

# Hita La'mon: Hasso Independence



## Historical Perspective on Davis V. Guam

"They are using the Constitution to destroy the institutions that protect our culture, but at the same time, that Constitution does not fully apply to us."

-Joe Garrido, *Pacific Daily News*, 2004

Decolonization is not a right that applies to all, it is a remedy to restore a right that was taken away. This cure is meant for a particular harm that was inflicted on a particular group of people. U.S. Congress itself defines this group as those who were made citizens by the enactment of the 1950 Organic Act of Guam and their descendants.

-Attorney Julian Aguon,  
Davis v. Guam Hearing, 2016

**Davis v. Guam:** Arnold "Dave" Davis, a white American settler on Guam, was denied the ability to register for the self-determination plebiscite because he is not a "native inhabitant" of Guam as defined in Public Law 25-106. He filed the claim that his 5<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> Amendment rights, the Organic Act of Guam and the Voting Rights Act were being violated by this denial in 2011.

Davis is being represented by the Center for Individual Rights (CIR), a conservative legal organization who once encouraged college students to sue their universities to oppose all affirmative action policies in admissions. CIR's mission is to, "look for cases with strong facts that can move a public agenda through years of litigation. This approach allows CIR to set the terms of public debate regardless of whether we win or lose in court."

The case was heard in the District Court of Guam by Chief Judge Frances Tydingco-Gatewood on September 1, 2016.

Attorney Julian Aguon, representing the Government of Guam, argued that Guam's decolonization registry law (P.L. 25-106) was NOT explicitly race-based as it contains a political definition of Guam's native inhabitants, and other ethnic groups, not just Chamoru, can be considered "native inhabitants" if they or their ancestors became US citizens by way of the Organic Act of 1950. Attorney Aguon argued that this is not an issue of civil rights but of human rights pertaining to Guam's status as an unincorporated territory and the guiding principles of our right to self-determination as set forth by the United Nations.

On March 8, 2017, Judge Tydingco-Gatewood ruled in favor of Davis and that P.L. 25-106 as unconstitutional in violation of the 14<sup>th</sup> and 15<sup>th</sup> Amendments. The "native inhabitant"-only qualification for participation in the self-determination plebiscite was deemed race-based discrimination.

This ruling, while claiming to uphold equality as defined in the U.S. Constitution, actually perpetuates institutional racism. It maintains U.S. power over Guam.



*Decolonization will liberate us from a system that uses the language of equality to maintain inequality, and that denies us our human right to sovereignty in our homeland.*

*Through independence, we can envision and create a truly equal and just Guåhan, shaped in part by the lessons we've learned from our experiences of inequality.*

## **Racist Vote?**

Racial Discrimination: To treat differently a person or group of people based on their race. *Power is a necessary precondition*, because racism depends on the ability to give or withhold rights, social benefits, facilities, services, opportunities, etc. solely on the basis of race, color or national origin. (“Defining Race, Racism and Racial Discrimination,” Vernellia R. Randall, racism.org)

The 14th and 15th Amendments were created after the Civil War to enfranchise former African slaves and give/ensure voting rights (for African American men). However, Jim Crow laws were enacted to make it difficult for African Americans to actually vote - poll taxes, literacy tests, and “grandfather” laws made it so that whites who couldn’t pay a poll tax or pass a literacy test could still vote if their grandfather did, but black Americans could not.

Race was created by law. Laws continue to enforce ideas about race and deny rights to people based on their race. In this way, the law is often used to assert political power, and laws that claim to achieve racial “equality” are used to maintain power, as seen in the Davis v. Guam case.

In the case of Guam’s political self-determination, race is not what defines who shall determine Guam’s future political status. Historical injustice and the need for restorative justice define this process. Thus, decolonization should be reserved for those who share the common historical connection of having been colonized and denied the ability to choose their political status outside of the legal boundaries and supremacy of American governance. It is an issue of representation, not race.

In the Davis case, the law is being used to silence a group of people and circumvent their rights to self-determine by utilizing the narrative of racial equality and ignoring all historical context.

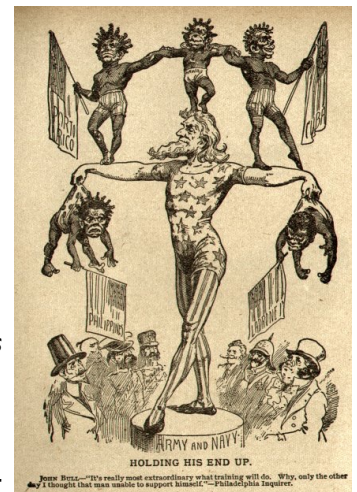
## **Colonization is Racism**

*Guam was first colonized by the United States in 1898. Decisions made during this first decade of American colonialism in Guam continue to shape the rights of the people of Guam today.*

In the 1901 Insular Case *Downes v. Bidwell*, Justice Henry Brown—famous as the author of *Plessy v. Ferguson*, which legalized race-based segregation (“separate and unequal”), describes the native peoples of America’s unincorporated territories as “savage” and “alien” races. “[Justice] Brown contended that Congress would treat the territories well because it was guided by “certain principles of natural justice inherent in the Anglo-Saxon character.”

-Pema Levy, *Mother Jones*

“The people are poor, ignorant, very dirty in their habits, but gentle and very religious. They are like children, easily controlled and readily influenced by example, good and bad.”  
-Naval Commander and Governor of Guam George Leland Dyer, 1904



## **Nihi Ta Hassuyi Este (Questions To Consider):**

1. What separates human rights from civil rights in this particular case, and why should they be distinguished?
2. What can we do as residents of Guam to support the quest for indigenous rights and self-determination?