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The Exclusion of Non-Native Voters from a Final Plebiscite in Puerto Rico: Law and Policy

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**THE EXCLUSION OF NON-NATIVE VOTERS FROM A FINAL PLEBISCITE
IN PUERTO RICO: LAW AND POLICY**

A Dissertation Presented

by

RAMON ANTONIO RODRIGUEZ SUAREZ

Submitted to the Graduate School of the
University of Massachusetts Amherst in
partial fulfillment of the requirements for the degree of

DOCTOR IN PHILOSOPHY

September 2010

Political Science

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DEDICATION

To my father Lorenzo O. Rodríguez who passed away before I concluded my PhD requirement and who always had faith in my desire and will to obtain my Ph.D. To my mother Nancy I. Suárez who throughout her life always showed me the value and power of education. Both served as a motivation and inspiration.

ABSTRACT

THE EXCLUSION OF NON-NATIVE VOTERS FROM A FINAL PLEBISCITE

IN PUERTO RICO: LAW AND POLICY

SEPTEMBER 2010

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U.S.-Puerto Rico relations have always been mystifying to countless U.S. citizens, due to inconsistent policies and judicial decisions from the United States. Puerto Ricans have no control over immigration yet immigrants can decide the future of the island nation. Puerto Rico is a nation under colonial rule. Paul R. Bras sustains the possibility of corporate recognition for the ethnic group as a separate nationality within an existing state evocative of the United States. The United States has treated Puerto Rico as a foreign country nevertheless at times as domestic. Under U.S. law and jurisprudence Puerto Rico is not part of the United States but rather the island is a possession. The electoral difference in plebiscites between the two major political parties is less than three percent.

Nonnative voters in the island can have the clout to decide the ultimate political status of the island. A key concern to the problem is who are considered nonnative voters in Puerto Rico. Non-native voters are those who have not been born in Puerto Rico nor have one of their parents born in the island. The exclusion is legally and politically achievable. There are many countries (ex. East Timor) in the world, former colonies (ex. Namibia), and previous U.S. territories (ex. Hawaii) that serve as examples of exclusion. Voting rights in plebiscites are determined by law. U.N. General Assembly Resolution 1514, states that all powers have to be in the hands of the people of Puerto Rico. International law and policies sustain that the future political status of colonies is to be determined by the nation. Puerto Rico lacks representation in the U.S. Government. When this happens the unrepresented become a separate nation. William Appelman Williams stated that “the principle of self determination when taken seriously ... means a policy of standing aside for people to make their own choices, economic as well as political and cultural.” Under international law and policies of self-determination Puerto Rico can exclude non native voters. Judicial precedents make this point very comprehensible.

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INTRODUCTION

Puerto Rico today is positioned in the minds of many U.S. mainland citizens and others as a tropical island, sunny beaches, baseball, boxing, and home to five Miss Universe, home of Ricky Martin, the ethnic background of U.S. Supreme Court Justice Sonia Sotomayor Baez and numerous other descriptions. Still others know that the island is somewhere in the Caribbean Sea, with a somewhat confused political relationship with the United States. In most American textbooks, it is a footnote, when the territories acquired by the United States as a result of the Spanish-American War are mentioned. Textbooks in American politics are normally limited to discussing the federal sphere of political action and that of the fifty states, excluding the territories and Puerto Rico. Even in the Universities, lectures in American politics exclude the island totally. So, it's no coincidence that even people with higher education do not have a clue about the political, social and economic relations of Puerto Rico with the United States.

The island is more than a vacation site or a footnote in a book. It is also the home to approximately 4.0 million American citizens¹ and the spiritual home for another 4.0 million Puerto Ricans residing in the continental United States.² Moreover, it is a political unit of unusual status that raises difficult questions about the meaning of nation, citizenship, voting rights, constitutionalism, autonomy, independence and other important political concepts. Puerto Rico and its sui-generis relationship with the United States deserve a closer attention by American politics experts.

¹ US Census 2006 estimate was 3, 855,608

² US Census 2006 estimate was 3, 987,947. As the economy worsens in the island more Puerto Ricans will migrate to the continental United States, also the supporters of statehood shall increase with the migration process between the States and Puerto Rico.

The history of the island goes back to the discovery voyages of Christopher Columbus, who first saw the island in his second trip to the New World, in 1493. For the next three centuries, the development of the insular society was tied to the fortunes of Spain in the New World as well as Spain's role in European politics. The original inhabitants of the island, the Arawak natives, with an estimated population of sixty thousand at the time of European dissemination, soon ceased to be an active element. The hard labor imposed by the Spaniards, new diseases which were epidemic in nature, losses in native rebellions, voluntary exile to neighboring islands, and biological assimilation were factors in the disappearance of the Arawak. The mineral resources in the form of pluvial gold which had attracted the first European settlers were soon exhausted. Sugar cane was introduced, giving the island its chief characteristic as a sugar producing island, a characteristic which remained well into the 20th century.

The island never became a prosperous colony under Spain. Its importance for the Spanish Empire was as a strategic defensive outpost in Spain's defense of its American Empire.³

Puerto Rico's role as a frontier outpost accounted for the form of government that Spain imposed on the island, a highly centralized and authoritarian government led by the Spanish military.⁴ The authoritarian type of government did not stop the emergence of a distinctive national identity. By the mid-19th century, nationalist sentiments were evident

³ Loida Figueroa, Breve Historia de Puerto Rico. (Río Piedras, Puerto Rico: Editorial Edil, 1971), p. 91. And which the US Navy also acknowledged throughout its history in Puerto Rican politics.

⁴ Centralism and authoritarianism are still today a part of Puerto Rican political culture.

in the society, especially among the middle group of landowners, merchants and professionals.⁵

Puerto Rico did not enter the process of colonial liberation in which most of the Americas colonies of Spain participated from 1810 to 1830. Instead, the Puerto Rican political leadership took advantage of the unstable political conditions of the metropolis to press for socio-economic and political reforms for the island. The years following the Latin American Wars for independence found the Puerto Rican leaders advancing the idea of autonomy as an alternative to the colonial relationship with Spain. The model for the proposed autonomy was the Canadian relationship to England.

By the end of the century, a weakened Spain, no longer the powerful empire of the Hapsburgs, with only two colonies left in America (Cuba and Puerto Rico), granted autonomy or limited self-government to both colonies, but the experience in self-government for Puerto Rico was short lived. The Spanish-American War of 1898 erased the constitutional gains of the island. The “Splendid Little War” resulted in the cession of Puerto Rico to the United States by Spain as compensation for the American demand for war reparations, a transfer formalized in the Treaty of Paris⁶ (1899). The war also transformed the United States from a nation bounded by the frontiers of its territory in North America into a colonial empire, with Puerto Rico in the Caribbean as a new colonial outpost, to the faraway Guam and the Philippine Islands, in the Pacific Ocean.

⁵ Loida Figueroa, Breve historia de Puerto Rico pp. 63-147.

⁶ The Treaty of Paris 1898 ended the Spanish-American War and ceded Puerto Rico to the United States.

The war was the closing chapter for the historic drama which Spain had begun in 1493, and the beginning of the American overseas empire.

The change of metropolitan power did not produce the blessing of democracy promised by the proclamation of the commander of the American forces General Nelson Miles when the island was invaded in 1898. The absence of a clear policy and colonial administrative experience characterized the American efforts in administrating the island during the first four decades of the relationship.⁷ In the absence of trained colonial bureaucracy, the United States government turned to the universities, where various social science professors were given the opportunity to try their theories, using the island as a laboratory. J. H. Hollander of John Hopkins University served as the first colonial treasurer. He was followed in the post by another professor of prominence, William F. Willoughby, who later became president of the American Political Science Association. Their responsibility was to “Americanize the island’s economy.”⁸ Education, an essential area in the Americanization process, was entrusted to men like Dr. Martin G. Brumbaugh, Chair of Pedagogy at the University of Pennsylvania, and first Commissioner of Education in Puerto Rico (1900-1902). The second Commissioner of Education was Samuel McCune Lindsay, a professor of social legislation at Columbia

⁷ While the absence of colonial administrative experience was more marked in the first decade (1900-1910), the subsequent periods were not much better. See Raymond Carr, Puerto Rico: A Colonial Experiment. (New York: Vintage Books, 1984), p. 40. Carr quotes Theodore Roosevelt, Jr., former governor of Puerto Rico, “We had no colonial service and we did not develop one. Most of the men who filled executive positions in Puerto Rico went there from the United States with no previous experience whatsoever, speaking not a word in Spanish”.

⁸ See. Stan Steiner, The Islands, The World of the Puerto Ricans. (New York: Harper and Row, 1974); p.121 and Henry Wells, The Modernization of Puerto Rico. (Cambridge, Massachusetts: Harvard University Press, 1969), p. 358.

University.⁹ The earlier governors, Charles H. Allen and Beekman Winthrop, were graduates of Amherst College and Harvard University.¹⁰ The universities, as a source of administrative knowledge, continued up to the last continental governor Rexford G. Tugwell. Tugwell distinguished professor of Economics at the University of Chicago and Columbia University. The Universities of Chicago and Columbia had a strong influence on the island. As late as 1966, two Columbia faculty members were members of the Board of Trustees of the University of Puerto Rico.¹¹ But as history has proven there were some governors and administrative officials that were totally ignorant of Puerto Rican affairs and their work was shameful for the United States and very harmful to Puerto Rico.

During the first four decades as an American colony, Puerto Rico experienced the classical ills of a colonial society: government by metropolitan appointees, externally directed corporations in control of most of the arable land, absentee ownership, an educational policy directed from the outside¹² and little, if any, economic growth. It was during this period that the island became known as “The Poorhouse of the Caribbean.”¹³

⁹ These commissioners clearly demonstrate that the United States wanted to assimilate and/or destroy the Puerto Rican nation, which clearly survived the attempt. The United States retained education in their hands well into the 1940’s. Education was and is an excellent tool for political socialization.

¹⁰ See Steiner, p. 121.

¹¹ See Ismael Rodríguez Bou, Report on Significant Factors in the Development of Education in Puerto Rico. (January 1966), p. 176.

¹² See Aída Negrón Montilla. La Americanización en Puerto Rico y el Sistema de Instrucción Pública, 1900-1930. (Río Piedras: Editorial Universitaria, 1977); and Juan J. Osuna, A History of Education in Puerto Rico. (Río Piedras, Puerto Rico: Editorial Universitaria, 1949). This clearly demonstrates that the United States wanted to eradicate the elements that defined the nation of Puerto Rico.

¹³ A classical example of “Imperialism” at its best.

There were changes within that period. Military government was terminated and civil government was established, limited participation of Puerto Ricans in the internal political affairs of the island was recognized by the metropolitan power, and in 1917 United States citizenship was extended to Puerto Ricans. Even though Puerto Rican legislators, and other leaders apposed U.S. citizenship.

From 1940 onward, Puerto Rico saw change in the native political leadership. Until that time, the leadership of the island had been in the hands of politicians trained in the Spanish political system. This system included men like Don Luis Munoz Rivera, Don Jose Celso Barbosa, Don Jose de Diego, Don Antonio R. Barceló and others. The new leadership, with Don Luis Munoz Marin at the helm, possessed different background. Their common background was a familiarity with the critical writings of American political scientist, lawyers and other specialist on the structures of American politics.¹⁴ The American leadership on the island also experienced change with the arrival of Rexford G. Tugwell,¹⁵ the former member of President Franklin Delano Roosevelt's Brain Trust, as new governor, in 1941. The new political actors emphasized economic reforms.

The idea behind the new approach was that the priority of government was to end the economic stagnation in which the island found itself. Once that was achieved, Puerto

¹⁴ See Henry Wells, p. 193.

¹⁵ Rexford G. Tugwell was a professor of economics at the University of Columbia, in New York City. He was also the last U.S. American governor of Puerto Rico appointed by the President.

Rico would be in a better position to make a political decision regarding their relationship with the United States.

The prime mover in this new effort was Don Luis Munoz Marin. His pragmatic philosophy¹⁶ mobilized the masses in support and, with the help of a sympathetic administration in Washington and governor of Puerto Rico, guided the island through significant economic changes. By 1950, Munoz Marin, as the undisputed political leader of the island, revived the autonomist solution to the political status question. In the same year, the United States Congress approved Public Law 600¹⁷ in which, by recognizing the importance of government by consent, a compact¹⁸ was established between the United States and Puerto Rico. The compact called for the organization of self-government in the island, with its own constitution, and in association with the United States.¹⁹

In 1952, the Commonwealth of Puerto Rico was established, when a constitution was written in Puerto Rico, and approved by the U.S. Congress. The Constitutional convention defined Commonwealth as:

“a politically organized community, a state, where the power resides

¹⁶ A form of empiricism, (The term was introduced in 1878 by Charles Sanders Pierce, who proposed that ideas should be evaluated pragmatically, that is, in terms of their consequences and that these consequences alone constitute their meaning) pragmatism disparaged abstract metaphysical speculation in favor of judging ideas through experience, experimentation and their practical effects. I will be using this philosophy throughout this research in order to demonstrate that it's practical to exclude non-native voters in a final plebiscite in the island.

¹⁷ Granted Puerto Rico the right to draft its own constitution in the form of a compact relationship, with the United States, it also included self-government for the island.

¹⁸ This compact relationship will have an eternal debate among political leaders in Puerto Rico.

¹⁹ The term “compact” relationship has been debated politically and decided by courts that have ruled that there is a compact (*Mora v. Torres* 113 F.Supp. 309; *RCA v. Gobierno de la Capital* 91 DPR 416) but the courts have also stated that there is no compact relationship (*Americana of Puerto Rico Inc. v. Kaplus* 368 F.2d. 431; *United States v. Feliciano Grafals* 309 F.Supp. 1292) so without doubt there is great confusion on the topic.

in the people, and thus it is a free state, but associated with a larger political system, in a federative form or other than federal, therefore it is not independent or separated.”²⁰

The period following the end of the Second World War was one in which struggles for national liberation from metropolitan powers spread throughout Africa, Asia and the Caribbean. The Puerto Rican leadership, aware that the United States was not willing or ready to relinquish its sovereignty over the island, and in the absence of a clear demand for independence from Puerto Ricans, opted for the alternative of autonomy. Under the new relationship, the island was transformed from the poorhouse of the Caribbean to one of the Caribbean’s most politically stable areas and one who enjoyed the highest income per capita.²¹

The socio-economic gains under the new status have not satisfied everyone in the island.²² Since 1952, the pro statehood movement has increased its electoral force in such a manner that it successfully challenged the autonomist hegemony over the island. At the present, as electoral forces, both autonomist (Partido Popular Democratico) and the statehooders (Partido Nuevo Progresista) are about even in electoral support.²³ This is

²⁰ Puerto Rico Constitutional Assembly, Res. Num. 22, Carmen Ramos de Santiago, Gobierno de Puerto Rico. (Río Piedras, Puerto Rico; Editorial Universitaria, 1978) {author’s translation} This has been the view of western powers when self government has been debated.

²¹ But in the year 2008 the island has been experiencing a recession that has been so severe that even the government has had serious problems meeting its payroll. Current economic conditions are very deteriorated. See Susan M. Collins, Barry P. Bosworth and Miguel A. Soto-Class, The Economy of Puerto Rico. The Bookings Institution and Center for the New Economy. Brooking Institution Press, 2006.

²² The Commonwealth status has been losing electoral support due to its inability to create jobs and revenue for the government’s payroll and expenses. Also the only political party that has increased its electoral support has been the statehood party (Partido Nuevo Progresista).

²³ In 1967 the island held its first plebiscite won by the Commonwealth Party. There were 1,067,349 registered to vote, 708,692 participated for a 66% participation rate. Commonwealth status obtained 60%, Statehood 39% and Independence 0.6% (the official position of the Independence Party (PIP) was not to participate in the Plebiscite). In 1993 under the statehood Governor Pedro Rossello and with the majority in the Legislature the island celebrated another plebiscite. 2,312,912 Puerto Ricans were registered to vote 1,701,395 participated for a 73.6%. Commonwealth

one reason why non-native voters should be excluded from participating in a final plebiscite in the island. In Puerto Rico the U.S. Census of 2000 indicated that 90.9% of the residents were born in the island. Using these facts in a population 3,954,037 the number of people on the island not born in Puerto Rico would be over 260, 000. The U.S. Census of 2000 also indicates that 2.9% were born in a foreign country. This means that in 2000 the foreign population in the island was over 100,000, 6.8 % were born in the continental United States or other possessions. Some of these residents may be of Puerto Rican ancestry. A conservative estimate would indicate that the Cuban, Mexican, Venezuelan, Dominican, Spaniards, US continentals and other non-native registered to vote in Puerto Rico could easily be over 75,000 today, enough to decide the political status of the island.²⁴ While the pro-independence forces are fragmented with only one political party of importance (Partido Independentista Puertorriqueno), they make up for their size by the intensity and visibility of their activities. They have taken the case of Puerto Rico to the international forum, and other groups have taken much more radical

status obtained 48.3, Statehood 46.2% and Independence 4.4%. The last plebiscite held was in 1998 the result was considered a vote of protest against Public Law 249 and the statehood government. In the 1998 Plebiscite there were 2,197,824 registered voters, 115,088 less than in 1993. The participation rate was 73.6%. The statehood government in the island legislated Public Law 249, August 17, 1998 that created the Plebiscite. Under this Plebiscite the government defined all the options available for the

Puerto Rican voter. This produced five options and the Commonwealth Party supported Option #5 which stated “none of the above”, because the PPD was not able to define their status option on the ballot. Option #1, was for the status quo which obtained 993 votes for a 0.1%; Option #2, represented a Free Associated State which obtained 4,536 votes for a 0.3%; Option #3, represented statehood which obtained 728,157 votes for a 46.5%; Option, #4 represented Independence which obtained 39,838 votes for a 2.5% and Option, #5 which meant “none of the above” obtained 787,900 for a 50.3% of the votes. The official position of the Commonwealth Party was to punish the Statehood government for legislating Public Law 249 and for not letting the PPD define their political status option.

²⁴ In the last plebiscite in 1998, 1, 700, 912 voters participated equivalent to 73.6 % of the eligible voters. The result was Commonwealth 48.4%, Statehood 46.2% and Independence 4.4%. The difference between the Commonwealth Party (PPD) and the Statehood (PNP) is 2.2%. Clearly non-native voters will be a crucial vote and most are pro-statehood as for example the Cuban and Dominican communities which are heavily in support of Statehood.

steps, such as armed attacks against United States installations and personnel on the island. A review of the historical and social science literature on Puerto Rico shows the inclination to overlook the benefits that the present relationship provides for the people in general.²⁵ In doing this, it seems to evade the fact that the purpose of the political association, in the final analysis, is to promote the highest degree of welfare for the people.

As a result, the approach to the Puerto Rican question is seen in the light of an either/or solution, or what may be termed the classical solutions for a colonial area. These are: (a) incorporation into the metropolis or (b) independence.

The first one, statehood, means the incorporation of the island into the federal union, as one of its states, with all the duties, obligations and responsibilities which are inherent in the federation. The argument in favor of statehood centers on the question of political equality for American citizens in Puerto Rico in relation to American citizens in the fifty states. It is the argument presented by former Governor of Puerto Rico Carlos Romero Barceló and others in their writings.²⁶ The statehood option is seen by opponents as politically unacceptable, for it implies the negation of Puerto Rico's national identity as a Latin American nation, and the image of the Americanized Hawaii is presented as an example of what could happen to Puerto Rico. In 1959 the State of Hawaii held a plebiscite that was won by the statehood status. The majority of the voters were non-native voters and the plebiscite process did not follow international law and procedures of

²⁵ Recently President Obama has assigned millions of dollars to the island. This situation has made the people more aware of the benefits that are derived from the islands relationship with the United States.

²⁶ See Carlos Romero Barceló, "Puerto Rico, U.S.A.: The Case for Statehood" *Foreign Affairs*, Fall 1980, pp. 60-81

self-determination. During the Hawaii plebiscite even military personnel had the right to vote as well as other non-native voters. The Kanaka Maoli (natives of Hawaii) nation did not decide the future of their land and nation; it was decided by non-native voters. On November 23, 1993 President Bill Clinton signed Public Law 103-150 which apologized to the Kanaka Maoli people (nation) for the U.S. illegal overthrow of the Kingdom of Hawaii and the suppression of the inherent sovereignty of the people of Hawaii.

The 1959 Statehood Plebiscite vote in Hawaii has also been criticized as a fraudulent vote and a denial of the Kanaka Maoli nation's right to self-determination because non-Kanaka Maoli people voted and outnumbered Kanaka Maoli voters and temporary resident status was granted to military personnel on U.S. military bases in Hawaii for the sole purpose of allowing them to vote in the election. No other option other than statehood was proposed in that election. Today in Puerto Rico the PPD and PNP are in an effective electoral deadlock, non-native voters can and will decide the final political status of the island and that can't be permitted because the process will be tainted and many Puerto Ricans will feel that their destiny was decided by foreigners. This can produce a Hawaiian situation²⁷ where statehood has a dark cloud and in the case of Puerto Rico independence supporters might even use violence as a means to undo an illegal act.

In Hawaii the plebiscite was not controlled by the Kanaka Maoli nation, it was under state control. United Nations Resolution 1514²⁸ states that power must be in the

²⁷ Hawaiian statehood procedures are still brought to the United Nations and the De-Colonization Committee for grievance on the ground that the statehood of Hawaii was totally illegal and did not follow international law and procedures of self-determination.

²⁸ United Nations Resolution 1514 (December 14, 1960) declares that all nations have a right to sovereignty and the protection of their territory. Liberation of colonies are irresistible and irreversible. Freedom is an

hands of the nation and never in the state. Hawaii never had the right to self-determination. In Puerto Rico the important issue is that the plebiscite must be the last phase, first the concept of nation must be clearly defined and who has the right to vote. Nationhood comes first in the process of self-determination and the plebiscite is the last phase in the process of self-determination as International Law and Procedures state in various United Nation Resolutions.

The second alternative is supported by many writers and scholars like Juan Mari Bras,²⁹ Ruben Berrios Martinez and others identified with the independence movement. Others, while not openly supporting independence, still limit the choices left to Puerto Ricans to only two, independence and statehood. Currently Puerto Rican Resident Commissioner Pedro Pierluisi has presented a bill H.R. 2499 Puerto Rican Democracy Act that will ask the people of Puerto Rico to vote if they approve the status quo. The whole idea is that if the people vote that they don't approve the status quo then the next plebiscite will be independence or statehood. George W. Bush administration has implied to the people of Puerto Rico that enhanced or any modified Commonwealth status is not constitutionally acceptable. This alternative is clearly supported by Juan Manuel Garcia Passalacqua, Jorge Heine, Raymond Carr, Robert Pastor and others.³⁰

inalienable right of colonies. Foreign dominance constitutes a violation of the fundamental human rights of the people who live under a colonial power. This Resolution imposes on the administrators of Trust Territories the obligation of transferring sovereign powers to the territories.

²⁹ Juan Mari Bras is a Law Professor, writer, former Secretary General of the Puerto Rican Socialist Party and political commentator. Mari Bras also renounced his U.S. citizenship formally at the US Embassy in Caracas, Venezuela. Ruben Berrios Martinez, former president of the Puerto Rican Independence Party, former Senator, writer and today he is the Executive President of the PIP.

³⁰ Raymond Carr is a British historian who wrote the book "Puerto Rico: A Colonial Experiment"; Juan Manuel Garcia Passalacqua is a former assistant to Governors Munoz Marin and Roberto Sanchez Vilella. He is also recognized as a brilliant political writer on Puerto Rican politics. Jorge Heine is former professor of Political Science at the Inter-American University and currently the Chile Ambassador to South Africa. Robert Pastor

But there is also a third position that is fragmented between those who support more autonomy and those that are pro-status quo. This fragmentation has created a serious problem of political discourse in the PPD. The use of the word sovereignty has split the supporters of Commonwealth.

I suggest that this often ignored alternative of autonomy under the present Commonwealth deserves much more serious analysis, especially of how well it responds to the particular pattern of Puerto Rican political development. A more pragmatic approach to the issue of political alternatives for the island can best be achieved through a closer understanding of Puerto Rican political culture.

Theories of nationalism are rooted in the European nation-state building experience. The process of nation building was seen as one which culminated with the emergence of the sovereign state as the representative of the nation. While this interpretation serves to explain nation-state building in Europe, it no longer explains contemporary political experiences in the world. For example, classic theories of nationalism cannot explain adequately the long standing political demands of regions in Spain like Catalonia, Galicia, and the Basque or those of Wales and Scotland in England. The demands of those regions are not for the total separation from the larger state but for degrees of local government or autonomy.

When faced with the problem of explaining demands for political change on the part of groups that display the characteristics of a nation, but do not necessarily aim at creating an independent state, theorist use terms like regionalism or patriotism or mini-

from the University of Maryland and a former member of the National Security Council for democratic United States Presidents.

nationalism. The problem seems to lie in the enduring connection between nationalism and state sovereignty. When the latter is not evident as a goal or demand, then the label of nationalism is not applicable.

At issue here is a classic question of political science: What is the purpose of a political society? In interpreting the answer to this question, I see the purpose of political society as the theoretical attainment of order and progress. On the other side, I see the need for concrete achievements benefiting the members of the society. It is essential that the fortune of one's land and people should be in the nation's hands, not in the hands of people that are not natural to the land. In my view, order and progress is central in concrete terms, while permitting non-native voters to decide the destiny of a nation only belongs to the abstract side. There is a pragmatic solution (exclusion of non-native voters in a final plebiscite in Puerto Rico) that will provide an asset for a long time solution of the political status of Puerto Rico.

This central issue of political purpose is manifested in tension between statehood supporters and those who oppose that Puerto Rico be admitted as a State of the Union. Puerto Rico provides an excellent case study in how a process can be done orderly and with the least faults possible leaving only the valuable asset of a decision made by its people (nation). Puerto Rico provides an excellent case for studying how a nation can reach self-determination in the 21st century following international law, procedures, domestic law and a pragmatic solution to a century old problem. I suggest, first, that the Puerto Rican experience with colonialism is sui-generis under U.S. sovereignty. The most important conflict resides over the recognition of a colonized people within a larger state. I will examine how the national identity of a colonized people is legally and politically

recognized and will analyze the conflict surrounding such recognition from the perspectives of the colonizer and the colonized.³¹ Using the specific case of Puerto Rico I will discuss the concept of national identity and how the conceptualization of a colonized people's national identity impacts on the exercise of their political and legal rights.

The conflict over political and legal recognition of a colonized people within a larger state³² takes many forms. The most common form of conflict is that, to the extent that a colonized people is recognized as having a distinct status within the State, there may be analytical resistance to accord different, and perhaps greater, rights to a national minority.³³ Most States (for example, USA) operate under the precept that all citizens should be treated equally, and if some are to be treated differently than others, there must be a principled reason for doing so.³⁴ In the United States, *Harris v. Rosario* (446 U.S. 651) established that the United States may treat Puerto Rico differently even though Puerto Ricans are U.S. citizens.

Additionally, the identity of the colonized is usually degraded as part of the act of colonization: a colonizer often denies the colonized the use of their native language or

³¹ The terms "people" and "nation" will be used frequently. For the purpose of this research, a "people" is defined as "the whole body of persons constituting a community, tribe, race, or nation because of a common culture, history, religion, or the like..." Webster's Encyclopedia Unabridged Dictionary of the English Language 1069 (2003)

The word "nation" is used...for the most part in a broad and non-political sense, viz., "friendly relations among nations". In this non-political usage, "nation" would seem

preferable to "state" since the word "nation" is broad and general enough to include colonies, mandates, protectorates, and quasi-states as well as states.

³² I will refer to both the "states" such as those that make up the United States of America and "States", such as Spain or England. To distinguish between the two "state" using all lower case letters, will refer to the sub-units of a larger "State", using initial capitalization.

³³ A national minority is a national group existing within a State. The goal of according different and arguably greater rights to a national minority is to forever preserve that people's identity, thus requiring institutionalized difference. This is distinct from groups that are targets of discrimination who typically require temporary measures in order to rectify inequality.

³⁴ See, United States Constitution, 14th Amendment.

prohibits the practice of key cultural identifiers such as religious ceremonies.³⁵ This degradation makes political and legal recognition problematic on a practical level because identifying and distinguishing the group becomes elusive. Furthermore, the colonizer typically cultivates the dependence of the colonized so that the relationship can be exploited.³⁶ This dependence creates forces within the colonized who wish to maintain the benefits of the relationship with the colonizer, even at the expense of their own liberty.

The pervasive acceptance of U.S. rule and the American presence within Puerto Rican society poses a crucial question. This phenomenon is best understood through the theoretical concept of hegemony. I use this concept in the basic sense given by Italian Marxist Antonio Gramsci. Gramsci used the theoretical category hegemony to explain the process by which a social class or bloc of social group wins consent to its historical project relying mostly on non coercive mechanism.³⁷ He defined hegemony as: “the spontaneous consent given by the great masses of the population to the general direction imposed on social life by the dominant fundamental group” as stated by Gramsci. In Gramsci’s theoretical system hegemony are both a strategy of domination and the kind of domination resulting from its successful realization. It depends on the dominant group’s capacity for intellectual, political and moral leadership as well as on its willingness to

³⁵ The United States did try to Americanize the Puerto Rican nation via education, school was taught in English but eventually the U.S. failed in its goal. It became dangerous to use the Puerto Rican flag well into the 1970’s. All these events proved that the Puerto Rican nation was distinct from the United States.

³⁶ See, Tim Pat Coogan, The IRA: A History 1994-1995. Stating that the standard of living in British occupied Northern Ireland rose because of the British ties and this was driving a wedge between North and South as Southern Republicans tried to persuade Northern Catholics to break lose those ties. This without doubt has a great similarity with Puerto Rico.

³⁷ See Antonio Gramsci, Selections from the Prison Notes.

incorporate the demands of other groups and satisfy them at least partially. This leaves room for subordinate sectors to obtain some advantages in exchange for their willingness to submit to the rule of the dominant group. The dominant group's hegemonic position rests on the perception by others that it has the requisite knowledge, resources and experience to manage the general affairs of society.

Hegemony therefore has both an ideological and a material foundation. The material foundation is what Gramsci called the decisive nucleus of economic activity. In this sense the Gramscian notion of hegemony resembles German philosopher and social theorist Jurgen Habermas contention that in advanced capitalistic societies the legitimating of political systems cannot be separated from the satisfaction of needs.³⁸

The wide spread adherence to American rule and the presence in Puerto Rico is the result and manifestation of American hegemony. That hegemony has been produced by conditions similar to those described by Gramsci and has been based on both ideological (rule of law, majority rule, democracy, law and other ideas) and material factors.

It is vital in this research that I focus on the national rights of Puerto Ricans within the State of the United States of America and how this nation is recognized as a distinct nation. One of the premises of this research is that Puerto Rico is a nation under the colonial domination of the United States.³⁹ So, it is neither pragmatic nor moral to let non-native voters decide the final political status of the island nation.

³⁸ See Jurgen Habermas, Legitimation Crisis. Cambridge, England; Polity, 1998

³⁹ The United States takes the position that the 1951 plebiscite in which Puerto Rico chose to become a commonwealth, or Estado Libre Asociado, was the fulfillment of Puerto Rico's self-determination.

Puerto Ricans status as a people qualifies them for national minority rights, rights that serve and promote the preservation of their cultural identity. Puerto Ricans, as a group bound together not only by the sheer fact that they live within a delineated area of land, but also by a common history, heritage and culture, are therefore, culturally different from the residents of the fifty states of the United States. And should be accorded different rights by law. This means that the final political status of the island should be in the hands of native voters exclusively. Furthermore, the accordance of national minority rights to Puerto Ricans would advance the United States compliance, as the country which administers Puerto Rico, with international law, which requires the achievement of self-determination for colonized people.⁴⁰

The recognition of who is a “Puerto Rican” typically arises, and is especially relevant, in the context of plebiscites on Puerto Rico’s status, because the purpose of these plebiscites is the exercise of self-determination.⁴¹ The issue of who may vote in

⁴⁰ In 1960, the Member States of the United Nations, including the United States, unanimously passed the Declaration on the Granting of Independence to Colonial Countries and Peoples. See G.A. Resolution 1514, U.N. GAOR, 15th Sess., Supp. No. 16 at 66U.N. Doc. A/L 323 & Add.1-6 (1960). The Special Committee on Decolonization, created to implement that declaration, has overseen the decolonization of over 40 nations. The General Assembly declared the last decade of the twentieth century the “International Decade for the Eradication of Colonialism”. The vote in this resolution was 135 in favor, 20 abstaining and 1 the United States, against. General Assembly resolutions are not law in and of themselves, but are evidence of international law:

Merely because a resolution is passed by the General Assembly or couched as a recommendation does not make it less legal instrument than the U.N. Charter. But even if we ignore this point, it is still difficult to use the traditional argument {that the General Assembly Resolutions have no legal significance} against General Assembly resolutions to nullify the provisions on colonialism, for not only are such Resolutions passed repeatedly by the General Assembly, but other organs and sometimes even agencies of the organization issue similar documents. Moreover this chorus of anti-colonial sentiment is so vindicated by the record of the anti-colonial movements that it can be taken as representing customary international law.

⁴¹ A plebiscite is usually the form for determining the will of a “PEOPLE” as to their political status. It’s a means of making government decisions or giving legitimacy to them, plebiscites have a history that is almost as old as democracy. See Louis Henkin ET AL. International Law and Cases and Materials 305 (3d ed. 1993).

plebiscites has been the focus of an ongoing dispute. One position is that only the residents of Puerto Rico may vote, the other is that only Puerto Ricans (native born) may participate exclusively, finally that those Puerto Ricans in the states that have blood ties may also participate. Puerto Rico's political status is critical because, under international law, Puerto Rico, which was considered a colony at the United Nations inception,⁴² can only progress from colonial status by exercising self-determination through the free and genuine choice of a legitimate political status.

Puerto Rico has failed to include the Puerto Rican Diasporas in status plebiscites⁴³. This issue has been debated during each legislation (plebiscites) and there has never been a consensus about the Puerto Rican Diaspora.

I will analyze Puerto Rico's national identity, how the United States as the colonizer has tried to destroy that identity⁴⁴ and Puerto Rico's resistance to such domination. I will conclude that since Puerto Ricans are a colonized people, their rights must be viewed differently from other US citizens or non-native residents on the island.⁴⁵

⁴² In 1946, the General Assembly passed a resolution in which Puerto Rico was among 74 territories formally designated as colonies. The admitted colonial powers were Australia, Belgium, Denmark, France, the Netherlands, New Zealand, the United Kingdom and the United States. The colonial powers were required by a specific provision on the UN Charter to report on the "economic, social and educational conditions" in the territories for which they were responsible. The initial compliance of the colonial powers was short lived, and they began to display resistance to accepting responsibility for the continued possession of non-self-governing territories.

⁴³ Puerto Rico's electoral law does not include the Puerto Rican Diasporas. Each plebiscite law is sui-generis in this aspect.

⁴⁴ See For a discussion of how a colonizer attempts to destroy a people's identity and psych. Frantz Fanon, The Wretched of the Earth. (Constance Farrington trans. Grove Press 1963) (1961).

⁴⁵ The United States is such a multinational State:

Many Western democracies are multinational. For example, there are a number of national minorities in the United State, including the American Indians, Puerto Ricans, the descendents of Mexicans (Chicanos) living in the south-west when the United States annexed Texas, New Mexico and California after the Mexican War of 1846-1848, native Hawaiians the Chamoros of Guam and various other Pacific islanders. These groups were all involuntarily incorporated into the United States, through conquest or colonization.

herefore, in a final plebiscite in Puerto Rico only native born Puerto Ricans should vote in a binding plebiscite. As Puerto Ricans in the continental U.S., born in the island, they should be entitled to vote in a plebiscite as if Puerto Rico were a nation to which they held dual citizenship with the United States.

Who can vote in Status Plebiscites is going to be the primary concern in this research. Status plebiscites have traditionally excluded nonresident Puerto Ricans and defined a Puerto Rican as someone who is domiciled on the island, a voter qualification much like that required of the citizens of a state in order to vote on issues relating to that state.⁴⁶ Popular debates on this issue focus on various arguments. One side argues that only those residing on the island should be able to vote, whereas others say that Puerto

As they were incorporated, most of these groups acquired a special political status. For example Indian tribes are recognized as “domestic dependent nations” with their own governments, courts and treaty rights; Puerto Rico is a “Commonwealth” and Guam is a protectorate.

These groups also have rights regarding language and land use. In Guam and Hawaii, the indigenous language has equal status with English in schools, courts and other dealings with government, while Spanish and English are the official language of Puerto Rico (although when under a PPD Rafael Hernandez Colon’s administration Spanish was the sole official language). Language rights were also guaranteed to Chicanos in the south-west under the Treaty of Guadalupe, although these were abrogated as soon as Anglophone settlers formed a majority of the population.

Native Hawaiians Alaskan Eskimos and Indian tribes also have legally recognized land claims. In short, national minorities in the United States have a range of rights intended to reflect and protect their status as distinct cultural communities.

Not mentioned above are African-Americans, who arguably are also a national minority. African-Americans present a unique question since their national origins have been eradicated by the brutality of slavery, leaving them without their history, their languages, their customs and their religions.

⁴⁶ Puerto Rico’s elections are run by the “Comision Estatal de Elecciones” (C.E.E.) which is made up of election commissioners representing each of Puerto Rico’s main political parties and a Commission Chairman, elected by the commissioners but required by law to be a member of the same party as the governor. Puerto Rican electoral requires special implementing legislation for every status plebiscite, which includes designating voter qualifications. In the last plebiscite (1998), although the C.E.E. considered changing the qualifications so that nonresident Puerto Ricans could vote, voter eligibility was based on existing electoral law (see P.R. LAWS ANN. Tit. 16, S3035) (qualified voters are those who are citizens of Puerto Rico) Puerto Rican law requires domiciled, but does not specify a specific duration, as aspect of the residency requirement employed by many states (see California Electoral Code 321; must have state residency for at least 29 days prior to election) (New York Electoral Law ; residency requirement is 30 days).

Ricans living in the United States, members of the Puerto Rican diaspora⁴⁷ should also be allowed to vote in a status plebiscite. When the Republic of Palau voted on a compact of free association with the United States, nonresident Palauan's were permitted to vote.

Who comprises the "self" of Puerto Rico, depends on how a Puerto Rican is conceptualized. Is a Puerto Rican the resident of a physical area, with an identity much like that of a New Yorker or a Bostonian? Or is a Puerto Rican the member of a people with a national identity? If a Puerto Rican is conceived of as the former, then it makes sense analytically to restrict the ability to vote in plebiscites to those who reside in Puerto Rico. If, however, Puerto Ricans are a nation, then those who can establish bonds through descent to the people of Puerto Rico should be able to vote in plebiscites.⁴⁸ Voting rights should not be restricted to Puerto Ricans on the mainland who were born in Puerto Rico. It has to include second and third generation members who can establish bonds.

During this research I will establish that it is pragmatic that only native Puerto Ricans should be able to decide the political status of the island. The circumstances of New Yorkers or Bostonians are indistinguishable, but the political status of Puerto Rico must not be decided by non-native voters and that also includes US citizens in the island that are not descent of Puerto Ricans. It's only natural⁴⁹ that the nation of Boriquen be the

⁴⁷ Prior to the 1993 plebiscite, these debates broke along party lines with statehooders generally taking the position that only residents of Puerto Rico should be able to vote, while supporters of the ELA (PPD) and the independence favored the inclusion of non-resident Puerto Ricans. See Larry Rohter, Puerto Rico Identity, Up for a Vote, N.Y. TIMES, and August 8, 1993. One would assume that the statehooders would support the inclusion of the Puerto Ricans diaspora who live in states of the union.

⁴⁸ This is only one means of defining a "people", but it is the one that makes the most sense when speaking of a nation which has had such an enormous outward migration. The islands population is approximately 4 million people, and it is estimated that over 4 million Puerto Ricans live in the United States, half of whom were born in Puerto Rico.

⁴⁹ Natural law is said to have its basis in "nature" in the natural order, in the human nature common to all people. Any positive law that contradicts the natural law is invalid. It would be natural that only native voters participate in a plebiscite.

exclusive voters in a final plebiscite, because there is always a natural bond between the people and the land. Bonds like culture, language, economic activity, personality and other similar features that go through the process of metamorphosis in the relationship between the land and the people. The main issue is whether Puerto Rico is properly conceived of as a nation under colonial domination with Puerto Ricans as her people, no matter where they are physically or whether Puerto Rico is analogous to a state. Puerto Ricans cannot be similar as other citizens of the states of the union.⁵⁰ On the other hand in *Sola v. Sanchez Villella*⁵¹ the residency requirement for status plebiscites was challenged. In *Sola*, fifteen Puerto Ricans living in New York, New Jersey and Massachusetts challenged a law barring them from voting in the upcoming 1967 plebiscite due to residency requirement.⁵² The plaintiffs claimed an interest in the plebiscite on the bases of being “citizens of the United States and of the Commonwealth of Puerto Rico and qualified voters and taxpayers of the Commonwealth”.

The U.S. District Court for the District of Puerto Rico disagreed with the plaintiffs and found that Puerto Rico is like a state for the purpose of voting on internal issues:

“Plaintiffs are in no different position than a citizen and resident of New York

⁵⁰ *Harris v. Rosario*, 446 U.S. 651 (1980) established that the US Congress can discriminate against Puerto Rico based on a rational decision. So, Puerto Rico is legally not considered an analogous state. Based on this precedent the US Congress can discriminate against non-native voters in the island.

⁵¹ See 390 F.2d 160 (1st Cir.1968) This case challenged an electoral law promulgated by the C.E.E. for the 1967 plebiscite which confined voter eligibility to the residents of Puerto Rico.

⁵² See 390 F.2d 160.

or New Jersey or Massachusetts, who was born, for example, in Missouri and to economically better himself moved to another state and become a citizen and resident of this state, and who, although owning property in Missouri and having nostalgia for Missouri, cannot meet the citizenship and the residential requirements for voting in a Missouri held election, even though the Missouri election may be on such fundamental matters as amending the State Constitution or adopting a new one.”

There are many problems with the courts analogy and reasoning: U.S. law does not generally treat Puerto Rico like a state⁵³ and furthermore the situation described by the court is dissimilar. Puerto Rico cannot be treated as another state; Puerto Ricans are a separate nation under colonial rule. One cannot make an argument for treating the island and its people as another state of the union.

The treatment of Puerto Rico like a state is erratic. United States courts have historically viewed Puerto Rico as an “unincorporated territory.”⁵⁴ “Incorporated Territories are destined to become states and are subject to the full application of the U.S. Constitution. Unincorporated territories are not intended for statehood and are only subject to fundamental parts of the U.S. Constitution.”⁵⁵ So, it is possible to exclude non-native voters from a final plebiscite in Puerto Rico. While there is some disagreement as

⁵³ See *Harris v. Rosario*, 446 U.S. 651 (Puerto Rico can be treated differently from the states as long as there is a rational basis for the distinction) The U.S. Supreme Court’s reluctance to qualify the nature of U.S. citizenship acquired by birth in Puerto Rico has led to a debate over whether Puerto Ricans have a statutory citizenship, with fewer attendant protections of their U.S. citizenship, or constitutional citizenship.

⁵⁴ The status of U.S. territories was analyzed at the turn of the century in the seminal series of decisions known as the Insular Cases. See *DeLima v. Bidwell*, 182 U.S. 1 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Downes v. Bidwell*, 182 U.S. 222 (1901); *Huus v. New York & Porto Rico Steamship Co.*, 182 U.S. 392 (1901)

⁵⁵ See *Balzac v. People of Puerto Rico*, 258 U.S. 298, 304, 312-313 (1922).

to whether its status has changed since the creation of the “Estado Libre Asociado”, the weight of the authority appears to be that Puerto Rico remains an unincorporated territory.⁵⁶

Sebastian de Grazia in “The Political Community” suggests a systematic theory of the state from the psychological perspective. He argues that leadership is dependent on the beliefs of the generality of people, not on the elite. Basic political concepts, state, citizen, nation, law, sovereignty, rights and others are defined in terms of beliefs and the cause and consequences of beliefs are related to their psychological function.⁵⁷ Puerto Rico’s political status is unique and the voter’s conceptualization of basic political concepts is unique to its political history. For example former Governor Pedro Rossello stated during his incumbency that Puerto Rico is not a nation because it’s not a sovereign state. Today, the concept of sovereignty is debated among the leadership and supporters of the Commonwealth Party (PPD). One sector favors sovereignty, and another does not. The Statehood Party (PNP) also used the term “Estado Soberano” as a step toward statehood.

It is crucial to understand how Puerto Ricans conceptualized such concepts as nation, sovereignty, state, voting rights, citizenship and others. These concepts will be an essential tool in order to rationalize the exclusion on non-native voters in the island.

⁵⁶ The U.S. Court of Appeals for the First Circuit, which hears cases from Puerto Rico, stated in 1956, after the establishment of the ELA, that “Puerto Rico is neither a state of the union nor a territory which has been incorporated into the union preliminary to statehood, thus all the provisions of the federal constitution are not necessarily in force”. *Guerrido v. Alcoa*, 234 F.2d 349 (1st Circuit 1956).

⁵⁷ Sebastian de Grazia, The Political Community, 1948.

Legal precedents, documents and policies will be crucial under US jurisdiction and international law and policies.

It would be a grave mistake to let foreigners decide the fate of the island. Hawaii serves as an example of how not to solve the political status. President Bill Clinton signed on November 23, 1993, Public Law 103-150 which apologized to the Kanaka Maoli people (nation) for the illegal overthrow of the Kingdom of Hawaii and the suppression of the inherent sovereignty of the people of Hawaii.

The 1959 Statehood Plebiscite vote in Hawaii has also been criticized as a fraudulent vote and a denial of the Kanaka Maoli nation's right to self-determination because non-native voters, voted and outnumbered Kanaka Maoli voters and temporary resident status was granted to military personnel on US military bases in Hawaii for the sole purpose of allowing them to vote in that election. No other option other than statehood was proposed in that election. Hawaii serves as a modern example for Puerto Ricans political status problem. Hawaiian statehood was ultra-vires in all its procedures.

A. Representative Democracy and Popular Participation in Referendums and Plebiscites

Referendums and Plebiscites as a means of making government decisions or giving legitimacy to them have a history that is almost as old as democracy. But they have been invoked only sporadically. A few admirable societies have never tried the device, while some authoritarian ones have grotesquely abused it.⁵⁸ At the beginning of this century referendums were welcomed by some as a liberating force, as a way of purifying government by enlisting the people against the politicians. This is the story of

⁵⁸ Adolf Hitler used plebiscites with a 99% support in order to legitimize his policies in the 1930's. Another example was Augusto Pinochet in Chile. Plebiscites have been used grotesquely by many modern day tyrants.

Puerto Rico's political status debate. Although there are leaders especially in the Popular Democratic Party and the Puerto Rican Independence that favor a delegate convention in order to deal with the political status of the island.⁵⁹ The New Progressive Party (statehood party) favors a plebiscite and it's very unlikely that a delegate convention will receive electoral and/or popular support. The world is moving towards more democratic instruments like a plebiscite and Puerto Rico is not the exception. Besides, the people want to participate directly in the solution of the political future of the island.⁶⁰

A distinction is often made between referendum and plebiscite. Plebiscite is much the older term; it goes back to the vote of the plebs⁶¹ in Rome in the fourth century B.C. and it was used for the popular consultations in France from 1793 onward. Referendum in its current sense appeared in English in the 1880's and in Spain after the fall of General Francisco Franco in 1975. Swiss cantons had decided issues by referendum⁶² 200 years earlier. Eighty years ago Referendum was the term used by reform movements throughout the English speaking world to denote the idea of putting issues directly to the electorate. Plebiscite was the term used to describe the efforts by the League of Nations to settle boundary disputes on the principle of self-determination after World War I.

⁵⁹ Both parties (PPD and PIP) have the concept sovereignty in their discourse and it's very controversial for the electorate to understand directly through a plebiscite. The statehood party (PNP) does not favor a convention to solve the status issue; they support a plebiscite.

⁶⁰ Electoral participation in plebiscites averages over 75%, which is considered high by US and world standards.

⁶¹ Pleb means the ordinary citizens of ancient Rome, as distinct from patricians. Cite means the yes of the Pleb. So, Plebiscite would mean the yes of the people in Latin. (Translation by the author) (Madrid, Spain: Diccionario de la Real Academia Española, 2001).

⁶² A Latin term used to describe the procedure were the government looks to ratify its decisions by the people about a law, an administrative process and/or a constitutional amendment (Translation by the author) (Madrid, Spain: Diccionario de la Real Academia Española, 2001).

Plebiscite was also used by the Nazis when they sought endorsement for their policies. The word plebiscite has tended to be applied to an ad hoc reference to the people of a specific question and in particular to one involving approval for a man or a regime. But there is no agreed usage. Since there does not seem to be any clear or generally acknowledged line that can be drawn to distinguish the subject matter, the intent or the conduct of a referendum from that of a plebiscite, the word referendum and plebiscite are synonymous.

For the purpose of this research, there is little benefit in going back to the distant origins of referendums in the assemblies of Greek city-states and the plebiscita of Rome, or even in turning to the early instances in modern history in the cantons of 15th century Switzerland and in France, which legitimized its annexation of Metz by a vote in 1552. The developing ideology of democracy by the end of the 18th century had opened the way to the modern referendum. The first examples are found in the popular votes by which after 1778 some American states adopted and altered their constitutions⁶³; they are also found in the efforts Girondins⁶⁴ and subsequently of Napoleon Bonaparte to demonstrate support for successive annexations and constitutional revisions. As the 19th century advanced the development of the technology of mass voting with electoral registers and secret ballots, made honest referendums far easier to conduct.

Before World War I, however, the most significant development of the referendum as a political institution undoubtedly came in Switzerland and in the United

⁶³ The first referendum in the United States was held in 1640 in the Massachusetts Bay Colony.

⁶⁴ A member of the moderate republican faction during the French Revolution that ruled from 1791-1793. Its leading members were from the Gironde region.

States. Since 1848 and still more since 1870 the Swiss have accepted the principle that almost every major national decision should become the subject of a popular vote. Switzerland developed the theory and practice of the referendum to a pitch which no other nation has begun to match.

Why are referendums widely used in Switzerland and a dozen states of the American union? The most likely explanation is that only in these polities there was longstanding pre-referendum experience with direct government by face to face assemblies of citizens. In both Switzerland and the American States, when population growth in the 19th and 20th century made assemblies impractical, referendums/plebiscites came into being as useful ways of adapting the principles of direct democracy to the limitations and necessities of large populations. The overwhelming bulk of referendums outside Europe have been attempts to seek endorsement for a new regime and its constitution or to demonstrate approval for an established one. Australia stands out as the only country where referendums have been defeated more often than not.⁶⁵ In Latin America the last referendum was held in Venezuela, and it was to provide President Hugo Chavez with the constitutional right to run for the Presidency for an unprecedented third term under the Bolivarian Constitution of Venezuela. Interestingly, Latin America has seldom produced instances of more than 90% yes. Costa Rica became the first country to approve a Free Trade Agreement via a referendum on October 7, 2007. Western democracies however, have not been eager to exploit the referendum as a serious decision-making instrument. Switzerland stands out as the only country that has become addicted to the referendum.

⁶⁵ Many analysts attribute this to the double majority necessary to approve a plebiscite in Australia.

A referendum under Spain was inconceivable in Puerto Rico. Spain's government in the island was authoritarian and deeply centralized. From the first governor Don Juan Ponce de Leon (under Spanish sovereignty) until the Foraker Act of 1900 (under United States sovereignty) the governments in the island were military. One characteristic of military government is their authoritarian style of leading, in other words holding a plebiscite or a referendum was totally outrageous under martial rule.

Current Electoral Law in Puerto Rico does not establish a difference between Referendums and Plebiscites,⁶⁶ although, in practice Puerto Rico uses and refers to referendums, when amending the Commonwealth constitution. On the other hand a plebiscite indicates a voting process on the political status of the island. An example being the plebiscites of 1967, 1993 and 1998.

B. Citizenship

Another issue to be analyzed in this research will be citizenship. The first form of citizenship was based on the way people lived in ancient Greek times, in small scale organic communities of the polis. In those days citizenship was not seen as a public matter, separated from the private life of the individual person. The obligations of citizenship were deeply connected into one's everyday life in the polis. To be truly human, one had to be an active citizen to the community, which Aristotle famously expressed: "to take no part in the running of the community's affairs is to be either a beast or a god!" This form of citizenship was based on obligations towards the community, rather than rights given to the citizens of the community. This was not a

⁶⁶ The Electoral Law in Puerto Rico does not establish a difference between referendum and plebiscite; although in practice referendum refers to the process of amending the constitution and plebiscite the electoral process of deciding the political status of the island.

problem because they all had an affinity with the polis; their own destiny and the destiny of the community were strongly linked. Also, citizens of the polis saw obligations to the community as an opportunity to be virtuous; it was a source of honor and respect. In Athens, citizens were both ruler and ruled, important political and judicial offices were rotated and all citizens had the right to speak and vote in the political assembly.

However, an important aspect of polis citizenship was exclusivity. Citizenship in ancient Greece and Rome, as well as medieval cities that practiced polis citizenship was exclusive and inequality of status was widely accepted. In human societies inequality in voting has always been a characteristic of politics. Citizens had a much higher status than non-citizens; women, slaves or barbarians.

Method used to determine whether someone could be a citizen or not could be based on wealth (amount of taxes one paid) political participation, or heritage (both parents had to be born in the polis).⁶⁷

In the Roman Empire, polis citizenship changed form: Citizenship was expanded from small scale communities to the entire empire. Romans realized that granting citizenship to people from all over the empire legitimized Roman rule over conquered areas. Some leaders in Puerto Rico have stated that the United States followed this idea also in Puerto Rico. Citizenship in the Roman era was no longer a status of political agency; it had been reduced to a judicial safeguard and the expression of rule and law.

In Puerto Rico there is a very sui-generis situation where the people have Puerto Rican citizenship and U.S. citizenship. The island's distinctive political association with

⁶⁷ This has not changed that much over centuries of tying voting rights to the land where one was born. Puerto Ricans have to born in the island and /or at least one of the parents should have been born in the island in order to participate in a final plebiscite.

the United States is not as those of the states that form the Union, thus producing, a political context, and history totally different from the states of the union. Therefore, the exclusion of non-native voters is a sui-generis condition under the political and legal jurisdiction of the United States. This unique situation promoted by the documents and historical events that make Puerto Rico sui-generis in respect to voting rights of foreigners in this unincorporated territory of the United States.

C. Voting Rights

The right of foreigners to vote in the United States will be another key issue in this research, to the extent that foreigners in Puerto Rico are U.S. citizens. Non-native voters are key in the electoral balance between the Commonwealth Party (PPD) and the Statehood Party (PNP).

The key concern would be who is a “Non-Native voter” in Puerto Rico. Actor Joaquin Pheonix and Spanish pop singer Luis Miguel were born in Puerto Rico does this give them the right to vote during a plebiscite in the island? Yes, in international law stemming from the most recent plebiscite in East Timor, all persons born in the land are considered native. While on the other hand in domestic law, U.S.citizenship and residency are the key ingredients in the right to vote in Puerto Rico. Puerto Rican diaspora should also have a right to vote but U.S.courts has stated that only legal residents have the right to vote. There are over 4 million Puerto Ricans (born in the island and descendents of Puerto Ricans) in the United States.

A Non-native voter would be a person with no cultural or biological ties to Puerto Rico or native Puerto Ricans. Singer Tony Croato who is of Argentinean-Italian origin had no ties absolutely with Puerto Rico but throughout the years he became as much a

Puerto Rican as any native born. In Olympic sports athletes that have one of their parents born in the island are considered native and can represent Puerto Rico in international competition; also those that have at least one grandparent born in the island are also considered native. U.S. Supreme Court Justice Sonia Sotomayor Baez would be considered a native voter even though she was born and raised in New York City; because her parents were born in the island (Sotomayor has biological ties to Puerto Rico). In order to be considered a non-native voter one has to be foreign culturally and/or biologically in order to be excluded from a final plebiscite in the island.

Over 40 states or territories, including colonies before the Declaration of Independence, have at some time admitted aliens voting rights for some or all elections.⁶⁸ In 1874, the U.S. Supreme Court in *Minor v. Happersett*⁶⁹ noted that “citizenship has not in all cases been made a condition precedent to the enjoyment of the right of suffrage. Thus, in Missouri, persons of foreign birth, who have declared their intention to become citizens of the United States, may under certain circumstance vote.”⁷⁰ *Minor v. Happersett* was a U.S. Supreme Court case appealed from the Supreme Court of Missouri concerning the Missouri law which ordained, “Every male citizen of the United States shall be entitled to vote.”

⁶⁸ Raskin, Jamin B. “Legal aliens, local citizens: The Historical, Constitutional and Theoretical meanings of Alien Suffrage. University of Pennsylvania Law Review (April 1993).

⁶⁹ 88 U.S. 162 (1874).

⁷⁰ Ibid.

The Supreme Court of Missouri upheld the Missouri voting legislation saying that the limitation of suffrage to male citizens was not an infringement of Minor's rights under the 14th Amendment.

The U.S. Supreme Court affirmed and upheld the lower Court's rulings on the basis that the 14th Amendment does not add to the privileges or immunities of a citizen and that historically "citizen" and "eligible voter" have not been synonymous. Since the U.S. Constitution did not provide suffrage for women, the 14th Amendment did not confer that right. The court decision had nothing to do whether women were considered persons under the 14th Amendment. The court ruled that they were clearly persons and citizens. It rested solely on the lack of provisions within the Constitution for women suffrage.

Minor has not been explicitly overruled by another U.S. Supreme Court decision. In fact, Minor is still cited for the proposition that the Constitution does not confer the right to vote. However, as the decision relates to women's suffrage in particular, it is no longer good law.

Voting rights have, always been a very controversial issue in many countries and Puerto Rico is not the exception. Recently with H.R. 2499⁷¹ promoted by Resident Commissioner Pedro Pierluisi D-Puerto Rico (PNP; Statehood Party) from Puerto Rico has received various opinions about who can vote in the plebiscite. Rep. Jose Serrano (D-New York) from New York supports that anyone born in the island should be able to

⁷¹ H.R. 2499 (Puerto Rico Democracy Act). The bill would provide for a referendum giving Puerto Ricans the choice between the options of retaining their present political status, or choosing a new status. If the former option were to win, the referendum would have been held again every 8 years. If the latter option were to win, a separate referendum would be held where Puerto Ricans would have been given the option of being admitted as a U.S. state "on equal footing with the other states" or becoming a sovereign nation, either fully independent from or in free association with the United States.

vote. On the other hand Rep. Luis Gutierrez⁷² (D-Illinois) from Chicago, Illinois states that those Puerto Ricans who have at least one of their parents born in the island should also have the right to vote. Representative Nydia Velasquez (D-New York) from New York has not given until this moment any public statement about who should vote in the plebiscite, but it is widely understood that Congresswoman Nydia Velasquez is a strong adherent of the Commonwealth Party (PPD) and her position might well be in agreement with the PPD's position.

D. Nation

The nation stands as a concept which has become increasingly difficult to define in a way that commands general agreement. The difficulty in defining it arises out of the modern usage of the word, which adds a political meaning originally lacking in the idea of a nation. Nation has become virtually synonymous with state, and the term nation-state has become part of the political vocabulary. Benedict Anderson, one of the most authoritative sources on nationalism defined nation as “an imagined political community [that is] imagined as both inherently limited and sovereign.”⁷³ An imagined community is different from an actual community because it is not (and cannot be) based on everyday face to face interaction between its members. Instead, members hold in their minds a mental image of their affinity. For example the nationhood you feel with other members of your nation when your imagined community participates in a larger event such as the

⁷² Luis Gutierrez was born in Chicago, Illinois to Puerto Rican born parents.

⁷³ Anderson, Benedict. Imagined Communities. (New Ed.) (London, New York, 2006), pp. 6-7.

Olympics.⁷⁴ As Anderson puts it, a nation “is imagined because the members of even the smallest nation will never know most of their fellow members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.”⁷⁵ Members of the community probably will never know one another face to face; however, they may have similar interest or identity as part of the same nation. The media also create imagined communities, through targeting a mass audience or generalizing and addressing citizens as the public.⁷⁶

These communities are imagined as both limited and sovereign. They are limited in that nations have finite, if elastic boundaries, beyond which lie other nations. They are sovereign insofar as no dynastic monarchy can claim authority over them, an idea arising in the early modern period.

A nation is an imagined community because regardless of the actual inequality and exploitation that may prevail in each, the nation is always conceived as a deep, horizontal comradeship. Ultimately it is this fraternity that makes it possible, over the past two centuries, for so many millions of people, not so much to kill, as willingly to die for such limited imagings.

Nation does have a political element but it is necessary to add cultural elements such as language, common literature, religion and traditions as attributes of nationalism. Puerto Rico easily meets these criteria's. Puerto Rico's primary religion is Catholicism,

⁷⁴ In Puerto Rico the Olympic teams tend to generate a feeling of nationhood among all Puerto Ricans. The Olympic status of the island has been an issue debated upon the three political parties.

⁷⁵ Anderson, Benedict. Imagined Communities.

⁷⁶ In Puerto Rico the media use very effectively the concept nation and people are very receptive to the message.

(although Protestants are increasing in numbers) but with a distinct cultural quality reflective of Puerto Rico as Latin American.⁷⁷ Anthony D. Smith defined a modern nation as a group with seven features. They are population, territory, cultural differentiation, group sentiment and loyalty, external political relations, direct membership with equal citizenship rights and vertical economic integration around a common system of labor.⁷⁸ Still Smith's definition remains well within the nation-state limits by including clearly political considerations such as external political relations, citizenship and economic organization. Hans Kohn, one of the most authoritative sources on nationalism, did not separate the political aspect from the cultural when he wrote that nationalism was a state of mind in which the individual gave his supreme loyalty to the nation-state.⁷⁹

The concept nation will be conceptualized clearly in order to establish why non-native voters should be excluded, from a binding plebiscite. Puerto Rico without any doubt is a nation under colonial rule.

E. State

Modern societies are characterized by the political organization known as the state. Virtually every individual in the world today, from the traditional areas to the more modern, is a member of some state. The quality of the relationship between the state and the individual varies from the all inclusive collectivism of totalitarian states to the more limited laissez-faire relationship in liberal democratic states. In Spanish usage, the term state is normally understood as the "nacion". It responds to the historical influence of the

⁷⁷ Catholics make up 85% of the population. The manner in which the catholic faith is expressed is particularly Latin American, which sets Puerto Rico apart from the United States. The Catholic Church in Puerto Rico by canonic definition has been independent from the Catholic Church in the United States. The Catholic Church in Puerto Rico responds to the Holy See via "Nuncio de las Antillas" not through the United States.

⁷⁸ Anthony D. Smith. Theories of Nationalism, (London: Gerald Duckworth & Company., 1983), p. 11.

⁷⁹ Hans, Kohn. Nationalism, Its Meaning and History. (New York: Van Nostrand, 1955).

French Revolution in Spanish and Latin American republicanism. It was then that the Third Estate constituted itself into a National Assembly and claimed to speak for the French nation. What had been, until that time, a highly personal and classed based state became the collective nation-state.⁸⁰

In Puerto Rico, “nacion”, with a political meaning, is used to refer to the American political system and to its government. The United States is referred to as “la nacion Americana”. While use of the word “nacion” to describe states is confusing, one must remember that the most important world organization of political states is called the United Nations. It is a reflection of the modern tendency to equate the nation and the state.

The concept state will be important to understand its role in the exclusion of non-native voters in a Puerto Rican plebiscite.

F. Sovereignty

Government, as one of the elements of the state, is very much in evidence in Puerto Rico. The government, as the guarantor and provider of economic security, is synonymous with the state. But a limited autonomy or self-government such as Puerto Rico enjoys raises questions on another element of the state sovereignty. Much of the political discourse on the island today⁸¹ and the positive and negative aspects of commonwealth status, revolve around the question of sovereignty.

⁸⁰ Joan McDonald, *Rousseau and the French Revolution, 1762-1791*. (London, The Athlone Press, 1965), pp. 99-100.

⁸¹ Especially the political discourses of the Commonwealth Party (PPD), which some of their leaders are called “Soberanistas” refereeing to those who promote sovereignty for the island.

Generally speaking, there is agreement that the elements of the state are: people, territory, government, and sovereignty. While there is no question that the first three are present in the Puerto Rican state, existence of the fourth raises difficulties. The theory of sovereignty as an essential element of the state goes as far back as Aristotle, who recognized in “The Politics” that there must be a supreme power in the state, and that the power could be in the hands of one, a few or many.⁸² Jean Bodin, the French political theorist, elaborated what is considered the modern theory of sovereignty. It says that the supreme power has to be totally independent and that sovereignty is indivisible there cannot be two supreme powers⁸³. Bodin’s position is the theoretical basis for what can be called the legal approach to sovereignty.

In Puerto Rico, the Bar Association (Colegio de Abogados), the professional association to which every practicing lawyer on the island had to belong to by law,⁸⁴ has defined sovereignty in Bodin’s terms. The Bar’s position was stated as follows:

“A sovereign people are where the final source of power resides.

In our case, it means that the United States Congress must abandon all its power over Puerto Rico, transferring it to the Puerto Rican people. The decision of the people in choosing one of the three alternatives will then be a true expression of its sovereign power”⁸⁵.

⁸² Aristotle, The Politics, Book III, Section vii, Translated by A.T. Sinclair (New York: Penguin Books, 1982), p. 189.

⁸³ C.E. Merriam, Jr. , History of the Theory of Sovereignty since Rousseau. (New York: AMS Press, 1968), pp. 13-17.

⁸⁴ In 2009 the new elected Legislature eliminated the compulsory membership of lawyers to the “Colegio de Abogados”. The reason is that the leadership of the Colegio de Abogados is dominated by independence and commonwealth supporters.

It is clear that from the legalistic viewpoint, the state in Puerto Rico does not have sovereignty, since Congress retains the power over the territory. Perhaps this is why the founder of the “Estado Libre Asociado,” Luis Munoz Marin, approached sovereignty from a different perspective when he stated:

“Sovereignty does not mean independence. The federal states are sovereign states in the American union, as sovereign as independent republics. Under the concept of sovereignty, a country can be a dependent sovereign state or a sovereign state associated in permanent union with the United States of America.”⁸⁶

Munoz Marin’s position responded to a populist interpretation of political association which was not strange to Puerto Rico. It was basically the same viewpoint which Jose Celso Barbosa⁸⁷ had in 1900 about the states in the American political system.

The popular sovereignty position has for sources the social contract theories in which political authority resides with the people, instead of with the state. For the support of popular sovereignty, the source of authority is in the voice of the majority of the people, the general will of which Rousseau wrote. It is the source for the constitution or basic law which creates the state, and as such remains sovereign. The government, not to be confused with the state, may receive portions of authority, but the whole or totality of

⁸⁵ United States-Puerto Rico Commission on the Status of Puerto Rico, Vol. 1, (Washington D.C.: U.S. Government Printing Office, 1966), p. 3.

⁸⁶ In Carmen Ramos de Santiago, El Gobierno de Puerto Rico. (San Juan, Puerto Rico: Editorial Universidad, 1978), p.176.

⁸⁷ Considered by pro-statehooders as the father of Puerto Rican statehood.

it remains with the people. That idea can be seen in the preambles of the constitutions of both the United States and Puerto Rico, which begin with the words, “We the people...”

The problem of sovereignty in Puerto Rico, while remaining unsolved by the two opposite views, can be approached from another perspective by looking at sovereignty through its two manifestations, the external and the internal. The external aspects relates to the State’s position among other states, while the internal refers to the relationship between the State and the individuals in the territory.⁸⁸ The external manifestations of sovereignty refer to the relationship among states based on their political equality. Since Puerto Rico is not politically an independent state, it does not enjoy sovereignty in this sense.

In the internal aspect of sovereignty, the Puerto Rican state has some clear areas of supremacy, and others that it shares with the U.S. Federal Government. The constitution of the United States is supreme on matters concerning citizenship and rights guaranteed by the constitution, but on purely state matters, the Constitution of the Commonwealth is the source of law. The internal sovereignty is very similar to that enjoyed by the mainland states.

The division of sovereignty into these two aspects facilitates the conclusion that Puerto Rico is a state which enjoys some sovereignty, as it should be in a limited autonomous relationship. The presence of some aspects of sovereignty, whether real or perceived, tends to satisfy emotional needs in an ethnic community, for it gives weight to the people’s perception of the group as a nation.

⁸⁸ C.E. Merriam, pp.180-181.

In international law, following Bodin's theory of sovereignty, the division is a contradiction, but given the political condition of the island, the division is a reality. In a world which is becoming more interdependent, the emphasis on political independence as a requisite to sovereignty may be outmoded.

Sovereignty will take part in an essential role in the exclusion of non-native voters in Puerto Rico during a binding plebiscite.

G. Nationalism

Most writers who discuss Puerto Rican nationalism seem to agree that there is nationalism on the island, but they differ on what that label or tag means. On the island itself, nationalism is identified by the majority of the people with Pedro Albizu Campos⁸⁹ and, the Nationalist Party. Professor Manuel Maldonado Denis⁹⁰ recognizes nationalism on the island as a middle class or bourgeois expression, and argues that nationalism will become a genuine force only when it acquires working class identification.⁹¹ Anthony Smith⁹² classified nationalism in Puerto Rico as a primitive movement, akin to the tribal movement in Asia and Africa⁹³. Carlos Fuentes, addressing the problem of nationalism in Latin America, said:

“Nationalism represents a profound value for Latin Americans

⁸⁹ Puerto Rican Nationalist leader during the turbulent 1950's. Considered one of the most revered leaders of the Puerto Rican Nationalist Party and independence movements.

⁹⁰ Puerto Rican scholar and professor of Political Science at the, University of Puerto Rico. Advocated independence for Puerto Rico and the author of “Puerto Rico: Una Interpretacion Historico-Social”.

⁹¹ Manuel Maldonado Denis, “Prospects for Latin American Nationalism: The Case of Puerto Rico”. Latin American Perspectives, No. 3, Summer 1976, pp.36-44

⁹² Smith argues that nationalism draws on the pre-existing history of the group an attempt to fashion this history into a sense of common identity and shared history.

⁹³ Anthony Smith, Theories of Nationalism. p. 272; also “Ethnosymbolism and Nationalism : A Cultural Approach” (2009)

simply because of the fact that our nationhood is still in question.”⁹⁴

Fuentes words seem applicable to the question of nationalism on the island as perceived by other writers. On the island, nationalism has been judged to be present or absent, developed or undeveloped, on the basis of its political contents and goals. If instead of political goals one uses cultural ones like preservation of the national culture and identity, then other explanations for nationalism on the island may be suggested.

Puerto Rico is a nation.⁹⁵ It enjoys strong elements of social unity such as language, common religion, common customs and traditions and a distinctive political history. This degree of distinctiveness establishes the existence of the nation, from the cultural point of view. As such, Puerto Rican nationalism can be identified as ethnic nationalism.⁹⁶ Smith defines ethnic nationalism as a movement of well integrated group manifesting common citizenship rights and one or more cultural features marking the group as different from other groups⁹⁷. This definition has the concept of ethnicity as its core, the awareness of ethnic identity shared by the members of the groups. Puerto Rico exhibits a very high degree of ethnic cohesiveness, a cohesiveness seen by some as a romantic attachment. Ethnic nationalism is not simply confined to cultural

⁹⁴ Louis L. Snyder, Macro-Nationalism, A History of Pan Movements, (Westport, CT.: Greenwood Press, 1986), p.226

⁹⁵ Roberta A. Johnson, on p.44 of her “The 1967 Puerto Rican Plebiscite” denies the existence of the nation. She claims that there is no well defined cultural tradition or a sense of identity on the island.

“Puerto Rican culture is a conglomerate of imports and does not in itself create the feeling of being Puerto Rican”

Johnson forgets the migratory nature of culture in the American continent, so that it would be impossible to find a culture in the area which does not have imports.

⁹⁶ Anthony D. Smith, p. 216.

⁹⁷ Ibid. p. 216..

manifestations, but includes political dimensions as well. When ethnic groups (Puerto Ricans) demand corporate recognition as a whole as has happened in the island, Puerto Ricans demanded the right to control their public system of education; and when Puerto Rico demanded the right to govern themselves, they were engaged in the politics of nationalism. As stated by David Easton⁹⁸ politics is “the authoritative allocation of values in a society”; so when Puerto Ricans started to demand self-government in all aspects of their social and economic life their national demands became political.

The political history of Puerto Rico is the chronicle of an ethnic group and its development into an ethnic community with its own nationality. During the second half of the 19th century, the group began to express this ethnicity through political demands for reforms.

My hypothesis, then, is that it would be pragmatic to exclude non-native voters in a final binding plebiscite in Puerto Rico. Because the characteristic idea of philosophical pragmatism is that efficacy in practical application, “What works out most effectively in practice”, somehow provides a standard for the determination of truth in the case of statements, and rightness in the case of actions. Puerto Rico must avoid being another Hawaii. It would be pragmatic that non-native voters be excluded from a final plebiscite in Puerto Rico thus avoiding future unrest in the island.

Citizenship, voting rights, nation, state and sovereignty play a crucial role in the process of arguing the case for the exclusion of non-native voters from a final plebiscite in the island. In the following chapters each concept will be discussed within the context

⁹⁸ David Easton is a Canadian political scientist who adapted systems theory to political science. In 1965 he wrote A Framework for Political Analysis. Prentice Hall.

of non-native voters in a final plebiscite. Also there will be an explanation about how international law and procedures sustains the exclusion of non-native voters in the island.

CHAPTER I

THE SETTING

The history of Puerto Rico, from its early beginnings as a Spanish colonial outpost in the 16th century to the present, as a political entity with a complex colonial relationship with the United States,⁹⁹ has been the subject of excellent investigations by scholars, not only from the island, but from other countries of the world.¹⁰⁰

This chapter aims at presenting a historical overview of the island and its society as an aid in understanding its present relationship with the United States.

While the knowledge of Puerto Rico in the United States has certainly gone beyond the 1898 period when the American geologist Robert T. Hill wrote that Puerto Rico was less known to the United States than Japan or Madagascar.¹⁰¹ Still today there are many Puerto Ricans that have experienced the poor knowledge that U.S. Americans have about Puerto Rico. In August 2004, Jose Rivera arrived on the University of Maryland campus thinking that the only obstacle that remained between his academic ambitions and beginning his university studies would be the registration for classes.¹⁰²

⁹⁹ Arturo Morales Carrión, Puerto Rico, A Political and Cultural History. (New York: W.W. Norton, 1983), p. xii.

¹⁰⁰ There are excellent historical works about Puerto Rico. The works of Salvador Brau, Lidio Cruz Monclova, Luis Diaz Soler, Loida Figueroa, Viva Maldonado and Arturo Morales Carrion are but a part of a rich bibliography on the subject.

¹⁰¹ Robert T. Hill, Cuba and Puerto Rico with the other islands of the West Indies. (New York, 1898) pp. 148-149, as quoted by Arturo Morales Carrion in Puerto Rico.

¹⁰² Name changed to preserve the anonymity. The following account is based on the recollection of Jose Luis Gonzalez, (former) President of the Washington DC chapter of “El Circulo de Puerto Rico” and

During registration, however Jose discovered that he would not be allowed to register for classes unless he presented a student visa or evidence that he was a resident alien.¹⁰³ Mr. Rivera confidently presented information that he thought would clinch his registration and supersede any visa or green card requirement. He informed the registration workers that he had been born in Santurce, Puerto Rico. Instead of an enrollment schedule, however, Jose Rivera received a very patient explanation that while this information was acknowledged and appreciated, that fact alone would not fulfill his registration status requirement because he had not been born in the United States. Jose could not find anyone who could remove the foreign cloud over his birthplace. Jose ultimately enrolled and completed his degree at the University of Maryland only after the matter came to the attention of Jose Luis Gonzalez, the former President of the Washington DC chapter of “El Circulo de Puerto Rico”. Mr. Gonzalez letter to the President of the University of Maryland resolved the matter in time for Jose Rivera to begin classes with only a minimal interruption. Although the delay in Jose’s registration occurred because of a lack of knowledge on the part of individuals rather than because of University policy, Mr. Gonzalez took time in his letter to the University President to educate the University concerning the 1917 action¹⁰⁴ by the US Congress that made a green card or student visa unnecessary for Jose Rivera.

Captain of the US Marine Corp (U.S.M.C.) “El Circulo de Puerto Rico” is an organization dedicated to the preservation and celebration of Puerto Rican culture.

¹⁰³ Personally my Puerto Rico driver’s license was not accepted by a cashier as a valid U.S. ID in a department store in Amherst Massachusetts, while attending the University of Massachusetts.

¹⁰⁴ Jones Act, ch. 145, 39 Stat. 951 (1917) (current version at 48 U.S.C. 731-916 (1988).

For most mainland United States citizens, whether Puerto Ricans are also United States citizens may not rank high as conversational curiosity. However, for Puerto Ricans, the issue constantly intrudes into what “mainstream” United States citizens accept as routine endeavors, such as seeking employment, obtaining services from state and local institutions or other daily pursuits. A widespread uncertainty exist regarding the status of Puerto Ricans, as demonstrated by members of Congress who themselves have expressed surprise that the residents of Puerto Rico serve in the United States military. Resident Commissioners representing Puerto Rico in the US House of Representative spend a great deal of time explaining what Puerto Rico is and just what US citizenship in the island entails. Unfortunate occurrences such as these may simply reflect the general public’s inadequate level of historical and geographical knowledge, but the adverse impact on individuals from Puerto Rico amounts to a great deal more than mere inconvenience.

Confusion about Puerto Rico’s political relationship with the United States, however, is not unique to the mainland. Although there is no doubt among residents of Puerto Rico that they are citizens of the United States, the exact nature of the political and legal relationship of Puerto Rico with the United States, and what the status is or should be, has dominated the debates of Puerto Rican scholars, jurist¹⁰⁵ and politicians.¹⁰⁶ Puerto Rico’s affiliation with the United States also figures prominently in the

¹⁰⁵ Juan A. Torruella, A. Dissenting Concurrence- An Opinion about the Bicentennial, 34 Fed. B. News & J. 352 (1987). This US Court of Appeals judge for the First Circuit discusses what he terms “the second class citizenship” of residents of Puerto Rico.

¹⁰⁶ Compare Carlos Romero Barceló, Puerto Rico USA : The Case for Statehood, 59 Foreign Affairs 60, (1980); with Ruben Berrios Martinez, Independence for Puerto Rico: The Only Solution, 55 Foreign Affairs 561 (1977).

discussions of residents of the island of Puerto Rico, all whom are born as United States citizens since passage of the Jones Act by the Congress of the United States.¹⁰⁷

U.S. continental citizens still need a clearer understanding of Puerto Rico, its people and its problems. Maybe with the nomination and confirmation by the U.S. Senate of Second Circuit Federal Judge Sonia Sotomayor¹⁰⁸ to the US Supreme Court by President Barak Obama may enhance the desire to know more about Puerto Rico. In the absence of a clear understanding, Puerto Rico may be seen by Americans as a far-off island removed from the sphere of American politics. At the worst, the words of Robert Pastor, in writing about Puerto Rican problems, may come true:

“Not without reason, most Americans would like to forget Puerto Rico. It reminds us of a colonial past we wish hadn’t happened.”¹⁰⁹

Located in the Caribbean Sea, between the island of Hispanola (containing the Dominican Republic and Haiti) in the west and the United States Virgin Islands in the east, the Commonwealth of Puerto Rico is formed by three islands of Puerto Rico and two smaller islands of Vieques and Culebra.¹¹⁰ Puerto Rico occupies an area of 3,435 square miles with a population of 3,958,128.¹¹¹ In the continental United States there are

¹⁰⁷ Jones Act, ch. 145, 39 Stat. 951 (1917) (current version at 48 U.S.C. 731-916 (1988)). This act secured United States citizenship for all Puerto Ricans. However, the Act did not contain any procedural presumption that either statehood could follow the imposition of citizenship or that some arrangement would allow for ultimate independence in spite of the impassioned pleas of Puerto Rico’s Resident Commissioner Luis Munoz Rivera. A Civil Government for Porto Rico: Hearings on H.R. 13818 Before the House Committee On Insular Affairs, 63rd Cong., 2d Sess. 5 (1914).

¹⁰⁸ Judge Sonia Sotomayor’s nomination to the United States Supreme Court is pending in the U.S. Senate. Born in New York City but of native born parents; her mother Celia Baez was born in Lajas and her father in Santurce, Puerto Rico.

¹⁰⁹ Robert Pastor, “The Problem of Puerto Rico,” (New York: The New Republic, 1984) , p. 38.

¹¹⁰ Both islands have had long controversies with the removal of the US Navy from its Municipal territories.

¹¹¹ The US Census 2008 (estimate).

more Puerto Ricans than in the island with approximately 4.0 million.¹¹² Most of the population in the island is urban (66.8 percent), while 32.2 percent reside in rural areas. In Puerto Rico 95.1 percent stated they were native residents, 3.4 percent were other Latinos (Cuban, Dominican, Venezuelan and others) and 1.2 percent were non-latinos. These facts will be crucial in understanding why non-native voters in the island should be excluded from voting in a final Plebiscite.

The principle city and capital is San Juan, with a population slightly over five hundred thousand. Other large cities are Carolina and Bayamon (which are part of the Capital metropolitan area), Ponce on the southern coast and Mayaguez on the western coast of the island.

The economy of the island, traditionally based on sugar, tobacco, coffee, and rum underwent drastic changes after 1948 under the self-help program “Operation Bootstrap,¹¹³” that emphasized industrialization through the use of incentives such as tax exemption (Section 931¹¹⁴ and 936¹¹⁵ of the U.S. IRS Code, both sections have been phased out by the US Congress), low wages and government loans to attract private investors.¹¹⁶ As a result industry passed agriculture as the primary source of income in

¹¹² The US Census 2008 (estimate).

¹¹³ In Spanish called “Manos a la Obra” designed to modernize and industrialize the island. It had its pros and cons as any other policy.

¹¹⁴ Internal Revenue Code states that U.S. industries in the island would not pay federal taxes.

¹¹⁵ Internal Revenue Code state that U.S. industries that re-invest their profits in the island would not pay federal taxes and if these industries repatriate their profits a Toll Gate tax would apply.

¹¹⁶ Susan M. Collins, Barry P. Bosworth and Miguel A. Soto-Class, The Economy of Puerto Rico. The Brookings Institution Press Washington DC and the Center for the New Economy, San Juan Puerto Rico 2006.

the island. By 1980, the income per capita in the island reached 3,486 dollars; today (2008) it's approximately \$19,600.¹¹⁷ Industrial production is mostly centered on apparel manufacturing, electronics and pharmaceutical products. Despite the marked increase in socio-economic gains, Puerto Rico has problems of inflation, a very high public debt and a high rate of unemployment.¹¹⁸ The people of Puerto Rico have no effective representation in the United States Congress.¹¹⁹ The representation of the island is limited to a delegate, the Resident Commissioner, who is elected for a four year term and serves in the US House Representatives. The Resident Commissioner serves and votes in committees to which he has been assigned but does not vote in House deliberation.¹²⁰

Politically, the Government of Puerto Rico exercises approximately the same control over its internal affairs as do the fifty states the United States federation.

The Constitution of Puerto Rico, patterned after the Federal Constitution of the United States, but more progressive,¹²¹ provides for a republican form of government with the three traditional branches.¹²² The basic administrative unit is the "Municipios" (city or town). "Municipios" are heavily dependent on the Commonwealth government

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ Although there are three Puerto Rican US Congressmen, Jose Serrano (D-NY), Luis Gutierrez (D-Illinois) and Nydia Velasquez (D-NY). All who are very versed in Puerto Rican politics and they do attend the needs and desires of the island.

¹²⁰ Resident Commissioner votes in the US House of Representative committees only when the Democratic Party has a majority. The Republican Party does not provide this benefit to the Resident Commissioner when their in control of the House of Representative.

¹²¹ The Constitution of Puerto Rico included elements from the United Nations Declaration of Human Rights.

¹²² The Executive, Legislative and Judicial branches of government.

for funding.¹²³ Although in recent years, funds from the federal government for development of small cities programs have lessened the dependence on the central government and legislature.

For electoral purposes, the island is divided into eight senatorial districts, eleven at large, forty representatives and eleven at large.¹²⁴ Each voter elects two senators (district), one senator at large, one representative (district) and one representative at large in the legislature. In the Executive Branch, voters elect the Governor and the Resident Commissioner that will represent Puerto Rico in the US House of Representative. The electoral units do not have administrative functions. Elections are held every four years, coinciding with national elections in the United States. Currently there are four political parties but only two have a genuine option to win an electoral race.¹²⁵ The third political party the “Partido Independentista Puertorriqueno” they support independence for the island. The PIP has elected senators and representatives but has never won a gubernatorial race or a seat in the US Congress as a Resident Commissioner. The fourth party “Partido Puertorriquenos por Puerto Rico” this party participated for the first time in the 2008 elections but as the PIP they too lost their electoral franchise in 2008 because they did not obtain the necessary electoral percentage vote to participate in future elections.

¹²³ Although Public Law 81 from August 30, 1991 establishes that all Municipios should reach full autonomy, the fact is that the majority are still fully **dependent** on the Commonwealth Government of Puerto Rico.

¹²⁴ Constitution of Puerto Rico.

¹²⁵ Partido Popular Democratico supports the current status; Partido Nuevo Progresista which supports statehood for the island.

The political development of the island can be divided into two periods. The first covers the 390 years when Puerto Rico functioned as a colony under Spanish rule. The second covers the period from 1898 to the present, when it has functioned as an American colony and a Commonwealth possession. A detailed analysis of both periods is beyond the aims of this research. However, emphasis is placed on the Commonwealth period from 1952 to the present.

A review of the past is necessary; however, as it is in this context that the political history of the island is discussed.

A. The Spanish Colony

Puerto Rico was one of the first European settlements in the New World. After the discovery by Columbus in 1493, settlement of the island began in 1508 under the leadership of Juan Ponce de Leon who became the first governor. It was in the island that the Catholic Church established its preeminence in America when the first bishop in the New World, Alonso Manso, established the see in San Juan in 1513.¹²⁶

The growth of the settlement was very slow. In 1529 the first census ordered by Governor Francisco Lando gave a total of 2,968 persons (Spaniards, free, and enslaved Indians and black slaves).¹²⁷ The largest group in that first census was black slaves, while the Indian element was already showing signs of losses. The census only accounted for Indians under Spanish control in the settled areas. It is estimated that at the time of the initial European contact in the island, the native population amounted to thirty thousand.

¹²⁶ Loida Figueroa, Breve Historia de Puerto Rico. (Río Piedras, Puerto Rico: Editorial Edil, 1971), p. 72.

¹²⁷ Salvador Brau, Historia de Puerto Rico. As quoted by Loida Figueroa, p. 69.

The estimate is based on archeological findings of pre-Columbian communities.¹²⁸ The main causes for the disappearance of the Indian can be assigned to migrations, deaths, and assimilation. This is more evident in the absence of ethnic diversity in modern Puerto Rico. The island ranks seventh among the top nine countries/areas of the world in racial homogeneity with ninety-eight percent homogeneity.¹²⁹ The fact takes on added importance when the relation between political instability and ethnic diversity is established.

The 16th century was not an impressive period of growth for the island. Its geographical location took on added importance as Spain faced European rivals for its American possessions. The island became a strategic bastion, a defensive key in Spain's strategy for continuing its dominance of the Caribbean. Accordingly, in 1538, work began on the construction of the San Felipe del Morro Castle (El Morro) and La Fortaleza.¹³⁰ Both installations were designed to protect the approaches into the Bay of San Juan. The cost for the construction of the forts forced the Spanish authorities to transfer an annual sum from its Treasury in Mexico to cover the military expenses in Puerto Rico. This subsidy was known as the "Situado Mejicano."¹³¹ For some scholars and students the Mexican subsidy has a negative effect in the development of Puerto Rican society. The historian Loida Figueroa says:

¹²⁸ The source of the estimated native population is the well known Puerto Rican archeologist, Ricardo Alegria, quoted by Loida Figueroa.

¹²⁹ Political Handbook of the World. 2008.

¹³⁰ Currently it's the official residence of the Governor of Puerto Rico and the oldest executive mansion in the New World.

¹³¹ The subsidy from the Royal Treasury of Mexico transferred to Puerto Rico from 1589 to 1811 was a metropolitan affair which did not benefit directly the population, but the Spanish commercial sector.

“... it taught Puerto Ricans to depend on external resources and to neglect internal ones, worst of all, it (the Mexican subsidy) created in the emerging nation, a beggars conscience, one which survives to our day.”¹³²

A somewhat less emotional and more objective analysis of the Mexican subsidy and its influence reveals that the effects of it did not extend to the general population. It was a metropolitan transaction, implemented to benefit metropolitan interest. The subsidy was in force from 1589 to 1811, but in countless years the money fell into the hands of pirates and filibusters.¹³³ During the forty years in which the subsidy was assigned to the Royal Treasury in Peru (1643-1683), it was seldom received in Puerto Rico.¹³⁴ To equate the Mexican subsidy with the United States Federal transfers of funds is to miss the purpose of the “Situado”. Its sole purpose was to meet Spanish military obligations in the island, such as salaries and expenses of the military garrison. The island’s commercial sector, especially in San Juan benefited from the military expenditures, but not the rest of the population.

The position of the island in the defensive configuration of the Spanish Empire in America was the dominant factor in its political and economic development during the three centuries of its existence. It explains the form of government established in the island. From 1582 to the end of Spanish sovereignty over the island in 1898, the governorship was in the hands of a military figure, the Captain-General, who was the

¹³² See Loida Figueroa, p. 84 (author’s translation).

¹³³ Arturo Morales Carrion, Puerto Rico and the Non-Hispanic Caribbean. (University of Puerto Rico, 1971), p. 47.

¹³⁴ Aída Caro in Arturo Morales Carrión, Puerto Rico, p. 14.

civil and military authority in the island. As a result, government was highly centralized and authoritarian, pretty much as it is today in Puerto Rico.

By 1808, the effects of the French Revolution reached the Spanish colonies in America when Napoleon Bonaparte forced upon Spain his brother Joseph Bonaparte as King of Spain. The instability which followed paved the way for the wars of independence in the colonies of Spanish America. While Puerto Rico did not embark on the road to independence as the other colonies did, the period can be seen as the emergence of the Puerto Rican nation.

In the absence of the deposed Bourbon King, the provinces in Spain which were not under the control of the French constituted a “Junta Suprema” (Supreme Council) to govern until the return of the rightful monarch. For that purpose, including the colonies, to draft a constitution in Cadiz in 1809. In Puerto Rico, the opportunity to participate in peninsular politics was welcome and two opposing tendencies emerged, the Liberals represented by “criollos” (those born in the island of Spanish parents), and the conservatives, represented by Spaniards born in the Iberian Peninsula (Peninsulares). So, it’s not unknown in Puerto Rico to debate native and non-native issues. In Puerto Rico today there is still a clear difference between natives and non-native, even among Puerto Ricans that are born and raised in the continental United States.¹³⁵

The island was organized in five municipalities, and each of them had to select a candidate to the Supreme Council. The Captain-General, as president of the Provincial Electoral Board, would make the selection from the five candidates submitted by the

¹³⁵ The conflict with Neuoricans (Puerto Ricans born and/or raised in New York City; but usually includes all fifty states) and native Puerto Ricans.

towns. The selection fell on Ramon Power y Giralt, a Spanish naval officer and a criollo, born in San Juan. As delegate from the island, Power received instruction from the towns. The instructions were essentially demands for redress or reforms. These demands were for political, social and economic reforms and reflected the liberal ideas common to that period. One town, San German, in its instructions to Power, went as far as demanding the right to separate and form an independent government for the island if Spain did not reform its system of government.¹³⁶ These demands for reforms of the colonial relationship were the first manifestations of a uniquely Puerto Rican way of solving its political problems. The demands emphasized the particular character of the colony, one which was different from other provinces in the peninsula, and made the distinction between Spaniards born in Spain and Puerto Ricans born in the island. Historically, the demands for reforms within the Spanish system of government represented a compromise between Puerto Rican regionalism and metropolitan imperialism a solution which was too surface again in the next century under a different metropolitan power.

Ramon Power y Giralt was successful in securing reforms for the island, such as the extension of constitutional rights of Puerto Ricans and the curtailment of the military governor's absolute powers (*poderes omnimodos*). Power's achievements were even more notable in the economic aspect. He achieved the separation of economic matters from the executive, and the establishment of the Intendancy as the center of authority for economic and administrative matters. The first Intendent appointed by the crown, Alejandro Ramirez was responsible for setting up new economic regulations, which in

¹³⁶ Lidio Cruz Monclova, *Historia de Puerto Rico*. (Ed. Universidad de Puerto Rico, 1952).

time were to weaken and eventually dismantle the limiting system of mercantilism, thereby opening the island to free trade.¹³⁷ Ramirez recognized the importance of the American trade in the economic future of the island, as evidenced by his proclamation of 1815:

“Every protection and assistance will be extended to American citizens trading here, and should any doubts hereafter arise on the regulations, the decision shall be in favor of the American citizens.”¹³⁸

In the same year, the first American consul to the island, John Warner, was appointed, giving the United States its first official representation in the island.

The restoration of the Bourbon King, Ferdinand VII, in Spain in 1814, brought to an end the liberal experiment there and signaled the eventual return of absolutism. However, Puerto Rico benefited from Spain’s fears, caused by struggles for independence in the other colonies. The fear of contagion forced the crown to maintain a program of liberal policies for the island. The most significant of those policies was the “Real Cedula de Gracia of 1815” (Royal Decree). The Real Cedula went farther than Power and Ramirez had gone in economic matters. The new policy promoted a developmental program designed to lift the island out of its economic morass. The policy called for governmental intervention in the promotion of agriculture’s, industry and commerce. This official support paid dividends, raising the overall value of property in the island during the period of 1815-1819 to fourteen times the value of 1814.¹³⁹

¹³⁷ Arturo Morales Carrion, Puerto Rico and the Non-Hispanic Caribbean, pp. 133-43.

¹³⁸ Ibid., p. 141.

¹³⁹ Luis González Vale in Morales Carrión, Puerto Rico

An irony of the colonial relationship with Spain was that further liberalization in the peninsula did not benefit Puerto Rico. After 1820, the absolutism of Ferdinand VII was forced to accommodate liberal reforms, but those reforms were not extended to Puerto Rico. On the contrary, the need to isolate the island from the liberating winds which were blowing throughout the former empire justified the reestablishment of absolute government. Marshal Miguel de la Torre, defeated by Simon Bolivar at the Battle of Carabobo in Venezuela, was named Captain-General in 1823, with unlimited powers, governing as if the island was under siege.

The apparent contradiction in the Spanish policies for the island, from liberalism to conservatism is rooted in the political instability which Spain experienced during that period. The liberalism of 1810 was forced upon King Ferdinand VII on his return in 1814, but with the return of absolutism in Europe after 1815 the King began to re-impose personal rule in the peninsula. In Spain itself, the liberals were able to maintain an active opposition, and the colonies (Cuba and Puerto Rico) were politically ineffective in pressing their demands.

In the years following 1820, the activism of the Puerto Rican political leadership centered on the promised "Leyes Especiales" of 1812 (Special Laws). The metropolitan government had promised to institute special laws for the governance of the overseas colonies, laws which would take into account the particularities of each colony. While little was accomplished in that direction, the leadership continued to struggle for reforms. By mid-century, the three political currents, which to this day serve as the base for political parties in the island, were evident.

The conservatives supported assimilation to the peninsular government by maintaining the current colonial status. The liberals sought reforms in the relationship with the metropolis, while the separatist sector supported political independence. The least visible of the three groups were the separatist who, in the face of official persecution, had to operate in clandestine ways.

The separatist had various well-founded complaints against the Spanish government. The repressive nature of the military government, the failure to establish liberal economic policies for the island, the refusal by Spain to abolish slavery, and above all, the sense of inferiority that the colonial system imposed on Puerto Ricans, were sources of discontent in the period of 1850's.¹⁴⁰ The past experiences showed the separatist that it was futile to expect reforms from Spain, and the only method left was the armed uprising.

The pro-independence forces struck in 1868. In September of that year, a revolutionary movement led by dissatisfied coffee planters took over the small town of Lares in the western mountains area. The rebels installed a provisional government in the town, declaring the independence of Puerto Rico. When the rebel forces moved to the next town, San Sebastian, they were met by superior Spanish forces. In the encounter with the government forces, the revolutionaries were routed and the movement was defeated. The "Grito de Lares", as the event is known, became a symbol of the Puerto Rican struggle for independence.¹⁴¹ Every year, on September 23, the various pro-

¹⁴⁰ Very much, the same colonial policy as under the United States. Franz Fanon makes an excellent point about the sense of inferiority of the colonized people in his book "The Wretch of the Earth."

¹⁴¹ The importance of the Grito de Lares does not rest on its success or failure, but as a symbol of Puerto Rican resistance to the metropolis.

independence groups gather in Lares to commemorate the historical event that challenged the metropolitan power.

There are various reasons for the failure of the revolt in Lares. Among the causes for the failure, one can point out the most important ones:

- a. The movement was cut off from its leader. The intellectual leader, Dr. Ramon Emeterio Betances, had been detained by the authorities in nearby St. Thomas, on the advice of the Spanish authorities.
- b. The rebels had lost the element of surprise and were poorly equipped for military action. The Spanish authorities were aware of the group's plans, forcing the rebels to act earlier than planned. Their equipment was limited to a few rifle and machetes.
- c. There was not widespread support for the revolutionaries. The liberal sector was not involved nor was the lower classes.
- d. The territorial size of the island and the nature of the Spanish government there made official control effective in dealing with isolated revolts.

In comparison, during the same month and year, the Cuban revolutionaries raised in revolt in the "Grito de Yara" a revolt which lasted ten years ending in 1878. None of the aforementioned causes for the failure in Puerto Rico were present in Cuba.

After the Lares experience, and encouraged by political reform within metropolitan Spain itself, political life in the island entered a new stage with an electoral process and active political parties. The first elections were held in 1872, with the Liberal Reformist Party and the Unconditionalist (Incondicionales) Party as contenders.

The Liberals, supported by the Creole landed class, professionals and the intellectual elite sought reforms for the island as a political entity of Spain. The Incondicionales, supported by the peninsular aristocracy and merchant class, favored the maintenance of the status quo, the colonial relationship in which power in the island was the monopoly of Spaniards. While the electoral process was one riddled with corruption and fraud, it allowed the emergence of an organized politically active opposition.

The failure of the Liberal-Reformist in securing reforms paved the way for an increase of autonomist sentiment among party members. By 1886, the spokesman for the autonomist was Roman Baldorioty de Castro.¹⁴² The group's position was in favor of political autonomy in the model of Canada's relationship to Great Britain. In 1887, the group formed itself into a party, the "Partido Autonomista Puertorriqueno" (Puerto Rican Autonomist Party). The party sought to gain autonomy in administrative and economic affairs while maintaining political ties with Spain.

The Conservatives (Incondicionales) immediately attacked the autonomist, accusing them of covertly leading the island toward independence from Spain.¹⁴³ The Spanish governor, General Romulado Palacios, sided with the Conservatives, unleashing and sanctioning a systematic campaign of persecution, repression and torture against the "Autonomistas" (autonomist followers). The government's actions are remembered as "La Era del Componte", and are well documented in Lidio Cruz Monclova's "El Anon Terrible."¹⁴⁴

¹⁴² Luis González Vale in Morales Carrión, Puerto Rico. P.116.

¹⁴³ Today the Statehood Party (PNP) uses the same strategy when debating the political status with the Autonomist Party (PPD).

¹⁴⁴ Lidio Cruz Monclova, Historia del Año Terrible de 1897 (Río Piedras, Puerto Rico, 1970).

With the removal of Palacios as governor, the Autonomists resumed their activities, and upon the death of their leader, Roman Baldorioty de Castro, the leadership passed to Luis Munoz Rivera. It was Munoz Rivera who brought forth the idea of entering into an alliance with the peninsular party. These coalitions are very common in parliamentary systems of government. It makes possible, through alliances, the formation of majority blocks. Political gains and advantages for otherwise minority parties are the rewards for entering into coalitions. The Puerto Rican deputies, elected by the Autonomist Party, would enter into a coalition with a strong Peninsular Party. In exchange for their support, the Autonomist would demand a pledge from the major party for support of autonomy for the island.

In 1897, a pact was formalized between the Autonomist Party and the Partido Liberal Dinastico of Spain, led by Praxedes M. Sagasta. The party of Sagasta pledged itself to “secure self government for the island.”¹⁴⁵ The island’s Autonomist agreed to become a provincial branch of the much larger peninsular party.

As a result of the pact, the Autonomistas of the island became divided. The dissenting group, led by Don Jose Celso Barbosa, a Black medical doctor and graduate of the University of Michigan, claimed that by entering an alliance with a pro-monarchy party in the peninsula, the Autonomist had forsaken their goal of autonomy under a republican form of government. The split led to the departure of Barbosa and his followers from the party and the establishment of another competing pro-autonomy party.

¹⁴⁵ Loida Figueroa, Breve Historia de Puerto Rico.

Recently a distinguished Puerto Rican political analyst wrote that it was Spanish racism which forced the split among the autonomists, because Sagasta insisted in keeping the Blacks from active politics in a potential autonomous Puerto Rico. For Barbosa that was not acceptable.¹⁴⁶

The anarchist movement which became very active towards the end of the century, worldwide, brought the island closer to its dream of self-government when an anarchist assassinated Spain's Prime Minister, Antonio Canova Del Castillo in 1897. Praxedes M. Sagasta was called to form a new government, and a month later, by royal decree, Puerto Rico was granted self-government under the Autonomy Charter of 1897.

The Charter established a parliamentary system of government for the island, with an Insular Parliament of two chambers. The upper chamber had fifteen members. Seven were appointed by the Spanish Crown and eight were elected. Some requisites for membership were property owner, president or former president of the Puerto Rican bar, the Chamber of Commerce, Dean of the Cathedral. The members represented the economic and social elite of the island which was dominated by Spaniards. It is in this composition of the membership that one can expect a reflection of metropolitan interest. The lower chambers thirty-five members were all elected by popular vote, had a closer identification with the island, its people, and their aspirations. Executive power was vested in a governor whose first loyalty was to the crown, which appointed him and whom he represented.

¹⁴⁶ Juan Manuel García Passalacqua, El Nuevo Día, San Juan, January 15, 1985.

The Autonomy Charter stood as a definite reform in the colonial relationship. It granted a measure of self-government with Puerto Rican representation in the decision making process in the island, as well as in the metropolis. Full constitutional protections were extended to the island, and international recognition was extended in the right of the Puerto Rican government to participate in commercial treaties. However, nowhere in the document did Spain renounce its authority and sovereignty over the island¹⁴⁷. The extension of autonomy to Cuba and Puerto Rico must be seen as a final attempt by the metropolis in maintaining its control over the colonies, and a way of accommodating Puerto Rican demands with those of Cuba, where a war of independence was being fought.

The extension of autonomy by the Spanish government, by royal decree and without the approval of the Cortes was an unconstitutional act. This was evidenced by the inclusion of additional Article 2 in the Charter, which read:

“Once the present constitution for the islands of Cuba and Puerto Rico is approved by the Cortes of the Realm, it can only be modified by law on petition of the insular parliament.”¹⁴⁸

When the Spanish Cortes reconvened, the approval of the Autonomy Charter became a moot question. Eight days after Puerto Rico’s parliament convened, the United States

¹⁴⁷ The Declaration of motives in the Autonomy Charter, in Carmen Ramos de Santiago, El Desarrollo Constitucional de Puerto Rico. (Universidad de Puerto Rico, 1973).

¹⁴⁸ Ibid.

invaded¹⁴⁹ the island, ending almost four hundred years of Spanish sovereignty over Puerto Rico.

B. The American Colony

That “Splendid Little War,”¹⁵⁰ the Spanish-American War, brought Puerto Rico into the American realm as war booty. Robert Pastor, the former U.S. State Department officer, writing about the island and its problems, states that the United States acquired the island in 1898, almost by accident.¹⁵¹ His words leave the reader with the idea that since American military forces were operating in Cuba, once that operation ended the American forces on their way home decided to stop in Puerto Rico and seize the island from Spain. Pastor’s theory of accidental acquisition may serve as a self serving claim for the American government, but the historical facts tell a different story. Edward Berbusse, the historian, notes that as early as 1823, the Monroe Doctrine envisioned the ouster of Spain from its Caribbean possessions, Cuba and Puerto Rico.¹⁵² During the Presidency of Ulysses S. Grant the United States made various offers to purchase Cuba and Puerto Rico from Spain¹⁵³.

¹⁴⁹ Some leaders (Senator Norma Burgos-PNP) of the Statehood Party have stated that it was an invitation not an invasion.

¹⁵⁰ Jorge Heine and J.M. Garcia Passalacqua, The Puerto Rican Question. (New York: Foreign Policy Association, 1983), p. 7.

¹⁵¹ Robert Pastor, The Problem of Puerto Rico (New York: The New Republic), p. 28.

¹⁵² Edward J. Berbusse, The United States in Puerto Rico, 1898-1900 (Chapel Hill, N.C.: University of North Carolina Press, 1966), p. 59.

¹⁵³ Arturo Morales Carrión, Puerto Rico.

Not too long before the Spanish-American War, the United States foreign policy was influenced by Alfred T. Mahan's theory of national greatness through naval supremacy. Mahan's words were "Whether they will or no, Americans must begin to look outward". Mahan, a naval officer and a serious student of history, found a close relation between the great empires of the past and their naval capabilities, not only for war, but for the promotion of commerce also. For him, the Caribbean Sea was to be for the United States what the Mediterranean had been for Rome, the basis for imperial supremacy. In 1890, he wrote words which were prophetic:

"The United States will have to obtain in the Caribbean, stations fit for contingent or secondary bases of operation."¹⁵⁴

For Mahan, island outpost like Malta in the Mediterranean Sea was the key to supremacy of a maritime power. Cuba and Puerto Rico, in the Caribbean, could become the American outpost necessary for American supremacy in the hemisphere.

Another fact towards debunking the accidental theory of acquisition is the role played by Puerto Ricans, like Dr. Julio Henna, in convincing American authorities that Puerto Rico should have been included in military involvements planned by the United States against Spain. The Henna group was very active, and was successful in getting the attention of the then Assistant Secretary of the Navy, Theodore Roosevelt¹⁵⁵.

1. Military Government

¹⁵⁴ Alfred T. Mahan. The Influence of Sea Power upon History. (New York: Hill & Wang, 1957), p. 39.

¹⁵⁵ Berbusse, op. cit., pp. 78-79.

The United States Army invaded Puerto Rico on July 25, 1898, landing in the south coastal town of Guanica. General Nelson A. Miles, the Commanding General of the American forces, issued a proclamation to the Puerto Rican people, which read in part:

“...They (U.S. Forces) bring you the armed support of a free nation, whose great powers rests in her justice and humanity for all who live under her protection... We have not come to bring war against a people which have been oppressed for centuries; but...to bring protection, not only to you, but also to your property, promoting your prosperity and bestowing upon you the guarantees and the blessings of the liberal institutions of our Government.”¹⁵⁶

Eighteen day later, August 12, Spain surrendered to the invading forces, and the civilian population stood ready to receive the blessings and the promises mentioned by General Miles in his proclamation.

The hope and aspirations for a better relationship with the new metropolis vanished with the establishment of a military government for the island. From October 1898 to May 1900, the island was governed by the United States Army Generals.

The military government in the island, including the short period with General Miles as commander of the occupations forces, lasted twenty months. During that period, serious efforts were made by the military to better the social and economic conditions of the island. Reforms were made in the field of public safety, health, education, public administration, the administration of justice and church state relations.¹⁵⁷ Military rule

¹⁵⁶ *Ibid.*, pp. 78-79.

¹⁵⁷ Berbusse and Carmen Ramos de Santiago, *Gobierno de Puerto Rico*. (Río Piedras, Puerto Rico: Editorial Universidad de Puerto Rico, 1978).

can be seen in that period of the Puerto Rican relationship with the United States as a period of transition, one in which people of different cultural and historical backgrounds come to know each other. The generals failed in meeting the demands of the island's political leaders for a continuation of the autonomy which the island had experienced toward the end of Spanish rule. But the generals only carried out policies set by the US Congress, so the real failure belonged in the United States Congress.

2. Civil Government: The Foraker Act, 1900-1917

For the United States Congress, the victory over Spain in the Spanish-American War brought the problem of how to manage the political relationship with newly acquired possessions. Article IX of the Paris Peace Treaty which ended the war stated that:

“The civil rights and the political condition of the natural inhabitants of the territories here ceded to the United States will be determined by the Congress of the United States.”¹⁵⁸

This article will have a stern impact upon U.S.-Puerto Rico relations. The new territories, besides Puerto Rico, were the Philippine Islands and Guam. In the Philippines, the resistance to American rule by pro-independence forces under the leadership of Emilio Aguinaldo justified the continuance of military government, but in Puerto Rico the situation was different. The political forces had realigned themselves to meet the new

¹⁵⁸ Treaty of Paris in Ramos de Santiago, Desarrollo Constitucional de Puerto Rico, *op. cit.* This article clearly states that the civil Rights of the natural inhabitants will be determined by the US Congress. This article will prove crucial in the exclusion of non-native voters in a final plebiscite for Puerto Rico.

situation. The Republican Party led by the autonomist Don Jose Celso Barbosa,¹⁵⁹ sought incorporation of the island as a state of the union. The Federalist Party, led by Luis Munoz Rivera, also an autonomist, also wanted to incorporate the island with the union, as the party's name implied.¹⁶⁰

Congress saw the problem of Puerto Rico as not only political, but one including economic and cultural considerations as well. The island could be seen as a potential competitor in warm-climate products and a potential source of cheap labor which would hurt American labor. The cultural and racial differences also weighed heavily on the Congressional decision. In Congress, the parties were opposed on how to deal with the newly acquired colonies. The Democrats, who had opposed the war with Spain, disliked attempts to create a colonial empire. The Republicans, on the other hand, in an expansionist mood, sought to keep the colonies and at the same time maintain a vestige of democracy in the new relationship. The economic, cultural, and racial differences which influenced decisions on government for the colonies were more the product of fear about the Philippines than of Puerto Rico. The economic potential of the Philippines was greater than Puerto Rico's as were the cultural and racial differences when compared to Puerto Rico's. Yet the concern for the Philippines had grave consequences for the relationship of Puerto Rico with the United States.

¹⁵⁹ Later on, will become the leading voice for statehood, considered the father of statehood in Puerto Rico, today.

¹⁶⁰ Ramos de Santiago, Gobierno de Puerto Rico.

The Foraker Act, “a temporary law to provide revenues and civil government for Puerto Rico”¹⁶¹ was the answer that the United States Congress found for the Puerto Rican problem. The Act provided for modified republican form of government. The executive branch would be headed by a governor, appointed by the U.S. President. The legislative branch would consist of an Executive Council of eleven member, six Americans and five Puerto Ricans, all appointed by the President. This Council, obviously representative of the metropolis, was lauded by one of its members (and later president of the American Political Science Association) as “the most original political institution created in the United States for its dependencies.”¹⁶² Popular representation was achieved in the composition of the lower chamber, the House of Delegates, whose thirty-five members were elected by the island voters in elections every two years.

The Judicial Branch, of which the island’s Supreme Court was the most important tribunal, also came under the control of the President of the United States, who named the Justices and the Chief Justice of the Court. The problem of citizenship was solved by making Puerto Ricans citizens of Puerto Rico.¹⁶³ In view of the fact that Puerto Rico did not have any international recognition as a separate political unit, its citizenship was devoid of recognition as well, leaving the Puerto Ricans in a virtual limbo as far as citizenship was concerned.¹⁶⁴ Although the legal status of “Puerto Rico citizenship” has

¹⁶¹ Ramos de Santiago, *Desarrollo Constitucional de Puerto Rico*, p. 57.

¹⁶² William F. Willoughby, “The Executive Council of Puerto Rico”. *American Political Science Review*, Vol. I., No. 4, August 1907, pp. 561-82.

¹⁶³ Puerto Rican citizenship today has caused unprecedented problems for the U.S. State Department and the Department of Justice.

¹⁶⁴ But today there is a new situation with Puerto Rican citizenship. The Administration of Gov. Anibal Acevedo Vila 2004-2008 State Department certified the existence of Puerto Rican citizenship. Also various

not changed in those most basic regards since its creation in 1900, we now live in a world that is thankfully far removed from the one in which the Foraker Act was passed. This distance can, however, leave us ignorant of just how and why the Puerto Rican citizenship defined in that law came to be. In brief, this peculiar “citizenship” was spawned by American turn of the century racism.

Included in the Foraker Act were eight points which were to regulate the economic relationship of the island with the United States, and to this day these points serve as the basis for the Puerto Rican Federal Relations Law.¹⁶⁵ These are:

1. Puerto Rico is included into the tariff system of the United States.
2. Puerto Rico will enjoy free trade with the United States.
3. The United States monetary system will operate in Puerto Rico.
4. Federal shipping regulations as applicable to coastal shipping will be applied to Puerto Rico.
5. United States Internal Revenue Laws will not be applicable to Puerto Rico.
6. Export duties will not be paid in Puerto Rico. (Duties will be collected in the United States and returned to the Government of Puerto Rico at the end of the fiscal year)
7. The public debt is limited to seven percent of the value of property. (Later this was amended)

pro-independence followers resigned their US citizenship and retained Puerto Rican citizenship. See Ramirez Ferrer v. Mari Bras, Supreme Court of Puerto Rico, No. CT-96-14 (November 1997).

¹⁶⁵ Carlos J. Smith, Estructuras Políticas de Puerto Rico. (San Juan, Puerto Rico: Editorial San Juan, 1973), pp. 43-44.

8. Statutory law, approved by Congress, except Internal Revenues laws will be applicable in Puerto Rico, except when in their nature, the laws cannot be applied.

The Foraker Act was not welcomed by Puerto Rican leaders. In the words of Luis Munoz Rivera:

“... it is a law unworthy of the United States who imposed it and of Puerto Rico who must live under its burden. It does not have a trace of democratic thought.”¹⁶⁶.

On the other hand, William F. Willoughby, writing in the American Political Science Review in 1907, said the following about the Foraker Act:

“The problem is devising forms of government for the insular dependencies that came to the United States as a sequel to our war with Spain presented, among others, this very special aspect: that the governments to be created should at one and the same time provide for a maximum of efficiency and carry with them the largest possible grant to the people governed of powers to manage their own affairs.”¹⁶⁷

Willoughby expressed the general feeling of Americans that the law was efficient and that it granted the people power to manage their own affairs.

The little political power which was left for Puerto Ricans to exercise (to elect their municipal government, the members of the House of Delegates, and the Resident Commissioner of Puerto Rico in Washington who sat in the U.S. House of

¹⁶⁶ María D. Luque de Sánchez, La Ocupación Norteamericana y la Ley Foraker. (Río Piedras, Puerto Rico: Universidad de Puerto Rico, 1980), p.138 {authors translation}.

¹⁶⁷ William F. Willoughby, p. 561.

Representative, with voice and no voting power) was dominated during the first four years (1900-1904) by the pro-statehood Republican Party. For the 1906 elections, a new party, Partido Union de Puerto Rico (Unionist Party), led by Luis Munoz Rivera, entered the race, winning that year and the subsequent elections until 1924. The Unionist, in their first years of activity, attracted all sectors by including the three alternatives statehood, independence and self-government or autonomy in the party's political program. The fifth point (Base Quinta) stated:

“We understand that it is possible that Puerto Rico could become a state of the American Union, a means by which we can achieve self-government. We also declare that Puerto Rico could become an independent nation under the protection of the United States and achieve the self-government we need.”¹⁶⁸

Eventually the party dropped statehood and independence from its political program, retaining self-government.

The constitutional test of the Foraker Act came with the Insular Cases, a series of litigations heard by the United States Supreme Court concerning the payment of the customs duties.¹⁶⁹ The Insular Cases, of course, deal with one important episode in the history of expansionism, the aftermath of the Spanish-American War of 1898, which

¹⁶⁸ Bolívar Pagan, Historia de los Partidos Políticos Puertorriqueños (San Juan, Puerto Rico: Librería Campos, 1972), p.107.

¹⁶⁹ The Insular Cases, strictly speaking, are the original six opinions issued in 1901 involving the status of the territories acquired as a result of the Treaty of Paris: *De Lima v. Bidwell*, 182 U.S. 1 (1901); *Goetz v. United States* 182 U.S. 243 (1901); *Dooley v. United States* 182 U.S. 222 (1901); *Armstrong v. United States* 182 U.S. 243 (1901); *Downs v. Bidwell* 182 U.S. 244 (1901); and *Huus v. New York and Porto Rico Steamship Co.*, 182 U.S. 392 (1901). However a series of cases which involved the status of the territories of the United States, culminating in *Balzac v. United States* 258 U.S.312 (1922). See also Juan R. Torruella, The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal (1985). If Judge Sonia Sotomayor is confirmed to become the 111 Justice of the US Supreme Court, Puerto Rico will have a Judge who knows the political and legal relationship of the island to the United States and most of all understand the effects of the relationship.

represented, among other things, the forthright decision by American Ruling elites and the electorate in the 1900 presidential contest between William McKinley and William Jennings Bryan to join European countries in becoming a frankly imperialist power. This meant, among other things, the capture and subsequent politico-legal control by the United States of America of hitherto foreign territory that would not, in any way, be viewed as a potential member of the organic entity known as the United States of America. The Insular Cases should be placed not only in the context of American expansionism but also within the sadly rich history of American racism or perhaps more to the point, the history of American “ascriptivism” the view that to be a true American one had to share certain racial, religious or ethnic characteristics.¹⁷⁰ This court also authored the egregious opinion in *Plessy v. Ferguson*¹⁷¹ which can be understood only against a background assumption that it was entirely reasonable for racially superior whites to wish to avoid the prospect of association as presumptive social equals with African-Americans. Out of the Insular Cases, the United States Supreme Court established the doctrine of incorporation and non-incorporation. Authorship of the doctrine had been assigned to Felix Frankfurter, then law clerk¹⁷² but the true father was

¹⁷⁰ Rogers Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (1997) Smith notes for example, the presence of an influential ideology, especially prevalent during the period of the Insular Cases, that America was by rights a white nation, a Protestant nation, a nation in which true Americans were native born men with Anglo-Saxon ancestors. Smith specifically discusses the treatment of Puerto Rico (and Puerto Ricans) pp.438-439.

¹⁷¹ 163 U.S. 537 (1896).

¹⁷² Stan Steiner, *The Islands* (New York: Harper and Row, 1974).

Harvard professor Abbot Lawrence Lowell¹⁷³. He distinguished between those territories “appurtenant to but not a part” of the United States (Puerto Rico, the Philippines, and Guam). And those previously acquired which were parts of the United States. The incorporated territories, those belonging to and a part of the United States were organized under the regulations set forth in the Northwest Ordinance of 1787,¹⁷⁴ in which the future incorporation of the territory as a state of the Union was recognized by Congress. That intention by Congress was absent in the acquisition of Puerto Rico and made Puerto Rico an unincorporated territory, one which fell under the governing and legislating powers of Congress as provided by the territorial clause of the U.S. Constitution.

In sum, Congress was empowered by the Court “to locally govern at discretion.”¹⁷⁵ In other words, the United States could hold Puerto Rico and the insular territories indefinitely, without ever making them “a part of the United States” and without holding out the promise of eventual statehood or according their people the full panoply of constitutional rights enjoyed by the citizens of the states. These cases will also prove to be crucial in this research.

The absence of a clear position on the matter of citizenship and of effective contribution in their political destiny moved the Puerto Rican leadership to demand reforms from Congress, as once they had done with the Spaniards. The phantom of the Philippines, racially different and a potential source of migration to the United States, slowed Puerto Rican efforts in Congress, for congressmen feared that reforms extended

¹⁷³ Heine and Garcia Passalacqua, p. 9.

¹⁷⁴ Henry Steele Commager, Documents of American History. (New York: Meredith Corp., 1968). pp. 128-132.

¹⁷⁵ *Downs v. Bidwell*, 182 U.S. 244 at 341-342.

to Puerto Rico would have to be extended to the Philippines also. This concern was illustrated by Senator Turner of Washington, as in his statement during the Senate's discussion of the Foraker Act:

“it has been found necessary to make a vicious and tyrannical precedent toward Puerto Rico, which will hereafter bar out the products of the Philippine Islands.”¹⁷⁶

Once Congress had settled the political destiny of its largest colony by the promise of eventual independence for the Philippines with the Jones Act 1916, it then turned to Puerto Rico and its fate within the American political system.

Although the legal status of “Puerto Rican citizenship” has not changed in the most basic regards since its creation in 1900.¹⁷⁷ We live now in a world that is thankfully far removed from the one in which the Foraker Act was passed. This distance can, leave us ignorant of just how and why Puerto Rican citizenship was spawned by American turn of the century racism.

3. The Jones Act of 1917

The Jones Act of 1917, the second Organic Act for Puerto Rico, erased many of the areas of discontent created by the Foraker Act. The new law included a Bill of Rights, something that the Foraker Act had not included. It separated the legislative function from the executive by eliminating the Executive Council and creating in its place a Senate. The separation of powers became a new instrument of government for the island

¹⁷⁶ Jose Cabranes, Citizenship and the American Empire (New Haven, Conn.: Yale University Press, 1978), pp. 38-39. Cabranes sustains that US citizenship is an excellent tool to impose US hegemony in Puerto Rico, just as the Romans did upon their conquest of barbarian lands.

¹⁷⁷ Puerto Rican citizenship will be a very controversial issue for the U.S. State Department with many pro-independence supporters renouncing their U.S. citizenship and retaining the Puerto Rican.

due to the fact that the experience in the Puerto Rico had been with a fusion of power under a parliamentary system of government. The Senate was to be elected by popular suffrage and was composed of fourteen senators elected from districts, plus five senators elected at large. The lower house (House of Representative) also elected by the popular vote, had thirty-five members elected from representative districts, and four elected at large. The President retained control of education and justice by appointing the Commissioner of Education and the Supreme Court Justices.¹⁷⁸ Metropolitan control over the legislature was strengthened by adding a presidential veto over legislative acts. It also rested on the governor, who continued to be a presidential appointee, and the congressional veto.¹⁷⁹

The Jones Act ended the uncertainty of the citizenship question by extending American citizenship to Puerto Ricans. While American citizenship solved a problem, it also paved the way for future problems among groups in the island. For some in Puerto Rico, the extension of citizenship in 1917 was a self serving act of the United States, for it gave to the U.S. an increase of manpower for the war effort which was near.¹⁸⁰ In fact, as Jose A. Cabranes points out in his legal study of the process, the extension of American citizenship to Puerto Ricans in 1917 was not designed to secure more soldiers for the U.S. because their status of “protected nationals” under the Foraker Act required Puerto Ricans to serve in the armed forces of the protecting country if asked to do so by

¹⁷⁸ Education is an excellent instrument for political socialization which eventually was a key to the Americanization of the people of Puerto Rico. Also Puerto Rico with a civil law system was and is in conflict with US common law, although both legal systems coexist today.

¹⁷⁹ Jones Act in Ramos Santiago, Desarrollo Constitucional de Puerto Rico, pp.76-109.

¹⁸⁰ José Cabranes, pp. 15-16.

that country.¹⁸¹ The arguments in 1917 are of little importance now. What are more important are the present consequences of American citizenship, consequence which will be discussed in subsequent chapters.

4. The Twenties and the Thirties

While the new government established by the Jones Act brought remedies to old and valid complaints, Puerto Rican political leaders did not accept it as the final solution to the relationship. They kept the pressure on Congress to remedy the situation, demanding more self-government, or statehood, or independence. When the autonomist forces weakened after the 1924 elections, the pro-statehood forces filled the vacuum, gaining ascendancy in island politics in 1932. This period is also characterized by the growth of American owned sugar corporations. The corporations became the biggest land owning group in the island despite a 1900 Congressional law which limited corporations to ownership of no more than five hundred acres in Puerto Rico. The exploitation of the workers and the stagnation of a one crop economy led to the revival of independentista sentiments on the island and the emergence of a radical movement, the Nationalist Party.

The Nationalist Party, made up of dissidents from the old Unionist Party, came under the leadership of charismatic Pedro Albizu Campos in 1930. Albizu Campos, a Harvard educated lawyer, built a strong and active following with his call for immediate independence, and the immediate incorporation of Puerto Rico into the family of free Latin American nations. But charisma and the call for patriotism were not enough to capture the voters and their support at the polls. After a dismal showing in the 1932

¹⁸¹ Ibíd.

elections,¹⁸² Albizu Campos and the Nationalist opted for violent means to achieve their goal of independence. This choice alienated a great part of the population, led to his incarceration, and brought the eventual disappearance of the Party as a force in Puerto Rican politics.

The decades of the thirties also saw the strengthening of the U.S. Federal government's presence by the introduction of economic relief programs,¹⁸³ instituted under the New Deal.

A coalition of the pro-statehood party, the Republicans, and the Socialist Party, a moderate pro-labor party won the elections in 1932 and 1936; it was a strange coalition, for it united the sugar barons and the cane and mills workers.¹⁸⁴

5. Luis Munoz Marin and the Populares

Munoz Marin, the son of Autonomist leader Luis Munoz Rivera, first entered politics on the side of the workers, joining the Socialist Party in the early twenties. After a lengthy stay in New York, Munoz Marin returned to the island and joined the Liberal Party, an autonomist party. In 1935, after the assassination of the island Police Chief Francis W. Riggs by members of the Nationalist Party¹⁸⁵, U.S. Senator Millard

¹⁸² Carmen Ramos de Santiago, Gobierno de Puerto Rico, p. 92.

¹⁸³ That will play a key role in future Puerto Rican politics. See Susan M. Collins, Barry P. Bosworth and Miguel A. Soto-Class, The Economy of Puerto Rico. The Bookings Institution and the Center for the New Economy, 2006.

¹⁸⁴ Carmen Ramos de Santiago, Gobierno de Puerto Rico, p. 92.

¹⁸⁵ The assassination of Col. Riggs was a reaction to the Massacre of Rio Piedras. See. Francisco Scarano, Historia de Puerto Rico: Cinco Siglos de Historia, MacGraw Hill, San Juan, Puerto Rico 2007. p. 695.

Tydings¹⁸⁶ of Maryland presented a proposal to the Senate to grant independence to Puerto Rico after a plebiscite which was to be held in 1937. The bill was punitive in nature. Economic adjustments were to be made in a four year period, after which the island would stand alone. In comparing this bill with the 1935 one in which independence for the Philippines was programmed for a ten year period, one finds that the Tydings bill was unfair to the island.

Munoz Marin a Liberal Party Senator opposed the bill, while the Party leadership supported it. The internal dispute over the bill led Munoz Marin's expulsion from the party. After his departure, Munoz Marin worked to create a new political organization. In 1939, the Partido Popular Democratico, with Munoz Marin as its president was registered. The Party ran in the 1940 elections, obtaining a majority in the Senate, and with enough seats in the House of Representatives to arrange a coalition with the Liberals. The following elections, from 1944 to 1964, saw the total dominance of Munoz Marin and his Populares over Puerto Rican politics. After Congress approved a law granting Puerto Rico the right to elect its governor, Munoz Marin became the first Puerto Rican elected governor in the island's history in 1948.¹⁸⁷ For the first time in over 450 years the people of Puerto Rico were going to elect who would govern them. The elected governor would name all members of his cabinet but the comptroller and the justices of

¹⁸⁶ Senator Tydings had a very close personal relationship with Francis W. Riggs. Tydings had recommended Riggs for the position of police Chief in Puerto Rico. See Scarano, p. 699.

¹⁸⁷ The United States Congress approved the Crawford-Butler Act (Public Law 362) known as the Elective Governor Law, in 1947. Jesus T. Pinero had been named by President Harry S. Truman to the governorship in 1946 becoming the first Puerto Rican governor, replacing the former governor Rexford. G. Tugwell, who resigned and recommended that a Puerto Rican be appointed governor.

the Supreme Court will still be named by the President. That meant that money and law will still be under the control of the United States.

The Populares attracted many pro-independence followers in the period 1939-1944. Its slogan of “Pan, Tierra y Libertad” (Bread, Land and Liberty) convinced many that independence was the goal of the Party. But after the electoral victory of 1944, Munoz Marin moved the Party away from the independence goal, and into the autonomist side. His efforts toward the development of a third alternative to the status question found expression in Congress’s approval of Public Law 600¹⁸⁸ in 1950. The law called for a new definition of the relationship between the island and the United States, one based on a compact relationship.¹⁸⁹ The relationship was to be based on the principles of mutual consent and constitutional government, although the US Federal Courts have been very inconsistent with the spirit of this law. The voters accepted the law in a referendum;¹⁹⁰ a Constitutional Assembly was elected by the voters, and when the new constitution was submitted to the people, it was also approved. Congress recommended some amendments to the constitution and also approved it.¹⁹¹

¹⁸⁸ Public Law 600, 64 Stat.319 (1950); 48 U.S.C.A. 371 b (1951) Gave Puerto Rico the right to draw its own constitution in the nature of a compact relationship with the United States.

¹⁸⁹ There have been various US Court decisions affirming that there is a compact relationship for example *Mora v, Mejias* 113 F. Supp.309; and others like *Americana of Puerto Rico, Inc. v. Kaplus* 368 F. 2nd. 431 that ruled that there is no compact relationship. This controversy has never reached the U.S. Supreme Court.

¹⁹⁰ Public Law 447, 66 Stat.327 (1952) Ratified the Constitution of Puerto Rico.

¹⁹¹ Congress objected to Section 5 and 20 of Article II. Congress interpreted that Section 5 limited the rights of individuals to send their children to public schools if the desired. Section 20 was one which various social rights, taken from the United Nations Declaration of Human Rights, were guaranteed to the people. Congress found those rights difficult to defend in court since the rights were dependent on the continuous economic growth of the island. Both sections were amended.

Fifty-four years after General Miles proclamation, the Commonwealth of Puerto Rico was officially established on July 25, 1952. The wide support that commonwealth status enjoyed in its first decades has now eroded and large sector of the population are not supportive of it, giving their support to alternative formulas, such as statehood.¹⁹² For the political parties, the unsolved status question is the most pressing problem of contemporary Puerto Rico, and a recurring theme in the islands political literature. Many of the islands problems and solutions are tied to the political status of Puerto Rico. But one fact is undeniable; the only political party that has been increasing in electoral support is the Statehood Party (PNP). The Independence Party (PIP) and Commonwealth Party¹⁹³ (PPD) have been constantly losing electoral support. It has become a contest to stop statehood. Statehood and Commonwealth are in a virtual tie in electoral support,¹⁹⁴ many factors are going to have a leading role for example non-native voters¹⁹⁵ who tend to support statehood.¹⁹⁶

¹⁹² The Partido Popular Democratico does not have today a political discourse to attract voters and/or supporters. Even its leadership is divided between those who support more sovereign powers and those who are pro-status quo.

¹⁹³ The Commonwealth Party (PPD) draws at least 3 percent of its voters from the Independence supporters who tend to vote for the status quo in order to reduce the electoral power of the Statehood Party (PNP). These voters are Independentistas that are discontent with their party leadership. The Independence movement in the island is fragmented into various small political organizations. The Independence Party was create in 1948 out of a division between don Gilberto Concepcion de Gracia and Don Luis Munoz Marin who were both members of the PPD. Don Gilberto Concepcion de Gracia left the PPD and in 1948 founded the Partido Independentista Puertorriqueno.

¹⁹⁴ In the last two plebiscites the Commonwealth Party and the Statehood Party have averaged 49% and 46% respectively. The Independence Party has averaged 3.4%. The margin of difference between the Commonwealth Party and Statehood Party is an average 3%.

¹⁹⁵ In Puerto Rico the US Census of 2000 indicated that 90.0% of the residents were born in the island. In a population of 3.8 million the number if people on the island not born in Puerto Rico is approximately 330,000. The US Census also indicates that 2.3% were born in a foreign country. This means that in 2000 the foreign population in the island was more than 85,000 and 6.8% were born in the continental US or other possessions. Some of these residents may be of Puerto Rican origin. The Pew Hispanic Center in 2010 indicated that there are 4.15 million Puerto Ricans in the continental U.S. some 200,000 more than on

The autonomous party (PPD) and the statehood party (PNP) are today in a state of equilibrium competing against each other electorally. From 1992 to 1996 the statehood party (PNP) was in control of the executive and legislative branches of government (also a majority of the municipal governments). The plebiscites of 1993 and 1998 were both won by the autonomous party (PPD) with a majority of 48.4% over 46.2% statehood. So, the electoral difference between the autonomous party and the statehood party is 2.4%. This concludes that a factor like non-native voters can shift the balance in favor of statehood. Although there is no research done on the status preference of non-native voters, it is well known among the people of Puerto Rico that foreigners are in favor of statehood for Puerto Rico.¹⁹⁷

In the 2008 elections the statehood party won by a land slide the governorship, the legislature and a majority of the municipal governments in the island. Also Governor Luis Fortuno nominated three justices to the Puerto Rico Supreme Court and the Senate has confirmed them as Justices of the Supreme Court. The Resident Commissioner in the US House of Representative Pedro Pierluisi also from the statehood party has been promoting a bill for a plebiscite in the next four years. So, the statehood party does have the electoral support to promote another plebiscite in the near future. But the issue about

the island. 2.8 million Puerto Ricans were born in the states and some 46,000 outside the U.S. and Puerto Rico.

¹⁹⁶ My observation and experience of the electoral process in the island indicates that foreigners tend to support statehood as was the case in Hawaii.

¹⁹⁷ It is well known among political scientist and the media that foreigners are statehood supporters. They are made US citizens in the island thus deriving a benefit from the colonial status of the island. In a pragmatic way you cannot ask people who benefit from the colonial status to decide the future of the island. Hawaii committed this grave mistake of permitting non-native voters to participate in their final plebiscite of which a clear majority was US citizens to decide the future of the Hawaiian Islands. Foreigners in Puerto Rico have their loyalty with the United States not with Puerto Rico in any sense at all. Foreigners are made US citizens not Puerto Rican citizens.

non-native voters will surface and eventually it must be solved because the Electoral Law in Puerto Rico does not mention anything about non-native voter's right to vote in a plebiscite.

In the next chapters, I will discuss the key concepts involved in the exclusion of non-native voters from a final plebiscite in Puerto Rico.

CHAPTER II

NATION AND CITIZENSHIP

The relationship between the United States and Puerto Rico, according to some, could involve the United States in a domestic variation of the Northern Ireland tragedy or the discomfort that the people of Quebec have with the rest of Canada. And yes even certain discomfort like the Kanaka Maoli people of Hawaii who every year set out to the United Nations to protest their illegal incorporation into the United States.¹⁹⁸ Or even that Puerto Rico and the United States are like Estragon and Vladimir in Samuel Beckett's play "Waiting for Godot" were Estragon states "that it's safer not to do anything". These apocalyptic visions fail to take into account the decisive role of the Puerto Rican nation themselves in future changes in the relationship. Currently both majority parties (PPD and PNP) are in a virtual tie electorally¹⁹⁹ and foreign voters would be a decisive vote in a final plebiscite.²⁰⁰ Much of the argument over the political future of the island revolves

¹⁹⁸ Juan M. Garcia Passalacqua. Puerto Rico, Equality and Freedom at Issue. (New York : Praeger Publishers, 1985) The author raises the racial issue (p.148) with following: "Is the United States willing to grant statehood to three million mulattos, Spanish speaking poor people of the Caribbean?" This argument could be questioned today with the election of Barak Obama to the Presidency of the United States. Race is definitely not the only factor involved in the admission of Puerto Rico as a state of the union.

¹⁹⁹ The difference between the Commonwealth Party (PPD) and the Statehood Party (PNP) in the 1993 and 1998 plebiscites is 2.2%. This situation makes non-native voters a crucial fact in future plebiscites.

²⁰⁰ The U.S. Census of 2000 indicated that 90.9% of the residents were born in the island. Using these facts in a population of 3,954,037 the number of people on the island not born in Puerto Rico would be over 300,000. The Census also indicates that 2.9% were born in a foreign country. This means that in 2000 the foreign population in Puerto Rico was over 100,000, and 6.8% were born in the continental United States or possessions. Some of these residents may be of Puerto Rican descent. The Pew Hispanic Center (2010) indicated that there are 4.15 million Puerto Ricans in the continental U.S. some 200,000 more than on the island. Some 2.8 million Puerto Ricans in the continental U. S. were born in the states or Washington D.C. Another 46,000 were born outside the United States and/or Puerto Rico and 55.4% live in the northeast especially in the State of New York.

around whether it is a colony or territory of the United States, and how strong or loose are its linkages to the United States. The issue concerning the electoral participation of foreign voters in a final plebiscite in Puerto Rico has become paramount at this moment in time due to the current electoral balance between the statehood party (PNP) and the commonwealth party (PPD).

An inescapable fact is that, regardless of the dependency or interdependency that Puerto Rico may enjoy or suffer,²⁰¹ it is a community in both the cultural and political senses. The two expressions of organized living are better recognized as the nation and the state. They are the main subjects of this chapter, which analyzes the relationship between the Puerto Rican nation and state and how these two concepts help strengthen the argument both in legal and political in the barring of foreign voters in a final plebiscite in Puerto Rico.

The English word “nation” comes from the French word “nation”, itself derived from the Latin term “natio” meaning “the action of being born”. As an example of how the word “natio” was employed in classical Latin, consider the following quote from Cicero’s *Philippics*,²⁰² against Mark Anthony in 44BC. Cicero contrasts the external, inferior nations (“races of people”) with the Roman *civitas* (community).

“Omnes nation’s servitatem ferre possunt: nostra civitas non potest.”

(All races are able to bear enslavement, but our community cannot.)

²⁰¹ There is a debate about how the relationship of Puerto Rico with the U.S. is analyzed. Some see the relationship as totally beneficial for Puerto Ricans and other see that Puerto Rico is being exploited by the United States, other see that Puerto Rico is a captive market for U.S. exports and the conclusions seem not to end.

²⁰² A *Philippic* is a fiery, damning speech, or trade delivered to condemn a political actor.

Liberalism, starting in the 17th century with authors like John Locke was the main philosophical current which alimented systematic theories of nationhood and its political implementations. Opposing the theoretical principles of the “Ancien Regime”, the 17th century liberals called into question the bases of absolute monarchism, and especially the sovereignty of the monarch. They introduced the concept of “citizen” to replace the older notion of “subject”. Furthermore, the sovereignty passed from the hands of the absolute monarch into the hands of the nation. The criteria for nationhood were based on rationalism, individual liberty and equality before the law, largely ignoring ethical or cultural considerations. Thus, the concept of nation employed was the political nation and not the cultural nation. This idea has been the focus of many Puerto Rican especially those who support statehood and do not see the existence of the Puerto Rican nation.²⁰³

In the Declaration of Independence and the Declaration of Human Rights, the requirements for nation formation were the same for everybody. The will of the individuals to constitute a political community was sufficient to form a nation.

The concept of nation (both political and cultural) as we understand it today, as a basically political notion, emerges around the end of the 18th century and coincides with the end of the “Ancien Regime.”²⁰⁴ At that time, the first solid theoretical formulations of the nation occur and are applied in concrete political demands like the American

²⁰³ The current Secretary of State in Puerto Rico Kenneth MacClintok stated that there was no such thing as a “Paro Nacional” (National Protest) against the policies of Governor Luis Fortuno. For MacClintok in order to exist a “Paro Nacional” (National Protest) there had to be protest in Denver, Los Angeles, Miami, Orlando and other cities of the United States.

²⁰⁴ Refers primarily to the aristocratic, social and political system established in France under the Valois and Bourbon dynasties (14th and 18th century). The term is French for “Former Regime” but rendered in English as “Old Rule”, “Old Order” or simple “Old”.

Revolution and the French Revolution. The ideas of political nation and cultural nation have evolved intertwined. Nevertheless, the term nation derived from Latin existed before with other meanings.

The term nation has two distinct meanings: The political nation, used in the domains of international law and politics is the political subjects which exerts the political sovereignty of a democratic state. The cultural nation is a sociological or ideological concept, which is more subjective and ambiguous in its meanings than the political nation. The cultural nation can roughly be defined as a community of people with certain common cultural featured, which are ethically or politically relevant to them. In broader sense, nation is also sometimes used to refer to a number of other things: state, country, territory or inhabitants of the former, people among others.

Benedict Anderson argued that nations were “imagined communities” because “the members of even the smallest nation will never know most of their fellow members, meet them or even hear of them, yet in the minds of each, lives the image of their communion”²⁰⁵. The imagination is made possible by extensive use of printing press, mass media and capitalism. Nations are therefore defined by how the communities are imagined. Anderson systematically describes nationalism using an historical materialist or Marxist approach as the major factors contributing to the emergence of nationalism in the world during the past three centuries. Puerto Rico today is seen very much as how Anderson views a nation. Mass media and capitalism are at the core of the Puerto Rican

²⁰⁵ Benedict Anderson. Imagined Communities, 1991 p. 6-7.

nation today.²⁰⁶ When Puerto Rico started its process of modernization a beckon of nationalism paved the way evidently for the Puerto Rican nation²⁰⁷.

The nation stands as a concept which has become increasingly difficult to define in a way that commands general agreement. The difficulty in defining it arises out of the modern usage of the word, which adds a political meaning originally lacking in the idea of a nation.²⁰⁸ Nation has become virtually synonymous with state, and the term nation-state has become part of the political vocabulary. Hans Kohn, one of the most authoritative sources on nationalism, did not separate the political aspect from the cultural when he wrote that nationalism was a state of mind in which the individual gave his supreme loyalty to the nation-state.²⁰⁹ Louis L. Snyder, while accepting the political nature of the nation, adds cultural elements such as language, common literature, religion, and traditions as attributes of nationalism.²¹⁰ Rupert Emerson also shares the common view of the political nation. He wrote, “The Nation has come to be accepted as the central

²⁰⁶ One only has to tune in on the radio, television and the print media to observe how products and services are marketed in the island. Puerto Rico has become a very consumerist society. It’s all an imagined community. There was the Nationalist Revolt of the 1950’s which included the attacks on the U.S. Congress and the Blair House in Washington, DC.

²⁰⁷ Ernest Gellner argues that there is a strong tie between nationalism and modernization. His words “It is nationalism which engenders nations, and not the other way around.”

²⁰⁸ The Secretary of State Kenneth MacClintok stated to the press that the movement “Todo Puerto Rico con Puerto Rico” that protested the action of the Governor Luis Fortuno for firing thousands of government employees and that the protest was not national because nothing happened in Cincinnati, Indianapolis or New York City; so the protest was insular not national as the leaders of the movement stated to the press.

²⁰⁹ Hans Kohn. Nationalism, Its Meaning and History. New York: Van Nostrand, 1955.

²¹⁰ Louis L. Snyder. Global Mini-Nationalism, Autonomy or Independence. West Port, Conn: Greenwood Press, 1982. p. xv.

political concept of recent times.”²¹¹ Many definitions of a nation combined several factors. Another definition is that established by Josef Stalin. His views on national identity influenced his subsequent nationality policies in the Soviet Union and the creation of the Republic of the Soviet Union. Stalin wrote in 1913:

“A Nation is historically constituted, stable community of people formed on the bases of common language, territory, economic life and psychological makeup manifested in a common culture.”

Anthony Smith defined a modern nation as a group with seven features. They are population, territory, cultural differentiation, group sentiment and loyalty, external political relations, direct membership with equal citizenship rights and vertical economic integration around a common system of labor.²¹² Still Smith’s definition remains well within the nation-state limits by including clearly political consideration such as external political relations, citizenship and economic organization.

The term nation-state is a confusing one when used to describe multinational political states like the extinct Soviet Union. Also, examples exist like Korea which is divided between North Korea and South Korea.

While the political realities of modern society cannot be ignored, one must remember that the original meaning of nation was basically cultural, related to the ethnic group.²¹³ Peter Sugar presented the thesis that ethnic nationalism, as a social force was

²¹¹ The Encyclopedia of Social Sciences. Vol. II. p.7.

²¹² Anthony D. Smith, Theories of Nationalism. London: Gerald Duckworth & Company, 1983, p. 11 also The Ethnic Origins of Nations London: Basil Blackwell. 1986, pp. 6-18.

²¹³ Benjamin Akzin. State and Nation. London: Hutchinson

returning to its point of origin, the community.²¹⁴ Ethnicity had served its functions as a mobilizing force in the construction of the nation state in Africa, Europe and America, but in many cases the new nation states failed to satisfy the demands of the ethnic groups. The ethnic groups, according to Sugar, were forced into a reassessment of their options. The result has been a return by the group to its original source of identification, the community while retaining the political identification provided by the larger nation-state reverse movement of the group demands and its return to primal loyalty and concomitant political power to the smaller unit is what Sugar defined as natioethnism. The increase of ethnic group demands and the willingness of the nation-state to find accommodations are evident in the devolution proposals in England for Scotland and Wales.²¹⁵ The natioethnism trend is also evident in the Spanish situation in which autonomous status has been included in the 1978 Constitution for areas like Catalonia, Galicia and the Basque country. Puerto Rico is the largest ethnic community with its own territory within the U.S. polity, and with real possibilities of developing a successful natioethnic relationship with the United States. Its historical affection for autonomy, separate territory, ethnic homogeneity and cultural identity are supportive elements for a new relationship which would be responsive to the realities of natioethnism. The United States is a multi-ethnic society, one in which a myriad of ethnic groups strive to maintain a separate cultural identity. The descendants of earlier immigrants still identify themselves

²¹⁴ Peter Sugar, "From Ethnicity to Nationalism and Back Again" in Nationalism, Michael Palumbo and William O. Shannon, eds. (Westport, Conn.: Greenwood Press, 1981), pp.76-84.

²¹⁵ Jack Brand, "The Rise and Fall of Scottish Nationalism", pp.29-43, and John Osmond, "Wales in the 1980's" pp.44-72 in Nations without a State, Charles R. Foster, ed. (New York: Praeger Publishers, 1980).

as Puerto Rican, German, Italian, Mexican, Dominicans and the like, retaining with pride the cultural linkage with their original ethnic community. The White House has liaison officers for the major ethnic communities, including Puerto Rico.²¹⁶ While none of the ethnic groups on the mainland is demanding a separate state,²¹⁷ or separate political arrangements, it is suggested that the ethnic national state is a viable possibility. But the possibility less real when one realizes that ethnic groups in the United States are not occupying significant territorial areas which could justify a distinctive political arrangement. Puerto Rico is a sui-generis case inside the United States polity.

Akzin linked culture and politics when he defined the national group as an ethnic group which strives for or has successfully gained corporate recognition. Paul R. Brass added the possibility of corporate recognition for the ethnic group as a separate nationality within an existing state.²¹⁸ It is within the context of the definitions advanced by Akzin and Brass that I approach the study of the nation and defines the Puerto Rican

²¹⁶ The White House has Special Assistants to the President for Public Liaison with major ethnic groups. See Congressional Quarterly Information Directory 2008-2000. (Washington D.C.: Congressional Quarterly Inc., 2008).

²¹⁷ Black Groups, like the Black Muslims, have at times called for the creation of a separate black state. The Black Muslims have been a minority group within the Black community. La Republica de Aztlan was a Chicano movement calling for the creation of a Chicano State. In 1969, La Raza Unida Party took control of Crystal, Texas. See David S. Broder, Changing of the Guard, Power and Leadership in America. (New York: Penguin Books, 1981), p. 296.

²¹⁸ Paul R. Brass. Ethnicity and Nationality Formation. Ethnicity, Vol. 3 No. 3 September, 1976.

nation as an ethnic community which enjoys degrees of corporate recognition at both cultural and political levels.

In Puerto Rico, the individual loyalty to the cultural community focuses on the “Patria”. Patria or homeland identifies Puerto Rico. The identification of “Patria” with what in English is called the nation is common in Spanish speaking cultures. The identification of Puerto Ricans with the “Patria” transcends partisan political consideration, it is one accepted by pro-independence, pro-statehood and commonwealth supporters alike. Don Luis Munoz Marin²¹⁹ the most known of the modern political leaders of the island, use to start his messages to the people with the word “Compatriotas” (Compatriots), establishing with it a sense of solidarity with the people. “Patria” is a non-political term, although for rhetorical value, political leaders will use it in a political context. “Patria” evokes a sense of commitment to the values of the society.

Of these values, dignidad or dignity is one of the most important. It is the belief that all Puerto Ricans are ultimately equal and worthy of respect in spite of differences in economic status, political power, prestige, or education. “Dignidad” does not stand in contradiction with adjustments to political realities of the community as suggested by Juan Manuel Garcia Passalacqua²²⁰ for it is centered on the individual vision of one’s position in the community, while accommodation with the political system may be responses to real and material needs of the individual. “Dignidad” is not limited to the

²¹⁹ First Puerto Rican elected governor of Puerto Rico.

²²⁰ Juan Manuel Garcia Passalacqua suggests that the political behavior of the Puerto Rican masses contradicts the dignity value, that instead of dignity, the masses are motivated by self-interest. He presents that thesis in “Dignidad y Jabería: Los paradigmas políticos puertorriqueños” Revista Anales San Germán, Puerto Rico: Universidad Interamericana, 1984. pp. 9-25.

islands elites; it is also shared by Puerto Ricans of all socio-economic levels. It is important to remember that different social groups have different understanding of Dignidad.

The love and devotion to the “Patria” can bring emotional rewards. It is one which may move the individual into action when his national identification is perceived to be threatened. A pro-statehood leader from San German, reacted to what he perceived was a threat to his national identity by an American official, with the words “wait a minute, we are no “Norte-Americanos”²²¹ “and never will be.”²²² In other words, it is possible for a Puerto Rican to favor statehood and still see the “Patria” as an independent source of identity²²³. The personal commitment to the patria is evident in one of many statements made by Former Governor Rafael Hernandez Colon before the United States Senate:

“Our Puerto Rican nationality has been given US citizenship which adds to it a special dimension of protection and political loyalty for coexistence, but not competing with or reducing the basic loyalty that, for vital reasons, ties us to the motherland.”²²⁴ The identification clearly differentiates between

²²¹ A U.S. Citizen

²²² In an interview with Vicente Pietri Gomez January 14, 2009 at Radio Sol 1090, San German, Puerto Rico. The term was used in a cultural sense. Mr. Pietri is an active member of the statehood party (PNP) and the U.S. Republican party.

²²³ Sebastian de Grazia in The Political Community (1948) suggests a systematic theory of the state from the psychological perspective. He argues that leadership is dependent on the beliefs of the generality of people not on elite. Basic political concepts are defined in terms of beliefs and the cause and consequences of beliefs are related to their psychological function.

²²⁴ GAO Report to Congress, Puerto Rico’s Political Future: A Divisive Issue with Many Dimensions. Washington D.C.: U.S. General Accounting Office, 1981. pp.43-45

Americans²²⁵ and Puerto Ricans on the island. The differentiation is evident in the language used in private conversations. It is “los Americanos”. For Americans, long term residency on the island does not erase his identification as “Americano.”²²⁶ It is interesting to observe, too, that the identification is weak and sometimes disappears with those born on the island, Americans.²²⁷ Every human being needs to belong to a social group. Luis Munoz Marin mentions the author Edward Everett Hale and his book “A Man without a Country” (1863) to illustrate the importance of belonging to a nation.²²⁸ The human being cannot be without some form of social organization.

The dilemma of nation and state, of conflicting loyalties to the national community and the political state, is one found almost everywhere and Puerto Rico is no exception. During the Vietnam War in 1969, a young Puerto Rican man was found guilty in a Federal Court of violation of the Selective Service Act (the Draft Law). The sentencing judge, Hiram R. Cancio, asked the accused to approach the bench, and said to him:

“... I do not believe that you are a criminal, but a person, who in the defense of firmly held ideas, has decided to violate what you consider an unjust and unconstitutional law. I know that you love Puerto Rico. I love Puerto Rico as

²²⁵ They are referred to as Americans, although Americans are all born in the American continent. The correct meaning would be “estadounidense” meaning a United States American.

²²⁶ Many Americans have settled in the island with a Puerto Rican spouse and still they refer to them as “el Americano”; in almost every town there is an example. The identification is not discriminatory in nature.

²²⁷ Like singer Roy Brown, actor Orville Miller, baseball player Rod Bristow, Basketball player Bill MacCadney who also played with the Puerto Rico National Team and others.

²²⁸ Juan Manuel García Passalacqua, Conversaciones en el Convento: La Visión de Luis Muñoz Marín a Mediados del Siglo XX. Impresora Feriva, S.A. Bogota, Colombia, 2006. pp27-28.

much as you do. We differ only in how we see what is best for our country...”²²⁹

Judge Cancio restated the emotional dilemma which Puerto Ricans must face at times.²³⁰

It is a problem found in every society, but it is compound on the island by the cultural differences of the two competing entities, the community and the state in the above case, the Puerto Rican community and the Federal state.

The attachment of the people to their culture is not rigid, because after all, cultures are dynamic. With modernization and the growth of communications, the culture has received and adopted certain American values, while rejecting others. Some extra legal institutions for the resolution of personal conflicts, like the Catholic Church clergy, the respected elders, and the system of social obligations like the “compadrazgo” (godfather), have been replaced by university trained lawyers. The American style nursing home was almost non-existent 20 years ago, but today it’s making its way through the Puerto Rican culture. Yet the care for older parents remains a dutiful obligation for the offspring. The observance of religious traditions remains strong on the island: the velorio, or wake for the deceased person, is still held, either at the family’s residence or at the funeral home. Some critics of the relationship with the United States decry the alleged loss of Puerto Rican cultural values forced by the Americanization of the island.

²²⁹ Carmen Ramos de Santiago, El Desarrollo Constitucional de Puerto Rico. San Juan, Puerto Rico: Editorial Universitaria, 1973, p. 405.

²³⁰ This dilemma was very common during the struggle to get the U.S. navy out of Vieques in 2003. There were protesters from all sectors of the political spectrum in the island. Statehooders, Independentistas and Autonomistas shared the same cell in the Federal Jail in Guaynabo.

The cultural changes must be understood within the context of two factors: the Americanization of the world after World War II with music, dress styles and dietary habits, as symbols of the process, and secondly the fact that no culture is free from external inputs. Despite the changes the island remains a separate cultural entity. One quickly discovers that there is running through the hearts and minds of Puerto Ricans at virtually every class level, a fervent identification with their society, bordering on a mystical romantic attachment. The attachment is to the “Patria”, not to a particular form of political organization. In a society where alternatives to the political future remain open, the emotional commitment to the non-partisan “Patria” permits the advancement of communal and social relations which are independent of political differences. One can find separatist, annexationist, and autonomist all members of the same family²³¹. A husband may belong to the commonwealth party, while the wife identifies with the statehood party; yet those differences do not stand in the way of their personal relationship.

In a contemporary world, where most social issues are seen and explained by their political importance, the Puerto Rican separation of cultural and political issues into two different spheres may be difficult to understand. Rousseau held that the nation was established before the social contract and the political society,²³² and it is in that context

²³¹ As examples, Rosario Ferre, writer and daughter of the former governor and pro-statehood leader, Luis Antonio Ferre is an independentista (although today her comments seem to be shifting out of the independence movement) The Ramos Yordan brothers, Luis and Edwin both served as legislators, each representing a different political party. The 2000 gubernatorial candidate for the statehood party Carlos Pesquera’s brother Raphael Enrique Pesquera, is also an independentista.

²³² Anne M. Cohler. Rousseau and Nationalism. New York: Basic Books, 1970, p. 143.

of primacy of the nation that the Puerto Rican emphasis on separating the two should be understood. Nation and state are two separate and different concepts.

The exact moment when a people begin to consider themselves a different group a separate nation is difficult to identify, but the period around 1810 can be seen as the time when the seeds of nationhood began to germinate in Puerto Rico. The instructions sent by the Spanish Regency Council at that time embodied the spirit of separation and self-identification with the words:

“From this moment on, you are elevated to the dignity of freemen. You are not as before, weighted down by the yoke of power, and treated with difference ... Your destiny does not depend in the Ministers, Viceroys or Governors, it is in your hands.”²³³

The encouraging words of 1810 proved to be lacking in official report, but the nation building process continued developing until it reached its present dimension. It is a dimension which, lacking the political trappings of an independent state, is not seen by some as a true expression of the nation. But the study of human societies shows that these do not exist solely for the purpose of theoretical justifications, nor do they disappear if the legitimacy of theories for them is not forthcoming. The nation is evident in Puerto Rico as *la patria*, in the same way that *patrie*, *vaterland*, *nacion* and *nation* are used to explain the national realities in other countries. That in Puerto Rico the concept nation lives within the cultural sphere where it originated may be the salient contribution of the island to the study of nations, which largely focuses on the merger of the cultural and political spheres in the nation-state.

²³³ J.L. Vivas Maldonado, History of Puerto Rico. New York: L.A. Publishing Co., 1972, p.182 (author's translation).

Most scholars who discuss Puerto Rican nationalism seem to agree that there is nationalism on the island, but they differ on what that label or tag means. On the island itself, nationalism is identified by the majority of the people with Pedro Albizu Campos and the Nationalist Party. The extremist or radical view of nationalism associated with Albizu Campos and his followers is not limited to islanders. Manuel Maldonado Denis recognizes nationalism on the island as a middle class or bourgeois expression, and argues that nationalism will become a genuine force only when it acquires working class identification.²³⁴ Anthony Smith classified nationalism in Puerto Rico as a primitive movement, akin to the tribal movements in Asia and Africa.²³⁵ The Mexican writer and diplomat, Carlos Fuentes, addressing the problem of nationalism in Latin America, said:

“Nationalism represents a profound value for Latin Americans simply because of the fact that our nationhood is still in question.”²³⁶

Fuentes words seem applicable to the question of nationalism on the island as perceived by other writers. On the island, nationalism has been judged to be present or absent, developed or underdeveloped, on the basis of its political contents and goals.

Puerto Rico is a nation²³⁷. It enjoys strong elements of social unity such as language, common religion, common customs and traditions and a distinctive political

²³⁴ Manuel Maldonado Denis, Prospects for Latin American Nationalism: The Case of Puerto Rico. Latin American Perspectives, No. 3, Summer 1976, pp. 36-44.

²³⁵ Anthony Smith, Theories of Nationalism, p. 272.

²³⁶ Louis L. Snyder, Macro-Nationalism: A History of the Pan Movements. Westport Conn: Greenwood Press. 1985, p. 226.

²³⁷ Imagined and Natural: which makes the Puerto Rican nation even absurd not to recognize its existence.

history²³⁸. This degree of distinctiveness establishes the existence of the nation, from the cultural point of view. As such, Puerto Rican nationalism can be identified as ethnic nationalism²³⁹. Anthony D. Smith defines ethnic nationalism as a movement of a well integrated group manifesting common citizenship and one or more cultural features marking the group as different from other groups.²⁴⁰ This definition has the concept of ethnicity as its core, the awareness of ethnic identity shared by the members of the groups. Puerto Rico exhibits a very high degree of ethnic cohesiveness, a cohesiveness seen by some as a romantic attachment. Ethnic nationalism is not simply confined to cultural manifestations, but includes political dimensions as well.

In his study about ethnicity and nationality, Paul Brass describes a way in which an ethnic community may enter the political arena as follows:

“When ethnic groups demand corporate recognition of the group as a whole with a right to control the public system of education in their areas of concentration or to govern themselves in a federal units, then they are engaged in the politics of nationalism.”²⁴¹

Paul Brass statement also fits into the definition of politics established by David Easton that politics means:

“The authoritative distribution of values in a society”

²³⁸ Primordialism argues that those shared characteristics (common decent, language, religion, history, culture) have an ancient root and nations are natural phenomena over different historical eras.

²³⁹ Anthony D. Smith, p. 216.

²⁴⁰ Ibid., p. 216.

²⁴¹ Paul Brass, “Ethnicity and Nationality Formation” Ethnicity, Vol. 3, No. 3 September 1976, pp. 225-41.

Easton provides the disciplines most widely used definition of politics and is renowned for his application of systems theory to the study of political science.

The political history of Puerto Rico is the chronicle of an ethnic group and its development into an ethnic community with its own nationality. During the second half of the 19th century, the group began to express this ethnicity through political demands for reforms.

The changes of 1898 which brought the island into a political relationship with the United States did not diminish the ethnic identity of Puerto Ricans. On the contrary, faced with the new political reality, the Puerto Rican ethnic identity was strengthened and seen as the vehicle through which political accommodation with the dominant metropolis could be achieved. As Akzin suggest, the politics of the ethnic community do not necessarily lead into the independent state; they may lead to territorial autonomy as the Puerto Rican case, but they still are the politics of nationalism²⁴².

During the 1993 plebiscite the New York Times saw the vote as an issue of the identity of Puerto Ricans²⁴³. In all three plebiscites the identity of Puerto Ricans has been an issue during the campaign. In late October 1993, an otherwise lame campaign was fired up by none other than singer Madonna, who gave “independentistas” quite a boost among youths by desecrating the Puerto Rican flag between her legs in one of her dances, this created a furor among all sectors of the electorate that inundated radio talk shows

²⁴² Benjamin Akzin, pp. 146-57.

²⁴³ Larry Rohter, “Puerto Rico’s Identity: Up for a Vote”, The New York Times, August 5, 1993, E5; El Nuevo Dia, 8 de agosto de 1993, p. 8.

with protest in a ratio of 6 to 1 against her act²⁴⁴. In the Puerto Rican legislature Puerto Rican Independence Party legislator Representative David Noriega passed without discussion a unanimous resolution condemning Madonna and her act.²⁴⁵ Cultural issues were crucial during plebiscite campaigns and there was an obvious undercurrent of affirmation of nationality.²⁴⁶ The language issue arose when pro-commonwealth campaign manager Celeste Benitez utilized the testimony of Congressman Toby Roth (R-WI), leader of the “English Only” movement in the United States, to argue in a television ad that statehood meant English as the first and only official language for the island.²⁴⁷

On February 14, 2010 the newspaper “El Nuevo Dia” published an article titled “To be or not to be” in their Sunday morning magazine “Revista.”²⁴⁸ The articles main argument is that still after 112 years the debate goes on about teaching English in schools. On the week of February 7-13, 2010 Congressmen Steve King (R-Iowa) and Paul Broun (R- Georgia) circulated a letter to their colleagues that Puerto Rico must accept English as their official language in order to become a state of the union. These Congressmen sent the letter to their colleagues because the House will vote on the House Bill 2499 “The

²⁴⁴ San Juan Star, October 28, 1993, p.F2, “Madonna: No Class Act” San Juan Star, October 28, 1993, p.35; Gino Ponti, “Islanders decry Madonna’s handling of flag”, San Juan Star, October 28, 1993, p.10; El Nuevo Dia, 29 de octubre de 1993, p. 16; El Nuevo Dia, 30 de octubre de 1993, p. 2. Her manager later apologized. El Nuevo Dia, 7 de noviembre de 1993, p. 115.

²⁴⁵ The House and Senate in Puerto Rico were dominated by the statehood party; the independence party only had 2 legislators out of 78. There was no discussion or opposition to the resolution.

²⁴⁶ U.S. Circuit Court Judge Juan R. Torruella, “Puerto Rico y su Futuro Olimpico”. El Nuevo Dia, 2 de septiembre de 1993, pp.80-81.

²⁴⁷ El Nuevo Dia, 15 de octubre de 1993, p. 6.

²⁴⁸ El Nuevo Día “To be or no to be” La Revista 14 de febrero de 2010.

Puerto Rican Democracy Act”. This Act is in the 111th United States Congress to provide for a federally sanctioned self-determination process for the people of Puerto Rico. This Act would provide for plebiscites to be held in Puerto Rico to determine the islands ultimate political status. The Bill was approved by the House of Representatives on April 29, 2010 by a recorded vote of 223-169 (most Democrats supported the Bill while on the other side most Republicans opposed the Bill). It has not yet been approved by the United States Senate. The bill has been introduced twice in the U.S. Congress, first in 2007 and again in 2009. The 2010 bill (H.R. 2499), was introduced in the United States House of Representatives on May 19, 2009 by Pedro Pierluisi (D-Puerto Rico). The bill would provide for a referendum giving Puerto Ricans the choice between the options of retaining their present political status, or choosing a new status. If the former option were to win, the referendum would have been held again every 8 years. If the latter option were to win, a separate referendum would be held where Puerto Ricans would have been given the option of being admitted as a U.S. State’ on equal footing with the other states”, or becoming a “sovereign nation, either fully independent from or in a free association with the United States”.

The concession of U.S. citizenship to Puerto Ricans via the Jones Act in 1917 was a key instrument in the process of Americanization of the people of Puerto Rico. In 1936 President Franklin D. Roosevelt ordered the Americanization of public schools in Puerto Rico and the elimination of Spanish from the public school system. This created protest among teachers, parents and students and even the teacher Maria Ines Mendoza who would later become the wife of the first Puerto Rican elected governor of the island. It was not until 1949 that the Commissioner of Education Mariano Villaronga nominated by

Governor Munoz Marin that Spanish was officially declared the language of public education in Puerto Rico. In 2001 the Commission on Education from the Puerto Rican Senate presided by Senator Margarita Ostalaza (PPD) stated that public school teachers are not prepared to teach in English, also in undergraduate studies at various universities in the island.²⁴⁹ In 2009 only 40% of public school students approved satisfactorily English, and 93% Spanish. Puerto Ricans are virtually unanimous in their conviction that their national identity is not negotiable.

A. The Legal Recognition of the Puerto Rican Identity for the Purpose of Voting in a Plebiscite

The legal recognition of who is a Puerto Rican typically arises, and is especially relevant in the context of plebiscites on Puerto Rico's political status, because the purpose of these plebiscites is the exercise of self-determination. The issue of who may vote in plebiscites has been the focus of an ongoing dispute.²⁵⁰ One position is that only the residents of Puerto Rico may vote another is that Puerto Ricans living in the United States should be permitted to vote as well. The core of this research is the question of whether non-native voters should be permitted to vote in the final solution to the century old issue of the political status of the island.

²⁴⁹ The Inter-American University of Puerto Rico, San German Campus which obligates students to take nine credits of courses dictated in English had serious problems obtaining instructors to teach History, Economics, Political Science and others in English. As a former instructor at IAU, some professors who have graduate degrees were unable to teach in English.

²⁵⁰ On April 29, 2010 the U.S. Congress was voting on the Puerto Rico Democracy Act and Congressman Luis Gutierrez from Illinois presented an amendment to permit Puerto Ricans in the continental states to have the right to vote on the plebiscites, his amendment was defeated.

Puerto Rico's political status is critical because, under international law, Puerto Rico which was considered a colony at the United Nations inception²⁵¹ can only move beyond its colonial status by exercising self-determination through the free and genuine choice of a legitimate political status. But one crucial issue is that the United States has to transfer all powers to the people of Puerto Rico in order to create a legitimate process of self determination. The United States must not interfere with the process of self-determination and all U.S. jurisdictions must cease especially laws and legal precedents that limit the sovereignty of the people of Puerto Rico. Puerto Rico must be free to decide its political future. United Nations Resolution 1514 (December 14, 1960) clearly states this transfer of sovereignty to the people of Puerto Rico. It can also be done through a Constitutional Assembly.

Puerto Rico is a nation under the colonial domination of the United States²⁵². The United States takes the position that the 1951 plebiscite, in which Puerto Rico chose to

²⁵¹ In 1946, The General Assembly passed a resolution in which Puerto Rico was among 74 territories formally designated as colonies. See General Assembly Resolution 66, U.N. Document A/64/Add.1, at 124-125 (1946). The admitted colonial powers were Australia, Belgium, Denmark, France, the Netherlands, New Zealand, the United Kingdom and the United States. The colonial powers were required by a specific provision of the United Nations Charter to report on the economic, social and educational conditions in the territories for which they were responsible. The initial compliance of the colonial powers was short lived, and they began to display resistance to accepting responsibility for the continued possession of non self governing territories:

Almost immediately, in 1947, three states stopped transmitting information on some of their Territories, the United Kingdom (in respect to Malta) the United States (in respect of the Panama Canal Zone) and France (in respect to of various overseas Departments and Territories as well as the "Associated States" of Vietnam, Laos and Cambodia). Various explanations were provided by the three states concerned. The General Assembly in 1949 tacitly acquiesced in the cessation of reports on these territories but in a resolution, on which the admitted colonial powers either voted negatively or abstained, began to flex its muscles in respect both of the development of relevant criteria and of who was to determine when the Charter provisions applied.

²⁵² Nor entirely under the domination of the United States because there are political forces that support the status quo as it is today. The pervasive acceptance of US rule and the American presence within Puerto Rico is mostly due to the hegemony of the United States. According to Antonio Gramsci's theoretical system hegemony

become a commonwealth or Estado Libre Asociado, was the fulfillment of Puerto Rico's self-determination. Puerto Ricans, a group bound together not only by the sheer fact that they live within a delineated area of land, but also by a common history, heritage and culture are therefore unlike the residents and US citizens of the fifty states of the United States and should be accorded different rights by law.²⁵³

Status plebiscites are a means of compliance with international law's mandate that colonialism be eradicated through the exercise of self-determination and the achievement of an acceptable measure of autonomy. In 1953, the United Nations General Assembly resolved to remove Puerto Rico from the list of non-self-governing territories.²⁵⁴

Subsequent plebiscites held in 1967 and 1993 approved versions of the Estado Libre Asociado.²⁵⁵ In 1998 another plebiscite was held but the electoral winner was Option #5

are both a strategy of domination and the kind of domination resulting from its successful realization It depends on the dominants group's capacity for intellectual, political and moral leadership as well as on its willingness to incorporate the demands of other groups and satisfy them at least partially. This leaves room for subordinate sectors to obtain some advantages in exchange for their willingness to submit to the rule of the dominant group.

²⁵³ Like excluding non-native voters from a political status plebiscite in Puerto Rico.

²⁵⁴ U.N. General Assembly Resolution 748, U.N. GAOR, 8th Sess., No. 17, at 25, U.N. Doc. A/2630 (1953)

Members of the United States delegation...expected the Soviet bloc to object to the cessation of information on Puerto Rico. Statements made, however, by such nations as Burma (today known as the Union of Myanmar), Guatemala, Honduras, Indonesia and Mexico, which felt that Puerto Rico had not yet achieved full self-government, came as a surprise to some United States delegates. The delegate from Mexico hoped that the case of Puerto Rico would emphasize the need to ensure that no peoples in the world are forced to sacrifice their dignity in order to live. He declared that politically Puerto Rico had less self-government than when under Spain with the Autonomy Charter of 1898.

India suggested that the committee was witnessing a new form of colonialism and offered proposals calling for future investigation of the whole Puerto Rican question.

The vote on Resolution 748 was not enthusiastic: 26 in favor, 16 opposed, 18 abstaining and 0 absent.

²⁵⁵ The 1967 vote was 60.5% in favor of the ELA, 38.9% in favor of statehood and .6% in favor of independence. In the 1993 plebiscite, 48.4% voted in favor of an enhanced ELA, 46.2% voted in favor of statehood, and 4.4% voted in favor of independence. In the 1998 plebiscite the vote was Option#1 pro status quo

which stated non-of-the-above. That year the statehood party that was in power in Puerto Rico defined the Estado Libre Asociado, so the Popular Democratic Party went to the courts and won the right to an Option called Non-of-the-above, thus winning the electoral contest.²⁵⁶

The 1993 plebiscite showed that the Puerto Rican populace is nearly evenly divided on the islands political identity; the 1998 plebiscite was not a normal electoral contest, but the electoral difference between statehood and enhanced ELA are about two percentage points²⁵⁷. United States and Puerto Rican lawmakers immediately began advocating that another plebiscite be held, both to resolve and to exploit the dissatisfaction evidenced by the closeness of the two main political parties in the island. And today, due to the critical economic situation in the island under the current Governor Luis Fortuno, many voters are looking toward the United States for help. This will tend to increase the electoral support for statehood to the extent that the deteriorating economic conditions provide a momentum for the pro-statehood party.²⁵⁸ Puerto Ricans will tend to move closer (statehood) to the United States. Aristotle may be relevant here. He says for

0.1%, Option #2 Free Associated State 0.3%, Option #3 statehood 46.5%, Option #4 independence 2.5% and Option #5 None of the Above 50.3%. The United States Congress never approved or committed itself to any of the plebiscites.

²⁵⁶ A similar situation occurred on April 29, 2010 while voting for the Puerto Rico Democracy Act, Representative Virginia Foxx from North Carolina presented an amendment that the current status be included on the ballot during the plebiscite, the amendment was approved although the Delegate from Puerto Rico Pedro Pierluisi opposed the amendment.

²⁵⁷ This is my main argument about non-native voters participating in a plebiscite, because non-native voters would be deciding the political status of Puerto Rico. And an absolute majority of non-native voters are pro-statehood.

²⁵⁸ The 2008 election was a landslide win for Governor Luis Fortuno (an active member of the Republican Party) and the Partido Nuevo Progresista (Statehood Party); they ended up controlling the House, the Senate, Resident Commissioner (Puerto Rico's representative in the US House of Representative) and 52 municipalities throughout the island.

instance, that it is affection which makes political union possible²⁵⁹ and Puerto Ricans have a special affection towards the United States.²⁶⁰ Both statehooders and enhance commonwealth supporters believe in this affection with the U.S. it's just a matter of how close this affection should be between these two nations.

Status plebiscites have traditionally excluded only nonresident Puerto Ricans and defined a "Puerto Rican" as someone who is domiciled on the island, a voter qualification much like that required of the citizens of a state in order to vote on issues relating to that state.²⁶¹ But Puerto Rico is never treated totally as a state under law and order in the United States.²⁶² Popular debates on this issue have various arguments. But here the core is the exclusion of non-native voters in a final plebiscite in Puerto Rico. One side argues that only those residing on the island should be able to vote, another that Puerto Ricans living in the United States, members of the Puerto Rican diaspora should also be able to

²⁵⁹ Aristoteles, La Política. The statehood party supporters do feel affection towards the U.S. even though the reasons may be economic rather than social or even political.

²⁶⁰ Over 90 % of Puerto Ricans do want a relationship with the U.S.; it's a matter of how close that relationship should.

²⁶¹ Puerto Rico's elections are run by the Comision Estatal de Elecciones (C.E.E.), which is made up of election commissioners representing each of Puerto Rico's main political parties and a Commission Chairman, elected by the commissioners but required by law to be a member of the same party as the Governor. See U.S.

General Accounting Office, Puerto Rico: Commonwealth Election Law and its Application to a Political Status Referendum, reprinted in 3 Puerto Rico Federal Affairs Administration, Proceso Plebicitario 1989-1991/Political Status Referendum 1989-1991, at 412 (1992). Puerto Rican electoral law requires special implementing legislation for every status plebiscite, which includes designating voter qualifications so that nonresident Puerto Ricans could vote; voter eligibility was based on existing electoral law. See also P.R. Laws Ann. Tit. 16,

Section 3053 (1985 & Supp. 1991) (qualified voters are those who are domiciled there). Puerto Rican law requires omicile, see P.R. Law Ann. Tit 1, Sec.8 for definition, but does not specify a specific duration, an aspect of the residency requirement employed by many states, see e.g., California Electoral Code Sec. 321 (West 1996) (must have state residency for at least 29 day prior to election); New York Electoral Law Sec. 5-102 (McKinney 1978 & Supp. 1997) (residency requirements is 30 days).

²⁶² Harris v. Rosario, (446 U.S. 651) Sustain that the US Congress can discriminate against Puerto Rico. This is one core reason why the United States can exclude non-native voters in a Plebiscite with binding power over Congress.

vote and the argument against non-native voters participation in a plebiscite concerning the Puerto Rican nation.²⁶³ Theoretically the US Congress can expand or exclude eligibility for voting in a status plebiscite in Puerto Rico²⁶⁴. In fact there is a precedent for allowing nonresidents members of a national group to vote in status plebiscites. When the Republic of Palau voted on a compact of free association with the United States in 1994, nonresident Palauan's were permitted to vote.

Who comprises the self of Puerto Rico, depends on how a Puerto Rican is conceptualized. Is a Puerto Rican the resident of a physical area, with an identity much like that of a New Yorker or a Floridian? Or is a Puerto Rican the member of a people with a national identity? If a Puerto Rican is conceived of as the former, then it makes sense analytically to restrict the ability to vote in plebiscites to those who are in Puerto Rico. If, however, Puerto Ricans are a nation, then those who can establish bonds through descent to the nation of Puerto Rico should be able to vote in plebiscites.²⁶⁵

The main issue is whether Puerto Rico is properly conceived of as a nation under colonial rule with Puerto Ricans as her people, no matter where they are physically (like

²⁶³ Prior to all plebiscites, these debates break along party lines with statehooders generally taking the position that only resident of Puerto Rico should be able to vote, while supporters of the ELA and independence favored the inclusion of nonresident Puerto Ricans. On the other hand the exclusion of non-native voters has been debated also but it hasn't been a prominent issue. Now being that the electoral difference between statehood and enhanced commonwealth is less than 2.5 points the issue will be highly debated in future plebiscites.

²⁶⁴ Puerto Rico remains under the Territorial Clause of the U.S. Constitution Article IV, Section 3 and it gives the US Congress the power to exclude or expand voting rights in Puerto Rico. See Memorandum from Kenneth R. Thomas, Legislative Attorney, American Law Division, Congressional Research Service, Library of Congress, Congressional Authority Under the United States Constitution to Extend Voting Rights for Federally Mandated Plebiscite in Puerto Rico to all Subjects Who Were Born Subject to the Jurisdiction of Puerto Rico (May 4, 1990)

²⁶⁵ This is only one means of defining a people, but it is the one that makes the most sense when speaking of a nation. The islands population is approximately 3.9 million people and it's estimated that another 4.0 million Puerto Ricans live in the United States, half of whom were born in the island. In contrast, the Basque people have discarded the conception of Basque as being defined by blood or differing physiognomy to being defined by one's commitment to and involvement in Basque culture and radical nationalist politics.

the Irish around the world),²⁶⁶ or whether Puerto Rico is analogous to a state. Many people hold dual citizenship and vote in U.S. elections as well as elections in their native countries.²⁶⁷ Puerto Ricans living outside of the island does not divorce them from a great interest (Plebiscite) in and commitment to Puerto Rico. Since the United States allows people to vote in U.S. elections and elections in that person's native country if they hold dual citizenship, then the same should hold true for Puerto Rico if it's viewed as a national entity.²⁶⁸ There is precedent in the United States for according a national minority a status that is similar to dual citizenship: Native American possesses a status that has been described by some as a dual citizenship with their respective nations, which have a quasi sovereign status known as domestic dependent nations²⁶⁹ and the United States.²⁷⁰

²⁶⁶ The Irish in Ireland have maintained strong ties with the Irish in America precisely through this conceptualization of themselves as a people flung worldwide by British domination and occupation.

²⁶⁷ The concept of dual citizenship recognizes that a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both. The mere fact that he asserts the rights of one's citizenship does not without more mean that he renounces the other. *Kawakita v. United States*, 343 U.S. 717, 723-724 (1952); See also *Afroyin v. Rusk*, 387 U.S. 253 (1967) (expatriation on the basis of voting in foreign election is unconstitutional because element of specific intent to renounce citizenship is not evident) The relevance of *Kawakita* and *Afroyin* to Puerto Rican –US dual citizenship may be by analogy only. In both cases, the court held that U.S. citizens derived their citizenship pursuant to the 14th Amendment. But people who derive their citizenship by virtue of their birth on the island of Puerto Rico may be statutory citizens with less constitutional protections. The nature of native born Puerto Ricans U.S. citizenship is unclear. See Memorandum from American Law Division, Congressional Research Service, Library of Congress, to the Honorable Bennett Johnston, Discretion of Congress Respecting Citizenship Status of Puerto Ricans (March 9, 1989)

²⁶⁸ Puerto Rico has a separate nationality from the United States.

²⁶⁹ See *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 509-10 (1991); see also *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1977) (holding that the United States does not have the right to intrude on the internal matters of the Santa Clara Pueblo even when tribal ordinance conflicted with Indian Civil Rights Act's equal protection guarantee). The United States legal relationship with the Native American nations is distinct from its legal relationship with Puerto Rico. The United States has conferred a de jure status of nationhood on the Native American nations by entering into treaties with them, which supersede conflicting state laws pursuant to the Supremacy Clause and can only be entered into by the Federal Government. In contrast, U.S. legislators exercise direct control over Puerto Rico. (*Harris v. Rosario*, 446 U.S. 651, 651-52 (1980) (per curiam) Holding that the Territory Clause empowers Congress to make rules and regulations for Puerto Rico and may treat Puerto Rico differently from states so long

The residency requirement for status plebiscites as challenged in *Sola v. Sanchez Vilella*²⁷¹, and found permissible under the U.S. Constitution and the Treaty of Paris, the agreement in which Spain ceded Puerto Rico to the United States²⁷². In *Sola V. Sanchez Vilella*, the US District Court for Puerto Rico stated that Puerto Rico is like a state for purpose of voting on internal issues.

There are many problems with the courts analogy and reasoning: U.S. law does not generally treat Puerto Rico like a state.²⁷³ Political scientist Thomas Ambrosio writes in 2002 that there has been a growing acceptance that ethnic identity groups have the right to mobilize politically for the purpose of influencing U.S. policies at home and abroad.²⁷⁴

The treatment of Puerto Rico like a state is erratic. United States courts have historically viewed Puerto Rico as an “unincorporated territory”²⁷⁵ : “Incorporated

as there is a rational basis.) ; (*Downs v. Bidwell*, 182 U.S. 244 (1901), holds that Congress has plenary authority (Territorial Clause) over territories.

²⁷⁰ While there is a debate over the quality of Puerto Ricans U.S. citizenship, the U.S. Supreme Court has clearly stated that Native Americans are statutory citizens as opposed to constitutional citizens. See *Elk v. Wilkins*, 112 U.S. 94, 102-04 (1884).

²⁷¹ 270 F. Supp.459 (D.P.R. 1967), 390 F.2d. 160 (1st. Circuit 1968), This case challenged an electoral law promulgated by the CEE for the 1967 plebiscite which confined voter eligibility to the residents of Puerto Rico.

²⁷² Treaty of Paris, December 10, 1898, US-Spain, 30 Stat. 1754.

²⁷³ *Harris v. Rosario*, 446 U.S. 651, 651-52 (1980) (per curiam) (Puerto Rico can be treated differently from the states as long as there is rational basis for the distinction); see also *Calero-Toldeo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 668-69 (1974) Stating that while due process guarantees apply to Puerto Rico, the Court refrains from deciding whether these protections arise from the Fifth or Fourteenth Amendments. The U.S. Supreme Courts reluctance to qualify the nature of U.S. citizenship acquired by birth in Puerto Rico has led to a debate over whether these Puerto Ricans have statutory citizenship, with fewer attendant protections of their U.S. citizenship, or constitutional citizenship.

²⁷⁴ Thomas Ambrosio, *Ethnic Identity groups and U.S. Foreign Policy*. Praeger Publishers, 2002.

²⁷⁵ The status of US territories was analyzed at the turn of the century in the seminal series of decisions made by the U.S. Supreme Court known as the Insular Cases; *DeLima v. Bidwell* 182 U.S. 1; *Goetze v. United States*, 182 U.S. 221; *Dooley v. United States*, 182 US 222; *Armstrong v. United States*, 182 U.S 243; *Downs v. Bidwell*, 182 U.S. 244; *Huus v. New York & Porto Rico Steamship Co.*, 182 U.S. 392.

territories are destined to become states and are subject to the full application of the U.S. Constitution. Unincorporated territories are not intended for statehood and are only subject to fundamental parts of the U.S. Constitution. While there is some disagreement as to whether the islands status has changed since the creation of the Estado Libre Asociado,²⁷⁶ the weight of the authority appears to be that Puerto Rico remains an unincorporated territory.²⁷⁷ Whatever may be the legal consequences for a Puerto Rican it is quite another matter what happens to his ethnicity or nationality.

The court evidences the weakness of its reasoning in *Sola* by its choice of analogy. The court's implication is that even in a vote deciding the adoption of a new state constitution, the most important matter in a case involving state sovereignty, and a relocated resident do not have a sufficient interest or connection to vote. However, state constitutions do not embody rights guaranteed by international law, except to the extent those rights are already guaranteed by the federal constitution. Puerto Rican status plebiscites, unlike a vote on a state constitution, are a necessary component of Puerto Rico's exercise of the right to self-determination under international law.²⁷⁸ This is possible because U.N. General Assembly Resolution 1514 states that all powers have to

²⁷⁶ *Montalvo v. Hernandez Colon*, 377 F. Supp. 1332 discussing U.S. Supreme Court criticism of the unincorporated territory doctrine.

²⁷⁷ The U.S. Court of Appeals for the First Circuit which hears cases from Puerto Rico, stated in 1956, after the establishment of the ELA, that Puerto Rico is neither a state of the union nor a territory which has been incorporated into the union preliminary to statehood, all the provisions of the federal Constitution are not necessarily in force. *Guerrido v. Alcoa Steamship Co.*, 234 F.2d 349 (1st Cir. 1956). Puerto Rico's status as an unincorporated territory is confirmed in more various decisions as well. *Harris v. Rosario* (1980), the U.S. Supreme Court found the Congress was authorized by the Territorial Clause to make all needful Rules and Regulations respecting the territory and could treat Puerto Rico differently than the other states as long as their acts had a rational basis. In *United States v. Sanchez* (992 F.2d. 1143) (1993) the U.S. Court of Appeals for the Eleventh Circuit declared that Congress has plenary authority over Puerto Rico.

²⁷⁸ See note 38.

be in the hands of the people of Puerto Rico. The Hawaiian plebiscite process of 1959 has to be avoided²⁷⁹ and the United States has to follow UN General Assembly Resolution 1514 in order to safe guard Puerto Rico's self determination process.

Currently before the US Congress stands the Puerto Rico Democracy Act of 2009 (H.R. 2499) introduced on May 19, 2009 by Pedro Pierluisi (D-Puerto Rico). The bill would provide for a plebiscite giving Puerto Ricans the choice between the options of retaining their present political status, or choosing a new status. If the former option were to win, the plebiscite would have to be held every 8 years. If the latter option were to win, a separate plebiscite would be held where Puerto Ricans would have to be given the option of being admitted as a U.S. State on equal footing with the other states or becoming a sovereign nation either fully independent from or in free association with the United States. The bill enjoys bi-partisan support in the House of Representatives, with 182 co-sponsors.²⁸⁰ The key issues before Congress that are debated are: (1) plebiscite vs. constitutional convention, (2) participation of Puerto Rican population not living in the island and (3) exact meaning of "Sovereignty in association with the United States". Non-native voters are not an issue in the bill at this time. Eventually the issue will surface into the public arena and will be debated.²⁸¹

²⁷⁹ The annexation of Hawaii to the United States was voted by non-native voters, the majority of the Kanaka Maoli people opposed statehood.

²⁸⁰ Luis Gutierrez (D-Illinois) and Nydia Velasquez (D-New York) are not co-sponsors of the bill. Velasquez presides the Hispanic Caucus in the House of Representative and is a supporter of the ELA, while Gutierrez has supported independence for the island. Jose Serrano (D-New York) is the only Puerto Rican Congressmen that co-sponsored the bill and is a statehood advocate.

²⁸¹ Once the political parties and the media start to conduct research, they will notice that non-native voters will be deciding the political future of the island and then it will become an issue in the island.

The Puerto Rico Democratic Act of 2009 (H.R.2499) does not establish the definition of who is a Puerto Rican for the purpose of voting in a status plebiscite into conformity with the conceptualization of Puerto Ricans as a nation, but maintain the conception of Puerto Rico as being like a state.²⁸²

The underlying issue in the status plebiscite is the valid exercise of Puerto Rico's right to self-determination. In addition to a plebiscite that reflects the free and genuine will of the people of Puerto Rico, the process has to abide by international law and procedures of decolonization and self-government. The blunder of the Hawaiian plebiscite²⁸³ must be avoided. One very important fact is that sovereign power must be transferred to the nation of Puerto Rico. The plebiscite is the last phase in the process of self-determination. Puerto Rican interest has to be paramount and must override U.S. interest.²⁸⁴

Who is defined as a Puerto Rican and the rights attendant on that identity have important implications for the fulfillment of international law's requirements regarding self-determination and autonomy. The United Nations General Assembly has enunciated the following characteristics by which a "self", for the purpose of establishing whether the exercise of the right of self-determination is outstanding, can be ascertained: a distinct religion, language, ethnicity or race, and history; a circumscribed territory; and discrete

²⁸² The leadership of the statehood party (PNP) at times has stated that the political status of Puerto Rico is an internal issue between the U.S. and Puerto Rico, thus excluding the international arena from the status issue of the island.

²⁸³ The Hawaiian plebiscite won by the statehood option violated international law in three crucial areas, (1) voting eligibility (non-native voters were permitted to vote), (2) limited choice (the only option on the ballot was statehood) and (3) conflict of interest (US interest was paramount).

²⁸⁴ In the Hawaiian plebiscite U.S. interest was paramount, and this violated international law and procedures of self-determination.

political, juridical and economic systems.²⁸⁵ Puerto Rico easily meets these criteria's. Puerto Rico's primary religion is Catholicism, but with a distinct cultural quality reflective of Puerto Rico as Latin American.²⁸⁶ The primary language of Puerto Rico is Spanish.²⁸⁷ Puerto Ricans are descended mainly from Tainos (Natives), Africans and predominantly Spanish Europeans. Puerto Rico is an island, a distinct and circumscribed territory.

Puerto Rico has a distinct national identity with cultural expressions that distinguish it from other nations.²⁸⁸ Puerto Rico has its own flag, which is omnipresent at the New York Puerto Rican Day Parade. There is a national anthem, "La Borinquena". Also the political expression of Puerto Rico is unlike the United States. While the island does have Republican and Democratic parties for the purpose of U.S. presidential primaries, the main parties are based on their positions on Puerto Rico's political status,²⁸⁹ Political culture is quite different from the United States.²⁹⁰ Puerto Rico's legal

²⁸⁵ A prima facie obligation to transmit information about a territory, in accordance with Article 73 (e) of the U.N. Charter, exist when the territory is geographically separate and is distinct ethnically and/or culturally from the country administrating it. See General Assembly Resolution 1541.

²⁸⁶ Catholics make up about 84% of the population. The manner in which the Catholic faith is expressed is particularly Latin American, which sets Puerto Rico apart from the United States.

²⁸⁷ English has again become one of the official languages of Puerto Rico, along with Spanish. This is due to the fact that the statehood party won a land slide election in 2008. Statehood supporters will not accept English as the only official language of the island.

²⁸⁸ For example, Bomba and Plena are two uniquely Puerto Rican musical forms. The Puerto Rican identity is personified in the "Jibaro" a simple countryperson who is romanticized in poems and songs and is used as an emblem by the Partido Popular Democratico (Commonwealth Party). Puerto Rican food has distinctive dishes, such as pastels and alcapurrias. See also Antonio S. Pedreira, *Insularismo*. This book is about how the Puerto Rican soul was formed through space and time.

²⁸⁹ Although there is today another political party "Puertorriquenos por Puerto Rico" (Puerto Ricans for Puerto Rico) who's core ideas are not rooted in the political status issue.

²⁹⁰ Puerto Rican political culture follows Latin America. When Hillary Clinton and then Democratic candidate Barak Obama came to campaign in the island they were astonished because the campaigning was nothing like Wyoming, New York, California or Hawaii.

system is a mix of civil law and common law and is unique among the majority of jurisdictions within the United States.²⁹¹

Puerto Rico demonstrates a national identity, both under international law and in practical terms. As a colonizer, the United States has attempted to destroy this self so that there is no self to determine.²⁹² Forces within Puerto Rico have also worked to assist the colonizer's attack upon the national identity, or otherwise negate that identity, as a means of preserving the relationship with the colonizer, which they see as beneficial. The people of Puerto Rico have resisted the eradication of their separate identity and have strived to maintain that identity as distinct in contrast to that of the United States.²⁹³

The United States domination of Puerto Rico, which is unlike the federal government's posture towards any state, is further evidence that Puerto Rico is a distinct nation. The United States has wholly subordinated Puerto Ricans as a group and as individuals; it has invaded the physical integrity of Puerto Rico, it has assailed Puerto Rico's linguistic identity, and it has undermined Puerto Rico's ability to reproduce itself

²⁹¹ Puerto Rico's distinctive legal tradition was recognized in *Balzac v. Porto Rico* 258 U.S. 298 (1922), in which the Court held that the right to trial by jury in the criminal context did not apply to Puerto Rico: "While the United States has been liberal in granting to the islands acquired by the Treaty of Paris most of the American constitutional guaranties, it has been sedulous to avoid forcing a jury system on a Spanish and civil law country until it desired it. For more information on the discussion of Puerto Rico's judicial autonomy, see Manuel del Valle, *Puerto Rico Before the United States Supreme Court*, 19 *Revista Juridica Universidad Interamericana de Puerto Rico* 13 (1984).

²⁹² Although some political sectors inside the statehood party have tried different ways to establish the English language, a tourist in the island can see some municipalities have used English as a mean to communicate with their constituencies. (Example: The municipalities of Guaynabo, Yauco, and others that are under the control of the statehood party).

²⁹³ Francisco Scarano, *Puerto Rico: Cinco Siglos de Historia*. McGraw Hill, Interamericana, Bogota, Colombia. 2008. My parents went to school on the island when public education was in English and they had a very hard time academically.

as a people. These attacks on Puerto Rico's identity are all means of maintaining colonial domination.²⁹⁴

Subordination of the group and the individuals that comprise the group is a key means of subjugating a people; subordinate status is, in and of itself, a means of control²⁹⁵.

Puerto Rico is not represented in the United States Congress on an equal basis with the residents of the fifty states of the union: Puerto Rico has no vote in the United States Senate or the U.S. House of Representatives.²⁹⁶ The U.S. Congress may decide the rights of Puerto Ricans and the status of Puerto Rico.²⁹⁷ The residents of Puerto Rico cannot vote to elect the U.S. President, although they may vote in presidential primaries.²⁹⁸

²⁹⁴ Francisco Scarano, Puerto Rico: Cinco Siglos de Historia. McGraw Hill, Interamericana. Bogota, Colombia. 2008. p. 669-702.

²⁹⁵ The international community recognizes that subordination is a key facet of colonial domination. Once a territory has been ascertained as being distinct from the country administering it, the presumption that the territory is under colonial domination is supported if the territory's distinctive characteristics "affect the relationship between the metropolitan State and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination..." U.N. General Assembly Resolution 1541.

²⁹⁶ See *Michel v. Anderson*, 14 F.3d. 623, (1994). The Puerto Rico Resident Commissioner can, however, vote in the Committee of the whole of the House of Representatives as well as standing committees. Because Puerto Rico does not have a voting elected representative, this job falls to Puerto Rican legislators elected from the states. For example, Representative Nydia Velasquez (D-NY) requested a congressional inquiry into Puerto Rican citizenship when Puerto Ricans in the island began to renounce their U.S. citizenship thus throwing open the question of what civil and political rights they possessed. See Lourdes Centeno, Congresista Pide Investigación Sobre Ciudadanía de Puerto Rico. EL DIARIO (N.Y.), Feb. 1, 1996.

²⁹⁷ See *Harris v. Rosario*, 446 U.S. 651, (1980) (per curiam) (holding that the Territorial Clause empowers Congress to make rules and regulation for Puerto Rico and may treat Puerto Rico differently from States so long as there is a rational basis); *Downs v. Bidwell*, 182 U.S. 244 (1901) Holding that the U.S. Congress has plenary authority over territories.

²⁹⁸ See *Igartua De La Rosa v. United States*, 32 F 3d 8 (1st Circuit 1994) (per curiam) (discussing the right to vote in presidential elections), Certiorari denied, 541 U.S. 1049 (1995); *Flores Sanchez v. United States*, 376 F. Supp. 239; see also Lillian Rivas, Republicanos Reiteran su Apoyo a Dole, EL DIARIO (NY), Mar. 3, 1996. In 2008 both Democratic Presidential candidates Sen. Barak Obama and Sen. Hilary Clinton both campaigned in the island. Sen. Hilary Clinton won the primary in Puerto Rico.

Despite this lack of representation, U.S. legislative bodies are ultimately governing Puerto Rico and promulgating laws that are binding on its residents.

Puerto Rico's subordinate status is also seen in the way the United States wields its economic power over the island.²⁹⁹ The residents of Puerto Rico receive benefits (such as public assistance and other economic benefits) from the United States, and fear among the populace is that being cut loose from the United States would result in the loss of benefits which the people feel they need desperately.³⁰⁰ Despite economic advances, however, Puerto Rico remains considerably less affluent than any U.S. state. While the United States is in an economic crisis with a un-employment rate of 10%, Puerto Rico is in a deeper economic crisis with a un-employment rate of over 16%; and the islands economy has been contracting for over the last three years.³⁰¹

The rights accruing by virtue of U.S. citizenship are different depending on where one is within the United States territory; those that stand on Puerto Rican soil have a second class citizenship. In *Igartua De La Rosa v. United States*, some of the plaintiffs were United States citizens who were residing outside the fifty states of the union, and now resided in Puerto Rico but were no longer able to vote in presidential elections.³⁰²

These plaintiffs challenged the Uniformed and Overseas Citizens Absentee Voting Act

²⁹⁹ Capitalism, Antonio Gramsci suggested, maintained control not just through violence and political and economic coercion, but also ideologically, through a hegemonic culture in which the values of the bourgeoisie became the common sense values of all. This would help maintain the status quo rather than revolting.

³⁰⁰ But there is another side to this argument and it's that the Puerto Rican market is very lucrative market for US products and services. The island is a captive market; it's the fifth most important market for US exports. Puerto Rico does not have the power to commercialize freely with other countries.

³⁰¹ Federal Reserve Bank of New York. Current Issues in Economic and Finance. Second District Highlights. Volume 14, Number 2, March 2008.

³⁰² *Igartua de la Rosa v. United States* (32 F. 3d. 8, 10.) (1st Circuit 1994). The other plaintiffs were residents of Puerto Rico who were challenging the constitutionality of their inability to vote in United States presidential elections. The Court reasoned that because Puerto Rico did not have the status of a state, its residents did not have the right to vote in the presidential elections.

on due process and equal protection grounds.³⁰³ Under this statute, U.S. citizens, including Puerto Ricans, who move to a foreign jurisdiction, may vote in U.S. presidential elections.³⁰⁴ A U.S. citizen who moves to Puerto Rico, however, loses that ability to vote. So, it seems clearly that voting rights in Puerto Rico are not covered by this federal law due to the islands status as an unincorporated territory.³⁰⁵ Puerto Rico is not considered a foreign country.

The U.S. Court of Appeals for the First Circuit applied the rational basis standard of review to the statute and found the consequences of the Act were not due to the Act itself, but to the absence of any constitutional right of Puerto Ricans residents to vote in presidential elections. This is a recurring outcome: one loses the rights of citizenship and the U.S. constitution does not apply totally as one step onto the soil of Puerto Rico in the same way one accrues rights as one steps onto the United States. The quality of U.S. citizenship conferred on Puerto Ricans by virtue of their birth on the island is distinct. Anyone born in the states or the District of Columbia, or naturalized in the United States, is a citizen of the United States pursuant to the Fourteenth Amendment Citizenship Clause. Statutory or legislative citizenship as opposed to constitutional citizenship is conferred on persons born outside the United States to U.S citizens or naturalized outside of the United States. Statutory citizenship can be stripped of their citizenship involuntary

³⁰³ The Uniformed and Overseas Citizens Absentee Voting Act is a U.S. law dealing with elections and voting rights for U.S. citizens residing overseas. The act requires that all U.S. states and incorporated territories allow certain U.S. citizens to register to vote and to vote by absentee ballot in federal elections. Public Law 99-410, 100 Stat. 924.

³⁰⁴ *Ibid.*

³⁰⁵ Established by the Insular Cases. This implies that non-native voters can be excluded.

or be forced to fulfill a condition precedent to the maintenance of U.S. citizenship.³⁰⁶ It is unclear whether Puerto Ricans who derive their U.S. citizenship from birth on the island are constitutional or statutory citizenship, thus leaving their status and its attendant rights uncertain.³⁰⁷ The lack of clarity is, in and of itself, reflective of the devaluation of citizenship derived from birth on Puerto Rican soil.

This degradation of Puerto Rico presents several conflicts with international law. The second class citizenship of those who reside in Puerto Rico clearly contradicts a factor of free association: citizenship without discrimination on the same basis as other inhabitants.³⁰⁸ The American Declaration of the Rights and Duties of Man³⁰⁹ includes the right to equal protection of the law, and the right to vote and to take part in government. The Universal Declaration of Human Rights³¹⁰ which has similar provisions, states specifically that no distinction shall be made in the accord of rights set forth in the Declaration on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. International law and policy

³⁰⁶ *Rogers v. Belli*, 401 U.S. 815 (1971). The leading case on the issue. In order to be naturalized, one may be asked to fulfill certain conditions precedent, but in such cases one already has a nationality which is being relinquished as opposed to being divested of nationality without necessarily having another.

³⁰⁷ The quality of citizenship is unclear since the U.S. Supreme Court has refrained from applying the equal protection guarantee to Puerto Rico through the Fifth and Fourteenth Amendment. It is possible for Congress to expatriate a place certain conditions on the U.S. citizenship of a native born Puerto Rican should Puerto Rico opt for independence. See also American Law Division Memorandum.

³⁰⁸ U.N. General Assembly Resolution 742.

³⁰⁹ Organization of American States Resolution XXX; adopted by the Ninth International Conference of American States (1948). The United States is subject to the jurisdiction of the Inter-American Commission on Human Rights, which applies the American Declaration ... to the United States and other States which have not yet ratified the American Convention.

³¹⁰ U.N. General Assembly Resolution 217 (1948) while not originally promulgated to have any effect, the Universal Declaration has, in the view of some commentators, achieved the status of customary international law.

does not help Puerto Ricans which are treated as second class citizens while on Puerto Rican soil. Puerto Rican soil is viewed as a foreign country and nation, implicitly by the U.S. Supreme Court³¹¹ decisions.

Puerto Rico is physically invaded by the United States and its agencies. For example the U.S. military has a substantial presence in Puerto Rico.³¹² On the island of Vieques alone the U.S. Navy controls 26,000 out of 33,000 acres of land.³¹³ Moreover, the physical presence of the colonizer is more than mere presence, but a destructive force at times. An example was the use of Vieques and Culebra by the U.S. Navy to test weapons, until the people of both islands and Puerto Rico started to fight back.³¹⁴

The colonial presence is also a policing force. In 1950, a series of uprisings³¹⁵ in Ponce, Jayuya, Naranjito and Utuado, and attacks on the Arecibo police station and La

³¹¹ The U.S. Supreme Court has the final decision upon legal controversies that have a political impact on Puerto Rico.

³¹² Jorge Rodríguez Beruff, Política Militar y Dominación: Puerto Rico en el Contexto Latinoamericano. Ediciones Huracán, 1988. The United States installed 21 U.S. military bases on some of the best land in Puerto Rico. Currently Roosevelt Roads Naval Station, Camp García in Vieques is in the process of closure. pp. 166-174.

³¹³ The U.S. occupies 78 % of the land; the island has suffered a prolonged economic crisis, a massive out migration, unemployment of over 50 %, an alarming cancer rate that doubles the rate of Puerto Rico and an alarming rate of contamination due to the use of live ammunition on the island. The U.S. Navy had and has been a very dreadful neighbor for all the Viequense and Puerto Rico.

³¹⁴ Fishermen would stage fish ins at the impact area and most of all the death of David Sanes Rodríguez in Vieques became the genesis of the fight to push out the U.S. Navy from Vieques by the organization of “Todo Puerto Rico con Venues” (All Puerto Rico with Venues) this struggle reached the Puerto Rican communities in the States specially New York, New Jersey, Illinois, Florida and other state with a substantial Puerto Rican community. The Navy left Culebra in 1972 and Vieques in 2003,

although the struggle in Vieques is not over yet until the lands are returned to the people of Vieques.

³¹⁵ The 1950 insurrection was organized by the Partido Nacionalista (Nationalist Party) a militant independence organization, in response to the planned 1951 plebiscite which omitted the option of independence. The 1950 nationalist uprising took place after President Truman refusal to hold a plebiscite on the issue of status in 1946. Truman had just signed the bill which would allow Puerto Rico to write its own constitution. Pedro Albizu Campos President of the Nationalist Party organized the insurrection in direct response to the planned plebiscite, which he saw as a continuation of the colony. Outraged by what Albizu Campos considered the falsehood of giving the impression to the international community that Puerto Rico had exercised its free choice, he organized the Jayuya uprising. Consuelo Corretjer, The Legacy of Don Pedro Albizu Campos, EL DAILY

Fortaleza³¹⁶ in San Juan³¹⁷ were put down by U.S. military personnel using machine guns, bazookas, and tanks.³¹⁸ Recently the F.B.I. and U.S. Marshalls have been used to arrest independentistas and trespassers in occupied lands that the U.S. military have in the island (including Vieques). They were also used to evict Viequense families at the beginning of the occupation of Vieques and Culebra.

Language is a critical facet of national identity.³¹⁹ Unlike the United States, Puerto Rico's populace is Spanish speaking: Four fifths of all Puerto Ricans do not speak English beyond a basic level. Local courts and government agencies conduct business in Spanish.³²⁰ The imposition of U.S. law regarding language presently leads to nonsensical

NEWS EN ESPANOL (NY), September 12, 1995 at E8 (Corretjer is the daughter of Juan Antonio Corretjer, the renowned poet and Secretary of the Parted Nationalist Puertorriqueno while Albizu was President.

³¹⁶ La Fortaleza is the Governor of Puerto Rico's residence. The oldest executive mansion in the western hemisphere.

³¹⁷ The insurrection lasted 72 hours and the nacionalistas managed to take Utuado and Jayuya, where the Republic of Puerto Rico was declared.

³¹⁸ Arturo Morales Carrion, Puerto Rico: A Political and Cultural History. (1983) When Filiberto Ojeda Rios was killed on September 23, 2006 (September 23 is a memorial day for the Independence supporters, it commemorates the 1868 revolt against Spain in the town of Lares) it was the F.B.I. that handled the arrest which ended up being considered an execution by many political leaders in the island including Tomas Rivera Shatz the current president of the Puerto Rican Senate who is also a member of the Statehood Party (PNP).

³¹⁹ By way of example, the birth of the United States and its national identity gave rise to the question of whether the U.S. should have a national language. Some suggested the United States speak a completely different language than the British in order to assert their new identity. Other advocated that the U.S. rename their language American rather than English and reject British linguistic standards simply because of their association with colonial oppression, even when those standards were demonstrably correct. See Dennis Baron, Federal English, in Language Loyalties: A Source Book of the Official English Controversy.

³²⁰ Ronald Fernandez, Prisoners of Colonialism: The Struggle for Justice in Puerto Rico. Filiberto Ojeda Rios a leader of the "Ejercito Popular Boricua" (Los Macheteros) killed by F.B.I. agents in a very controversial situation on September 23, 2006 a highly commemorative date for Independence supporters. Ojeda Rios refused to speak English at his 1989 federal trial in the District of Puerto Rico: as Ojeda Rios spoke to his people in their language, a court employee dutifully translated his Spanish for a jury that needed no translation ... U.S. law required that a translation occur, but when the judge offered the jurors headsets to hear the translation, they collectively discarded them. Ojeda Rios was acquitted.

outcomes. For example, the requirement that jurors in the U.S. Federal Courts speak English leads to the disqualification of roughly 75 % of the jury pool in Puerto Rico.³²¹

Linguistic identity is a component of Puerto Rico's identity that stands not only in opposition to that of the United States, but establishes its identity as sui-generis, even among Latin American countries. Puerto Ricans have a particular accent which sets them apart from other Latin Americans (although the Puerto Rican accent is generally discernible as Caribbean),³²² and Puerto Ricans have specific expressions that mark them as Puerto Ricans.³²³

The issue of language has always been a contentious one for Puerto Rico.³²⁴ Ever since the United States installed a military government in Puerto Rico after the Treaty of Paris was signed, the United States has tried to Americanize the people through its control of public education.³²⁵ Different Puerto Rican governors have also manipulated language to further political ends, most recently pro-statehood governor Luis Fortuno and the statehood party (PNP) which wants to allow the use of English in local courts.³²⁶

³²¹ Studies conducted in the "Ateneo Puertorriqueno" one of the leading cultural institutions reported that 97.3 % of Puerto Ricans regarded themselves as native Puerto Ricans; 57% believed Puerto Rican culture to be very different from American culture; 79% held the opinion that it was extremely important for Puerto Ricans to preserve their national identity; 75% expressed that they considered themselves to be first Puerto Ricans and then Americans; 94% answered that they would not relinquish Spanish as their language.

³²² See Morales Carrion, for example, Puerto Ricans tend to pronounce the letter "r" as an "l".

³²³ Such expressions as "ay bendito"; Puerto Ricans are the only Spanish speakers that say "Chinas" to oranges, the rest of Latin America said "naranjas".

³²⁴ During the debate on April 29, 2010 of the Puerto Rico Democracy Act, various U. S. House Representatives (all from the Republican Party) stated that Puerto Rico in order to be a state of the union had to have English as the official language of the state.

³²⁵ The United States maintained control of education well into the 1940's in an attempt to Americanize the people of Puerto Rico.

³²⁶ Laura Candelas, "Procesos judiciales serian en ingles" EL NUEVO DIA, November 12, 2009.

Former Governor Pedro Rossello also made English with Spanish the official language of Puerto Rico during his incumbency in La Fortaleza.

The United States made English and Spanish the official languages of Puerto Rico in 1902. In 1909, the colonial government attempted to prohibit public school instruction in Spanish, to which school children responded by going on strike and refusing to attend classes held in English.³²⁷ A law passed in 1952 made English and Spanish the languages of local government, but this was a failure and the law went unenforced until 1991 when Governor Rafael Hernandez Colon signed a law making Spanish Puerto Rico's sole official language. In 1991, Spain gave Puerto Rico the award "Principe de Asturias"³²⁸ for its defense of the Spanish language. In 1993, English was again added as one of the islands official languages under Pedro Rossello pro-statehood administration.³²⁹

Diminishing Puerto Rico's linguistic difference, and therefore the islands distinct identity, is seen by pro-statehood forces as a way of americanizing Puerto Rico and making the prospect of admitting Puerto Rico to the United States union as the fifty-first state more palatable to the U.S. Congress and to the American people.³³⁰ Republican

³²⁷ The Jose de Diego Institute was established by activist so that children expelled for refusing to attend classes in English could be taught in Spanish for free. Jose de Diego was a supporter of independence and is called the "Caballero de la Raza" (the gentlemen of the race) in Puerto Rico.

³²⁸ The Prince of Asturias Awards is a series of annual prizes given in Spain by the Fundacion Principe de Asturias to individuals, entities and/or organizations from around the world that make notable achievements in the sciences, humanities or public affairs.

³²⁹ See, 139 Congressional Records H328-30, (daily ed. Feb. 2, 1993); (statement by Puerto Rico Resident Commissioner Carlos Romero Barceló). This law still retained Spanish as the language of instruction in the islands public school system and reaffirmed that Spanish will be the principle language used in island courts. However, a government project was instituted in Puerto Rico's public schools for the 1997-98 school years in which many classes were taught in English, sparking fear and resentment among students and teachers. Critics charged that an English proficient population will make statehood more palatable to Congress and the American people.

³³⁰ It appears, however that statehood supporters will not accept the establishment of English as the sole language of Puerto Rico. The people of Puerto Rico are against the adoption of English as the sole language of

Congressmen Steve King (R-Iowa) and Paul Broun (R-Georgia) circulated a letter to their House colleagues during the week of February 7-13, 2010 that if Puerto Rico decides to be admitted to the union the island would have to accept English as the official language of Puerto Rico.³³¹ The pro-statehood leadership classified their actions as racist.

Katzenbach v. Morgan³³² makes an interesting turn in the question of language and the Puerto Rican identity. In this case, a group of New York voters challenge the constitutionality of the Voting Rights Act of 1965 because it would prohibit enforcement of a New York law requiring that a voter read and write English in order to be eligible to vote, thus violating the U.S. Constitution's Tenth Amendment.³³³ This case becomes crucial in establishing the distinct identity of Puerto Ricans. The court determined that section 4 (e) of the Voting Rights Act:

“... may be regarded as an enactment to enforce the Equal Protection Clause. Congress explicitly declared that it enacted Section 4 (e) to secure the rights under the Fourteenth Amendment of persons educated in American Flag schools in which the predominant classroom language was other than English. The persons referred to include those who have migrated from the Commonwealth of Puerto Rico to New York and who have been denied the right to vote because of their inability to read and write English... More specifically, Section 4 (e) may be viewed as a measure to secure for the Puerto

the island. Average polls in the island indicate that over 80 % do not want English as the sole language of Puerto Rico.

³³¹ El Nuevo Dia, 15 de febrero de 2010, “To be or not to be” Revista Dominical.

³³² 384 U.S. 641 (1966).

³³³ 384 U.S. 643-646 (1966).

Rican community residing in New York non-discriminatory treatment by government, both in the imposition of voting qualifications and the provision or administration of governmental services, such as public schools, public housing and law enforcement.³³⁴

Thus this case and related cases³³⁵ illustrate recognition of the Puerto Rican identity, as manifested by language, by U.S. law.³³⁶

Yet another means of attacking a people's identity is to attack their ability to biologically reproduce. The Puerto Rican government, using funds from the U.S. government and privately funded U.S. Foundations, sterilized over one-third of the women of child bearing age in Puerto Rico over thirty-five year period ending in 1968. It was a procedure so commonly performed that Puerto Ricans referred to it as "la operacion."³³⁷

Not only does sterilization abuse curtail a people's ability to reproduce, but sterilization is a means of degradation. The nature of the colonial relations between Puerto Rico and the United States made coercion possible through a population control program. The underlying attitude is that the person is worth so little that her physical

³³⁴ Ibid at 652.

³³⁵ Puerto Rican Org. for Political Action v. Kusper, 490 F.2d 575 (7th Circuit 1973); Torres v. Sachs, 381 F. Supp. 309 (1974). In Kusper, Puerto Ricans challenged their denial by the Chicago Board of Election Commissioners to voting assistance in Spanish. Part of the courts analysis was based on Puerto Ricans status as U.S. citizens and the facts that they are educated in Spanish in schools under the U.S. flag and are not required to pass an English proficiency test in order to acquire citizenship. Without voting assistance in their language, the court found that Puerto Ricans were unable to effectively vote. The court concluded that no Illinois law prohibited the Board of Election Commissioners from giving voting assistance in Spanish, and if such a law existed, it would be in violation of the Voting Rights Act and its amendments.

³³⁶ English and Spanish were the official languages of Puerto Rico at the time of Morgan, but that law was largely unenforced. The holding of Morgan is still relevant, especially since English is once again one of Puerto Rico's official languages.

³³⁷ LA OPERACION (Latin American Film Project & Skylight Pictures 1982).

integrity can be violated without her consent, and her individual right to exercise self-determination can be encroached upon. Sterilization has been used historically as a means of eliminating the unfit sectors of society. Puerto Rican women are among a number of communities of women that have been devalued to this degree. Aside from robbing women of their autonomy, sterilization is a means of obtaining cheaper labor or other resources.³³⁸ In the case of Puerto Rico, women were sterilized so they would stay in the workforce, thus boosting the islands economy because they could be paid less money than men.³³⁹

Puerto Rico's historical defiance of domination is further evidence that it is a nation. Puerto Rico actively distinguishes itself from the colonizer, despite the United States efforts to Americanize its subjects, by resisting the imposition of language and citizenship in the pursuit of its self determination, even resorting to armed insurgency in its resistance.³⁴⁰

Puerto Ricans have targeted their most pointed resistance at the imposition of U.S. citizenship, further emphasizing their self identification as a nation. In 1917, the Jones

³³⁸ Numerous communities of women have been subjected to sterilization for the purpose of economic exploitation:

Native American women and men exposed the unprecedented number of sterilizations on reservations without evidence of informed consent, while they showed the efforts of several corporations to deprive them of their land, particularly that which contained uranium. Mexican women told of increasing sterilization programs just across the U.S. border, in Juarez and other border cities where U.S. industries have established plants employing thousands of women.

³³⁹ LA OPERACION (Latin American Film Project & Skylight Pictures 1982).

³⁴⁰ See Arron Guevara, Puerto Rican Anti-Colonial Fighters and the Right to Prisoner of War Status. 60 *Revista Juridica Universidad de Puerto Rico* 713 (1991).

Act imposed U.S. citizenship upon the people of Puerto Rico,³⁴¹ who until that point had the status of Puerto Rican citizenship.³⁴² Puerto Ricans had at that time a single, and rather distasteful, option. They automatically became U.S. citizens unless they signed a document refusing it. But this refusal deprived them of numerous civil rights, including the right to hold office, and made them aliens in their birthplace.³⁴³ This imposition was met by adamant resistance. The Puerto Rico House of Delegates stated:

“We maintain firmly and loyally our opposition to our being made against our express will and without our express consent, citizens of any country that is not our beloved land to which God gave us an inalienable right. We, like all Puerto Ricans, believe in the existence of God and an eternal life, but if there were a celestial citizenship by which we could obtain eternal happiness and if that citizenship were offered to us in exchange for ours, we would hesitate in accepting it...”³⁴⁴

In 1994, three hundred Puerto Ricans renounced their U.S. citizenship in a symbolic ceremony and issued themselves Puerto Rican passports. These are the first since 1917,

³⁴¹ See ch.145, Section 5, 39 Stat. 951, 953 (1917). Raul Serrano Geyls, Derecho Constitucional de Estado Unidos y Puerto Rico. Colegio de Abogados de Puerto Rico: Instituto de Educacion Práctica. 1986. p.476-472.

³⁴² See Foraker Act, ch. 191, section 7, 31 Stat. 77, 79 (1900). Serrano Geyls, p.442-449.

³⁴³ See Jones Act , ch. 145, Section 10 (all judicial officials must be U.S. citizens), Section 35 (one must be a U.S. citizens to vote), Section 36 (Puerto Rico Resident Commissioner must be a U.S. citizen). Several hundred people refused U.S. citizenship and chose to retain Puerto Rican citizenship. All of these people have since died. See Frank Gaud, Una Aspiracion Cumplida, EL DIARIO (NY), Dec.5, 1995 at 3. Puerto Ricans who declared themselves Puerto Rican citizens were not aliens within the meaning of U.S. immigration law, but non-citizen U.S. nationals. See Gonzalez v. Williams, 192 U.S. 1, 13 (1904) (citizens of Puerto Rico were neither United States citizens nor aliens); Jose Julian Alvarez Gonzalez, The Empire Strikes Out: Congressional Ruminations on the Citizenship Status of Puerto Ricans, 27 Harvard Journal on Legislation 309, 313 n.14 (1990) (citing authority for different positions in the debate over the difference between the concepts of citizenship and nationality).

³⁴⁴ Quoting a memorandum sent to the U.S. Congress by the Puerto Rico House of Delegates.

when 288 local activists protested to local authorities following imposition of the Jones Act, which made Puerto Ricans U.S. citizens without their consent.³⁴⁵ There are several Puerto Ricans who took this one step further and have legally renounced their U.S. citizenship.

The first, independentista activist Juan Mari Bras³⁴⁶ went to Venezuela and renounced his U.S. citizenship before the U.S. Ambassador there, as required by law.³⁴⁷ On December 2, 1995, he was notified that his renunciation had been accepted by the United States. Several other Puerto Ricans have legally renounced their U.S. citizenship,³⁴⁸ among them Paquita Pesquera,³⁴⁹ Antonio Caban Vale³⁵⁰ and Alberto Lozada Colon, (Attorney at Law) the PIP candidate for mayor of Mayaguez.

These renunciations had resulted and will continue to result in legal actions to clarify the status of these individuals, who could be conceived as “statelessness” or as a de jure or de facto Puerto Rican citizenship. The renunciations raise the questions of what

³⁴⁵ Robert P. Walzer, Act of Defiance: Group Renounces Citizenship, N.Y. NEWSDAY, Jan. 10, 1994, at A18. Denoting the ceremony as symbolic does not undermine the commitment of those who have renounced their U.S. citizenship in this manner, but simply distinguishes this type of renunciation from one done in accordance with U.S. law. Those renouncing symbolically typically do not recognize U.S. authority over Puerto Rico and so renouncing in accordance with U.S. law would be meaningless to them.

³⁴⁶ Juan Mari Bras is not only a prominent figure in the independence movement, but a lawyer, professor of law and author. Most of all he is well respected in Puerto Rico by all political forces on the island.

³⁴⁷ See Immigration and Naturalization Act, section 349 (5), U.S.C.A. Section 1481 (a) (5).

³⁴⁸ See Judge: U.S. Citizenship Not Pre-requisite for Voting in Puerto Rico, AP, Oct. 21, 1996, available in Lexis, News Library, Curnws File; See also Lillian Rivas, Siguen las renunciaciones a la Ciudadanía, EL DIARIO (NY), Jan. 31, 1996, at 11; Lillian Rivas, Mujer regresa con pasaporte Boricua, EL DIARIO (NY), Apr. 9, 1996, at 13; Un Líder Obrero Renuncia a la Ciudadanía de EE.UU. para Reclamar la de Puerto Rico, CRONICA, Aug. 27, 1997, available en Lexis, New Library.

³⁴⁹ See Lillian Rivas, Renuncia Primera Mujer a Ciudadanía, EL DIARIO (NY), Feb. 28, 1996 at 14. Pesquera is Mari Bras Fritz wife and the mother of Santiago Mari Pesquera, whose 1976 murder has been attributed to members of the police force as a means of silencing his father.

³⁵⁰ Caban Vale is a popular singer and musician, known as “El Topo”, who wrote “Verde Luz” considered by independentistas being Puerto Rico’s unofficial national anthem.

status exist when one strips away U.S. citizenship, whether a status of Puerto Rican citizenship exists, and what rights are attendant on Puerto Rican citizenship.

The first option is that Puerto Ricans without U.S. citizenship are “stateless”. People who are stateless have neither the rights nor the protections that accompany citizenship: they cannot vote or travel internationally, they have no State to protect their rights in the international arena, and they will encounter serious difficulties in obtaining employment.³⁵¹

Statelessness arises when someone is involuntarily stripped of their citizenship, such as when the Nazi government in Germany removed citizenship from the Jews in 1941, or when a person voluntarily renounces citizenship without claiming another.³⁵² Statelessness also arises through conflicts between different countries nationality laws: a person born in a country whose nationality law is jus-sanguinis³⁵³ of parents from a country whose law of nationality is jus-soli³⁵⁴ will, theoretically, be stateless, although in practice there are remedies to resolve this. The main problem with this option is that it is counterintuitive since it is absurd to say that these Puerto Ricans are not Puerto Ricans just because they say they are not U.S. Americans.³⁵⁵

³⁵¹ The United States for example requires proof of legal status in order to obtain employment and employers who hire unauthorized aliens are subject to sanctions.

³⁵² *Davis v. INS*, 481 F. Supp. 1178, 1179-82 (1979), a U.S. national renounced his U.S. citizenship and declared himself a citizen of the world, thus becoming stateless.

³⁵³ Jus-Sanguinis means citizenship that is derived from parent’s nationality.

³⁵⁴ Jus-Soli means Citizenship that is derived from one’s birthplace.

³⁵⁵ The Puerto Rican Department of Justice issued an opinion on Juan Mari Bras status, stating that, among other conclusions Mari Bras is an alien. In response to this, Fufi Santori, speaking for the Union Nacional Pro-Patria said, “How can Mari Bras who was born and raised in Puerto Rico be a foreigner? How can a Peruvian, a Cuban, or an American be able to vote in Puerto Rican elections and Mari Bras who was born and raised here cannot? That is what makes Pierluisi (Pedro Pierluisi was then Secretary of Justice in Puerto Rico and today is the Resident Commissioner of the island in the House of Representatives) opinion ridiculous. Quiomarie J. Vera Muñoz, Rechazo a Decisión Pierluisi, CLARIDAD (San Juan), Jan. 12-18, 1996, at 5.

Mari Bras argues that a de jure Puerto Rican citizenship exists because the U.S. citizenship imposed by the Jones Act did not supersede the pre-existing Puerto Rican citizenship, which was recognized by the Foraker Act,³⁵⁶ and therefore is still in force. The basis of this argument is that, under international law, U.S. citizenship could only have displaced the pre-existing Puerto Rican citizenship by the Puerto Rican people consent which was clearly lacking. The final option is that a de facto Puerto Rican citizenship exists.

The existence of a de -facto Puerto Rican citizenship is already evident. In 1994, a family of four, who had symbolically renounced their U.S. citizenship traveled between Puerto Rico and Aruba with Puerto Rican passports: the passports were accepted by both U.S. Department of Agriculture and Aruban customs officials.³⁵⁷ In April of 1996, Beatriz Berrocal renounced her U.S. citizenship at the U.S. Embassy in Mexico and returned to Puerto Rico with her Puerto Rican passport which was stamped by customs in Mexico City and at Miami International Airport.

A state of confusion exists as to what status and rights Puerto Ricans who have renounced U.S. citizenship now possess. Regarding Mari Bras, the Department of Justice issued an opinion on February 2, 1996 stating that he is an alien for the purpose of U.S. civil and political rights and that it is up to the Immigration and Naturalization Service to grant Mari Bras legal permanent residency.

³⁵⁶ See ch.191, Section 7, 31 Stat. 77, 79 (1900).

³⁵⁷ See Family Goes to Aruba Using a Puerto Rico Passport, SAN JUAN STAR, May 5, 1994, at 9; Fufi Santori, Pasaporte Puertorriqueño Pasa la Prueba, EL NUEVO DIA, (San Juan), April 30, 1994, at 84.

The first legal action occurred in Puerto Rico's insular courts involving Mari Bras right to vote. Miriam Ramirez a leader of a pro-statehood organization sued to prevent Mari Bras from voting in the November 5, 1996 Puerto Rican elections. In November 1997, the Puerto Rico Supreme Court, the islands highest court, decided in Mari Bras favor.³⁵⁸ A lower court held that the provisions of Puerto Rican election law which require that an elector be a United States citizen were unconstitutional. The Puerto Rico Supreme Court vacated the lower court judgment, finding that the election law provisions were constitutional in that the Puerto Rico legislature was authorized to regulate who was qualified to vote in Puerto Rico and that U.S.citizenship was a valid requirement.³⁵⁹ However, the court also found that the Puerto Rico Legislature could not have meant to exclude voters such as Mari Bras: a person residing in Puerto Rico and born in Puerto Rico of Puerto Rican parents, in other words, a citizen of Puerto Rico. The court recognized Puerto Rican citizenship as a de jure and held that Mari Bras, as a Puerto Rican citizen, had the right to vote in local elections. This jurisprudence sets off an important precedent for the exclusion of non-native voters in a future plebiscite.

The U.S. State Department has concluded that the intention to relinquish U.S. nationality for purpose of section 349(a) of the Immigration and Naturalization Act does not exist where the renunciant plans or claims a right to reside in the United States (does this mean Puerto Rico too or is it just the fifty states), a right that is inherent in

³⁵⁸ See Ramirez v. Mari Bras, 97 J.T.S. 134 (P.R. Nov. 18, 1997); one important feature here is that the majority of the Justices were named by PPD Governors and confirmed by PPD Senate. Today if that case were to be viewed the decision might have been adverse to Mari Bras because for the first under the commonwealth status the majority of the Justices have been nominated and confirmed by statehood supporters.

³⁵⁹ Ramirez v. Mari Bras, 97 J.T.S. 134 (1997).

U.S.nationality, unless the renunciant demonstrates that residence will be as an alien properly documented under U.S. law. Can a Puerto Rican like Juan Mari Bras be an alien in his country of birth and origin? There are two possible options that they could apply for legal permanent residency if they want to live in the mainland United States, or they could be deemed an alien while in the United Sates but recognized as a Puerto Rican citizen while in Puerto Rico. U.S. law says undocumented aliens must be deported to their country of origin and this renunciant country of origin is Puerto Rico.

There are other possible legal actions, depending on the circumstances in which Puerto Rican citizenship's attendant rights are asserted. For example, if the Immigration and Naturalization Service makes the determination to give Puerto Ricans who renounce U.S. citizenship the status of legal permanent resident or if any of the renouncers are put into deportation proceedings when they try to re-enter the United States or Puerto Rico, then there could be an INS proceedings and subsequent appeals in the federal court system.

B. Conclusion

Under current U.S. case law and Puerto Rican statutory law, a Puerto Rican is legally defined by the fact that she or he lives in the island. This means of legal recognition defies the true Puerto Rican identity which is more appropriately a national identity with membership in the group tied to descent as opposed to residency. The burgeoning development of a Puerto Rican citizenship status further emphasizes that Puerto Rico identifies itself as a nation and Puerto Ricans as a people.

The future development of the Puerto Rican citizenship status promises to challenge Puerto Rican and U.S. legal conceptions of who is a Puerto Rican and what

rights that individual has. While a Puerto Rican citizen is currently statutorily defined by domicile, the renunciations of U.S. citizenship may prompt that definition to include descent.³⁶⁰ This indicates a move toward the definition, under Puerto Rican law, of Puerto Rican as a national identity.

Any further plebiscites on Puerto Rico's status must be held in accordance with international law so that Puerto Rico's right to self determination is truly exercised. To date, a legitimate plebiscite has not been held which offered the **"people of Puerto Rico"** their true options. Key to the expression of the will of the people of Puerto Rico is that the "People of Puerto Rico" and not merely the residents of Puerto Rico must be allowed to participate.³⁶¹ Only when the self of Puerto Rico decides its political identity will self-determination be achieved.

³⁶⁰ The Puerto Rico Supreme Court decision in *Ramirez v. Mari Bras* gave local voting rights to native born Puerto Ricans domiciled on the island and born of Puerto Rican parents.

³⁶¹ The United States and Puerto Rico do not want another Hawaiian plebiscite disaster. Where all residents were allowed to vote and Hawaii became a state of the union even though over 90% of the native Kanaka Maoli people opposed annexation.

CHAPTER III

PUERTO RICAN CITIZENSHIP

Defining Puerto Rico, what it is and what it should be becomes a very personalized endeavor depending on the political and cultural alignment and identification of the individual considering the question. No matter what position the individual ultimately takes in his or her conclusion of what Puerto Rico is or should be, the longstanding and current legacy of Puerto Rico's connection to the United States is clearly that island inhabitants are second class citizens that do not have a voting representative in the United States and cannot vote for the President.

We tend to think of U.S. citizenship as membership in a sovereign state of the sort that we take to comprise the most important unit in world politics. And we think of U.S. citizenship as something that should be and now largely is an essentially uniform status, conferring the same legal rights and duties on all those who possess it. Neither of these things has ever been wholly empirically true or normatively uncontested. The world has never been politically organized exclusively in terms of sovereign states and many have never wanted it to be. Citizenship has never been essentially a uniform status, in U.S. law or anywhere else, and many have never wanted it to be.

In giving meaning to citizenship the U.S. Supreme Court has often had to look beyond the four corners of the Constitution. With no definition of citizenship in the framers text, the Court until after the U.S. Civil War decided its citizenship cases using a

mix of ideas drawn from international law and natural law. The most famous attempt to define the limits of citizenship, Dred Scott Case³⁶² (1857), this case ultimately provided a rare occasion on which the amendment process reversed a constitutional decision of the U.S. Supreme Court. Since 1868 when the Fourteenth Amendment defined United States citizenship, the Courts decisions have been more concerned with safeguarding citizenship against unjust deprivation than with elaborating the content of U.S. citizenship.

The Constitution referred to but did not define U.S. citizenship. Article I required that Representatives and Senators be citizens of the United States. Article II further said that the President must either be a citizen of the United States at the time of adoption or be a natural born citizen. Article III gave federal courts jurisdiction in cases involving citizens, among others. The U.S. Constitution Article IV provided that “citizens of each state” would have “all Privileges and Immunities of Citizens in the Several States”.

What then, would make a person a United States citizen? The framers stipulation that the President be a natural born citizen is an implicit rule of *jus soli*. According to this ancient doctrine, the term means “right of land or ground”; citizenship results from birth within a territory. This contrast with *jus sanguine* is, or right of blood, by which nationality derives from descent. Citizenship based on place of birth was a feudal remnant, in tension with principles of liberal theory that rest political legitimacy on a foundation of consent. Birth right citizenship, however, offered several practical advantages: it helped clarify property rights; it promoted immigration; it avoided jurisdictional conflicts and eased fears of massive expatriation in wartime.

³⁶² Dred Scott Case, 19 Howard 393 (1857).

Not until the slavery crisis did the principle of jus soli become an explicit part of the Constitution, in spite of what the U.S. Supreme Court had ruled. Dred Scott case denied that a person of African descent could be a citizen of the United States. The Fourteenth Amendment exploded this decision by declaring that “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside”.

The Fourteenth Amendment did not settle the matter entirely in favor of birthright citizenship. In *Elk v. Wilkins*³⁶³ for example, the U.S. Supreme Court stated that Native Americans were not automatically U.S. citizens. Congress later reversed the result of the Wilkins decision.

One of many U.S. Supreme Court cases arising out of late 19th century discrimination against persons of Chinese ancestry, *U.S. v. Wong Kim Ark*³⁶⁴ (1898) broadly interpreted jus soli. The Fourteenth Amendment rule of citizenship by birth within U.S. territory made Wong Kim Ark a citizen, even though the parents could not legally be naturalized.

Once defined in 1868, citizenship became an operative term in four more amendments. In particular, the citizens right to vote could not be denied because of race (Fifteenth Amendment) ; gender (Nineteenth Amendment); failure to pay a poll tax (Twenty-Fourth Amendment); or age (Twenty-Sixth Amendment). Though the U.S.

³⁶³ *Elk v. Wilkins*, 112 U.S. 94 (1884) stated that an Indian cannot make himself a citizen of the United States without the consent and cooperation of the government.

³⁶⁴ *United States v. Wong Kim Ark*, 169 U.S. 649, stated that a child born in the United States to foreign parents who are subject to U.S. jurisdiction automatically becomes a U.S. citizen.

Supreme Court has had many cases requiring interpretation of these amendments, the concept of citizenship per se has not been at the core of these disputes.

Despite the place of citizenship in several amendments, what is notable is the remarkably limited scope of citizenship in the U.S. Supreme Courts work. This is so since, while one must be a citizen to vote or hold federal office, most of the constitution's key rights and liberties do not extend to citizens only. No less than the entire "Bill of Rights" applies to the people citizen and the non-citizen alike. But the core issue is that as affirmed by Linda Bosniak in her book "The Citizens and the Alien", she argues that the state should be hard and exclusionary toward outsiders who might in some way harm the existing citizenry as is the case of non-native voters in Puerto Rico.

The U.S. Supreme Court's decisions have tended to reflect the Constitution's own ambivalence about citizenship. Despite its status as fundamental law, the Constitution did not explicitly define criteria for membership in the political community it created. The Courts antebellum attempt to fill this void broke apart on the issue of slavery. While the Court has upheld birthright citizenship and has erected high barriers to deprivation of citizenship, its equal protection decisions have tended to underscore the Constitution's tendency toward a narrow conception of citizenship closely tied to voting.

Whether in legislative reports, statements by members of the Executive Branch, court opinions or the ambivalent and variable application of federal laws and privileges to residents of Puerto Rico.³⁶⁵ Congress role in dominating Puerto Rico, just as it controls other United States territories, requires that Congress take the lead in striking a resolution

³⁶⁵ According, Arnold Leibowitz, The Applicability of Federal Law to the Commonwealth of Puerto Rico, 16 Georgetown Law Journal 226 (1967).

of Puerto Rico's status agreeable to Puerto Rico's United States citizens. Congress exercise of its plenary power, a power that is NOT LIMITED in the manner that the Constitution limits federal power over the states, indeed defines the existing political and legal relationship with Puerto Rico.³⁶⁶ Since the United States Constitution grants Congress plenary power over territory and property of the United States, thus rendering Puerto Rico's power subordinate, Congress must therefore assume its responsibility to correct the omissions of its power over Puerto Rico.³⁶⁷ Any proposed resolution, however, must recognize and allow a vote or binding plebiscite on three traditional options: statehood, commonwealth or independence. Nevertheless, true commonwealth status, as one of the options that will meet both international and United States constitutional criteria, cannot exist without both federal taxation and a voting representation for Puerto Rico.³⁶⁸ The roots of the present second class citizenship of the residents of Puerto Rico stem from the United States Supreme Court, emanating from the same Justice Henry B. Brown who led the majority in the infamous "separate but equal" doctrine of *Plessy v. Ferguson*.³⁶⁹ In *Williams v. Mississippi* (1898) the United States

³⁶⁶ U.S. Constitution Article IV, Section 3. Congress has the power "to dispose of and make all needful rules and regulations respecting the territory or property belonging to the United States..." See *DeLima v. Bidwell*, 182 U.S. 1, 27, 196 (1901) and *Downs v. Bidwell*, 182 U.S. 224, 268 (1901) The United States has the legal power to exclude non-native voters in a final plebiscite in Puerto Rico.

³⁶⁷ As for example following International Law and Procedures on self-determination as stated in United Nations Resolutions 1514 and 748.

³⁶⁸ An analysis of whether a "Free Association" commonwealth type government can potentially be designed that meets both the United Nations criteria for representation for free associated states and also meets United States constitutional standards is beyond the scope of this research. Once the United States constitutional is extended to the citizens of Puerto Rico, then a quasi-status such as a commonwealth may be problematic where the Ordinance of 1787 regarding new territories would then apply.

³⁶⁹ 163 U.S. 537 (1896) is a landmark U.S. Supreme Court decision in the jurisprudence of the United States, upholding the constitutionality of racial segregation even in public accommodations under the doctrine of "separate but equal". The decision was handed down by a vote 7 to 1, with majority opinion written by Justice Henry B. Brown and the dissent written by Justice John Marshall Harlan. "Separate but equal" remained standard

Supreme Court did not find discrimination in the state's requirements for voters to pass a literacy test and pay poll taxes, as these were applied to all voters.³⁷⁰ The plaintiff Henry Williams, had been indicted for murder by an all-white grand jury, and convicted by an all white jury and sentenced to be hanged. Williams v. Mississippi was overruled by the Voting Rights Act of 1965. This decision ruled for over 65 years and had a deep effect upon Puerto Ricans living in the mainland United States and gave a sense of electoral inferiority upon those in the island.

It is an incontrovertible fact that both the mainland United States citizens and the residents of Puerto Rico have accepted second class citizenship, as evidenced by its continued existence. This unacceptable institutional racism manifested by Puerto Rico's current political status, springs from the apartheid premises of the Plessy Court. Such an enduring legacy of the Plessy Court remains unacknowledged and unappreciated in spite of its repugnance to current societal and international values. Having determined at least one deplorable ingredient of the present political status, the continuation of such an anomaly in an American political system that proclaims only the very highest standards of enfranchisement as the key to democracy is difficult to comprehend.

Yet beyond simply the Plessy factor, why does the status question continue unresolved? Is Puerto Rico a political entity that simply never matured to the ultimate evolution of independence like its sister Spanish colony Cuba? Or on the other hand, if the United States had decided to force a dominant political structure on Cuba in order to

doctrine in U.S. law until its repudiation in the 1954 U.S. Supreme Court decision Brown v. Board of Education . The early 20th century was characterized by racist court decisions.

³⁷⁰ 170 U.S. 213 (1898) The U.S. Supreme Court unanimously rejected Williams contention in a 9-0 vote, ruling that he had not shown administration of the Mississippi suffrage provision was discriminatory.

maintain its military bases at Guantanamo³⁷¹ in the same way as has occurred with Puerto Rico, would Cuba have fared any better? Did the United States make a calculated consideration that the cost of resistance by local residents would be greater on one island versus the other? Is Puerto Rico a hapless victim, where the resolution and development of its status is continually and indefinitely postponed, because of imperial policies that were merely transferred from Spain to the United States?

Or is Puerto Rico a frustrated territory, in the same sense that New Mexico languished, that has been excluded from full participation in Congress and from full citizenship benefits because a largely protestant mainland population irrationally perceives and fears Puerto Rico's population to be Catholic and non-white? Or is the mainland wisely protecting itself from the distress of a full integration of Puerto Rico, resulting in a discovery of incompatibility³⁷² that could lead to a political divorce, such as Canada continuous to confront in its relationship with Quebec? Or quite magnanimously, has the United States simply stood back in recognition of the unique law, language and culture of Puerto Rico, setting up a benign protectorate with the knowledge that greater integration might destroy Puerto Rico's rich cultural heritage? If the majority of Puerto Rico's population opts to continue in second class status, why should anyone in the mainland or in the international organizations concern themselves? Certainly Puerto Rico had a long history of struggle for independence that the Hawaii and Alaska territories did not have.³⁷² Did this lengthy struggle by Puerto Rico provide an unacknowledged basis

³⁷¹ U.S. military base in the eastern part of Cuba used today as a detention center for terrorist suspects, in the United States war on terrorism.

³⁷² Compare Olga Jimenez de Wagenheim, *Puerto Rico's Revolt for Independence: El Grito de Lares* (1993) (discussing the extent and duration of Puerto Rico's independence movement beginning under Spain) with Claus M. Naske, *Alaska: A History of the 49th State* p.133-155 (1979) (reviewing the lack of any significant independence movement among Alaskans) and Sylvester Stevens, *American Expansion in*

for the Plessy Court's creative judicial legislation that in effect, invented an entirely new theory that would thwart the constitutional assumptions that routinely apply to the citizens of other territories?

This research certainly is not so ambitious to pretend to define the degree of impact any of these questions and their underlying premises have had on Puerto Rico. However, there are two aspects that must be considered, first, how Puerto Rico and its citizens have proceeded in territorial status compared to other United States territories that later became states second, how Puerto Rico and its citizens measure their relationship with the United States as compared to the United Nations criteria applied to territories belonging to foreign governments and third how can non-native voters be excluded from a final plebiscite in the island.

In understanding the development of the present situation and the pertinence of these three points, the limited nature of United States citizenship for the island Puerto Ricans may best be illustrated by the votes in 1991, 1993 and 1998 allowing island residents to express their desires concerning Puerto Rico's status. The December 8, 1991, plebiscite that enabled island residents to vote on the island's political status demonstrates the lack of power inherent in this non-binding vote. After years of effort on the part of Puerto Rican leaders, the United States Congress rejected the opportunity to allow Puerto Rico to determine its status in a binding vote.³⁷³ In 1991, the United States Congress left Puerto Rico to conduct its own non-binding vote that amounted to no more than a locally

Hawaii: 1842-1898, p.187-193 (1968); Ralph S. Kuyendall, Hawaii: A History p.174-179 (1961) (addressing the short lived opposition of Hawaiians against domination by the United States).

³⁷³ Bill McAllister, Puerto Rico Referendum Killed, Washington Post, Feb. 28, 1991, at A6; House Passes Puerto Rico Bill, Washington Post, Mar. 5, 1998.

and unscientifically opinion poll.³⁷⁴ The so called November, 14, 1993, plebiscite in which Congress played a more substantial role than it did in designing the 1991 vote, still lacked any potential for making a difference.³⁷⁵ On August 17, 1998 the statehood government promoted and legislated another plebiscite. Under this plebiscite the government defined all the options available to the voter. The PPD did not want to define their vision of an enhanced Commonwealth, because ideologically the party has deep divisions concerning their political status position. The 1998 plebiscite changed the rules of the game. The option “None of the above” was a rejection of all the alternatives, including the one that the PPD has historically supported. The PPD supported and campaigned in favor of option #5. The PPD has not been able to articulate a definite position on the political status of the island because their position is fragmented in the party. There are very powerful economic entities (Banks, Pharmaceutical plants and others) that support the PPD’s status quo faction. There are also powerful leaders in the PPD that favor more autonomy this makes a final decision very difficult. All plebiscites were won by the Commonwealth Party; although they have been losing electoral support and the only political party that has been increasing its electoral support has been the Statehood Party (PNP). Today the U.S. Congress is considering HR 2499 Puerto Rico Democracy Act of 2009³⁷⁶ which the Commonwealth Party has been lobbying against. Governor Luis Fortuno a Republican Party member (GOP) has been supporting the bill, but his neo-liberal policies in the island have brought him great criticism from labor

³⁷⁴ Puerto Rico Rejects Sovereignty, Washington Post, December 9, 1991.

³⁷⁵ Puerto Rico Rejects Sovereignty, New York Times, November 15, 1993.

³⁷⁶ This bill promotes a series of plebiscites in the island but Commonwealth Party leaders oppose the bill due to the procedural and substantial parts of the law.

leaders both in the island and the States. Gov. Fortuno's approval ratings have been extremely low and if this plebiscite is brought to the voters, voters will make Gov. Luis Fortuno the issue not the political status of the island. Non-native voters have become a catalyst agent that has brought the plebiscites to a very narrow victory margin in favor of the Commonwealth status.³⁷⁷ There is no available that non-native voters tend to support statehood but my experience as an elected official most native voters from all parties favor the notion that the status quo should be decided by native Puerto Ricans.

The outcome of these votes is less important than the fact that the vote were non-binding, illustrating that the 4 million US citizens in Puerto Rico continue to have only limited constitutional rights³⁷⁸ to effect change and have little say in the development of federal laws that impact the island in nearly all aspects of island life. As merely an illustration of the United States-Puerto Rican relationship in action, the non-binding votes on status themselves reduce the 4 million US citizens of Puerto Rico to the level of somewhat ineffective lobbyist in the attempted development of an island government that would ideally meet either United States constitutional standards of full citizenship or the United Nations mandated standards for member nations owning territories.³⁷⁹

³⁷⁷ The difference between the Commonwealth Party (PPD) and the Statehood Party (PNP) is 2.2%. My personal experience in Puerto Rican politics and as the media has sustained non-native voters tend to support statehood. One reason is that the PNP promotes US citizenship among foreigners in the island and foreigners are only interested in US citizenship not Puerto Rican citizenship. Foreigners are benefiting from Puerto Rico's colonial situation and that's one of the reasons why they should be excluded from a final plebiscite.

³⁷⁸ The United States Supreme Court has stated through the Insular Cases that the Constitution does not apply 100% in Puerto Rico. Only fundamental constitutional rights apply in the island. But then what are "Fundamental Rights".

³⁷⁹ See UN Charter, Articles 1, 55 (regarding the right to self-determination o.....established international legal principle).

Puerto Rico remains one of an ever dwindling number of non-self-governing territories in the world. As determined by the criteria for self-governing territories set forth by the United Nations, Puerto Rico's misleading label as a "Commonwealth" does not in itself, elevate the islands political status to a level that can be considered self-governing by any artful description of the islands political dynamics with the United States.³⁸⁰ In practice, Puerto Rico is no less a colony than were the African colonies that France unpersuasively pronounced "autonomous" just prior to the time that the French colonial citizens began successful efforts for independence.

Puerto Rico's current status is inadequate and substandard as a matter of law. Claims that the United States citizens of Puerto Rico have had an ample opportunity to vote on the status disregard the fact that, to date every attempt to define or affirm Puerto Rico's status by a vote has been procedurally deficient. More specifically, every vote fails as either non-binding upon the United States Congress or because viable and appropriate status options have been excluded from the ballot.

Puerto Rico's current political status situation exists, in part, because the island's status rests on the misguided premise that United States citizens of Puerto Rico are not subject to the Revenue Clause of the United States Constitution.³⁸¹ The United States Constitution does not apply to a full extent in the island, so even though non-native voters may be US citizens they may be excluded from voting in the island, due to the Insular Cases. Also this is a reason why Puerto Rico has not been able to solve their political

³⁸⁰ See the criteria for self-governing status in U.N. General Assembly Resolution 742.

³⁸¹ *Downes v. Bidwell*, 182 U.S. at 280. But see reasoning argued in dissent by Chief Justice Fuller. "A treaty cannot change the Constitution or be held valid if it be in violation of the Constitution. The Constitution itself never yields to treaty or enactments..."

status, even after four plebiscites with no binding power upon the U.S. Congress. The United States Supreme Court has ruled that the Treaty of Paris 1898 superseded the U.S. Constitution when the Insular Cases affirmed that U.S. constitutional rights do not apply to a full extent in Puerto Rico. As a result, the island residents have not been fully subjected to federal taxation nor conferred with the benefits of the Constitution that might allow more say in changing the islands political status.

There has been no credible reason put forth, in spite of the US Supreme Court's decision to make Puerto Rico an exception to the well-established rule that no treaty can supersede the United States Constitution.³⁸² What initiated this major break in the Court's reasoning? Would the existence, in Puerto Rico of a movement for independence be sufficient reason for the Supreme Courts to suspend the application of the United States Constitution to Puerto Rico? That seems unlikely. The lack of full federal taxation, combined with the extension of some, but not all, benefits and entitlements to the island residents, has partially resulted in an entrenched advantage to a sufficient number of island residents that a political impasse has been reached. This result has furthered the mainland's interest by effectively defusing efforts by island residents to resolve the nebulous nature of their political existence. This impasse, however does not appear to satisfy the residents of Puerto Rico as a whole, since all political parties within Puerto Rico have agreed that the political status should be altered.³⁸³ Congress though appears

³⁸² The U.S. Constitution is supposed to be the supreme law of the land, and the Treaty of Paris implicitly denies this legal fact.

³⁸³ See Puerto Rico, USA: A Special Report Prepared by the Washington Times Advertising Department, Washington Times, March 4, 1998, at 3. Although the Popular Democratic Party (PPD) or the Commonwealth Party is generally characterized as supporting the status quo, the PPD has urged for a more expansive definition of commonwealth that goes way beyond the status quo, including greater autonomy in domestic and external

content with the impasse, effectively postponing any decision on Puerto Rico's permanent status.³⁸⁴

Both mainland Republican and Democratic political parties agreed in their platforms, as long ago as 1980, that Puerto Rico's status should change in at least some manner.³⁸⁵ And although the political parties in Puerto Rico disagree on the exact nature of any change of status, they all agree that the present political and legal relationship of Puerto Rico with the United States is unsatisfactory.

Since all political party platforms, island and mainland, express an interest in making changes in the United States-Puerto Rico relationship, particularly in view of the procedural deficiencies that have characterized and dominated since 1898, the United States can no longer rely on or claim that the 1953 United Nations General Assembly Resolution No. 748 reflects either current international law or international public opinion concerning Puerto Rico's status.³⁸⁶ Even though, a binding plebiscite could result in only a slight modification of Puerto Rico's status through some sort of enhanced commonwealth status. Congress must no longer delay making a full and complete effort to procedurally satisfy United States law and to fulfill the express will of the primary

affairs, a demand for veto power over the United States laws applicable to the island and the full funding of federal programs, similar to the states, but without the corresponding obligation to

pay federal taxes. The New Progressive Party (PNP) advocates statehood and wants to achieve its objectives for Puerto Rico within the Constitution by full integration into the United States as the 51st state with all rights and obligations, including the payment of federal taxes. The Puerto Rico Independence Party (PIP) believes that independence is the only option.

³⁸⁴ See Trent Lott sees Bill for New State Rushed, *Washington Times*, March 6, 1998.

³⁸⁵ Philip Shabecoffi, President Proposes Puerto Rican State, *New York Times*. January 1, 1977. U.S. Faces Challenge on Puerto Rico in U.N., *New York Times*, November 1, 1980. Carter Beats Kennedy by Slim Edge in Puerto Rico. *New York Times*, March 17, 1980 (First Primary in which Puerto Ricans could vote).

³⁸⁶ See U.N. General Assembly Resolution 748. This resolution declared Puerto Rico to be self-governing.

political factions within Puerto Rico after full consultation. Since the United States Congress has not had the political incentive to take corrective steps on its own, party platforms notwithstanding, and given the historical evolution of the impasse, a plebiscite may satisfactorily³⁸⁷ resolve the status issue only if Congress takes an additional step.³⁸⁸

Accordingly, Congress should voluntarily submit to the procedural norms³⁸⁹ and standards of the United Nations for territories and avoid another Hawaiian tragedy plebiscite. The United States can utilize the United Nations procedures in a manner that will support its own procedures without having to publicize a recantation of any prior United States position regarding Puerto Rico's political status and move forward in resolving the current status stalemate.

A. The Origins of Puerto Rican Citizenship

The legal status of "Puerto Rican citizenship" has not changed in the most basic regards since its creation in 1900. This peculiar citizenship was spawned by American turn of the century racism.³⁹⁰

The late 19th century was a time when political reactions against the racially egalitarian transformations of Reconstruction, reinforced by prestigious post war

³⁸⁷ But the plebiscite today must exclude non-native voters in order to make the process just in the eyes of all native voters.

³⁸⁸ The US argument that Puerto Ricans parties have to find a consensus in order to decide the islands future is a false argument. The US uses this argument to delay the political status solution of Puerto Rico.

³⁸⁹ U. N. General Assembly resolutions regarding self-governing status or self-determination of current applicability include: Declaration on the Granting of Independence to Colonial Countries and Peoples, G. A. Resolution 1514 (1960); the International Covenant on Economic, Social and Cultural Rights, G. A. Resolution 2200, (1967); and the Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among States, G. A. Resolution 2625 (1970).

³⁹⁰ In 1906 the Populist Party had become the party of white supremacy. In 1896 the U.S. Supreme Court decided Plessy v. Ferguson that sanctioned apartheid. In Williams v. Mississippi (1898) the U. S. Supreme Court sanctioned the disenfranchisement of southern blacks. Louis Menand, The Metaphysical Club: A Story of Ideas in America. Farrar, Straus and Giroux, New York, New York 2001. pp. 372-375

doctrines of separate and unequal racial evolution, created an increasingly hospitable climate for the rebuilding of systems of white supremacy in the United States. By the 1890's, most American political leaders and intellectuals openly and routinely endorsed the alleged racial superiority of peoples of northern European descent and their manifest destiny to quite literally rule the world. The Spanish-American War did not arise from any great economic or military necessity. It resulted essentially from the desire of some U.S. leaders to win a war, build a larger empire and prove to the European powers that Americans too, were one of the masterful races as President Theodore Roosevelt put it. When various circumstances made it inconvenient to hold Cuba in the wake of the war, many U.S. leaders came to regard Puerto Rico both as a symbol of United States supremacy and as an important strategic asset for protection of the Panama Canal and U.S. expanding interest in Central and South America generally.³⁹¹

The reason the United States could acquire Puerto Rico by warring with Spain was, of course that Spain was itself an imperial power that had taken control of the island over four hundred years earlier. Though there were signs of a developing sense of a distinctive island cultural identity, most Puerto Ricans, it seems had long been content to be Spanish subjects, without a legally recognized independent Puerto Rican nationality.³⁹²

³⁹¹ This discussion and the historical section on this research generally draw on Rogers M. Smith, Civic Ideals: Conflicting Visions of Citizenship in US History (1997) p. 430-439. The Roosevelt quotation is found in Stanley Karnow, In Our Image: America's Empire in the Philippines (1989) p.85 , pp.79-80, 119.

³⁹² Adalberto Lopez, "Birth of a Nation: Puerto Rico in the Nineteenth Century", in The Puerto Ricans: Their History, Culture and Society, ed. Adalberto Lopez (1980), p. 78-81.

But in November of 1897, tensions over Cuba led Spain to sign “Autonomic Charter for Cuba and Puerto Rico, establishing the first home rule governments in La Habana and San Juan. Puerto Ricans won rights to full representation in the Spanish parliament, the Cortes, as well as in Spanish treaty negotiations affecting Puerto Rico. They also could veto Spanish commercial treaties they saw as harmful to their interest, and they could set the tariffs and duties on their imports and exports themselves via their own two-chamber parliament. Their executive officer, the governor-general, remained an appointee of the Spanish crown, and resident Spaniards as well as native Puerto Ricans were eligible to serve in this new parliament of Puerto Rico.³⁹³ Still, Puerto Ricans might then be said to have possessed a measure of independent, self-governing “citizenship” as well as Spanish subjects; that status was not legally explicit.

If it existed at all, it was extraordinary short lived. Eight days after the first meeting of the Puerto Rican Parliament in 1898, US troops invaded the southern port of Guanica. They encountered little resistance and many Puerto Ricans welcomed them. In December 1898, the Treaty of Paris ending the Spanish-American War provided that the U.S. Congress would determine the “civil rights and political status of the native inhabitants of the territories hereby ceded to the United States”; includes Puerto Rico.³⁹⁴ Puerto Ricans themselves had no meaningful say in the writing of this treaty, nor would they have an official voice in the Congressional deliberations that would determine their

³⁹³ Juan R. Torruella, The Supreme Court and Puerto Rico: The Doctrine of Separate and Unequal (1985) p.14-15.

³⁹⁴ Treaty of Peace between the United States and the Kingdom of Spain, U.S. Statutes at Large 30 (1899): 1754, Art. IX. par. 2, at 1759 (Treaty of Paris), cited in Torruella, *Ibid*, at 24.

fate. This would be totally unacceptable today and has been an argument against U.S. sovereignty.

The questions then arose: what limits, if any did the Constitution of the United States set on the rights and statuses Congress could define for Puerto Ricans? Can the United States Congress exclude non-native voters from a final plebiscite in the island constitutionally? It seems that yes, this is possible. In 1899, those issues were widely debated in American academic, political and popular forums. Though voices championing human rights could be heard, among both proponents and opponents of America's new colonial empire, racial themes predominated.

The degree to which that was true has been somewhat obscured by the great scholarly attention paid to a set of articles in the Harvard Law Review during 1899, which argued the question of the Constitution and the colonies in rather dry, technical, legalistic terms. The most seminal essay in the series was by A. Lawrence Lowell³⁹⁵ a Harvard political scientist who would later become his university's president. Rejecting two extreme positions, that the Constitution "followed the flag" in full force wherever Americans took it, Lowell defined an influential middle ground. He developed what he acknowledged to be a neglected if not novel distinction between territories "incorporated" into the Union and "unincorporated" territories. In incorporated territories, the Constitution applied completely. In contrast, only its most basic principles were judicially enforceable in unincorporated territories.³⁹⁶ And it was, Lowell

³⁹⁵ Abbot Lawrence Lowell (1856-1943) he supported racial segregation at Harvard, supported quotas for Jewish students, expelled homosexual students and manifested his bigotry toward minorities. Lawrence Summer President Obama's Economic advisor and 27th President of Harvard apologized for the acts of bigotry committed by Abbot Lawrence Lowell.

³⁹⁶ Voting rights are not constitutional for US citizens in Puerto Rico.

maintained, entirely Congress's choice whether a territory should be incorporated and hence whether its inhabitants should have constitutional rights, or not.³⁹⁷

Although it took time, the U.S. Supreme Court would eventually endorse Lowell's "incorporated/unincorporated" distinction and it remains accepted, though controversial, legal doctrine to this day.³⁹⁸ Lowell's ideas demonstrates beyond any reasonable doubt that the incorporation doctrine was self consciously part of the ignoble retreat from racial equal protection that dominated this era in U.S. constitutional history.

Lowell argued in the *Atlantic Monthly* that the westward expanding United States had long been "one of the greatest and most successful colonizing powers the world has ever known", and he suggested that this history reflected at bottom the unalterable fact that "the Anglo-Saxon race is expansive". The United States had always also, however, had traditions endorsing the "theory that all men are equal politically". To be sure the United States had never fully followed that theory. It had instead pretended that members of the native tribes and African-Americans were "not men", a view that Lowell saw as proof of the "political good sense and bad logic of the English speaking race". But the question remained whether in 1899 the theory should be followed in regard to the nation's new colonial acquisitions.³⁹⁹

³⁹⁷ Abbott, Lawrence, Lowell, "The Status of Our New Possessions, A Third View" *Harvard Law Review* 13 (1899).

³⁹⁸ *Downs v. Bidwell*, 182 U.S. 244, 302-303, 306,311-315, 336,342; *Hawaii v. Mankichi*, 190 U.S. 197,224,227 (1903); *Balzac v. People of Puerto Rico* 258 U.S. 298,308-311 (1922), (with Chief Justice William Howard Taft definitively affirming the unincorporated/incorporated territories distinction). The U.S. Supreme Court continues to cite *Downs v. Bidwell*, *Balzac v. People of Puerto Rico* and the unincorporated/incorporated territories distinction to support restrictions of the scope of the Bill of Rights (*Verdugo v. Urquidez*, 499 U.S. 259, 268 (1990)).

³⁹⁹ Abbott Lawrence Lowell, "The Colonial Expansion of the United States", *Atlantic Monthly* 83 (1899).

Lowell said, no, only the “Anglo-Saxon race” had been made capable of self governance by centuries of disciplined. The Spanish race had not been accustomed to self governance. It would be sheer cruelty to extend equal political rights prematurely. The acquisition of powers of self governance by Puerto Ricans must be gradual and tentative and guided by appropriate experts, with a highly specialized training such as Harvard social scientist.

It was, then because non-Anglo-Saxon were racially unfit for equal rights that Lowell thought legal grounds had to be found, or contrived, to deny that the Constitution extended equal political and civil rights to the territorial inhabitants. The “incorporated/unincorporated” distinction was really a distinction between territories with populations racially qualified to be equal citizens and those racially fit only for lesser statuses. Lowell devoted most of his attention to justifying the distinct status of “unincorporated” territories in terms of legal precedent and did not discuss race; but he concluded that many of the constitutional rights guaranteed to U.S. citizens should be seen as “applicable except among a people whose social and political evolution has been consonant with the United States.”⁴⁰⁰ Those words might seem reasonable enough in many contexts, but when evolutionary theories read in light of late nineteenth century, they appear far more threatening.

⁴⁰⁰ Lowell, *supra* note 14, at 176. In arguing for the yet more extreme position that the Constitution imposed few if any limits on congressional treatment of “any inhabitant” outside the existing states. So Lowell’s argument can be used to exclude non-native voters in Puerto Rico during a final plebiscite.

Congressional debates over the status of Puerto Rico only made such racial concerns even more prominent.⁴⁰¹ For example, the most celebrated contribution to congressional discussions of the fate of the colonies was a Senate speech delivered by a young reform minded Republican Senator from Indiana, a Theodore Roosevelt ally named Albert Beveridge.⁴⁰² Beveridge argued that the colonial question was:

“... deeper than any question of party politics; deeper than any question of the isolated policy of our country even; deeper even than any question of constitutional power. It is elemental. It is racial. God has not been preparing the English speaking and Teutonic peoples for a thousand years for nothing but vain and idle self contemplation and self admiration. No! He has made us the master organizers of the world to establish systems where chaos reigns. He has given us the spirit of progress to overwhelm the force of reaction throughout the earth. He has made us adepts in government that we may administer government among savage and senile peoples. Were it not for such a force as this the world relapse into barbarism and night. And of our entire race He has marked the American people as his chosen nation to finally lead in the regeneration of the world. This is the divine mission of America, and it holds for us all the profit, all the glory all the happiness possible to man. We are the trustees of the world’s progress, guardians of its righteous peace. The

⁴⁰¹ Jose A. Cabranes, Citizenship and the American Empire: Notes on the Legislative History of the United States Citizenship of Puerto Ricans (1979), at 39-41.

⁴⁰² Senator Beveridge is known as one of the great American imperialist. He also lived by the code of the superiority of the Anglo-Saxon race.

judgment of the master is upon us “Ye have been faithful over a few things; I will make you ruler over many things.”⁴⁰³.

Beveridge received total support from the media, and he was placed on the committee that would decide the fate of the colonial inhabitants and his policies usually prevailed. The colonial inhabitants would be governed not as equal citizens but as wards of Anglo-Saxon trustees.⁴⁰⁴ Some administration leaders did propose absorbing Puerto Rico completely into the United States by establishing unrestricted trade and full U.S. citizenship for Puerto Ricans, but opposition to those egalitarian policies quickly triumphed. The only real battle was over whether it was too dangerous for the United States to have an extended connection with these power races at all. Such “mongrels” might only introduce ignorance and inferiority and pestilence into the United States⁴⁰⁵. Though Puerto Ricans did not seem quite as low as Filipinos, it seemed a risky precedent to grant anything like equal membership to either community. To avoid such dangers, the organic act for Puerto Rico, or Foraker Act, passed later that session labeled Puerto Ricans “citizens of Porto Rico” not U.S. citizens. It also constructed a civil government for the island that was subordinate to the U.S. Congress and funded by a special tariff on Puerto Rican international trade. The organic acts principle author, Senator Joseph

⁴⁰³ Congressional Record., 56th Congress., 1st session (1900).

⁴⁰⁴ As President, Harvard’s Theodore Roosevelt would pick the Yale man as a suitable trustee for the Philippines, his White House successor and future Supreme Court Chief Justice William Howard Taft.

⁴⁰⁵ Congress Record, 56th Congress, 1st session (1900) Racism was on both sides of the debate. See also Torruella, pp. 33-35.

Foraker, made it clear that this bill was not intended to give Puerto Ricans “any rights that the American people do not want them to have.”⁴⁰⁶

The legal status of “citizen of Puerto Rico” invoked in the *Mari Bras*⁴⁰⁷ decision, then, is one that did not exist until it was created, not by Puerto Ricans but by the U.S. Congress in 1900, implementing an authority the United States had acquired through armed conquest.

I believe that it is unwise to build claims for Puerto Rican nationality on the legal framework laid out by the Puerto Rico Supreme Court in *Ramirez v. Mari Bras* decision. The opinion traces Puerto Rican nationality to the status of Puerto Rican citizen that originated legally in the Foraker Act of 1900. It was at that point, Justice Fuster Berlingeri argues that “the people of Puerto Rico became a political community, with its own citizenship.”⁴⁰⁸ If however, nationality is defined as membership in a political community recognized as fully independent and sovereign by municipal and international law, then Puerto Rico could not be both a nation and one of the United States. But today its common to define nationhood in ways that do not require the existence of a nation-

⁴⁰⁶ Congress Record, 56th Congress, 1st Session (1900). The Foraker Act employed the misspelling “Porto Rico”, following an error in the English version of the Treaty of Paris. Though “Porto” is a Portuguese word, the U.S. government did not bother to correct it in official documents until 1932.

⁴⁰⁷ *Ramirez de Ferrer v. Mari Bras*, Supreme Court of Puerto Rico, No. CT-96-14 (November 18, 1997). On November 18, 1997 the Supreme Court of Puerto Rico ruled that independence activist Juan Mari Bras remained a citizen of Puerto Rico even though he had formally and voluntarily renounced his United States citizenship at the U.S. Embassy in Caracas, Venezuela in 1994. Puerto Rico Supreme Court Justice Jaime Fuster Berlingeri wrote for the court, he could still vote in Puerto Rican elections. Justice Fuster Berlingeri argued that section 2.023 of Puerto Rico’s Electoral Law, which appeared to require that voters be U.S. citizens, should not be interpreted to do so in the case of people like Mari Bras. He was a native born resident of Mayaguez, Puerto Rico, long engaged with the politics of Puerto Rico, whose parents were also both native-born Puerto Ricans. When enacting the Electoral Law in 1977, Justice Fuster Berlingeri wrote, the Legislative Assembly of Puerto Rico had almost certainly not contemplated the electoral rights of such persons, whose Puerto Rican nationality is unquestionable. Those words in particular and the holding in general appeared to give significant legal recognition to Puerto Rican nationality and citizenship as legal-political statuses that are distinct from United States nationality and citizenship.

⁴⁰⁸ *Ramirez v. Mari Bras*, No. CT-96-14, at 22.

state, as a community sharing a common culture, history, territorial origin, ethnicity, language or religion, among other senses and Puerto Ricans can plausibly claim to be a nation according to some definitions even if the island does not possess and does not seek full political independence from the United States.⁴⁰⁹

Legally the status was further justified by treaty and constitutional doctrines, also constructed entirely without Puerto Rican participation that established virtually unlimited congressional power over Puerto Rico. Though it labeled Puerto Ricans a separate race from U.S. Americans, it did not involve any recognition of Puerto Ricans as having an independent nationality of their own. After all African Americans had long been recognized as a separate race and denied genuinely equal citizenship, but the United States had never accepted any claims of independent African American nationality. Puerto Rican citizenship was similarly a category Congress created for a certain subset of its nationals. And Congress created that category expressly as another subordinate status, inferior to U.S. citizenship and inferior explicitly because U.S. political and intellectual leaders regarded Puerto Ricans as not just a separate but as yet another unequal race, incapable of full self governance.

The citizenship created by the Foraker Act seems undesirable. It rests on the denial of equal and autonomous Puerto Rican nationality.

⁴⁰⁹ For a brief overview of conceptions of nationality and a defense of Puerto Ricans claims to nationhood, see Nancy Morris, Puerto Rico: Culture, Politics and Identity (1995), at 11-15, 17-18. Leading discussions of nationality and nationalism include Benedict Anderson, Imagined Communities: Reflections on the Origin and Spread of Nationalism (1983); Ernest Gellner, Nations and Nationalism (1983); Eric Hobsbawn, Nations and Nationalism since 1780 (1990); Etienne Balibar and Immanuel Wallerstein, Race, Nations Class: Ambiguous Identities (1991).

Justice Jaime Fuster Berlingeri's Mari Bras opinion, he contends that the original tainted character of the Puerto Rican citizenship it created has been cleansed by subsequent developments. The opinion rightly places little reliance on the 1917 Jones Act conferring U.S. citizenship on Puerto Ricans, for that law did not alter Puerto Rico's status as an unincorporated territory, unrepresented in the Congress that governed it, and unprotected by many fundamental constitutional guarantees. Such U.S. citizenship represented neither equal membership in the American polity nor recognition of any autonomous national status for Puerto Ricans. The island representative in the U.S. House of Representative Luis Munoz Rivera opposed the bill. The mass of Puerto Ricans did not have any formal opportunity to even express an opinion on the matter.⁴¹⁰

The Mari Bras opinion contends, that the "situation changed radically during the 1950-1952 constitutional process" when the Commonwealth of Puerto Rico was established. An overwhelming majority of Puerto Rican voters did approve U.S. Public Law 600, which authorized the people of Puerto Rico to create a new Puerto Rican Constitution. Justice Fuster Berlingeri contends that "the public authority and governmental powers of the people of Puerto Rico were not, as before, merely delegated by Congress, but rather, stemmed from itself and were free from higher authority". When Public Law 442 approving the new Puerto Rican Constitution, the United States acknowledged a new self constituted public authority of the Puerto Rican people; or so the Justice avers. True, certain federal relations with the United States continued to exist, but in Justice Fuster Berlingeri's view those constraining relations had been rendered

⁴¹⁰ Balzac v. People of Puerto Rico, 258 U.S. 298.

“obligations which the people imposed on itself”, not products of conquest any longer. It is inconceivable he writes, “that all this happened merely to approve another piece of legislation of the United States Congress, or to further the U.S. Congress absolute powers over the island of Puerto Rico”. At this point Puerto Rican citizenship and nationality became legally cognizable entities independent of U.S. citizenship and nationality. Puerto Rican citizenship was established by federal law, but it no longer rests on such federal law, but rather on the Constitution of Puerto Rico.⁴¹¹

Puerto Rico gained richly warranted expanded powers of self governance over their internal affairs in the 1950-52 process. Some may say that this process did not go far enough to transform the Puerto Rican citizenship created by the Foraker Act into a status stemming from the Puerto Rican people themselves and tantamount to independent nationality.

Puerto Rico gained only a limited measure of sovereignty through these changes. Even after 1952, the exclusive authority of the Commonwealth solely addresses internal matters. Ultimately, it remains to the courts and Congress of the United States to decide what matters are internal enough to be free of Congressional regulation. Excluding non-native voters from a final plebiscite in the island will be possible because an overwhelming number of native voters are in favor that the status of the island should be decided by native voters.⁴¹² Furthermore, as a matter of U.S. law, all these were still changes initiated by Congressional statute and approved by Congressional statute. As

⁴¹¹ Ramirez v. Mari Bras, Supreme Court of Puerto Rico, No. CT-96-14.

⁴¹² Although there are is no data, my position stems from my experience in politics in Puerto Rico and the perception that a clear majority of the people (native voters) I have met they are overwhelmingly in favor of the exclusion of non-native voters.

such they are legally alterable by Congressional statute. A very important fact is that U.S. law must follow international law and covenants to which the United States has ratified through the U.S. Senate. The United States has said that their government will not act unilaterally in these regards, viewing the commonwealth arrangements as a compact that can be altered only by mutual consent. And it is true, that if the U.S. Congress nonetheless did try to act unilaterally,⁴¹³ Puerto Ricans would probably resist and international law authorities today would probably support their position.

In any case, the compact is a double edged sword. Even if it does require that changes occur only with the agreement of both U.S. and Puerto Rican authorities, it thereby perpetuates a U.S. veto power over Puerto Rican decisions to alter their internal governing arrangements, even as it leaves the United States unencumbered in regulating all external matters. Those external regulations can have profound internal consequences, as the recent U.S. State Department decision not to allow Puerto Ricans to renounce their U.S. citizenship without also losing their Puerto Rican citizenship.

Whatever the advantages of U.S. citizenship, contemporary Puerto Rican citizenship is a status conceived in racism; expressive of the proposition that all men are not created equal; and supportive of a federal government that in regard to Puerto Rico, does not derive its just powers from the consent of the governed in any regularly verifiable way.

Justice Fuster-Berlingeri argues that the Puerto Rican nationality of Juan Mari Bras is unquestionable, he does not really seem to be appealing to the Foraker Act's

⁴¹³ Today it would seem impossible due to the policies that President Barak Obama has been voicing throughout the world.

creation of Puerto Rican citizenship, and even though that is the main argument his opinion develops. He seems implicitly to be relying on the recognition that Mari Bras is a native born, lifelong resident of Puerto Rico, descended from Puerto Rican parents, who has throughout much of his life championed the political cause of Puerto Rican independence. Whether nationality is seen as a matter of *jus soli* or *jus sanguinis*, place of birth or parentage, as the international lawyers view it, or as a matter of personal consensual political commitment and involvement, as modern liberal, democratic and republican political theorist tend to view it, Juan Mari Bras and all Puerto Ricans have a very powerful claims to be a Puerto Rican national.⁴¹⁴

To be sure, the legal, theoretical and polemical literatures on what constitutes a nation and nationality are vast and growing, especially since these issues have become increasingly contentious in a postcolonial, post Cold War world of rapidly altering borders and states. I do not seek to settle those difficult issues here, but as for Puerto Rico there is no doubt that it is a nation under colonial rule and decolonization must occur and the islands future status must be decide by its native voters. I only insist, again that under many definitions of a nation including those stressing common historical experiences, shared territory, a unifying language, distinctive cultural traditions, longtime existence as some kind of distinctive political community and existence as an “imagined community”⁴¹⁵ thought of as such by a large yet broadly identifiable population of self conceived members, Puerto Ricans qualify and have long qualified.

⁴¹⁴ It is within the context of the definitions advanced by Benedict Anderson that I approach the study of the nation and defines the Puerto Rican nation as an ethnic community which enjoys degrees of corporate recognition at both cultural and political levels.

⁴¹⁵ Benedict Anderson, *Imagined Community*.

But if Puerto Ricans can be termed a nation, Puerto Rico has nonetheless never been an independent nation-state as a matter of international law. It moved from a longstanding if recently relaxed form of Spanish subjectship to imperial governance by the United States in 1898 without any intervening period of genuine freedom. And because, in terms of international law, independent nationhood and independent statehood tend to be virtually synonymous, that legal and political history is the strongest argument against Puerto Rican nationality.

But if the argument is put on such legal and historical grounds, then we also have to inquire by what legal right the United States has claimed ultimately sovereignty over Puerto Rico. Admittedly, its authority in this regard originally had the sanction of international law, which did not become at all hostile to colonialism until after World War II, and which remains permissive enough in this regard to plausibly satisfy by the 1952 commonwealth arrangement. That arrangement satisfied the United Nations that Puerto Rico was sufficiently self governing to be no longer a colony as UN agreements defined that status.⁴¹⁶ U.S. law is, however a different question. I do not think the U.S. Constitution or American political principles more broadly can sanction the status of Puerto Rico from 1898 up to through today as legitimate.

That contention is of course a highly charged one and I cannot make a detailed case for it here. I will simply state, without mincing words, my belief, first that the Spanish-American War was an unjust, unprovoked and a racist war of aggression by the United States which could not result in legitimate acquisitions. Its conduct may have been

⁴¹⁶ For a discussion of pertinent UN policies, see *ibid* at 9-12, citing particularly Resolution 748 (VIII), United Nations General Assembly, November 27, 1953.

constitutional in form, as a duly declared war, but in the substance it was illicit exercise of federal powers outside and against any valid constitutional purpose. Second, the claim that the constitution applied to territorial inhabitants only to the most limited extent, justified by the incorporated/unincorporated distinction, also seems to me legally unfounded as well as clearly racist in motivation. It was as Lowell virtually acknowledged, an innovation with little precedential support contrived to avoid the results of clear and fundamental American constitutional principles. Third, the manner in which Puerto Ricans as residents of a still unincorporated territory are denied not only electoral representation in the U.S. government that claims ultimate sovereignty over the people of Puerto Rico, but also full protection of the Bill of Rights and other constitutional guarantees, seems to me a violation of the equal protection clause of the Fourteenth Amendment, as well as a violation of various specific rights. It is a form of second class citizenship, originally unilaterally imposed, significantly inferior even to that possessed by (often voluntarily) inhabitants of incorporated territories. As such, it does not seem to me consistent with the constitution even if it should be genuinely embraced by most Puerto Ricans in a plebiscite with full panoply of possibilities made available to them, a circumstance that has never really occurred.

These points support the conclusion that the governing authority asserted by the United States over Puerto Rico is and always has been substantially illegitimate in violation of the U.S. Constitution and their political principles. This clearly means that the United States and its citizens are not entitled to decide the status of Puerto Rico. Puerto Ricans should be seen legally entitled to decide their status exclusively (a power that is arguably at the heart of national identity).

If one accepts these conclusions, then it seems perfectly appropriate for the Supreme Court of Puerto Rico to speak of Puerto Rican nationality, to hold that a person can be a Puerto Rican national and citizen and not a U.S. citizen, and to rule that such a person can participate in processes of self government in Puerto Rico. It further seems appropriate for Congress to recognize the right of native Puerto Ricans to determine unilaterally their political status. Foreigners in Puerto Rico cannot be asked to decide by their vote the political status of the island, because they have benefited from the colonial relationship illegally.⁴¹⁷ Such actions represent at least some Puerto Ricans deciding on their status for themselves, without giving any unwanted weight to their imposed U.S. identity.

Under current U.S. case law and Puerto Rican statutory law, a Puerto Rican is legally defined by the fact that she or he lives in the island. This means of legal recognition defies the true Puerto Rican identity which is more appropriately a national identity with membership in the group tied to descent as opposed to residency. The burgeoning development of a Puerto Rican citizenship status further emphasizes that Puerto Rico identifies as a nation and Puerto Ricans as a people. The exclusion of non-native voters has to be the genesis of a binding plebiscite. The tragedy of Hawaii cannot be repeated under United States sovereignty⁴¹⁸ native voters should be the exclusive voters under a binding plebiscite in Puerto Rico.

⁴¹⁷ Foreigners in Puerto Rico that have been naturalized US citizens are not entitled to decide the political status of the island. Foreigners have absolutely no ties what so ever with Puerto Rico, their loyalty is with the United States.

⁴¹⁸ Native Hawaiians were less than 20% of the population; over 90% of the Kanaka Maoli people opposed annexation. Hawaii plebiscite violated international law in three areas critical to the plebiscite outcome (1) voting eligibility (2) limited choices and (3) conflict of interest.

The conception of Puerto Rican as a national minority is totally absurd; Puerto Ricans are not and cannot be considered a minority while in the island. In the fifty states of the union yes, Puerto Ricans are a minority, but in the island of Boriquen⁴¹⁹ that is totally absurd. The future development of the Puerto Rican citizenship status promises to challenge Puerto Rican and U.S. legal conceptions of who is a “Puerto Rican” and what rights that individual has. While a Puerto Rican citizen is currently statutory defined by domicile, the renunciations of U.S. citizenship may prompt that definition to include descent.⁴²⁰ This case clearly indicates a move toward the definition, under Puerto Rican law, of Puerto Ricans as a national identity.

Any further plebiscites on Puerto Rico’s status must be held in accordance with international law so that Puerto Rico’s right to self-determination is truly exercised. One important aspect of self determination is that power (sovereignty) has to be given to Puerto Rico and here is where the decision is made of who gets to vote. To date, a legitimate plebiscite has not been held which offered the people of Puerto Rico their true options. Key to the expression of the will of the people of Puerto Rico is that the people and not merely the residents of Puerto Rico must participate. Only when the self of Puerto Rico decides its political identity will self-determination be achieved.

Non-native voters in Puerto Rico must be excluded from a final plebiscite; it’s the nation of Puerto Rico that must decide its political future. And a nation cannot include

⁴¹⁹ The native Tainos called the island Boriquen, land of the great man.

⁴²⁰ The Puerto Rico Supreme Court decision in *Ramirez v. Mari Bras* gave local voting rights to native born Puerto Ricans domiciled on the island and born of Puerto Rican parents.

foreigners in decisions that will have an effect upon the future of the nation. The Puerto Rican nation is a fact that cannot be denied as was the nationality of Juan Mari Bras.

The quality of U.S. citizenship conferred on Puerto Ricans by virtue of their birth on the island is distinct. Anyone born in the states or the District of Columbia, or naturalized in the United States, is a citizen of the United States pursuant to the Fourteenth Amendment's Citizenship Clause. Statutory or legislative citizenship, as opposed to constitutional citizenship is conferred on persons born outside the United States to U.S. citizens or naturalized outside of the United States. Statutory citizens can be stripped of their citizenship involuntary or be forced to fulfill a condition precedent to the maintenance of U.S. citizenship.⁴²¹ It is unclear whether Puerto Ricans who derive their U.S. citizenship from birth on the Island are constitutional or statutory citizens, thus leaving their status and its attendant rights uncertain.⁴²² The lack of clarity is, in and of itself, reflective of the devaluation of citizenship derived from birth on Puerto Rican soil.

⁴²¹ See *Rogers v. Bellie*, 401 U.S. 815 (1971), the leading case on the issue. In order to be naturalized, one may be asked to fulfill certain conditions precedent, but in such cases one already has a nationality which is being relinquished as opposed to being divested of nationality without necessary having another.

⁴²² The quality of citizenship is unclear since the U.S. Supreme Court has refrained from applying the equal protection guarantee to Puerto Rico through the Fifth and Fourteenth Amendment. It is possible for Congress to expatriate or place certain conditions on the U.S. citizenship of native born Puerto Ricans should Puerto Rico opt for independence.

CHAPTER IV

INTERNATIONAL LAW AND POLICIES

Puerto Rico has had three plebiscites intended to de-colonize the island.⁴²³ None have had binding power upon the United States. Influential sectors in the United States Congress especially the U.S. Senate do not favor a plebiscite or statehood for Puerto Rico. The United States has never sponsored a plebiscite on the political status issue of the island.

The 1993 plebiscite held in the island started off with a letter written to President George H. W. Bush on January 17, 1989 by then Governor Rafael Hernandez Colon with the endorsement of the Statehood Party (PNP) and the Puerto Rican Independence Party (PIP) Presidents. The letter stated that the people of Puerto Rico have never been consulted by a plebiscite that had binding power upon the United States, since the Treaty of Paris (1899). And quite frankly the current economic situation that the United States is facing under the Obama administration the Puerto Rican status problem seems not to be a priority for the U.S. The United States has never consulted the people of Puerto Rico on the status issue.

President George Bush in his State of the Union Address affirmed in 1989 that the U.S. Congress should solve once and for all the political status of Puerto Rico. He also acknowledged that he supported statehood for Puerto Rico.⁴²⁴

⁴²³ Intended because, none of them have complied with international law and procedures of de-colonization. On 2010 the U.S. Congress will be voting on the Puerto Rico Democracy Act (HR 2499) which will provide for another status plebiscite.

⁴²⁴ The Republican Party and their leaders have never explicitly supported statehood for the island.

Puerto Rico has held all its plebiscites without the minimum requisite recognized by international law and procedures of decolonization.⁴²⁵ United Nations General Assembly Resolution 1514 states: “all nations have the right of self-determination”⁴²⁶ and that “all territories that have not obtained independence, measures should be taken to transfer all powers (sovereign power) to the people of the territory without conditions”. There has never been a legitimate interest in the self-determination of the people of Puerto Rico by the United States. All three plebiscites held in Puerto Rico have divided the people in three tribes and have caused confusion among the voters.⁴²⁷ The plebiscites have been an excellent instrument for the United States to postpone a final solution to the status of Puerto Rico.⁴²⁸ George H. W. Bush, Bill Clinton and George W. Bush have used the argument that Puerto Ricans are too divided among themselves and reaching a consensus has been almost impossible.

The political status of the island will always be debated and will cause division among the people until there is a solution to the status issue of Puerto Rico. The 1993 and 1998 did not follow international law, self-determination and all other United Nations decolonization procedures.⁴²⁹ The question about non-native voters flourished because the

⁴²⁵ Until this day there has not been an adequate recognition of the right to self-determination for Puerto Rico. One must point out that the Statehood Party (PNP) has stated that the political status issue of the island is a domestic problem of the United States and Puerto Rico.

⁴²⁶ As stated in previous chapters Puerto Rico is a nation under colonial rule.

⁴²⁷ Political parties have one goal and that is to win elections and/or maintain power. The greatest confusion has been the operationalization of key concepts like sovereignty, statehood, nation and others by the political parties. Parties do not have the policy of educating the voters, although that has been one of the issues debated in the U.S. Congress during the hearings of the 1993 and 1998 plebiscites.

⁴²⁸ The United States has always used the argument that there must be a consensus among the people of Puerto Rico and obviously this is almost impossible due to the nature of Puerto Rican politics.

⁴²⁹ The 1998 plebiscite denied the existence of Puerto Rico as a separate nation of the United States. The plebiscite referred to the people as U.S. citizens exclusively. Under United Nation Resolution 1514 people

electoral balance between Statehood and Commonwealth is less than three percent. Non-natives can decide the political status of the island. This would be inequitable to the Puerto Rican nation.

Quebec provides an excellent example of how non-natives can influence a plebiscite.⁴³⁰ In 1995 Quebec held a plebiscite. Quebec has a population of 25 million, a quarter of the total population of Canada. Its territory is 1/6 of the total territory of Canada. In 1980, forty percent of the electorate favored secession from Canada. The 1995 plebiscite results were different, 53% favored to stay within the Canadian state, 46.9% favored secession. These facts demonstrated a significant increase in favor of secession. But the concerning issue was that over 29% of the voters were from other provinces of Canada. This means that 29% of the voters had come from other provinces and the secessionist would have gained more than 50% of the vote if those emigrants had been excluded.⁴³¹

In Puerto Rico the U.S. Census of 2000 indicated that 90.9% of the residents were born in the island. Using these facts in a population of 3.7 million the number of people on the island not born in Puerto Rico would be approximately 330,000. The U.S. Census also indicates that 2.3% were born in a foreign country. This means that in 2000 the

is synonymous with nation or nationality. Also there was no explicit statement for self-determination of Puerto Rico. U.N. Resolution 748 clearly states that Puerto Rico is a nation with the right of self-determination; this resolution had the sponsorship of the United States. The 1998 Plebiscite was a product of the First Amendment of the U.S. Constitution “the right to assemble and to petition the government for a redress of grievances”.

⁴³⁰ In President Obama’s (January 27, 2010) first State of the Union Address, he disagreed with the U.S. Supreme Court ruling in *Citizens United v. Federal Election Commission* decided January 21, 2010. President Obama mentioned that he was worried about foreign corporations meddling in U.S. politics, quite similar to the exclusion on non-native voters in a final plebiscite in Puerto Rico.

⁴³¹ Jack Jedweb, *A la procaine? Une retrospective des Referendums Quebecois de 1980 et 1995*. Editions Saint Martin, Montreal, Quebec 2000.

foreign population in the island was more than 85,000, 6.8% (225,000) were born in the continental United States or other possessions. Some of these residents may be of Puerto Rican origin.

A conservative estimate would indicate that the Cuban, Mexican, Venezuelan, Spaniards, Dominican and U.S. continentals⁴³² and other non-natives registered to vote in Puerto Rico could easily be over 90,000, enough to decide the political status of the island.

How would Puerto Ricans in the continental United States vote in the island. Dr. Juan Hernandez Cruz⁴³³ a sociologist set forth the theory that most Puerto Ricans in the northeast are against statehood because of their experience with racism and discrimination in the 60's, 70's and 80's. On the other hand Hernandez Cruz points out that Puerto Ricans in the State of Florida which are over one million tend to lean toward statehood due to less racism and discrimination.⁴³⁴ Also, that in Florida, Puerto Ricans tend to have a higher educational level and have not had the hard life of Puerto Ricans of the northeast⁴³⁵.

⁴³² U.S. citizens, not born in the island or of Puerto Rican ancestry.

⁴³³ Juan Hernandez Cruz PhD (New York University) Former Director of CISCLA (Caribbean Institute and Study Center for Latin America) Inter-American University of Puerto Rico, San German Campus.

⁴³⁴ A May 2004 survey conducted by Agenda Puertorriquena found in the State of Florida that 43% favor statehood, 36% commonwealth and 7% independence. 70% would favor statehood if the status quo is not an option (very similar to voter in Puerto Rico); 69.7% favor that Puerto Ricans in the United States mainland should be permitted to participate in a final plebiscite on the political status of the island; 59% consider themselves Puerto Rican-Americans, 33% exclusively Puerto Ricans and 1.9% exclusively U.S. Americans.

⁴³⁵ First wave of Puerto Ricans that migrated to the United States suffered deeply in all aspects (economic, social and political) of life.

In the 1993, 1,700,912 voters participated, equivalent to 73.5% of the eligible voters.⁴³⁶ The result was Commonwealth 48.4%, Statehood 46.2% and Independence 4.4%. The difference between Commonwealth and Statehood is 2.2%.

As one can observe the Independence supporters are not a strong force on their own. But Independence faction can also be a difference between Commonwealth (48.2%) and Statehood (46.2%). The Puerto Rican Independence Party averaged 3.32%⁴³⁷ in the last three general elections and in the last two they haven't been able to preserve their electoral franchise for the next electoral race. In the last three plebiscites they have averaged 3.4%. Since the electoral equilibrium between commonwealth and statehood is less than 3%, non-native voters are going to be a decisive vote in a future plebiscite in Puerto Rico.

A. United Nations and Self-Determination

Since World War II the principle of self-determination has been transformed from an essentially political concept into an important element of international law and procedures. U. N. General Assembly Resolutions dealing with self-determination have for the most part linked the concept of self-determination to that of de-colonization. The association of self-determination with de-colonization was evident for example in Resolution 637 (VII) of December 16, 1952, which called upon members of the United Nations to recognize and promote the realization of the right of self-determination of the peoples of non-self-governing and trust territories who are under their administration.

⁴³⁶ I do not refer to the 1998 plebiscite because it was out of the norm due to its 5 options available on the ballot. Option 5, won which state non-of-the-above and was supported by the Commonwealth Party (PPD).

⁴³⁷ In 2000 the PIP obtained 5.2%, 2004 2.73% (they lost their electoral franchise) and in 2008 2.04% (again they lost their electoral franchise) and lost their Senate and Representative seats in the legislature.

The U.N. Charter had not defined when a territory would be considered non-self-governing or when it would cease to be non-self-governing. Although this determination had originally been left to the member states themselves, the U. N. General Assembly quickly moved to assert control over the criteria used to determine whether a particular territory was non-self-governing.

Subsequent resolutions of the U. N. General Assembly increasingly insisted on the need to promote self-determination in non-self-governing territories.⁴³⁸ On December 14, 1960 the United Nations General Assembly adopted Resolution 1514 (XV) entitled ‘The Declaration on the Granting of Independence to Colonial Countries and Peoples. Resolution 1514 was the most important General Assembly resolution to associate the concepts of self-determination and de-colonization and it has become the definitive statement of the General Assembly with regard to colonial situations. Paragraph two, of the Resolution declared that all peoples have the right to self-determination and reiterated word for word the principle of self-determination as set out in Article I, and paragraph I of the International Human Rights Covenants. In its preamble the Resolution proclaimed “the necessity of bringing to speedy and unconditional end to colonialism in all its forms and manifestations” and declared in paragraph 1 that the subjection of peoples to alien subjugation, domination and exploitation was a denial of fundamental human rights, contrary to the U.N. Charter and an impediment to the promotion of world peace and cooperation. Such situations could only be right, as indicated in paragraph 5 by the immediate transfer of all powers⁴³⁹ to the peoples of those territories without any

⁴³⁸ General Assembly Resolution 1188 (XII), December 11, 1957.

⁴³⁹ Sovereign power enables a nation to decide freely, its will.

distinction as to race, creed or color in order to enable them to enjoy complete independence and freedom. This grant of independence to non-self-governing territories was not to be delayed, by any inadequacy of political, economic, social or educational preparedness.⁴⁴⁰ All states were to observe the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all states, and respect for the sovereign rights of all peoples and their territorial integrity.⁴⁴¹ Of course in international politics the role of power politics plays a key task in understanding the international sphere. Institutions may, at times be willful actors on their own, but are also the venue in which reflexive new practices and policies develop.

The day after the adoption of U. N. Resolution 1514 the General Assembly adopted another important resolution on self-determination: Resolution 1541 (XV) on December 15, 1960. The purpose of this resolution was to enumerate a definitive list of factors known as principles to guide members in determining whether an obligation existed to transmit information under Article 73 (e) of the U.N. Charter. Like U. N. Resolution 1514 the language of Resolution 1541 was anti-colonial in nature. Principle II observed that such territories were in a dynamic state of evolution and progress toward a full measure of self-government is attained. Puerto Rico became the first case to

⁴⁴⁰ United Nations Resolution 25/118 of December 11, 1980 subsequently enlarged the list of factors which could not be raised in order to delay the granting of independence to non-self-governing territory. Questions of territorial size, geographical isolation and limited resources should in no way delay the implementation of the declaration.

⁴⁴¹ Rules are pictured as summaries of past decisions which allow the observer to predict future behavior. Rules as these can be changed by participants on utilitarian grounds without engaging in self-contradictory behavior. Were the rules of a practice to change, so would the fundamental nature of the activity in question.

withdraw from the list of non-governing territory⁴⁴² and approved by the United Nations. The United Nations approved Resolution 748 (VIII) which stated that the people of Puerto Rico had obtained a new constitutional status, that the United States and Puerto Rico had reached a compact relationship that the people of Puerto Rico had exercised their right to self-determination, and that Puerto Rico had acquired an autonomous government and constitution.⁴⁴³ The United States used an aggressive campaign in order to muster the votes.⁴⁴⁴

Both U.N. Resolutions 1514 and 1541 placed great emphasis on the attainment of independence. Resolution 1514 had declared independence to be the only method of achieving self-determination for non-self-determining territories. Resolution 1541 although it provided for two other alternatives⁴⁴⁵ nevertheless emphasized that independence was to be regarded as the normal outcome for non-self-governing territories. This emphasis on independence was repeated again and again in subsequent resolutions on self-determination, the wording of which invariably linked the terms self-determination and independence.

The United States has traditionally associated the principle of self-determination with popular sovereignty and representative government. Western states did not acknowledge that the U.N. Charter reference to self-determination conferred legal status

⁴⁴² Humberto Garcia Muniz, Puerto Rico and the United States: The United Nations Role 53 Revista Juridica. Universidad de Puerto Rico 1 (1984).

⁴⁴³ Resolution 748 was approved with 26 votes in favor; 16 votes against and 18 votes abstained.

⁴⁴⁴ The delegate from Honduras gave a discourse against the United States and was later relieved by his government. Vicente Geigel Polanco, La Farsa del Estado Libre Asociado. Universidad de Puerto Rico, Río Piedras, Puerto Rico, 2da Edición 1981, p. 193.

⁴⁴⁵ Fully integrated into another state and Free Association, are methods of de-colonization.

on the concept. Western states were forced to abandon this understanding of self-determination in the 1960's as the concept became more and more associated with decolonization. In 1966 a new approach to self-determination became imperative when self-determination was recognized as a legal right in Article I of the International Human Rights Covenant. The United States and other western powers responded by seeking to define the legal right of self-determination in terms of their own political traditions of popular sovereignty and representative government. The right of self-determination was linked in Western opinion to the notion of representative government it applied not only to non-self-governing territories but also to sovereign and independent states. For the United States, self-determination therefore means the ongoing right of all citizens within the state to participate in periodic elections which result in a representative government. Self-determination meant differently for those countries that felt the boot of colonialism. This understanding of self-determination is reflected in international instruments to which the United States is a party such as the Helsinki Declaration.⁴⁴⁶ Self-determination was defined in Principle VIII of the Declaration:

“The participating states will respect the equal rights of peoples and their right to self-determination, acting at all times in conformity with the purpose and principles of the Charter of the United Nations and with relevant norms of international law including those relating to the territorial integrity of states.

By virtue of the principle of equal rights and self-determination of peoples, **all**

⁴⁴⁶ Was the final act of the Conference on Security and Cooperation in Europe held in Helsinki, Finland during July and August of 1975. Thirty-five states, including the USA, Canada and all European states except Albania and Andorra, signed the declaration in an attempt to improve relations between the Communist bloc and the west. One of the principles declared and accorded was (I) Sovereign equality, (VIII) Equal Rights and Self-Determination of peoples.

peoples always have the right, in full freedom to determine when and as they wish their internal and external political status without external interference, and to pursue as they wish their political, economic, social and cultural development. The participating states affirm the universal significance of respect for and effective exercise of equal rights and equal self-determination of peoples for the development of friendly relations among themselves as among states: they also recall the importance of the elimination of any form of violations of this principle”.

This became the western view of self-determination. The declaration refers to self-determination as a right which is universal and applies to all peoples. Because the signatories to the Declaration were all sovereign and independent states the reference to self-determination in the Declaration represented an affirmation that the principle applied to the peoples of sovereign and independent states as well as those of non-self-governing territories. More over by using the word such as “always” and “when and as they wish” the Declaration indicated that self-determination was a continuing right requiring the periodic consent of the governed.

Puerto Rico’s case is sui-generis due to the fact that the island became a prize of war and many related documents became vital to the future political status of the island.

The Treaty of Paris,⁴⁴⁷ established in Article IX: “the civil rights and political condition of the **NATIVE INHABITANTS** of Puerto Rico shall be decided by the

⁴⁴⁷ The Treaty of Paris (1898) was signed by the United States and Spain on December 10, 1898 which ended the Spanish-American War. The Treaty was approved in the U.S. Senate on February 6, 1899 by a vote 57 to 27 only one vote more than the two-thirds required. The Treaty was very controversial in the U.S. because some political leaders opposed the idea of having an empire and overseas colonies.

United States Congress". This article gives the United States power over Puerto Rico and the native people of the island. Current international law and policies are very different from 1898. Still it's explicitly written that the United States has power over Puerto Rico.⁴⁴⁸

When the Treaty of Paris was concluded there was no United Nations and international law did not define the rights of nations and nationals subject to colonialism.

After two World Wars, political changes shocked the world, Bolshevik Revolution and colonies fighting for independence contributed to the creation of the United Nations. The problem of colonialism was in the immediate agenda of the United Nations, Article I and 55 established without doubt the self-determination of nations.

The right of self-determination and development is explicitly part of International Law and Article I and 55 of the United Nations Charter as part of the administration of Trust Territories.

The revolt of New World British colonist in North America, during the mid 1770's, has been seen as the first assertion of the right of national and democratic self-determination, because of the explicit invocation of natural law, the natural rights of man, as well as the consent of, and sovereignty by, the people governed; these ideas were inspired particularly by John Locke's enlightened writings of the previous century. Thomas Jefferson further promoted the notion that the will of the people was supreme, especially through authorship of the Declaration of Independence of the United States which has inspired the world.

⁴⁴⁸ Article IV, Section 3, of the United States Constitution provides the U.S. Congress with the power to dispose of and make all needful Rules and Regulations respecting the territories or other property belonging to the United States.

In 1941 Allies of World War II signed the Atlantic Charter and accepted the principle of self-determination. In January 1942 twenty-six states signed the Declaration by United Nations, which accepted those principles. The ratification of the United Nations Charter in 1945 at the end of World War II placed the right of self-determination into the framework of international law and diplomacy.

- Chapter 1, Article 1, part 2 states that the purpose of the U.N. Charter is: “To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measure to strengthen universal peace”
- Article 1 in both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Both read: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”.
- The United Nations Universal Declaration of Human Rights article 15 states that everyone has the right to a nationality and that no one should be arbitrarily deprived of a nationality or denied the right to change nationality.

The right of self-determination was not only a principle or political aspiration of International Law it became a fundamental right of all nations of the world. Self-determination is a fundamental right under the International Treaty of Human Rights, the International Treaty on Civil and Political Rights and the International Treaty on Economic, Social and Cultural Rights of Nations adopted in 1956. However, the Charter

and other resolutions did not insist on full independence as the best way of obtaining self-government, nor did they include an enforcement mechanism.

These Articles of the United Nations Charter have also been expressed on further Acts of the U.N. The most significant have been:

1. Resolution 1514 (December 14, 1960) declares that all nations have a right to sovereignty and the protection of their territory. Liberation of colonies are irresistible and irreversible. Freedom is an inalienable right of colonies. Foreign dominance constitutes a violation of the fundamental human rights of the people who live under a colonial power. This Resolution imposes on the administrators of Trust Territories the obligation of transferring sovereign powers to the territories⁴⁴⁹.
2. Resolution 1541 (December 15, 1960) The purpose of this Resolution was to enumerate a definitive list of factors, known as principles to guide members in determining whether an obligation existed to transmit information under Article 73 (e) of the United Nations Charter.
3. Resolution 1654 (November 27, 1961) The United Nations was worried those colonial powers were not following Resolution 1514. Colonial powers were obstructing Resolution 1514. The United Nations decided to create a Special Committee⁴⁵⁰ to examine the applicability of Resolution 1514 and that

⁴⁴⁹ For this reason Puerto Rico may exclude non-native voters if the island does not have sovereignty and U.S. law nor its policies may be imposed on the people. The will of the people must prevail.

⁴⁵⁰ Also known in Spanish as “Comite de Descolonizacion” (Committee of De-colonization). The correct name is “Special Committee in charge of examining the situation of applicability of the Declaration of Independence for colonies.”

the Committee formulate suggestions and recommendations that would make 1514 function.

4. Resolution 748 (1953) established that the United States had a compact relationship with Puerto Rico and that the United States did not have to file reports to the U.N. on the colonial status of the island.⁴⁵¹

Since 1978 the Special Committee has had the case of Puerto Rico. On January 17, 1953 then Governor Luis Munoz Marin sent a letter to President Dwight D. Eisenhower requesting that the United Nations be informed that the status of the “Estado Libre Asociado” be excluded from the list of Trust Territories and that the United States cease to file reports about the economic, social and political situation of the island to the U.N.

On March 20, 1953, Ambassador Henry Cabot Lodge informed the United Nations on the decision made by the United States and Governor Luis Munoz Marin. In order for the United States not to be defeated in the United Nations the United States accepted the existence of a compact relationship between Puerto Rico and the United States.⁴⁵²

During the elections of 2008, then Governor and candidate Anibal Acevedo Vila from the pro-commonwealth party (PPD) sent a letter to Secretary of State Condoleezza Rice to clarify the controversy of the compact relationship. Early in 2010 the issue of sovereignty came to the public attention again with the controversy of the compact relationship especially in the pro-commonwealth party. But whose initiative was it to remove Puerto Rico from the list of non-self-governing territories, the United States or Puerto Rico?

⁴⁵¹ This Resolution has caused a great uproar with the supporters of the Commonwealth Party (PPD). United States Federal Courts have been totally inconsistent with the existence of the compact relationship. Still today there is a great controversy over this resolution especially among pro-commonwealth supporters.

⁴⁵² Raúl Serrano Geyles, Derecho Constitucional de Estados Unidos y Puerto Rico. Colegio de Abogados de Puerto Rico, p. 563.

Scholars in the island have argued that it was a U.S. initiative.⁴⁵³ Taking Puerto Rico out of the list of non-self-governing territory immunized the United States from being called a colonial power then, because today most Puerto Ricans are well aware of the colonial relationship that the island has with the United States. At prima-facie Puerto Rico was not considered a non-autonomous territory.⁴⁵⁴ Even if the majority of the people in the island considers its relationship with the U.S. as colonial for the world it's a self-governing territory.

Although as we have seen the United States Supreme Court has been inconsistent with the existence of the “Compact Relationship between Puerto Rico and the United States”. But still the Committee of 24 has been able to review the political status of the island and its relationship with the United States. From 1978 until today (2010) the committee has made various statements regarding Puerto Rico’s colonial status and the United States has always stated that Puerto Rico is a domestic issue not subject to the United Nations jurisdiction.⁴⁵⁵

1. 1978 : Self-determination for Puerto Rico shall be done by the complete sovereignty of the people.
2. 1979: Emphasizes that the United States has not taken the necessary measure to transfer power to the people of Puerto Rico. The committee also reaffirms that any plebiscite held in the island has to be done first by the transfer of

⁴⁵³ Antonio Fernos López, Análisis Histórico de las Relaciones entre Puerto Rico y los Estados Unidos. 41 Revista Colegio de Abogados de Puerto Rico 75, p. 82-85 (1980).

⁴⁵⁴ In the United Nation, Puerto Rico is considered an accomplishment, as one enters the U.N. building the map of the world does not illustrate the island as a colony of the United States.

⁴⁵⁵ This has also been the position of the statehood party (PNP) in Puerto Rico.

sovereignty to Puerto Rico. This exactly affirms that if the political forces or the people of Puerto Rico want to exclude non-native voters, it is possible. In 1975 the International Court of Justice decided the Spanish Sahara Case on the right of self-determination. One crucial element in this case is that the voters of the metropolitan power cannot control the registration of voters. The options on the ballot of a plebiscite cannot be controlled by the metropolitan power as was the case of Hawaii.

3. 1980: The Special Committee declares that any measure designed to change the political status of the island without the explicit consent and participation of Puerto Rico would violate Resolution 1514.
4. 1983: Calls upon the United States to take notice of Resolution 1514 and other issues by the United Nations.
5. 1991: The Special Committee has confidence that the parties involved in the de-colonization of Puerto Rico will adhere to International Law.
6. 1993-1998: Puerto Rico will be under investigation until the parties involved in the process of de-colonization reach a procedure that would move the island out of colonialism.
7. 2007: In 2007 the Decolonization Subcommittee called for the United Nations General Assembly to review the political status of the island, a power reserved by the 1953 Resolution.

The Puerto Rican Bar Association presented to the Special Committee a proposal that the committee via the United Nations General Assembly ask for an opinion of the International Court of Justice on the de-colonization of Puerto Rico.

On the 20th anniversary of Resolution 1514 colonialism was declared incompatible with the U.N. Charter and International Law. On the 25th anniversary it is reaffirmed the right of nations to self-determination and independence, thus requiring colonial powers to eradicate colonialism. And finally the United Nations declared that the decade 1990-2000 is proclaimed as the decade of the eradication of colonialism in the world. Power politics has been an enormous obstacle for the de-colonization process.

There are six recommendations established by international law that apply toward self-determination and independence of colonies. First, self-determination and/or independence are an inalienable right of nations; second, there is a necessity to accelerate de-colonization; **third, the future political status of colonies is to be determined by the nation;** fourth, territorial integrity must be upheld and no act shall threaten this integrity; fifth, colonial powers are obligated to create the conditions that lead to self-determination and/or independence of these nations; sixth, the convocation of a Constitutional Convention the revocation of all discriminatory laws and practice, full guarantee of democratic liberties, the concessions of full amnesty to political prisoners free elections based on universal suffrage and in some cases the participation of the United Nations.⁴⁵⁶ Self-determination should be taken seriously by the United States. Just as William Appelman Williams stated: “that the principles of self-determination when taken seriously ... means a policy of standing aside for peoples to make their own choices, economics as well as political and cultural”. The truth is that the American idea

⁴⁵⁶ Carmen Gautier Mayoral, Poder y Plebiscito en Puerto Rico. Editorial Universidad de Puerto Rico, Río Piedras, Puerto Rico, p. 143.

of self-determination so influential in the nations founding, conflicts with U.S. meddling in Puerto Rico's destiny.⁴⁵⁷

B. Fundamental and Procedural Requisite in the Exercise of Self-Determination

The principle of self-determination has figured in a number of decisions of the International Court of Justice. The first was the case Concerning the Right of Passage Over Indian Territory, Portugal v. India.⁴⁵⁸ This involved the status of two Portuguese enclaves within Indian Territory. In July and August of 1954 an insurrection occurred in the enclaves, India prohibited any further access to the enclaves by Portuguese authorities. Both raised the issue of self-determination in their pleading in the ICJ. In its judgment, the court as a whole focused only on the question of sovereignty and the right to passage. India's refusal of passage could not be held to be action contrary to its obligation resulting from Portugal's right to passage.⁴⁵⁹

The question of self-determination was also implicit in the case concerning the Northern Cameroon (Cameroon v. United Kingdom).⁴⁶⁰ One of the issues which arose in this case concerned the legal effects of the termination of the trusteeship under Chapter XII of the U.N. Charter. The territory was divided into two mandates one of which was administered by France and the other by the United Kingdom. These two mandates had become trust territories in 1946.

⁴⁵⁷ William Appelman Williams, The Tragedy of American Diplomacy. New York: Delta, 1962.

⁴⁵⁸ International Court of Justice Reports 1960, pp. 6-16.

⁴⁵⁹ International Court of Justice Reports 1960, p. 53.

⁴⁶⁰ International Court of Justice Reports 1960, p.15

In 1958 a U.N. Special Mission was sent to the British Cameroon to investigate how best to ascertain the views of the population concerning the political future. It concluded on the basis of the ethnic and linguistic difference existing between the northern and southern parts of the territory that the wishes of the northern and southern should be determined separately. The U.N. General Assembly thereupon adopted Resolution 1350 (XIII) in March 13, 1959 which recommended that separate plebiscites be held in the northern and southern parts of the British Cameroon. Meanwhile the French Cameroon trust territory had become independent as the Republic of Cameroon on June 1, 1960. The northern part of the trust territory became a province of Nigeria while the southern half was incorporated into the Republic of Cameroon. Non-natives were excluded from voting in the plebiscite.

The first case in which the ICJ as a whole actually pronounced on the issue of self-determination was in its 1971 Advisory Opinion on the Status of Namibia, "Legal Consequences for the States of the Continued Presence of South Africa in Namibia, notwithstanding Security Council Resolution 276 (1970)."⁴⁶¹ The status of Namibia had involved South Africa in a protracted dispute with the United Nations, producing in the process four Advisory Opinions and two judgments from the ICJ.

South West Africa was a German colony which was captured during the World War I by South African troops. By virtue of Article 22, of the League of Nations it was subsequently placed under mandate, with South Africa as the administering power. When the League of Nations was dissolved in 1946 South Africa took the position that

⁴⁶¹ International Court of Justice Report, 1971, p.16.

the United Nations possessed no successor supervisory role and that South Africa was under no obligation to place South West Africa under the United Nations Trusteeship System. In South Africa's opinion, the mandate over South Africa has expired and it was consequently at liberty to annex the territory.

The position of South Africa prompted the United Nations General Assembly to seek the advice of the International Court of Justice on the status of South Africa. The Court found that the mandate over South West Africa had not lapsed as South Africa alleged and that the dissolution of the League of Nations had not brought to an end South Africa's obligations as administering power with regard to South Africa.⁴⁶² The Court rejected South Africa's claim that it was at liberty to annex South West Africa, noting that the creation of the mandate did not involve any cession of territory or transfer of sovereignty to the union of South Africa. South Africa had undertaken certain obligations to promote to the utmost the material and moral well being and the social progress of the inhabitants. South Africa was not obligated to place the South West Africa mandate under the United Nations Trusteeship System. This did not mean that South Africa was not subject to the supervisory power of the United Nation. In this respect the obligation on South Africa to submit to supervision had continued, and the U.N. General Assembly by virtue of Article 10 of the U.N. Charter was competent to exercise such supervision.⁴⁶³ In addition the Court held that South Africa was under an obligation to accept the compulsory jurisdiction of the Court by virtue of Article 7 of the Mandate Agreement in

⁴⁶² International Court of Justice Report, 1950, p. 128.

⁴⁶³ Article 10 provides: The U.N. General Assembly may discuss any question or nay matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter and except as provided in Article 12 may take recommendations to the members of the United Nations or to the U.N. Security Council or to both on any such question or matters.

conjunction with Article 37 of the statute of the International Court of Justice and Article 37 of the statute of the ICJ and Article 80 (1) of the U.N. Charter.⁴⁶⁴ The Court concluded by stating that competence to determine and modify the international status of South Africa rests with the union of South Africa acting with consent of the United Nations.⁴⁶⁵ Pursuant to this finding the Court rendered two subsequent Advisory Opinions, in 1955 and 1956 which established the proper procedure to be used by the U.N. General Assembly when exercising its supervisory functions.⁴⁶⁶ In spite of these Advisory Opinions, South Africa continued to deny the ongoing existence of the mandate in South Africa and refused to cooperate with the United Nations. In an attempt to bind South Africa by the judgment of the ICJ, Ethiopia and Liberia undertook contentious proceedings against South Africa in 1960. Ethiopia and Liberia had included in their submission the allegation that South Africa's policy of apartheid in South West Africa had impeded opportunities for self-determination by the inhabitants of the territory.⁴⁶⁷ This submission was not addressed in the majority judgment but it was taken up in a separate opinion. That noted that Article 73 of the U.N. Charter referred to territories whose people have not yet attained a full measure of self-government prescribed "due respect for the cultures of the peoples concerned" and declared that due account should be taken of the political aspirations of the peoples concerned, who should be assisted in the development of their free political institutions according to the particular

⁴⁶⁴ International Court of Justice, Reports, 1950 pp. 143.

⁴⁶⁵ International Court of Justice, Reports, p. 143.

⁴⁶⁶ International Court of Justice, Reports, 1955 p.67 and ICJ Reports 1956 p.23.

⁴⁶⁷ ICJ Reports, 1966, p. 15.

circumstances of each territory and its people and its varying stages of advancement. This lead to conclude that South Africa far from impeding opportunities for self-determination had actually pursued a policy aimed at separate self-determination for the various population groups of West Africa.⁴⁶⁸ The dissenting opinion concluded; different treatment was an exception to the principle of equality and as such it was incumbent on those who advocate different treatment to show its reason and to demonstrate its reasonableness.⁴⁶⁹ Different treatment was reasonable in certain circumstances because the mechanical application of equal treatment could lead to injustice if it did not take into account the concrete circumstances of individual cases.⁴⁷⁰ The cases brought by Ethiopia and Liberia were dismissed.

The U.N. General Assembly reacted to the Courts decision by adopting Resolution 2145 and stated that South Africa has failed to fulfill its obligations in respect of the administration of the mandate territory and to ensure the moral and material well being and security of the native inhabitants of South Africa and has in fact disavowed the mandate. It declared that the mandate conferred on South Africa was terminated and that South West Africa would come under the direct responsibility of the United Nations.

Faced with South Africa's continued intransigence on the issue, the Security Council requested as Advisory Opinion from the ICJ concerning the legal consequences of South Africa's continued presence in Namibia to Security Council Resolution 276.⁴⁷¹

⁴⁶⁸ ICJ Reports, 1966, p. 196.

⁴⁶⁹ ICJ Reports, 1966, p. 309.

⁴⁷⁰ ICJ Reports, 1966, p. 308.

⁴⁷¹ Security Council Resolution 284 (1970).

The Court responded with its Advisory Opinion of 1971.⁴⁷² The Court confirmed again that the mandate had continued in spite of the dissolution of the League of Nations and that the General Assembly had inherited the supervisory powers of the League. If the nation states are seen as the sole actors, moving or moved like a set of chess figures in a highly abstract game, one may lose sight of the human beings for whom and by whom the game is supposed to be played. If, on the other hand, one sees only the mass of individual human beings of whom mankind is composed, the power game of states tends to appear as an inhuman interference with the lives of ordinary people. A statesman accustomed to analyzing international politics in terms alone of state behavior will treat the United Nations differently from one who believes in the rise of international organizations to a place of independent control over world events similar to that control exerted by states.

States are presumed to possess a will to survive and a will to power; they live in fear of losing their possessions to others and are tempted by opportunities of acquiring new possessions.

If as Thomas Hobbes assumed, all states were equally and constantly driven by fear that their survival, the most cherished of their state possessions, might be threatened, then the multistate system would of necessity become an all around struggle for security.⁴⁷³ This is what happens in international politics, it's all about power politics. Men acting for states share the same traits of human nature. Specifically, leaders are

⁴⁷² ICJ Reports, 1971, p. 16.

⁴⁷³ Thomas Hobbes, Leviathan.

expected to place exceedingly high value on the so called possessions of the nation above all, on national survival, national independence and territorial integrity and to react to fear against any threats to these possessions. Even enthusiastic supporters of the United Nations realize that there can be no U.N. action of any consequence if a single great power refuses to permit it.

The ICJ explicitly addressed the issue of self-determination for the first time. In its 1950 Advisory Opinion the ICJ declared the principle of the sacred trust to be of paramount importance with respect to the mandate. In its 1971 Advisory Opinion the court held that the sacred trust as a result of developments in international law now extended to all territories whose people have not yet obtained a full measure of self-government.⁴⁷⁴ The Court also stated that the ultimate objective of the sacred was the self-determination and independence of the peoples concerned.⁴⁷⁵ The court noted that the subsequent development of international law in regard to non-self-governing territories as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all.⁴⁷⁶

Puerto Rico is sui-generis and it does seem reasonable to exclude non-native voters due to the fact that the people who inhabit Borinquen are a unique nation dissimilar from the United States. If non-natives voters are left to decide the future of the island the application of equality could lead to injustice, for the people will view the outcome of the plebiscite as one not decided by the Puerto Rican nation.

⁴⁷⁴ ICJ Reports, 1971, pp. 16, 31.

⁴⁷⁵ ICJ Reports, 1971, p. 31.

⁴⁷⁶ ICJ Reports, 1975, p. 12.

Ethnic groups frequently claim to have a right to self-determination on the basis that they are “peoples” and are therefore entitled to determine their own political status. There is not yet a recognized legal definition of “peoples” in international law. International law and U.N. Resolutions find in cases of non-self-governing peoples and foreign occupation “a people” is the entire population of the occupied territory, no matter their other differences. In cases like Puerto Rico where people lack representation by a States government, the unrepresented become a separate people.⁴⁷⁷ Present international law does not recognize ethnic and other minorities as separate peoples.⁴⁷⁸ Other definitions offered are “peoples” being self evident (from ethnicity, language, history, etc...) or defined by “ties of mutual affection or sentiment” or by mutual obligations among peoples. Or the definition may be simply that a people are a group of individuals who unanimously choose a separate state. If the “people” are unanimous in their desire for self-determination, it strengthens their claim. For example, the populations of federal units of the former Yugoslav federation were considered a people in the breakup of Yugoslavia, even though some of those units had diverse populations.

Ethnic self-determination has not disappeared with the advent of modern technology⁴⁷⁹ and greater economic interdependence. Modern technology has in fact had

⁴⁷⁷ Puerto Rico has become a separate people by the actions for example of President Obama that excluded 3.9 million U.S. citizens from the Health Care Reform. The island has been discriminate voluntarily by the United States since *Harris v. Rosario* permits the discrimination against Puerto Rico.

⁴⁷⁸ Vita Gudeleviciute, *Does the Principle of Self-Determination Prevail over the Principle of Territorial Integrity*. *International Journal of Baltic Law*, Vytautas Magnus University School of Law, Volume 2, No. 2 (April, 2005).

⁴⁷⁹ In 2008 Puerto Rico’s personal income per capita amounted to \$14, 237, less than that of the poorest state, Mississippi whose personal income that year was \$30,399, while in the U.S. it was \$40,208. In 2009 the islands unemployment rate rose to 15.9%, while Mississippi was 9%. Puerto Rico’s labor force participation rate was 44.5% while Mississippi was 57.9% and the U.S. 65%. More than 50% of households in the island live under the level of poverty. Households led by single women, the poverty level rise to 60.7%. With 4 million inhabitants and a population density of 1,113 persons per square mile, by far higher than any state, Puerto Rico

the opposite effect; modern technology enables much greater contact between ethnic groups. This heightens each group's consciousness of its own particular identity, because the differences recognized in other groups highlight the criteria which make up the groups identity. Economic interdependence has also contributed to increase ethnic consciousness because the economic differences which can result from unequal distributions of resources often coincide with ethnic divisions.⁴⁸⁰ Economic status can thus be associated with membership of a particular ethnic group. Puerto Rico has the lowest per-capita income inside U.S. jurisdiction.

Modern technology and the increase in economic interdependence throughout the world far from decreasing nationalism have stimulated ethnic awareness. The spread of modern technology increased the opportunities for Puerto Ricans to make comparisons and observe differences which in turn results in a heightened sense of Puerto Rican identity.

Puerto Rico has a vibrant cultural nationalism that has become a potent factor in the islands politics. Nationalism has become a potent factor where minority ethnic groups

has come to rely heavily on federal transfers for its economic survival. In 2208 out of a total consolidated budget of \$26.6 billion, \$5.73 billion or 21.5% came from the federal budget mostly healthcare, education and low-income housing. Direct federal payments to individuals in Puerto Rico totaled \$10.46 billion, mostly by way of social security, retirement and disability benefits and veteran's pensions and food stamps. These figures account for over 20% of personal income in the island.

⁴⁸⁰ As is the case, between Puerto Ricans and mainland U.S. citizens. Recently former governor Rafael Hernandez Colon sent a letter on February 4, 2010 to the U.S. Congress criticizing HR 2499, stating that the bill provides for 2 plebiscites which will be held in Puerto Rico as soon as the bill is approved in Congress. In the first plebiscite, statehood and independence voters will join up to provide a majority in favor of change; that is to change the present Commonwealth status to a different political status. In the second plebiscite Statehood will win easily because Commonwealth will not be on the ballot. Upon that victory, the Statehood Party will seek statehood for Puerto Rico. This bill does harm over 900,000 Commonwealth supporters and does not follow international law and procedures of de-colonization. In his letter to the U.S. Congress former governor Rafael Hernandez Colon states the abysmal economic differences between Mississippi (the poorest state in the union) and Puerto Rico. Clearly the former governor establishes those differences between U.S. citizens on the island and those in the continental U.S.

like Puerto Ricans have traditionally sought to preserve their particular cultural, religious and linguistic attributes.⁴⁸¹

In agreement with U.N. General Assembly Resolution 1514 there are three ways in which a colony can reach self-determination. These are first, becoming an independent state, second, establishing a free association with another state and third, the option of complete integration into another independent state. Currently the Puerto Rico Democracy Act (HR 2499) which is going to the floor soon does not follow international law and procedures of de-colonization. International law demands that for a nation to have any of the three options and be able to exercise self-determination there must be a principle of sovereignty in the process.

The Puerto Rican Bar Association has constantly stated since February 21, 1963 that in order to comply with international law, sovereignty must reside in Puerto Rico not in the United States. A sovereign nation is one in which resides the ultimate source of power. Which means, that the United States must relinquish all power over the island; transferring sovereignty to the people of Puerto Rico.⁴⁸² Only then is self-determination fulfilled and the people of Puerto Rico can choose freely. This means clearly that if Puerto Rico wants to exclude non-native U.S. citizens from a final plebiscite they don't have to consider U.S. law and jurisprudence. U.S. law and jurisprudence cannot have any

⁴⁸¹ In Puerto Rico Spanish has been preserved even under U.S. influence. To the extreme that there have been demonstrations about the Puerto Rican flag, nationality, language, Olympic team, and other issues related to the concept of the existence of the Puerto Rican nation.

⁴⁸² United Nations General Assembly Resolution 1514, states: "all nations have a right to self-determination ...and that all powers should be transferred to the people of those territories without conditions". Power, means sovereignty, period.

legal standing in Puerto Rico in order to have a legal and moral process of decolonization.

C. Decolonization

De-colonization must have its origin in the Puerto Rican nation. This process cannot be chained to U.S. law because there is no participation by Puerto Rico in the legislative, executive nor judicial branches of the United States government⁴⁸³. The only way that Puerto Rico can reach self-determination is that the United States transfer sovereignty to the people of Puerto Rico. The United Nations can supervise the process, but without doubt the United States cannot have the power to oversee a final plebiscite. Even if the United States government does not agree with the intervention of the U.N. the ultimate decision will rest upon the people of Puerto Rico.⁴⁸⁴ Puerto Rico in order to negotiate with the United States must be equal and the current political status of the island makes them subordinate to the U.S. The case of Hawaiian statehood must not be repeated with Puerto Rico. The Hawaiian context is totally different from Puerto Rico.

The plebiscite has to be through an electoral process⁴⁸⁵ and only natives should be able to participate. Any plebiscite to be held in the island designed to reach self-determination must follow international law and procedures of de-colonization. The

⁴⁸³ Puerto Rico has a Resident Commissioner in the U.S. House of Representatives who has only voice but cannot vote in the floor. Puerto Rico does not have any representation in the U.S. Senate. U.S. Supreme Court decisions have jurisdiction in the island. Federal Judges in the island today are all of Puerto Rican ancestry. Justice Sonia Sotomayor Baez became the first Hispanic to sit in the U.S. Supreme Court; the island has no participation in the nomination process. Also the U.S. Supreme Court can override the Puerto Rico Supreme Court.

⁴⁸⁴ Vieques proved that the people of Puerto Rico can overcome political controversies with the United States.

⁴⁸⁵ Although there are political leaders in the PPD and PIP that support a constitutional convention; but it does seem that the Puerto Rican electorate will not support a convention. Path dependent will be crucial in the debate between a convention and a plebiscite.

plebiscite is the last phase it's is not the genesis of decolonization. That first step must be to determine and conceptualize who are the people of Puerto Rico. The plebiscite is a special election and the voters have to be the sons and daughter of the land. In a regular election to elect executives and legislators the political system is extended to all even foreigners, but a plebiscite must be in the hands of native voters as other countries of the world have done. Electing public officials is one thing but deciding the future of Puerto Rico is paramount to the Puerto Rican people. Under international law the participation of non-natives in the plebiscite would cast serious doubts on the process of self-determination for the people of Puerto Rico. Article 55 of the United Nations Charter does not define who people are for the purpose of self-determination. Article 73 and 76 do establish the definition of people. Article 73 mentions the culture of the people and that it has to be protected. Article 76 relates people with territory. Based on the United Nations Charter the conclusion is that people are characterized by two traits; first, the people of Puerto Rico have a different culture from the United States and second, Puerto Rico's territory is clearly without doubt outside the continental United States.

Resolution 1514 reaffirms the relationship between territory and nation and explicitly demands absolute sovereignty immediately.⁴⁸⁶ The United Nations sustains that people are a group culturally and territorially related. Puerto Rico has been culturally and territorially related since the 18th century. The elements of a definition sustain, which have emerged from the discussion, state that this subject in the United Nations cannot and should not be ignored. These elements can be taken into consideration in specific

⁴⁸⁶ United Nations General Assembly Resolution 1514 states that the immediate transfer of powers has to provide to the territory, and power means "Sovereign transfer of power."

situations in which it is necessary to decide whether or not an entity constitutes a people fit to enjoy and exercise the right of self-determination. The term people denote a social entity possessing a clear identity and its own characteristics; it implies a relationship with a territory even if the people in question have been replaced by another population. People should not be confused with ethnic, religious, linguistic minorities whose existence and rights are recognized in Article 27 of the International Covenant on Civil and Political Rights.⁴⁸⁷

The principles of international law are not alien to U.S. Constitutional law. Article VI of the United States Constitution states: “this constitution and the laws of the United States which shall be made in pursuance thereof; and all treaties made or which shall be the Supreme Law of the land and judges in every state shall be bound thereby and anything in the Constitution or laws of any state to the contrary notwithstanding”.

In *Paquete Habana*⁴⁸⁸ the United States Supreme Court stated: “International Law is part of our law and must be properly ascertained and administered by the court of justice of appropriate jurisdiction as often as questions of right depending upon it are duly represented for their determination”. For this purpose where there is no treaty and no controlling executive or legislative act or judicial decision must be to the custom and usage of civilized nations.

⁴⁸⁷ The ICCPR is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1966 and in force from March 23, 1976. As of October 2009, the Covenant had 72 signatories and 165 parties. The United States ratified the ICCPR in 1992, with five reservations and four declarations. Some experts have noted that with so many reservations, its implementation has little domestic effects. Included in the Senates ratification was the declaration that “the provisions of Article 1 through 27 of the Covenant are not self executing, and in a Senate Executive Report stated that the declaration was meant to clarify that the Covenant will not create a private cause of action in U.S. courts.

⁴⁸⁸ 175 US 677 (1900).

In *Filartiga v. Pena-Irala*⁴⁸⁹ the court stated: “laws of the nations forms a part of the laws of the United States, even in the absence of Congressional enactment”.

Professor Louis Henkin⁴⁹⁰ also indicated, “Today it is established that customary International Law as incorporated into U.S. law fits comfortably into the phase of the laws of the United States for purpose of supremacy to state law”. Henkin affirms that “we have also accepted customary International Law in the laws of the United States for the purpose of Article III. Indeed it is only by including International Law in the laws of the United States that one can find a firm basis for the supremacy of federal interpretations of International Law, or for federal jurisdiction over cases arising under international law.”⁴⁹¹ In order to determine who votes in a plebiscite in Puerto Rico it has to be guided by defined criteria of international law.

There are 3.9 million Puerto Ricans in the island and another 4 million in the continental United States. Puerto Ricans migrate constantly between the island and the continental United States. Hispanics⁴⁹² today are the largest minority group in the United States. In case the United States does not support a final plebiscite in the island excluding

⁴⁸⁹ 630 F2d 876 (1980)

⁴⁹⁰ Louis Henkin is a former president of the American Society of International Law and University Professor emeritus at Columbia Law School. He was also the chairman of the Center for the Study of Human Rights at Columbia University. He is widely considered one of the most influential contemporary scholars of International Law.

⁴⁹¹ 82 Michigan Law Review 1555, p.1566 (1984).

⁴⁹² Hispanics composed 12% of the total U.S. population in 2000. In the next census it should be well over 12%, mostly, Mexicans, Puerto Ricans and Cubans. The Hispanic community has always supported the issue of Puerto Rico.

non-natives the situation can turn into another movement like Vieques.⁴⁹³ Former Governor of Puerto Rico Sila Maria Calderon developed a program to register Puerto Ricans and other Hispanics to vote in U.S. elections especially New York, New Jersey, Massachusetts, Illinois and Florida. These states combined have over 100 electoral votes for the U.S. Presidency. Puerto Ricans and other Hispanics are starting to use their political power in U.S. elections. This new political context can help promote a plebiscite with binding power over the U.S. Congress.

On May 16, 1989, the Congressional Research Service determined upon request from the Senate Committee on Energy and Natural Resources, that there was no constitutional impediment for Puerto Ricans in the continental United States to vote in the island. Then on July 1989 the U.S. Department of Justice also stated that there was no impediment for Puerto Ricans born in the island but living in the continental U.S. to participate in a plebiscite.

After World War I the Treaty of Versailles, held various plebiscites where the right to vote was granted to those who were born where the plebiscite was going to be held. International precedents support the exclusive participation of native Puerto Ricans as the case of East Timor, Northern Cameroon and Western Sahara.⁴⁹⁴ The United States recognized the concept of self-determination for Namibia and the right to vote to all non-

⁴⁹³ Vieques has become the example of how Puerto Rico can face the political power of the United States in the island.

⁴⁹⁴ United States Congress, House Committee on International Relations. Sub-committee on Africa U.N., Referendum for Western Sahara. 102nd Congress, Second Session, September 1, 2000.

residents native born voters in their plebiscite.⁴⁹⁵ If the United States does not see the contradiction then the U.S. would have to be viewed as imperialist.⁴⁹⁶ This would mean that the United States has the right to reduce Puerto Ricans as an ethnic minority inside the U.S. population. This would go against all U.S. international commitments that the United States accepted before the U.N. General Assembly on Resolution 748 in 1953. If this were to occur Puerto Rico would have a case before the Human Rights Tribunal in the United Nations.

In the case of Northern Cameroon the United Nations approved a resolution in which those born in the territory and those born of native parents could participate in the plebiscite.⁴⁹⁷ In the Western Sahara case the International Court of Justice delivered the opinion in which under international law only natives can vote in the plebiscite.⁴⁹⁸

The argument that the Constitutional criteria to determine who votes in the plebiscite are national is notwithstanding in international law. Self-determination and decolonization of Puerto Rico transcends the limits established by Puerto Rican Electoral Law, Federal Laws and the U.S. Constitution Clause of Equal Protection of the Law.

⁴⁹⁵ Brian Harlech-Jones, *New Thing: The Namibian Independence Process 1989-1990*. Ecumenical Institute for Namibia, University of Namibia, 1997. p. 25.

⁴⁹⁶ The United States must not reduce the people of Puerto Rico to an ethnic minority inside the U.S. population.

⁴⁹⁷ United States Congress, House Committee on Foreign Affairs. Subcommittee on Human Rights and International Organizations. 102nd Congress, First Session, October 8, 1991.

⁴⁹⁸ *Ibid.*

Many current U.S. state, regional and city secession groups use the language of self-determination. A 2008 Zogby International⁴⁹⁹ poll revealed the 22% of Americans believe that any state or region has the right to peaceably secede and become an independent republic. The plebiscite is a special electoral process designed to determine the future of a nation and their territory and this process must follow international law in order to have legitimacy in the international sphere. For example Southern Sudan reached a peace agreement with Sudan in 2005. It contains a referendum for self-determination in 2011. The Sudan plebiscite will follow international law and procedures.

International law is part of U.S. domestic law as stated by the Supremacy Clause of the Constitution and by United States jurisprudence. Also it is well known that national law is prohibited under international law to limit its obligation. Colonial issues are a matter of international interest and are not the exclusive domain of domestic jurisdiction of the states that have colonies.⁵⁰⁰

There are other cases that support the exclusion of non-native voters in a binding plebiscite. Namibia, Eritera, Southern Cameroon, French Somalia, Western Sahara, East Timor and Southern Sudan all have and will (Southern Sudan Case) exclude non-native voters.⁵⁰¹

⁴⁹⁹ Zogby International is a U.S. market research, opinion polling firm founded in 1984 by John Zogby. The company polls and consults for a wide spectrum of business media, government and political groups and conducts public opinion research in more than 70 countries.

⁵⁰⁰ The Puerto Rican Statehood Party (PNP) and some U.S. administrations like the George W. Bush administration have sustained that the Puerto Rican status issue is a domestic problem.

⁵⁰¹ United States Congress, House Committee on International Relations Subcommittee. The Future of Western Sahara Referendum. 105th Congress, Second Session, September 24, 1998.

If Puerto Rico permits non-natives to vote it will weaken the legitimacy of the process of self-determination. If over 10% who vote in the Puerto Rican plebiscite are foreigners and the election is decided by less than 3% or 2% then the people of Puerto Rico will reach the conclusion that foreigners decided the future of their island. This will give the Puerto Rican nation the perception that the political status of the island was decided by foreigners. Currently some leaders in Puerto Rico view the Puerto Rico Democracy Act of 2010 (HR 2499) (Plebiscite) as designed to overrun the status quo and give statehood an easy electoral triumph. Most important of all is that the plebiscite does not follow international law and procedures of de-colonization. The tragedy of Hawaii cannot be repeated; on November 15, 1993 President Bill Clinton signed an “Apology Resolution” apologizing on behalf of the American people for the U.S. Governments role in the overthrow of the Hawaiian monarchy (Queen Liliukalani who did not formally abdicate the throne and became a government in exile). In *Hawaii v. Office of Hawaiian Affairs* (2009) the decision of the U.S. Supreme Court of March 31, 2009, the “whereas clauses of the Apology Resolution have no binding effect and the resolution does not change or modify the title to the public lands of the State of Hawaii.”⁵⁰²

The decision of a nation has to be in the hands of its nationals. International law supports this fact and various precedents also sustain the exclusion of non-natives. Power politics in the international arena may influence the process and cause serious problems of legitimacy. Puerto Rico is very much divided on the political status issue.⁵⁰³ One thing

⁵⁰² 556 U.S. ____ (2009).

⁵⁰³ On March 4, 2010 President Obama’s Task Force came to Puerto Rico to hear its leaders about the political status of the island and their opinion about HR 2499. They reached the conclusion that the island is divided on the political status options...

is sure, they know who exactly is a Puerto Rican and nationalism will permeate the process as it has been done over the past fifty years.

Puerto Rico is still a non-incorporated territory subject to the Territorial Clause of the United States Constitution.⁵⁰⁴ Under U.S. law and jurisprudence Puerto Rico is not part of the United States but that the island belongs to the U.S.⁵⁰⁵ So under international law Puerto Rico is a nation that has not reached self-determination.

Jose Trias Monge former Chief Justice of the Puerto Rico Supreme Court, and a former member of the constitutional convention in 1950, that drafted the current constitution of the island. Trias Monge stated: “Puerto Rico may well be the oldest colony in the world. U.S. policy toward Puerto Rico’s political status has been purely rhetoric. The United States has never moved the island toward self-determination. The process has been one of degradation for both the United States and Puerto Rico. In a world where colonialism is held to be evil the United States holds the island to a colonial relationship to the edge of international respect”.

The only way to end colonialism in Puerto Rico for the pride of the United States and Puerto Rico is to ensure a process of self-determination following the basic procedures of international law. The future of Puerto Rico has to be decided by the native voters in a final plebiscite.

⁵⁰⁴ The PPD has a clear vision of its future relationship with the U.S. and it’s that Puerto Rico must not be under the Territorial Clause of the U.S. Constitution.

⁵⁰⁵ In 2005 the Bush Administration Task Force on Puerto Rico reached two conclusions, first, that the U.S. Congress can strip away U.S. citizenship to those Puerto Ricans born in the island and second, that the U.S. can give the island to another country. Both conclusions very much debated and which President Obama has rejected totally. These conclusions clearly establish that Puerto Rico is a nation distinct from other U.S. citizens.

Puerto Rico is undoubtedly a colony of the United States. U.S. Supreme Court decisions have placed the island under a colonial relationship with the United States. The Insular Cases although controversial is the main source of the islands political relationship with the United States. Still today these cases are sought as the prime jurisprudence when political-judicial questions arise between Puerto Rico and the United States.

Puerto Rico has its own identity and the people view themselves as a separate nation. Although the islands nationalistic sentiment revolves around its cultural nationalism, there is a nationalist sentiment even among those who favor statehood.

The plebiscites held in the island have had no binding power upon the United States. The U.S. Congress has never legislated to provide a plebiscite with binding powers over both nations.⁵⁰⁶

The exclusion of non-native voters is possible under U.S. jurisdiction and international law. The Territorial Clause of the U.S. Constitution gives Congress total power over Puerto Rico. But the U.S. Congress has been very careful not to be perceived as classical colonial power.⁵⁰⁷ This authority has never been diminished even though the courts have been very inconsistent in its decisions related to the political status of the island. Other documents, such as the Treaty of Paris 1898 also provides the U.S. Congress with full authority over the political condition of the inhabitants of the territories ceded to the United States by Spain.

⁵⁰⁶ Currently HR 2499 The Puerto Rico Democracy Act (2010) is being considered in the House and if approved will be in the U.S. Senate.

⁵⁰⁷ Antonio Gramsci, The Prison Notes.

The United States Constitution does not full applicability in Puerto Rico.⁵⁰⁸ So this protection is severely diminished by the Insular Cases, especially *Balzac v. People of Puerto Rico*. These cases are still relevant today. President Obama's Health Care Reform does not include the U.S. citizens that live in Puerto Rico.⁵⁰⁹ Governor Luis Fortuno has stated that he will go to courts if necessary in order that U.S. citizens in the island are not discriminated. It does seem as a very long shot, because following the *Harris v. Rosario* (446 U.S. 651) case the U.S. Congress can treat Puerto Rico differently from the states of the union. All these peculiar situations clearly establish that non-native voters can be excluded from a final plebiscite in Puerto Rico.

Immigration control is under U.S. jurisdiction and Puerto Rico has no power over who enters the island.⁵¹⁰ The island cannot protect its economy nor can the island commerce with other countries unless the U.S. State Department approves the action. United States interest overrides Puerto Rican interest⁵¹¹ even if it's in the best interest of Puerto Rico.

D. Conclusion

Under international law Puerto Rico may exclude non-native voters as other countries have done in their political development. The transfer of powers to Puerto Rico

⁵⁰⁸ Insular Cases and especially *Balzac v. People of Puerto Rico* 258 U.S. 298.

⁵⁰⁹ The House bill did include Puerto Rico, but the Senate has opposed the inclusion of the island.

⁵¹⁰ Governor Luis Fortuno from the statehood party (PNP) supported that the Cuban Olympic team travel directly from La Habana to San Juan to participate in the 2010 Central Americana and Caribbean Games in an airplane from Cubana de Aviacion, but the U.S. State Department had their reserves about the situation. In the end Cuba decided not to participate. If Puerto Rico cannot control who enters the island then how is it possible that foreigners participate in a final plebiscite.

⁵¹¹ Very typical, in a colonial relationship where the metropolitan power exploits the colony. Over 85% of products and services consumed in the island are from the United States.

is vital in order for the island to decide freely its final political status. United Nations General Assembly Resolution 1514 sustains the transfer of powers and power means sovereignty in order to negotiate on equal basis with the United States. The blunder of Public Law 600 (1950)⁵¹² which established a compact relationship between Puerto Rico and the United States has to be rewritten following the principles of law. U.N. General Assembly Resolution 748 (1953) established that the United States had a compact relationship with Puerto Rico and that the U.S. did not have to file reports to the U.N. on the colonial status of the island; this has proven totally false because the United States still holds complete sovereign power over the island. Most of all in order to negotiate a compact the parties have to be in equal power and this did not remotely happen in 1950.

Self-determination has become a legal force today in international law and policies. Although the United States (mostly Republican Administrations) and the Puerto Rican Statehood Party (PNP)⁵¹³ sustain that the Puerto Rican status quandary is domestic it is also under the consent of the United Nations as was the case of Namibia. The Puerto Rican nation has the right to full freedom to determine when and as they wish to decide their internal and external political status without external interference and to pursue as they wish their political, economic social and cultural development. This statement is based on United Nations Resolutions, international law, treaties, customs, general principles of law, judicial decisions and learned writers. Various countries like Namibia, Cameroon, Western Sahara, East Timor and other serve as examples for Puerto Rico.

⁵¹² Public Law 600 (64 Stat. 319). This law to provide for the organization of a constitutional government by the people of Puerto Rico, this act was adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption.

⁵¹³ The Pro-Commonwealth party (PPD) and the Puerto Rican Independence Party (PIP) have both gone to the United Nations to discuss and support the inclusion of Puerto Rico before the De-colonization Committee.

With the triumph of Barak Obama and the Democratic Party in both chambers of the United States Congress it seems more likely that the U.S. will abide by international law, procedures of self-determination and jurisdiction of the United Nations.⁵¹⁴ The political context today compared with the George W. Bush Administration is more likely to favor a U.N. intervention in the island. Pro-Commonwealth Party (PPD) and the Puerto Rican Independence Party do not oppose the jurisdiction of the United Nations. The PIP affirms that the United Nations has jurisdiction over colonialism.

Puerto Rico is sui-generis and it seems reasonable to exclude non-native voters due to the reasonability of the political context today. If non-native voters are left to decide the political future of the island the application of equality could lead to injustice for the people will view the decision as one decided by foreigners. This may lead to certain political instability in the political future of Puerto Rico. There may even be political violence⁵¹⁵ due to the mere fact of permitting non-native voters to have the decisive vote on the political future of Puerto Rico.

The conceptualization of native voters is not an easy task. The solution is political, made by political parties and other civic groups within Puerto Rico. There is no doubt that there must be a line drawn on who gets to vote in a final plebiscite in the island. There are various examples as the most recent, East Timor in 2000 who limited participation to those who had at least one parent born in East Timor.

⁵¹⁴ It would seem more likely because compared with the Republican Administrations that have stated that the problem of Puerto Rico is domestic and the United Nations has absolutely no jurisdiction over the political status of the island.

⁵¹⁵ In the 1950's Puerto Rico had political violence due to the political situation that was unstable.

Puerto Rico like individuals or other groups may value things not because they consider them good or less evil than their alternative; they value them because they satisfy their pride heighten their sense of self-esteem or reduce their fears.

CHAPTER V

NATIONALISM AND COMMONWEALTH

A. Role of History

The study of Puerto Rican development is the study of the durability and permanence of ideas. A review of its historical development as a cultural and political entity shows the thread of autonomy strongly woven into the socio-political fabric of the island. The historical past, how problems were solved before, is always a source for action in the present (path dependent), and on the island, autonomy is a salient feature of the history. The historical sources of autonomy are in the colonial past when the political leadership on the island began to question the control exercised by the Spanish metropolis. The last years of Spanish sovereignty were considered very active politically by the native Puerto Ricans due the fact that their leaders supported liberal ideas such as self-government for the island.⁵¹⁶ Internal political battles, the war for independence in Cuba and the possibility of war between Spain and the United States all nurtured political reforms (Autonomy) for Puerto Rico. The questioning could have led to political independence, as it did in the other Spanish colonies of America, but one of the factors economic considerations encouraged autonomy as an answer to the Puerto Rican question. The economic considerations, as interpreted by the island leaders, became one of the

⁵¹⁶ Freedom of Speech was a crucial element for the Autonomist Party (later on called Partido Liberal, Federal and Union). The AP on various occasions stated that freedom of speech was a priority due to their persecution by government authorities. See "A Donde Vamos", La Democracia, 23 de febrero de 1895, p. 2.

predominant factors in the proposal for change.⁵¹⁷ When a change in the metropolitan powers took place in 1898 the search for autonomy continued.⁵¹⁸ From 1895-1914 many native intellectuals wrote in the newspaper “La Democracia”⁵¹⁹ founded by Don Luis Munoz Rivera the father of Luis Munoz Marin the first elected Puerto Rican governor. Among the Puerto Rican intellectuals that contributed to the ideas of autonomy for Puerto Rico were Luis Munoz Rivera, Mariano Abril, Luis Rodriguez Cabrero, Eugenio Astol, Vicente Pales, Jose Negron Sanjurjo and Luis Bonafoux among others.⁵²⁰ The establishment of autonomy under the commonwealth status in 1952 proved how deeply ingrained was the autonomist idea.⁵²¹

The transformation of the Puerto Rican society cannot be seen as solely the product of autonomy because the state, the Commonwealth government, has been the vehicle through which most of the change has been made.⁵²² That those changes have benefited the population in the area of material well-being is not just a matter of rhetoric,

⁵¹⁷ Henry K. Carroll, Report on the island of Puerto Rico. Washington D.C., Government Printing Office, 1899, p.158, p. 503, p.158-159.

⁵¹⁸ Mariano Negron Portillo, El Autonomismo Puertorriqueno Río Piedras, PR: Ediciones Huracan, Inc., 1981), pp. 15-16.

⁵¹⁹ The newspaper La Democracia functioned as an organ of the Autonomist Party. The prime objective of the newspaper was to defend the idea of self-government and confront ideologically their enemies.

⁵²⁰ Mariano Negron Portillo, El Autonomismo Puertorriqueno. Río Piedras, PR: Ediciones Huracan, Inc., 1981), pp. 17-20.

⁵²¹ Even though the United States obviously did all it could, so not to lose control of Puerto Rico. The United States even accepted that there was a compact relationship with Puerto Rico which has been ambivalent through judicial decisions. Autonomy proved to be an idea that was ingrained in the political history of the island.

⁵²² Operation Bootstrap was the process of industrialization and modernization of Puerto Rico, but this process also included a significant role played by the government. The government of Puerto Rico became the prime catalyst for the modernization of the island.

but a fact to be observed in the daily lives of the people.⁵²³ At the same time, there has been an increase awareness of Puerto Rican cultural distinctiveness which becomes an expression of nationalism.

The nationalistic expression of the present is also rooted in the past. The self consciousness of the community began during the colonial relationship with Spain, and then continued with the United States.⁵²⁴ In order for Puerto Ricans to define themselves and to think in terms of “we” there has to be a “they” who were the Spanish peninsulares.⁵²⁵ The differentiation was a geographical one, separating the natives from those who were originally from the Iberian Peninsula. Later that differentiation was extended to Americans, this time based on cultural differences. The “we-they” basis is one that is also shared by the United States Congress in its policies towards Puerto Rico.⁵²⁶

The self consciousness of Puerto Ricans as members of a separate nation with its own and distinctive nationality is translated into support for autonomy and its expression as ELA. The community self-awareness which I describe as ethnic nationalism could be

⁵²³ Although today, the economic conditions of Puerto Rico have deteriorated drastically to the point that over 1 million people receive Food Stamps and more than 51% of the population lives under federal guidelines of poverty. Crime, drugs, murders, unemployment, high school drop-outs and other social and economic figures have been on a constant increase. The island has also been in an economic recession for the last four years. Economic growth has been stagnant and most economic indicators have been negative.

⁵²⁴ We can see this today in all the aspects of Puerto Rican life, sports, literature, music, government policies, laws, social political and economic institutions, beauty pageants like Miss Universe and as recent as the Central and Caribbean Games 2010 held in Mayaguez Puerto Rico in general it is a we and they.

⁵²⁵ Spaniards in the island were called peninsulares.

⁵²⁶ Harris v. Rosario, 446 U.S. 651.

and has been supportive of statehood, but it has not resulted in general support for independence.

Statehood, the incorporation of Puerto Rico into the federal system of the United States with a status equal to that of any of the fifty states, threatens assimilation into the larger culture and the loss of the islands separate cultural identity.⁵²⁷ It's a price which many people consider too high. Independence implies the severance of the political ties which relate the individual with the United States as citizens of that state. The one hundred and eleven years which the relationship with the United States has lasted have left Puerto Ricans with a strong sense of political identification with the United States which cannot be broken so easily.⁵²⁸ That material benefits are important in the relationship between Puerto Rico and the United States⁵²⁹ it cannot be denied, but they in themselves do not explain the willingness of Puerto Ricans to share with other Americans the obligation of citizenship.⁵³⁰

B. Assessment of Commonwealth

Commonwealth, as a third alternative between the extreme choices of independence and annexation, has added a new dimension to the relations between colonies or dependent territories and the metropolitan power. It has mitigated the sense of foreign

⁵²⁷ This has been the political discourse of political parties and its leaders that oppose the incorporation of Puerto Rico as a state of the union or as an incorporated territory. Puerto Rico throughout its history under U.S. sovereignty has maintained a constant struggle against the assimilation of Puerto Rican culture.

⁵²⁸ This clearly explains the growth of the pro-statehood movement in the island.

⁵²⁹ Over 88% of the island exports come from the United States and U.S. Corporation expatriate millions of dollars tax free from Puerto Rico. Puerto Rico on the other hand receives U.S. aid that benefits different areas of the islands economy.

⁵³⁰ Puerto Ricans derive material benefits from their relationship with the United States, but many Puerto Ricans also share their obligations as U.S. citizens.

oppression, since in matters of local concern the political process is responsive to the people and is led by popular elected Puerto Rican officials. But still this does not change the colonial nature of the political system in Puerto Rico. It has increased metropolitan involvement in the economic development of the island through favorable federal laws and by the extension of federal social programs.⁵³¹ The political discourse in the island about cultural matters has been a positive factor in maintenance of the national identity. It is a concern which has been emulated by other American territories which have included provisions in their constitutions to protect their culture.⁵³²

While the major success of the commonwealth status has been in the area of securing and promoting economic benefits and a sense of well being in the population,⁵³³ it is also an area that has attracted much criticism. When the island economy enters a crisis as is today caused the financial downturn, the ELA budget crisis, and the policies implemented by Governor Luis Fortuno, the federal government has increased its participation in the islands economy with the transfer of individual aid.⁵³⁴ The large outlay of federal funds in the island is seen by critics as the source of support for a

⁵³¹ Jason Bram, Francisco E. Martinez and Charles Steindel. Federal Reserve Bank of New York. Volume 14, Number 2. March 2008. Current Issues in Economic and Finance, Second District Highlights. Trends and Developments in the Economy of Puerto Rico. 2008. Currently the U.S. Senate is debating President Barak Obama's healthcare reform bill and the inclusion of Puerto Rico.

⁵³²The Northern Marianas in 1986 and, the Republic of Palau in 1994 are examples on how to protect their culture from assimilation.

⁵³³ Although for more than a decade the economy of the island has been stagnant and for the last 4 years the island has been under an economic recession. Followers of autonomy still have faith in the goals of the autonomist movement.

⁵³⁴ The Bush and Obama stimulus bill was implemented in the island even though some Republican legislators were opposed. The argument being that there is no federal income tax in the island, but over 90% of Puerto Rican imports are from the United States.

dependent commonwealth.⁵³⁵ But as I have discussed before, support for commonwealth does not rest solely on its economic performance, but also on its ability to maintain the ethnic identity of the community.

One does not have to be a Marxist to accept the importance of the relationship between economics and politics. Economic security, its presence or absence has a direct influence on how the individual perceives the political process. Puerto Rico is no exception to that influence. The Canadian experience in recent years is also evidence of how economic well being affects political satisfaction. The threat of secession by the province of Quebec was clearly felt. The cultural and economic subordination of the province to the English speaking provinces could only be resolved by separation, at least in the minds of the separatist leadership. But the call for secession was answered by major economic and cultural reforms, and at the present time the secession of the province has been held, since the people are more interested in maintaining their economic gains than in political separation. The political dissatisfaction that leads to political conflict is often the result of scarcities or threats to the well being of the people.⁵³⁶ In the degree that threats are removed and the people become secure and contented with their material life, the possibility of conflict is lessened and the acceptance of the political condition becomes a shared conviction.⁵³⁷ The commonwealth status of

⁵³⁵ For a critique, see Rubén Berríos, “Latino americanización de la Independencia”, Opiniones, Vol. III, No. 2, pp. 22-24. For a more sober análisis, See Rafael A. Jaume, “Puerto Rico: Dos Modelos Caribenos,” Opiniones, Vol. III, No. 2, pp. 32-33.

⁵³⁶ Paul R. Brass, “Ethnicity and Nationality Formation”, Ethnicity, Volume 3, Number 3, September 1976, pp. 225-241.

⁵³⁷ This is called colonialism, even when the threats are removed and the people become secure and content with their material life.

the island, through the political establishment, has been successful in diminishing conflict by increasing the economic benefits which the people receive.

Modern societies are characterized by the political organization known as the state. Virtually every individual in the world today, from the traditional areas to the more modern, is a member of some state. The quality of the relationship between the state and the individual varies from the all inclusive collectivism of totalitarian states to the more limited laissez-faire relationship in liberal democratic states. It responds to the historical influence of the French Revolution in Spanish and Latin American republicanism. It was then that the Third estate constituted itself into a National Assembly and claimed to speak for the French nation. What had been, until that time, a highly personal and classed based state became the collective nation-state.⁵³⁸

In Puerto Rico “nacion”, with a political meaning, is used to refer to the American political system and to its government. The United States is referred to as “la nacion Americana”. While use of the word “nacion” to describe states is confusing, one must remember that the most important world organization of political states is called the United Nations. It is a reflection of the modern tendency to equate the nation and the state.

The state in Puerto Rico is seen most often in its capacity; thus the government represents that state for the majority of the people. As the operating arm of the state, the government reinforces that close identification. In the past, some government dependencies were known as Insular Departments (the Insular Police). Later on the term

⁵³⁸ Joan McDonald, Rousseau and the French Revolution 1762-1791. London,: The Athlone Press, 1965, pp. 99-100.

was used to identify some state functions and services, such as the State Fire Department, but especially at the present time the state functions are identified as elements of the government, such as “Policia de Puerto Rico”, “Gobierno del Estado Libre Asociado” or Puerto Rico Police Department, Government of the Commonwealth of Puerto Rico. Regardless of the name used, the state is ever present on the island. As in state governments on the mainland, the state of Puerto Rico is responsible for the maintenance of domestic law and order, for the education of children, for making the majority of policy decisions, and for the implementation of policies.⁵³⁹

On the island however, the state goes beyond its normal regulatory function. It has become the provider of many essential services for the community. The state, through its public corporations and authorities, owns public utilities such as electric energy, land, water and transportation to mention some. The large presence of the state in the economy gives it a quasi-socialistic characteristic which is not present in most of the states in the United States. It also makes the government of the island the single most important employer.⁵⁴⁰ In 2006, over one-fourth of the active labor force worked for the state (government).⁵⁴¹ The highly centralized nature of public administration on the island, and its participation in the operation of many enterprises which in the continental U.S. are left

⁵³⁹ As will be the case if a law is approved to exclude non-native in a final plebiscite in the island. Following international law and policies regarding decolonization power has to be transferred to the people of Puerto Rico.

⁵⁴⁰ Susan M. Collins, Barry P. Bosworth and Miguel A. Soto-Class, The Economy of Puerto Rico. Center For The New Economy, San Juan, Puerto Rico, Brookings Institution Press, Washington D.C. 2006. pp. 82-86.

⁵⁴¹ Governor Luis Fortuno in 2009-2010 (PNP and Republican Party member) has implemented policies to reduce the governments pay role, but essentially Governor Fortuno has implemented neoliberal policies that are designed to reduce the size of the government and its expenditures.

to the private sector, explains its predominance as employer.⁵⁴² The highly centralized nature of public administration on the island, and its participation in the operation of many enterprises which on the mainland are left to the private sector, explains its predominance. Puerto Rico does not have a strong civil society.

Generally speaking, there is agreement that the element of the state are: people, territory, government and sovereignty. While there is no question that the first three are present in the Puerto Rican state, existence of the fourth raises difficulties. The theory of sovereignty as an essential element of the state goes as far back as Aristotle, who recognized in “The Politics” that there must be a supreme power in the state, and that the power could be in the hands of one, a few or many.⁵⁴³ Jean Bodin⁵⁴⁴ (1530-1596), the French political theorist, elaborated what is considered the modern theory of sovereignty. It says that the supreme power has to be totally independent and that sovereignty is indivisible, there cannot be two supreme powers.⁵⁴⁵ Bodin’s position is the theoretical basis for what can be called the legal approach to sovereignty.

In Puerto Rico, the Puerto Rican Bar Association (Colegio de Abogados) the professional association that used to be mandatory for lawyers to belong to was recently

⁵⁴² Republican Governor Luis Fortuno has implemented policies to reduce substantially public personnel in the islands public administration labor force.

⁵⁴³ Aristotle, The Politics. Book III, Section vii, New York: Penguin Books. 1982, p.189.

⁵⁴⁴ Jean Bodin’s classical definition of sovereignty is: “la puissance absolute et perpetuelle d’une Republique” (Sovereignty is that absolute and perpetual power vested in a commonwealth). His main ideas about sovereignty are found in chapter VIII and X of Book I, Six Books of the Commonwealth.

⁵⁴⁵ C. E. Merriam, History of the Theory of Sovereignty since Rousseau. New York, AMS Press, 1968, pp. 13-17.

eliminated by law.⁵⁴⁶ The Puerto Rican Bar Association has defined sovereignty in Bodin's terms. The bars position was stated as follows:

“A sovereign people are where the final source of power resides. In our case, it means that the United States Congress must abandon all its power over Puerto Rico, transferring it to the Puerto Rican people. The decision of the people in choosing one of the three alternatives will then be a true expression of its sovereign power.”⁵⁴⁷

It is clear that from a legalistic viewpoint, the state in Puerto Rico does not have sovereignty, since the U.S. Congress retains the power over the territory. Perhaps this is why the founder of the commonwealth status, Don Luis Munoz Marin, approached sovereignty from a different perspective when he stated:

“Sovereignty does not mean independence. The federal states are sovereign states in the American union, as sovereign as independent republics. Under the concept of sovereignty, a country can be a dependent sovereign state or a sovereign state associated in permanent union with the United States of America.”⁵⁴⁸

Munoz Marin's position responded to a populist interpretation of political association which was not strange to Puerto Rico. The basic denominator of citizens is

⁵⁴⁶ The Statehood Party (PNP) which has the majority in the legislature abolished the mandatory law, there are various reasons but one which clearly stands out has been that the Statehood Party has not been able to control thy association.

⁵⁴⁷ United States-Puerto Rico Commission on the Status of Puerto Rico, Vol. 1, Washington, D.C. : U.S. Government Printing Office, 1966, p. 3.

⁵⁴⁸ Carmen Ramos de Santiago, El Gobierno de Puerto Rico. San Juan, Puerto Rico: Editorial Universidad, 1978, p. 176.

their belief systems which express their ideas concerning their relationship to one another and to their rulers.⁵⁴⁹ It was basically the same view point which Don Jose Celso Barbosa⁵⁵⁰ had in the 1900 about the states in the American political system.

The popular sovereignty position has for sources the social contract theories in which the political authority resides with the people, instead of with the state. For the support of popular sovereignty, the source of authority is in the voice of the majority of the people, the general will of which Rousseau wrote. It is the source for the constitution or basic law which creates the State, and as such remains sovereign. The government, not to be confused with the state, may receive portions of authority, but the whole or totality of it remains with the people. That idea can be seen in the preambles of the constitutions of both the United States and of Puerto Rico, which begin with the words, “We the people...”

The problem of sovereignty in Puerto Rico, while remaining unsolved by the two opposite views, can be approached from another perspective by looking at sovereignty through its two manifestations, the external and the internal. The external aspects relates to the State’s position among other States, while the internal refers to the relationship between the State and the individuals in the territory.⁵⁵¹ The external manifestation of sovereignty refers to the relationship among states based on their equality. Since Puerto Rico is not a politically independent state, it does not enjoy sovereignty in this sense. Other than its participation in international sports events, the island has no recognition in

⁵⁴⁹ Sebastian de Grazia, The Political Community.

⁵⁵⁰ Founder of the, Pro United States Statehood Movement in Puerto Rico.

⁵⁵¹ C. E. Merriam, pp.180-181.

the formal international sense. In this respect, it is the United States which enjoys external sovereignty as far as Puerto Rico is concerned. An example is the Central American and Caribbean Games⁵⁵² that will be held in Mayaguez Puerto Rico on July 17, 2010 and the United States has not yet authorized the participation of Cuba in the sports event.⁵⁵³ The problem lies on the fact that Cuba wants to fly directly to the Rafael Hernandez Airport in Aguadilla and the United States State Department has not authorized this flight. The PNP administration of Governor Luis Fortuno who is also a Republican Party member favors the petition of Cuba. But the final decision lies on the United States and Puerto Rico does not have the power to decide who can enter Puerto Rican soil. Immigration in Puerto Rico is under federal jurisdiction.

In the internal aspects of sovereignty, the Puerto Rican state has some clear areas of supremacy⁵⁵⁴ and others that it shares with the federal government. The Constitution of the United States is supreme on matters concerning citizenship and rights guaranteed by the Constitution,⁵⁵⁵ but on purely state matters, the Constitution of Puerto Rico is the source of law. The internal sovereignty is very similar to that enjoyed by the states of the union.

⁵⁵² The Central American and Caribbean Games are a multi-sport regional championship event, held quadrennial, typically in the middle year between Summer Olympics. The Games are for countries in Central America and the Caribbean, as well as a few South American countries that border the Caribbean Sea such as Venezuela and Colombia. These games are the oldest continuing regional games in the world.

⁵⁵³ Juan Fernandez President of the Cuban Olympic Committee has stated that Cuba shall not participate due to U.S. policies toward the people of Cuba.

⁵⁵⁴ Fiscal and Budgetary procedures and powers is an example of Puerto Rican supremacy.

⁵⁵⁵ Voting rights is not a fundamental right under the US Constitution in Puerto Rico. The U.S. Constitution does not apply totally in Puerto Rico as stated by the United States Supreme Court in the Insular Cases.

The division of sovereignty into these two aspects facilitates the conclusion that Puerto Rico is a state which enjoys some sovereignty, as it should be in a limited autonomous relationship. The presence of some aspects of sovereignty, whether real or perceived, tends to satisfy emotional needs in an ethnic community, for it gives weight to the people's perception of group as a nation.

In international law, following Bodin's theory of sovereignty, the division is a contradiction, but given the political condition of the island, the division is a reality. In a world which is becoming more interdependent, the emphasis on political independence as a requisite to sovereignty may be outmoded.

CHAPTER VI

EMOTIONAL SATISFACTION

A. Introduction

An American, writing about the political situation in Puerto Rico, said that the flaw of commonwealth is that it appeals more to reason than to emotion and that “one can feel patriotic about statehood or independence, but commonwealth is an affair of the mind.”⁵⁵⁶ It is difficult for Americans to understand the apparent contradictions of commonwealth status, for after all, the United States has had over two hundred years of political independence, and its colonial past is buried in history books and archives for scholars to study. It becomes easy, then to ignore the value that Puerto Ricans assign to political autonomy. The difficult decision of choosing total integration to the United States, or political separation in independence, is postponed in autonomy.

An understanding of Puerto Rican culture and national identity, and how they influence political perceptions in the island, is helpful in bringing clarity to the question of excluding non-native voters from a final plebiscite in the island. To draw a cultural image of an organized group has been recognized as an almost impossible task by social scientists, since what are seen as cultural properties or indicators of the given group do not always serve to describe individual behavior. Still, attempts must be made to point out the elements which make a national culture. In the case of Puerto Rico, the work prepared by

⁵⁵⁶ Herman Nickel, “Puerto Rico’s Drift toward Statehood and Dependence”. *Fortune*, Vol. 100/3, August 13, 1979, p. 165.

Sydney W. Mintz⁵⁵⁷ for the United States-Puerto Rico Status Commission is very useful. The cultural description which emerges out of that study is that of a Hispanic society, with a common language, a common religious tradition, shared customs and values, but a culture which has adopted many values from American life as a result of the political relationship. As insular people elsewhere, they have a highly developed sense of identity.⁵⁵⁸

Politics and cultural identity are linked in a strong and lasting relationship. All political movements on the island, statehooders, independentists and autonomist, rest on the idea of Puerto Rican identity. They may differ on the political arrangement that each proposes in order to maintain the identity, but, cultural identity is not and never has been the property of a single party or movement, since the identity is not determined by political programs. A lucid majority of Puerto Rican agree that the political destiny of the island should be in the hands of its native people and that there should be a limit to Puerto Ricans that have migrated to the continental United States.⁵⁵⁹

It is worth that the early parties proposed self-government (autonomy) or statehood. It was not until 1912 that the first pro-independence party was organized. The pro-independence parties proposed extension of cultural independence into the political realm as an independent state, while the pro-statehooders proposed to safeguard Puerto

⁵⁵⁷ Sidney W. Mintz, "Puerto Rico: An Essay in the Definition of National Culture", Status of Puerto Rico: Selected Background Studies. United States-Puerto Rico Commission on the Status of Puerto Rico. U.S. Government Printing Office, 1966, pp. 380-434.

⁵⁵⁸ Bill Thompson, "Margaret Mead on the Problems of Puerto Rican Identity", Revista Interamericana, Vol. V. No. 1, Spring 1975, pp. 5-10.

⁵⁵⁹ There is no research on the issue, but as an elected official in the island and a political analyst for radio talk shows there is no doubt that the people want the native of the island to decide the political status of the island.

Rican identity through political integration with the culturally different metropolis. The autonomist offered a middle of the road proposition: to maintain a political relationship with the metropolis that was close but not integrated, and at the same time to maintain the separate and distinctive cultural identity. The present commonwealth status embodies the autonomists' idea.

One hundred and twelve years after the United States acquired the island, Puerto Rico remains, in terms of cultural identity a separate and distinctive nation. Despite early efforts to Americanize the island, it remains culturally Hispanic with Spanish as the language of the people and the principle vehicle for cultural transmission. Spanish is the language of Puerto Rico.⁵⁶⁰ Of the island's 3.9 million residents, 98.2 percent speak Spanish, 52.6 percent do not speak English at all, and 23.8 percent speak English "with difficulty."⁵⁶¹ At best, only 23.6 percent of the population is truly fluent in English.⁵⁶² Fluency in English, moreover does not run along the lines of political status preferences, but rather reflects socio-economic class and urban or rural dwelling. Many Puerto Ricans perceive English as a proxy for attempts at political and cultural domination, which have been resisted since 1898. Even supporters of statehood evidence their own version of this trait. They argue that the Spanish language and Puerto Rican culture are not negotiable in the statehood process. Some time ago, the most ardent exponents of this thesis were

⁵⁶⁰ Even though the United States tried to eradicate the Spanish language and the people fought to protect their language and customs.

⁵⁶¹ U. S. Department of Commerce, Bureau of the Census, 2000 Census of Population, Social and Economic characteristics. Hispanic Pew Center in 2010 stated that 4.15 million Puerto Ricans live in the U.S. Over 2.5 million Puerto Ricans five years and older stated that they prefer to speak Spanish in their homes. Approximately 1.25 million use English in their homes. Eight out of ten Puerto Ricans in the states stated that they are fluent in English.

⁵⁶² *Ibid.*

Carlos Romero Barceló (former Governor and Resident Commissioner of Puerto Rico) and Pedro Rossello (former-Governor of Puerto Rico). Today statehood governor Luis Fortuno and his administration have had a stronger stance on English,⁵⁶³ they have been promoting the English language in various sectors of Puerto Rican society.⁵⁶⁴

The presence of American cultural symbols, while significant, is no greater than in other areas of the world where a political relationship with the United States as close as Puerto Rico's exist. The rapid industrialization experienced by Puerto Rico has not diminished the people's sense of a distinctive identity. It was in that regard that the late Margaret Mead, talking about Puerto Rico said,

“Industrialization doesn't do anything to the identity of a people at all, as long as they stay in the same place, as long as they identify with the industry, with the land they live in and have lived in and care about.”⁵⁶⁵

At the official level of commonwealth status, Puerto Rico displays many characteristics of an independent nation. As part of his constitutional duties, the Governor goes every year to the Legislative Assembly and delivers the State of the Country (Estado del Pais) address. There is a large accredited Consular Corps in San Juan, and the Consuls, along with other dignitaries, go to the Governor's mansion for the traditional New Year's visit of good will. The White House and Congress send their representatives to the inauguration ceremonies of the Puerto Rican executive. Representative or delegations

⁵⁶³ The PNP (statehood party) has been trying to impose English as a primary language in the life of the Puerto Rican people on the island.

⁵⁶⁴ For example, Court proceedings, public education and official government documents.

⁵⁶⁵ Bill Thompson, “Margaret Mead on Problems of Puerto Rican Identity,” *Revista Interamericana*, Vol. V, No. 1, Spring 1975, pp. 5-10.

from the governments of states like the Dominican Republic, Venezuela, Costa Rica, and others are usually present at the ceremonies. Cultural groups on the island have sought to incorporate the island into the UNESCO organization of the United Nations as an associated member. While these incidents may be devoid of concrete political consequences, they must be seen as political symbols that further strengthen the sense of cultural identity. Holding it together are systems of beliefs, flexible bands weaving through and around each member of the society, compacting it, allowing some stretch at times, coiling like a steel spring at others. The basic denominator of citizens is these belief systems which express their ideas concerning their relationship to one another and to their rulers. The centralized nature of the islands government is an element of promotion of national identity. Education, health and public safety are some of the areas which are administered in San Juan for the rest of the island.

In the field of sports, the national identity of Puerto Rico has more visibility. The island has participated in the International Olympic Games since 1948⁵⁶⁶ not as a United States territory, but as a full fledged member with all the rights and obligations inherent in membership. On July 17, 2010, Puerto Rico will celebrate the Central and Caribbean Games in Mayaguez. The people of Puerto Rico are very disappointed that still the United States has not approved the visa for the Cuban team.⁵⁶⁷ For sport-minded people like the Puerto Ricans, to see the island represented at these international contests is a

⁵⁶⁶ Puerto Rico's first appearance was in London where Juan Francisco Venegas won a bronze medal in boxing and the island marched with the Olympic flag.

⁵⁶⁷ Even the statehood government in the island has publically endorsed the Cuban team to fly directly to Aguadilla Puerto Rico. Puerto Rican Olympic Committee President Carlos Bernier and Felipe Perez President of the Games and Guillermo Rodriguez Mayor of Mayaguez have taken the issue directly to Washington D.C.; they have held meetings with top U.S. officials in the Obama Administration and the four Puerto Rican Congressmen, (Jose Serrano, Luis Gutierrez, Nydia Velasquez and Pedro Pierluisi).

matter of pride.⁵⁶⁸ There are on the island “National” teams for every sport: for basketball, baseball, boxing, swimming even grass hockey. The emphasis on international competition reached its zenith when Puerto Rico was represented in the 1984 Winter Olympic Games in Yugoslavia with a one man team.⁵⁶⁹

The extent to which Puerto Ricans emphasize national identification through sports was demonstrated when the island’s sovereignty and national identification were threatened by a judicial decision. An American basketball player was included as a member of one of the participating teams in the regular tournament sponsored by the Puerto Rican Basketball Federation.⁵⁷⁰ The player had claimed that his father was Puerto Rican. When the player failed to produce evidence of his claimed ancestry, the Federation declared him ineligible to play. The player sued in Federal Court, claiming a violation of his rights as an American citizen. The district court decided in favor of the player and ordered his return to the team.⁵⁷¹ To maintain its position, the Federation cancelled the tournament and appealed the decision to the First District Court in Boston (the Court of Appeals for the Federal District Court in Puerto Rico).⁵⁷²

⁵⁶⁸ In 1980 the United States boycotted the Olympic Games in Moscow, still the Puerto Rican Olympic Committee sent a delegation to Moscow and participated fully in the games.

⁵⁶⁹ Puerto Rico participated in Bobsled competition.

⁵⁷⁰ David Ponce was an American born Puerto Rican that was contracted by the Ponce Leones violating the rules of the tournament. He had not spent the three years in Puerto Rico that was necessary in order to play in the tournament. The Federation permits players born in the mainland (USA) and with at least one parent of Puerto Rican ancestry to play in their tournament. David Ponce claimed that his father was born on the island and migrated to California. His claim was not upheld and he sued the Federation in the Federal District Court in San Juan Puerto Rico.

⁵⁷¹ Clear majorities of the Federal Judges are pro-statehood and some are political activist as Judge Perez Gimenez who decided in favor of David Ponce.

⁵⁷² The Court ordered that he be allowed to play; the Federation cancelled the remaining games. For the 1985 tournament and while the case was in appellate court, the Federation established a players pool from which players could be drafted by teams and David Ponce was included in the draft. No team in the Federation drafted

Cultural identity in the island is reinforced by many popular festivals which are held throughout the island. Old traditions, such as “Fiesta del Acabe” (End of coffee picking season) have been revived and has become an annual celebration in towns like Yauco and Maricao. The fishing areas of Puerto Real and La Parguera in the municipalities of Cabo Rojo and Lajas, attracts thousands of visitors for its annual fish festivals.⁵⁷³ These public events, which have flourished in the last 20 years, serve to reinforce aspects of popular culture and further the identification of the people with their communities, their regions and their island.

It is the political discourse of the island that one finds a continuous appeal to nationalist sentiments.⁵⁷⁴ This is not limited to pro-independence leaders from whom it is expected, but it is shared by pro-statehooders and supporters of commonwealth alike.

Former Governor Rafael Hernandez Colon said:

“I declare with pride that I am a son of this land. I am a Puerto Rican who has lived closely to the people and know of their anguish, their struggles, and of their hopes. I do not feel inferior to anyone not superior. The colonial load which weighted down the island for centuries does not rest on my spirit. I am a free man, the son of a nation which has chosen freely its political place in the world.”⁵⁷⁵

David Ponce, making for all intents and purposes a moot question of his eligibility to play. On May 1, 1985 the appellate court (760 F.2d. 375) ruled against David Ponce, supporting the Federation.

⁵⁷³ Manuel Valdez Pizzini, “Culture and Production: An Analysis of the Fishing Community of Puerto Real” in Ronald J. Duncan and Edward Richardson, eds., Social research in Puerto Rico, Science, Humanism and Society. (San Juan, Puerto Rico: Inter-American University, 19830, pp. 101-113.

⁵⁷⁴ Puerto Ricans from all political sectors of the island stand behind the idea that the political status of the island has to be decided b its native born citizens.

⁵⁷⁵ El Nuevo Dia, 3 de enero 1985.

Current President of the Puerto Rican Senate Tomas Rivera Shatz has stated that he is a native of this land first and then a statehooder (Estadoista). Pro independence elected officials when taking their oath and after swearing to defend the United States and Puerto Rico's constitutions against external and internal enemies they add a text of their own which states:

“This oath must be understood within the context of our supreme commitment with the struggle for the independence of Puerto Rico.”⁵⁷⁶

The Catholic Church in Puerto Rico⁵⁷⁷ in Puerto Rico remains a powerful institution and its current leader Archbishop Roberto Gonzalez Nieves⁵⁷⁸ a strong supporter of the Puerto Rican identity as was Cardinal Luis Aponte Martinez. Pope John Paul II visited the island on October 12, 1984, the anniversary of the discovery of America. In his message to the people of Puerto Rico, the Pope emphasized the national identity of the island and warned the people of the danger brought by external and foreign influences.⁵⁷⁹ With the Pope's message and subsequent declarations by Cardinal Aponte, the position of the Church is clear: it recognizes the particular identity of Puerto Rico and places it within the Latin-American cultural context. The Catholic Church opposed the

⁵⁷⁶ As a Municipal Legislator in the municipality of Lajas, I presences PIP municipal legislators as they took their oath of office.

⁵⁷⁷ The CIA World Fact (2008) book reports that the amount of population that is Roman Catholic is 85%, Protestant, Islam and Jews being the rest of the 15%. That is 3,400,000 Puerto Ricans practice Catholicism. The island is divided into five dioceses and one archdiocese.

⁵⁷⁸ Luis Aponte Martinez the first Puerto Rican Cardinal has retired due to age and currently Archbishop Roberto Gonzalez Nieves is the leader of the Catholic Church in the island. Archbishop Gonzalez Nieves said in 2007, “U.S. rule began in 1898, at the end of the Spanish-American War, but indigenous, African and Spanish cultures shaped its identity for 400 years and that influence cannot be undone overnight.

⁵⁷⁹ El Nuevo Dia, 13 de octubre 1984; also Cardinal Aponte, “Mensaje de Semana Santa”, El Nuevo Dia, 30 de marzo 1985.

Americanization of Puerto Rico especially within the Nationalist Party that Pedro Albizu Campos presided during the 1950's.⁵⁸⁰

In 1921, Martin Travieso, a political leader who later became a Justice of the Puerto Rico Supreme Court, said:

“We go to bed thinking about statehood, stay awake thinking about independence and dawn finds us thinking about autonomy...and we have not solved the fundamental problem.”⁵⁸¹

A review of the political literature about Puerto Rico confirms Travieso's words for according to various authors; the most pressing problem faced by society is the definition of its political status. Although in every survey done by leading newspapers (El Vocero, El Nuevo Dia) in the island the status issue comes in at ninth or tenth among the most pressing issues for the people of Puerto Rico.⁵⁸² The voters are more concerned with socio-economic issues which affect them directly. The Puerto Rican who travels outside the island must be ready to answer the inevitable question about status, since the image that the literature conveys is one of a people obsessed with their political destiny. On the island, the political parties use the status as the magic wand which will solve the island's

⁵⁸⁰ Samuel Silva Gotay, Catolicismo y Política en Puerto Rico. La Editorial Universidad de Puerto Rico. San Juan, P. R. 2005. pp. 436-454.

⁵⁸¹ Bolívar Pagan, Historia de los Partidos Políticos Puertorriqueños, 1898-1956. Tomo I, San Juan Puerto Rico: Librería Campos, 1959. p. 209.

⁵⁸² Crime, drugs, unemployment, health, education, inflation, housing, political corruption and other pressing issue are more important for the people than the status issue. Although today, (2010) recession and unemployment are key issues for the people. Economic problems today tend to move the island more towards statehood due to the perception that statehood would shelter the island from a more serious economic problem.

problems once a definite formula is chosen.⁵⁸³ The urgency that the political condition of the island demands has produced various works dedicated to proposed solutions.⁵⁸⁴

In fact, the reality of Puerto Rican life differs from the sense of urgency that some assign to it. The average person on the island does not have the political status on his mind when he retires to bed at the end of the day. The problems of daily living, such as family, security, employment, education, and many others inherent in the human condition, hold primacy over political questions like non-native voters.⁵⁸⁵ The most pressing problem, that polls show was and is the high rate of crime present in the island.⁵⁸⁶ Among the issues that the people were asked to rank in order of importance, the political status was relegated to the tenth position and at times even lower. But still the majority of the people argue that the final political status of the island should be in the hands of its native voters.

While the results of the 2008 elections which gave control of both the legislative and executive branch to the statehood party (PNP) cannot be interpreted as a blanket endorsement of statehood, it may well be seen as a rejection of the commonwealth party administration of the country by former Governor Anibal Acevedo Vila and the move of

⁵⁸³ Today as the economic stimulus of President Obama has given most of the people in the island a sense of security, statehood seems to be the safety net for the problems in the island. The earthquake in Haiti is also an example to most people in the island of the sense of security that the United States can give Puerto Rico.

⁵⁸⁴ On January 13, 2010 the “Junta de Gobierno” (Governing Board) of the Popular Democratic Party stated in a Resolution that the Commonwealth Party would not support an Associated Republic or a Free Association as solution to the political status of the island. It would support the status quo and move towards more autonomy for Puerto Rico.

⁵⁸⁵ Abraham Maslow has an excellent theory, the “Hierarchy of Needs”. Maslow has set up a hierarchy of five levels of basic needs. Beyond these needs, higher levels of need exist. These include needs for understanding, aesthetic appreciation and purely spiritual needs. In the level of the five basic needs, it is said that the person does not feel the second need until the demands for the first needs have been satisfied or the third until the second has been satisfied, and so on.

⁵⁸⁶ By January 21, 2010 there had been 53 murders in the island.

the governors party to the concept of sovereignty which ended with the Resolution of the Commonwealth Party “Governing Board” (Junta de Gobierno) in January 13, 2010 which stated that the party would not support sovereignty in any form of political status for Puerto Rico.⁵⁸⁷

B. Conclusion

Under commonwealth status, Puerto Rico has evolved from a backward and underdeveloped area to a highly industrialized one. The political arrangement with the United States results in increased economic security for the people⁵⁸⁸, as well as the opportunity to maintain the cultural identity of the island. The Overseas Development Council developed the Physical Quality of Life Index⁵⁸⁹ (PQLI). It is a composite index calculated by averaging three indices: life expectancy, infant mortality and literacy. The maxim total of the three combined is 100. Puerto Rico ranks twenty-fifth among 180 countries with 92/100. The United States ranked sixteenth with 96/100. Puerto Rico ranked higher than any other Latin American country.⁵⁹⁰ In one hundred sixteen countries polled by UNESCO, Puerto Rico ranked second to the United States in the percentage of the population who had attended or completed post-secondary education.⁵⁹¹ The growth

⁵⁸⁷ The PPD seems to realize that the people feel secure under U.S. sovereignty and that they must follow this sentiment in order to win the next general elections.

⁵⁸⁸ This economic security seems to make statehood more attractive to the Puerto Rican voter.

⁵⁸⁹ The PQLI is an attempt to measure the quality of life or well being of a country. The value is the average of three statistics: basic literacy rate, infant mortality and life expectancy. It was developed in the mid 1970's by Morris David Morris, as one of a number of measures created due to dissatisfaction with the use of GNP as an indicator of development. PQLI might be regarded as an improvement but shares the general problems of measuring quality of life in a quantitative method. It has also been criticized because there is considerable overlap between infant mortality and life expectancy.

⁵⁹⁰ Overseas Development Council, World Ranking, p. 286.

⁵⁹¹ UNESCO Statistical Yearbook, World Ranking, p. 322. The Pell Grant and other federal assistance programs are applicable to the island. That explains, in part the high enrollments.

of modern Puerto Rico, while impressive, still lags behind that of the mainland federated states of the United States, but it compares favorably with other islands in the Caribbean region.

Puerto Rico, as a member of a larger cultural group has been successful in maintaining a separate identity. The ambiguity with which the Puerto Rican electorate views the political status may seem strange and unacceptable to others, both in and out of the island, but that ambiguity or pragmatic approach to political problems is rooted in the islands history. An American sociologist, writing about Puerto Rico, described its relationship with the United States as imperial development which is:

“...the sociopolitical relationship where one nation controls the ultimate prerogatives of sovereignty of another, ethnically distinct nation, generally through some federal political mechanism and is obliged to promote economic and social development in the dependent territory as a condition of that arrangement.”⁵⁹²

In the Federalist No. 62, the principles of good government are seen as:

“first, fidelity to the object of government, which is happiness of the people; secondly, a knowledge of the means by which the object can be obtained.”⁵⁹³

It is my position that as long as the happiness of the people of Puerto Rico is attained in the emotional fulfillment of national identity, the political status of the island has to be

⁵⁹² Barry B. Levine, Ralph S. Clem, *Imperial Development: The Case of American Puerto Rico and Soviet Georgia*. *Comparative Studies in Sociology* (1978), I, pp. 319-336.

⁵⁹³ Garry Wills, ed. *The Federalist*. Bantam Classic. 2003. pp. 379

decided by its native sons and daughters. Politicians and writers will continue to ponder the question “Who am I?” but the people know who and what they are, Puertorriqueños.

CHAPTER VII

CONCLUSION

Commonwealth status in Puerto Rico presents a problem for the student of political science in colonial areas. It is a political relationship which does not satisfy all the political sectors on the island and which, according to some observers, cannot continue. Even so, since its establishment in 1952, the Commonwealth status has been the vehicle for a transformation which took the island from a backward and underdeveloped colony to become modern and one of the most developed in Latin America. Today though, the island lags in economic growth with some of their neighbors in the Caribbean.

To the chagrin of Commonwealth critics, Puerto Ricans do not seem to be in a hurry to change the situation⁵⁹⁴ as evidenced by electoral returns in the general elections held every four years. All three plebiscites have been won by the Commonwealth Party (PPD) (though in 1998 the PPD campaigned in favor of Option #5 and won the electoral contest) even though they have been losing electoral support. Recent political history in the island shows that political parties advocate one, and only one, of the status alternatives. The parties have encouraged straight votes for the party slate of candidates; straight votes for the party can later be interpreted as an endorsement of the status alternative supported by the party. Although many people are aware, that they are not voting for a status option, but for the administration of the local government. It is in the

⁵⁹⁴ Polls in Puerto Rico have always reflected that the people do not consider the political status as an important issue in their lives. The political status has never been a priority for the Puerto Rican voter.

above context of Puerto Rican politics that the hegemony of the Statehood Party (PNP) in the last 20 years can be seen as an indication of statehood as the preferred status,⁵⁹⁵ today.

For the average Puerto Rican, political autonomy under the Commonwealth status has made possible the economic blessing which results from both the continuous relationship with the United States and the emotional satisfaction of maintaining his distinctive identity.⁵⁹⁶ The emphasis on economic benefits which derive from the political relationship with the United States becomes a focal point for criticism by some observers of Puerto Rican society, as the following words illustrate:

“Puerto Rican political formulations take on a hollow ring. They seem designed for a people which is shopping for a status. No one would deny that voluntary political change should obey, among other things, broad economic considerations. But it is surprising that a people who prides itself on a Hispanic soul should translate them into dollars and cents reckoning carried to the last decimal point.”⁵⁹⁷

The above argument rests on the turn of the century position held by many Latin Americans that the Hispanic culture is oriented toward spiritual values, in opposition to the Anglo-Saxon (American) ones which emphasize materialism.⁵⁹⁸ Another observer, in

⁵⁹⁵ This is why today HR 2499 the Puerto Rico Democracy Act is being pushed through Congress, because statehood supporters feel that this is their moment in history to make Puerto Rico the 51st state of the union.

⁵⁹⁶ There is no doubt that Puerto Ricans who support the commonwealth status are pragmatic. Pragmatism is a philosophical movement that sustains that the meaning of a proposition is to be found in the practical consequences of accepting it, and that unpractical ideas are to be rejected. The truth of an idea needs to be tested to prove its validity.

⁵⁹⁷ Richard M. Morris, “The Deceptive Transformation of Puerto Rico”, quoted in “Beyond Survival: Por que Seguiremos Siendo Puertorriquenos” by Frank Bonilla in Intellectual Roots of Independence, Zavala y Rodriguez eds. (New York: Monthly Review Press, 1980).

⁵⁹⁸ The main was developed by Jose Enrique Rodo in his essay “Ariel” His followers came to be known as Arielistas. José Enrique Rodo, “Ariel” (Madrid: Colección Austral, Espasa Calpe, 1976, Quinta Edición).

his study of student's politics on the island, criticized what he saw as an excessive attachment to materialism by Puerto Ricans when he wrote:

“Contemporary Puerto Rican students, the children of their fathers have disapproved a maxim that has characterized nationalist movements in many areas of the world. Puerto Ricans, including their fathers have shown that man can live on bread alone.”⁵⁹⁹

Critics of the Puerto Rican model of political relationship seem to ignore a well known fact of social organization. The fact is that every social unit, from the smallest to the largest, serves basically one purpose: to maximize the benefits and minimize the risk of the people in the group.

Much of the criticism also fails to consider the historical development of the island and the role that autonomy, as a valid alternative, has played in its political history. Autonomy has permitted Puerto Rico to maintain its civil law system even though today the islands judicial system has incorporated common law procedures. In this same spirit Puerto Rico should have the right to decide its political future, but voters should be exclusively native Puerto Ricans. In the end, it is necessary to accept the fact that the relationship with the United States has lasted 112 years. It is also necessary to give some credence to the possibility that the Puerto Rican's predilection for material benefits shows the extent to which the relationship with the United States has Americanized political perceptions in the island. It can be argued that these perceptions fall well within the

⁵⁹⁹ Arthur Liebman, The Politics of Puerto Rican University Students. (Austin, Texas: University of Texas Press, 1980), p. 150.

current view of the United States as a nation where the self-interest of the majority is the most salient characteristic. Even though there is no research on the topic of the exclusion of non-native voters in Puerto Rico, the majority of the people do support the fact that the political status of the island should be decided by native voters.⁶⁰⁰

Ethnic groups can claim as they have done in the past what Akzin calls personal autonomy⁶⁰¹ or the recognition by the state of the group as a separate cultural unit. Puerto Rico is a sui-generis case inside the United States polity. Excluding non-native voters is viable and pragmatic for both Puerto Rico and the United States. Puerto Rico could very well serve as a model of self-determination for U.S. territories.

The exclusion of non-native voters is a practical solution to the dilemma of who decides the future of Puerto Rico. Preference for a particular political status does not have any effect on the issue of the exclusion of non-native voters. Statehooders, independence and pro-commonwealth supporters all agree that the decision has to be in the hands of the native people of Puerto Rico. In its generic meaning commonwealth is the productive coexistence of two different orientations: one toward the ethnic community deeply involved in the Hispanic and Latin tradition; the other toward the political community functioning in the American tradition. But again, the final decision on the political status of the island has to be in the hands of the native voter and only he can give a stable solution to the political status of Puerto Rico in the future.

⁶⁰⁰ Even some foreigners that are U.S. citizens have stated that the political status of the island should be in the hands of its native born citizens. Jay Hernandez a Cuban political activist has stated in his radio program "Magazine Cubano" transmitted by Radio Noti-uno 760AM (WUNO) every Sunday night that all foreigners should be excluded from a final plebiscite in Puerto Rico. Although there is no research on the topic as an elected Municipal Legislator and an active political analyst the majority of the people do favor the position that non-native voters should be excluded from a final plebiscite in the island.

⁶⁰¹ Carl J. Friedrich, Puerto Rico: Middle Road to Freedom (New York: Rinehart & Company, 1959), p. 64.

Autonomy is the practical solution to the dilemma of nation versus state, of emotion versus practical realities.⁶⁰² In its generic meaning, commonwealth as autonomy simply describes the political community, the secondary association which emerges from the nation, but in Puerto Rican context commonwealth is also the productive coexistence of two different orientations: one toward the ethnic community deeply involved in the Hispanic and Latin tradition; the other toward the political community functioning in the American tradition of democracy.

The political process and the relations it generates are not static but characterized by change, change which is always judged in part by progress toward the achievement of the Aristotelian promise of the good life. At the onset of the commonwealth relationship, supporters and critics alike point to areas of deficiency such as limited Puerto Rican participation in the federal legislative process⁶⁰³ federal restraints on the Commonwealth's possibility of growth, absence of a clear and defined relationship, and the lack of participation by the island in regional affairs. Past efforts to amend the relationship have met with no success.

The American political system is characterized not by its rigidity but by its ability to adopt changes when they become necessary. Inside U.S. jurisdiction the exclusion of non-native voters is possible, and it will be necessary if the solution is to be final and stable for Puerto Rico. In the United States third century of political existence, an updated

⁶⁰² Even though today, Puerto Rican society has serious social, economic and political problems.

⁶⁰³ The United States Congress has excluded Puerto Rico from the Health Care Reform (2010) another reason that sustains Puerto Rico's nationality.

Table 1: Autonomy Related Proposal

Year	Proposal	Place	Result
1917	Jones Act	U.S. Congress	Approved
1922	Campbell Bill (Dominion Status)	U.S. Congress	No Action
1923	Governor as Elective Position	U.S. Congress	No Action
1924	Governor as Elective Position	U.S. Congress	No Action
1925	Governor Elective	U.S. Congress	No Action
	Amendments to Jones Act		
1943	U.S.-Puerto Rico Status Commission	Washington, D.C.	Made
1945	Tydings-Pineiro Bill (Proposed plebiscite in Puerto Rico with the three options of Independence, Statehood, and Dominion status)	U.S. Congress	No Action
1947	Bill to make the Governor Position Elective	U.S. Congress	Approved
1950	Public Law 600 (Authorized the People to draft their own Constitution)	U.S. Congress	Approved
1952	Estado Libre Asociado established in accordance with PL 600	U.S. Congress	Approved
1953	Fernos Bill (A bill to clarify elements of the relationship)	U.S. Congress	No Action
1959	Fernos-Murray Bill	U.S. Congress	Withdrawn
1976	New Compact	Puerto Rico Legislature and U.S. Congress	No Action

revision of its relationship with the states and territories is needed. Recent policies signal a trend toward decentralization and increased responsibilities for states and territories.

Puerto Rico needs to solve its political status and most of all the solution has to be stable for the years to come. It is in this spirit of decentralization, and in the light of Puerto Rican natioethnicism, that non-native voters should be excluded. The exclusion on non-native voters will not be an easy task for either Americans or Puerto Ricans, but it is one which, in spite of the complexities, must be done if the solution of the political status is to be stable in the future. The political status of Puerto Rico has to be reviewed. The New

Compact of 1975, a proposed bill which did not prosper in the United States Congress, could be the starting point for a revision.⁶⁰⁴

Former Governor Roberto Sanchez Villella⁶⁰⁵ lists six elements which must be included in a revision if real autonomy is desired. These are:

1. The right of the Commonwealth to pass protective legislation for its economic sectors which would protect the islands economy. At the present there is little that the Commonwealth can do to protect island enterprises from being buried or swallowed by mainland enterprises.
2. The right of the Commonwealth to enter into regional Caribbean trade agreements.
3. The right of the Commonwealth to be consulted when the United States enters into commercial agreements which have a direct effect on the island.
4. The United States Congress should avoid approving legislation harmful to the economic development of the island.
5. Eliminate or amend the shipping regulations which restrict the island's commerce.
6. The right of the Commonwealth to participate in its own right in international organizations such as those related to science, education and culture⁶⁰⁶.

The exclusion of non-native voters in a final plebiscite should also be included in order to sustain a longstanding and final solution of the political status of Puerto Rico. This proposal aims at a revision of the economic basis of the relationship but today the exclusion of non-native voters is also vital to the future political stability of the island.

⁶⁰⁴ The New Pact of Association was a legislative bill submitted in Congress by Jaime Benitez, Puerto Rico Resident Commissioner. The bill died without any action taken.

⁶⁰⁵ Succeeded Luis Munoz Marin as the second Puerto Rican elected governor in 1964 under the Partido Popular Democratico (Commonwealth Party).

⁶⁰⁶ Roberto Sanchez Vilella, "Las Relaciones entre Puerto Rico y Estados Unidos: Necesidad de una revisión". Speech on May 13, 1983 [copy in authors file].

The United States Constitution, with over 200 hundred years of history since it was ratified, has survived through the ability of judges and others to make the 1789 language relevant to modern political needs. Constitutional recognition of autonomy would solve the political dilemma, and at the same time would recognize the right of Puerto Rico to decide its political issues as a nation. In 1898, an American official stated:

“...there is no country or people on the face of the earth which could afford the United States a better opportunity for showing the world the power of her institutions in developing a people and country than this island of Puerto Rico.”⁶⁰⁷

One hundred and twelve years after, the opportunity is still there, but a more mature nationalism in its natioethnic expression will play a major role in future developments.

The study of nationalism as a social force has been, for the most part, directed at the European experience and to the developing areas of Africa and Asia. Ethnic nationalism has emphasized European ethnic communities such as Wales, Cataluna, Scotland and the like, as case studies show. Yet, the Caribbean and Latin America, with their ethnic diversity, offers rich diverse sources for the study of ethnicity and nationalism. From Puerto to the Miskitos Indians in Nicaragua, from the Dutch Aruba to the French islands of Guadeloupe and Martinique, the area has many possibilities for the different varieties of nationalism.

Puerto Rico is a nation under the influence of a metropolitan power, the United States. Puerto Rico without any doubt is a colony of the United States.

⁶⁰⁷ U.S. Consul-General Hanna, Hearings before the United States Commissioner, November 8, 1898.

The island must reach a final decision about its political status. The current political context of the island is very delicate due to the electoral balance between statehood and commonwealth. U.S. citizenship is highly valued among Puerto Ricans, but when it comes to who decides the political status of the island there is a uniform code, Puerto Rico future has to be decided by its native people. This does not follow partisan politics; the decision has to be made by the Puerto Rican nation. As the Puerto Rican writer Antonio S. Pedreira⁶⁰⁸ acknowledged in his book “Insularismo”, Puerto Rico is surrounded by mirrors.

The exclusion of non-native voters, who are also U.S. citizens, has to be done because it will produce a stable political status for the future of the island nation. The termination is intricately complex and tied to the exclusion of non-native voters in the island. Puerto Rico is clearly sui-generis under the United States jurisdiction, on the grounds that it is the only major territorial unit in the U.S. inhabited overwhelmingly by citizens with a distinct culture. Without any doubt long term resident aliens, citizens of Puerto Rico and the District of Columbia, some members of Indian nations, all have less than complete membership in the United States. Powerlessness is what colonialism is all about. The Puerto Rican nation should be able to decide their political future exclusively without external pressure or non-native voters. Congress was empowered by the U.S. Supreme Court “to locally govern at discretion.”⁶⁰⁹ In other words, the United States could hold Puerto Rico and the insular territories indefinitely, without ever making them “a part of

⁶⁰⁸ Antonio S. Pedreira, Insularismo. (1934) Considered one of the most important books of the national analysis of Puerto Rico in the XX century.

⁶⁰⁹ *Downs v. Bidwell* 182 U.S. at 341-342.

the United States” and without holding out the promise of eventual statehood or according their people the full panoply of constitutional rights enjoyed by the citizens of the states. Excluding non-native voters is a political issue not one of legality or with any constitutional concern. The U.S. Supreme Court stated that the Constitution does not follow the flag. The court held that Puerto Rico and the other new insular territories were not foreign territory, but it also held that they were not “a part of the United States for all constitutional purpose.”

Puerto Ricans and Americans have to come to terms with the fact that American political processes, by design are slow and cumbersome. Victorious political movements achieve their objectives only through prolonged advocacy of their cause in Washington D.C. Nothing happens automatically under the American political system. Delays and frustrations are inevitable. But no one, in my view, should assume that Puerto Ricans aspirations are destined to be spurned by mainland Americans, once the political process has run its course.

With this in mind, and with the history of the past century as a backdrop, we are afforded an opportunity to resume the exploration of national identity that galvanized a great public debate a century ago. The exclusion of non-native voters in a final plebiscite is as much about the United States as about Puerto Rico. Puerto Ricans and Americans share a common devotion to democratic principles, especially to majority rule and to the rule of law. An inquiry informed by these principles is one that is well worth undertaking, as Puerto Ricans and U.S. Americans look back on a century of social and economic transformation. And today both Puerto Ricans and U.S. Americans look toward the future on the political transformation of “Borinquen.”

The public debate on this question will mirror, to a large extent the debate that has been quietly screaming in the heart and soul of all native born Puerto Ricans. The debate will not be as divisive as the political status issue, because one of the few political issues that most Puerto Ricans concur is that the political status of the island has to be in the hands of native Puerto Ricans. Puerto Ricans take politics very seriously and even while many argue that Puerto Rico lacks political influence, Puerto Ricans themselves are Herculean political infighters.⁶¹⁰

For all the divisiveness of the political status, we would do well to recall that as I have emphasized, there is indeed a common ground that the majority of Puerto Rican agree and it's that the political status of the island has to be decided by the native voters. There is the common feeling of political weakness and marginality; there is the common yearning for change and that the future of the island is and ought to be in the hands of the native voter; there is the common aspiration for the empowerment of the people of Puerto Rico; there is the common good faith of the competing movements and their leaders; and there is the common longing for the Puerto Ricans to stand upright and unbowed.

⁶¹⁰ Since the Vieques campaign Puerto Ricans have found that they can override U.S. political interest.

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