the colonial empire had resulted in their tacit acceptance of a more particularist, foreign yet domestic, form of civil liberties made safe for colonial empire.

Samenvatting

Foreign Yet Domestic Liberties probeert antwoord te geven op de volgende vragen: waarom en hoe hield de American Civil Liberties Union (ACLU) zich bezig met het Amerikaanse koloniale rijk tussen 1920 en het begin van de Amerikaanse deelname aan de Tweede Wereldoorlog in 1941? Hoe belangrijk was een imperiale verbeelding (*imperial imaginary*) voor hun betrokkenheid? Hoe verhiel hun betrokkenheid bij de koloniën zich tot hun bekendere werk in de staten op het Amerikaanse vasteland? En tot slot, wat waren de resultaten en gevolgen van dit engagement voor de ACLU, hun imperiale imaginaire ideeën en hun daaruit voortvloeiende streven naar burgerlijke vrijheden in de koloniale invloedssfeer?

Door in te gaan op de betrokkenheid van de ACLU bij het Amerikaanse koloniale rijk tussen 1920 en 1941, laat *Foreign Yet Domestic Liberties* zien dat de ACLU zich inzette voor de verdediging van en steun voor burgerlijke vrijheden zoals vrijheid van meningsuiting, pers en vergadering in het hele Amerikaanse koloniale rijk. Ze deden dit met het doel om misbruik van staatsmacht tegen te gaan en omdat ze geloofden dat deze vrijheden de essentiële middelen waren voor het tot stand komen van vreedzame verandering.

Deze studie laat zien dat de ACLU in de loop van hun betrokkenheid bij het imperium te maken kreeg met een grote verscheidenheid aan koloniale contexten die van groot belang bleken te zijn. Want of het nu op de Filippijnen, de Amerikaanse Maagdeneilanden, Amerikaans Samoa of Haïti

was, de ACLU werd geconfronteerd met een koloniaal rijk dat sterk varieerde in termen van formele soevereiniteit, grondwettelijke statussen en regimes. Deze factoren bleken van groot belang te zijn voor de manier waarop de ACLU zich bezighield met het koloniale rijk van de VS en hoe ze er tegenaan keken.

Dit onderzoek toont aan dat de ACLU hun brede inzet voor burgerlijke vrijheden in het koloniale rijk op een wisselende, pragmatische en ad-hoc manier nastreefde. De ACLU nam zelf het initiatief en werd door anderen opgeroepen om zich te betrekken bij zaken waarin burgerlijke vrijheden werden geschonden. De ACLU pleitte ook proactief voor verschillende beleidsbenaderingen en wetshervormingen, lobbyde bij koloniale en federale overheden en pleitte, door het ondersteunen van rechtzaken, in twee gelegenheden zelfs voor een grondwetswijziging met betrekking tot het koloniale rijk. Op basis van eisen uit specifieke kolonies en grotendeels op aandringen van de uitvoerend directeur van de organisatie, Roger Baldwin, hield de ACLU zich ook bezig met de kwestie van onafhankelijkheid van het rijk. En in het geval van Haiti, een informele kolonie, gingen ze zelfs zover dat ze een direct anti-imperialistisch standpunt innamen.

Een belangrijke stelling van deze studie is dat de imperiale verbeelding van de ACLU van groot belang bleek te zijn tijdens hun engagement met het koloniale rijk. Het conceptuele kader van “imperial imaginaries” werd ontwikkeld door historicus Duncan Bell. Met imperiale verbeeldingen bedoelde Bell de “aspecten van sociale voorbeelden die betrekking hebben op de rechtvaardiging of het bestuur van het imperium”. Bell maakte

onderscheid tussen voorbeeldingen en ideologieën en benadrukte dat de eerstgenoemde “fundamenteler” zijn dan de laatstgenoemde “in zoverre zij de culturele en cognitieve achtergrondconventies bepalen die hen structureren en bezielen”. Imaginaire denkbeelden moeten worden onderscheiden van de meer wilskrachtige, zelfbewuste en/of weloverwogen constructies die ideologieën en zelfs overtuigingen plegen te zijn.

De imperiale verbeelding van een actor en/of een groep actoren is een altijd aanwezige (zelfs latente), dynamische en contingente conditie van een imperiaal ingebedde actor en/of groep actoren. En onder dergelijke imperiaal ingebedde actoren is dit kader het meest relevant voor grootstedelijke actoren die zich interesseren voor de koloniale sfeer. Het imperiale denkkader is dan ook een bijzonder geschikt middel om de betrokkenheid van de ACLU bij het koloniale imperium van de VS te beoordelen. Dit onderzoek stelt dat de imperiale verbeelding van de ACLU een fundamenteel aspect was van hoe zij ruimtes, mensen, gebeurtenissen en/of kwesties al dan niet beschouwden als behorend tot het koloniale rijk. Deze perceptie was cruciaal voor wat ze registreerden als behorend tot de metropool of de koloniale periferie (of dat nu de formele of informele sferen waren), of geen van beide en dus een deel van een buitenlands rijk. Een zeer relevant aspect van hun verbeelding was niet alleen hoe ze klaarblijkelijk onderscheid maakten tussen deze categorieën, maar ook hoe ze de lijnen vervaagden die hen nominaal scheidden binnen hun verbeelding.

Foreign Yet Domestic Liberties stelt dat er een breed traject kan worden waargenomen in de betrokkenheid van de ACLU met het koloniale rijk.

Terwijl het vroege antistatisme van de ACLU begon af te nemen - zowel binnen de meer metropolitaanse staten als in de koloniën - ontwikkelden ze in de loop van het interbellum steeds meer samenwerkingsrelaties met en zelfs afhankelijkheid van federale en koloniale overheidsactoren. Dit beïnvloedde de ACLU in toenemende mate in het bijzonder met betrekking tot hun prioriteiten, percepties, gedrag en doelstellingen. Specifiek vormde het een belemmering voor de controle op het machtsmisbruik van de koloniale staat, wat hun mandaat voor burgerlijke vrijheden wilde bieden op het gebied van vrijheid van meningsuiting, vergadering en pers. Bovendien verhinderde hun imperiale verbeelding hen ervan om het gebrek aan inbreng, perspectief, samenwerking en/of lidmaatschap van de vershillende onderworpen bevolkingsgroepen in de koloniale sfeer te erkennen en dus mogelijk aan te pakken. Dit had grote gevolgen. Als de ACLU hun toewijding aan het controleren van misbruik van de koloniale staatsmacht krachtig had willen bevestigen, dan hadden ze dergelijke koloniale contacten en bondgenoten moeten vaststellen en onderhouden.

Deze factoren leidden er uiteindelijk toe dat ze aan het eind van de jaren 1930 genoeg namen met een meer gevarieerde en onzekere vorm van burgerlijke vrijheden voor de koloniale sfeer. Deze meer koloniale particularistische oriëntatie stond in groot contrast met de meer universeel geformuleerde vorm van burgerlijke vrijheden die ze binnen de grootstedelijke staten veiligstelden. De ACLU erkende zelfs dat dit onderscheid bestond toen ze later terloops refereerden aan het bestaan van “koloniale burgerlijke vrijheid”. Daarmee versterkten ze de metropolitane

en koloniale dichotomie van het Amerikaanse imperium in hun verbeelding. Het is tekenend voor het belang van de imperiale verbeelding van de ACLU dat ze zich schijnbaar niet bewust waren van het feit dat aan het eind van het interbellum hun betrokkenheid bij het koloniale rijk had geresulteerd in hun stilzwijgende acceptatie van een meer particularistische, buitenlandse en toch binnenlandse, vorm van burgerlijke vrijheden toch veilig was voor het koloniale rijk.

Curriculum Vitae

Paul Brennan was born in New York on May 28 May 1982. He earned his BA in Modern History with First Class Honors from Queens University in July 2014. In February 2018, he earned a Research Masters in Political Culture and National Identities from Leiden University with cum laude. In November 2017, Paul began his PhD with Leiden University and the Roosevelt Institute of American Studies. He completed his dissertation under the supervision of Prof. Giles Scott-Smith, Prof. Damian Alan Pargas, and Prof. Dario Fazzi.