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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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Citation

Brennan, P. (2025, May 15). *Foreign yet domestic liberties: the imperial imaginary of the ACLU and the U.S. colonial empire, 1920-1941*. Retrieved from <https://hdl.handle.net/1887/4246153>

Version: Publisher's Version

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Note: To cite this publication please use the final published version (if applicable).

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

²⁴⁹Joseph 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 Urion, 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 Urion 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 Urion to Forest Bailey, (September 3, 1926), ACLU Papers (Digitized Microfilm), vol. 309, 232; Henry Urion to Forest Bailey, 1 October 1926, ACLU Papers (Digitized Microfilm), vol. 309, 239-40.

³⁰⁸ Forest Bailey to Henry Urion, 8 September 1926, ACLU Papers (Digitized Microfilm), vol. 309, 234; Forest Bailey to Henry Urion 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 Urion 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 Urion to Forest Bailey, 3 September 1926, ACLU Papers (Digitized Microfilm), vol. 309, 232; Henry Urion to Forest Bailey, 1 October 1926, ACLU Papers (Digitized Microfilm), vol. 309, 239-40; Forest Bailey to Henry Urion, 8 September 1926, ACLU Papers (Digitized Microfilm), vol. 309, 234; Forest Bailey to Henry Urion, 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 Urion 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 Mindinao 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 Antiimperiliasta 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?locat t=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. Paguia. This had stemmed from Paguia 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 Paguia 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 Paguia. 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 Paguia, 20 February 1926, ACLU Papers (Digitized Microfilm), vol. 309, 180; Lucille Milner to Antonio Paguia, 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.