

INDIGENOUS RIGHTS: A PATHWAY TO END AMERICAN SECOND-CLASS CITIZENSHIP

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ABSTRACT

Nearly 4 million American residents in U.S. territories are second-class citizens, lacking individual and collective voting rights and burdened with other gross socioeconomic and healthcare disparities. These disparities affect many honorable veterans that suffer from physical and mental injuries due to fighting for rights they themselves do not possess. The *Insular Cases*, self-determination, and critical race theory are current hot topics in Washington D.C. Out of the five U.S. territories, only Guam, Puerto Rico, and the U.S. Virgin Islands fully supported a resolution denouncing the systemically racist *Insular Cases* at a Congressional hearing in 2021. Even Trump-appointed Supreme Court of the United States (“SCOTUS”) Justice Gorsuch called for the end of the *Insular Cases* in 2022. The Commonwealth of the Northern Mariana Islands (“CNMI”) and American Samoa had reservations about fully supporting the resolution due to concerns regarding cultural survival. Legislative solutions to address the prejudiced language in the *Insular Cases* and the overall nature of second-class citizenship in U.S. territories, which would require statehood to remain American, have yet to materialize. Implementing the United Nations Declaration of the Rights of Indigenous Peoples (“UNDRIP”) through local and federal legislation could be a consensus-based solution to not only

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replace the *Insular Cases* but also overturn what this Article will refer to as the *Discovery Cases* – rulings linked with *Johnson v. M'Intosh*, which include the *Insular Cases*. Indigenous rights protections could also provide interest toward statehood for the CNMI, as well as potential reunification with Guahan. UNDRIP-based legislation could end Pacific territories' concerns regarding closer integration with the U.S. by ensuring Indigenous rights and simultaneously laying a foundation to end second-class citizenship in America.

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I. INTRODUCING THE ISSUE OF AMERICAN SECOND-CLASS CITIZENSHIP

Struggles for fundamental rights are gaining momentum in America, especially in American lands existing outside of statehood. Washington D.C., Puerto Rico, and Guahan (officially known as “Guam” in the present

day, but this paper will use the Indigenous term “Guahan”) are all exercising their right of self-determination through community-based dialogues and referendums alongside legislative efforts for potential statehood and voting rights.² The movement to end second-class citizenship in America is ramping up. One of the remaining racist legacies of the “separate but equal” *Plessy*-era SCOTUS rulings from the early 1900s are the *Insular Cases*.³ The “*Insular Cases*” are a collective series of SCOTUS rulings in response to litigation arising from newly acquired territories of the “American empire”⁴ in the aftermath of the Spanish-American War of 1898. They include *Downes v. Bidwell*, which enshrined, to varying degrees, second-class citizenship in American territories. Second-class citizenship applies to millions of residents of U.S. territories that are U.S. citizens (or “nationals” in the case of American Samoa) but do not have the right to vote for the President, do not have representation in the U.S. Senate, have non-voting representation in the U.S. House of Representatives, receive lower federal funding relative to states, and have stark poverty and health disparities.⁵ The tentacles of U.S. imperialism and the *Insular Cases*’ reach even includes the human rights black hole⁶ of Guantanamo Bay in Cuba, whose origins also date back to the Spanish-American War of 1898.⁷ In addition to Guantanamo Bay, Cuba, the war created the U.S. territories of Guahan, the Philippines, and Puerto Rico.⁸

As awareness of the *Insular Cases* and demands for legislative solutions continues to grow, any conversation about reforming systemic

² Susan K. Serrano, *Elevating the Perspectives of U.S. Territorial Peoples: Why the Insular Cases Should Be Taught in Law School*, 21 J. GENDER RACE & JUST. 395, 395–458 (2018); Gabriela Miranda, *Decades-long Debates Surrounding D.C., Puerto Rico and Guam Statehood Have Been Reignited. What’s the Best Option?*, USA TODAY (Apr. 30, 2021, 4:16 PM), <https://www.usatoday.com/story/news/politics/2021/04/30/statehood-dc-puerto-rico-and-guam-what-do-their-residents-want/7413044002> [https://perma.cc/5WQE-9CHV].

³ Joseph Blocher & Mitu Gulati, *Puerto Rico and the Right of Accession*, 43 YALE J. INT’L L. 229, 240 (2018).

⁴ *Downes v. Bidwell*, 182 U.S. 244 (1901).

⁵ *D.C., Puerto Rico, and the U.S. Territories*, ROCKTHEVOTE (Nov. 24, 2021), <https://www.rockthevote.org/explainers/washington-d-c-puerto-rico-and-the-u-s-territories/> [https://perma.cc/Q7ZM-GFMW].

⁶ Andrew Kent, Boumediene, Munaf, and the Supreme Court’s Misreading of the *Insular Cases*, 97 IOWA L. REV. 101 (2011).

⁷ *Id.*

⁸ *The Spanish-American War, 1898*, OFFICE OF THE HISTORIAN, <https://history.state.gov/milestones/1866-1898/spanish-american-war> [https://perma.cc/Q9TA-7SQG] (last visited Nov. 23, 2021).

racism is not credible without also including the foundational Doctrine of Discovery-based cases. President Jefferson, as well as other Founding Fathers, recognized the Doctrine of Discovery against Indigenous land rights and implemented an American version called “Manifest Destiny” for westward “expansion” with the Louisiana Purchase and the Lewis and Clark expeditions.⁹ The basis for the international law of colonialism, the “Doctrine of Discovery” was integrated into America legally in 1823 with the seminal property law case that all U.S. attorneys read about in law school: *Johnson v. M’Intosh* (“*M’Intosh*”).¹⁰ *M’Intosh* essentially legalized land theft¹¹ and thus the eventual genocide of Indigenous peoples through the religiously-authorized Doctrine of Discovery (that is, an arbitrary logic that other White Europeans had taken land before, thus making it incontestable).¹² The “Doctrine of Discovery” is a collective of papal bulls (Vatican-based authorizations) that provided the framework for European empires declaring ownership of land from non-Christian peoples on the basis of their religious beliefs. Starting with *M’Intosh*, the Doctrine of Discovery was incorporated into American law, and used by other nations such as Canada.¹³ From the Northwest Ordinance of 1787¹⁴ and continuing through today, the U.S., as an “American empire,” dexterously (or conveniently) chose which international laws it would select, such as ignoring the Royal Proclamation of 1763, which protected Indigenous land rights west of the thirteen colonies,¹⁵ and implementing the Doctrine of

⁹ Robert J. Miller, *American Indians, the Doctrine of Discovery, and Manifest Destiny*, 11 WYO. L. REV. 329, 329-49 (2011) [hereinafter *American Indians*].

¹⁰ Robert J. Miller, *The Doctrine of Discovery: The International Law of Colonialism*, 5 INDIGENOUS PEOPLES’ J. L. CULTURE & RESISTANCE 35, 37-38 (2019) [hereinafter *Doctrine of Discovery*]. This article refers to *Johnson v. M’Intosh* as “McIntosh,” although it is commonly referred to as “McIntosh”; *Johnson v. M’Intosh*, 21 U.S. 543 (1823).

¹¹ Justin Farrell et al., *Effects of Land Dispossession and Forced Migration on Indigenous Peoples in North America*, 374 SCI. (2021).

¹² *The Doctrine of Discovery, 1493*, GILDER LEHRMAN INST. OF AM. HIST., https://www.gilderlehrman.org/history-resources/spotlight-primary-source/doctrine-discovery-1493?gclid=Cj0KCQiA0rSABhDIARIsAJtfCfozqndFRapmcvg0gFi6LKppqEyAsgY7K12D-VfqJWhyeRizth76rhwaAme_EALw_wcB [https://perma.cc/P34B-HLMH] (last visited Oct. 11, 2021).

¹³ Blake A. Watson, *The Impact of the American Doctrine of Discovery on Native Land Rights in Australia, Canada, and New Zealand*, 34 SEATTLE U. L. REV. 507 (2011).

¹⁴ *Northwest Ordinance (1787)*, NAT’L ARCHIVES, <https://www.archives.gov/milestone-documents/northwest-ordinance> [https://perma.cc/TVH4-FM8Q] (last updated May 10, 2022).

¹⁵ Jesse Greenspan, *How the Proclamation of 1763 Sparked the American Revolution*, HIST., <https://www.history.com/news/remembering-the-proclamation-of-1763> [https://perma.cc/5QDN-9T57] (Oct. 7, 2013).

Discovery.¹⁶ Neither *M'Intosh* nor the *Insular Cases* are currently possible without the Vatican-based Doctrine of Discovery, so the *Insular Cases* are in reality just a subset of Doctrine of Discovery-based case law, which we will later describe as the “*Discovery Cases*” (*M'Intosh*-related cases & the *Insular Cases* combined).¹⁷

These examples of active case law have varying impacts on populations living in U.S. territories. The *Insular Cases* impact all U.S. territories. The *Discovery Cases*, along with the Equal Protection Clause, specifically impact Indigenous peoples living in U.S. territories who fear that closer union with the U.S. would destroy their culture through the loss of Indigenous land rights. One of the most notorious *Insular Cases*, *Downes v. Bidwell*, references *M'Intosh* three times and “discovery” nine times.¹⁸ Denouncing the *Insular Cases* alone would address symptoms and not root causes. To adequately discuss the *Insular Cases* requires a new classification and terminology – a broader scope to include the *Insular Cases* and all other cases based on the Doctrine of Discovery under the larger umbrella term of what we call the “*Discovery Cases*.” This could result in rooting out the arguably unconstitutional religious authorization of the Doctrine of Discovery from the American legal system. The Doctrine of Discovery is the foundation for international law with regard to the dispossession of Indigenous land rights. If the Founding Fathers had no issue using international law to dispossess Indigenous peoples, then international law can be used today as a remedy, such as legislatively implementing the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

A. UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES (UNDRIP)

UNDRIP is the most comprehensive international Indigenous rights instrument,¹⁹ covering a wide range of issues that recognize the traumatic

¹⁶ Erin Blakemore, *This 500 Year-Old Catholic Decree Encouraged Colonization. Will the Pope Revoke It?*, NAT'L GEOGRAPHIC (July 22, 2022), <https://www.nationalgeographic.com/history/article/doctrine-of-discovery-how-the-centuries-old-catholic-decree-encouraged-colonization> [https://perma.cc/K7LU-Q8VC].

¹⁷ See *Downes v. Bidwell*, 182 U.S. 244 at 281 (1901).

¹⁸ See *Downes v. Bidwell*, 182 U.S. 244 at 281, 300, 301, 303, 304, 306-08, 311, 369 (1901).

¹⁹ *United Nations Declaration on the Rights of Indigenous Peoples*, U.N., <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of->

histories and living legacies of colonialism.²⁰ It contains forty-six articles that address all aspects of human rights, including culture, environment, language, education, and health. A main component of UNDRIP that is stated several times throughout the Declaration is the importance of Indigenous peoples' land rights. Article 26 of UNDRIP states, "Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired . . . have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired . . . [and] States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned."²¹ UNDRIP has a diverse track record with many different Indigenous peoples and governments and includes a variety of mechanisms to utilize via the United Nations.²² Indigenous rights are international human rights²³ – they do not threaten non-Indigenous peoples' rights. Indigenous rights are not beneficial exclusively for Indigenous peoples; everyone can benefit from a diversity of cultures. Humanity suffers when entire cultures and languages become extinct – whether they are Indigenous or not. The *Discovery Cases* are a White supremacist stain on the American judicial system and continue the destructive legacies of genocidal colonialism through the present day, especially for Indigenous peoples. Indigenous land rights, such as Article 12 of the CNMI Constitution, which stipulates that only people of "Northern Marianas Descent" can own land, should not have to rely on the *Insular Cases* in order to exist as an unincorporated territory.²⁴ UNDRIP-based legislation could be an alternative solution to these issues.

indigenous-peoples.html [https://perma.cc/GU8R-DMZL] (last visited Oct. 2, 2021); G.A. Res. 61/295, Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

²⁰ *About the Declaration, IMPLEMENTATION PROJECT*, https://un-declaration.narf.org/about-un-declaration [https://perma.cc/6N8F-8QT9] (last visited Nov. 23, 2021).

²¹ *United Nations Declaration on the Rights of Indigenous Peoples*, *supra* note 19.

²² *Expert Mechanism on the Rights of Indigenous Peoples*, OFFICE HIGH COMM'R FOR HUM. RTS., https://www.ohchr.org/en/hrc-subsiaries/expert-mechanism-on-indigenous-peoples [https://perma.cc/Q2UA-ZJNL] (last visited Nov. 23, 2021).

²³ *OHCHR and Indigenous Peoples*, OFFICE HIGH COMM'R FOR HUM. RTS., https://www.ohchr.org/en/indigenous-peoples [https://perma.cc/9K3R-7LHW] (last visited Nov. 23, 2021).

²⁴ N. Mar. I. CONST. art. XII, § 1, 3, 4.

UNDRIP is currently legally unenforceable in the U.S., although it could provide persuasive support in domestic courts. Enforceability requires the implementation of UNDRIP-based legislation. This can happen at both the local and federal levels. The strongest international example of implementation is Bolivia,²⁵ which incorporated Indigenous rights into their national constitution.²⁶ Be that as it may, this comparative analysis focuses on local and federal UNDRIP-based legislative actions in Canada that would be in the realm of comparability for a U.S. territory such as the CNMI and the U.S. at the federal level. If the U.S. Congress were to legislate UNDRIP-based laws similar to Canada, this would establish protections for Indigenous cultural survival that eliminate territorial concerns regarding closer political union with the U.S. – whether it be citizenship, reunification, or statehood.

B. IMPLEMENTING INDIGENOUS RIGHTS

In an age of relative progress in gender and sexual equality, concepts of feminism²⁷ and LGBTQ+²⁸ rights find roots in ancient Indigenous culture. The status of matrilineal or matriarchy-based cultures is core to many Indigenous peoples, including the Indigenous Chamorro people of the CNMI. Historically, the Chamorro people had both *Maga'lahi* male chiefs and female *Maga'haga* chiefs,²⁹ and their cosmological origin story involves equally powerful brother and sister bonds.³⁰ *Maga'lahi* and *Maga'haga* denoted the highest-ranking position in a clan for Chamorro

²⁵ Corrine Tansowny, *An UNDRIP in the Bucket? The Potential Impact of BC's Adoption of the United Nations Declaration on the Rights of Indigenous People*, MCGILL J. SUSTAINABLE DEV. L., <https://www.mjsdl.com/content/an-undrip-in-the-bucket-the-potential-impact-of-bcs-adoption-of-the-united-nations-declaration-on-the-rights-of-indigenous-people> [https://perma.cc/N7SQ-DJVG] (last visited Sept. 18, 2022).

²⁶ Stephanie Wood & Emma McIntosh, *Indigenous Rights: How Bolivia Got Ahead of Canada*, CAN.'S NAT'L OBSERVER (Dec. 8, 2019), <https://www.nationalobserver.com/2019/12/08/news/indigenous-rights-how-bolivia-got-ahead-canada> [https://perma.cc/5F5J-VWPX].

²⁷ HAUNANI-KAY TRASK, *EROS AND POWER: THE PROMISE OF FEMINIST THEORY* (1986).

²⁸ Lana Sue I. Ka'opua et al., *Addressing Risk and Reluctance at the Nexus of HIV and Anal Cancer Screening*, 17 HEALTH PROMOTION PRAC. 21, 21-30 (2016).

²⁹ Kelly G. Marsh, *Maga'hāga: Highest Ranking Daughter*, GUAMPEDIA, <https://www.guampedia.com/maga-haga-2/> [https://perma.cc/V3YH-BFTB] (last updated May 19, 2021);

³⁰ Celeste Perez, *Fo'na: Mother of the Chamorro People*, GUAMPEDIA, <https://www.guampedia.com/fuuna/> [https://perma.cc/U56Q-7BSG] (last updated Dec. 20, 2022).

people, and women held control over resources such as land rights and favorable divorce outcomes.³¹ Two of the most prominent Indigenous rights advocates in recent history are the Trask sisters of Hawaii. The late Professor Emerita at the University of Hawaii, Dr. Haunani Kay Trask, wrote extensively on the value of UNDRIP.³² Dr. Trask's sister, attorney Miliani Trask, is a co-drafter of UNDRIP³³ and the first elected leader of *Ka Lahui Hawaii*.³⁴ Artist and former CNMI Representative Cinta Kaipat, one of the first CNMI Chamorro-Refaluwasch females to obtain her Juris Doctor, is an example of a modern-day *Maga'haga* that continues to engage in art and advocacy for Indigenous rights, especially for her homeland of the Northern Islands that include the volcanic island of Pagan.³⁵ If an Indigenous Renaissance is possible, listening to the voices of Indigenous female leadership could be a wise strategy worthy of consideration.

Finally, if there were willing and interested parties, legislative implementation of UNDRIP could lay the groundwork for statehood, as Indigenous peoples in U.S. territories could be more agreeable to closer political union with the U.S. if cultural safeguards are in place. Statehood is the only available way for territories to remain American, obtain individual and collective voting rights, and end second-class citizenship.³⁶ The recent "For the People Act"³⁷ would be a step in the right direction in creating a congressional task force to address territorial voting rights.³⁸ If cultural land rights for the Indigenous peoples of the CNMI exist at the federal level, then

³¹ Tanya M. Champaco Mendiola, *Women's Roles*, GUAMPEDIA, <https://www.guampedia.com/womens-roles/> [<https://perma.cc/J6XL-XSQP>] (last updated Jan. 7, 2023).

³² HAUNANI-KAY TRASK, *FROM A NATIVE DAUGHTER: COLONIALISM AND SOVEREIGNTY IN HAWAII* 61 (U. of Haw. Rev. ed. 1999).

³³ *Testimony of Mililani B. Trask: In Support of Joseph Kualii Lindsey Camara*, DEP'T LAND & NAT. RES. (Oct. 2, 2016), <https://dlnr.hawaii.gov/mk/files/2016/10/Camara-witness-2-Trask.pdf> [<https://perma.cc/2V6W-YKZU>].

³⁴ Noe Wong-Wilson, *A Conversation with Mililani Trask*, 17 CONTEMP. PAC. 142, 142-156 (2005).

³⁵ *US Sued Over Military Plans for Marianas Islands*, RNZ (July 29, 2016, 3:05 PM), <https://www.rnz.co.nz/international/programmes/datelinepacific/audio/201810177/us-sued-over-military-plans-for-marianas-islands> [<https://perma.cc/E7TP-89DM>].

³⁶ *The Constitution of the United States: A Transcription*, NAT'L ARCHIVES, <https://www.archives.gov/founding-docs/constitution-transcript> [perma.cc/J8XS-JBZV] (last updated Aug. 16, 2022).

³⁷ For The People Act of 2021, H.R. 1, 117th Cong. § 3 (2021).

³⁸ *Annotated Guide to the For the People Act of 2021*, BRENNAN CTR. FOR JUST. (Jan. 20, 2021), <https://www.brennancenter.org/our-work/policy-solutions/annotated-guide-people-act-2021#t2-sd> [<https://perma.cc/PN5A-EK6V>].

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reunification would be a compelling argument for consolidation into statehood. Reunification efforts between Guahan and the CNMI have failed in the past in vastly different circumstances,³⁹ but that does not mean failure in modern times. Chamorros were partitioned and separated, played off each other, and used to work against their own people by multiple colonialists, especially most recently under the Japanese occupation pre-World War II. Consider the environment that created the divisions between Guahan and CNMI Chamorros to this day:

When a Guam Chamorro commits an indiscretion against the Japanese, he gets one lash. On the other hand, when a Saipan Chamorro commits an indiscretion, he gets 10 lashes. The reason for this is that a Guam Chamorro was not raised by the Japanese and thus may be expected to commit an indiscretion. However, a Saipan Chamorro was raised by the Japanese and is not supposed to commit an indiscretion.

Steve Limtiaco, *World War II Deepened Rift Between Guam, Saipan CHamorus*

All historic and current intra-Marianas tension arguably would not exist but for genocidal colonialism and partition.⁴⁰ Furthermore, implementing UNDRIP puts citizenship and statehood on the table for American Samoa as well, since federal UNDRIP law would protect cultural rights and alleviate Indigenous cultural survival fears.⁴¹ If all territories felt like their Indigenous rights were legally protected, there would likely be a unanimous condemnation of the *Insular Cases*. With unanimity, a consensus could move forward with actions that address systemic racism and repeal the *Insular Cases* as well as all of the additional *Discovery Cases*,

³⁹ Don Farrell, *History of Efforts to Reunify the Mariana Islands*, GUAMPEDIA, <https://www.guampedia.com/history-of-efforts-to-reunify-the-mariana-islands/> [https://perma.cc/S34D-CV5Q] (last updated Oct. 13, 2019).

⁴⁰ Gina E. Taitano, *CHamorus: A People Divided*, GUAMPEDIA, <https://www.guampedia.com/chamorros-a-people-divided/> [https://perma.cc/STQ2-K7YR] (last updated May 24, 2022).

⁴¹ Robert Barnes, *Supreme Court Won't Take Case Raising Past Rulings Denounced as Racist*, WASH. POST (Oct. 17, 2022, 12:27 PM), <https://www.washingtonpost.com/politics/2022/10/17/supreme-court-american-samoa-citizenship/> [https://perma.cc/HN6K-K4H8].

which would address the roots of today’s second-class citizenship in America.

Although UNDRIP-based legislation at the federal level may for a time be improbable, the hypothetical is possible, considering both the Republican and Democratic parties are strong in the Marianas and thus have bipartisan appeal in Washington D.C. The people of the Marianas are currently marketing material for the Republican party in the sense that they show that the GOP is not just a “White” political party. The first gubernatorial endorsement for then-candidate Donald Trump in the 2016 presidential campaign was Indigenous Republican Governor Ralph Torres of the CNMI.⁴² Statehood for the Marianas should appeal to both major political parties. Ideally, if the CNMI led with UNDRIP-based legislation, and if Congress also legislated Indigenous rights, the CNMI and Guahan could pursue statehood together. There is no ending second-class citizenship without full voting rights, which requires statehood. Indigenous rights-based legislation could be the key to addressing disparities and synthesizing international human rights law with U.S. foreign and domestic policy while ending second-class citizenship in U.S. territories.

C. *DISCOVERY CASES* AND THE ROOTS OF AMERICAN SECOND-CLASS CITIZENSHIP

Along with the institution of slavery and female disenfranchisement in coverture,⁴³ the roots of American second-class citizenship began immediately upon debasement from *colonized* to *colonizer*. These roots reside in American “*Manifest Destiny*”⁴⁴ colonialism of Indigenous lands from “sea to shining sea” to create “incorporated territories” that would gain first-class citizenship upon obtaining statehood.⁴⁵ The *Insular Cases* go

⁴² Gaynor Dumat-ol Daleno, *CNMI Governor Ralph Torres Endorses Trump Ahead of Caucus*, PAC. DAILY NEWS (Mar. 15, 2016), https://www.guampdn.com/news/local/cnmi-governor-ralph-torres-endorses-trump-ahead-of-caucus/article_965d21a6-5c4d-5005-acf0-dad464b728c1.html [perma.cc/4L4F-A9LM].

⁴³ Marylynn Salmon, *The Legal Status of Women, 1776-1830*, GILDER LEHRMAN INST. OF AM. HIST., <https://ap.gilderlehrman.org/essay/legal-status-women-1776%C3%A2%E2%82%AC%E2%80%9C1830> [perma.cc/F37R-M2K4] (last visited Nov. 23, 2021).

⁴⁴ Andrew C. Isenberg & Thomas Richards, Jr., *Alternative Wests: Rethinking Manifest Destiny*, 86 PAC. HIST. REV. 4, 4-17 (2017).

⁴⁵ 1789: *The Northwest Ordinance Guarantees Tribal Land Rights*, NATIVE VOICES, <https://www.nlm.nih.gov/nativevoices/timeline/241.html> [perma.cc/64XD-WUBB] (last visited Nov. 23, 2021).

further by racist judicial fiat in creating “unincorporated” territories – mostly non-White territories *not* on a track for statehood that can thereby exist outside the full application of the Constitution in seemingly *perpetual* inequality. Fortunately for both the CNMI and U.S., the U.S. federal law referred to as the Covenant created the CNMI-U.S. political integration and can be amended through mutual consent (or *unilaterally* by the U.S. federal government).⁴⁶ The Covenant agreement arguably makes the CNMI the most empowered of the territories, although they still lack essential voting rights and equal access to all three branches of government – just like all other U.S. territories.⁴⁷

While the CNMI “agreed” to the Covenant and thereby “agreed” to be treated as second-class citizens, the circumstances in which that took place must be critically contemplated. Second-class citizenship that included Indigenous land rights and limited self-government at the time was commonly considered a tremendous improvement after hundreds of years of brutal genocidal colonialism, World War II-based bombing causing the destruction of their islands, followed by years of internment camps under the U.S. The CNMI Founding Fathers⁴⁸ deserve credit for a deal that included Indigenous land rights protections after surviving centuries of occupation by colonizers that did not allow them the freedom to move about and utilize their lands as they saw fit. However, the journey for *true* self-determination does not have to end in inequality. These CNMI foundational leaders were wise to leave open the ability to amend the Covenant so that the CNMI could continue decolonization for greater self-determination in the future.

If the people want out of second-class citizenship and wish to remain American, the CNMI needs to pursue statehood. If the CNMI alone without Guahan were to pursue statehood, and if the Northwest Ordinance of 1787’s minimum population requirement of 60,000 or more to be eligible for statehood is still in effect for “incorporated territories” transitioning out of “unincorporated” status, then the CNMI would have to wait until its

⁴⁶ S. Rep. No. 110-324 (2008); *Covenant*, COMMONWEALTH L. REV. COMM’N, <https://cnmilaw.org/cov.php#gsc.tab=0> [https://perma.cc/7Y7T-W8HF] (last visited Nov. 23, 2021).

⁴⁷ Northern Mariana Islands v. Atalig, 723 F.2d 682, 691 n.28 (9th Cir. 1984).

⁴⁸ Edward DLG. Pangelinan, *The Legacy of the Commonwealth’s Founding Fathers to Our People*, SAIPAN TRIB. (Sept. 22, 2020), <https://www.saipantribune.com/index.php/the-legacy-of-the-commonwealths-founding-fathers-to-our-people/> [perma.cc/2HLM-8GNH].

population of approximately 47,000 increases.⁴⁹ If they reunified with Guahan and pursued statehood together, they would have a combined population of over 200,000 and gain immediate eligibility. Recent Census data revealed a shocking 12% drop in the CNMI population since 2010, so reunification might be even more crucial than ever if the CNMI desires political equality for its people.⁵⁰

However, second-class citizenship in America will still exist even with voting rights as long as systemic racism remains alive and well in case law. Perhaps the two most infamously racist SCOTUS collections of active case law are *Johnson v. M'Intosh* and *Downes v. Bidwell*, and it is no surprise that they are intimately connected. Many people are familiar with the *Insular Cases* thanks to recent civil rights advocacy⁵¹ as well as pop culture.⁵² However, lesser known and far more shockingly racist are the original cases based on the Doctrine of Discovery, which includes the 1823 foundational American property law case of *M'Intosh* and its progeny. The case of *Johnson v. M'Intosh*,⁵³ a dispute between two White men regarding ownership rights to Indigenous lands, is a Supreme Court ruling that removed ownership of land from Native American tribes and put it in the hands of the U.S. federal government based on Vatican authority and religious superiority.

If the abhorrent *Insular Cases* need to be discarded into the dustbin of history, *M'Intosh* demands equal scrutiny. *M'Intosh's* arguable First Amendment violations of freedom of religion would today be considered modern-day war crimes of land theft and genocide. A potential legal justification for SCOTUS to overturn these bigoted *Discovery Cases* could rely on the argument that any religious “decree” justifying land theft is an unconstitutional violation of the First Amendment. Implementation of UNDRIP could provide the congressional action that SCOTUS and territories alike demand to resolve the *Insular Cases* issue.

⁴⁹ *Northwest Ordinance (1787)*, NAT'L ARCHIVES, <https://www.archives.gov/milestone-documents/northwest-ordinance> [<https://perma.cc/TVH4-FM8Q>] (last updated May 10, 2022).

⁵⁰ Emmanuel T. Erediano, *Census: NMI Population Down 12%*, MARIANAS VARIETY (Oct. 29, 2021), https://mvariety.com/news/census-nmi-population-down-12/article_b528e6f8-37f4-11ec-bea9-c75ba931a654.html [perma.cc/7RVW-PQFQ].

⁵¹ *U.S. Citizens Defend Democracy, Can't Vote for President*, EQUALLY AM. BLOG, https://www.equalrightsnow.org/u_s_citizens_defend_democracy_can_t_vote_for_president [perma.cc/AQ2Q-U8JQ] (last visited Oct. 11, 2021).

⁵² LastWeekTonight, *U.S. Territories: Last Week Tonight with John Oliver (HBO)*, YOUTUBE (Mar. 8, 2015), <https://www.youtube.com/watch?v=CesHr99ezWE> [perma.cc/2282-QWV8].

⁵³ *Johnson v. M'Intosh*, 21 U.S. 543, 572, 574-77 (1823).

Reforms between the U.S. federal government and “non-states” are actively moving forward with proposed statehood for Washington D.C. and decolonization with self-determination considerations for Puerto Rico and Guahan that may also include statehood.⁵⁴ Other U.S. territories, like the CNMI and American Samoa, have largely been outside this conversation due to concerns about cultural extinction under greater integration with the U.S.⁵⁵ Thus, Indigenous rights legislation with a national action plan is a creative endeavor to address solutions not only to a post-*Discovery Cases* world, but also to pave the foundation for U.S. territories to potentially become states while safeguarding cultural survival. SCOTUS has the power to undo the historic White supremacist embarrassment of the *Discovery Cases*: “. . . (I)t is [the Supreme] Court's prerogative alone to overrule one of its precedents.”⁵⁶ The U.S. Congress has similar discretionary power to do the same with the admission of new states, and Indigenous rights legislation could be the harmonizing nexus for these two branches of government to ameliorate American systemic racism. “. . . Congress's exercise of its express constitutional authority to decide to admit a new state is a classic political question, which courts are highly unlikely to interfere with, let alone attempt to bar.”⁵⁷

Global protest movements demanding an end to police brutality show the time is ripe to address systemic racism. For example, the Paris Climate Accords and the Iran nuclear deal did not survive the Trump presidency,⁵⁸

⁵⁴ Sahil Kapur, *Letter to Congressional Leaders on Constitutionality of Statehood for Washington D.C., May 2021*, SCRIBD (May 2021), <https://www.scribd.com/document/509015647/Letter-to-Congressional-Leaders-on-Constitutionality-of-Statehood-for-Washington-D-C-May-2021> [perma.cc/CJ4B-JPMB]; Puerto Rico Self-Determination Act of 2021, S. 865, 117th Cong. (2021); “USA Has Not Supported Self-Determination for the Chamorro People of Guam” Say UN Experts, UNREPRESENTED NATIONS & PEOPLES ORG. (Mar. 30, 2021), <https://unpo.org/article/22133> [perma.cc/G3W4-VZ6B].

⁵⁵ Anita Hofschneider, *The US Supreme Court's Decision Not to Hear American Samoa Citizenship Case Gets Mixed Reaction*, HONOLULU CIV. BEAT (Oct. 18, 2022), <https://www.civilbeat.org/2022/10/us-supreme-courts-decision-not-to-hear-american-samoa-citizenship-case-gets-mixed-reaction/> [https://perma.cc/HR6V-LERN].

⁵⁶ *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997).

⁵⁷ Kapur, *supra* note 54, at 11.

⁵⁸ *Statement by President Trump on the Paris Climate Accord*, TRUMP WHITE HOUSE ARCHIVE (June 1, 2017), <https://trumpwhitehouse.archives.gov/briefings-statements/statement-president-trump-paris-climate-accord/> [https://perma.cc/8BPJ-S4AF]; *President Donald J. Trump is Ending United States Participation in an Unacceptable Iran Deal*, TRUMP WHITE HOUSE ARCHIVE (May 8, 2018) <https://trumpwhitehouse.archives.gov/briefings-statements/president->

but it is a credit to his administration that the U.S. commitment to UNDRIP remained unspoiled. Current President Biden served as the Vice President in President Obama’s administration when the U.S. became a Signatory to UNDRIP.⁵⁹ The Declaration has been proudly endorsed by the current Department of Interior Secretary Deb Haaland, the first Native American in a presidential cabinet.⁶⁰ Bold Indigenous rights-based legislation at the local (CNMI), regional (Guahan, American Samoa), and federal levels (U.S. Congress) would incorporate international human rights law (Indigenous rights) with U.S. foreign and domestic policy (UNDRIP). America may be late to implementing UNDRIP, but it can and should legislate Indigenous rights that address legacies of genocidal colonialism, systemic racism, and provide a pathway to end second-class citizenship in its territories. Prior to discussing the legal implications of the *Discovery Cases* and how UNDRIP-based legislation could be implemented in a U.S. territory like the CNMI, it is necessary to review the CNMI’s colonial history and the resulting impact it has had on the islands and people.

D. TERRITORIAL FOCUS: CNMI HISTORICAL BACKGROUND

The Spaniards would have done better to remain in their own country. We have no need of their help to live happily. Satisfied with what our islands furnish us, we desire nothing. The knowledge which they have given us has only increased our needs and stimulated our desires...They dare to take away our liberty, which should be dearer to us than life itself

The Spaniards reproach us because of our poverty, ignorance and lack of industry. But if we are poor, as they tell us, then what do they search for? If they didn’t have need of us, they would not expose themselves to so many perils and make such efforts to establish themselves in our

donald-j-trump-ending-united-states-participation-unacceptable-iran-deal/ [perma.cc/6TAT-WBUR].

⁵⁹ *Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples*, U.S. DEP’T OF STATE (Jan. 12, 2011), <https://2009-2017.state.gov/s/srgia/154553.htm> [perma.cc/T368-WKDE].

⁶⁰ *Remarks by Secretary of the Interior Deb Haaland at the UN Permanent Forum on Indigenous Issues*, U.S. MISSION TO U.N. (Apr. 19, 2021), <https://usun.usmission.gov/remarks-by-secretary-of-the-interior-deb-haaland-at-the-un-permanent-forum-on-indigenous-issues/> [https://perma.cc/7BNR-J6VW].

midst. For what purpose do they teach us except to make us adopt their customs, to subject us to their laws, and to remove the precious liberty left to us by our ancestors? In a word, they try to make us unhappy in the hope of an ephemeral happiness which can be enjoyed only after death.

They treat our history as fable and fiction. Haven't we the same right concerning that which they teach us as incontestable truths? They exploit our simplicity and good faith. All their skill is directed towards tricking us; all their knowledge tends only to make us unhappy. If we are ignorant and blind, as they would have us believe, it is because we have learned their evil plans too late and have allowed them to settle here.

Let us not lose courage in the presence of our misfortunes. They are only a handful. We can easily defeat them. Even though we don't have their deadly weapons which spread destruction all over, we can overcome them by our large numbers. We are stronger than we think! We can quickly free ourselves from these foreigners! We must regain our former freedom!⁶¹

Chamorro Maga'lahi Chief Hurao

The Commonwealth of the Northern Mariana Islands (CNMI) is the geo-strategic westernmost U.S. territory of fourteen islands, immediately north of Guahan,⁶² and is closer to China than California. Most Americans probably do not know that the CNMI even exists, let alone that it is a part of America,⁶³ yet it plays a major role in the U.S. military's "Pivot to Asia" amongst hyper-tensions with China.⁶⁴

⁶¹ Victoria-Lola Leon Guerrero & Nicholas Yamashita Quinata, *Hurao*, GUAMPEDIA, <https://www.guampedia.com/chiefs-hurao/> [perma.cc/SC76-BAW8] (last updated May 22, 2021).

⁶² *Commonwealth of the Northern Mariana Islands*, U.S. DEP'T INTERIOR, <https://www.doi.gov/oia/islands/cnmi> [perma.cc/26HN-Z3R4] (last visited Nov. 23, 2021).

⁶³ Claire Hansen, *Poll Finds Americans Don't Know Puerto Ricans Are Citizens*, U.S. NEWS (Sept. 26, 2017), <https://www.usnews.com/news/national-news/articles/2017-09-26/almost-half-of-americans-dont-know-puerto-ricans-are-us-citizens-poll> [https://perma.cc/2J5T-P6UQ].

⁶⁴ Patsy Widakuswara, *US-China Tensions Rising Over Trade, Taiwan*, VOICE OF AMERICA (Oct. 6, 2021, 11:34 PM), <https://www.voanews.com/a/us-china-tensions-rising-over-trade-taiwan/6260733.html> [perma.cc/FEJ8-CFPK].

The Chamorro people accomplished great feats such as leading the first Remote Oceania⁶⁵ culture and settlement at least 3,500 years ago with megalithic latte stone structures,⁶⁶ ancient cave art,⁶⁷ and fast Indigenous Sakman sailboats (also known as “flying proas”).⁶⁸ They also had their own cosmology,⁶⁹ calendar,⁷⁰ and astronomy,⁷¹ along with pescatarian diets,⁷² water-based lifestyles,⁷³ and a matrilineal-based culture. The destructive legacies of nearly 500 years of war, disease, and forced acculturation by genocidal colonialism, first under the Spanish, then German and Japanese, before the arrival of the Americans, left a wake of disparities for Indigenous peoples. A range of roots for inequities in the Marianas include second-class citizenship status⁷⁴ with unequal access to all three branches of government via the lack of individual and collective voting rights,⁷⁵ health care funding

⁶⁵ Jeremy Choin et al., *Genomic Insights into Population History and Biological Adaptation in Oceania*, 592 NATURE 583, 583-589 (2021).

⁶⁶ Rosalind L. Hunter-Anderson, *Latte*, GUAMPEDIA, <https://www.guampedia.com/latte/> [perma.cc/4T6X-EPUH] (last updated Dec. 21, 2019).

⁶⁷ Dominica Tolentino, *Ancient CHamoru Cave Art*, GUAMPEDIA, <https://www.guampedia.com/chamorro-cave-art/> [perma.cc/X6WP-WSDX] (last updated May 2, 2022).

⁶⁸ Michael Lujan Bevacqua, *Agad’na: Canoe Builders*, GUAMPEDIA, <https://www.guampedia.com/agadna-canoe-builders/> [perma.cc/KZE4-M2R9] (last updated July 14, 2022).

⁶⁹ Brandon L. Cruz, *Rediscovering Fo’na and Pontan*, GUAMPEDIA (Apr. 27, 2022), <https://www.guampedia.com/rediscovering-fona-and-pontan/> [perma.cc/7YDM-TY7Z].

⁷⁰ Shannon J. Murphy, *Ancient CHamoru Calendar*, GUAMPEDIA, <https://www.guampedia.com/ancient-chamorro-calendar/> [perma.cc/3XAF-4Z8Y] (last updated May 22, 2022).

⁷¹ Rosina C. Iping, *The Astronomical Significance of Ancient Chamorro Cave Paintings*, 31 AM. ASTRONOMICAL SOC’Y 671 (1999).

⁷² Marilyn C. Salas & Dominica Tolentino, *Ancient CHamoru Food and Diet*, GUAMPEDIA, <https://www.guampedia.com/ancient-chamorro-food-and-diet/> [https://perma.cc/XQE5-25PU] (last updated June 21, 2022).

⁷³ Carlos Madrid, *Early European Observations of CHamorus*, GUAMPEDIA, <https://www.guampedia.com/early-european-observations-of-chamorros/> [https://perma.cc/T6U2-F42K] (last updated June 20, 2022).

⁷⁴ Steve Limtiaco, *Biden: ‘There Can Be No Second-Class Citizens’*, PAC. DAILY NEWS (June 8, 2021), <https://www.guampdn.com/story/news/2021/06/08/biden-there-can-no-second-class-citizens/7595294002/> [https://perma.cc/3XFS-2AM6].

⁷⁵ Maria Murriel, *Millions of Americans Can’t Vote for President Because of Where They Live*, THE WORLD (Nov. 1, 2016, 2:45 PM), <https://www.pri.org/stories/2016-11-01/millions-americans-cant-vote-president-because-where-they-live> [https://perma.cc/U4G6-UYW2].

brinkmanship,⁷⁶ and historic systematic efforts to push the Chamorro language to extinction.⁷⁷

Although there are CNMI constitutional laws recognizing Indigenous land rights such as Article 12,⁷⁸ UNDRIP-based legislation could build on that foundation to expand the field of laws beyond just one Indigenous issue. Article 12 of the CNMI Constitution preserves land rights for Indigenous peoples having Northern Marianas descent. Currently, the combined twenty-nine percent minority population of Indigenous peoples overwhelmingly dominate local electoral politics. The CNMI's Indigenous cultural survival may initially seem secure. Yet, with diminishing native language fluency and discussion to destroy perhaps one of the most important domestic Indigenous rights laws in America by discarding Article 12⁷⁹, cultural survival is indeed under threat.

Before the 17th century Spanish “*Reduccion*” system of genocidal colonialism in what is now called the “Marianas” archipelago of Guahan and the CNMI, the islands were all one united home to the Indigenous

⁷⁶ See Esther L. Muña, *Devastating Decisions Loom for the Territories if Congress Does Not Act by Sept. 30*, THE HILL (Sept. 14, 2021, 3:45 PM), <https://thehill.com/blogs/congress-blog/healthcare/572227-devastating-decisions-loom-for-the-territories-if-congress> [<https://perma.cc/F9R2-7TZX>] (“There is a need for a permanent solution to ensure equitable financing and access to health services for individuals living in U.S. territories, on par with states.”); see also Joshua Santos, *Medicaid ‘Fiscal Cliff’ Averted*, SAIPAN TRIB. (Sept. 20, 2021), <https://www.saipantribune.com/index.php/medicaid-fiscal-cliff-averted/> [<https://perma.cc/F99T-NWHA>] (“Delegate Gregorio Kilili C. Sablan (Ind-MP) announced Saturday that the federal government will allocate \$64 million for the CNMI’s Medicaid program in fiscal year 2022, averting a looming ‘fiscal cliff’ that would have meant a loss of \$55.1 million for the CNMI’s Medicaid program come Oct. 1, 2021.”); Orlando Rodríguez-Vilá et al., *Healthcare Disparities Affecting Americans in the US Territories: A Century-Old Dilemma*, 130 AM. J. MED. e39, e39-e42 (2017).

⁷⁷ See Anita Hofschneider, *The Fight to Save CHamoru, a Language the US Military Tried to Destroy*, THE GUARDIAN (Feb. 12, 2020, 4:00 PM), <https://www.theguardian.com/world/2020/feb/13/the-fight-to-save-chamoru-a-language-the-us-military-tried-to-destroy> [<https://perma.cc/C4ZJ-RY3G>] (“Although there’s little data about how many people still speak CHamoru, it’s clear the language is vulnerable.”); Johanna Salinas, *A Dying Language*, PAC. ISLAND TIMES (Aug. 6, 2018), <https://www.pacificislandtimes.com/post/2018/08/07/a-dying-language> [<https://perma.cc/C5CH-GP76>]; Michael R. Clement, Jr., *English and Chamorro Language Policies*, GUAMPEDIA, <https://www.guampedia.com/us-naval-era-language-policies/> [<https://perma.cc/WR54-9UCD>] (last updated Nov. 9, 2022).

⁷⁸ N. Mar. I. Const. art. XII, § 4.

⁷⁹ K-Andreas Evarose Limol, *Senate President Shelves Proposal to Amend Article 12*, MARIANAS VARIETY, https://www.mvariety.com/news/senate-president-shelves-proposal-to-amend-article-12/article_ed2924ac-b7af-11eb-92ed-bbc217741228.html [<https://perma.cc/TJ3H-74D3>] (last updated May 19, 2021).

Chamorro people. The Indigenous Chamorros fought and resisted arguably one of the most powerful nations on earth at the time—Spain—for thirty years of “divide and conquer” warfare. The violence and disease at the hands of the Spanish resulted in the decimation of the Chamorro population by at least eighty to ninety percent.⁸⁰ Surviving Chamorro people were forced to endure a “convert-or-die” colonial mindset, with benefits and privileges going to “good Christians” but never full freedom.⁸¹ Although now partitioned since the conclusion of the Spanish-American War of 1898, the Indigenous peoples of Guahan and the CNMI still share deep-rooted familial and cultural bonds that are undermined by legacies of division.

Studies suggest a strong cultural identity correlates with positive health outcomes.⁸² Alternatively, disconnection from Indigenous culture can result in greater negative health outcomes.⁸³ A strong culture would presumably be a united one. Several attempts to reunite the archipelago separated by colonialists were unsuccessful in the past.⁸⁴ Reunification would be a great catalyst to pursue statehood together, as the U.S. has denied Guahan the right of self-determination by maintaining Guahan as a “non-self-governing territory.” The United States can be labeled a “colonizer” because it still has territories on the list of the UN’s Non-Self-Governing Territories, such as Guahan, American Samoa, and the U.S. Virgin Islands. The CNMI is not on the list following its integration into the U.S. via the federal law of the Covenant, even though they are treated as second-class citizens without voting rights. This democratic purgatory in which an area is not technically a colony, but also not fully free with equal voting rights, provides a

⁸⁰ Nicholas J. Goetzfridt, *Spanish Response to CHamoru Depopulation*, GUAMPEDIA, https://www.guampedia.com/spanish-response-to-chamorro-depopulation/#Diseases_affect_CHamorus [https://perma.cc/22KR-5BTY] (last updated Apr. 26, 2022).

⁸¹ Jillette Leon-Guerrero, *Forzado System and the Mariana Islands*, GUAMPEDIA, <https://www.guampedia.com/forzado-system-and-the-mariana-islands/> [https://perma.cc/9AZP-DYH7] (last updated Dec. 1, 2022); Tony Palomo, *History of Democracy in Guam*, GUAMPEDIA, <https://www.guampedia.com/history-of-democracy-on-guam/> [https://perma.cc/CTN5-3GHJ] (last modified Nov. 16, 2022).

⁸² Lisa Wexler, *The Importance of Identity, History, and Culture in the Wellbeing of Indigenous Youth*, 2 J. HIST. CHILD. & YOUTH 267, 267-276 (2009).

⁸³ *Id.*; Lucas Trout et al., *Beyond Two Worlds: Identity Narratives and the Aspirational Futures of Alaska Native Youth*, 55 TRANSCULTURAL PSYCHIATRY 800 (2018).

⁸⁴ Doris Flores Brooks, *Guam, CNMI Unification Needs a Fresh Look*, GUAM DAILY POST, https://www.postguam.com/forum/letter_to_the_editor/guam-cnmi-unification-needs-a-fresh-look/article_f929a9a4-bdbb-11eb-b2e0-eb823bfb7b56.html [https://perma.cc/5L2G-FQ4R] (May 27, 2021).

spectrum of outcomes for the CNMI.⁸⁵ The Indigenous peoples of the Marianas deserve the right to decolonize in a way of their choosing; independence, free association, and integration are the main options.⁸⁶

Political union with the U.S. evolved during the late 1970s after decades of United Nations “Trust Territory” status following World War II, yet CNMI residents still cannot vote for the President of the United States (POTUS), and their U.S. Congressional delegate⁸⁷ cannot vote in Washington D.C. To complete the trinity of three branches of government, the current judge of the highest court of the CNMI is Indigenous but was appointed by the POTUS and confirmed by the U.S. Senate, not by CNMI Americans. If the Chamorros of Guahan want to integrate into the U.S., reunification and statehood with the CNMI would make the strongest argument to end second-class citizenship in the Marianas.

Local and federal UNDRIP-based legislation could maintain current agreements regarding Indigenous land rights in the territories and preserve cultural survival for future generations with increased political equality. If the Indigenous peoples of the CNMI and Guahan want to not only reunite, but also remain with the U.S., UNDRIP-based legislation is an ideal version of what statehood in the U.S. could look like for Indigenous peoples currently in territories. This would at least bring the Marianas out of second-class citizenship.

II. THE RULES OF AMERICAN SECOND-CLASS CITIZENSHIP

America has unfinished business in reconciling relationships with Indigenous peoples. In 1963, Martin Luther King, Jr. summed up the injustices suffered by Indigenous peoples in his book *Why We Can't Wait*:

Our nation was born in genocide when it embraced the doctrine that the original American, the Indian, was an inferior race. Even before there were large numbers of

⁸⁵ David J. McGuire et al., *Voting Rights in U.S. Territories*, U.S. COMM’N C.R. (Oct. 4, 2021), <https://www.usccr.gov/files/2021-11/voting-rights-in-the-territories-advisory-memo-ct-sac.pdf> [<https://perma.cc/5768-JGAY>].

⁸⁶ *United Nations and Decolonization*, UNITED NATIONS, <https://www.un.org/dppa/decolonization/en/about> [<https://perma.cc/F98J-PLDJ>] (last visited Nov. 23, 2021).

⁸⁷ *Delegate Gregorio Kilili Camacho Sablan*, CONGRESS.GOV, <https://www.congress.gov/member/gregorio-sablan/S001177> [<https://perma.cc/ZZA7-WERF>] (last visited Nov. 23, 2021).

Negroes on our shores, the scar of racial hatred had already disfigured colonial society. From the sixteenth century forward, blood flowed in battles of racial supremacy. We are perhaps the only nation which tried as a matter of national policy to wipe its indigenous population. Moreover, we elevated that tragic experience into a noble crusade. Indeed, even today we have not permitted ourselves to reject or to feel remorse for this shameful episode. Our literature, our films, our drama, our folklore all exalt it.

Martin Luther King, Jr., *Why We Can't Wait*

Along with the U.S. Constitutional Indian Commerce Clause⁸⁸ and Territorial plenary powers, the *Discovery Cases* define the dominant role of the American legal landscape of federal relationships with Indigenous peoples. Many legal horrors for Native Americans flowed from these foundations, including the Indian Removal Act,⁸⁹ Dawes Act,⁹⁰ Homestead Act,⁹¹ and Indian Civilization Fund Act of 1819.⁹² These laws worked towards land dispossession of Indigenous peoples and financed Christian institutions to enforce cultural genocide within Indian Residential Boarding Schools. Current SCOTUS rulings have shown an inclination towards greater recognition of Indigenous rights,⁹³ making it plausible for the passage of Indigenous rights legislation and the legislative-judicial consummation for the legal denunciation of the *Discovery Cases*.

⁸⁸ Natsu Taylor Saito, *Asserting Plenary Power Over the "Other": Indians, Immigrants, Colonial Subjects, and Why U.S. Jurisprudence Needs to Incorporate International Law*, 20 YALE L. & POL'Y REV. 427 (2002).

⁸⁹ *Indian Removal Act: Primary Documents in American History*, LIBR. CONG., <https://guides.loc.gov/indian-removal-act#> [<https://perma.cc/JW3M-TQBV>] (last visited Nov. 23, 2021).

⁹⁰ *The Dawes Act*, NAT'L PARK SERV., <https://www.nps.gov/articles/000/dawes-act.htm> [<https://perma.cc/JWY3-RAPL>] (last updated July 9, 2021).

⁹¹ Lee Ann Potter & Wynn Schamel, *The Homestead Act of 1862*, 61 SOC. EDUC. 359, 359-364 (1997).

⁹² *On This Day - Mar 03, 1819: Congress Creates Fund to "Civilize" Native American People*, EQUAL JUST. INITIATIVE, <https://calendar.eji.org/racial-injustice/mar/03> [<https://perma.cc/83M7-6RFT>] (last visited Nov. 23, 2021).

⁹³ Brett Milano, *Landmark SCOTUS Ruling Affirms Native American Rights in Oklahoma and Bodes Well for Tribal Rights Going Forward, Says Robert Anderson*, HARV. L. TODAY (July 14, 2020), <https://hls.harvard.edu/today/landmark-scotus-ruling-affirms-native-american-rights-in-oklahoma-and-bodes-well-for-tribal-rights-going-forward-says-robert-anderson/> [<https://perma.cc/4FP3-EAMJ>].

Implementing UNDRIP principles within the U.S. is not a completely novel idea. The Navajo Nation has utilized UNDRIP in several ways,⁹⁴ and the Pawnee Nation recently implemented UNDRIP into their tribal government.⁹⁵ Although Indigenous groups in the CNMI are not classified as “Native American Tribes,”⁹⁶ Native American tribes and the CNMI’s Chamorros and Refaluwasch are all Indigenous peoples, and all are federally governed through the Department of Interior.⁹⁷ Native Americans’ and the Chamorros’ first-contact stories with Europeans share a common denominator in the Doctrine of Discovery authorizing the eventual genocide, forced labor, and land theft of their ancestors. The indignity from legacies of the Doctrine of Discovery is kept alive today under *M’Intosh* and other active *Discovery Cases*.

Aligning advocacy goals for all Indigenous peoples within the U.S. requires greater collaboration between Indigenous Pacific Islanders and Native Americans. Enhanced solidarity between the political leadership of the CNMI and Guahan is also critical. The CNMI political leadership remains for the most part publicly silent, as ancient Chamorro sacred sites in Guahan, such as Litekyan (“Ritidian”), are under threat of further destruction from the current U.S. military live-fire weapons testing build-up.⁹⁸ The sacred sites in Guahan are also sacred to CNMI Chamorros, as nearly all Chamorros were forced through the crucible of Guahan post-ethnic cleansing of most of the Marianas archipelago.⁹⁹ Similarly, the

⁹⁴ *U.N. DRIP*, NAVAJO NATION HUM. RTS. COMM’N, <https://www.nnhrc.navajo-nation.gov/undrip.html#> [<https://perma.cc/Y8JM-QCF6>] (last visited Oct. 2, 2021); *Community Information: Navajo Nation Human Rights Commission to Host Public Meeting Addressing How Navajo and Native Students are Treated*, NAVAJO-HOPI OBSERVER (Oct. 22, 2019, 12:47 PM), <https://www.nhnews.com/news/2019/oct/22/community-information-navajo-nation-human-rights-c/> [<https://perma.cc/LQX7-ZDXF>].

⁹⁵ *Pawnee Nation Passes Landmark “Pawnee Nation Declaration on the Rights of Indigenous Peoples Act”*, IMPLEMENTATION PROJECT, <https://un-declaration.narf.org/pawnee-declaration-2022/> [perma.cc/ZK93-2WYK] (last visited Dec. 12, 2022).

⁹⁶ *Tribal Nations & the United States: An Introduction*, NAT’L CONG. OF AM. INDIANS (Feb. 2020), <https://www.ncai.org/about-tribes> [<https://perma.cc/X8MZ-AZ2C>].

⁹⁷ *Office of Insular Affairs*, U.S. DEP’T OF INTERIOR, <https://www.doi.gov/oia> [perma.cc/8GHT-HAXE] (last visited Dec. 10, 2022).

⁹⁸ Anumita Kaur, *Buildup Projects in Full Swing; Prutehi Litekyan Appeals to United Nations*, MONTGOMERY ADVERTISER (Aug. 6, 2020, 11:17 AM), <https://www.montgomeryadvertiser.com/story/news/local/2020/08/06/guam-military-buildup-prutehi-litekyan-united-nations/3296935001/> [<https://perma.cc/AYK5-MT6Q>].

⁹⁹ Bryan Manabat, *Court Affirms Dismissal of Lawsuit Against DOD, Navy*, GUAM DAILY POST (Sept. 22, 2020), <https://www.postguam.com/news/cnmi/court-affirms-dismissal-of-lawsuit->

leadership in Guahan were also relatively publicly silent as the U.S. military previously planned to controversially turn the islands of Tinian and Pagan in the CNMI into live-fire weapons testing zones, bases, and airports; all sources of irreversible environmental pollution.¹⁰⁰ There are other examples contributing to ongoing second-class citizenship in U.S. territories. Regular exclusion from “Indigenous” designations and collaborations,¹⁰¹ such as the erasure of Indigenous Chamorros, Refaluwasch, and Samoans from Indigenous Peoples Day celebrations,¹⁰² demean the sacrifices of Chamorro, Refaluwasch, and Samoan military veterans. Absent recognition,¹⁰³ it is easier for Americans to be unaware that the U.S. even possesses Pacific territories, let alone oppresses Indigenous peoples by denying voting rights to all and citizenship to some.¹⁰⁴

Constitutional plenary powers give Congress complete control over both territories and Indigenous peoples in the U.S.¹⁰⁵ *M’Intosh* begins the

against-dod-navy/article_112e0caa-fbdb-11ea-8a3f-df0ce44bc0b1.html [https://perma.cc/DGP7-4GQZ].

¹⁰⁰ *Toxic “Forever Chemicals” Found in Groundwater Near More U.S. Military Bases*, CBS NEWS (Aug. 31, 2021, 2:01 PM), <https://www.cbsnews.com/news/pfas-forever-chemicals-groundwater-us-military-bases/> [https://perma.cc/C3E9-WTA2]; Meghann Myers, *Here’s the Latest Count of Suspected Bases with Toxic “Forever Chemicals” in the Water*, MIL. TIMES (Apr. 6, 2020), <https://www.militarytimes.com/news/your-military/2020/04/06/heres-the-latest-count-of-suspected-bases-with-toxic-forever-chemicals-in-the-water/> [https://perma.cc/884D-LHGG].

¹⁰¹ *Our View: Indigenous Proclamation Overlooks People of the Marianas*, PAC. DAILY NEWS (Oct. 11, 2021), https://www.guampdn.com/opinion/our-view-indigenous-proclamation-overlooks-people-of-themarianas/article_019e2ffe-2989-11ec-badf-0b09e9b405fe.html [https://perma.cc/N3UJ-PXWS].

¹⁰² Joseph R. Biden Jr., *A Proclamation on Indigenous Peoples’ Day, 2021*, THE WHITE HOUSE (Oct. 8, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/10/08/a-proclamation-indigenous-peoples-day-2021/> [https://perma.cc/M8HG-PYV9].

¹⁰³ *Subcommittee for Indigenous Peoples of the United States*, NAT’L RES. COMM., <https://naturalresources.house.gov/subcommittees/subcommittee-for-indigenous-peoples-of-the-united-states> [https://perma.cc/YT7K-9ZVZ] (last visited Nov. 23, 2021) (The subcommittee only addresses issues facing Native Americans, Alaskan Natives, and Native Hawaiians.).

¹⁰⁴ Deb Haaland, *Deb Haaland: ‘Moving Forward on Priorities for Indian Country’*, INDIAN COUNTRY TODAY (Oct. 6, 2021), <https://indiancountrytoday.com/opinion/deb-haaland-moving-forward-on-priorities-for-indian-country> [https://perma.cc/9ENB-U46E].

¹⁰⁵ Saito, *supra* note 88; Joseph E. Horey, *The Right of Self-Government in the Commonwealth of the Northern Mariana Islands*, 4 ASIAN-PAC. L. & POL’Y J. 180, 181-245 (2003); Matthew L.M. Fletcher, *A Short History of Indian Law in the Supreme Court*, 40 HUM. RTS. MAG. (Oct. 1, 2014), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/2014_vol_40/vol--40--no--1--tribal-sovereignty/short_history_of_indian_law/ [https://perma.cc/FQN6-YNMP].

historic line of *Discovery Cases* that enforce religious authorization for “Conquest” and “Discovery” which enabled global genocide that legalized land theft from Indigenous peoples and the enslavement of African people.¹⁰⁶ The series of *Insular Cases*¹⁰⁷ made it legal to enforce further indignities of political inequality within U.S. territories.¹⁰⁸ The U.S.-CNMI Covenant makes the CNMI unique as a U.S. territory, whereas other current territories were mostly acquired either by military conquest (Puerto Rico and Guahan) or purchase (U.S. Virgin Islands). However, this came at a great cost to the CNMI’s Indigenous peoples, as nearly a quarter¹⁰⁹ of their combined population died during the American onslaught.¹¹⁰ The period between World War II and the creation of the Commonwealth included years of internment camps and over ten years without self-determination and freedom of movement for the Indigenous peoples of the CNMI. The Covenant was not a negotiation between equal parties and thus arguably subjected to “undue influence” in contracting,¹¹¹ even if the people of the CNMI desired a union with the U.S. and it was supported by the UN. The above requires a general review of how plenary powers and SCOTUS rulings affect the CNMI.

A. U.S. CONSTITUTIONAL PLENARY POWERS

We in Congress must stay vigilant and keep up the fight to protect the franchise, especially for communities of color. . . . And as members of the Indian Affairs Committee, we

¹⁰⁶ *American Indians*, *supra* note 9; *Doctrine of Discovery*, *supra* note 10; Blake A. Watson, *The Impact of the American Doctrine of Discovery on Native Land Rights in Australia, Canada, and New Zealand*, 34 SEATTLE U. L. REV. 507 (2011).

¹⁰⁷ Juan R. Torruella, *Ruling America's Colonies: The Insular Cases*, 32 YALE L. & POL’Y REV. 57, 57-95 (2013) (discussing the constitutional validity of the United States-Puerto Rico colonial relationship); Neil Weare, *Why the Insular Cases Must Become the Next Plessy*, HARV. L. REV. BLOG (Mar. 28, 2018), <https://blog.harvardlawreview.org/why-the-insular-cases-must-become-the-next-plessy/> [<https://perma.cc/X9JT-YN5Y>].

¹⁰⁸ Juan R. Torruella, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 29 U. PA. J. INT’L L. 283, 283-347 (2007) (discussing the link between politics and Supreme Court decisions in the context of the *Insular Cases*).

¹⁰⁹ Erwin Encinares, *932 Chamorros, Carolinians Perished During WWII*, SAIPAN TRIB. (June 7, 2019), <https://www.saipantribune.com/index.php/932-chamorros-carolinians-perished-during-wwii/> [<https://perma.cc/3YUN-YSM6>].

¹¹⁰ *Battle of Saipan*, NAT’L PARK SERV..., <https://www.nps.gov/amme/learn/historyculture/battle-of-saipan.htm> [<https://perma.cc/C4T3-7QB3>] (last updated June 25, 2021).

¹¹¹ Mary Joy Quinn, *Defining Undue Influence*, 35 BIFOCAL 72, 72-75 (2014).

owe a particular duty to American Indians, Alaska Natives, and Native Hawaiians to ensure their votes are counted, not discounted. Because voting is sacred. And Native votes matter.

U.S. Senator, Brian Schatz (D-Hawai'i), Chairman of the Senate Committee on Indian Affairs

Senator Schatz's speech notably leaves out Indigenous American Chamorros, Refaluwasch, and Samoans. The U.S. Constitutional plenary powers require statehood for voting rights, and territories are not states. This leaves nearly four million Americans residing in U.S. territories without "sacred voting rights" which Senator Schatz references in his speech above. Worse still is the incorporated versus unincorporated divide: incorporated territories are at least on a track to statehood, while unincorporated territories remain in political purgatory sans voting rights. The Commonwealth is an unincorporated U.S. territory, exercising self-determination with integration into America and limited self-governance including Indigenous land rights, but it is treated relatively similarly as all other U.S. territories in lacking individual and collective voting rights. However, the Covenant allows for amendments, so the CNMI could pursue incorporated status for statehood, or anything else.¹¹² The Indigenous peoples of the CNMI were put in a unique position relative to other Indigenous groups colonized in the United States, because they submitted to U.S. sovereignty while keeping a hundred percent of their ancestral lands. However, context is critical, and the review of how and why anyone would "agree" to second-class citizenship in potential perpetuity is required.

Arguments have been made that the U.S.-CNMI Covenant was made pursuant to plenary presidential treaty powers and not territorial plenary powers.¹¹³ Article II Section 2 of the Treaty Power in the Constitution reads, "[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur . . ."¹¹⁴ Strong arguments deem the CNMI and the Covenant products of plenary treaty power, and not territorial plenary powers, because the CNMI was not technically a U.S. jurisdiction before becoming a territory.¹¹⁵ Self-determination via integration with the U.S. "liberated" the CNMI from

¹¹² *Covenant*, *supra* note 46.

¹¹³ Horey, *supra* note 105.

¹¹⁴ U.S. CONST. art. II, § 2, cl. 2.

¹¹⁵ Horey, *supra* note 105.

Japanese colonialism, even though the Americans had no plans on leaving after World War II. Either way, the CNMI is still a self-governing unincorporated territory, and with any potential future pursuit of statehood, plenary powers could enable a new agreement to end second-class citizenship.

Congressional plenary powers¹¹⁶ over Indigenous “Indian Tribes” are derived from the U.S. Constitution, Article I Section 8: “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes”¹¹⁷ However, the CNMI’s Indigenous peoples are not technically “Tribal.”¹¹⁸ Territorial plenary powers over territories reside in Article IV Section 3: “The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.”¹¹⁹ Although arguments have been made that the CNMI was formed under treaty plenary power, this ambiguity on which type of plenary power it falls under contributes to the Commonwealth’s *ultimate* status as being “far from clear.”¹²⁰ Plenary powers provide Congress with the highest authority over Indigenous affairs in “Tribal” America. It also gives Congress the ability to sever ties with any territory as it pleases. That would put the CNMI in a precarious legal standing with the U.S. federal government if the Covenant were dependent upon territorial plenary powers like other territories. Alternatively, if the Covenant is dependent upon plenary treaty powers, then the CNMI is in a less volatile situation. That there are even debates about which kind of plenary power is responsible for the Covenant makes the situation for the CNMI’s Indigenous populations potentially unstable.¹²¹ The Covenant mandates that any change to the integration must have mutual consent between the CNMI and the U.S. (although the U.S. can also act *unilaterally*). The Covenant provides some level of security for the CNMI to remain a non-state territory, rather than facing a threat similar to fellow territory Puerto Rico when former President

¹¹⁶ *Plenary Power*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/plenary_power [<https://perma.cc/Q93W-RQL2>] (last visited Nov. 21, 2021).

¹¹⁷ U.S. CONST. art. I, § 8, cl. 3.

¹¹⁸ 25 C.F.R. § 83.1 (2022) Federal regulations specifically define “Tribal” as belonging to Native American tribes.

¹¹⁹ U.S. CONST. art. IV, § 3.

¹²⁰ *Wabob v Villacrusis*, 908 F.2d 411 n.18 (9th Cir. 1990).

¹²¹ Horey, *supra* note 105.

Trump threatened to barter Puerto Rico for Greenland.¹²² Further research is required for a political and economic cost-benefit analysis weighing the status quo versus statehood (assuming legal preservation of Indigenous land rights).¹²³

Indigenous peoples in the CNMI had been ravaged to varying degrees by three different colonizers for centuries before the devastation of World War II. Few places experienced the devastation of bombs, infrastructure destruction, and Indigenous population loss like Saipan did during World War II. Thus, the CNMI was desperate for support. Due to these circumstances, it is no surprise that the CNMI joined the U.S. voluntarily and did so without the benefits of voting rights.¹²⁴

Some arguments are made that remaining a territory has tax benefits.¹²⁵ It is difficult to argue that federal income tax exemptions for the territory benefits anyone other than the wealthy minority. Over half of the CNMI population live below the federal poverty line and would not pay much, if any, federal income tax.¹²⁶ If the CNMI were a state and had representatives and senators voting on legislation in Washington D.C., political horse-trading could lead to more funding and resources for the Indigenous peoples living with harsh disparities which could outweigh arguments that taxes from statehood could be economically harmful.

A 2021 Congressional hearing that included legal experts, law and history professors, and members of Congress, featured debate and

¹²² Nicole Acevedo, *Trump Was Serious About Trading Hurricane-Stricken Puerto Rico for Greenland, Ex-DHS Official Says*, NBC NEWS (Aug. 19, 2020, 3:56 PM), <https://www.nbcnews.com/news/latino/trump-was-serious-about-trading-hurricane-stricken-puerto-rico-greenland-n1237336> [https://perma.cc/26SV-8ECD].

¹²³ *Territory Gets Less Than Any State in Competitive Programs*, PUERTO RICO 51ST (Feb. 25, 2015), <https://www.pr51st.com/territory-gets-less-than-any-state-in-competitive-programs/> [https://perma.cc/E75M-P8JB].

¹²⁴ Marianas Pol. Status Comm'n, *Position Paper Regarding the Future Political Status of the Mariana Islands*, N. MAR. I. HUMAN. COUNCIL, (May 10, 1973), http://www.nmhcouncil.org/nmhc_archives/Development%20of%20a%20U.S.%20Commonwealth,%201960-1977/1973/1973%2005%2010,%20Position%20Paper,%20Future%20Political%20Status%20of%20Mariana%20Islands,%20MPSC,%20003321.pdf [https://perma.cc/C4DD-RJUS].

¹²⁵ Covenant, *supra* note 46; *Tax Policy and U.S. Territories: Overview and Issues for Congress*, CONG. RES. SERV., <https://crsreports.congress.gov/product/pdf/R/R44651> [https://perma.cc/N28H-WCZQ] (last updated Oct. 7, 2016).

¹²⁶ *HIES 2016 Population*, CNMI DEP'T. OF COM., <https://commerce.gov.mp/hies-2016-population> [https://perma.cc/KES5-RMS9] (last visited Nov. 21, 2021).

discussion of a proposed Resolution denouncing the *Insular Cases*.¹²⁷ However, American Samoa would not agree to the Resolution. Many American Samoan people fear a loss of cultural land rights due to belief that the *Insular Cases* provide protection of those land rights through the unincorporated territory status.¹²⁸ None of the experts at the hearing provided solutions to this conflict, instead only offering general responses like “this is just a first step” and “Congress needs to find legislative fixes.”¹²⁹

A potential solution to the abhorrent *Insular Cases*, and the *Discovery Cases* in general, is UNDRIP-based legislation that includes land right protections for Indigenous peoples. If a federal UNDRIP-based law became a reality, and the CNMI desired statehood (with or without Guahan), the authority would be under state admissions-based plenary powers.¹³⁰

If the U.S. were to follow Canada’s lead with local and then federal UNDRIP-based laws, this could help address the concerns of Indigenous peoples in the CNMI and other territories who desire closer integration with the U.S. Territories like American Samoa could then potentially support a resolution denouncing the racist *Insular Cases*, because they know their cultural rights are protected at the federal level. Political power through individual and collective voting rights and additional resources to address socioeconomic and health care disparities could be revolutionary for the CNMI.

As the Indigenous peoples of Guahan go through public and community-wide dialogue regarding their own self-determination,¹³¹ reunification is on the table, if they desire integration via statehood instead of independence or free association.¹³² Partition is perhaps the worst living legacy of genocidal colonialism in the Marianas because it continues to divide a once-united Chamorro people and culture that otherwise thrived

¹²⁷ House Natural Resources Committee Democrats, *Full Committee Hearing - Insular Cases Resolution*, YOUTUBE (May 12, 2021), https://www.youtube.com/watch?v=_ZYBMHLn1mM&t=5491s [https://perma.cc/3MFM-DFDX].

¹²⁸ *Amata’s Statement on Supreme Court Declining Fitisemanu Case*, CONGRESSWOMAN AUMUA AMATA COLEMAN RADEWAGEN (Oct. 17, 2022), <https://radewagen.house.gov/media-center/press-releases/amata-s-statement-supreme-court-declining-fitisemanu-case> [https://perma.cc/B7W7-HJLH].

¹²⁹ House Natural Resources Committee Democrats, *supra* note 127.

¹³⁰ U.S. CONST. art. IV, § 3.

¹³¹ Patricia L.G. Taimanglo, *The Chamorro People of Guam*, AM. PSYCH. ASS’N (Aug. 2010), <https://www.apa.org/pi/oema/resources/communique/2010/08/chamorro-people> [https://perma.cc/JH39-NS69].

¹³² *United Nations and Decolonization*, *supra* note 86.

together for millennia. Decolonization through reunification could strengthen any advocacy for statehood. Perhaps using a decolonized name different from the “Marianas” that is not an insulting reference to a European royal that held power during the genocide of the Chamorros could be a good place to start.¹³³

If the Marianas were to reunify into U.S. statehood, their two voting U.S. Senators could be decisive power brokers in a split Senate, not unlike the leveraging power of Senators Joe Manchin and Kyrsten Sinema over the 2021 budget discussions in Congress.¹³⁴ Guahan and the CNMI both have relatively equal number of Republican and Democratic politicians; combined, they could be a crucial swing vote that is partial to both agendas. This could bring enormous benefits to the people of the Marianas in terms of political power. If the CNMI leads with local UNDRIP-based legislation, including an open-invite to reunify with Guahan, it would be an exemplary display of Indigenous diplomacy for peace and harmony – the essence of “*Inafa’maolek*.”¹³⁵ *Inafa’maolek* in Chamorro literally means “to make good” but is more aptly used to describe their cultural philosophy that emphasizes harmonious relationships between each other and nature.

B. THE DOCTRINE OF DISCOVERY & *M’INTOSH*

They make us go every day to their churches to pray, and if we do not learn their prayers, either they scold us, or punish us. They teach our children their own way, so that they would rather disobey their parents than to [disobey] anything their teachers tell them. A short time ago, these boys dragged [the body of] one of our relatives, because he had not wanted to become a Christian when they killed him; this they did just to please their teachers. These are [supposed to be] the best among the Spaniards, who came to our lands only to teach us the way to Heaven, as they

¹³³ *History of the Northern Mariana Islands*, ENCYC. BRITANNICA, <https://www.britannica.com/place/Northern-Mariana-Islands/History> [https://perma.cc/5X3G-7CYU] (last visited Oct. 11, 2021).

¹³⁴ Eliza Collins & Kristina Peterson, *Kyrsten Sinema is Enigma at Center of Democrats’ Spending Talks*, WALL ST. J. (Sept. 26, 2021, 9:00 AM), <https://www.wsj.com/articles/kyrsten-sinema-is-enigma-at-center-of-democrats-spending-talks-11632661201> [https://perma.cc/4F3X-SFMD].

¹³⁵ Lilli Perez-Iyechad, *Inafa’maolek: Striving for Harmony*, GUAMPEDIA, <https://www.guampedia.com/inafamaolek/> [https://perma.cc/C973-HHM7].

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claim, as if all our ancestors had not discovered it, and only they know it, as if they were wiser than ourselves, to know what our ancestors did not know.

Chamorro Maga'lahi Chief Agualin

To have an appreciation for the impact of the *Discovery Cases* requires a brief explanation of the time period and justification used to enact those laws. During Iberian global colonialism in the early 1500s, the Spanish announced upon arrival to non-Christian lands that those who did not convert to Christianity and subject themselves to Spanish rule would suffer grave consequences:

But if you do not do this [(convert & submit)], and maliciously make delay in it, I certify to you that, with the help of God, we shall powerfully enter into your country, and shall make war against you in all ways and manners that we can, and shall subject you to the yoke and obedience of the Church and of their highnesses; we shall take you, and your wives, and your children, and shall make slaves of them, and as such shall sell and dispose of them as their highnesses may command; and we shall take away your goods, and shall do you all the mischief and damage that we can, as to vassals who do not obey, and refuse to receive their lord, and resist and contradict him: and we protest that the deaths and losses which shall accrue from this are your fault, and not that of their highnesses, or ours, nor of these cavaliers who come with us.

El Requerimiento

The above Spanish “*El Requerimiento* of 1513” was a part of the first legal code for Spanish action in the Americas,¹³⁶ and eventually led to a caste system based on whiteness of skin color,¹³⁷ thus paving the way for the global visible and invisible legacies of White supremacy that we

¹³⁶ *AD 1513: El Requerimiento: Spain Demands Subservience*, NATIVE VOICES, <https://www.nlm.nih.gov/nativevoices/timeline/178.html> [https://perma.cc/77GT-8KU3] (last visited Oct. 11, 2021).

¹³⁷ *Lesson Summary: The Spanish Empire*, KHAN ACAD., <https://www.khanacademy.org/humanities/us-history/precontact-and-early-colonial-era/spanish-colonization/a/spanish-empire-lesson-summary> [https://perma.cc/TKW8-C946] (last visited Nov. 21, 2021).

experience today.¹³⁸ Even after conversion, Indigenous peoples like the Chamorros were still under Spanish forced labor systems.¹³⁹ Forced labor systems like *Encomienda*, *Repartimiento*, and *Forzado* allowed *Conquistadors* to capitalize upon the Indigenous people they colonized.¹⁴⁰ In the Marianas, Indigenous laborers were forced to work for the profit of their Spanish overlords in a form of *Forzado*, in addition to enforced religious worship.¹⁴¹ The Spanish ethnically cleansed the Chamorros from most islands to Guahan and burned down their fleet of ingenious *Sakman* sailboats which adversely altered the interconnectedness of the Chamorro to their most critical cultural foundation of water-based lifestyles. Due to denied freedom of movement, cultural genocide, enforced labor, religious conversion, and near extinction from population collapse, the Chamorros became open-air prisoners in their own land for hundreds of years, with only minor positions of authority.

Black, Indigenous, and People of Color alliance-building between various solidarity movements is a logical pairing, as their respective plights share the same origin. The Iberian trans-Atlantic slave trade accelerated due to the declining global population of enslaved Indigenous peoples.¹⁴² Global Indigenous peoples were not the only people forced to convert to Christianity; enslaved Africans were as well.¹⁴³ The trans-Atlantic slave trade and forced-labor systems' roots reside among the series of Doctrine

¹³⁸ *The Casta System*, COLL. WOOSTER (May 4, 2020), <https://cowlatinamerica.voices.wooster.edu/2020/05/04/the-casta-system/> [<https://perma.cc/A8HJ-5B9S>].

¹³⁹ Carl Wise & David Wheat, *The Spanish and New World Slavery*, LOWCOUNTRY DIGIT. HIST. INITIATIVE (Feb. 2014), https://ldhi.library.cofc.edu/exhibits/show/african_laborers_for_a_new_emp/the_spanish_and_new_world_slav [<https://perma.cc/H2N6-GER5>].

¹⁴⁰ *Encomienda*, ENCYC. BRITANNICA (June 20, 1998), <https://www.britannica.com/topic/encomienda> [<https://perma.cc/YDV8-Q4YZ>] (last updated Apr. 10, 2019); *Repartimiento*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/repartimiento> [<https://perma.cc/CLQ8-N9H2>] (last updated Jan. 25, 2016); Leon-Guerrero, *supra* note 81.

¹⁴¹ Leon-Guerrero, *supra* note 81.

¹⁴² PAUL FARMER, FEVERS, FEUDS, AND DIAMONDS: EBOLA AND THE RAVAGES OF HISTORY, 196 (2020); David Wheat, *Iberian Roots of the Transatlantic Slave Trade, 1440-1640*, GILDER LEHRMAN INST. AM. HIST. <http://ap.gilderlehrman.org/history-by-era/origins-slavery/essays/iberian-roots-transatlantic-slave-trade-1440%E2%80%931640> [<https://perma.cc/73D9-CXCB>] (last visited Nov. 21, 2021).

¹⁴³ Juan Siliezar, *Slavery Alongside Christianity*, HARV. GAZETTE (Jan. 7, 2019), <https://news.harvard.edu/gazette/story/2019/01/a-harvard-exhibit-on-slavery-and-christianity/> [<https://perma.cc/FWP9-XKX8>].

of Discovery papal bulls. Horrifically, the Vatican authorized *eternal* slavery for Africans, global Indigenous peoples, and any other “non-Christian.”¹⁴⁴ The Vatican-created 1455 “*Romanus Pontifex*” papal bull by Pope Nicholas V authorized the following:¹⁴⁵

. . . invade, search out, capture, vanquish, and subdue all Saracens and pagans whatsoever, and other enemies of Christ wheresoever placed, and the kingdoms, dukedoms, principalities, dominions, possessions, and all movable and immovable goods whatsoever held and possessed by them and to reduce their persons to perpetual slavery.

Pope Alexander VI, a Spaniard previously known as Rodrigo Borja,¹⁴⁶ is arguably the most singularly responsible person for European-based genocidal colonialism. The founder of modern political philosophy, Machiavelli,¹⁴⁷ was a contemporary of Pope Alexander VI¹⁴⁸ and penned the iconic book “*The Prince*” on the Pope’s son, Cesare Borja.¹⁴⁹ “Borja” continues to be a prominent surname of Chamorros in the Marianas post-Spanish invasion. Pope Alexander VI deemed that non-Christian lands and peoples could be invaded and occupied *forever* according to the following Discovery Doctrine papal bull called “*Inter Caetera*” the year after Columbus’ “discovery” of the “new world”:¹⁵⁰

¹⁴⁴ *Romanus Pontifex: (Granting the Portuguese a Perpetual Monopoly in Trade with Africa)* January 8, 1455, PAPAL ENCYCLICALS ONLINE (2017), <https://www.papalencyclicals.net/nichol05/romanus-pontifex.htm> [<https://perma.cc/6T3P-VZBR>].

¹⁴⁵ *Id.*; Carl Wise & David Wheat, *Pope Nicolas V and the Portuguese Slave Trade*, LOWCOUNTRY DIGIT. HIST. INITIATIVE (Feb. 2014), https://ldhi.library.cofc.edu/exhibits/show/african_laborers_for_a_new_emp/pope_nicolas_v_and_the_portugu [<https://perma.cc/6LTJ-R4N4>].

¹⁴⁶ *Alexander VI*, ENCYC.. BRITANNICA, <https://www.britannica.com/biography/Alexander-VI> [<https://perma.cc/FJY2-AHPB>] (last updated Oct. 28, 2022).

¹⁴⁷ Cary Nederman, *Niccolo Machiavelli*, STAN. ENCYC. OF PHIL (Sept. 13, 2005), <https://plato.stanford.edu/entries/machiavelli/> [<https://perma.cc/ERH3-4UQY>].

¹⁴⁸ Daniel Pellerin, *Machiavelli’s Best Fiend*, 27 HIST. POL. THOUGHT 1, 1 (2006).

¹⁴⁹ Robert P. Harrison, *What Can You Learn from Machiavelli?*, YALE INSIGHTS (Jan. 1, 2011), <https://insights.som.yale.edu/insights/what-can-you-learn-machiavelli> [<https://perma.cc/3KAZ-YZBL>].

¹⁵⁰ *Inter Caetera*, PAPAL ENCYCLICALS ONLINE, <https://www.papalencyclicals.net/alex06/alex06inter.htm> [<https://perma.cc/G7PT-K7DV>] (last visited Nov. 3, 2022).

. . . [I]n our times especially the Catholic faith and the Christian religion be exalted and be everywhere increased and spread, that the health of souls be cared for and that barbarous nations be overthrown and brought to the faith itself[Y]ou have purposed with the favor of divine clemency to bring under your sway the said mainlands and islands with their residents and inhabitants and to bring them to the Catholic faith

. . . [B]y the authority of Almighty God conferred upon us in blessed Peter and of the vicarship of Jesus Christ, which we hold on earth, do by tenor of these presents, should any of said islands have been found by your envoys and captains, give, grant, and assign to you and your heirs and successors, kings of Castile and Leon, forever, together with all their dominions, cities, camps, places, and villages, and all rights, jurisdictions, and appurtenances, all islands and mainlands found and to be found, discovered and to be discovered. . . .

This acknowledges “*divine clemency*” to engage in genocidal colonialism, forced conversion, and enslavement *forever* in the name of God, Jesus, Saint Peter, and “*discovery*” – all of which created the current foundation of international law and American property rights.¹⁵¹ Even though Spain eventually withdrew the Spanish Requirement of 1513,¹⁵² genocidal actions continued. The Vatican eventually denounced the enslavement of Indigenous peoples¹⁵³ but did not act to stop it, either. They did make time for the Inquisition and punishments for the “heresy” of

¹⁵¹ *Id.*

¹⁵² ROBERT A. WILLIAMS, JR., *THE AMERICAN INDIAN IN WESTERN LEGAL THOUGHT: THE DISCOURSES OF CONQUEST* 93 (1990).

¹⁵³ *AD 1537: Pope Paul III Opposes Enslaving Native Peoples*, NATIVE VOICES, <https://www.nlm.nih.gov/nativevoices/timeline/185.html> [https://perma.cc/N6FC-QYVP] (last visited Nov. 21, 2021).

scientific luminaries such as Bruno,¹⁵⁴ Copernicus,¹⁵⁵ and Galileo¹⁵⁶ – but not for the Spanish Habsburg family¹⁵⁷ who were also responsible for one of history’s greatest global genocide.¹⁵⁸ This included the genocidal *Reduccion*¹⁵⁹ against the Chamorro people for hundreds of years.

Refaluwasch peoples, suffering from natural disasters in the Spanish-occupied “Caroline Islands,” immigrated as climate refugees to the Marianas with Spanish permission.¹⁶⁰ This makes the “Northern Marianas Descent” distinction unique as having two different Indigenous peoples, which is at times contentious due to the fact that Chamorros predated Refaluwasch peoples by thousands of years and had no agency to consent when Spain gave away their ancestral land.¹⁶¹ Be that as it may, *Inafa’maolek*, which translates to harmonious relationships with each other and nature, reigns supreme as Chamorro-Refaluwasch relations as a combined CNMI minority are generally strong, having much more in common than what divides them. Symbolism in the CNMI flag, inter-marriage between Indigenous groups, Chamorro-Refaluwasch joint canoe-building and sailing projects, and other efforts generally enhance harmonious communal bonds.

¹⁵⁴ *Giordano Bruno*, ENCYC. BRITANNICA, <https://www.britannica.com/biography/Giordano-Bruno> [https://perma.cc/M65X-ULDJ] (last updated Feb. 13, 2022).

¹⁵⁵ Maurice A. Finocchiaro, *400 Years Ago the Catholic Church Prohibited Copernicanism*, ORIGINS (Feb. 2016), <https://origins.osu.edu/milestones/february-2016-400-years-ago-catholic-church-prohibited-copernicanism> [https://perma.cc/V6JZ-3MEF].

¹⁵⁶ *Galileo is Accused of Heresy*, HIST. (Nov. 13, 2009), <https://www.history.com/this-day-in-history/galileo-is-accused-of-heresy> [https://perma.cc/AC5J-46GQ].

¹⁵⁷ Gonzalo Alvarez, et al., *The Role of Inbreeding in the Extinction of a European Royal Dynasty*, 4 PLOS ONE e5174 (2009).

¹⁵⁸ *Hispaniola*, YALE U. GENOCIDE STUD. PROGRAM, <https://gsp.yale.edu/case-studies/colonial-genocides-project/hispaniola> [perma.cc/487C-3JN6] (last visited Dec. 10, 2022); DAVID ROCK, *The Colonial Era and its Aftermath, 1492-1870*, in THE SOUTH AMERICA HANDBOOK 3 (Patrick Heenan & Monique Lamontagne eds., 2002); DAVID M. CROWE, WAR CRIMES, GENOCIDE, AND JUSTICE: A GLOBAL HIST. 54 (2014).

¹⁵⁹ Goetzfridt, *supra* note 80.

¹⁶⁰ *People*, NAT’L PARK SERV., <https://www.nps.gov/amme/learn/historyculture/people.htm> [perma.cc/HD42-PVBL] (last updated Feb. 20, 2019).

¹⁶¹ Nicholas J. Goetzfridt, *Carolinians on Guam*, GUAMPEDIA, <https://www.guampedia.com/carolinians-on-guam/> [perma.cc/VZH7-L2VR] (last updated Jan. 7, 2023).

At the end of the Spanish-American War in 1898, Spain partitioned the Mariana Islands and Guahan was taken by the United States.¹⁶² The islands now known as the CNMI were sold to Germany, followed by Japanese control from 1914-1944.¹⁶³ The Vatican's Doctrine of Discovery and Spanish genocidal colonialism caused the Chamorro people to suffer devastating losses to their population.¹⁶⁴ The survival of the Chamorro people demonstrates incredible resiliency in the face of hundreds of years of historic and intergenerational trauma.¹⁶⁵ The actions by the Vatican and the Spanish consequently led to the denial of the Chamorro's right to self-determination for about 450 out of the past 500 years.¹⁶⁶

If the *Insular Cases* depend upon *M'Intosh*, and *M'Intosh* depends upon the Vatican-based Doctrine of Discovery, then these laws based on a series of religious decrees are in dire need of review. These Iberian actions of land theft and slavery became international law by having Vatican approval through the Doctrine of Discovery. Strikingly, the Vatican has yet to apologize for the Doctrine of Discovery.¹⁶⁷

The power of the Pope still maintains global reach as U.S. President Biden went to the Vatican in 2021 to *symbolically* "kiss the ring."¹⁶⁸ The Vatican is worth unknown billions of dollars¹⁶⁹ and allegedly owns over

¹⁶² Becky Little, *How the United States Ended Up with Guam*, HIST. (Aug. 9, 2017) <https://www.history.com/news/how-the-united-states-ended-up-with-guam> [perma.cc/CK7M-5GC4].

¹⁶³ Don Farrell, *Partition of the Marianas*, GUAMPEDIA, <https://www.guampedia.com/partition-of-the-marianas/> [perma.cc/2S9S-LYAT] (last updated Jan. 12, 2023).

¹⁶⁴ Sara Mar, *The Trauma of Colonization*, PUB. HEALTH POST (May 18, 2021) <https://www.publichealthpost.org/research/the-trauma-of-colonization/> [perma.cc/Z9ZH-B5PY].

¹⁶⁵ Patricia L.G. Taimanglo, *The Chamorro People of Guam*, AM. PSYCH. ASSOC. (Aug. 2010), <https://www.apa.org/pi/oema/resources/communique/2010/08/chamorro-people> [perma.cc/7N2H-CJUY].

¹⁶⁶ Katy June-Friesen, *Scott Russell of the Northern Mariana Islands*, 35 HUMANITIES (2014).

¹⁶⁷ Blakemore, *supra* note 16.

¹⁶⁸ CNN, *Joe Biden and Pope Francis Talk for 90 Minutes in a Symbolic Meeting for America's Second Catholic President*, 9NEWS (Oct. 30, 2021, 12:29 AM), <https://www.9news.com.au/world/joe-biden-and-pope-francis-meeting-symbolic-americas-second-catholic-president/68cd90fc-23f9-4d80-a378-1449e19c685b> [https://perma.cc/DK9P-CZ8F].

¹⁶⁹ Philip Pulella, *Vatican Releases Financial Figures, Promises Transparency*, REUTERS (Oct. 1, 2020, 4:37 AM), <https://www.reuters.com/article/us-vatican-finances-idUSKBN26M5XD> [https://perma.cc/3DZS-P6QQ].

5,000 properties¹⁷⁰ worldwide; thus, they have assets to review claims of reparations¹⁷¹ stemming from their role in global genocidal colonialism and slavery. The current climate crisis is arguably a result of colonial resource extraction from Indigenous lands – a direct link to the Vatican-authorized Doctrine of Discovery, which makes reparation claims even more compelling.¹⁷²

The global visible and invisible Iberian legacies of the Doctrine of Discovery that are now embedded into American law through the *Discovery Cases* contribute to vast disparities and pain for many Indigenous peoples, including Chamorros. Particularly painful for the Chamorros is the fact that the same Doctrine of Discovery that authorized the eventual genocide, land theft, and forced labor of their ancestors has come back to systemically rule over their lands in the form of the American *Discovery Cases*. *M'Intosh* does not impact the CNMI directly with regards to land rights. However, it does impact the CNMI directly via the *Insular Cases*, as well as suffering the insult of inclusion in a system that relies upon the authorization of the genocide of their ancestors. Chamorro cosmological worldview has a circular concept of history called “*Mo'na*” – the idea that time and history do not move forward linearly but always come back to the same point – which is sadly apropos in describing the Doctrine of Discovery in the Marianas.¹⁷³

The foundation of America's *true* “original sin”¹⁷⁴ of genocidal colonialism resides in the religiously-authorized Doctrine of Discovery – which provided the religious as well as legal foundation for institutional

¹⁷⁰ Joe Walsh, *Vatican Owns Over 5,000 Properties Worldwide, It Reveals in First Disclosures on Its Real Estate Holdings*, FORBES (July 24, 2021, 1:05 PM), <https://www.forbes.com/sites/joewalsh/2021/07/24/vatican-owns-over-5000-properties-worldwide-it-reveals-in-first-disclosures-on-its-real-estate-holdings/?sh=1ec57bd37a88> [https://perma.cc/2S9C-GK3].

¹⁷¹ Mariama Diallo, *Reparations: Can Money Absolve the Sins of the Past?*, VOICE OF AM. (July 9, 2021, 2:29 AM), https://www.voanews.com/a/usa_race-america_reparations-can-money-absolve-sins-past/6208006.html [https://perma.cc/2FAA-XWT3].

¹⁷² *Māori Climate Activist Tells COP26 Challenge Modern ‘Colonial Project’ or Be Complicit in Death*, RNZ (Nov. 1, 2021, 3:17 PM), <https://www.rnz.co.nz/news/te-manu-korihi/454669/maori-climate-activist-tells-cop26-challenge-modern-colonial-project-or-be-complicit-in-death> [https://perma.cc/MF6T-SYL9].

¹⁷³ Michael Lujan Bevacqua, *Mo'na: Circular Concept of History*, GUAMPEDIA, <https://www.guampedia.com/mona-circular-concept-of-history/> [https://perma.cc/FB47-667S] (last updated May 19, 2021).

¹⁷⁴ Annette Gordon-Reed, *America's Original Sin: Slavery and the Legacy of White Supremacy*, FOREIGN AFFS. (Jan./Feb. 2018), <https://www.foreignaffairs.com/articles/united-states/2017-12-12/americas-original-sin> [https://perma.cc/D6HH-5JKB].

slavery. This Doctrine essentially became international property law¹⁷⁵ as the foundation for the existence of not just the U.S., but also Canada, New Zealand, and Australia.¹⁷⁶ Implementing Indigenous rights-based legislation is a possible solution for tearing down White supremacist ideology based in arguably unconstitutional religiously-authorized and arbitrary judicial doctrines that comprise the *Discovery Cases*.¹⁷⁷ In 1823 *Johnson v. M'Intosh* was accepted unanimously and endorsed as recently as 2005¹⁷⁸ by the Supreme Court of the United States. If the U.S. is honest about addressing systemic racism, cases based on the Doctrine should not be allowed to stand today.

There would be no “United States of America” without historic land dispossession,¹⁷⁹ and the Doctrine of Discovery is the keystone for *M'Intosh's* existence and subsequent continental invasion.¹⁸⁰ *Without Precedent* by Professor Joel Richard Paul discusses the link between the American Revolution and the greed for more stolen Indigenous land.¹⁸¹ The Royal Proclamation of 1763 by England’s King George III ordered no more invasion and land theft of Indigenous peoples beyond the thirteen colonies, and this was a major, yet largely undiscussed, catalyst for the American Revolutionary War.¹⁸² This Royal Proclamation recognized Indigenous land rights and sovereignty, which conflicted with the American colonial insurrectionists intent on getting rich from stolen land west of the Appalachian Mountains. Destroying any obstacle in their ambition for Indigenous lands by any means necessary is a major cornerstone of how the United States exists today. Thirteen years after the Royal Proclamation of 1763, the revolutionaries of the thirteen colonies issued the American

¹⁷⁵ *Doctrine of Discovery*, *supra* note 10.

¹⁷⁶ *Indigenous Title and the Doctrine of Discovery*, INDIGENOUS CORP. TRAINING INC. (Jan. 26, 2020), <https://www.ictinc.ca/blog/indigenous-title-and-the-doctrine-of-discovery> [<https://perma.cc/3GYT-NAQ4>].

¹⁷⁷ Horey, *supra* note 105.

¹⁷⁸ *City of Sherrill v. Oneida Indian Nation of N. Y.*, 544 U.S. 197 (2005).

¹⁷⁹ Donald L. Fixico, *Documenting Indigenous Dispossession*, 374 SCI. 536, 536-537 (2021).

¹⁸⁰ *1823: Supreme Court Rules American Indians Do Not Own Land*, NATIVE VOICES, <https://www.nlm.nih.gov/nativevoices/timeline/271.html> [<https://perma.cc/V6XJ-JZCL>] (last visited Dec. 10, 2022).

¹⁸¹ JOEL RICHARD PAUL, *WITHOUT PRECEDENT: CHIEF JUSTICE JOHN MARSHALL AND HIS TIMES* (2018).

¹⁸² Jeffrey Ostler, *The Shameful Final Grievance of the Declaration of Independence*, THE ATLANTIC (Feb. 8, 2020), <https://www.theatlantic.com/ideas/archive/2020/02/americas-twofold-original-sin/606163/> [<https://perma.cc/5SF8-NQY7>]; Greenspan, *supra* note 15.

Declaration of Independence,¹⁸³ which included White supremacist ideology in listing grievances against England's King George III: "He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages, whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions."¹⁸⁴

The Declaration's primary drafter was Thomas Jefferson. By offering freedom to enslaved peoples of the revolutionaries,¹⁸⁵ the British "excited domestic insurrections" and unleashed the fury of White slave owners, such as Thomas Jefferson, George Washington, John Marshall, and other notable figures of foundational American history.¹⁸⁶ This provides further evidence of American systemic racism and links the plight of enslaved Africans and Indigenous peoples through the dispossession of their lands and their forced, uncompensated labor.¹⁸⁷ The Indigenous peoples' stolen land, acquired through invasion and conquest, was used to pay off soldiers fighting for land speculators like George Washington before he became the

¹⁸³ *Declaration of Independence: A Transcription*, NAT'L ARCHIVES, <https://www.archives.gov/founding-docs/declaration-transcript> [<https://perma.cc/W6JP-2WQJ>] (last updated June 8, 2022).

¹⁸⁴ *Id.*; Ostler, *supra* note 182. <https://www.theatlantic.com/ideas/archive/2020/02/americas-twofold-original-sin/606163/> [<https://perma.cc/5SF8-NQY7>].

¹⁸⁵ *Lord Dunmore's Proclamation, 1775*, GILDER LEHRMAN INST. AM. HIST., <https://www.gilderlehrman.org/history-resources/spotlight-primary-source/lord-dunmores-proclamation-1775> [<https://perma.cc/E5BE-7GUT>] (last visited Nov. 21, 2021). Lord Dunmore proclaimed that African slaves could get their freedom by joining forces with the British against the Americans.

¹⁸⁶ *Lord Dunmore's Proclamation, 1775*, DOC. BANK OF VA., <https://edu.lva.virginia.gov/dbva/items/show/268> [perma.cc/B5X4-QLGV] (last visited Dec. 10, 2022); *From George Washington to Lieutenant Colonel Joseph Reed, 15 December 1775*, NAT'L ARCHIVES, <https://founders.archives.gov/documents/Washington/03-02-02-0508> [<https://perma.cc/P3G3-WDTD>] (last visited Dec. 10, 2022); 1 ALBERT J. BEVERIDGE, *THE LIFE OF JOHN MARSHALL 77-78* (2012).

¹⁸⁷ Moyers & Company, *American Indians Confront "Savage Anxieties"*, BILL MOYERS (Dec. 26, 2014), <https://billmoyers.com/episode/american-indians-confront-racism/> [<https://perma.cc/WR8C-WXR8>]; Kelundra Smith, *Emory Unpacks History of Slavery and Dispossession*, EMORY U. (Sept. 28, 2021), <https://news.emory.edu/features/2021/09/emory-unpacks-history-of-slavery-and-dispossession/index.html> [<https://perma.cc/SRU8-QF7L>]; Alan Gally, *Indian Slavery in the Americas*, GILDER LEHRMAN INST. AM. HIST., <https://ap.gilderlehrman.org/essay/indian-slavery-americas> [<https://perma.cc/55GB-7GRZ>] (last visited Nov. 21, 2021).

nation's first president.¹⁸⁸ Unsurprisingly, George Washington obtained his wealth through stolen land and peoples he had inherited and acquired from invasion and conquest.¹⁸⁹

Furthermore, the connection between Washington and Chief Justice Marshall casts doubt over the judicial fiat by Marshall since he was previously in Washington's army at Valley Forge.¹⁹⁰ Chief Justice Marshall's father surveyed Indigenous land to parcel out two hundred acres to enlisted men, while officers were given even more.¹⁹¹ Be that as it may, conflict of interest was apparently a non-issue, as Marshall (considered by many to be the greatest U.S. Supreme Court Chief Justice) did not recuse himself from America's foundational property law case that eliminated Indigenous peoples' land rights throughout the continent. Wealthy, White land speculators enriched themselves from waging war and subsequent land theft and made it legal to do so by judicial fiat in arguably the most significant property law case: *Johnson v. M'Intosh*.¹⁹²

The Doctrine of Discovery and *M'Intosh* occupy a unique space in the realm of international law; several nations use this religiously-based justification for Indigenous land theft in establishing domestic property law while simultaneously ignoring the many human rights violations those laws have created (i.e. genocide, religious persecution, and land theft).¹⁹³ According to the United Nations, "conquests" – including other actions such as land appropriation and forced relocation – by Euro-American invaders would qualify as war crimes if they happened today.¹⁹⁴ Ironically,

¹⁸⁸ Edward Redmond, *Washington as Land Speculator*, LIBR. OF CONG., <https://www.loc.gov/collections/george-washington-papers/articles-and-essays/george-washington-survey-and-mapmaker/washington-as-land-speculator/> [https://perma.cc/L2TJ-4PVY] (last visited Dec. 1, 2022).

¹⁸⁹ *Conotocarious*, MOUNT VERNON, <https://www.mountvernon.org/library/digitalhistory/digital-encyclopedia/article/conotocarious/> [https://perma.cc/477V-VTXT] (last visited Dec. 10, 2022); *John Washington, Burgess from Westmoreland County*, JAMESTOWNE SOC'Y (June 12, 2019), <https://www.jamestowne.org/blog/john-washington-burgess-from-westmoreland-county> [https://perma.cc/FZ4T-SCDN].

¹⁹⁰ William M. S. Rasmussen, *A Connected Legacy: John Marshall and George Washington*, VA. MUSEUM HIST. & CULT. (2019), <https://virginiahistory.org/learn/connected-legacy-john-marshall-and-george-washington> [https://perma.cc/F6EQ-RAES].

¹⁹¹ PAUL, *supra* note 181, at 398.

¹⁹² *Johnson v. M'Intosh*, 21 U.S. 543 (1823).

¹⁹³ Roger Merino, *The Land of Nations: Indigenous Struggles for Property and Territory in International Law*, 115 AJIL UNBOUND 129, 129-134 (2021).

¹⁹⁴ *War Crimes*, UNITED NATIONS, <https://www.un.org/en/genocideprevention/war-crimes.shtml> [https://perma.cc/96GA-JTFS] (last visited Oct. 11, 2021).

that was the rationale utilized by the U.S. in waging the first Gulf War against Saddam Hussein—to stop Iraq’s invasion of “conquest” in Kuwait.¹⁹⁵ It is important to highlight that the *M’Intosh* legacy between the United States government and Indigenous land rights is not just an archaic ruling from the 1800s. Liberal icon Justice Ruth Bader Ginsburg cited the Doctrine of Discovery in *City of Sherrill v. Oneida Indian Nation* as justification for land theft as recently as 2005.¹⁹⁶ Given the relatively recent activity in the *Discovery Cases* world,¹⁹⁷ it is not unreasonable to fear that *M’Intosh* and its progeny could challenge any acknowledged land rights of Indigenous peoples in U.S. territories, if they were to seek statehood without UNDRIP-based legislation already in place.

The U.S. government’s track record of dealing with Indigenous peoples warrants examination.¹⁹⁸ The American footprint in Oceania has disturbing origins. Some patterns worth addressing include the kidnapping of the Indigenous Queen Lili’uokalani and the “annexation” of Hawaii,¹⁹⁹ treating Micronesians as guinea pigs during the nuclear weapons testing in the Marshall Islands,²⁰⁰ legacies of military sexual assaults in Okinawa,²⁰¹ and

¹⁹⁵ *Iraqi Aggression in the Persian Gulf*, U.S. DIPLOMATIC MISSION TO GERMANY (Aug. 2008), <https://usa.usembassy.de/etexts/speeches/rhetoric/gbaggres.htm> [<https://perma.cc/7YCH-6TTG>].

¹⁹⁶ *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197, 203 (2005).

¹⁹⁷ *Id.*; 1823: *Supreme Court Rules American Indians Do Not Own Land*, NATIVE VOICES, <https://www.nlm.nih.gov/nativevoices/timeline/271.html> [<https://perma.cc/8MAX-59EB>] (last visited Sept. 15, 2022).

¹⁹⁸ Susanne Rust, *How the U.S. Betrayed the Marshall Islands, Kindling the Next Nuclear Disaster*, L.A. TIMES (Nov. 10, 2019), <https://www.latimes.com/projects/marshall-islands-nuclear-testing-sea-level-rise/> [<https://perma.cc/DV4K-CRPE>].

¹⁹⁹ American Masters, *Queen Lili’uokalani - The First and Last Queen of Hawai’i*, PBS (July 1, 2020), <https://www.pbs.org/wnet/americanmasters/queen-liliuokalani-the-first-and-last-queen-of-hawaii-kx2oc7/15032/#> [<https://perma.cc/Q3SU-NG5Z>].

²⁰⁰ Susanne Rust, *Rep. Katie Porter Presses Biden Team on Marshall Islands Nuclear Waste, Gets Few Answers*, L.A. TIMES (Oct. 22, 2021, 4:00 AM), <https://www.latimes.com/environment/story/2021-10-22/marshall-islands-nuclear-waste-congressional-hearing-compact> [<https://perma.cc/8644-N4GB>]; Peter Cohen, *Bikini’s Tragic Heritage*, IN THESE TIMES (Sept. 15, 2010), <https://inthesetimes.com/article/bikinis-tragic-heritage> [<https://perma.cc/QF44-6CJK>].

²⁰¹ EMMA CHANLETT-AVERY & IAN E. RINEHART, CONG. RSCH. SERV., R42645, U.S. MILITARY PRESENCE IN OKINAWA AND FUTENMA BASE CONTROVERSY (2014); Mika Kuniyoshi, *Okinawa Women Document U.S. Military Sex Crimes in Book*, ASAHI SHIMBUN (Oct. 22, 2020, 6:58 PM), <https://www.asahi.com/ajw/articles/13860131> [<https://perma.cc/QW3T-AKUK>].

now military destruction of sacred sites in Guahan.²⁰² The CNMI should take U.S. history into account when engaging in CNMI Constitutional Conventions and any other discussions (i.e. 902 talks)²⁰³ between the local and federal U.S. governments. Enhanced Indigenous rights may also be of importance for any potential land dispute or case of eminent domain by the U.S. federal government against the CNMI and their limited, sacred lands.²⁰⁴

Re-examining international law and foundational U.S. property law is essential when denouncing legal precedents based on White supremacy. Although Chief Justice Marshall was considered “sympathetic” to Native Americans and had some progressive stances for the time period,²⁰⁵ his language in *M’Intosh* includes the following spliced examples of colonialist ideology regarding Indigenous peoples:

. . . inferior race of people. . . They maintain, as all others have maintained, that discovery gave an exclusive right to extinguish the Indian title of occupancy, either by purchase or by conquest . . . find some excuse, if not justification, in the character and habits of the people whose rights have been wrested from them . . . Frequent and bloody wars, in which the whites were not always the aggressors, unavoidably ensued. European policy, numbers, and skill prevailed. As the white population advanced, that of the Indians necessarily receded . . . However extravagant the pretension of converting the discovery of an inhabited country into conquest may appear; if the principle has been asserted in the first instance, and afterwards sustained; if a country has been acquired and held under it; if the property

²⁰² Manny Cruz, *Community Calls for End to Military Destruction of Environment, Cultural Sites*, PAC. DAILY NEWS (Nov. 3, 2018), https://www.guampdn.com/news/local/community-calls-for-end-to-military-destruction-of-environment-cultural-sites/article_4ef41a9e-bf0c-557f-8326-2525dd34b327.html [https://perma.cc/2PUP-523T].

²⁰³ *Federal Relations*, CNMI OFFICE OF GOVERNOR, <https://governor.gov.mp/priorities/federal-relations/> [https://perma.cc/A9X3-4KYD] (last visited Dec. 10, 2022) Section 902 of the CNMI Covenant states that both the U.S. and CNMI government will hold regular consultation meetings on issues that might affect their relationship.

²⁰⁴ Chris Gelardi & Sophia Perez, *‘This Isn’t Your Island’: Why Northern Mariana Islanders Are Facing Down the US Military*, THE NATION (June 12, 2019), <https://www.thenation.com/article/archive/northern-mariana-islands-military-bases-tinian/> [https://perma.cc/9XY5-XLBE]; 48 U.S.C. §1801; Covenant art. VIII, § 806.

²⁰⁵ PAUL, *supra* note 181.

of the great mass of the community originates in it, it becomes the law of the land, and cannot be questioned.
Chief Justice Marshall, *Johnson v. M'Intosh*, 21 U.S. 543 (1823)

Further evidence of active American systemic racism built on Vatican decrees led to the terrorism of, and subsequent disparate impacts on, Indigenous peoples for centuries. Justice John Marshall, one of the most influential Supreme Court Justices, hypocritically cast Indigenous peoples as “savages” despite having spent decades upholding the Constitution, a document that was significantly based on Indigenous wisdom and governance.²⁰⁶ As Benjamin Franklin acknowledged in 1751, “It would be a very strange Thing, if six Nations of ignorant Savages [sic] should be capable of forming a Scheme for such a Union, and be able to execute it in such a Manner as that it has subsisted Ages, and appears indissoluble; and yet a like Union should be impractical for ten or a Dozen English Colonies”²⁰⁷

Professor Robert Williams’ book *Savage Anxieties: The Invention of Western Civilization*²⁰⁸ describes the three-thousand-year-old historical mythology based on the concept of “savagery,” and is evident in both the Declaration of Independence and *M'Intosh's* usage of the term “savage.”²⁰⁹ Famously symbolized on the U.S. dollar bill²¹⁰ by the bald eagle clutching thirteen arrows,²¹¹ federalism’s concept of sharing power and states’ rights for strength are based on the Iroquois “Great Law of Peace,”²¹² which provided the answer to the failed Articles of Confederation in which states

²⁰⁶ *American Indian*, *supra* note 9, at 32-56.

²⁰⁷ Livia Gershon, *The Native American Roots of the U.S. Constitution*, JSTOR DAILY (Sept. 15, 2021), <https://daily.jstor.org/the-native-american-roots-of-the-u-s-constitution/> [<https://perma.cc/GF22-XX2W>].

²⁰⁸ ROBERT A. WILLIAMS, JR., *Savage Anxieties: The Invention of Western Civilization* (2012).

²⁰⁹ *Declaration of Independence: A Transcription*, *supra* note 183; *Johnson v. M'Intosh*, 21 U.S. 543 (1823).

²¹⁰ *The Colors of Independence*, PIMA CNTY. PUB. LIBR. (July 1, 2021), <https://www.library.pima.gov/blogs/post/the-colors-of-independence/> [perma.cc/6B3W-NQ8W].

²¹¹ Steven Paul McSloy, *Border Wars: Haudenosaunee Lands and Federalism*, 46 BUFF L. REV. 1041, 1041-1059 (1998).

²¹² Tony Tekaroniake Evans, *How the Iroquois Confederacy Was Formed*, HIST. (Nov. 8, 2021), <https://www.history.com/news/iroquois-confederacy-hiawatha-peacemaker-great-law-of-peace> [perma.cc/CVY8-BXPY].

were more like sovereign nations.²¹³ The American “Founding Fathers” incorporated fundamental concepts such as federalism and separation of powers with checks and balances into the Constitution from the wisdom of the Iroquois Confederacy²¹⁴ yet slandered Indigenous peoples as “savages” to justify their profiteering from invasion and land theft.

M’Intosh’s systemic racism continues to be the basis for the current law of the land, as the “*Discovery Cases*” paradoxically dispossessed Indigenous peoples throughout the U.S. (Guahan to Hawaii to the continent),²¹⁵ yet provides the “unincorporated” space to protect Indigenous land rights in the CNMI via the *Insular Cases*.²¹⁶ All of the above is why it is necessary to understand why and how the *Insular Cases* exist – in order to overrule the *Discovery Cases* root and stem, and replace them with Indigenous rights-based legislation as a solution to second-class citizenship.

C. THE RELATIONSHIP BETWEEN THE CNMI AND THE *INSULAR CASES*

Land is the only significant asset of the Commonwealth people and “is the basis of family organization is the islands. It traditionally passes from generation to generation creating family identity and contributing to the economic well-being of family members And we must be mindful also that the preservation of local culture and land is more than mere desideratum — it is a solemn and binding undertaking memorialized in the Trusteeship Agreement

Circuit Judges Cecil F. Poole et al., *Wabol v. Villacrusis*, 908 F.2d 411, 422-433 (9th Cir. 1990).

The CNMI’s relationship with the *Insular Cases* is complicated. To start with, legal scholars differ on how many different cases should be classified as *Insular Cases*.²¹⁷ Classification of the *Insular Cases* initially

²¹³ *Articles of Confederation: Primary Documents in American History*, LIBR. OF CONG., <https://guides.loc.gov/articles-of-confederation> [perma.cc/FP38-95AK] (last visited Dec. 12, 2022).

²¹⁴ *American Indian*, *supra* note 9.

²¹⁵ *AD 1513*, *supra* note 136.

²¹⁶ Christina D. Ponsa-Kraus, *The Insular Cases Run Amok: Against Constitutional Exceptionalism in the Territories*, 131 *YALE L.J.* 2390-2758 (2022).

²¹⁷ PEDRO A. MALAVET, *AMERICA’S COLONY: THE POLITICAL AND CULTURAL CONFLICT BETWEEN THE UNITED STATES AND PUERTO RICO* (2004).

began with six cases and is now perhaps in the dozens.²¹⁸ Furthermore, cases like *Downes v. Bidwell* discussed below provide additional examples of systemic racism. Nevertheless, the *Insular Cases* created space to protect Indigenous land rights, as mentioned above in the *Wabot v. Villacrusis* quote.²¹⁹ Some argue that the CNMI and its Indigenous land rights could not exist without the *Insular Cases*, which requires analysis to see how they are connected to determine potential alternatives if these cases were to be struck down.

The *Insular Cases* began in the early 1900s after the Spanish-American War that resulted in Guahan, Puerto Rico, and the Philippines becoming territories under U.S. control.²²⁰ Although the *Insular Cases* origins were decades before the CNMI became a U.S. territory, these infamously racist series of rulings govern the political inequality between the U.S. federal government and all territories. It is no coincidence that the vast majority of peoples in U.S. territories are non-White while dealing with the harsh realities of second-class citizenship.²²¹ Perhaps the most substantial evidence that the *Insular Cases* are just a subset of what we call the *Discovery Cases* resides within *Downes v. Bidwell*:²²²

If those possessions are inhabited by alien races, differing from us in religion, customs, laws, methods of taxation, and modes of thought, the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible Take a case of discovery. Citizens of the United States discover an unknown island, peopled with an uncivilized race, yet rich in soil, and valuable to the United States for commercial and strategic reasons. Clearly, by the law of nations, the right to strategy such

²¹⁸ Efrén Rivera-Ramos, *The Legal Construction of American Colonialism: An Inquiry into the Constitutive Force of Law 158* (1996) (Ph.D. dissertation, Univ. Coll. London) (ProQuest).

²¹⁹ *Wabot v. Villacrusis*, 908 F.2d 411, 422-423 (9th Cir. 1990).

²²⁰ Lana Birbrair, *The Insular Cases: Constitutional Experts Assess the Status of Territories Acquired in the Spanish–American War* (Video), HARV. L. TODAY (Mar. 18, 2014), <https://today.law.harvard.edu/insular-cases-constitutional-experts-assess-status-territories-acquired-spanish-american-war-video/> [<https://perma.cc/NG2F-U2AQ>].

²²¹ Karl Widerquist, *The Case for Five New States*, OPENDEMOCRACY (May 5, 2021, 11:08 AM), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/case-five-new-states/> [<https://perma.cc/M8WM-UAKP>].

²²² *Downes v. Bidwell*, 182 U.S. 244, 287 (1901).

acquisition and thus to acquire the territory would pertain to the government of the United States.

These quotes show examples in *active* case law of how, once again, the judicial fiat-based *Discovery Cases* uphold White supremacy and are embedded into American institutions. The priority requirement is addressed up front: “alien races” were not considered White. The second point – “differing from us in religion” – is perplexing for an educated SCOTUS bench since religion should not have anything to do with governance. Additionally, the vast majority of territories seized after the Spanish-American War from the Caribbean to the Pacific were reduced into varying degrees of forced labor, even *after* conversion into Catholicism for hundreds of years. As stated previously, *Downes* not only cites *M’Intosh*, but references *Discovery* *nine* times throughout the ruling.²²³ The *Discovery Cases* are intimately connected.

These shameful rulings that reduce territories to “alien races” are not only current legal authority; they continue to be citations argued at the U.S. Supreme Court by both of the recent Obama and Trump presidential administrations.²²⁴ However, recent advancements such as the 2020 Democratic National Committee advocate for progressive voting reform with the territories.²²⁵ President Biden speaks for legislative solutions and an end to second-class citizenship in the U.S., yet his Department of Justice argues in court to maintain the *Insular Cases*.²²⁶ Even if budget talks might include permanent solutions to federal funding programs which would dramatically address funding disparities in U.S. territories,²²⁷ those

²²³ *Id.*

²²⁴ Pema Levy, *The Obama Administration is Using Racist Court Rulings to Deny Citizenship to 55,000 People*, MOTHER JONES (May 27, 2016), <https://www.motherjones.com/politics/2016/05/obama-administration-american-samoa-deny-citizenship/> [https://perma.cc/F2Z8-FGEP]; Adriel I. Cepeda Derieux & Neil C. Weare, *After Aurelius: What Future for the Insular Cases?*, 130 YALE L. J. 284 (2020).

²²⁵ *Restoring and Strengthening Our Democracy*, DEMOCRATIC NAT’L COMM., <https://democrats.org/where-we-stand/party-platform/restoring-and-strengthening-our-democracy/> [https://perma.cc/LSM5-EZ8F] (last visited Oct. 11, 2021).

²²⁶ Phill Leon Guerrero, ‘No Second-Class Citizens’: Biden Breaks with Justice in SSI Case, GUAM DAILY POST (June 15, 2021), https://www.postguam.com/news/local/no-second-class-citizens-biden-breaks-with-justice-in-ssi-case/article_fa939830-c825-11eb-88f5-7fc42cad8044.html [https://perma.cc/8XDR-8CMJ].

²²⁷ *SSI and Medicaid Expansion for U.S. Territories Included in Build Back Better Draft Text*, EQUALLY AM. (Oct. 28, 2021), https://www.equalrightsnow.org/equally_american_applauds_inclusion_of_ssi_and_medicaid_in_build_back_better_draft_text [https://perma.cc/JU4H-993T].

solutions will not end second-class citizenship without addressing disenfranchisement. Only statehood can deliver full voting rights.²²⁸

It is preposterous to continue treating Americans living in U.S. territories as second-class citizens. Territorial residents have among the highest enlistment rates in the entire country.²²⁹ Unfortunately, those disproportionately high rates of enlistment most likely reflect the exploitation of violent poverty²³⁰ in the territories.²³¹ Further compounding this tragedy, absent the additional “health care brinkmanship” lobbying by non-voting territorial delegates to D.C., is that these U.S. veterans do not get the proper health care they deserve for conditions like PTSD and depression.²³²

The *Insular Cases* created, by judicial fiat, a new territorial status alongside “incorporated”: an “unincorporated” status for second-class citizenship to continue in potential perpetuity, whereas “incorporated” territories have pathways to statehood and voting rights.²³³ The sole “incorporated” territory of the U.S., Palmyra Atoll, has no permanent residents.²³⁴ Ironically, it is this “unincorporated” status for the CNMI that allows for Indigenous land rights.²³⁵ Until legislative reform becomes reality, the *Insular Cases* concretize second-class citizenship status for

²²⁸ Neil Weare, *Biden Made a Promise to End Discrimination Against Puerto Ricans. He’s About to Break it.*, SLATE (Oct. 18, 2021, 11:55 AM), <https://slate.com/news-and-politics/2021/10/biden-puerto-rico-vaello-madero-supreme-court.html> [<https://perma.cc/94R5-6P3D>].

²²⁹ *U.S. Citizens Defend Democracy, Can’t Vote for President*, *supra* note 51.; *Insular Areas*, NAT. RES. COMM. (Feb. 2020), <https://naturalresources.house.gov/imo/media/doc/Insular%20Fact%20Sheet%202020FINAL.pdf> [<https://perma.cc/KEH3-4XHA>].

²³⁰ *Violence & Socioeconomic Status*, AM. PSYCH. ASS’N., <https://www.apa.org/pi/ses/resources/publications/violence> [<https://perma.cc/3K4B-5GGC>] (last visited Nov. 21, 2021).

²³¹ Patrick T. McCormick, *Volunteers and Incentives: Buying the Bodies of the Poor*, 27 J. SOC’Y CHRISTIAN ETHICS 27, 77 (2007); *Thousands of US Military Families Live in Poverty*, VOA (Oct. 29, 2009, 8:10 AM), <https://www.voanews.com/a/a-13-a-2003-01-15-5-thousands-67286427/380364.html> [<https://perma.cc/R3FD-L3JY>].

²³² Natalie Bareis & Briana Mezuk, *The Relationship Between Childhood Poverty, Military Service, and Later Life Depression Among Men: Evidence from the Health and Retirement Study*, 206 J. AFFECTIVE DISORDERS 1, 1-2, 7 (2016).

²³³ Torruella, *supra* note 108.

²³⁴ *Palmyra Atoll*, OFFICE OF INSULAR AFFS., <https://www.doi.gov/oia/islands/palmyraatoll> [<https://perma.cc/K57V-6ZMW>] (last visited Dec. 10, 2022).

²³⁵ *Wabol v Villacrusis*, 898 F.2d 1381 (9th Cir. 1990).

American citizens and *nationals* (i.e., people living in American Samoa)²³⁶ to varying degrees among the territories.²³⁷

Even if the CNMI Covenant with the U.S. is deemed as dependent upon the *Insular Cases*²³⁸ or that the *Insular Cases* protects Indigenous culture,²³⁹ that does not mean that the Covenant or Article 12 in the CNMI could not exist without the *Insular Cases*. U.S. plenary powers are such that Congress can legislate new laws to govern the territories in a more equitable manner. The CNMI could continue the Covenant with the U.S. under new legislation from U.S. Congressional plenary powers or mutually agreed upon amendments to the Covenant via 902 Consultations.²⁴⁰

Other arguments discuss that statehood may have to include categorizing the CNMI's Indigenous peoples as having "Native American/Tribal Nations Status" in order to create "reservations"²⁴¹ that protect their land. Indigenous peoples of the CNMI and other U.S. territories have good reason to avoid the "Tribal" status with "reservations" to protect Indigenous lands; they would become subjected to the violent history of the Bureau of Indian Affairs (BIA). The BIA supported "Kill the Indian, Save the Man" boarding schools²⁴² which essentially kidnapped Indigenous children and sent them to forced labor acculturation death camps. These "schools" promoted the "twin goals of cultural assimilation and territorial dispossession of Indigenous peoples through the forced removal and

²³⁶ Harv. L. Rev. Assoc., *Developments in the Law: The U.S. Territories*, 130 HARV. L. REV. 1616, 1680 (2017).

²³⁷ Eric Bellone, *Century-Old Racist US Supreme Court Cases Still Rule Over Millions of Americans*, THE CONVERSATION (Oct. 5, 2021, 8:26 AM), <https://theconversation.com/century-old-racist-us-supreme-court-cases-still-rule-over-millions-of-americans-167091> [<https://perma.cc/X39X-KSD9>] (updated May 2, 2022, 5:22 PM).

²³⁸ Horey, *supra* note 105.

²³⁹ Rose C. Villazor, Commentary, *Problematizing the Protection of Culture and the Insular Cases*, 131 HARV. L. REV. F. 127, 130 (2018).

²⁴⁰ Anita Hofschneider, *More Political Power for the Marianas?*, HONOLULU CIV. BEAT (Dec. 15, 2016), <https://www.civilbeat.org/2016/12/more-political-power-for-the-marianas/> [<https://perma.cc/Y3F2-7JQR>].

²⁴¹ Phill Leon Guerrero, *US, International Officials Decry Insular Cases*, MARIANAS VARIETY (May 7, 2021), https://mvariety.com/news/us-international-officials-decry-insular-cases/article_0d8f83f6-ae7f-11eb-bba4-23ea162f09d5.html [<https://perma.cc/3X7P-D88K>]; Villazor, *supra* note 239.

²⁴² *Past*, CARLISLE INDIAN SCH. PROJECT, <https://carlisleindianschoolproject.com/past/> [<https://perma.cc/X9G7-TMFF>] (last visited Nov. 21, 2021).

relocation of their children.”²⁴³ To avoid having to go through the “Tribal” process, which could be worse than the CNMI laws currently in place, UNDRIP-based legislation at the federal level would create protections for Indigenous peoples—a broader and more encompassing system than just “Tribal.”

Guahan currently allows for private property purchase for non-Indigenous populations,²⁴⁴ so if the CNMI and Guahan reunited into statehood, there could be Indigenous and non-Indigenous land ownership within a new state of the Union. Chamorro self-determination efforts in the Marianas could continue together into statehood, as decolonization and self-determination do not only mean independence or free association. There is a symbiotic relationship between the Marianas and the U.S.; however, statehood would be required for the Marianas to continue this relationship if the CNMI also wants to eliminate second-class citizenship. An argument could be made that Article 12 of the CNMI Constitution, which protects Indigenous land rights, would violate the Equal Protections Clause or other federal protections for property rights, if the CNMI were to become a U.S. state.²⁴⁵ Equal Protection-related arguments against the constitutionality of Article 12 say that it is a “race-based” law.²⁴⁶ Critical analysis regarding what defines an “Indigenous” person has more to do with one’s “relationship to land,” which can be interpreted as a political designation, and not necessarily race.²⁴⁷

For example, the CNMI has two Northern Marianas Descent (NMD) peoples: Chamorro and “Carolinian” (Refaluwasch).²⁴⁸ Although both

²⁴³ Press Release, *Department of the Interior Releases Investigative Report, Outlines Next Steps in Federal Indian Boarding School Initiative*, U.S. DEP’T INTERIOR (May 11, 2022), <https://www.doi.gov/pressreleases/department-interior-releases-investigative-report-outlines-next-steps-federal-indian> [<https://perma.cc/T7BB-FJG6>].

²⁴⁴ *Guam Shouldn’t Copy CNMI’s Land Ownership Restriction*, GUAM DAILY POST (Oct. 5, 2018), https://www.postguam.com/forum/editorial/guam-shouldn-t-copy-cnmi-land-ownership-restriction/article_03e9378e-c79b-11e8-8385-9fa74c32038d.html [<https://perma.cc/BKV3-74GH>].

²⁴⁵ 42 U.S.C.S. § 1982; Harv. L. Rev. Assoc., *Developments in the Law*, *supra* note 235.

²⁴⁶ Villazor, *supra* note 239; Rose Cuison Villazor, *Blood Quantum Land Laws and the Race Versus Political Identity Dilemma*, 96 CAL. L. REV. 801 (2008) [hereinafter *Blood Quantum*].

²⁴⁷ Matt Ford, *The Supreme Court Could Save Tribal Sovereignty—or Demolish It*, NEW REPUBLIC (Oct. 6, 2021), <https://newrepublic.com/article/163875/supreme-court-icwa-tribal-sovereignty> [<https://perma.cc/V6E4-8DLF>].

²⁴⁸ N. Mar. I. Const. art. XII, § 4. “Carolinian” is a colonial term for the Indigenous Refaluwasch people. The CNMI Constitution uses the term Carolinian, although native speakers refer to themselves as Refaluwasch. Since this sentence references the CNMI Constitution, “Carolinian” is used here. *Id.*

groups have “Indigenous land rights” via Article 12 as NMDs, not all “Carolinians” in the world have land rights to the CNMI. Their relationship to the land is the determinative factor – not their race. Race is a factor, but not the definitive element. Section 4 of Article 12 states that those who qualify as a person of “Northern Marianas Descent” require “*at least some*” Indigenous ancestry, but the critical requirement is residency prior to 1950.²⁴⁹ Not all Carolinians in the world have Indigenous land rights in the CNMI *unless* they have ancestry in the CNMI prior to 1950,²⁵⁰ which makes the determinative factor a *political* decision, not race-based. Hypothetically, this would mean that someone that is ninety-nine percent non-NMD, but also has at least one percent NMD ancestry, would be eligible to purchase land in the CNMI, which is hardly discriminatory to other Americans. Therefore, it could be argued that Indigenous land rights are fundamental rights and should be safeguarded akin to “protected classes,”²⁵¹ not subjected to race-based legal analysis as it is not inherently racial discrimination, as discussed by Professor Rose Villazor in *Davis v. Guam* and in her testimony before the Full Committee Hearing on the *Insular Cases* Resolution.²⁵²

If Indigeneity is a protected class with fundamental land rights and not predominantly race-based in order to survive strict scrutiny, the *Rice* and *Davis* standards regarding voting rights and race-based analysis would not apply and could co-exist with Indigenous land rights.²⁵³ Had *Rice* and *Davis* ruled otherwise, Americans would be disenfranchised, which is inherently unconstitutional. Voting rights and Indigenous land rights are *both* fundamental rights. Protecting politically-based and fundamental Indigenous land rights would not take away any American’s right to buy and sell property; Americans could still buy and sell real estate, except for where they already cannot, such as public lands and Native American reservations. Even if such a practice was considered racially discriminatory, restorative justice and maintaining agreements involving Indigenous land rights such as Article 12, could also equally merit necessary exemptions

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ Meghan Droste, *What Are “Protected Classes”?*, SUBSCRIPT L. (June 22, 2020), <https://subscriptlaw.com/protected-classes/> [https://perma.cc/F68M-SZBG].

²⁵² *Davis v. Guam: Ninth Circuit Holds That Guam’s Plebiscite Law Violates Fifteenth Amendment*, 133 HARV. L. REV. 683 (2019); House Natural Resources Committee Democrats, *supra* note 127.

²⁵³ *Rice v. Cayetano*, 528 U.S. 495, 520 (2000); *Davis v. Guam*, 932 F.3d 822, 832 (9th Cir. 2019).

given the CNMI's experience with the historic crime of genocidal colonialism.²⁵⁴

To survive the Equal Protection clause's strict scrutiny,²⁵⁵ three questions need to be addressed: is the law narrowly tailored, is it necessary, and is it of compelling state interest?²⁵⁶ The implementation of local and federal UNDRIP-based legislation could be *narrowly tailored* to honor existing Indigenous fundamental land rights agreements, laws, or treaties in U.S. states, territories, and reservations. The legislation is *necessary* to continue existing legal agreements ("Treaties . . . shall be the supreme law of the land"²⁵⁷) in a post-*Discovery Cases* world, where Indigenous fundamental rights (or the lack thereof) are not reliant upon racist case law. Finally, national security and economic concerns are a *compelling state interest* to maintain U.S. jurisdiction over the military's Marianas-based "tip of the spear" during its larger "pivot to Asia."²⁵⁸

Arguments have also been made in the CNMI that lowering blood quantum requirements have called into question "connections to the land" and "direct/long-term benefits."²⁵⁹ It is misguided for anyone to argue that having a high "blood quantum" requirement *increases* Indigenous peoples' rights to their lands. Blood quantum has a horrible history for Indigenous people that is still alive and well today. It is a requirement not currently burdened upon any other race. Blood quantum requirements go hand in hand with the racist "one-drop rule" demanding that if an American had "at least some" Black blood, even though they looked White, they were still considered Black.²⁶⁰ It is no coincidence that both blood quantum²⁶¹ and

²⁵⁴ Melinda Meng, *Decolonizing Law Through Restorative Justice*, HARV. INT'L REV. (Oct. 19, 2020, 9:00 AM), <https://hir.harvard.edu/decolonizing-law-through-restorative-justice/> [<https://perma.cc/3FEL-D6CF>]; Horey, *supra* note 105.

²⁵⁵ Reva Siegel, *Why Equal Protection No Longer Protects: The Evolving Forms of Status-Enforcing State Action*, 49 STAN. L. REV. 1111, 1138-1141 (1997).

²⁵⁶ *Strict Scrutiny*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/strict_scrutiny [<https://perma.cc/DA4X-NE7K>] (last visited Nov. 21, 2021).

²⁵⁷ U.S. CONST. art. VI.

²⁵⁸ Michael Lujan Bevacqua, *Guam: Protests at the Tip of America's Spear*, 116 S. ATL. Q. 174 (2017); Kenneth G. Lieberthal, *The American Pivot to Asia*, BROOKINGS (Dec. 21, 2011), <https://www.brookings.edu/articles/the-american-pivot-to-asia/> [<https://perma.cc/775Z-DBJW>].

²⁵⁹ *Blood Quantum*, *supra* note 246; House Natural Resources Committee Democrats, *supra* note 127.

²⁶⁰ David A. Hollinger, *One Drop & One Hate*, 134 DAEDALUS 18 (Winter 2005).

²⁶¹ Maya Harmon, *Blood Quantum and the White Gatekeeping of Native American Identity*, CAL. L REV. BLOG (Apr. 2021), <https://www.californialawreview.org/blood-quantum-and-the-white-gatekeeping-of-native-american-identity/> [<https://perma.cc/57ZB-D5AJ>].

one-drop²⁶² requirements are products of White supremacy embedded into America's institutions. It is a credit to the CNMI for amending Article 12 to lower this blood quantum requirement to "at least some" NMD ancestry, which inherently de-emphasizes the role of race with the focus squarely on the political relationship to the land.²⁶³ Now, Indigenous peoples have greater freedom to choose who they marry.

Maintaining a twenty-five percent blood quantum threshold arguably *threatened* long-term Northern Marianas Descent ownership, and perhaps extinction. People needing to meet a certain "blood quantum requirement" on a construct like "race" is grossly unscientific and ethically wrong.²⁶⁴ This highlights the *political* and *non-racial* elements of defining "Indigenous" as primarily a relationship to land and *not* a "racial" threat to constitutional equal protection. Blood quantum requirements in U.S. history are rooted in systemically racist land dispossession policies²⁶⁵ against Indigenous peoples and ultimately *for* the profit of mostly "White supremacist genocidal land thieves."²⁶⁶ The concept of blood quantum levels originated in the 1700s by White settlers "as a way of limiting the rights of Native people."²⁶⁷ Dehumanizing blood quantum requirements essentially demand a limited gene pool reproduction that could actually result in drastic drops in Indigenous populations.²⁶⁸ "*At least some*" ancestry²⁶⁹ is relatively easy to chronicle and maintain and allows cultural fluidity while preserving documented connections to Indigenous identity through lands and people in the CNMI.

²⁶² Christine B. Hickman, *The Devil and the One Drop Rule: Racial Categories, African Americans, and the U.S. Census*, 95 MICH. L. REV. 1161 (1997).

²⁶³ N. Mar. I. Const. art. XII, § 4.

²⁶⁴ ROBERT WALD SUSSMAN, *THE MYTH OF RACE: THE TROUBLING PERSISTENCE OF AN UNSCIENTIFIC IDEA* (2016); Elizabeth Kolbert, *There's No Scientific Basis for Race - It's a Made-Up Label*, NAT'L GEOGRAPHIC (Mar. 12, 2018), <https://www.nationalgeographic.com/magazine/article/race-genetics-science-africa> [https://perma.cc/YMK4-ZJAR].

²⁶⁵ *The Dawes Act*, *supra* note 90.

²⁶⁶ ROXANNE DUNBAR-ORTIZ, *NOT "A NATION OF IMMIGRANTS": SETTLER COLONIALISM, WHITE SUPREMACY, AND A HISTORY OF ERASURE AND EXCLUSION* (2021); Emily A. Haozous et al., *Blood Politics, Ethnic Identity, and Racial Misclassification Among American Indians and Alaska Natives*, 2014 J. ENV'T PUB. HEALTH 1 (2014).

²⁶⁷ *Blood Quantum and Sovereignty: A Guide*, NATIVE GOVERNANCE CTR., <https://nativegov.org/resources/blood-quantum-and-sovereignty-a-guide/> [https://perma.cc/E3EC-A345] (last visited Dec. 10, 2022).

²⁶⁸ Harmon, *supra* note 261.

²⁶⁹ N. Mar. I. CONST. art. XII, § 4.

In her testimony, Professor Villazor stated that extending long-term leases “might” lessen the importance of land to CNMI’s Indigenous peoples.²⁷⁰ Counter arguments can be made that extending long-term leases for Northern Marianas Descent land ownership actually *strengthens* connections to the land *and* provides short and long-term benefits. Extending a long-term lease by any number of years is just an arbitrary number; it does not change the ultimate element of “ownership.” Whether a long-term lease is one, ten, or a hundred years, owners still receive “direct-benefit” through rental income to build capital and capacity into prosperity while maintaining land ownership and cultural survival.²⁷¹ From an ownership and cultural perspective, this would not “loosen the fit,” nor would it weaken the compelling government interest and strict scrutiny of Equal Protection law.²⁷²

The CNMI currently depends upon the *Insular Cases* to exist as an “unincorporated” territory of the U.S., along with the space to have legislative and judicial support for CNMI Constitution Article 12. American Samoan arguments to uphold the racist *Insular Cases* exist mainly because some believe closer constitutional equal protection scrutiny might challenge culture and land rights.²⁷³ Congress has the power to implement Indigenous rights legislation as a political solution to override race-based equal protection concerns, and allow for territories to escape second-class citizenship with voting rights. During his line of questioning at a congressional hearing in March 2021, Delegate Kilili called for the need to explore “alternative legal theories or even new law . . . to protect culture and tradition.”²⁷⁴ Recommendations for legislating Indigenous rights to address the above issues are discussed below.

III. APPLICATION OF INDIGENOUS RIGHTS

A. LEGISLATING INDIGENOUS RIGHTS

It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as

²⁷⁰ House Natural Resources Committee Democrats, *supra* note 127.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ Hofschneider, *supra* note 55.

²⁷⁴ House Natural Resources Committee Democrats, *supra* note 127.

a laboratory; and try novel social and economic experiments without risk to the rest of the country. Justice Brandeis, *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932).

Although claims of systemic racism create heated debates regarding the ability to change the system from within, addressing issues through the legal system has appeal given that the U.S. Constitution is rooted in Indigenous wisdom²⁷⁵ and traditions that are nearly a thousand years old.²⁷⁶ Another Indigenous-based legal instrument, UNDRIP, has the potential to be used as a vehicle to systematically address past atrocities and current disparities.²⁷⁷ Implementing UNDRIP-based legislation through U.S. Constitutional-based legal means could synthesize these two Indigenous-inspired legal instruments for an Indigenous Renaissance. Canada and New Zealand have gone beyond minimal signatory status and legislated bold Indigenous rights laws with the global principles of UNDRIP.²⁷⁸ The time is ripe for America to join the global movement.

²⁷⁵ H.R. Con. Res. 331, 110th Cong. (1988);

²⁷⁶ Terri Hansen, *How the Iroquois Great Law of Peace Shaped U.S. Democracy*, PBS, <https://www.pbs.org/native-america/blogs/native-voices/how-the-iroquois-great-law-of-peace-shaped-us-democracy> [<https://perma.cc/8JNX-2PT3>] (last updated Dec. 17, 2018, 7:48 AM); Becky Little, *The Native American Government That Inspired the US Constitution*, HIST. (Nov. 9, 2020), <https://www.history.com/news/iroquois-confederacy-influence-us-constitution> [<https://perma.cc/677S-227C>].

²⁷⁷ Roxanne Dunbar-Ortiz, *Columbus Day Helped Italians Become 'White,' Roxanne Dunbar-Ortiz Explains*, TEEN VOGUE (Oct. 8, 2021), <https://www.teenvogue.com/story/columbus-day-italians-white> [<https://perma.cc/Y9WP-PC87>]; Teresa Wright, *How Canada's UNDRIP Bill was Strengthened to Reject 'Racist' Doctrine of Discovery*, CTV NEWS (June 19, 2021, 4:04 AM), <https://www.ctvnews.ca/canada/how-canada-s-undrip-bill-was-strengthened-to-reject-racist-doctrine-of-discovery-1.5477403> [<https://perma.cc/32JL-3S6G>].

²⁷⁸ Ashley Westerman, *Should Rivers Have Same Legal Rights as Humans? A Growing Number of Voices Say Yes*, NPR (Aug. 3, 2019, 8:02 AM), <https://www.npr.org/2019/08/03/740604142/should-rivers-have-same-legal-rights-as-humans-a-growing-number-of-voices-say-ye> [<https://perma.cc/E45C-W6Y5>]; Hannah White, *Indigenous Peoples, the International Trend Toward Legal Personhood for Nature, and the United States*, 43 AM. INDIAN L. REV. 129, 148-151, 164-165 (2018); *United Nations Declaration on the Rights of Indigenous Peoples*, U. ALBERTA, <https://www.ualberta.ca/indigenous/strategic-plan/united-nations-declaration-rights-indigenous-peoples.html> [<https://perma.cc/TZ84-DLGD>] (last visited Dec. 10, 2022).

Indigenous rights are international human rights,²⁷⁹ and UNDRIP has been implemented in various ways throughout the world in more than a decade of existence.²⁸⁰ Recognizing the importance of reconciliation and advancing relationships with Indigenous peoples led Canada's government to recently enact UNDRIP-based legislation at the federal level.²⁸¹ British Columbia in Canada legislated UNDRIP at the local level first, which provides the best example that is most comparable with the current U.S.-CNMI relationship since British Columbia is a province of Canada – Canada's version of a U.S. state.²⁸² The next section discusses how Canada achieved this goal at local and federal levels to inculcate the point that legislating Indigenous rights in American society is more than reverie. Utilizing a universally recognized UN Declaration to create Indigenous-based legislation provides a potential vehicle for reimagining a diverse society.

B. UNDRIP IMPLEMENTATION IN CANADA

Although U.S. and Canadian laws have their differences, both are Western Democracies with similar origin stories comprising varying degrees of genocidal colonialism.²⁸³ Both have Doctrine of Discovery

²⁷⁹ *Human Rights*, UNITED NATIONS,

<https://www.un.org/development/desa/indigenouspeoples/mandated-areas1/human-rights.html> [https://perma.cc/ASU3-ZZ37] (last visited Nov. 20, 2021).

²⁸⁰ Kristen Carpenter & Alexey Tsykarev, *Indigenous Peoples and Diplomacy on the World Stage*, 115 AM. J. INT'L L. UNBOUND, 118, 118–22 (2021); *Approaches in Other Countries*, THE IMPLEMENTATION PROJECT, <https://un-declaration.narf.org/about-un-declaration/un-declaration-context/approaches-other-countries/> [https://perma.cc/ZC3M-RRYM] (last visited Nov. 20, 2021).

²⁸¹ *Implementing the United Nations Declaration on the Rights of Indigenous Peoples Act*, GOV'T OF CANADA, <https://www.justice.gc.ca/eng/declaration/index.html> [https://perma.cc/MC5W-A4PD] (last updated Sep. 13, 2022).

²⁸² Kim Rutledge et al., *Province*, NAT'L GEOGRAPHIC, <https://www.nationalgeographic.org/encyclopedia/province/print/> [https://perma.cc/3ZUS-ZFKJ] (last updated May 19, 2022).

²⁸³ Nancy Chen, *Indigenous Americans Call for Justice Over Residential Schools*, CBS NEWS (July 20, 2021, 8:19 PM), https://www.cbsnews.com/news/indigenous-american-residential-schools/?fbclid=IwAR2UHq4sVSAF79Zg-snrqXb86SnmllNzCpa67_pQdOKSxnYACs2ZB4GxRbU [https://perma.cc/75MF-NHAZ]; DAVID E. STANNARD, *AMERICAN HOLOCAUST: THE CONQUEST OF THE NEW WORLD* (1992).

justifications embedded into current law.²⁸⁴ Both Canada and the U.S. are former British colonies themselves, and both have horrific histories with their Indigenous peoples.²⁸⁵ Becoming signatories to UNDRIP was a major step forward for both countries attempting to reconcile their relationships with Indigenous peoples. Canada has implemented UNDRIP-based legislation at the local and federal levels, while the U.S. has yet to do so at either level.

Although Indigenous peoples in Canada have suffered from colonial abuses²⁸⁶ and varying degrees of forced assimilation,²⁸⁷ British Columbia's UNDRIP-inspired legislation (Bill 41) has not only provided a space for healing intergenerational trauma, but also for cultural identity building with a government action plan.²⁸⁸ Bill 41 includes the entire 46 articles of UNDRIP and additionally creates a government action plan that provides guidance on the best path to implement UNDRIP standards throughout the British Columbia government. Unsurprisingly, the local and federal bills are not without controversy; First Nations sovereignty groups have justifiably argued that the accepting both the provincial and federal bills is accepting

²⁸⁴ Selena Zhao, *A Progressive Facade: Comparing the U.S. and Canada's Treatment of Indigenous Peoples*, HARV. POL. REV. (Jan. 22, 2021), <https://harvardpolitics.com/a-progressive-facade-comparing-the-u-s-and-canadas-treatment-of-indigenous-peoples/> [<https://perma.cc/UR4V-9P93>].

²⁸⁵ David MacDonald, *Canada's Blind Spot on Recognizing Genocide*, U.S. NEWS & WORLD REP. (June 4, 2021), <https://www.usnews.com/news/best-countries/articles/2021-06-04/canada-recognizes-genocide-except-against-its-own-indigenous-peoples> [<https://perma.cc/CFB3-MYC2>]; 1993: *President Clinton Apologizes For 1893 Overthrow of Hawaiian Monarchy*, NATIVE VOICES, <https://www.nlm.nih.gov/nativevoices/timeline/578.html> [<https://perma.cc/YUD8-ZHLK>] (last visited Oct. 11, 2021).

²⁸⁶ Frances D'Emilio, *Pope OKs Canada Trip to Help Healing with Indigenous Peoples*, AP NEWS (Oct. 27, 2021), <https://apnews.com/article/pope-francis-europe-religion-vatican-city-5f4b874d0fb055aefb177ff60024f49> [<https://perma.cc/58U6-CQBS>].

²⁸⁷ Holly Honderich, *Why Canada is Mourning the Deaths of Hundreds of Children*, BBC NEWS (July 15, 2021), <https://www.bbc.com/news/world-us-canada-57325653> [<https://perma.cc/M6JS-A8BG>].

²⁸⁸ Sarah Plank, *First Annual Report on Declaration on the Rights of Indigenous Peoples Act Released*, BC GOV NEWS (June 30, 2020, 2:00 PM), <https://news.gov.bc.ca/releases/2020IRR0012-001198> [<https://perma.cc/HA5U-CGQ2>]; *Declaration on the Rights of Indigenous Peoples Act Action Plan: 2022-2027*, BC MINISTRY OF INDIGENOUS RELS. AND RECONCILIATION (2022), https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/ministries/indigenous-relations-reconciliation/declaration_act_action_plan.pdf [<https://perma.cc/D87Y-GFTP>].

subordination to Canadian law and genocidal Doctrine of Discovery legal justifications.²⁸⁹

British Columbia's blueprint, imperfect as it may be, adds to the growing international precedent for attempting to address legacies of colonial legal architecture. Canada, like the U.S., is the modern-day inheritor of genocidal colonialism and land theft of Indigenous peoples — even Adolph Hitler modeled his genocidal plans for Eurasia on North America's treatment of Indigenous peoples.²⁹⁰ Truth and reconciliation²⁹¹ in Canada facilitated the legal space to implement UNDRIP-based legislation to remedy the harms of genocidal colonialism. Bill 41 attempts to harmonize diverse cultures while advancing Indigenous rights, recognizing that strengthening international human rights law is good for everyone, not just for Indigenous peoples.²⁹² As a minority group of voters in Canada, Indigenous peoples successfully influenced White legislative majorities to implement Indigenous rights at the local and federal levels.²⁹³ The genuine catharsis was evident in news reports during the legislative process; several people present of all races were visibly moved with tears of joy and disbelief.²⁹⁴ These types of “truth and reconciliation” actions have a relatively successful global track record. South Africa's Truth and Reconciliation experience after the apartheid era led by Nelson Mandela and Bishop Desmond Tutu helped foster recognition of historic and current

²⁸⁹ Veronica Martisius, *Bill C-15 Implementing UNDRIP: What Should This Mean for the First Nations, Inuit and the Métis in Relationship to Canada?*, B.C. C. L. ASS'N (May 20, 2021), <https://bccla.org/2021/05/bill-c-15-implementing-undrip-what-should-this-mean-for-the-first-nations-inuit-and-the-metis-in-relationship-to-canada/> [https://perma.cc/68LF-DNV2].

²⁹⁰ Robert J. Miller, *Nazi Germany and American Indians*, INDIAN COUNTRY TODAY (Aug. 14, 2019), <https://indiancountrytoday.com/opinion/nazi-germany-and-american-indians> [https://perma.cc/63YH-RX9L].

²⁹¹ *Truth and Reconciliation Commission of Canada*, GOV'T CANADA, <https://www.rcaanc-cimac.gc.ca/eng/1450124405592/1529106060525> [https://perma.cc/C97R-9UFM] (last modified June 11, 2021).

²⁹² Athena Bonneau, *Racism at Root of Indigenous Knowledge Being Ignored in Academia Says UBC Professor*, APTN NAT'L NEWS (Jan. 31, 2021), <https://www.aptnnews.ca/national-news/racism-at-root-of-indigenous-knowledge-being-ignored-in-academia-says-ubc-professor/> [https://perma.cc/PP8F-ECHF].

²⁹³ D'Emilio, *supra* note 286.

²⁹⁴ B.C. Ministry of Indigenous Rels. and Reconciliation, *A New Path Forward*, BRITISH COLUMBIA, <https://declaration.gov.bc.ca> [https://perma.cc/C2KW-S2XZ] (last visited Nov. 20, 2021).

hardships between all of the parties.²⁹⁵ Similarly, the Pope recently apologized for Vatican atrocities to Indigenous peoples in Canada.²⁹⁶ Perhaps a similar “truth and reconciliation” effort is also needed in the Marianas and the U.S.

This type of local and federal legislation in Canada could be possible for the CNMI and the U.S. or any other jurisdiction that desires advancements to harmonize diverse cultures into a healthy community. A similar bill in the CNMI could strengthen existing minority Indigenous culture at the local level and could provide a more balanced legal ground to settle any potential future disputes at the local or federal level.²⁹⁷ The support of UNDRIP by the U.S. government essentially makes it U.S. foreign and domestic policy (with the usual exceptions that strive to maintain federal hierarchical superiority).²⁹⁸ Legislating an international human rights instrument at local and federal levels would give the CNMI and the U.S. common ground in terms of recognizing Indigenous rights.²⁹⁹

C. IMPLICATIONS OF INDIGENOUS RIGHTS LEGISLATION IN THE CNMI

. . . [T]he incorporation of international law into U.S. jurisprudence is the most promising way to ensure the end

²⁹⁵ *Welcome to the Official Truth and Reconciliation Website*, S. AFR. TRUTH & RECONCILIATION COMM’N, <https://www.justice.gov.za/trc> [<https://perma.cc/P9WT-X5ET>] (last visited Nov. 24, 2021); Mary Kay Magistad, *South Africa’s Imperfect Progress, 20 Years After the Truth & Reconciliation Commission*, THE WORLD (Apr. 6, 2017, 1:45 AM), <https://www.pri.org/stories/2017-04-06/south-africas-imperfect-progress-20-years-after-truth-reconciliation-commission> [<https://perma.cc/J3SM-D4KV>].

²⁹⁶ Elisabetta Povoledo & Ian Austen, *‘I Feel Shame’ Pope Apologizes to Indigenous People of Canada*, N.Y. TIMES (Apr. 1, 2022), <https://www.nytimes.com/2022/04/01/world/europe/pope-apology-indigenous-people-canada.html> [<https://perma.cc/J2U7-5QSU>].

²⁹⁷ Fawn Sharp & Matthew Randazzo V, *Washington State Tribal Coalition Passes Unprecedented Climate Change Bill, Puts Consent Instead of Consultation into Law*, INDIANZ (May 21, 2021), <https://www.indianz.com/News/2021/05/21/fawn-sharp-tribal-consent-becomes-the-law-in-washington-state/> [<https://perma.cc/ZNJ2-3YJW>].

²⁹⁸ Letter from Jason R. Mack, U.S. Deputy Permanent Rep., United Nations Hum. Rts. Council, to Office of the High Comm’r for Hum. Rts. (Mar. 8, 2018) (on file with Office of the High Comm’r for Hum. Rts.), <https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/EMRIP/FPIC/USA.pdf> [<https://perma.cc/QL6A-5AX5>]; *Free, Prior, & Informed Consent*, THE IMPLEMENTATION PROJECT, <https://un-declaration.narf.org/implement-us/fpic/> [<https://perma.cc/PNU4-L533>] (last visited Nov. 20, 2021).

²⁹⁹ Nick Martin, *Jay Inslee and the American Desire to Put Tribes in their Place*, NEW REPUBLIC (May 27, 2021), <https://newrepublic.com/article/162524/jay-inslee-american-desire-put-tribes-place> [<https://perma.cc/6HLN-FZSX>].

of genocidal and ecocidal policies and practices, the adherence to existing treaties, the return of unceded land, and the implementation of political self-determination.

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Predicting what statehood or reunification would look like in the Marianas goes beyond individual and collective voting rights, equity and equality in health care, and additional federal funding. Local CNMI Indigenous visionaries are the ones who will creatively develop what future looks best for themselves. If statehood is the only path available for voting rights, then that is the only currently available road to end second-class citizenship in the U.S., barring a constitutional amendment to allow territories the right to vote. This article explores the first step on this pathway to statehood by providing hypothetical *ideas* for implementing the CNMI's version of UNDRIP-based legislation ("CNMI-DRIP").

Political equality, cultural survival, and reunification are not the only possible implications of Indigenous rights implementation. Impacts of CNMI-DRIP legislation in the CNMI and the U.S. could be tremendous, depending upon what a government action plan would look like. The CNMI could also implement UNDRIP-based legislation without an action plan or reflect any points related to reunification, statehood, or denouncement of the "Discovery Cases," and it would still be an incredible advancement for Indigenous rights. However, this article explores possibilities that come with a government action plan, reunification, and statehood. Improved health and academic outcomes and decreased disparities in the CNMI are also potential results of emphasizing an "*Inafa'maolek*" action plan.³⁰⁰ There are infinite ways to imagine how the CNMI could locally apply their own government action plan that respects and celebrates local Indigenous culture.³⁰¹ For example, in the CNMI, several areas of desperate need include: energy independence, health disparities, and cultural survival. These examples are not exhaustive of all the issues but highlight how Indigenous-based legislation could address some of these key areas of grave concern.

³⁰⁰ BEYLUL SOLOMON & WILLIAM J. FIFE, III, *Indigenous Rights: A Vehicle to Address Mental Health and Academic Outcomes in the CNMI*, in *LEARNING AND RECONCILIATION THROUGH INDIGENOUS EDUCATION IN OCEANIA 17* (Perry Pangelinan & Troy McVey eds., 2021).

³⁰¹ UHM ICAP, *Miliani Trask*, YOUTUBE (June 29, 2012), <https://www.youtube.com/watch?v=dDXJT-cHEAs> [<https://perma.cc/T8CY-UDPD>].

1. Addressing Energy Independence

Directives at the CNMI hospital arising from fossil-fuels dependence and “life or death” decision-making due to utility debt have not only come about as a result of systematic disparities in health care funding for U.S. territories³⁰² but also due to the failure to harness renewable energy. Indigenous cultures have been stewards of nature for millennia, and environmentalism is core to Indigenous cultures everywhere.³⁰³ Renewable energy continues the *Inafa’maolek* tradition of eco-friendly approaches to society. Environmentalism in the modern era requires green energy. The fossil fuel era has been unkind to healthcare in the CNMI. The CNMI hospital (CHCC) and the local utilities company (CUC) made recent headlines over the issue of tens of millions of dollars of debt from utility bills.³⁰⁴ The monopolistic “non-profit” CNMI utility company³⁰⁵ threatened the *only* hospital with shutting off their power if the hospital did not pay their power bills. It is incredibly discouraging to think that in the richest country in the world, the only hospital serving a local population would be threatened with power outages by a utility company for outstanding debt.

The combined CNMI government, CHCC, and Public School System utility bill debt to CUC is nearly \$50 million dollars.³⁰⁶ That is relatively

³⁰² Joshua Santos, ‘*Life-Or-Death Decisions*’ Loom, SAIPAN TRIB. (Sept. 17, 2021), <https://www.saipantribune.com/index.php/life-or-death-decisions-loom/> [https://perma.cc/6DLA-J85H].

³⁰³ Monica Coc Magnusson, *Securing Land Tenure for Indigenous Peoples Directly Combats Climate Change*, CULTURAL SURVIVAL (Oct. 27, 2021), <https://www.culturalsurvival.org/news/securing-land-tenure-indigenous-peoples-directly-combats-climate-change> [https://perma.cc/WY6D-U9VZ].

³⁰⁴ Miguled, *Official: CHCC Has to Choose Between Paying CUC or Providing Health Care*, MARIANAS VARIETY (Dec. 16, 2020), https://www.mvariety.com/news/local/official-chcc-has-to-choose-between-paying-cuc-or-providing-health-care/article_c5411f8d-df23-531a-8e51-0e0fb2e9212f.html [https://perma.cc/6EFH-WA3Z].

³⁰⁵ Emmanuel T. Erediano, *Report: CUC Spent \$66.5 Million in FY 2021*, MARIANAS VARIETY (Nov. 8, 2021), https://mvariety.com/news/report-cuc-spent-66-5-million-in-fy-2021/article_086aafd8-3f9b-11ec-beb7-ab4caff9365e.html [https://perma.cc/W477-LMVH].

³⁰⁶ Bryan Manabat, *CUC Mulls CHCC Request to Pay Lower Rate*, GUAM DAILY POST (Nov. 14, 2020), https://www.postguam.com/news/cnmi/cuc-mulls-chcc-request-to-pay-lower-rate/article_09c4de1e-2569-11eb-ac9b-cf16ad859dcf.html [https://perma.cc/5AW3-85V3]; *Rates and Tariffs*, COMMONWEALTH UTILS. CORP., <https://www.cucgov.org/rates-and-tariffs/> [https://perma.cc/EGE7-7GHM] (last visited Nov. 20, 2021); Junhan B. Todino, *PSS Pays \$2.7M to CUC for Unpaid Utilities Charges*, GUAM DAILY POST (Jan. 11, 2017), https://www.postguam.com/news/cnmi/pss-pays-2-7m-to-cuc-for-unpaid-utilities-charges/article_413c903c-d700-11e6-bfb1-d79e41e2c27d.html [https://perma.cc/8TKS-TV6Z];

significant, considering the 2022 CNMI government budget was only \$103 million (not including federal COVID-19 ARPA relief funds).³⁰⁷ The fossil fuel-related debt in combination with systemic disparities in federal health care funding are the roots of real-time pain for local Indigenous peoples in the CNMI, and likely require legislative solutions. The hospital³⁰⁸ and the public school system³⁰⁹ recently made ground on renewable energy, and will likely reap said benefits, but without a system-wide divorce from fossil fuels as a source of energy, the people of the CNMI will continue to suffer the consequences. Relieving debt and freeing up future resources by immediately investing in renewable energy could provide tens of millions of dollars in savings for the CNMI over the next ten years, especially considering that CNMI is a tropical island with an abundance of sunshine and wind.³¹⁰

An *Inafa'maolek* action plan could direct all public or private organizations requesting money from the CNMI government to show how they are maximizing space or available concrete roofing to transition to energy independence in order to continue receiving funding. Since the CNMI is included in an archipelago of Micronesia in the Pacific Ocean that has tropical weather and sunshine, investing in solar panels and storage batteries for all government buildings with concrete rooftops would reduce the government's monthly power bills, help pay down their debts, and reallocate previously budgeted resources that would normally go towards

Emmanuel T. Erediano, *CUC Asks for Funds to Pay Overdue Gov't Utility Bills*, GUAM DAILY POST (Mar. 12, 2020), https://www.postguam.com/news/cnmi/cuc-asks-for-funds-to-pay-overdue-govt-utility-bills/article_659005ac-6372-11ea-84ed-5b9f98f6c04c.html [<https://perma.cc/KLE4-HCZS>].

³⁰⁷ Ferdie De La Torre, *\$103.3M Budget is Now Law*, SAIPAN TRIB. (Oct. 1, 2021), <https://www.saipantribune.com/index.php/103-3m-budget-is-now-law/> [<https://perma.cc/HM68-6ZJR>].

³⁰⁸ Variety News Staff, *CHCC: Phase 1 of Solar Power Project is Complete*, MARIANAS VARIETY (Sept. 7, 2020), https://mvariety.com/news/local/chcc-phase-1-of-solar-power-project-is-complete/article_c3739935-c106-5831-94a9-9ee06755ed4d.html [<https://perma.cc/RUU5-JXC8>].

³⁰⁹ Emmanuel T. Erediano, *PSS Launches Solar Energy System*, MARIANAS VARIETY (Oct. 8, 2021), https://mvariety.com/news/pss-launches-solar-energy-system/article_99c79206-2737-11ec-bdad-9b7e9fd0fbd0.html [<https://perma.cc/Z2KH-6RW8>].

³¹⁰ Ralph D.L.G. Torres, *Governor's Budget Proposal Fiscal Year 2021 Commonwealth of the Northern Mariana Islands* (Apr. 1, 2020), <https://cnmileg.net/Resources/files/Video/Governor%27s%20Budget%20Proposal%20Fiscal%20Year%202021%20Volume%20I.pdf> [<https://perma.cc/9WV6-VZVP>]; Variety News Staff, *Administration to Help CHCC Pay Utility Bills*, MARIANAS VARIETY (Sept. 6, 2020), https://mvariety.com/news/local/administration-to-help-chcc-pay-utility-bills/article_f2c8d353-bbbe-5154-8b4c-052d6069dfa3.html [<https://perma.cc/7U8M-6WFH>].

utilities payments. These savings would be equivalent to a new revenue source and help an economy that is overly reliant upon tourism and federal funding.³¹¹

Tesla's Solar City recently revolutionized fellow U.S. territory American Samoa with solar power and battery storage, and the CNMI could develop similar public-private partnerships to gain energy independence to free up millions of dollars per year in utility liabilities.³¹² This emphasis on green energy aligns with Indigenous environmental values and could provide a potential example of government action plan priorities. Decolonization can take infinite forms, and it does not mean that Indigenous peoples have to revert to pre-colonial infrastructure, especially when those frameworks are eco-friendly. As the first Indigenous peoples of the Remote Pacific, Ancient Chamorros mastered green transportation and the energy of wind power with their asymmetrical flying proas. *Inafa'maolek* action plans that focus on green energy combine the best of all worlds.

2. Addressing Health Disparities

Nearly eighty percent of all CNMI suicides from 2014-2019 were from Indigenous populations.³¹³ It is important to emphasize again that the combined Indigenous peoples only amount to about twenty nine percent of the entire CNMI population.³¹⁴ In fact, Pacific Islanders as a whole have the

³¹¹ K-Andrea E. Limol, *Reduction in Force*, MARIANAS VARIETY (Feb. 10, 2021), https://mvariety.com/news/reduction-in-force/article_6ac45d38-6aa2-11eb-a84c-578dcff0f22c.html [https://perma.cc/F3ZH-SWMX].

³¹² Daniel Lin, *How a Pacific Island Changed from Diesel to 100% Solar Power*, NAT'L GEOGRAPHIC (Feb. 23, 2017), <https://www.nationalgeographic.com/news/2017/02/tau-american-samoa-solar-power-microgrid-tesla-solarcity/> [https://perma.cc/A7AX-ZCHX]; *Decolonization and Radical Indigenous Futures*, STAN. SOC. INNOVATION REV., https://ssir.org/decolonization_and_radical_indigenous_futures# [https://perma.cc/EJ62-LVGM] (last visited Nov. 20, 2021); Nick Tilsen, *Building Indigenous Power and Investing in Indigenous Self-Determination*, STAN. SOC. INNOVATION REV. (Jan. 28, 2021), https://ssir.org/articles/entry/building_indigenous_power_and_investing_in_indigenous_self_determination# [https://perma.cc/QYT9-CRG2].

³¹³ Junhan B. Todino, *Community Guidance Center Shares Data on Suicides*, MARIANAS VARIETY (Sept. 7, 2022), https://mvariety.com/news/local/community-guidance-center-shares-data-on-suicides/article_1f8c835f-fa72-585f-ba4d-768eef0cc13d.html [https://perma.cc/R9D9-DEDS].

³¹⁴ *Northern Mariana Islands*, WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/countries/northern-mariana-islands/#people-and-society> [https://perma.cc/K5X7-5Y5L] (last updated Nov. 16, 2021).

highest rates of suicides in the world.³¹⁵ This highlights just one of the many health care disparities in the CNMI, especially for Indigenous populations, and most specifically the Chamorro people. Historic and intergenerational trauma from genocidal colonialism around the world show this disparity is not limited to the CNMI³¹⁶ and is common in Indigenous societies that experienced cultural genocide and forced assimilation.³¹⁷

Furthermore, non-communicable diseases (NCDs) such as heart disease, stroke, and diabetes are the leading cause of death in the CNMI.³¹⁸ Diabetes and obesity ravage many of the CNMI's Indigenous peoples.³¹⁹ A 2019 report from the primary provider of healthcare services reported that eighty-three percent of CNMI Indigenous residents are overweight or obese, with twenty-five percent of Chamorro adults and twenty-one percent of Refaluwasch adults having diabetes.³²⁰ This data should be considered in the context that NCDs were practically non-existent in pre-contact pescatarian Indigenous communities in the CNMI. A dramatic and *forced*

³¹⁵ Heather Booth, *Pacific Island Suicide in Comparative Perspective*, 31 J. BIOSOCIAL SCI 433, 433-448 (1999); *Suicide Rate in Pacific Islands Among Highest in the World*, PAC. ISLANDS REPORT (Aug. 15, 2014, 12:00 AM), <http://www.pireport.org/articles/2014/08/15/suicide-rate-pacific-islands-among-highest-world>; Hannah Martin, *Study: Pacific Youth More at Risk of Suicide Than Any Other Group*, STUFF (Apr. 28, 2017, 2:00 AM), <https://www.stuff.co.nz/national/health/91938328/study-pacific-youth-more-at-risk-of-suicide-than-any-other-group> [<https://perma.cc/S2DS-Y859>].

³¹⁶ Martha Henriques, *Can the Legacy of Trauma Be Passed Down the Generations?*, BBC (Mar. 26, 2019), <https://www.bbc.com/future/article/20190326-what-is-epigenetics> [<https://perma.cc/D56L-QAEF>] (explaining intergenerational trauma); Linda Nahulu et al., *Stress & Trauma Toolkit for Treating Indigenous People in a Changing Political and Social Environment*, AM. PSYCHIATRIC ASS'N, <https://www.psychiatry.org/psychiatrists/cultural-competency/education/stress-and-trauma/indigenous-people> [<https://perma.cc/Z7XT-QMLW>] (last visited Nov. 20, 2021).

³¹⁷ Amy Bombay et al., *The Intergenerational Effects of Indian Residential Schools: Implications for the Concept of Historical Trauma*, 51 TRANSCULTURAL PSYCHIATRY 320, 320-338 (2014); Laurence J. Kirmayer, et al., *Rethinking Historical Trauma*, 51 TRANSCULTURAL PSYCHIATRY 299, 299-319 (2014).

³¹⁸ *Northern Mariana Islands*, INST. FOR HEALTH METRICS & EVALUATION, <http://www.healthdata.org/northern-mariana-islands> [<https://perma.cc/9USN-W24W>] (last visited Nov. 20, 2021).

³¹⁹ Henry M. Ichiho, et al., *An Assessment of Non-Communicable Diseases, Diabetes, and Related Risk Factors in the Commonwealth of the Northern Mariana Islands: A Systems Perspective*, 72 HAW. J. MED. PUB. HEALTH 19 (2013).

³²⁰ The Commonwealth Healthcare Corp., *About the Northern Mariana Islands*, CONGRESS.GOV, <https://www.congress.gov/116/meeting/house/109536/witnesses/HHRG-116-I100-Wstate-MunaE-20190523-SD001.pdf> [<https://perma.cc/8QJ3-HJSP>] (last updated Mar. 2019).

shift in lifestyle over the centuries has resulted in negative health outcomes that can no longer be ignored.

During the Spanish occupation, the Spanish burned down nearly all of the Chamorro Sakman sailboats, an action akin to the genocide of the buffalo during Manifest Destiny and the invasion of the American West,³²¹ as both the Sakman and buffalo were central to Indigenous peoples' ways of life.³²² These horrific actions by the Spanish also include the Chamorro version of the "Trail of Tears" when most Chamorros from what is now the CNMI were ethnically cleansed and forced to relocate to Guahan. Ethnic cleansing³²³ took star-based navigators of the vast Pacific Ocean, and essentially land-locked them away to centuries of "open-air imprisonment," religious enslavement, and forced labor.³²⁴ Genocidal colonialism drove Chamorros away from their traditional water-based lifestyles and pescatarian diets,³²⁵ to now include meat-based diets and Western processed foods that resulted in the adverse health outcomes we see today. Further research is also required to understand possible epigenetic impacts (i.e. how a person's environment and behaviors affect gene expression) that historical trauma over hundreds of years has had on the Indigenous peoples of the CNMI. Did the horrific violence and abuse the Chamorros survived carry on to future generations through behavioral *and* genetic influences (i.e. "intergenerational trauma")?³²⁶ Epigenetic impact or not, the good news is that the answer to solving intergenerational trauma is the same as the root cause: environmental or external change,³²⁷ which for Indigenous peoples

³²¹ Gilbert King, *Where the Buffalo No Longer Roamed*, SMITHSONIAN MAG. (July 17, 2012), <https://www.smithsonianmag.com/history/where-the-buffalo-no-longer-roamed-3067904/> [<https://perma.cc/7Y7V-B8NB>].

³²² *Historic Context - The Chamorro Flying Proa*, 500 SAILS, http://500sails.org/historic_context.php [<https://perma.cc/BX5Q-NAES>] (last visited Dec. 10, 2022); King, *supra* note 321.

³²³ Michael Lujan Bevacqua, *Transmission of Christianity into Chamoru Culture*, GUAMPEDIA, <https://www.guampedia.com/transmission-of-christianity-into-chamorro-culture/> [<https://perma.cc/5U2F-ZS2T>] (last updated July 6, 2021).

³²⁴ Leon-Guerrero, *supra* note 81.

³²⁵ Marilyn C. Salas & Dominica Tolentino, *Ancient Chamoru Food and Diet*, GUAMPEDIA, <https://www.guampedia.com/ancient-chamorro-food-and-diet/> [<https://perma.cc/LCP4-U88J>] (last updated June 21, 2022).

³²⁶ Rachel Yehuda & Amy Lehrner, *Intergenerational Transmission of Trauma Effects: Putative Role of Epigenetic Mechanisms*, 17 WORLD PSYCHIATRY 243, 243-257 (2018); Alastair L. Bitsóí, *Survivors See a Link Between Indigenous Boarding Schools' Harsh Discipline and Later Domestic Violence*, SALT LAKE TRIB. (Oct. 25, 2021, 5:00 AM), <https://www.sltrib.com/news/2021/10/25/survivors-indigenous/> [<https://perma.cc/TEY7-PGKA>].

³²⁷ Yehuda & Lehrner, *supra* note 326.

could mean continuing *decolonization*. This could be achieved even through deeper integration with American UNDRIP-based legislation.

3. Addressing Cultural Survival

For thousands of years, independent Indigenous peoples thrived with impressive STEM-based accomplishments, only to be stripped of their personal identities and involuntarily given foreign names, their cultural identities reformed over hundreds of years through forced acculturation. Respecting the growing scientific literature on the importance of cultural identity and language, the need to decolonize names and places should be seriously considered by the CNMI in an *Inafa'maolek* government action plan. It has been argued that language is the greatest human innovation³²⁸ as well as a critical component of what defines a culture.³²⁹ To decolonize from a 500-year history that includes linguistic imposition and acculturation from multiple invaders, dramatic efforts need to be made to save the endangered Chamorro language.³³⁰ As Ngugi wa Thiong'o discussed, Indigenous languages are absolutely essential to culture and communication and are thus a critical component in the decolonization process.³³¹

Indigenous peoples and their languages are repositories of ancient wisdom³³² that are increasingly relevant in the realm of resource management.³³³ To quote the late Dr. Haunani-Kay Trask, "Human diversity ensures biodiversity,"³³⁴ and humanity needs Indigenous

³²⁸ Salikoko S. Mufwene, *Language Could Be Humankind's Most Impressive Technological Invention*, THE CONVERSATION (Sept. 15, 2016, 6:31 PM), <https://theconversation.com/language-could-be-humankinds-most-impressive-technological-invention-58444> [https://perma.cc/PUP9-GPWQ].

³²⁹ SOLOMON & FIFE, *supra* note 300.

³³⁰ Johanna Salinas, *A Dying Language*, PAC. ISLAND TIMES (Aug. 6, 2018), <https://www.pacificislandtimes.com/post/2018/08/07/a-dying-language> [https://perma.cc/XYN6-VNKJ].

³³¹ NGUGI WA THIONG'O, *DECOLONIZING THE MIND: THE POLITICS OF LANGUAGE IN AFRICAN LITERATURE* (James Currey et al. eds., 2011).

³³² Nicole Mortillaro, *'We Come from the Stars': How Indigenous Peoples are Taking Back Astronomy*, CBC (Mar. 30, 2019), <https://www.cbc.ca/news/science/indigenous-astronomy-1.5077070> [https://perma.cc/9JHC-XHJP].

³³³ Linda Etchart, *The Role of Indigenous Peoples in Combating Climate Change*, 3 PALGRAVE COMM'NS 17085 (2017); Khin Htet Pyone, *Indigenous Knowledge in Natural Resource Management: Integrating Local Perspectives into Conservation Strategies*, YALE ENV'T REV. (Sept. 24, 2019), <https://environment-review.yale.edu/indigenous-knowledge-natural-resource-management-integrating-local-perspectives-conservation> [https://perma.cc/4R9Z-PBP4].

³³⁴ TRASK, *supra* note 32.

environmental wisdom now more than ever. Since language and culture are inherently intertwined, without knowledge of language, it is impossible to fully understand a culture.³³⁵ To address these issues, *Inafa'maolek* government action plans could require all schools that receive government funding offer Indigenous-based curriculum, as well as require Indigenous languages displayed on all public signage along with English, as it supports cultural identity building for the entire community.³³⁶

Everyone can benefit from multilingual development,³³⁷ and seeing local Indigenous languages on all government signage could enhance *all* CNMI residents in learning additional languages. Furthermore, all public schools offering Indigenous-based curriculum³³⁸ with local languages in addition to English would ensure that all students were learning these skills for enrichment. To further strengthen commitment to this course of action of enhanced language learning, the Indigenous peoples of the CNMI could also add to it by recognizing the probable roots of Chamorro civilization – from what is now called the Philippines,³³⁹ and include the predominant Filipino language (Tagalog) in aspects within an *Inafa'maolek* government action plan, whether offered as a language in schools, public signage, etc. This would not just be a symbolic nod to likely Chamorro origins but would also recognize the largest ethnic demographic in the CNMI – Filipinos.³⁴⁰ This has the potential of being a unifying act of solidarity bridging potentially five thousand years or more of history and current realities among Indigenous Chamorros and Filipinos through the vehicle of Indigenous rights and *Inafa'maolek* principles of harmonious relationships.³⁴¹

³³⁵ K-Andrea Evarose Limol, *NMI Launches 'Hafa Adai and Tirow Pledge'*, MARIANAS VARIETY (May 31, 2021), https://mvariety.com/news/nmi-launches-hafa-adai-and-tirow-pledge/article_31dca456-c134-11eb-a716-1376073179ae.html [<https://perma.cc/Z8ZU-EACD>].

³³⁶ SOLOMON & FIFE, *supra* note 300.

³³⁷ Jared Diamond, *The Benefits of Multilingualism*, 330 SCI. 332, 332-333 (2010); Gaia Vince, *The Amazing Benefits of Being Bilingual*, BBC (Aug. 12, 2016), <https://www.bbc.com/future/article/20160811-the-amazing-benefits-of-being-bilingual> [<https://perma.cc/2J5L-TUCW>].

³³⁸ PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* (Myra B. Ramos trans., 2000).

³³⁹ Irina Pugach et al., *Ancient DNA From Guam and the Peopling of the Pacific*, 118 PROC. NAT'L ACAD. SCI. (2021).

³⁴⁰ *Northern Mariana Islands*, *supra* note 312.

³⁴¹ Patricia L. G. Taimanglo, *The Chamorro People of Guam*, AM. PSYCH. ASS'N (Aug. 2010), <https://www.apa.org/pi/oema/resources/communique/2010/08/chamorro-people> [<https://perma.cc/JU4H-XCD4>].

Decolonizing names and places have many examples to choose from; the name of the islands of Luta in the CNMI has been mangled into “Rota,” and the island of Guahan is now known as “Guam.” Guahan has begun the process of changing village names to their Indigenous language.³⁴² Perhaps one of the most striking examples of the bastardization of the Chamorro language comes in the form of the word “*matapang*.” Most people in the Marianas use “*matapang*” as a derogatory adjective to describe someone’s looks or actions, as if they are mad or nasty. The true history is that “*matapang*” was actually a *person* – a Chamorro *Maga’lahi* Chief who fought to resist Spanish domination of what later came to be known as the Marianas. *Maga’lahi* Matapang,³⁴³ along with another chief, *Maga’lahi* Hurao, killed the man remembered for bringing Christianity to the Marianas: Father Diego Luis de San Vitores.³⁴⁴ San Vitores allegedly baptized Matapang’s daughter without his consent, which enraged Matapang as disease from the Spanish was already impacting the Indigenous Chamorro and he did not want his children exposed. The Vatican would beatify Vitores, a so-called “martyr,” into sainthood in 1985,³⁴⁵ while Matapang devolved from “Resistance Leader” to a derogatory adjective.³⁴⁶ Interestingly in Tagalog, the main language of the Philippines and where the ancient Chamorros likely migrated from to the Marianas, *matapang* can mean “courageous, powerful, or bold.”³⁴⁷

The emerging scientific area of historical and intergenerational trauma is most closely linked to the longstanding effects of genocidal colonialism

³⁴² Anne Wen, ‘*It Restores My Soul*’: Pandemic Offers Unexpected Boon to Guam Indigenous Language Learners, THE GUARDIAN (Sept. 15, 2021, 2:00 PM), <https://www.theguardian.com/world/2021/sep/16/it-restores-my-soul-pandemic-offers-unexpected-boon-to-guam-indigenous-language-learners> [https://perma.cc/63Q4-22MF].

³⁴³ Victoria-Lola Leon Guerrero and Nicholas Yamashita Quinata, *Matâ’pang: Matapang*, GUAMPEDIA, <https://www.guampedia.com/chiefs-matapang-matapang/> [https://perma.cc/4T3Q-ZB42] (last updated July 21, 2022).

³⁴⁴ Tom Rochford, *Blessed Diego Luis De San Vitores*, JESUITS, <https://www.jesuits.global/saint-blessed/blessed-diego-luis-de-san-vitores/> [https://perma.cc/GAM6-VDQD] (last visited Nov. 20, 2021).

³⁴⁵ Tanya M. Champaco Mendiola, *Father Diego Luis de San Vitores*, GUAMPEDIA, <https://www.guampedia.com/father-diego-luis-de-san-vitores/> [https://perma.cc/X5HV-6L4L] (last updated July 8, 2021).

³⁴⁶ Michael L. Bevacqua, *Matâ’pang: Evolution of the Term*, GUAMPEDIA, <https://www.guampedia.com/matapang-evolution-of-the-term/> [https://perma.cc/Q5MK-6X53] (last updated Apr. 27, 2022).

³⁴⁷ *Matapang*, TAGALOG DICTIONARY, <https://www.tagalog-dictionary.com/search?word=matapang> [https://perma.cc/9AP6-AQCX] (last visited Nov. 20, 2021).

and Indigenous disparities seen today.³⁴⁸ Genocide, land theft, forced labor, forced relocation, forced religious conversion, partitioning the islands and peoples are not the only historical traumas. The environmental insults for Indigenous peoples come in many lasting forms: the terms “Marianas,” “Carolinian,” and “Filipino” are rooted in the identities of their Spanish colonial masters. These names are everywhere, yet “invisible.”³⁴⁹ Queen Mariana was one of the main powers of Spain during most of the 30-year war of Chamorro resistance, while the Carolinian islands are named for King Charles/Carlos II (also known as “The Bewitched”).³⁵⁰

King Charles II was Queen Mariana’s son. Both were descendants of King Philip II, the Spanish king who engaged in encomienda-based colonialism of Indigenous peoples in the islands now named after him: “the Philippines.” King Philip II, Queen Mariana, and Charles II are just three of the notorious Spanish Habsburg family that were responsible for one of the greatest genocides in human history during the “Age of Discovery.” Chamorros, Refaluwasch, and Filipinos – a combined majority of the CNMI population – identify themselves through a single family that is responsible for the genocidal colonialism of their own ancestors. Knowing one’s cultural history is critical towards having a strong cultural identity. Thus identifying oneself or islands after the individuals who colonized one’s ancestors and who represent such a violent and painful history is worth reconsidering.

Cultural identity can further be enhanced by institutionalizing Chamorro and Refaluwasch traditional STEM-based practices such as sailing and canoe building,³⁵¹ astronomy,³⁵² megalithic stone quarrying and engineering into local public school curricula through project-based learning.³⁵³ Local non-governmental organizations, such as 500 Sails, promote and teach swimming, fishing, and sailing with Indigenous

³⁴⁸ Nahulu, *supra* note 316.

³⁴⁹ Paul Collis & Jen Webb, *The Visible and Invisible: Legacies of Violence in Contemporary Australian Aboriginal Contexts*, 38 J. AUSTRAL. STUD. 490, 490-503 (2014).

³⁵⁰ Mihaela D. Turliuc et al., *Hydrocephalus of King Charles II of Spain, the Bewitched King*, 81 EUR. NEUROL. 76, 76-78 (2019).

³⁵¹ *Indigenous Knowledge and Knowledge Transmission*, UNESCO, <https://en.unesco.org/links/transmission/canoe> [https://perma.cc/37CL-HAHC] (last visited Nov. 20, 2021).

³⁵² *A Lesson from a Micronesian Navigator to His Hawaiian Apprentice: Life Lessons For All*, MICRONESIAN BLOG (Oct. 31, 2021), <https://micronesiablog.blogspot.com/2021/10/a-lesson-from-micronesian-navigator-to.html> [https://perma.cc/ZR4X-G65R].

³⁵³ SOLOMON & FIFE, *supra* note 300.

Chamorro “Sakman” sailboats, and are now expanding their fleet to also include Refaluwasch-designed sailboats for relationship building between diverse Indigenous cultures.³⁵⁴ Yet sadly these Indigenous practices are continuously threatened by the pollution-fueled climate crisis which endangers Indigenous people’s way of life disproportionately in devastating ways.³⁵⁵ Light pollution also threatens their star-based navigation and astronomical knowledge.³⁵⁶ The Spanish themselves documented that the Sakman sailboats were among the fastest in the world and also remarked on the impressive swimming skills of Chamorros.³⁵⁷ One of Magellan’s crew noted of the Chamorro Sakman speed that “. . . many small sails approached the ship sailing so swiftly they appeared to be flying.”³⁵⁸

The STEM-based achievements of geometric megalithic latte stones and the asymmetrical “flying proa” Sakman sailboats still mystify historians and scientists as to how these were accomplished hundreds if not thousands of years before power tools. An Indigenous cultural renaissance re-connecting Chamorros and Refaluwasch peoples with sailing and swimming lifestyles provides the potential for strengthening cultural identity with the added bonus of improving positive health outcomes, such as diabetes and obesity.³⁵⁹ It was recently announced that a collaboration of various stakeholders will establish a Cultural Maritime Training Center with the purpose of providing training on traditional sailing, canoe

³⁵⁴ 500 SAILS, <https://500sails.org> [<https://perma.cc/8FS7-7DTQ>] (last visited Nov. 21, 2021).

³⁵⁵ *Indigenous Peoples Disproportionately Impacted by Climate Change, Systematically Targeted for Defending Freedoms, Speakers Tell Permanent Forum*, UNITED NATIONS (Apr. 18, 2018), <https://www.un.org/press/en/2018/hr5389.doc.htm> [<https://perma.cc/G8J8-ELN8>].

³⁵⁶ Nikita Amir, *Light Pollution Threatens Millennia-Old Indigenous Navigation Methods*, DISCOVER MAG. (Oct. 27, 2021, 1:00 PM), <https://www.discovermagazine.com/environment/light-pollution-threatens-millennia-old-indigenous-navigation-methods> [<https://perma.cc/V3UX-6C75>].

³⁵⁷ *Historic Context - The Chamorro Flying Proa*, 500 SAILS, http://500sails.org/historic_context.php [<https://perma.cc/CTL9-NVM6>] (last visited Nov. 20, 2021).

³⁵⁸ Nicholas J. Goetzfridt, *Proa and Navigation*, GUAMPEDIA, <https://www.guampedia.com/proa-and-navigation/> [<https://perma.cc/GK4D-DPF4>] (last updated Apr. 27, 2022).

³⁵⁹ Sarah MacLean et al., *Health and Wellbeing Outcomes of Programs for Indigenous Australians that Include Strategies to Enable the Expression of Cultural Identities: A Systematic Review*, 23 AUSTL. J. PRIMARY HEALTH 309, 309-318 (2017).

construction, and navigation skills, which is tremendous news for integrating traditional technology with modern careers.³⁶⁰

Continued institutionalization in the K-12 public school system with Indigenous-based curriculum and community stakeholder collaborations could prove to be pivotal. Indigenous peoples returning to water-based lifestyles of swimming, fishing, and sailing could help alleviate devastating non-communicable disease disparities, in a culturally relevant way that also enhances cultural identity. There would be no Chamorro or indeed *any* Pacific-based cultures sans sailing, which makes it a keystone feature to *all* Indigenous peoples of Oceania. Indigenous-based curriculum decolonizes the mind, and these approaches could turn the tide of suicide disparities as well as enhance academic performance.³⁶¹ Some public school system Cooperative Education program students³⁶² are reaping the benefits from this type of curriculum. Project-based learning is essentially Indigenous-based education: hands-on, rigorous, and relevant. All learners can benefit from Indigenous-based curriculum, in addition to learning about local history and languages even if one is non-native in the public school system. Embracing a community-wide cultural education campaign would likely improve economic activity, as tourists like to experience cultural authenticity, which would assist in greater global understanding of Chamorro-Refaluwasch cultural identity and history.

Increased and insensitive militarization also threatens cultural survival in the Marianas. As stated earlier, the geopolitical value of having the CNMI and Guahan creating the “Tip of the Spear” in the American military’s Pivot to Asia strategy is enormous. In the 1945 words of Vice Admiral George D. Murray, Commander of the Naval Air Forces of the Mariana Islands: “Military control of these islands is essential...The economic development and administration of relatively few native inhabitants should be subordinate to the real purpose for which these islands are held.”³⁶³

³⁶⁰ *500 Sails, NMC, IAO, CCVI to Develop Maritime Training Center*, N. MARIANAS COLL. (Oct. 24, 2021), <https://www.marianas.edu/proanews/500-sails-nmc-iao-ccvi-to-develop-maritime-training-center> [<https://perma.cc/YD7Q-FKZ9>].

³⁶¹ Joshua Santos, *Expansion Plans on the Horizon for 500 Sails*, SAIPAN TRIB. (May 27, 2021), <https://www.saipantribune.com/index.php/expansion-plans-on-the-horizon-for-500-sails/> [<https://perma.cc/NC8B-ENKT>]; SOLOMON & FIFE, *supra* note 300.

³⁶² Iva Maurin, *PSS Co-Op Students Learn to Build Canoes with 500 Sails*, SAIPAN TRIB. (Oct. 24, 2019), <https://www.saipantribune.com/index.php/pss-co-op-students-learn-to-build-canoes-with-500-sails/> [<https://perma.cc/T7FF-YZS3>].

³⁶³ Frank Quimby, *Fortress Guåhån: Chamorro Nationalism, Regional Economic Integration and US Defence Interests Shape Guam’s Recent History*, 46 J. PAC. HIST. 357, 357-380 (2011).

The U.S. military's Pivot to Asia makes the CNMI and Guahan prime geopolitical territory³⁶⁴ and thus invaluable to U.S. national security interests.³⁶⁵ Furthermore, the CNMI faces several challenges that make it dependent on U.S. support (i.e., history of genocidal occupation, World War II devastation, numerous catastrophic super-typhoons, and COVID-19). It could prove costly for the U.S. if a pathway to statehood is denied to the people of the Marianas and perpetual second-class citizenship is imposed. The U.S. would likely go to great lengths to prevent breaking off the "tip of the spear" and having the CNMI enter into the Chinese orbit.

The thought of a Chinese air force base on the island of Tinian in the CNMI, just miles away from the increasing military footprint on Guahan, would be of monumental concern to the Pentagon. This possibility could spark another Cuban Missile Crisis-type nightmare. As China-Taiwan tensions rise along with potential U.S. involvement, the geo-strategic position of the Marianas are as important as ever.³⁶⁶ A figurative "double-edged sword" instead of a "tip of the spear," the Marianas are in the "second island chain,"³⁶⁷ which makes them potential shark bait as the military version of a "sacrifice zone,"³⁶⁸ not unlike the then-U.S. territory of the Philippines and Guahan during the attack on Hawaii's Pearl Harbor during World War II.³⁶⁹ Neither party wants to end the relationship, but the unequal dynamics leave the CNMI at a disadvantage. That vulnerability manifests

³⁶⁴ Lieberthal, *supra* note 258; Bevacqua, *supra* note 258.

³⁶⁵ Mark E. Manyin et al., *Pivot to the Pacific? The Obama Administration's "Rebalancing" Toward Asia*, CONG. RSCH. SERV. (Mar. 28, 2012), <https://sgp.fas.org/crs/natsec/R42448.pdf> [<https://perma.cc/86FE-WN5Y>]; Marian Faa & Prianka Srinivasan, *Pentagon Pushes for Pacific Missile Defence Site to Counter China's Threat to the US*, ABC NEWS (Mar. 18, 2021 7:07 PM), <https://www.abc.net.au/news/2021-03-19/united-states-pentagon-missile-defence-guam-counter-china/100015900> [<https://perma.cc/V5KX-NH6Z>].

³⁶⁶ Jon Schwarz, *We've All Pretended About Taiwan for 72 Years. It May Not Work any Longer*, THE INTERCEPT (Nov. 5, 2021, 8:10 AM), <https://theintercept.com/2021/11/05/taiwan-china-biden-nuclear-weapons/> [<https://perma.cc/93WC-TTY3>].

³⁶⁷ Derek Grossman, *America is Betting Big on the Second Island Chain*, THE DIPLOMAT (Sept. 5, 2020), <https://thediplomat.com/2020/09/america-is-betting-big-on-the-second-island-chain/> [<https://perma.cc/L7VJ-F7LU>].

³⁶⁸ Matt Tuzel, *Making the Case for Increased US Basing in the Pacific*, THE DIPLOMAT (Nov. 28, 2019), <https://thediplomat.com/2019/11/making-the-case-for-increased-us-basing-in-the-pacific/> [<https://perma.cc/VG2L-R2GQ>]; Adrienne Matei, *What Are 'Sacrifice Zones' and Why Do Some Americans Live in Them?*, THE GUARDIAN (Nov. 16, 2021, 6:18 AM), <https://www.theguardian.com/commentisfree/2021/nov/16/what-are-sacrifice-zones-and-why-do-some-americans-live-in-them> [<https://perma.cc/AB5Y-HTWS>].

³⁶⁹ Democracy Now!, *"How to Hide an Empire": Daniel Immerwahr on the History of the Greater United States*, YOUTUBE (Mar. 5, 2019), <https://www.youtube.com/watch?v=RvIUGYvLg0s> [<https://perma.cc/RC2P-G8NA>].

itself in ways that hamstring the CNMI's ability to advocate for their rights and issues, as a politically powerless territory.

In order to prevent the CNMI from entering into an adversarial orbit with China³⁷⁰ – currently a huge source of income for the CNMI's tourism industry³⁷¹ – the chances are strong that the U.S. would agree to individual and collective voting rights *and* the preservation of Article 12 for Americans in the CNMI in a potential statehood campaign.³⁷² America risks further loss of Pacific allies³⁷³ if perceived acts of disrespect continue, as shown during recent Compact negotiations with freely associated states.³⁷⁴ If Native American reservations can exist with protected land rights in America, and their Indigenous peoples can vote, the same can be true of *all* peoples in U.S. Territories. People of color in the CNMI, Puerto Rico, and all territories deserve laws that are not systemically racist, and Indigenous peoples deserve land rights that are not dependent upon White supremacy, as provided by the *Insular Cases* under the larger *Discovery Cases* umbrella.

All these examples of current issues in the CNMI could be addressed through legislation that includes a “Renewability & Wellness” government action plan based on Indigenous “*Inafa’maolek*” values that focus on utilizing renewable energy (environmentalism) and traditional Indigenous culture (water-based lifestyles). UNDRIP-inspired legislation could have a ripple effect throughout the Indigenous society by embracing native languages, practices, and spaces for creative cultural identity building. The legal beauty of this theoretical framework is its compatibility with all existing major legal frameworks between the U.S. and the CNMI — the U.S. Constitution, the U.S.-CNMI Covenant, and the CNMI Constitution — thus minimizing any legal conflict or opposition. Local legislation could

³⁷⁰ Matthew Campbell, *A Chinese Casino Has Conquered a Piece of America*, BLOOMBERG (Feb. 15, 2018, 10:00 AM), <https://www.bloomberg.com/news/features/2018-02-15/a-chinese-company-has-conquered-a-piece-of-america> [<https://perma.cc/LK2E-WXP9>].

³⁷¹ Yuan Zhi (Owen) Ou, *The Northern Marianas Islands: US Territory, China-Dependent*, THE DIPLOMAT (Sept. 25, 2021), <https://thediplomat.com/2021/09/the-northern-mariana-islands-us-territory-china-dependent/> [<https://perma.cc/K9JN-TNS5>].

³⁷² U.S. CONST. art. IV, § 3, cl. 1.

³⁷³ Derek Grossman & Michael S. Chase, *Maintaining the U.S. Edge in the Freely Associated States*, THE RAND BLOG (Sept. 3, 2019), <https://www.rand.org/blog/2019/09/maintaining-the-us-edge-in-the-freely-associated-states.html> [<https://perma.cc/4NKV-V5T3>].

³⁷⁴ Mar-Vic Cagurangan, *US Slammed for Assigning ‘Desk Officers’ to Renegotiate Compacts with FAS*, PAC. ISLAND TIMES (Nov. 3, 2021), <https://www.pacificislandtimes.com/post/us-slammed-for-assigning-desk-officers-to-renegotiate-compacts-with-fas> [<https://perma.cc/AV5B-HSNH>].

build upon existing local Indigenous rights laws such as Article 12 of the CNMI Constitution and ensure cultural survival. This would provide the crucial first step towards federal legislation, just as British Columbia led before the rest of Canada followed.

Implementation of legislation that shares similar language as British Columbia's Bill 41 in the CNMI would not just build international legal precedent with almost 400 million global Indigenous peoples, but also provide the freedom to create their own government action plans in accordance with their own respective issues/solutions, capacities, and resources. The British Columbia bill's flexible language creates space for a CNMI adoption that would not require the same Canadian standards to apply to the CNMI. This action would also continue growing global solidarity and recognition of Indigenous rights law as international human rights law. Although cultures evolve over time, laws should be flexible to not only allow for change, but also protect Indigenous practices that may be declining or have changed altogether. Many of these cultural changes were *forced* upon Indigenous peoples over the course of hundreds of years, including religious practices and languages. Space must be protected for decolonization and cultural revitalization in areas that may be unpopular now but could be saved for future generations that desire a return to their ancestral roots.³⁷⁵

This space should also include protecting cultural survival based on the relationship with ancestral lands over supposed American private land ownership rights that were founded on the genocide and dispossession of Indigenous peoples' land. Recent proposed local legislation to amend Article 12 and allow land ownership by foreigners alarmed the Indigenous peoples of the CNMI.³⁷⁶ They demanded that the proposed amendment to Article 12 be removed and their efforts proved victorious, as the legislation is no longer active.³⁷⁷ This does not mean future efforts by Indigenous,

³⁷⁵ Joe Taitano, *Ancestors and Artifacts: Johnny Siguenza Recalls His History with the Taotaomo'na*, PAC. DAILY NEWS (Oct. 31, 2021), https://www.guampdn.com/news/ancestors-and-artifacts-johnny-siguenza-recalls-his-history-with-the-taotaomona/article_d23090c4-3624-11ec-9782-9739e3790736.html [<https://perma.cc/RFB8-9A4X>].

³⁷⁶ K-Andrea Evarose Limol, *Millennials Voice Concerns About Proposal to Amend Article 12*, MARIANAS VARIETY (Apr. 23, 2021), https://mvariety.com/news/millennials-voice-concerns-about-proposal-to-amend-article-12/article_3ed89598-a343-11eb-a84d-07b80da12bda.html [<https://perma.cc/TAE8-4AYJ>].

³⁷⁷ K-Andrea Evarose Limol, *Senate President Shelves Proposal to Amend Article 12*, MARIANAS VARIETY (May 19, 2021), https://mvariety.com/news/senate-president-shelves-proposal-to-amend-article-12/article_ed2924ac-b7af-11eb-92ed-bbc217741228.html [<https://perma.cc/88ZL-ZRW4>].

Asian, or other ethnicities might have different outcomes due to the radically changing population demographics. The largest population center of the CNMI islands is Saipan, which is only less than 15 miles long and has just under 50,000 people.³⁷⁸ It would not take long for wealthy foreigners to swoop into the CNMI and gentrify the island by exploiting that legal loophole if Article 12 is removed. How can a culture survive without its language *and* land?

The possibilities are endless on how UNDRIP-based legislation could be utilized to address the injustices brought about by the historical and ongoing legacies of the Doctrine of Discovery. Implementation could inspire other types of bold actions rooted in genocidal colonialism like pursuing reparation claims against Spanish royal or government interests, government, or even the Vatican.³⁷⁹ The Spanish sold the CNMI along with other lands for nearly \$4.5 million in 1899,³⁸⁰ which would be about \$141.21 million adjusted for current inflation. In 2021, the Spanish Royal Navy had the financial wealth and audacity to sail a classic warship into Guahan on the recent 500-year anniversary of Magellan’s bloody first stop in the Pacific.³⁸¹ Actual receipts could be a starting place to work from in making reparation claims. For a people ironically referred to as “Ladrones” (“Thieves”) by the Spanish who stole the Marianas islands³⁸² for themselves, reparations could be a financial remedy and reconciliation effort for the survivors of colonial genocide, and critically, to discourage future atrocities.³⁸³

³⁷⁸ Emmanuel T. Erediano, *Census: NMI Population Down 12%*, MARIANAS VARIETY (Oct. 29, 2021), https://mvariety.com/news/census-nmi-population-down-12/article_b528e6f8-37f4-11ec-bea9-c75ba931a654.html [<https://perma.cc/VKA7-35XK>].

³⁷⁹ Jordan Williams, *Jesuits to Raise \$100 Million For Descendants of Slaves*, THE HILL (Mar. 16, 2021, 7:00 PM), <https://thehill.com/blogs/blog-briefing-room/news/543519-jesuits-to-raise-100-million-for-descendants-of-slaves> [<https://perma.cc/A5RK-Q7QZ>].

³⁸⁰ Don Farrell, *History of Efforts to Reunify the Mariana Islands*, GUAMPEDIA, <https://www.guampedia.com/history-of-efforts-to-reunify-the-mariana-islands/> [<https://perma.cc/X66G-6WCS>] (last updated May 14, 2022).

³⁸¹ Matthew M. Burke, *Spanish Navy Ship Stops in Guam, Marking 500 Years Since Magellan-Elcano Circumnavigation*, STARS & STRIPES (Mar. 1, 2021), https://www.stripes.com/theaters/asia_pacific/spanish-navy-ship-stops-in-guam-marking-500-years-since-magellan-elcano-circumnavigation-1.663938 [<https://perma.cc/7AQ4-AZFN>]; Carlos Madrid, *Ferdinand Magellan*, GUAMPEDIA, <https://www.guampedia.com/ferdinand-magellan/> [<https://perma.cc/3FT6-GXZT>] (last updated June 20, 2022).

³⁸² Richard J. Shell, *The Ladrones Population*, 36 J. PAC. HIST. 225, 225-236 (2001).

³⁸³ Douglas Haynes, *Reparations Matter: Accountability Begins with Understanding*, FORBES (Feb. 2, 2021, 11:14 AM), <https://www.forbes.com/sites/douglashaynes/2021/02/02/reparations->

IV. CONCLUSION

UNDRIP-based legislation can be a medium to begin the process of healing via shared community-building that recognizes Indigenous rights as international human rights law.³⁸⁴ Legitimate arguments of sovereignty from Indigenous peoples around the world should be evaluated on a case-by-case basis, as Indigenous peoples have the right for self-determination that allows them to maintain sovereignty or submit to another Sovereign. Indigenous peoples exercising their right of self-determination via integration with the United States deserve their rights to be respected and enforceable. If the U.S. is honest about their foreign and domestic policy, implementation and enforcement of those purportedly supported policies for Indigenous rights is the logical next step. Strengthening Indigenous culture at a higher level of the public sphere benefits the entire community by enhancing international human rights law as well as cultural survival, and this could be pivotal for the CNMI. All of the above, with legal protections at the local and federal levels with UNDRIP-based legislation, could be used as a pathway to reunification, statehood, and a solution to end second-class citizenship in U.S. territories, while ensuring cultural survival.³⁸⁵

Applying UNDRIP-based legislative approaches could be a creative vehicle to give the CNMI and other Indigenous-based U.S. territories unanimous support to denounce the *Insular Cases*. If there is unanimity against the *Insular Cases*, U.S. territories could move forward together to end second-class citizenship for nearly 4 million Americans by implementing UNDRIP-based legislation and offering statehood to any U.S. territory that wishes to remain American. Poetic justice would have the Marianas reunify into statehood together if the Indigenous people desire to do so. Indigenous rights legislation could also create a foundation to additionally discard all *Discovery Cases*. Cultural survival increases with

matter-accountability-begins-with-understanding/ [https://perma.cc/3848-QZMJ]; Allen J. Davis, *An Historical Timeline of Reparations Payments made from 1783 Through 2022 by the United States Government, States, Cities, Religious Institutions, Universities, Corporations, and Communities*, U. MASS. AMHERST LIBR., <https://guides.library.umass.edu/reparations> [https://perma.cc/N7G6-ZH6P] (last updated June 28, 2022).

³⁸⁴ Negiel Bigpond & Sam Brownback, *Opinion: It's Long Past Time for Our Country to Apologize Publicly for What it Did to Native People*, WASH. POST (July 6, 2021, 7:06 PM), <https://www.washingtonpost.com/opinions/2021/07/06/native-peoples-an-apology-never-spoken-is-no-apology-all> [https://perma.cc/T66B-R52Q].

³⁸⁵ *American Indians*, *supra* note 9.

Indigenous rights legislation, as Indigenous peoples are still under attack from exploitative powers.³⁸⁶ In a world of increasing instability from the climate crisis, war and potential nuclear annihilation, pandemics, etc., an Indigenous Renaissance could help the CNMI remain independently sustainable,³⁸⁷ if need be, thus ensuring self-determination. The Indigenous Chamorro blessed the CNMI with a wonderful legacy: an *Inafa'maolek* blueprint for a harmonious way of life with each other and nature.

If Indigenous rights are implemented at the federal level, statehood is the ticket for the CNMI out of second-class citizenship and territorial purgatory. Reunification could also bring enhanced cultural identity for the Indigenous peoples of the Marianas. UNDRIP-based legislation at the local and federal levels could create legally protected space for a culturally-enriched society. For America to end second-class citizenship, equitizing further integration, independence, or free association must be on the table for U.S. territories. If America wants to keep their geo-strategic positioning during the Pivot to Asia, this would require federal protections for Indigenous cultural rights, which could catalyze Indigenous territories' interest in statehood. Finally, ending second-class citizenship in U.S. territories can embrace diversity and reduce socioeconomic and healthcare disparities, thereby ensuring cultural survival for Indigenous peoples. If states and territories are laboratories for democracy, the CNMI could be an influential domino in implementing UNDRIP in the U.S. and ending second-class citizenship in the process.

³⁸⁶ Nina Lakhani, 'A Continuation of Colonialism': Indigenous Activists Say Their Voices Are Missing at Cop26, THE GUARDIAN (Nov. 3, 2021 2:00 AM), <https://www.theguardian.com/environment/2021/nov/02/cop26-indigenous-activists-climate-crisis> [https://perma.cc/8SHJ-VHWU].

³⁸⁷ *Indigenous Knowledge and Climate Change*, UNESCO, <https://en.unesco.org/links/climatechange> [https://perma.cc/WBF3-8BFQ] (last visited Nov. 21, 2021).