"The Constitution Follows the Flag...but Doesn't Quite Catch Up with It": The Story of Downes v. Bidwell.

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Some may consider a 1901 case to be ancient history, but *Downes v. Bidwell* progeny still govern all of these regions. This chapter will explore the Insular Cases as a way to understand the role of race in articulating the relations territorial expansion and American citizenship-between American democracy. The chapter begins by historicizing the *Downes* opinion. My aim here is threefold: (1) to provide a brief description of the effects of Spanish colonial rule on Puerto Rico; (2) to set forth the circumstances leading up to the Spanish American War; and (3) to illustrate how the outcome of that war helped to shape colonial power. Next, the chapter tells the story behind the *Downes* showing how the law reflected an uneasy balance between declaring the island to be both a U.S. possession, and one with a separate, not entirely "American" population. As this story and its aftermath will reveal, *Downes* and other early cases made clear that Puerto Rico did not enjoy the same status as states when it came to commerce and trade.

**Recommended Citation**
