AMERICA'S COLONY

THE POLITICAL AND CULTURAL CONFLICT BETWEEN THE UNITED STATES AND PUERTO RICO

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America’s Colony: The Political and Cultural Conflict between the United States and Puerto Rico
Pedro A. Malavet
America’s Colony

The Political and Cultural Conflict between the United States and Puerto Rico

Pedro A. Malavet
To my parents,

María Angélica Cruz de Menchaca and
Pedro Malavet Vega
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— Ponce, Puerto Rico
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— Gainesville, Florida
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Introduction

Why I Am Here

Puerto Rico is a group of islands bordered by the Atlantic Ocean and Caribbean Sea. The main island is known as Puerto Rico and is joined by adjacent smaller islands that include Vieques, Culebra, Mona, and Monito. The main island—which is roughly 160 kilometers long and 53 kilometers wide and contains most of Puerto Rico’s 8,959 square kilometers of land area—is the home of all but a few thousand of the nearly four million Puerto Ricans. Therefore, the archipelago is generally referred to as the *Isla del Encanto* (enchanted island or isle of enchantment) or, simply, the “island.” Unless otherwise expressly indicated, references to the *isla*, or island, refer to all the Puerto Rican islands.

For about five centuries before Christopher Columbus claimed the territory for Spain in 1493, Taino and Carib natives lived on the Puerto Rican islands. The Spanish colonial period lasted for a little more than four centuries, during which the Spaniards created the racial, legal, political, and cultural composition of the Puerto Ricans. In 1898, after prevailing in the Spanish-American War, the United States took Puerto Rico from Spain and has ruled the island and its people ever since.

The culturally Latina/Latino Puerto Ricans became citizens of the United States in 1917. Like any other U.S. citizens, the Puerto Ricans are free to travel from the island to the fifty states without travel documents or immigration checks. They also qualify for government employment and serve in the U.S. armed forces. Besides Puerto Rico’s nearly four million residents, more than 2.7 million Puerto Ricans live on the United States mainland. Other U.S. citizens have not moved to Puerto Rico in substantial numbers, however. According to the 2000 U.S. Census—which provides the most current information—more than 3.8 million persons live in Puerto Rico, of whom 98.8 percent describe themselves as “Hispanic” or “Latino” and 95.1 percent as “Puerto Rican.”
The Puerto Ricans living in Puerto Rico—the group that is the primary focus of this book—are the poorest of all U.S. citizens, with a per capita income that is less than one-third the average for the fifty states. Although the islanders do not pay federal income taxes, they contribute billions of dollars annually to the federal treasury, mostly through Social Security, Medicare, and a few other taxes and fees. Moreover, the local income tax in Puerto Rico is higher than that of most U.S. states. Besides being the principal supplier of goods and services to Puerto Rico, the United States is the main consumer of Puerto Rico’s products. For example, nine of ten pharmaceuticals consumed in the United States are produced in Puerto Rico. The island also receives federal funds as allocated by Congress. Although the islanders have a locally elected government, they are not allowed to vote for president or vice-president and do not have voting representation in the U.S. House or Senate. A single, nonvoting, resident commissioner represents the Puerto Ricans in the U.S. House of Representatives.

This book offers a critique of Puerto Rico’s current status and its treatment by the United States’ legal and political systems. Because Puerto Rico is a colony of the United States, Puerto Ricans living on the island are subject to the United States’ legal and political authority. They are the largest group of U.S. citizens currently living under territorial status.

In this book I argue that the Puerto Rican cultural nation is under the sway of U.S. imperialism, which compromises both the island’s sovereignty and Puerto Ricans’ citizenship rights. I analyze the three alternatives to Puerto Rico’s continued territorial status, examining the challenges of each and suggesting what I believe to be the best course of action. This book is meant to inform U.S. citizens about the relationship between the United States and Puerto Rico and to serve as a resource for academics in law, political science, international relations, and Puerto Rican, Chicana/o, and other ethnic studies. I hope it also can serve as a guide for U.S. policymakers determining the future of Puerto Rico and perhaps as a catalyst for legal action by Puerto Ricans to end their colonial status under U.S. imperialism.

Why Are You Here?

Puerto Ricans’ cultural nationhood conflicts with their external reality: the U.S. control of their territory. After the Spanish-American War, the
United States’ imperial aspirations led it to attempt to “Americanize” the Puerto Ricans by imposing on the island a narrow vision of “American” culture, principally through legal and educational programs. When this project failed, U.S. policymakers devised a system to use and benefit from Puerto Rico’s land and to control its culturally foreign people. Through this process, Puerto Rico was legally subjected to the absolute rule of the U.S. government’s political branches, even though the Puerto Rican people have no legal, political, or cultural sovereignty.

The fundamental basis of imperialism is generally the racial supremacy of one group over all others. This privileged or normative (dominant) group believes that it is entitled to control the other groups as well as all the wealth and power possessed or generated by those “others.” According to this position, the estadounidenses believe that they are entitled to govern the Puerto Rican peoples in spite of, and perhaps because of, the puertorriqueñas/os’ legal U.S. citizenship.

In the United States, imperialism extends to the internal and external conquests of those racially classified as nonwhite by those racially classified as white. In order to maintain its power, the United States’ empire is constantly engaged in internal and external conquests. Through the social construction of allegedly inferior peoples inside and outside the U.S. borderlands, the United States’ white, male, heteropatriarchal normative group continuously redefines itself as superior to these racialized “others.” In this way, the group conquered and almost exterminated Native Americans, enslaved African Americans, and conquered and dispossessed Latinas and Latinos in what is today the U.S. Southwest, often despite their being U.S. citizens. Today, the new imperialism both inside and outside the United States is constructing a new category of people, those who are “Arab” or “Islamic.”

While the targets of this imperialism have changed, many of the old conquered peoples remain internal underclasses. Indeed, the internal and external colonization that characterizes “American” imperialism is largely unchanged from the time of the Spanish-American War in 1898. This book uses the Puerto Ricans, the largest group of people who were colonized during that war and who are still subject to U.S. domination, to illustrate both the old and the current “American” imperialism.

Puerto Rico’s colonial relationship to the United States began during President William McKinley’s term at the beginning of the twentieth century and continues at the beginning of the twenty-first century. Because the United States holds absolute legal and political power over the island
and the people of Puerto Rico, the colonialists are still invested in their colony, and the conditions imposed after the attacks on September 11, 2001, are likely to make them even more aggressive and intransigent in the exercise of their power.

As used in this book, the word *colony* refers to a polity with a definable territory that lacks legal and political sovereignty because that authority is exercised by a people other than the inhabitants of the colony. Puerto Rico, with a definable territory as well as an identifiable culture that is different from that dominating in the colonial power (the United States), is a “cultural nation” that lacks sovereignty; it is therefore an “American” colony.4

The term *American* itself illustrates the language of power. Berta Esperanza Hernández-Truyol pointed out the irony of using the word *American* to refer only to citizens of the United States of America, especially in a discussion about imperialism:

I find it ironic that in a book on imperialism the imperialistic practice of denominating the United States as “America” remains normative. Indeed, America is much larger than the U.S. alone; there is also Canada in North America, and all of Latin America and the Caribbean ([Mexico in North America, and] some locations commonly referred to as Central America, some as South America).5

In this book, therefore, I generally refer to the United States of America as the United States and to its citizens as United States citizens or U.S. citizens or the Spanish term *estadounidenses*. When I use the term *American*, I place it in quotation marks.

As a lawyer, a law professor, a scholar, and a Puerto Rican, I have spent a lot of time studying the history of the United States’ colonial rule of my island.6 For me, “home” is Ponce, on the island of Puerto Rico. No matter how far away I may be, my personal, professional, and emotional travels always lead me back to Ponce. (I was in Ponce when I wrote the first draft of this book.) Nonetheless, I have made the ironic choice not to live in my country while it suffers under its colonial status but to live among the *estadounidenses*.

My choice of exile brings with it legal, social, and economic complexities. I shun the concept of a U.S. citizenship that is legally second class7 and a Puerto Rican citizenship that lacks its own passport. I live in the “states” where I can take advantage of the benefits of my statutory United
States citizenship, but because of that statutory citizenship and U.S. racism, I am “othered”—that is, I am socially constructed as not belonging to the dominant culture—and thereby rendered socially second class here. I use the phrase “U.S. racism” rather than “racism in the United States” to underscore the endemic, even constitutive, nature of white racism in the dominant culture of the United States.\(^8\) I also use it because a person can be the victim of U.S. racism outside the United States. In addition, because most Puerto Ricans on the island are members of an economic underclass, my economic status also is in doubt.

Paradoxically, my exile from the island to the United States has put me in a better position to evaluate the Puerto Rican perspective, and my position as an “outsider” scholar within the U.S. legal academy gives me a similar frame of reference from which to view U.S. policy toward Puerto Rico. Even my choice of the word *exile* is a political statement designed to underscore and subvert Puerto Rico’s colonial status.

Unsympathetic and unapologetic imperialists might ask: “If the United States is a racist imperialist nation, why, then, are you here?” As Professor Dinesh Khosla suggested, an appropriate answer to the colonialist is, “Because you *were* there.”\(^9\) But in the case of Puerto Rico, given the ongoing colonial relationship, it is more accurate to say, “Because you *are* there.” I have chosen exile partly because the *estadounidenses* (people of the United States) are in Puerto Rico, and their presence deprives Puerto Ricans of an independent legal citizenship and nationhood. Nevertheless, exile and my position as a member of the legal academy in the United States of North America offer me a unique opportunity to critique the legal and social constructs of Puerto Rican citizenship in the United States.\(^10\)

As a result of this colonial experience, there are two Puerto Rican cultures, one for the island and another for the Puerto Ricans who live outside Puerto Rico. The two are then linked in a broader, more diverse Puerto Rican cultural experience. In addition, there is the narrative telling of Puerto Rico by the normative U.S. mass media popular culture. This introduction analyzes my struggles as an exile from the island along all these cultural borderlands.

Many Puerto Ricans might resent an outsider’s imposing his vision on their culture. In other words, even if I am accepted as a native-born Puerto Rican, I might be accused of imposing an imperialistic “American” vision of society on our cultural nation. As these critics might argue, I would be destroying the culture that I claim to be trying to defend, not
to mention belonging to. Because of the inherent paradoxes of exile, I want to share a personal narrative about being a boricua in exile, which, of course, is a predicate to and a foundation for my analysis.

**A Ponceño (Person from Ponce) Goes to the United States: Othering Part I**

In thinking about culture and nation and the experience of Puerto Rico, I am struck that my life’s travels are effectively a metaphor for nation and colony, freedom and serfdom, sovereignty and dependency. These shifting sets can be conceived as the simple boarding of a plane on one or the other side of the Caribbean, for I do not need to switch passports on either side, although I plainly change nationalities.

I was born and raised in Puerto Rico, la Isla del Encanto. It was not until I was seventeen and a junior in high school that family circumstances resulted in my migration to these United States. Although crossing both cultural and citizenship fronteras (borders) fortunately did not require a passport or any obvious change in legal status, when I came of age on this side of the border, I would be able to vote for president.

After I finished my secondary education, both academic and cultural, in DeKalb County, Georgia, I chose to attend Emory University in Atlanta and then moved only slightly farther north to attend law school at Georgetown University Law Center in Washington, D.C. In the middle of the summer of 1993, while I again was living in Puerto Rico, I received a call from the admissions director at Georgetown saying that she had learned from my admission essay that I was, and wanted to continue to be, a law teacher. She told me that the Law Center had a fellowship for future law teachers and that the selection committee had voted to offer me that position, even though I had not applied for it. This meant that I could accelerate my plans to start my post-J.D. degree by a year, because the fellowship included a tuition waiver and a small stipend.

During my fellowship, I was introduced to the legal academy in the United States by two faculty mentors. They, and other members of the Georgetown faculty who also were dedicated to the fellowship, encouraged me to remain in the states as a law school teacher. I was surprised to learn that there were only a handful of Latina/o and Puerto Rican law teachers in the United States. (In 2000, Professor Michael Olivas identi-
fied nineteen law professors at continental U.S. institutions who described ourselves as Puerto Rican, an increase of two during the six years that I had spent in the legal academy. I started to take their recommendation seriously.

My journey to the legal academy is relevant to set the stage and as a metaphor for my analysis of the convergence between the reality and the theory of power that makes me, as a U.S. citizen, both normative and “other.” That is, being Puerto Rican turns me into an inferior “colored person,” an “other” in this society.

This book uses the word *other* as a relative term to distinguish between identifiable cultural groups. Generally, as used here, “other” and “being othered” mean to be socially constructed as “not normative” or as being outside the dominant group. This process of “othering” is what marginalizes the nondominant group. As Cathy Cohen explained,

Much of the material exclusion experienced by marginal groups is based on, or justified by, ideological processes that define these groups as “other.” Thus, marginalization occurs, in part, when some observable characteristic or distinguishing behavior shared by a group of individuals is systematically used within the larger society to signal the inferior and subordinate status of the group.

To describe this “othering” metaphorically, my feet, which are “clean” in Puerto Rico, become “soiled” here; I become a *patisucio*, which literally means to have dirty feet. The term refers to being poor in Puerto Rico, which meant that you could not afford to buy shoes, and so your feet always were dirty from walking barefoot on unpaved streets.

My father often describes himself as a *patisucio* because he got his first pair of shoes from his mother only after years of walking barefoot. He also got a new pair of shoes in the public school—to which he walked on unpaved streets—in his *barrio* (neighborhood) Bucaná in Ponce. (Ironically, he used to shine shoes as a shoeless child in order to make a bit of extra money for his household.) *Patisucio* is also his acknowledgment of being a class outsider within Puerto Rican society. But my father acquired the honorary class privilege that accompanies education and wealth, and as a result, his children were not *patisucios* in Puerto Rican society. Nevertheless, when I traveled to the United States borderlands, I became a metaphorical *patisucio* from Puerto Rico, and the dirt on my feet became code for my social construction as “colored.”
You Can’t Go Home Again: Othering Part II

The pull to my enchanted island led me to head south after earning my first law school degree, to live my own version of the biblical tale of the prodigal son. Initially, a tragic accidental journey (the lawsuits resulting from the December 31, 1986, fire at the San Juan DuPont Plaza Hotel that killed ninety-six people) took me to work in the U.S. federal court in the Puerto Rican borderlands. This job brought home the reality of my two citizenships: Puerto Rican cultural citizenship and “American” legal citizenship, both with a U.S. passport. While I very much enjoyed the time that I spent in Judge Raymond L. Acosta’s chambers, working for the most important agency in the U.S. governance of Puerto Rico was paradoxical and conflicting.

The U.S. District Court for the District of Puerto Rico belongs to the First Circuit, together with Maine, Massachusetts, New Hampshire, and Rhode Island. But these state boundaries are not my fronteras (borders); rather, the Atlantic represents the physical, political, and psychological barriers that I travel. This particular lesson in border crossings continued when I became a member of the bar in Puerto Rico and, after my two-year federal clerkship, joined the Bufete Malavet and Ayoroa (the law firm of Malavet and Ayoroa), my dad’s established law practice in my hometown of Ponce. I then learned about his extensive record as a subversivo which was imposed on him simply because the police thought that he believed that we ought to travel with a Puerto Rican passport.

A short time after I joined papi’s (dad’s) practice, I also started teaching courses in federal court jurisdiction and practice and Puerto Rican appellate procedure at the Pontifical Catholic University of Puerto Rico School of Law. This exposure to the intellectual side of law inspired me to pursue an academic life, a goal that led me, again, to the estadounidense borderlands. Initially, I thought this was a two-way trip, but fate intervened and I chose to stay in the “American” borderlands, returning to Puerto Rico now only as a temporary visitor.

Going into exile while owning the passport with which to return home is a difficult choice. But it can have some benefits, perhaps the most important being the critical frame of reference that exile illuminates. However, when this critical eye is turned inward toward my own culture, I am suddenly transformed into an outsider in my own Puerto Rican borderlands.
I had always been aware of political and class fault lines in Puerto Rican society because my family had often been both the objects and the honorary beneficiaries of those forms of elitism. Although now I recognize and acknowledge the victims of racism and the unfair nature of the privilege that this discrimination creates, even racial fault lines work in my favor back on the island, where I am considered to be white. I also became aware of other forms of discrimination—such as xenophobia, anti-Semitism, sexism, and homophobia—for the first time through the looking glass of exile.

For example, because I am a heterosexual male, I am expected to behave in a particular way in my own community, although I am now much more aware of issues of sex and gender that conflict with those essentialist expectations and make sexist and homophobic conduct by my fellow Puerto Ricans in Puerto Rico difficult to tolerate. I am also much more sensitive to issues of race and to the societal privilege that Puerto Rican culture gives me because of my whiteness. Finally, as an exile, I am also more attuned to the paradoxical animosity between the island and mainland Puerto Rican cultures.

To the extent that I now re/view La Perla del Sur (the Pearl of the South), as my home town of Ponce is known, through the perspective of exile, I can never really go home again, at least intellectually. For me, the curse of exile is my social construction as an inferior, “colored” “other” that is imposed on me by the normative United States culture and the realization that I can no longer look at my own culture with the critical but uninformed vision of my youth. This book represents a deployment of these perspectives to analyze the competing narratives of Puerto Rican cultures as well as the legal construction of Puerto Rican colonial status.

Why I Am Here

Ironically, at the start of the twenty-first century, the United States of America, the self-appointed “beacon of democracy,” is the largest colonial power in the world. As Arnold Leibowitz explained, “The United States [is] . . . the largest overseas territorial power in the world. [It] now governs five areas (Puerto Rico, [the] Virgin Islands, Guam, the Northern Marianas, and American Samoa) with over four million people and has special responsibilities for three additional areas (Federated States of Micronesia, the Marshall Islands and Palau).”

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The “insular cases” is the collective name of a series of decisions issued in the early twentieth century in which the U.S. Supreme Court defined the legal status of American territorial possessions and their inhabitants. This status means that these land areas are part of the United States, even though they have not been incorporated into “our” country as states of the union. Puerto Ricans are the largest group of U.S. citizens currently living under territorial status and are the focus of this book.

This book identifies three flaws in the current U.S.–Puerto Rican regime: (1) the legal and political shortcomings of the colonial relationship on which it is premised; (2) the conflicting legal, political, and social constructs of the Puerto Ricans compared with those of the people of the United States as citizens and foreigners at the same time (which Professor Ediberto Román aptly labeled the “alien/citizen paradox”); and (3) the carefully constructed general ignorance of this relationship among most citizens of the United States. This is, of course, complicated by the continued toleration of the Puerto Rico colonial status by certain Puerto Ricans who helped build and are invested in the current “commonwealth” status. This book analyzes the three alternatives to the continued territorial status that face Puerto Rico today—a truly bilateral form of association, statehood, and independence—and shows that serious challenges attend each of the options.

I use both cultural studies and critical race theory to expose the racist underpinnings of Puerto Rico’s current colonial status. In the United States, Puerto Ricans have been racialized as something other than white and therefore as inferior to whites. Balancing the discussion of the racialization of the Puerto Ricans as nonwhite while valuing Puerto Ricans’ strong native and especially African elements and avoiding the internalization of oppression (the adoption of racist views by the victims of racism) requires special care.

Issues of class also are important here. I use the term class in this book with a nontraditional meaning. The “class” in second-class citizenship, as that phrase is generally used, is not the traditional socioeconomic class category but a legal second class of citizenship that carries with it fewer rights for Puerto Ricans than for other U.S. citizens. Nevertheless, the classification (and the reality) of the Puerto Ricans as generally poor is an important part of their subordination and of their racialization by the United States.

Legal and political philosophy informs this analysis. Many scholars distinguish between liberalism and communitarianism as legal and polit-
ical philosophies, but I believe that the two can be reconciled. If liberalism could see through a communitarian lens, it does not commit the errors that its usual uncompromising focus on the individual makes. Conversely, communitarianism needs to be tempered by the valuation of individualism in order to avoid the evils of nationalistic fascism. I use a reformed liberalism to focus on the Puerto Rican community.

There are at least two Puerto Rican communities, the one in Puerto Rico and the one in the “United States proper” (the designation of the continental United States in a Supreme Court opinion; see Balzac v. People of Porto Rico). Although all Puerto Ricans are U.S. citizens, Puerto Ricans on the island do not have the same rights as U.S. citizens on the mainland have. For example, they cannot vote for president, lack a voting member in Congress, and receive fewer public benefits than do other U.S. citizens. Puerto Ricans in the “United States proper” also are racially marginalized persons like African Americans, Mexican Americans, and Asian Americans and are also denied full citizenship rights, though in different ways. This book looks at how Puerto Ricans’ race and citizenship rights have been manipulated and compares the conditions of and develops commonalities with other marginalized groups. My primary concern, however, is the Puerto Ricans on the island.

Accordingly, I do not spend much time on the Puerto Rican community living outside Puerto Rico because the theory that I develop here is for empowering Puerto Ricans in Puerto Rico to determine the future of the island. I do not subscribe to the theory that Puerto Ricans living outside Puerto Rico should be called refugees and thus be allowed to vote in a Puerto Rican referendum. It is the combination of a distinct culture and an identifiable territory possessed by only the Puerto Ricans on the island that, in my theory, entitles Puerto Ricans to determine their own future.

I use the existence of the Puerto Ricans as a cultural nation in Puerto Rico not only to construct an example of cultural imperialism but also, and more important, to show the resistance and survival of the Puerto Rican culture in spite of U.S. cultural imperialism. This courageous and essentially successful attempt to preserve their culture indeed differentiates Puerto Ricans from other citizens of the United States. But the cultural differences do not necessarily require Puerto Ricans’ legal and political separation from the United States. The failure of cultural imperialism, and of cultural assimilation more generally, has been politicized and in part has prevented the legal and political assimilation of Puerto Ricans into the United States. I argue that it should be possible for the United
States and Puerto Rico to develop a common political culture that is distinct from each one’s own popular culture or self-identity. Puerto Ricans’ political culture is perfectly compatible with U.S. culture, and they should not be required to surrender their self-identity in order to become full citizens of a multicultural United States if they so choose. Moreover, if the United States is unable or unwilling to accept Puerto Ricans as they are, it should stop its colonial exploitation and set them free.

An Overview

Chapter 1 explains the meaning of Latina/o critical race theory and how it informs my writing. This chapter also describes the difficult balance between traditional academic language and nontraditional narrative methods, as well as the challenge of making the work accessible to a larger audience. It begins to discuss the inseparable link between race and racism, on the one hand, and imperialism and colonialism, on the other. Finally, it shows how the Puerto Rican cultural nation illustrates the problems and shortcomings of U.S. imperialism and how this book uses these theories, methodologies, and language to discuss the challenges and possible solutions.

Chapter 2 examines the historical evolution of the flawed legal relationship between Puerto Rico and the United States, starting with the first colonial period, the Spanish colony. I then describe the acquisition of Puerto Rico by the United States as a result of the Spanish-American War and the legal consequences of the change in sovereignty for the island’s inhabitants. I study the current legal relationship between Puerto Rico and the United States and the construction of legal second-class citizenship for the Puerto Ricans on the island.

Chapter 3 provides a history of Puerto Rican political thought, again starting during the Spanish colonial period. Political movements and then parties began in the nineteenth century, during Spanish rule. By the time of the Spanish-American War, Puerto Rico had a rich political life and sophisticated political parties that were ready to engage the new “American” rulers. The United States was not, however, prepared to accept the reality of a politically assertive colonial people. Natural political criticism was treated as subversion, and political, cultural, and sometimes physical self-defense were seen as sedition. Finally, I discuss the so-called antisubversives campaign of political repression that targeted mostly the pro-in-
dependence movement on the island and how that process manipulated political opinion on and off the island. The chapter concludes that with the experience of two centuries of voting, Puerto Ricans have developed a sophisticated political culture that is always limited and frustrated by having only the right to petition a mostly unresponsive colonial power.

Chapter 4 offers a solution to the problem: to establish the existence of a Puerto Rican culture that can be distinguished from that of the dominant U.S. society. I show why Puerto Rican popular culture is a nonsovereign form of nationhood and cultural citizenship, what Puerto Rican culture on the island looks like, and how it sets the Puerto Rican peoples apart from the people of the United States. By identifying Puerto Rican cultural citizenship, this work constructs Puerto Ricans as “others” relative to the people of the United States. In doing so, it seeks to differentiate and empower, not to marginalize. Therefore, besides using it in the context of marginalization, I also use “other” to describe societal-group relationships, putting the survival of Puerto Rican culture in the context of the official attempts to destroy it through the project known as Americanization.

Given the existence of a separate Puerto Rican cultural citizenship and the presence of a native political consciousness, chapter 5 describes how a sensible legal and political theory must provide the means to construct a postcolonial Puerto Rican legal citizenship. Well-accepted communitarian principles can bring coherence to the legal definition of Puerto Rican citizenship. The chapter shows how the Puerto Ricans’ quest to become citizens of an independent nation conflicts with traditional liberal ideals of citizenship that emphasize individuality and coexistence. That is, by imposing an essentialized homogeneity, liberalism fails to take seriously the problems of nonnormative cultural groups. From the perspective of critical race and LatCrit theory, this book develops a pluralistic communitarian proposal to reform the construction of citizenship in traditional liberalism in general and American constitutional liberal theory in particular. The theory developed here allows liberal theorists to see, through a communitarian lens, that Puerto Rican cultural citizenship and nationhood should become Puerto Rican sovereignty, that is, true legal citizenship and nationhood. This change in the legal construction of Puerto Rican sovereignty and citizenship is justified by Puerto Rican cultural nationhood, whose survival represents the failure of the United States’ colonization and liberal jurisprudence. This chapter creates a reformation of liberalism by applying contemporary theories of communitarianism.
tailored to recognize and promote cultural citizenship while maintaining a pluralistic national legal/political culture, to develop a coherent, just, and moral approach to the Puerto Rican citizenship and political status problem. A communitarian theory of citizenship would give Puerto Ricans the right to determine their legal and political future because of their cultural citizenship and separate territory. A pluralistic legal and political vision would allow the Puerto Rican people to coexist among themselves and/or within a continued postcolonial relationship with the United States.

Chapter 6 briefly discusses the legal framework for determining Puerto Rico’s future, produced through the lens of the specific communitarian theory of justice developed here. Again, the current colonial status is morally unacceptable because it imposes second-class legal and social citizenship on Puerto Ricans. Independence is the only just status that will permit Puerto Ricans to define their citizenship by reconstructing their state into an independent republic of Puerto Rico, the U.S. state of Puerto Rico, or an affiliation between the United States and a republic of Puerto Rico by a really enforceable international agreement. Finally, I consider the issues in the actual implementation of a postcolonial Puerto Rico, using recent reparations writings to illustrate the goals and the challenges of establishing full legal citizenship for a previously marginalized, colonized people, the Puerto Ricans.

Chapter 7, the conclusion, looks at the consequences of the U.S. colonial domination of Puerto Rico by focusing on the mythology of the second colony. I offer a critical analysis of the misleading cultural and political narratives of Puerto Rico and the Puerto Ricans constructed by the United States. I contrast the general ignorance of Puerto Rico and Puerto Ricans of most “Americans,” on the one hand, against the purposely hidden desire for and exploitation of the island by U.S. policymakers, on the other. I then focus on the severely limited, albeit hopeful, outlook for a postcolonial Puerto Rico, followed by a call to congressional action on Puerto Rico’s future and a discussion of the imperative that it act soon.
In this chapter I try to center the Puerto Rican condition in critical academic discourse as well as in the broader marketplace of ideas. I use Latina and Latino critical race theory (LatCrit theory) to help convey the purpose, importance, and qualifying factors of studying and focusing on the flawed relationship between Puerto Rico and the United States.

According to one of the founders of this movement, LatCrit theory is . . . discourse that responds primarily to the long historical presence and general sociolegal invisibility of Latinas/os in the lands now known as the United States. As with other traditionally subordinated communities within this country, the combination of long-standing occupancy and persistent marginality fueled an increasing sense of frustration among contemporary Latina/o legal scholars, some of whom already identified with Critical Race Theory (CRT) and participated in its gatherings. Like other genres of critical legal scholarship, LatCrit literature tends to reflect the conditions of its production as well as the conditioning of its early and vocal adherents.1

As an expression of LatCrit scholarship, this book fits comfortably within contemporary critical jurisprudence.2 More precisely, LatCrit is one of the most current of the constantly evolving forms of outsider jurisprudence, that is, scholarship produced by and focused on outsider perspectives, communities, and interests that goes beyond the dominant group.3 It is based on such movements as critical legal studies, feminist legal theory, and critical race theory.4
LatCrit is a refinement and refocusing of critical race theory (CRT), which Cornel West defined as follows:

Critical Race Theory is the most exciting development in contemporary legal studies. This comprehensive movement in thought and life—created primarily, though not exclusively, by progressive intellectuals of color—compels us to confront critically the most explosive issue in American civilization: the historical centrality and complicity of law in up holding white supremacy (and concomitant hierarchies of gender, class, and sexual orientation).  

The refocusing of academic and theoretical schools more precisely on previously invisible (or unrepresented) groups is not always easy. Just as critical race theory was born partly of the frustration of African American academics with the critical legal studies movement, LatCrit was born out of a sense of exclusion from CRT, especially from the CRT annual workshop. Therefore, claiming the center, even if only temporarily, requires sensibilities, because even the best-intentioned theory can sometimes produce unintended exclusionary effects. For example, developing the consciousness of being victims of U.S. racism has often produced more conflict than common ground among Latinas/os and between Latinas/os and other racialized groups, especially African Americans.

The recent discussion of reparations provides a good example of the possible pitfalls of focusing exclusively or principally on one group. As did my fellow LatCrit Robert Westley—a reparations expert—I use a comparative study of reparations to set a moral, and sometimes legal, precedent for other claims of reparations and not to develop a “comparative victimology,” that is, “to situate a given group . . . at the top of an imagined hierarchy of oppression” intended to divide marginalized groups. The movement favoring Puerto Rico’s decolonization is one of many “progressive social movements” that seek to undo the legacy of U.S. imperialism. The problem of Puerto Ricans in no way diminishes the claims to reparations made by other groups, especially African Americans. Instead, I want to empower the Puerto Ricans and, I hope, help other victims of imperialism as well.

This disclaimer is important because the place for blackness in LatCrit has occupied a great deal of our scholarly time. After all, LatCrit was born in part out of Latinas’/os’ frustration with the CRT workshop (the annual meeting of RaceCrits), which was at this time dominated by
African American scholars. While LatCrit has and will continue to have a fundamental intellectual link to CRT, it represents a reorientation of critical race theory to “center” outsider groups other than African Americans. While I am not suggesting that there is a monolithic CRT experience or that the CRT workshop either represented the entire field of critical race theory or lacked the capacity to grow, the workshop unfortunately appears to have generated a sense of exclusion of Latinas/os and of issues of particular concern to us.\textsuperscript{12}

From much of the policy discourse, LatCrit immediately identified the relative invisibility of Latinas/os, Native Americans, Asian Americans, and other persons of color besides African Americans. In other words, discussions about race in the United States are often based on the existence of only two races: blacks, who are subordinated to and by whites. Although other fields of social science have already explored this phenomenon—labeled the black/white binary paradigm of race—LatCrit was largely responsible for introducing it to legal scholarship.\textsuperscript{13}

Many African Americans viewed the critique of the black/white binary paradigm of race by LatCrit scholars with outright hostility and substantial discomfort.\textsuperscript{14} LatCrit scholars—I think correctly—pointed out that discussions about race in the United States often assumed or were fundamentally based on the existence of one white race and one black race, thus excluding other persons of color, such as Latinas/os and Asian Americans, who are racialized as nonwhite. Our African American colleagues were concerned that the discussion failed to emphasize that white supremacy has made blacks its special target and that the power of the normative white society has created the paradigm. In that vein, Angela Harris defined “black exceptionalism” as “the claim . . . that African Americans play a unique and central role in American social, political, cultural, and economic life, and have done so since the nation’s founding. From this perspective, the ‘black-white paradigm’ that [LatCrit scholar Juan] Perea condemns is no accident or mistake; rather it reflects an important truth.”\textsuperscript{15}

Because of LatCrit’s aggressive and often sensitive search for intersectionalities and after much debate, we have largely managed to reach a common ground that allows us to rotate centers to focus on particular groups without marginalizing other fellow outsiders.\textsuperscript{16} It is important to note that many of these scholarly debates have taken place in the LatCrit conferences and have been developed in the articles published in its symposia. Ultimately, the discourse of the black/white binary paradigm proves that LatCrit is self-consciously coalitional.
In addition, the recognition of agreements and disagreements between different scholars and communities of color must be anti-essentialist, in accordance with my use of the term essentialist in this book:

The concept of essentialism suggests that there is one legitimate, genuine universal voice that speaks for all members of a group, thus assuming a monolithic experience for all within the particular group—be it women, blacks, Latinas/os, Asians, etc. Feminists of color have been at the forefront of rejecting essentialist approaches because they effect erasures of the multidimensional nature of identities and, instead, collapse multiple differences into a singular homogenized experience.¹⁷

LatCrit scholarship and its other interventions also are mature and sophisticated enough to manage to rotate centers, or, in the words of Athena Mutua, to “shift bottoms” to focus on different marginalized groups¹⁸ while avoiding essentialism.¹⁹ The most important part of this process is to acknowledge diversity and to avoid the homogenization of entire groups as well as the pitfalls of comparative victimology.²⁰ In this coalitional spirit, after a brief discussion of language and methodology, the remainder of this book uses the existing scholarship to formulate a LatCrit solution to the lack of sovereignty and the general marginalization of Puerto Ricans that has been imposed by U.S. imperialism, in the hope of assisting other legitimate claims.

Language, Narrative, and the Culture Wars

In the LatCrit context, deconstructionist postmodern analysis demands an approach to language that allows scholars to explore the hidden complexities of its subjects. The LatCritical use of language in legal scholarship is exciting, intellectually stimulating, and effective.²¹

Critical language does pose some challenges, however. Initially, Pomo, the language of postmodernism, is not, even now, a tongue in which I can claim fluency. (“Pomo” is short for postmodernism, the current philosophical age.) Until my immersion in LatCrit scholarship, I had never used the terms anti-essentialism or anti-normative or praxis in a written sentence. I am fairly certain that I had never used essentialism or praxis in any way in my entire life, but I have come to the realization that, though perhaps difficult, critical language will enrich my scholarship.
Furthermore, critical theory and language are necessary for developing the ideas I explore in this book. Reaching the proper balance between the critical exploration of language and its abuse is difficult. While I realize that the attacks on CRT all too often are essentialist attempts to silence different voices, some of the charges regarding the form of critical speech, when coupled with my own aversion to language abuse and experience with a few intemperate bits of discourse, give me pause.

In *The Race for the Theory*, Barbara Christian explained the real dangers of such language abuse:

I feel that the new emphasis on literary critical theory is as hegemonic as the world which it attacks. I see the language it creates as one which mystifies rather than clarifies our condition, making it possible for a few people who know that particular language to control the critical scene—that language surfaced, interestingly enough, just when the literature of peoples of color, of black women, of Latin Americans, of Africans began to move to “the center.”

Christian further explains that this language fails to communicate either positively or effectively. “And as a student of literature, I am appalled by the sheer ugliness of the language, its lack of clarity, its unnecessarily complicated sentence constructions, its lack of pleasureableness, its alienating quality. It is the kind of writing for which composition teachers would give a freshman a resounding F.”

The correct use of language is necessary for critical scholarship. More generally, mastering language is a necessary skill for a lawyer or an academic, and challenging the language skills of our audience can have strong pedagogical effects. As a teacher and scholar, I am offended by the notion that simple language is a sign of simplemindedness. For example, popular cultural narratives may sometimes be delivered in plain and simple language and still be able to transmit complex ideas. I am not implying that popular culture is always conveyed in “plain and simple” language. In fact, popular culture is incredibly complex and textured. But using plain and simple language makes complex messages accessible to everyone. Accordingly, I have tried to present complex concepts in language that make them accessible to students and persons outside my field. After all, making my work accessible to uninitiated audiences is part of my educational and political mission and is one of the purposes of this book.
In addition, I include cultural narratives in this book even though I am conscious of the attacks leveled against CRT in general and against the use of narrative in particular. When scholars of color use storytelling, they often are attacked as being dishonest and failing to meet the supposedly objective standards of methodological quality required of academics. The exchange between two professors from my law school alma mater—Georgetown University Law Center—Mark Tushnet and Gary Peller, the sustained critique by Richard Posner, and the strongly worded attacks by Daniel Farber and Suzanna Sherry illustrate the increasingly bitter culture war that has overtaken the legal academy.

Discrediting outsider jurisprudence and outsider storytelling could prevent people of color from meaningfully participating in the legal discourse about civil rights in this nation. The suppression of the voices of scholars of color would again create the incongruity identified by Richard Delgado in “The Imperial Scholar,” that the civil rights discourse in legal scholarship is dominated by the normative voices of white males and thus is incomplete. As George Martínez explained:

The fact that minorities have a different conceptual scheme from whites makes it plausible to suppose that there is a distinctive voice of color which is based on that distinctive conceptual scheme. It also explains why whites cannot write in the voice of color. They cannot speak in the voice of the outsider because they have a different conceptual framework.

Reserving the discourse for white males would deprive the aggrieved groups of a voice in the civil rights debate, and this would be anti-democratic. This scholarly segregation would also preserve the “perpetrator perspective” in the legal discussion of equal rights. Such a result would be particularly dangerous in this era of backlash when racism is being publicly denied, even though empirical evidence shows that bigotry in fact remains alive and well. We must resist the retrenchment of the existing hegemony. Storytelling is essential ammunition in the culture wars over civil rights in general and critical theory in particular in the legal academy.

Understanding why we cannot abandon the field of civil rights discourse to white academics also requires understanding that “truth” is not color-blind, especially legal truth, which in this context is more often than
not socially constructed as a result of normativity—the enforcement of the dominant group’s power—and essentialism.  

Minority and subordinated communities use narratives to counter the “singular homogenized experience” produced by the essentializing of identities imposed by the majority society. Narrative is therefore a vehicle through which to speak the truth to the “power”—the dominant American society. LatCritters embrace and celebrate narrative. More specifically, LatCrit scholarship includes storytelling because it is both anti-normative and anti-essentialist. In fact, our failure to use narrative would contribute to the preservation of privilege and, thus, to normativity and essentialism.

I should also confess that I use narrative in serious scholarship partly because I have edited several books in Spanish that use storytelling to explain historical, political, cultural, sociological, and legal points. Storytelling can be used to fill historical gaps. Although historians provide perspective on world and local events, legal academics need specific facts that they can then tie to legal authorities. Historical analysis takes a macroview of events, whereas we in the law, particularly Anglo-American law, need to take a microview of the facts from which we can make general policy. Storytelling, particularly by outsiders, provides a balanced historical view, ensuring that the particulars of stories about minority communities are not suppressed because all but “normative” voices have been silenced.

Popular culture and its many forms of narrative expression can fill in the gaps left by both historical analysis and the enforced homogeneity of essentialism, by showing scenes from everyday life. Popular culture provides insights into the ambiente, the daily environment, passions, and customs of a particular segment of our society. In popular culture, music, for example, has a much wider and current impact than does literature because it is more accessible. Music makes ideas available to the masses who have fallen through the huge cracks of the educational system and who have failed to acquire the skills to read or to those who simply do not or perhaps would not read the literature. For instance, in Puerto Rico the declamador Juan Boria, and the album by singers and artists Lucecita Benítez and Alberto Carrión, who turned the poems into lyrics, introduced many of us to the African Caribbean poetry of Luis Palés-Matos and Fortunato Vizcarrondo. These poems are an all too rare, honest, and extended discussion about the African Puerto Rican.
Finally, long ago critical race theorists identified the tension, and sometimes the disjunction, between theory and praxis (practice and implementation). Accordingly, LatCrit theory has always tried to ensure that its theoretical work can contribute to praxis.31

In sum, the purpose of this book is to present ideas that will be transformed into action by melding the theory and critical language of LatCrit with the cultural narrative of the Puerto Rican nation in order to explain the need to reform the social and legal relationship between the United States and Puerto Rico.

Race, Colonialism, and Citizenship

Even though the Puerto Ricans on the island have been citizens of the United States since 1917, they do not have full legal, political, and cultural citizenship rights. The cultural differentiation between the dominant culture in the United States and that in Puerto Rico has produced a racialization of the Puerto Ricans by the *estadounidenses*, which in turn has been used by the dominant white Anglo culture to marginalize them.

One part of this construct is that despite our legal citizenship, Latinas/os and other groups—such as Asian Americans—in the United States, are socially constructed as “foreigners,” which implies a denial of “citizenship.” Neil Gotanda observed that in

the United States, if a person is racially identified as African American or white, that person is presumed to be legally a U.S. citizen and socially an American. . . . [But] these presumptions are not present for Asian Americans, Latinos, Arab Americans, and other non-Black racial minorities. Rather, there is the opposite presumption that these people are foreigners; or, if they are U.S. citizens, then their racial identity includes a foreign component.32

LatCrit scholars have identified many forms of discrimination that target Latinas/os in the United States despite their legal U.S. citizenship. Language, for example, has often been used as a cultural marker to discriminate against Latinas/os. Laws and proposals to make English the official language in a particular location often target Latinas/os for governmental mistreatment and outright discrimination.33 Such laws also expose Latinas/os to “language vigilantism,” which, according to Steven W. Ben
der, is the phenomenon in which “individuals [mostly Latinas/os] speaking a language other than English have increasingly come under attack [from normative Anglos] in their schools, their workplaces, and even in their homes and places of leisure.”

The reasons for these forms of discrimination are ultimately racial. The normative culture in the United States socially constructs many different nonwhite races who are supposedly “naturally” inferior to whites. In this context, Puerto Ricans are just one of many groups who are the objects of racialization, as are Latinas/os in general. Michael Omi and Howard Winant use the term “racialization to specify the extension of racial meaning to a previously racially unclassified relationship, social practice or group. . . . [R]acialization is an ideological process, an historically specific one.”

Initially, one might argue that the construct of Latina/o as a racial category encompassing people of white, indigenous, and African heritage misses the point that Latinas and Latinos are not a race but are a cultural/ethnic group encompassing persons of many different races. To put it more simply, some Latinas/os are phenotypically or anthropologically white, black, indigenous, something else, or of mixed heritage. Many Latinas/os, however, embrace the concept of a sociedad o raza india, española, y africana (an Indian, Spanish, and African society or race). Of course, these shifting meanings of Latinidad (Latina/o-ness) only help reinforce the LatCrit tenet that race is a social construct and, as such, varies according to the viewer. Ian F. Haney-López observed that “race is social, in the sense that the groups commonly recognized as racially distinct have their genesis in cultural practices of differentiation rather than in genetics, which plays no role in racial fabrication other than contributing the morphological differences onto which the myths of racial identity are inscribed.”

The social construction of a Latina/o “race” is not primarily based on or motivated by ethnicity and xenophobia but, rather, by race and racism. This is not to suggest that culture, ethnicity, and “foreignness” are not a part of this device but to emphasize the social construction of race(s). Latinas/os are racialized as a mixed, nonwhite race, and as it does with African Americans, this results in our social marginalization.

Ethnicity, in contrast, includes “common geographic origin; migratory status; race; language or dialect; religious faith or faiths; ties that transcend kinship, neighborhood and community boundaries; an external perception of distinctiveness.” The social and legal construction of
Latinas/os in the United States is fundamentally a racialized process. For example, to Ian F. Haney López, race and ethnicity are not essentially different; on the contrary... race and ethnicity are largely the same. [But they] should not be conflated because these two forms of identity have been deployed in fundamentally different ways. The attribution of a distinct ethnic identity has often served to indicate cultural distance from Anglo-Saxon norms. Left unstated but implicit, however, is a claim of transcendental, biological similarity: ethnics and Anglo-Saxons are both white. The attribution of a distinct racial identity, on the other hand, has served to indicate distance not only from Anglo-Saxon norms, but also from whiteness. Racial minorities are thus twice removed from normalcy, across a gap that is not only cultural, but supposedly innate.42

The United States racialized Puerto Ricans as nonwhite early in the second colony. For example, during the congressional debate on the 1917 Organic Act for Puerto Rico, U.S. Representative Joseph Cannon stated that “the racial question” made Puerto Ricans ineligible for statehood and made them suspect as “people competent for self-government.” He supported his argument with the following “statistical” analysis: “Porto Rico is populated by a mixed race... [which is a]bout 30 percent pure African... [And] 75 to 80 percent of the population... was pure African or had an African strain in their blood.”43

Today, the Puerto Ricans are still the racialized “other” largely because of the survival of their culture, what I describe as the Puerto Rican cultural nation.

U.S. Imperialism and Puerto Rican Cultural Nationhood

Puerto Rico is geographically separate from the territory of the fifty states. It is a political entity with a local government elected by the Puerto Ricans who live on the island. Most significantly for this book, Puerto Rico retains a national consciousness that is reflected in its popular culture. The island is the oldest of the remaining U.S. colonies and one of the oldest colonies in the world today. From 1493 until 1898, before becoming “American” territory, the island was a Spanish colony. The second colony, that of the United States, has endured for more than one hundred...
years as a result of the United States’ interest in possessing and controlling the island, on the one hand, and the racialization of the Puerto Ricans, on the other.

Puerto Ricans’ strong cultural nationhood contrasts with their lack of legal sovereignty. Indeed, the territorial clause of the U.S. Constitution (Article IV, section 3, clause 2) gives the United States total authority to regulate the Puerto Ricans and their territory. As U.S. citizens by law, Puerto Ricans are both normative (i.e., dominant) and “other” because of their puertorriqueñismo (the state of being Puerto Rican). They are culturally normative on the island and legally and culturally “other,” relative to the legal authority, the “Americans.” In this book I offer a theory of Puerto Rican cultural nationhood that is largely based on race and ethnicity.44 In linking race, ethnicity, and citizenship, it is important to avoid the evils of ethnic strife and balkanization while celebrating rather than imposing difference; that is, community consciousness cannot be allowed to degenerate into fascism.45 At the same time, my presentation of the Puerto Rican culture is not intended to contribute to Puerto Ricans’ racialization.

Being Puerto Rican is a cultural reality, but under the prevailing U.S. and international regime, it is not a legal reality. One way for all Puerto Rican identities to attain coherence would be to advocate the island’s incorporation into the United States of America as a state and the toleration of its “minority culture” by the larger U.S. society. But this legal and political assimilation is only one of the alternatives available to the Puerto Rican people. Because of Puerto Ricans’ cultural citizenship and their identifiable territory, secession, that is, independence, is also an alternative. Or an independent Puerto Rican nation could freely choose to enter into a supranational affiliated-nation regime with the United States.

Liberal citizenship theory focuses on the rights of individuals as members of a national political society. Communitarian citizenship theory views the individual as a member of a community within the nation-state and illustrates the concept of cultural citizenship.46 Contemporary post-colonial citizenship philosophy, however, generally opposes secession as well as nationalistic enforced homogeneity, on the one hand, or ethnic cleansing, on the other. As a general rule, ethnic groups should tolerate one another in a larger political society. The theory of justice developed in this book is a specific application of communitarianism that leaves it to the Puerto Rican people themselves to construct the legal citizenship they desire by legally redefining the Puerto Rican nation.
Because of the exceptional combination of national consciousness and territory, a belief in *ciudadanía puertorriqueña* (Puerto Rican citizenship) should not be viewed as contradicting contemporary legal philosophy’s embrace of the “toleration” of minority cultures. Toleration requires that Puerto Ricans be given the power to construct a legal citizenship that preserves their cultural citizenship. If the choice is a free one, they can decide to redefine the Puerto Rican state without its unacceptable colonialness and with independence or U.S. statehood or as an affiliated state. The point is that the choice must be made legally not as a colony and made by the Puerto Rican people without fear of losing their cultural citizenship.

Early in the “American” occupation of the island following the Spanish-American War, U.S. General George Davis remarked that Puerto Rico “unlike . . . many other republics, never has been, is not, and probably never will be free.” History has so far proved the general right. As a matter of law, Puerto Rico has been a colony for more than five hundred years. In modern times, colonialism—the status of a polity with a definable territory that lacks sovereignty because legal and political authority is exercised by a people distinguishable from the inhabitants of the colonized region—is the only legal status that the *isla* (island) has known.

I contend that Puerto Rico’s colonial status—particularly its intrinsic legal and social constructs of second-class citizenship—is incompatible with contemporary law or a sensible theory of justice and morality. The United States now faces a paradox. Congress has the legal authority to regulate the territory, but the exercise of that power has theoretical and moral limitations, which were captured by Edmund Burke in reference to the Puerto Ricans: “I care not if we have a right to make them miserable, have we not an interest to make them happy?”

It has long been clear to me, and to many other Puerto Ricans, that we are not acceptable “material” for full citizenship in the United States. Accordingly, Puerto Rico’s admission into the union as a state has been, and in my view will continue to be, unacceptable because of “American” white racism, “a centuries-old system intentionally designed to exclude Americans of color from full participation in the economy, polity and society.” In this context, the racialization of Puerto Ricans by the normative U.S. culture as a single, mixed, inferior nonwhite race deprives them of full citizenship rights, even though the island belongs to the United States.

It is even more difficult to understand why Puerto Rican independence is not an acceptable status for the United States. In other words, if the
United States does not want Puerto Ricans, why does it stay in Puerto Rico? The simple answer is that the United States, which has all the power in this relationship, is still invested in its colony. The reason for this continued desire is that the United States makes public and private use of Puerto Rico in a manner that justifies any expenditure of U.S. governmental resources there. Moreover, the “American” interests on the island are so strong that the U.S. government refuses to decolonize it.

While the recent closing of the Vieques training center has substantially reduced some of the U.S. government’s military uses, its use in the past clearly explains the continuation of the colony. It is possible that the decrease in the governmental and military uses of the island might signal a change in status. Or the U.S. private industries’ use of Puerto Rico, which is less visible and more difficult to quantify, may continue to produce substantial colonial profits.
The Legal Relationship between Puerto Rico and the Estados Unidos de Norteamérica (United States of America)

When those states which have been acquired are accustomed to live at liberty under their own laws, there are three ways of holding them. The first is to despoil them; the second is to go and live there in person; the third is to allow them to live under their own laws, taking tribute of them, and creating within the country a government composed of a few who will keep it friendly to you. Because this government, being created by the prince, knows that it cannot exist without his friendship and protection, a city used to liberty can be more easily held by means of its citizens than in any other way, if you wish to preserve it.

—Niccolò Machiavelli, The Prince

The legal relationship between the United States of America and Puerto Rico was formed by one colonial power forcibly evicting another. After four hundred years of Spanish colonial rule as the object of the conquista (conquest), Puerto Rico and its inhabitants became the spoils of war. The Treaty of Paris transferred sovereignty over Puerto Rico from Spain to the United States, although beyond terminating Spanish citizenship, the treaty did not define the legal citizenship of its inhabitants. Instead, the treaty expressly reserved this power for the U.S. Congress; implicitly, it was initially left to the courts. In a series of cases now known as the “insular cases,” most of which were decided during its 1901 term, the U.S. Supreme Court defined the legal rights of the inhabitants of the new territories as well as the power of the U.S. Congress to legislate the legal regime applicable to both the territories and their peoples. Ever since
then, such legislation has clearly established the nonexistence of Puerto Rican legal nationhood and the lack of independent Puerto Rican citizenship.

For practical and legal reasons that are detailed later, the United States constructed for Puerto Rico the type of regime that Machiavelli recommended to his prince “creating within the country a government composed of a few who will keep it friendly to you.”3 Although locals are governed by locals, the power is wielded by the United States (The Prince) through careful legal and social constructs of citizenship.

**Historical Antecedents: The First Colony**

The legal construction of colonial status for the territory now known as Puerto Rico began with the Spanish conquistadores (conquerors). This Spanish colony dates back to November 19, 1493, when Christopher Columbus arrived in Puerto Rico during his second voyage to the Americas and claimed the island for Spain.4 The Spanish began their full-scale colonization during the sixteenth century. This brutal process of conquest meant the destruction of the natives, the introduction of slavery, and careful attempts by the Spanish government to maintain white Spanish domination over the island.5

The islands of Puerto Rico were initially inhabited by two distinct native groups. “Columbus encountered Tainos throughout most of the West Indies. . . . A second peripheral group, the Island-Caribs, lived on the islands from Guadeloupe southward, separating the Tainos from South America.”6 The Caribes (Caribs) and the Spanish fought a type of guerilla war during the early sixteenth century, with many raids on Puerto Rican soil and military retaliation from the Spanish. By the end of the century, the Caribes were no longer raiding the island. In 1509, 60,000 Tainos were taken into servitude; by 1515 only 14,636 were left; by 1530 only 1,537 were left; and by 1778 only 2,302 Tainos were counted, living mostly in the central mountains.7

The encomienda (Spanish for “to entrust”) system was the principal method of the genocide of the natives. On December 20, 1503, Queen Isabella of Spain issued a royal order instructing the governor of Puerto Rico to “compel and force the said Indians to associate with the Christians of the island and to work on their buildings, and to gather and mine the gold and other metals, and to till the fields and produce food for the
Christian inhabitants and dwellers of the said island.” The edict itself identified the problem that it was trying to resolve: “We are informed that because of the excessive liberty enjoyed by said Indians they avoid contact . . . with the Spaniards to such an extent that they will not even work for wages, but wander about idle, and cannot be had by the Christians to convert to the Holy Catholic Faith.” While the Tainos were ostensibly considered “free” persons under the edict, the reality was that they were enslaved.8

The island natives were the Spaniards’ first slaves. The Caribs were enslaved upon capture, usually the result of combat during a raid by the Caribs on Puerto Rico or raids by the Spaniards who were fighting them. The legal authority to capture and enslave “indios” for use in Puerto Rico was given by the Spanish crown to Cristóbal de Sotomayor on June 15, 1510. Later, enslaved white women who had been “rescued” from Moorish captivity during the reconquista (reconquest) in the Iberian Peninsula were sent to the Americas to “start a new life” as slaves. The largest group of slaves in Puerto Rico was African, who were imported beginning in 1510.9

In 1527, the Spanish king ordered white men in Puerto Rico to marry white women in order to increase the white population.10 This particularly Spanish form of white racism might seem paradoxical in the context of a racially mixed society. But in the first colonial period, Spanish white racism was pervasive. For example, one contemporary observer wrote: “There is nothing more ignominious on this island [Puerto Rico] than being black, or to be descended from them; a white man insults any of them, with impunity, and in the most contemptible language; some masters treat them with unjust rigor, . . . resulting in disloyalty, desertion, and suicide.”11 This was the first instance in which the authorities expressed concern about the racial balance in Puerto Rico and took steps to ensure white supremacy.12

The seventeenth and eighteenth centuries were marked by the development of a Puerto Rican criolla/o (island-born) culture and by external challenges to Spain’s control of Puerto Rico. These attacks on the island were mostly unsuccessful. Sir Francis Drake failed to take it when the guns of El Morro heavily damaged his fleet in 1595. The Earl of Cumberland succeeded in taking the city of San Juan in 1598 but was forced to withdraw two months later after disease killed many of his men and the locals unceasingly attacked his garrison. The Dutch landed in San
Juan on September 24, 1725, but were forced to withdraw on November 2 after heavy losses. Although there were no more serious attacks on San Juan until 1797, there were many small-scale hit-and-run attacks on other parts of the island during the eighteenth century. Most seriously, the British occupied the island of Vieques from 1685 to 1688. After that, they continued to attack it because it was a critical link for escaping English and Dutch slaves, who were granted freedom in Puerto Rico by order of the Council of the Indies, the Spanish ruling body for the colonies of the Americas.13

The last foreign attack on Puerto Rico before the Spanish-American War was the British invasion of 1797. Sixty frigates carrying seven thousand men attacked on April 17, 1797, landing three miles east of San Juan. But the capital’s fortifications and the mobilization of the regular army, reserves, and volunteers, including many exiles from the fighting in Haiti, helped defeat them. The British retreated on May 2, 1797, and San Juan was not attacked again for more than a hundred years. The Spanish did not face serious internal opposition in Puerto Rico until the slave rebellions of the late eighteenth and early nineteenth century and the pro-independence revolts of the late nineteenth century.14

During these fights for control of Puerto Rico, the islanders developed their own consciousness. Although the history of criolla/o (native-born) Puerto Rican armed struggle against the Spanish colony is short, this resistance represents an important part of the Puerto Ricans’ construction of themselves as something other than Spanish. That is, the criolla/o became the puertorriqueñal/o (Puerto Rican). The Puerto Ricans partly accomplished through legal and political means what they could not obtain by force of arms. Eventually, the weakness of the Spanish empire and the puertorriqueñas/os’ desire for self-rule led to a brief period of self-government.

The governmental authorities in Puerto Rico generally reported to Spain through other regional offices, especially the administrators on the island of La Española (Hispaniola), which is today shared by Haiti and the Dominican Republic. Not until 1795 did the Spanish authorities who controlled Puerto Rico report directly to Madrid.15 During the next 103 years, the legal regime that governed Spain generally, and its relationship with the insular possessions more specifically, was caught up in Spain’s chaotic introduction to constitutionalism. Early in the nineteenth century, this process led to the independence of all the Spanish Americas except
Cuba and Puerto Rico. For Cuba and Puerto Rico, the political process leading to the implementation of home rule was interrupted by the Spanish-American War.

The first constitution to apply in Spain was imposed in 1808 by Napoleon Bonaparte, and the first Spanish constitution was the Constitución de Cádiz (Constitution of Cadiz) of 1812. In the midst of the bloody struggle with the French, a Spanish representative assembly (Cortes) was convened in the city of Cádiz, in southern Spain. It was composed of bishops, noblemen, and “good men of the villages.” At its first convocation in León in 1188, King Alfonso IX pledged that he would not wage war, agree to peace, or enter into treaties without consulting the Cortes. While the nature of its powers is not entirely clear, the Cortes voted on taxes, and at its request, the king issued special judicial and administrative orders. But by 1810, the Cortes had been convened only a few times. That year, however, the Regency Council, a sort of resistance government that ruled in the absence of the deposed Spanish king, Ferdinand VII, convened the Cortes in Cádiz. On September 24, 1810, this new Cortes decreed that as the country’s parliament, Spain’s sovereignty resided in it. The Cortes expressly rejected the French regime and instead recognized Ferdinand VII as Spain’s lawful king, albeit with highly limited authority. The Cortes announced the passage of the Constitución de Cádiz on March 19, 1812, thereby completing its transformation into a legislative body and Spain’s into a republic with a constitutional monarchy.

The Cadiz constitution provided that the Cortes would be composed of one elected representative for every seventy thousand citizens. Article 18 conferred Spanish citizenship on everyone who “by both lines [paternal and maternal] bring their origin from Spanish dominions in both hemispheres, and who are residents of any town of those same dominions.” Article 22, however, stipulated that persons who by either line of descent could be “reputed to be originated in Africa” could be given letters of citizenship by the Cortes, provided they met criteria set forth in the article, such as being married to an “ingenuous woman,” practicing a profession, working in a useful industry, or having money. The constitution allocated one representative in the Cortes, now the Spanish parliament, for Puerto Rico.

After being defeated at Leipzig, Napoleon had to abandon Spain. He released Ferdinand VII, who returned to Spain and abrogated the Constitución de Cádiz on May 4, 1814. The constitution was briefly re-
stored in 1820 during the mutiny of twenty thousand Spanish soldiers awaiting embarkation to fight in the Americas. They were led by Commander Rafael Riego. But the mutiny did not have a lasting effect in Spain. On October 1, 1823, Ferdinand VII, who had fled Spain and allied himself with France, retook power. During the repression that accompanied the king’s return to the throne, 100,000 Spaniards reportedly lost their lives. Commander Riego was hanged and his body dismembered in a square of Madrid; parts were publicly displayed in every province of the peninsula to discourage sedition.22

The troubles in Spain allowed most of its empire in the Americas to claim independence, with Mexico (the viceroyalty of New Spain) and Central America (the captaincy of Guatemala) becoming independent in 1821. The battle of Ayacucho in the Andes in 1824 marked the end of the wars of independence in South America.23 Unfortunately, for the remaining people of the Spanish Americas (now encompassing just Cuba and Puerto Rico), the return of the old regime meant the loss of Spanish citizenship and participation in the political process granted by the Constitución de Cádiz. White cubanas/os (Cubans) and puertorriqueñas/os were back to being subjects of Spain, but they were not citizens.

In a process that started with the revolution of September 1868 in Spain and continued with the new Spanish constitution of 1876,24 the Spanish crown began to reconsider the legal regime governing the islands of Cuba and Puerto Rico. Article 89 of the Constitution of the Spanish Monarchy of 1876 gave the government the power to issue special legislation for the governance of the “provincias del ultramar” (the overseas provinces). Clause 2 of this article gave Cuba and Puerto Rico the right to be represented in the Cortes once special legislation to that effect was enacted. Because of the turmoil in Spain, though, the constitutional authorization was not implemented in earnest until 1895. In a series of enactments, Cuba and Puerto Rico received increasing levels of home rule and the rights of Spanish citizens.25 To be sure, these reforms were motivated by not just the more liberal Spanish republic but also the inability to maintain its dying empire. The reforms were more acceptable to the Puerto Ricans than to the Cubans. In the late 1890s, Luis Muñoz-Rivera, the leader of Puerto Rico’s Autonomist Party, rejected plans for a military attack against the Spanish proposed by Puerto Rican pro-independence forces in exile in New York.26

Legal Spanish citizenship was formally granted to the native-born inhabitants of Cuba and Puerto Rico in November 1897.27 On November
25, 1897, Spain legislated the Charter of Autonomy for Puerto Rico. The charter granted self-government by an elected lower chamber of the legislature, a partially elected and partially appointed upper legislative chamber, and an appointed high executive, known as the governor-general. 28 A separate decree extended the civil rights guarantees of the 1876 Spanish constitution to apply to Puerto Rico. 29 The Charter of Autonomy purported to be a “bilateral compact” because the decree stated that it could be amended only at the request of the local legislature. 30 But because of the method the Cortes used to pass this act, the Spanish parliament’s limitation on unilateral amendment was not really binding on it and instead constituted a “declaration of principles” that the Spaniards were free to ignore. 31

On March 27, 1898, the elections for Puerto Rico’s first autonomous government were held, and on July 17, 1898, the local parliament was installed. 32 It was an imperfect form of home rule, as the Spaniards retained the authority to appoint certain members of the upper chamber of the legislature and to set the eligibility requirements, which ensured that only the economically powerful classes would be allowed to run for office. The law required that candidates for office have “an annual income of four thousand pesos,” 33 which was a lot in those days, when a teacher made 180 pesos a year and peasants made four-eights to seven-eights peso a day. 34 Nevertheless, Puerto Rico’s Autonomist and Liberal Parties welcomed the charter and elected the country’s first homegrown government just weeks before the start of the Spanish-American War.

The Charter of Autonomy proved unacceptable to the more stridently pro-independence Puerto Ricans exiled in New York, some of whom encouraged the United States to invade. In 1892, these exiles founded the Borinquen Club, a pro-independence Puerto Rican group. After autonomist leaders in Puerto Rico rejected their call for revolution against Spain, officers of the club, which by then had changed its name to the Puerto Rico Section, met with Senator Henry Cabot Lodge in 1898 to ask the “United States government for help in evicting Spain from Puerto Rico.” 35 The pro-independence puertorriqueñ@cas in New York even provided interpreters and scouts for the U.S. Army.

Unfortunately, these supporters of independence failed to understand that they were dealing with a weakening Spanish empire that would eventually collapse. To be sure, many believed that the United States would quickly give Puerto Rico independence after the invasion, as it did with Cuba. What they clearly underestimated in both Puerto Rico and Cuba
was how disruptive “America’s” imperial dreams would be for both islands. Nevertheless, some of Puerto Rico’s leaders did recognize this. As Olga Jiménez-de Wagenheim described it,

In early July [of 1898] Ramón E[meterio] Betances . . . predicted, “if Puerto Ricans don’t act fast after the Americans invade, the island will be an American colony forever.” A press release from the White House on July 21 confirmed Betances’ worst fears. It said in part, “Puerto Rico will be kept. . . . That is settled, and has been the plan from the first. Once taken it will never be released. . . . Its possession will go towards making up the heavy cost of the war to the United States.”

Betances’s message has so far been quite prophetic.

The Second Colony: Foundations of the United States–Puerto Rico Legal Regime

On April 19, 1898, the U.S. Congress passed a joint resolution authorizing the president to use force if Spain “failed to pacify Cuba.” On April 25, 1898, Congress declared war, retroactive to April 21, 1898, because on that date the U.S. warship Nashville had captured the Spanish ship Buenaventura. U.S. troops landed in Guánica, Puerto Rico, on July 25, 1898, while a naval force blockaded San Juan harbor. Although the campaign cannot be described as long or especially bloody, young men on both sides died and those who lived did so in fear. In his diary, a Puerto Rican–born gunnery officer in the Spanish army recounted the agonizing wait to be attacked in San Juan, when they already knew that U.S. troops had landed in the south and were marching north. They also were well aware of the presence of American warships offshore. Indeed, the wait proved too stressful for two of the gunnery officer’s comrades, who attempted suicide. One of the U.S. soldiers, the poet Carl Sandburg, recounts his own deep fear of being attacked during the first night after his unit landed in Guánica. The only shots he heard, however, were fired by a unit from Illinois that apparently panicked during the night, firing so wildly that they hit the transport carrying the task force commander, several Red Cross nurses, and, presumably, fellow soldiers.

The Spanish forces in Puerto Rico did not put up much of a fight. The guns of San Juan had not been fired in hostilities since they repelled the
British invasion in 1797, and they had not been upgraded since then. The United States quickly captured the island.41  
U.S. forces took Ponce on July 28, without firing a shot. On this date, Major General Nelson Miles issued a proclamation announcing:

To the inhabitants of Porto Rico: In the prosecution of the war against the Kingdom of Spain by the people of the United States, in the cause of liberty, justice, and humanity, its military forces have come to occupy the Island of Porto Rico [sic]. . . . They bring you the fostering arm of a nation of free people, whose greatest power is in its justice and humanity to all those living within its folds.  
The chief object of the American military forces will be to overthrow the armed authority of Spain and to give to the people of your beautiful island the largest measure of liberty consistent with this military occupation. . . . [We have] come to bring protection, not only to yourselves but to your property, to promote your prosperity and bestow upon you the immunities and blessings of liberal institutions of our government.42

In the Puerto Rico campaign, seventeen Spanish soldiers were killed, eighty-eight were wounded, and 324 were taken prisoner. For the United States, three soldiers were killed and forty were wounded, mostly by Puerto Rican irregular troops.43

By August 12, 1898, the United States had ended its military operations in Puerto Rico, and on September 14, 1898, most of the remaining Spanish troops left the island. October 18 was the final day for the official surrender of San Juan to the U.S. troops, and the last few Spanish soldiers sailed aboard the warship Montevideo on October 23.44 The second colony had begun.

The Treaty of Paris, signed on December 10, 1898, approved by the U.S. Senate, and ratified by the president in 1899, officially ended the Spanish-American War, with the island of Puerto Rico the United States’ prize.45

Between September 1898 and April 12, 1900, Puerto Rico was under military rule, supervised by the War Department.46 During this period, the “partidas,” well-organized mobs, fought in the mountains of Puerto Rico. This guerrilla class-warfare began with the poor attacking the Spaniards but quickly extended to attacks on wealthy criollas/os.47 The targets were mostly white mallorquines (Majorcans) and corsos (Corsicans) who owned coffee plantations and thus controlled what was then
the most powerful part of the economy. These were the same immigrants who arrived after Spain opened Puerto Rico and Cuba to those fleeing the wars of independence in the Spanish Americas. At the expense of the poor, the U.S. military restored “order” and earned the gratitude and allegiance of the Puerto Rican elites. The Americans also shifted the emphasis from the mountain economy of coffee to the coastal valleys and the production of sugar.

On April 12, 1900, the Foraker Act authorized a U.S.-appointed civilian government to be established on the island, and its chief executive, the governor, would be named by the president of the United States. The president also appointed the members of the cabinet, known as the Executive Council, who also acted as the upper legislative house. The lower house of thirty-five delegates was elected by the people of Puerto Rico. The chief justice and associate justices of the island’s supreme court also were appointed by the president of the United States, and the Federal District Court for Puerto Rico was established. This regime lasted until 1917 when it was replaced by the Jones Act.

The citizenship status of Puerto Ricans during this period was ambiguous. Article IX of the Treaty of Paris provided that Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions, being subject in respect thereof to such laws as are applicable to other foreigners.

The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress.

Although the peninsulares (natives of the Iberian Peninsula) were given the choice of retaining their Spanish citizenship, the native-born Puerto Ricans were not; they lost the Spanish citizenship that had been granted in late 1897. Yet again, the island’s native inhabitants became subjects, but not citizens, of a colonial power. Despite the language of the treaty, until Congress acted on the matter, the legal citizenship of Puerto Rico’s non-Spanish inhabitants would be defined by the U.S. courts.
A group of cases regarding the legal status of Puerto Rico and its inhabitants, decided during the early part of the twentieth century by the U.S. Supreme Court, are collectively known as the “insular cases.” Some scholars limit the label to only nine cases, which were resolved by the U.S. Supreme Court in 1901/2. Others take a broader view, identifying the insular cases as a more complex series that helped create the “American empire.” Guadalupe T. Luna, for example, noted that the *Scott v. Sanford* decision is arguably the first of the insular cases because it created the imperial United States with its inherent constructs of citizens and noncitizens within U.S. territorial control; *Balzac v. People of Porto Rico* then established the categories of citizenship based on larger or lesser entitlements to constitutional rights.

Six of the insular cases resolved during the Court’s 1901/2 term referred specifically to Puerto Rico, and other cases resolved between 1901 and 1922 interpreted and clarified the legal regime applicable to the United States’ overseas territories. Therefore, I extend the insular cases to include the 1922 opinion in *Balzac v. People of Porto Rico*, the last case that could fall into this category. The six cases that were decided during the 1901/2 term basically ruled that Puerto Rico was an unincorporated territory of the United States, that is, part of the United States under the “territorial clause” but subject to absolute congressional legislative authority under that provision and the “necessary and proper clause” of the U.S. Constitution. In sum, the residents of Puerto Rico were citizens of Puerto Rico but not of the United States. Unfortunately, this Puerto Rican citizenship is utterly meaningless outside the United States–Puerto Rico legal regime because citizenship and nationality are linked in international law, and Puerto Rico is not a nation. Therefore, until they were granted U.S. citizenship in 1917, Puerto Ricans were, in the words of a Democratic U.S. senator, “without a country. Can any man conceive of a more tyrannical form of government?”

In *DeLima v. Bidwell*, the U.S. Supreme Court ruled that for the purpose of imposing import tariffs in the United States, Puerto Rico was not a foreign country. Although the island had become a territory of the United States when the Treaty of Paris was ratified, it had not been incorporated into the United States, because that would have required an affirmative act by the entire Congress, not just the ratification of a treaty.

In *Downes v. Bidwell*, an opinion issued on the same day as *DeLima*, a deeply divided court ruled “that the Island of Puerto Rico is a territory appurtenant and belonging to the United States, but not a part of the
United States within the revenue clauses of the Constitution; that the
Foraker act is constitutional, so far as it imposes [discriminatory] duties
upon imports from such island [to the United States].”\textsuperscript{59} In so ruling, the
court rejected the argument that in matters of taxation, Congress could
not treat the U.S. territory of Puerto Rico differently than a U.S. state;
thus, Puerto Rican exports to the U.S. mainland were subject to duties not
imposed on the products of the states.\textsuperscript{60}

This opinion deepened the cleavage between the territory that was a
“part of” the United States but had not been “incorporated” into it. In
his dissenting opinion, Justice John M. Harlan found the distinction less
than compelling:

I am constrained to say that this idea of ‘incorporation’ has some occult
meaning which my mind does not apprehend. It is enveloped in some
mystery which I am unable to unravel. In my opinion, Puerto Rico be-
came, at least after the ratification of the treaty with Spain, a part of
and subject to the jurisdiction of the United States in respect of all its
territory and people, and Congress could not thereafter impose any
duty, impost, or excise with respect to that island and its inhabitants,
which departed from the rule of uniformity established by the Constitu-
tion.\textsuperscript{61}

Most important, the majority opinion, over a vigorous dissent by four
justices, gave to the U.S. Congress almost unfettered discretion to do with
Puerto Rico what it wanted. In a dissenting opinion written by Chief Jus-
tice Melville W. Fuller, joined by Justices Harlan, David J. Brewer, and
Rufus W. Peckham, the minority called for constitutional values to pre-
vail over the desire for empire:

They may not indeed have deliberately considered a triumphal progress
of the nation, as such, around the earth, but, as [Chief Justice John]
Marshall wrote: “It is not enough to say, that this particular case was
not in the mind of the convention, when the article was framed, nor of
the American people, when it was adopted. It is necessary to go farther,
and to say that, had this particular case been suggested, the language
would have been so varied, as to exclude it, or it would have been made
a special exception.”

This cannot be said, and, on the contrary, in order to the successful
extension of our institutions, the reasonable presumption is that the
limitations on the exertion of arbitrary power would have been made more rigorous.\textsuperscript{62}

Justice Horace Gray’s concurring opinion proved to be prophetic: “If Congress is not ready to construct a complete government for the conquered territory, it may establish a temporary government, which is not subject to all the restrictions of the Constitution.”\textsuperscript{63} However, Justice Edward D. White’s opinion includes an important caveat suggesting that territorial status could not last forever:

Conceding, then, for the purpose of the argument, it to be true that it would be a violation of duty under the Constitution for the legislative department, in the exercise of its discretion, to accept a cession of and permanently hold territory which is not intended to be incorporated, \textit{the presumption necessarily must be} that that department, which within its lawful sphere is but the expression of the political conscience of the people of the United States, will be faithful to \textit{its duty under the Constitution, and, therefore, when the unfitness of particular territory for incorporation is demonstrated the occupation will terminate}. I cannot conceive how it can be held that pledges made to an alien people can be treated as more sacred than is that great pledge given by every member of every department of the government of the United States to support and defend the Constitution.\textsuperscript{64}

Nevertheless, to this day Puerto Rico continues to be an unincorporated territory of the United States, albeit with an increasingly powerful locally elected government.

The Foraker Act, which was the legal catalyst for the insular cases, was replaced by the Jones Act of 1917, which changed the local government and gave Puerto Ricans U.S. citizenship.\textsuperscript{65} The local governor would still be appointed by the president of the United States, but he was given the right to appoint his own cabinet, with the advice and consent of the Puerto Rican senate. Intermediate appeal from the Puerto Rico Supreme Court to the U.S. First Circuit Court of Appeals was imposed. This new law, however, left some confusion about Puerto Rican citizenship that required judicial resolution.\textsuperscript{66}

\textit{Balzac v. People of Porto Rico} was resolved by the U.S. Supreme Court after passage of the Jones Act. By adopting one of the many views articulated in the earlier insular cases, this case helped clarify the constitu-
tional relationship between Puerto Rico and the United States. It stated that “the opinion of Mr. Justice White of the majority, in *Downes v. Bidwell*, has become the settled law of the court.” On the specific facts of the case, *Balzac* ruled that even after the grant of U.S. citizenship to the residents of Puerto Rico, not all U.S. constitutional protections applied to the territory. Fundamental rights, generally those guaranteed by the due process clause, would automatically apply to U.S. citizens living in the unincorporated territories, but personal freedoms would not. Among the latter are the right to a trial by jury and the right to uniform taxation. Furthermore, home rule in Puerto Rico was governed by a congressional delegation and thus was subject to the almost unlimited discretion of the U.S. Senate and House of Representatives.

*Balzac* constitutionally constructs the U.S. citizenship of Puerto Ricans as second class as long as they remain on the territory of Puerto Rico. It distinguishes between the rights of U.S. citizens living in Puerto Rico and U.S. citizens living in “the United States proper.” The court expressly indicates that as long as they choose to remain on the island, Puerto Ricans who are U.S. citizens will not enjoy the full rights of American citizenship. It thus also distinguishes between Puerto Ricans as individual U.S. citizens and as collective inhabitants of Puerto Rico. As individuals, they are free “to enjoy all political and other rights” granted to U.S. citizens if they “move into the United States proper.” But as long as they remain on the island, they cannot fully enjoy the rights of U.S. citizenship. The Supreme Court explained the motivation behind this construction of Puerto Rican second-class citizenship in nativistic terms when it distinguished the island from Alaska:

Alaska was a very different case from that of Porto Rico. It was an enormous territory, very sparsely settled and offering opportunity for immigration and settlement by American citizens. It was on the American Continent and within easy reach of the then United States. It involved none of the difficulties which incorporation of the Philippines and Porto Rico presents.

This statement, which is the Court’s interpretation of the act giving U.S. citizenship to Puerto Ricans, clearly assumes that Puerto Rican U.S. citizens are not the “American citizens” who could resettle an “American” state. While recognizing the impossibility of creating an Anglo-Saxon majority on the island, the Court also constructed Puerto Ricans
as “others.” Because Puerto Ricans are so “other,” the incorporation of the territory into the United States could not be inferred; it had to be clearly expressed by Congress. 73

Nevertheless, to this day, the Puerto Ricans continue to travel with a U.S. passport and to “enjoy” the limited “blessings” of their legal citizenship, but without the legal right to a separate Puerto Rican citizenship. However, in an interesting but sui generis case, the Supreme Court of Puerto Rico held that Puerto Rican citizenship was independent of U.S. citizenship because of certain provisions of Puerto Rican law. The opinion in the case, Ramírez-de Ferrer v. Mari-Bras, was issued on November 18, 1997, according to the published text. 74 On the day before the opinion was issued, the Puerto Rican law alluded to in the opinion was amended to require both U.S. citizenship and Puerto Rico residency in order to become a citizen of the island. 75 This made the matter of law addressed in the opinion moot. The U.S. Department of State later rescinded Juan Mari-Bras’s renunciation of his U.S. citizenship, returning him to his legal status before the case was resolved. Therefore, Puerto Ricans were again limited to the legal citizenship of the United States but not the full enjoyment of the rights usually associated with that citizenship.

The passage of the Jones Act also revealed Congress’s construction of Puerto Ricans as being mostly of African descent and thus belonging to “an inferior race,” which made incorporation into the United States as a state impossible for some legislators. In sum, Puerto Ricans were legally constructed, by statute and constitutional opinion, as “others” relative to the United States, and their citizenship as expressly inferior, that is, second class, at least as long as they choose to reside on the island.

Old Colony, New Name: The Estado Libre Asociado de Puerto Rico (The “Commonwealth” of Puerto Rico)

La Farsa del Estado Libre Asociado—cruel, inhumana—no sólo se refleja trágicamente en la estructura gubernativa, sino también manifiesta sus dañosos efectos en el cuerpo desnutrido, el alma enferma y la conciencia abochornada de nuestro pueblo.
¿Hasta cuándo?

The farce of the Commonwealth—cruel, inhumane—not only is reflected in the governing structure but also manifests its harmful ef-
fects in the malnourished body, the sick soul, and the ashamed conscience of our people.

For how long?

—Vicente Géigel-Polanco,
La Farsa del Estado Libre Asociado

In 1932, the U.S. Congress finally got the island’s name right, changing the mistaken “Porto Rico” used in statutes and judicial opinions to “Puerto Rico.” Unfortunately, twenty years later Puerto Rico received the misnomer of the “Commonwealth” of Puerto Rico. To the extent that this term was intended to suggest a relationship similar to that of the Commonwealth of Virginia or the Commonwealth of Massachusetts, the legal reality of Puerto Rico’s continued territorial status makes it incorrect as applied to the island.

On July 3, 1950, the U.S. Congress approved law 600 to give Puerto Ricans the right to form an elected self-government. “Fully recognizing the principle of government by consent, this act is now 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.” On June 4, 1951, law 600 was “accepted” by Puerto Rican voters in a referendum, thereby starting the creation of this new governing scheme for the island. On August 21, 1950, voters went to the polls to select the representatives to the convention that would draft the new constitution of Puerto Rico. The document produced by the convention was then submitted to the U.S. Congress for its approval.

While drafting Puerto Rico’s constitution, the convention also approved several explanatory resolutions. Resolution 22 gives the Puerto Rican definition of the English term commonwealth and selects it as the English equivalent of the Spanish estado libre asociado, which is more accurately translated as “free associated state.” The legislators explained:

Whereas, the single word “commonwealth,” as currently used, clearly defines the status of the body politic created under the terms of compact existing between the people of Puerto Rico and the United States, i.e., that of a state which is free of superior authority in the management of its own local affairs but which is linked to the United States of America and hence is a part of its political system in a manner compatible with its federal structure.
In that regard, resolution 23, the “Final Declarations of the Constitutional Convention of Puerto Rico,” states that Puerto Rico is acquiring “complete self-government, the last vestiges of colonialism having disappeared in the principle of Compact [between Puerto Rico and the United States of America].” This resolution goes on to state that any changes to the new legal regime would require the “mutual consent” of Puerto Rico and the United States.

Congress amended and approved the new Puerto Rican constitution on July 3, 1952. It then returned the constitution for ratification by the people of Puerto Rico. The amendments provide that (1) students in private schools are exempt from the compulsory public education requirement of article II, section 5, of the Puerto Rican constitution; (2) article II, section 20, of the proposed Puerto Rican constitution—the declaration of human rights—should be eliminated; and (3) article VII, section 3, should have added to it language that essentially requires congressional approval of amendments to the Puerto Rican constitution. The constitutional convention accepted these amendments by means of resolution 34 on July 10, 1952, as required by the joint resolution. Governor Luis Muñoz-Marín then promulgated the constitution on July 25, 1952. The congressional resolution did not require any further action by voters for the enactment of those parts of the constitution that it neither struck nor amended. But the two sections that were ordered amended by Congress would not become effective until they were approved, as amended, by the people of Puerto Rico. The Puerto Rico government submitted the amended language of article II, section 5, and article VII, section 3, to popular vote during the general elections of 1952, and both amendments were “approved.” Interestingly, Puerto Rican voters were not asked to “approve” the removal of the human rights declaration.

The United States quickly moved to take advantage of this new “compact” in the international arena. On January 19, 1953, the State Department issued a press release announcing that the United States would no longer report to the United Nations regarding Puerto Rico, because “the new Commonwealth cannot be considered as a non-self-governing territory” under article 73 of the United Nations Charter.

On March 20, 1953, the U.S. ambassador to the United Nations, Henry Cabot Lodge Jr., wrote to the U.N. secretary-general, Dag Hammarskjöld, that Puerto Rico’s new form of government was consistent with self-determination and thus not subject to the reporting requirements of article 73 of the U.N. Charter. According to the memorandum
sent to the U.N. supporting the ambassador’s statements, “At the request of the people of Puerto Rico and with the approval of the Government of the United States, Puerto Rico has voluntarily entered into the relationship with the United States that it has chosen to describe as a ‘commonwealth’ relationship.” In the memorandum, the U.S. delegation quotes from the resolutions of the Puerto Rican constitutional convention, indicating that it “expresses the views of the people of Puerto Rico as to the status they have now achieved.” It then quotes the self-determination statements made in resolution 23, in which the Puerto Rico constitutional convention states that there is a bilateral compact between Puerto Rico and the United States.

In advocating the nonreporting position, U.S. representatives went even further. “Mason Sears, United States delegate to the [U.N.] Committee on Information, . . . [stated:] ‘A compact . . . is far stronger than a treaty. A treaty can be denounced by either side, whereas a compact cannot be denounced by either party unless it has the permission of the other.’” Ohio Congresswoman Frances Bolton, who was also a member of the U.S. delegation to the U.N., stated: “The relationships previously established also by a law of the Congress, which only Congress could amend, have now become provisions of a compact of a bilateral nature whose terms may be changed only by common consent.” The United Nations voted to accept the United States’ position that it was no longer required to report to the U.N. under article 73.

Despite these carefully worded acts of obfuscation to the United Nations and notwithstanding some lower court decisions, the real “American” view of Puerto Rico’s status was conclusively expressed by the U.S. Supreme Court in three very terse, *per curiam* opinions: *Califano v. [Gautier-] Torres*, *Torres v. Puerto Rico*, and *Harris v. [Santiago-] Rosario*.

Before analyzing their contents, I must point out that even the selection of an official name for the cases as reported in the United States is culturally insensitive and ignorant. As the case itself indicates, the name of the plaintiff in the case reported as *Califano v. Torres* was actually César Gautier-Torres. Puerto Ricans customarily use both parents’ last names, with the paternal last name first, followed by the maternal last name, without a hyphen. Most *estadounidenses*, however, see the paternal last name as a middle name, and this case and the person were identified incorrectly. Again, the name of the plaintiff-respondent in the case reported as *Harris v. Rosario* was actually Awilda Santiago-Rosario. Likewise, another case was officially identified as *Gomez v. Toledo*, but
the names of the litigants were Carlos Rivera-Gómez and Astol Calero-Toledo, Puerto Rico’s former chief of police. The only case that is correctly reported is Torres v. Puerto Rico, in which the name of the defendant was “Terry Terrol Torres-Lozada.”

In these cases the court ruled that Puerto Rico was still an organized but unincorporated territory of the United States, subject to almost limitless congressional power, based mostly on the territorial clause. The territorial clause of the U.S. Constitution reads as follows: “The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any claims of the United States, or of any particular state.” In Califano v. Torres, the Supreme Court reiterated what it had said in the insular cases, that Puerto Rico was an unincorporated territory of the United States. The three appellees in this case had moved from Massachusetts, Connecticut, and New Jersey to Puerto Rico. While living in the states, they had received Supplemental Security Income through a federal Social Security Administration program for “qualified aged, blind, and disabled persons.” When they arrived in Puerto Rico, however, their benefits were canceled. The Supreme Court, in a *per curiam* opinion, let this discrimination stand, explaining that

the exclusion of Puerto Rico in the amended program is apparent in the definitional section. . . . [The] Act . . . states that no individual is eligible for benefits during any month in which he or she is outside the United States. The Act defines “the United States” as “the 50 States and the District of Columbia.”

The justices then concluded that

we deal here with a constitutional attack upon a law providing for governmental payments of monetary benefits. Such a statute “is entitled to a strong presumption of constitutionality.” “So long as its judgments are rational, and not invidious, the legislature’s efforts to tackle the problems of the poor and the needy are not subject to a constitutional straitjacket.”

The “rational basis” for Congress’s action in this case was described by the court in Harris v. Rosario: “In Califano, we concluded that a similar statutory classification was rationally grounded on three factors:
Puerto Rican residents do not contribute to the federal treasury; the cost of treating Puerto Rico as a State under the statute would be high; and greater benefits could disrupt the Puerto Rican economy.”

In *Torres v. Puerto Rico*, the U.S. Supreme Court ruled that Congress had the power to grant, and conversely to withhold, constitutional guarantees from the U.S. citizens who may be found in Puerto Rico.

*Harris v. Rosario* further exposed Puerto Rico’s continued territorial status. In this case the U.S. Supreme Court, summarily, but with a written opinion, ruled that the lower level of reimbursement provided to Puerto Rico under the Aid to Families with Dependent Children program did not violate the Fifth Amendment’s equal protection clause. In accordance with its authority under the territorial clause of the U.S. Constitution, Congress can make any necessary rules that affect the territories, and it may treat Puerto Rico differently from states if it has a rational basis for its actions.

Puerto Rico is subject to the national legislative and executive regulatory processes of the fifty United States, and these laws and regulations are enforced in Puerto Rico by federal executive and judicial officials. But at the same time Puerto Ricans are not allowed meaningful participation in the political process at the national level, because they are not permitted to vote for the president of the United States, and their only congressional representation is a nonvoting representative in the House. The resident commissioner’s “role in Congress is determined by the House rules under which he may be a member of only three House committees and may introduce bills and speak on the House floor. He may not vote.” There is, therefore, a fundamental democratic deficit in the manner in which Puerto Rico is ruled by the United States. The basic notion of three separate and equal branches of government, central to the “American” definition of a “Republican form of Government,” is missing in Puerto Rico. Moreover, this lack of empowerment is firmly established in the U.S. Constitution and cannot be changed by simple legislative or executive action.

In 2000, a group of Puerto Rican voters filed a lawsuit in the U.S. District Court for Puerto Rico challenging their denial of voting for the president. In denying the government’s motion to dismiss this action, U.S. District Judge Jaime Pieras Jr. ruled that U.S. citizens residing in Puerto Rico by either birth in Puerto Rico or relocation from the U.S. mainland had a constitutional right to vote in U.S. presidential elections. Specifically addressing what I label a “democratic deficit,” Judge Pieras wrote:
The present political status of Puerto Rico has enslaved the U.S. citizens residing in Puerto Rico by preventing them from voting in Presidential and Congressional elections and therefore is abhorrent to the most sacred of the basic safeguards contained in the Bill of Rights of the Constitution of the United States—freedom.\textsuperscript{111}

Unfortunately, Judge Pieras’s ruling was quickly reversed by the First Circuit Court of Appeals.\textsuperscript{112}

Thus, a few years into the second century of U.S. occupation, Puerto Ricans are subject to the almost total discretion of the U.S. Congress in constructing their legal rights. So far, that construction has made the U.S. citizenship of Puerto Ricans living in Puerto Rico second class, because it does not entitle its holders to the same political and civil rights as those living in “the United States proper.”
Native-born (*puertorriqueña/o*) political thinking in the island is determined by the relationship between Puerto Rico and the current colonial power advocated by each person or political group. In Puerto Rico this is commonly referred to as the “status issue.”

Politics and political views are just as much a part of “culture,” as that term is used here, as is any other element of daily life or a personal belief system, and it is even truer in a colonial context. This chapter addresses Puerto Rico’s political culture, political thinking, and political parties, starting with their history and ideology.

Some ignorant observers argue that Puerto Ricans themselves are politically confused. For example, Raymond Carr stated:

> The deep sense of frustration that haunts Puerto Rico is self-induced. Congress will not act as long as the democratic process in Puerto Rico gives no clear indication of the status Puerto Ricans wish to enjoy. . . . "Divide and rule" was the classic device for the maintenance of colonial rule. The United States does not need to foster it. The Puerto Ricans divide themselves.¹

But the reality is that for more than two hundred years, Puerto Ricans have endured, and been marked by, the frustration that no matter how sophisticated their political thinking or organizing is, ultimately their lives continue to be dominated by the colonial power. This means that the politics of two large overseas nations—first Spain and now the United States—controls the political past, present, and future of the island and its residents.

Political activism in Puerto Rico has been characterized by the limitations imposed and the contradictory messages sent by the colonial governments regarding the status choices available to Puerto Ricans. This has
consistently resulted in the criminalization of pro-independence activities
and the legitimacy of anti-independence violence that is either initiated or
sanctioned by the government. Paradoxically, at the same time Puerto Ri-
cans have been denied full citizenship and equal participation in the “na-
tional” political processes of the colonial nation. While Puerto Ricans
talk to one another about the future status of their island, from the per-
spective of the colonial power the only available alternative to absolute
colonial rule has always been the extremely unclear and democratically
unsatisfactory “middle-ground” status imposed by the Charter of Au-
tonomy and the current estado libre asociado (commonwealth).

Three types of political-status ideologies have prevailed throughout
the history of Puerto Rico’s two colonies. Separatists, nationalists, or in-
dependentististas (independence supporters), favor sovereignty, that is, sep-
oration from the colonial power and complete independence for the
Puerto Rican nation. Liberals, autonomists, or estadolibristas (supporters
of the estado libre asociado, free associated state), favor varying forms of
home rule that include a permanent legal and political relationship with
the colonial power. Conservatives, republicans, integrationists, assimila-
tionists, or estadistas (statehooders), favor becoming a full part of the
colonial power’s political organization as part of Spain during the first
colony, or entry into the union as a state under U.S. rule.2

But political lines are not always entirely consistent, and there is a di-
versity of opinion within the three general movements ranging from “lib-
eral” to “conservative,” as those terms are commonly used in political
discourse in the United States. Moreover, fundamental differences about
specific aspects of the status option or how it should be achieved often
produce political fractures within these movements.

The goal of each political movement is relatively clear for indepen-
dence and for statehood supporters, but not so clear for the common-
wealth advocates. Much like the different forms of autonomy in regard
to Spain, the definition of the commonwealth’s prerogatives relative to
the power of the U.S. government varies today in the different factions
within that movement. The other status tendencies usually differ as well.
Independence supporters range from social conservatives to socialists
(and perhaps even an occasional Marxist). While the overwhelming ma-
ajority of pro-independence supporters favor a legal and democratic path
to independence, some marginal groups have advocated and resorted to
violence (although on balance, the independence movement has mostly
been the object of violent repression). Statehood supporters differ internally on the degree to which Americanization (the cultural reconstruction of Puerto Rico to be “American”) should be a prerequisite to or the result of statehood. While some statehooders have been willing to surrender their cultural identity in exchange for statehood, at least in practice most appear to favor estadidad jíbara (jíbaro statehood), meaning Puerto Rico’s political union with the United States while maintaining its cultural distinctiveness.

The First Colony: The Birth of Puerto Rico’s Political Consciousness

Puerto Rican political culture came of age during the final years of the Spanish colony. Its most tangible legal achievement was the Charter of Autonomy (see chapter 2), which was issued on November 25, 1897, and created the first locally elected, albeit limited, government for Puerto Ricans. Although the U.S. invasion made this charter irrelevant, the politics and political parties that produced its adoption are the direct precursors of Puerto Rico’s current political parties.

The first election of note in Puerto Rico was held in 1809 to select a representative to the Cortes, Spain’s legislative body. Like all elections during the Spanish period, this was a “special” election ordered by an electoral decree from the Cortes. Although political parties were not officially established on the island until the last three decades of the nineteenth century, historians have identified three basic political tendencies in existence before the parties were formed.

In 1795, the Spanish governor, Field Marshal Ramón de Castro y Gutiérrez, reported “seditious” sentiments based on the discovery of pro-independence slogans defacing a Spanish coin. In 1800, the separatists published a leaflet favoring a Puerto Rican republic. Because these acts were considered to be criminal acts of sedition, they were carried out anonymously, so it is difficult to gauge the strength of this early independence movement and to identify its participants. In direct opposition to the liberals were the Spanish merchants and appointed administrators, who favored total Spanish control over the island. These conservatives were also motivated by a distrust of the liberals, believing them to be “revolutionaries or subversives in disguise.”
At the start of the nineteenth century, most of the *criollas/os* and even some *peninsulares* supported “liberal” or “reformist” ideals, which favored elected representation for the island in the Spanish legislature. In 1809, Ramón Power-Giralt, a liberal reformist and a Puerto Rican officer in the Spanish armed forces, was selected to represent the island in the Cortes. Power was again sent as Puerto Rico’s representative to the Cortes in 1810. (These were the Cortes convened in Cádiz by the Spanish resistance government during the Napoleonic period, which produced the Constitución de Cádiz discussed in chapter 2.) Power and the liberal reformists favored a liberal constitution that also gave the provinces legal representation in the legislature. On the other side were the monarchists or conservatives, who favored absolute royal rule after the restoration of the Spanish monarchy. After the Constitution of Cadiz, Spanish politics in the nineteenth century was split between the conservative monarchists and the liberal republicans; in Puerto Rico, the distinction between conservatives and liberals continued as well.

Although the Constitution of Cadiz granted Spanish citizenship to white *criollos*, it was quickly rescinded. Between 1813 and 1836, the prevailing political ideology on the island was liberal reformist, favoring Spanish citizenship for *puertorriqueñas/os* and participation in the Spanish legislative process. Accordingly, liberals were elected as both representatives and alternates to the Cortes in 1813, 1814, 1820, 1821, 1823, 1834, and April 1836.\(^7\)

In May 1836 the Cortes was dissolved, and a new system of voting was imposed on the island. This system allowed only persons of wealth to vote, which favored the conservative candidates. Accordingly, conservatives won the elections held in November 1836.\(^8\) It also is important to note that the loss of the Spanish empire in Mexico and all of Central and South America, which was completed in the early 1820s, greatly affected the two remaining Spanish colonies in the Americas. Pro-monarchy, extremely conservative *peninsulares* who fled the newly independent nations of America moved to Puerto Rico and Cuba. These persons, naturally wary of “revolutionaries,” quickly took positions in the local government and established themselves as social, business, and political leaders. Their allegiances were to Spain and the monarchy, not to their new island homes. In 1815 the Spanish government enacted a special law, called the Real Cédula de Gracias, to promote immigration to its colonies in the Americas, and by the 1820s, this law allowed easy immigration into Cuba and Puerto Rico. For example, in 1827, 77 percent of the plan-
tation owners in Ponce, the principal economic town on the island at that
time, were not Puerto Ricans.\footnote{Between 1837 and 1868, Puerto Rico was
governed by the special laws for the Spanish provinces and had no
representation in the Cortes. This was a chaotic time in Spanish history,
marked by the civil wars over who should succeed Ferdinand VII as
queen (his daughter Isabel II) or king (his brother Carlos, hence these wars
are known as the “Carlista” wars). Isabel II prevailed, but the situation
remained volatile, with military uprisings and civil revolts pitting
republicans against monarchists.\footnote{During these years, Spain ruled
the provinces, including Puerto Rico, with absolute centralized power and
suppressed any native political movements.}

It was not until after the September 1868 revolution in Spain, which
led to the abdication of Isabel II in favor of her son Alfonso XII, that
Puerto Rican representatives were once again summoned to the Cortes.
The elections were held over a four-day period starting on May 30, 1869.
Puerto Rico was given a total of eleven representatives to the Cortes
from three districts. Seven of those elected were conservatives, and four
were liberals. Reece Bothwell-González notes that the four liberal
candidates were elected despite the government’s widespread abuses of the
liberal candidates and their supporters.\footnote{The September 1868
revolution created the legal and political climate that permitted the
formation of political committees, associations, and, eventually, parties in
Puerto Rico. The catalysts were the combination of the allocation of
seats to Puerto Rico in the Cortes and the grant of freedom of the
press and of association. Freedom of the press allowed the political
to openly express their views in party-published newspapers. This was
the most effective form of mass media in the era before radio or
television. Indeed, party-owned or -controlled newspapers remained
important to the Puerto Rican political process well into the
twentieth century.\footnote{But these political freedoms had their limits. That
same year, 1868, was also a year of revolution in the Spanish territories of
Puerto Rico and Cuba. On September 23, 1868, the “Grito de Lares,” a
revolt, was staged by a group of about four hundred Puerto Rican}
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By October 10, 1868, the governor-general of the island declared complete victory over the rebels and reported to his superiors that they all had been captured.\textsuperscript{13}

The puertorriqueñas/os emerged as a politically conscious and active people as a result of this revolt and the Spanish revolution of September 1868. According to Juan Antonio Corretjer, “we became Puerto Ricans” on the day of the Grito de Lares.\textsuperscript{14} He attributes its failure to a lack of weapons and the need to move up the attack when Spain intercepted the ship carrying the weapons. Although the criolla/o identity had developed much earlier, it was a cultural self-awareness. But when “we became Puerto Rican,” the criolla/o identity developed a political consciousness separate from Spanish influence.

Although the new Spanish constitution of 1869 gave Puerto Ricans greater participation in the Cortes, the enabling legislation was not passed until 1873. The delay was partly because the Cortes had to wait until Puerto Rico and Cuba sent their representatives to the legislative body. But another reason was civil unrest in Spain. The second Carlista war broke out in 1872 and ended in 1876. In 1873, following Amadeus of Savoy’s brief stint as a constitutional monarch, the Spanish government accepted Alfonso XII, son of Isabel II, as king and passed a new constitution in 1876. Alfonso XII died of tuberculosis in 1885 and his (posthumous) son eventually became King Alfonso XIII. During Alfonso XIII’s infancy, his mother, Maria Cristina of Austria, became the queen regent. In December 1885 she swore allegiance to the Spanish constitution of 1876 and ruled until 1902, the period during which Spain lost its last colonies in the Caribbean.\textsuperscript{15}

In Puerto Rico, all but one of the fifteen representatives to the Cortes chosen in the 1871 elections were liberals. Then there were two elections in 1872, one in April and one in August. The one held in April resulted in a shocking victory for the conservatives, because this election was held under the close “supervision” of the governor-general, Ramón Gómez-Pulido. Pulido means “polished” in Spanish, and so these elections came to be known as the elecciones pulidas (polished elections), a reference to their having been “fixed” by the governor in favor of the conservatives. A new Spanish governor-general took over in July 1872. That August, though, the liberals won back all but one seat (that for the district of San Juan), and they won all the legislative seats in the 1873 elections.\textsuperscript{16}

Puerto Ricans were finally free to form political parties after May 1873, when the new Cortes passed decrees guaranteeing freedom of
the press and of association.\textsuperscript{17} The Partido Liberal-Reformista (Liberal-Reformist Party) represented the liberals, and the Partido Conservador (Conservative Party), which later becomes the Partido Incondicionalmente Español (the Unconditional[ly] Spanish Party) represented the conservatives, who opposed the abolition of slavery and other liberal political reforms. Later in the century, a dissident group in the Unconditional Party, which favored a liberal Spanish republic, formed the Partido Oportunista (Opportunist Party).\textsuperscript{18}

As a result of the political turmoil in Spain, in which the liberals got the worst of it, the Puerto Rican Liberal-Reformist Party suffered. Spain was governed mainly by conservative monarchists, who opposed political rights for the colonies of Puerto Rico and Cuba. Added to this was political repression by the local governments, led by the appointed governors. The net effect was that the conservatives won overwhelmingly in the elections for representatives to the Cortes that were held in Puerto Rico in 1876, 1879, 1881, 1884, 1886, 1891, 1893, and 1896.\textsuperscript{19}

In 1883, the Liberal-Reformist Party decided to support the full incorporation of Puerto Rico as a province of Spain with all the rights and obligations that this entailed.\textsuperscript{20} Dissidents within the party who preferred more self-rule for the island, though they still wanted Spanish sovereignty, left to form the Partido Autonomista Puertorriqueño (Puerto Rican Autonomist Party). The Autonomist Party was made official after a convention in Ponce in 1887, with Román Baldorioty-de Castro as its leader. Rosendo Matienzo-Cintrón, Luis Muñoz-Rivera, and José de Diego later became prominent leaders in the party as well. At the same time, a political movement was started to boycott businesses owned by peninsulares and to favor those owned by Puerto Ricans. This movement is known as La Torre del Viejo (Old Man’s Tower) or La Boicotizadora (The Boycotter).\textsuperscript{21}

Those who favored full incorporation into Spain remained in the Liberal-Reformist Party. Note, though, that the self-rule advocated by the Autonomist Party was not the same as independence. Instead, the party described it as generally an interest in decentralized (from Spain) control and the strongest possible local self-government.\textsuperscript{22} Puerto Rico’s failure to gain independence was a reminder that the island lacked the kind of standing rebel army that could be found, for example, in Cuba. This partly explains why the Puerto Ricans welcomed the “autonomy” that was granted in 1898, whereas the Cuban independence fighters did not.
It is more difficult to determine whether Puerto Ricans viewed autonomy as a transitional status that would eventually lead to independence by political rather than military means. During the early U.S. regime, it is clear that some of the members of the Autonomist Party (most notably Rosendo Matienzo-Cintrón and José de Diego), did in fact favor eventual independence for Puerto Rico, and yet others, mainly José Celso Barbosa, became leaders of the pro-statehood movement. Still other Autonomists favored a permanent, albeit “autonomous,” relationship with Spain. The coexistence of such varied political views within a single party is typical of Puerto Rican political culture. It reflects a colonial pragmatism that recognizes strength in numbers, especially when dealing with a colonial power that can be extremely intolerant of native political movements. In simple terms, the Autonomist Party attracted puertorriqueñas/os who wanted to participate in the political process to define the future of their island, even though they internally disagreed about the precise form of that political future.

In the early months of 1897, frustrated by the conservatism of the Spanish governments, especially those led by Antonio Cánovas-del Castillo, the Autonomist leadership considered merging with a Spanish political party. Initially, the thought of allying with a monarchist reactionary party offended some of the members. The party eventually chose to join the less conservative but still monarchist Partido Liberal Fusionista Español (Spanish Liberal Fusionist Party) of Práxedes Mateo Sagasta. In this way, the Puerto Rican Autonomist Party became the Partido Liberal Fusionista de Puerto Rico (Liberal Fusionist Party of Puerto Rico). But the dissidents were still opposed to a merger with any Spanish pro-monarchy political party and so decided to leave to form the Partido Liberal Puro y Ortodoxo (Pure and Orthodox Liberal Party), with José Celso Barbosa as its leader.

An assassin’s bullet became the catalyst for a change in the Spanish government that led to the Charter of Autonomy for Puerto Rico. The Spanish government that granted the charter was headed by the newly named President Práxedes Mateo Sagasta, who took over on October 4, 1897. His predecessor, Antonio Cánovas-del Castillo, a conservative monarchist who opposed autonomy for Cuba and Puerto Rico, had been assassinated in Barcelona in August 1897. According to the historian Osvaldo García, the assassin, an anarchist, visited Puerto Rican independence leader Ramón Emeterio Betances in Paris before the event. After trying to persuade the assassin not to go through with the murder, Be-
stances sent him one thousand francs in financial support. The new Spanish president, Sagasta, was the leader of the Spanish Liberal Fusionist Party, the party with which the Autonomist Party, led by Luis Muñoz-Rivera, had allied itself. The Charter of Autonomy was the political payback for this alliance, although it was clearly offered in the context of Spanish military weakness, especially in Cuba.

The Charter of Autonomy set the stage for the final Spanish election in Puerto Rico. On March 27, 1898, 121,573 voters went to the polls. The Liberal/Autonomist Party received 82,627 of the votes cast; the Orthodox Party, 15,068; the Unconditional Spanish Party, 2,144; and the Opportunists, 1,585. The Liberals won ten seats in the Cortes, and the Orthodox Party, the remaining six. One member of the Opportunist Party and one from the Unconditional Spanish Party, five Orthodox, and twenty-five Liberal candidates were elected to the local house of representatives created by the charter. The upper chamber of the local legislature, the Consejo de Administración Insular (Insular Administration Council), with a total of eight elected positions, seated five Liberal, two Orthodox, and one Unconditional Party members.

Then in July 1898, the americanos invaded, and the Autonomist experiment ended before Puerto Rico had a real chance, however limited, to rule itself. Nevertheless, the native political thinking and organizing had developed greatly during the nineteenth century, and so when the United States arrived in Puerto Rico, it found sophisticated politicians and parties ready to support, challenge, and oppose the new sovereign.

The Second Colony: Puerto Rican Politics and the Americanos

Soon after the change in sovereignty, the former Pure and Orthodox Party became the pro-statehood Partido Republicano Puertorriqueño (Puerto Rican Republican Party). The party's organizers, which included José Celso Barbosa and Manuel F. Rossy, described their goals as “the definitive and sincere annexation of Puerto Rico to the United States. Declaration of organized territory for Puerto Rico, as a prelude thereafter to become a State of the Federal Union.” They favored accelerating the Americanization project (the process of educating the Puerto Ricans in English to become “Americans”), which, they hoped, would lead to statehood. Accordingly, in their original political manifesto, they supported English as the language of instruction, “in order to put the country ["el
pais” (sic), referring to Puerto Rico] in conditions more favorable soon to become a new State of the Federation.”

Luis Muñoz-Rivera continued to lead the Autonomist/Liberal Party, which also was undergoing a transformation after the invasion and became the Partido Federal Puertorriqueño (Puerto Rican Federal Party) in October 1899. Perhaps surprisingly, the party’s first official program, or platform, supported the immediate grant of territorial status to Puerto Rico and eventual statehood. But it also favored the absolute autonomy of the island’s municipal governments to handle what the party called asuntos locales (local matters), especially education. This put them in direct conflict with the U.S. administrators and with the Republican Party. On October 26, 1900, an editorial in La Democracia, the newspaper published by the party and edited by Muñoz-Rivera, criticized the U.S. administrators of Puerto Rico and the Republican Party and its political thugs. The editorial ended with a call for retraimiento (withdrawal) from the elections. Consequently, in 1900 the Federal Party boycotted the first election held under the U.S. regime.

In the election of November 1900, of 123,140 registered voters, 58,367 voted for Republicans, and 148 voted for Federals. Republican candidates were elected to all thirty-five positions in the newly created Puerto Rico House of Delegates and they also elected the sole Puerto Rico delegate to the U.S. Congress, called the resident commissioner. The Federal Party’s withdrawal was less successful in 1902, and so Federal candidates were elected from the districts of Arecibo, in the north of Puerto Rico, and from Humacao, in the east. But the Puerto Rican Republican Party’s candidate was elected resident commissioner, and the majority of the delegates to the local legislative body were Republicans.

The turn of the century was characterized by turbas republicanas (Republican mobs or riots). The former autonomists and supporters of the Federal Party were attacked by violent mobs associated with the Republican cause, which were generally tolerated and sometimes supported by the U.S. authorities. In some of their more serious attacks, for example, on September 13, 1900, the turbas ransacked the offices of the Federal Party’s newspaper, El Diario de Puerto Rico, destroying the printing equipment. The next day, the turbas shot at Muñoz-Rivera’s home, but the authorities actually charged Muñoz and other Federal Party members with crimes! Although Muñoz and the other defendants were acquitted of all charges on December 22, 1900, the atmosphere of fear and intimidation led many liberal politicians to flee Puerto Rico. Muñoz-Rivera left
for New York early in 1901 with his wife and infant son, Luis Muñoz-
Marín, and did not return to Puerto Rico until January 26, 1904.35

In February 1904, the Federal Party dissolved itself and was reconsti-
tuted as the Partido Unión de Puerto Rico (Union Party of Puerto Rico). The party again included among its principal leaders the autonomist Luis Muñoz-Rivera, the Autonomist Party founder and now independence leader Rosendo Matienzo-Cintrón, and another prominent independence supporter, José de Diego. Again displaying the colonial political pragmatism recognizing strength in numbers, the party also included statehood supporters. Its name was specifically chosen to describe the intent to unify the party members’ diverse political views regarding status.36 Thus the Union Party included autonomists, independentistas, statehooders, and, probably the most controversial group, sugar plantation owners.37 At least some of its creators were motivated to present a “united front of puertorriqueñidad,” as Juan Mari-Bras described its early motivation and potential.38

The official minutes of the convention that created the Union Party de-
scribe its members as Puerto Rican patriotas (patriots) and express the party’s support for strong “self-government” for the island. It is interesting that this document, though written in Spanish, uses the English words self-government. The fifth paragraph of the statement, later to become the famous base quinta (fifth basis), adds that the status—again using the English term—options that would achieve “self-government” for the people of Puerto Rico included statehood or that “the island of Puerto Rico be declared an independent nation, under the protectorate of the United States.”39

Thus, independence peeked out of the political closet for the first time.40 But within the Union Party, it had to coexist officially with state-
hood and with yet a third status alternative. In the fifth of the bases de la Unión de Puerto Rico (bases or tenets of the Union of Puerto Rico), the party stated that in addition to statehood and independence, a third pol-
itical form was “a special system that recognizes [for Puerto Ricans] self-
government and United States citizenship.”41 Explaining why such seem-
ingly divergent political views could coexist within one party, the state-
ment added:

The power to decree the political form in which self-government can be founded and developed for the people of Puerto Rico, does not reside in our people, but rather in the American people and in the Congress of the
United States, directly emanating from national sovereignty, and the Puerto Rican people cannot exercise in this area any other act than that of petitioning the high powers of the Republic.  

The Union Party expressed the hope that the actual choice among the three alternatives would be made by the United States in consultation with Puerto Ricans and with some consideration of the needs and desires of both groups. However, the statement concluded that the “aspiration of the Puerto Rican people” that the “spirit” of the declaration really supported was “self-government or complete autonomy.” Consequently, the party was generally considered to be against statehood and in fact opposed the grant of U.S. citizenship until 1917.  

Was the Union Party really Puerto Rico’s first pro-independence party? A study of its political manifestos shows that while Luis Muñoz-Rivera and especially Rosendo Matienzo-Cintrón and José de Diego were active, the Union Party of Puerto Rico, as well as its predecessor organizations during Spanish and U.S. rule, was mostly, though not exclusively, a pro-independence party. The party opposed statehood, favored teaching in the Spanish language, and opposed the Americanization project. It also saw home rule under U.S. sovereignty as a transitional, not a permanent, status. On November 22, 1913, the official program of the Union Party expressly declared that its ultimate goal was an independent republic for Puerto Rico. In the famous Miramar rules, the Union Party’s leaders—Muñoz-Rivera, Antonio R. Barceló, José de Diego, and Cayetano Coll-Cuchí—explained that independence should be achieved in three steps:

1. energetic action in favor of full insular autonomy; 2. development of insular autonomy until it is demonstrated, in the judgment of the majority of Puerto Ricans, that the people of the island have the capacity to govern themselves; [and] 3. the definitive claim of independence for Puerto Rico.  

The Union Party won the most votes in the elections held in Puerto Rico between 1904 and 1924. In 1904, a Union candidate was elected resident commissioner; party members took over forty-four of sixty-seven municipal governments; and they won twenty-five of thirty-five seats in the local house of representatives. Republicans took control of the other twenty-three municipalities and won ten legislative seats. In 1906, the Union
Party candidate also was elected resident commissioner, and the party took control of fifty-two of sixty-seven municipalities and won all thirty-five legislative seats. The results were almost exactly the same in 1908 and 1910, except that in 1910 the Unionists took control of only fifty-one of the municipalities.47

On February 8, 1912, a group of frustrated members of the Union Party, among whom was Rosendo Matienzo-Cintrón, formed the Partido de la Independencia (Party of Independence).48 However, this was more a political message directed at the Union Party rather than a serious pro-independence party. Muñoz-Rivera wrote that he could not join the new party because

between my desideratum [desire], which is independence, and my modus operandi, which is autonomy, [the defectors’] spirit of analysis finds serious contradictions. These contradictions appear to be real, but they do not exist. Independence is a purely abstract ideal. It cannot be realized. It will never be realized. [Acknowledging that he eventually might support independence, he explained that] it will be when no possibility remains that we shall be given that which belongs to us. And this will also be the last protest, as useless as our political labor; but undoubtedly more noble and beautiful.

. . . For Puerto Rico, I wish to be American; I shall be anti-American when I am convinced that America is irrevocably unjust and oppressive.49

This is a good summary of Puerto Rican independence politics. Many of the liberal politicians want it; some simply hope for it; and many believe that it is an impossible dream. Political leaders live as autonomists, and when the United States fails to act on their status, they die as independentistas. Nevertheless, the more serious political work on behalf of independence was being conducted by De Diego and others in the Union Party, especially in the discussion of the so-called fifth basis. Rosendo Matienzo-Cintrón, one person who wanted to live as an independence leader—and in fact did—died in 1913.50

In the 1912 elections, the Union Party won in fifty-four municipalities. It also obtained the resident commissioner slot and twenty-eight of thirty-five legislative seats. The Republicans took over the remaining thirteen municipalities and seven legislative appointments. The Partido de la
Independencia received a mere seventy of the 149,645 votes cast and was quickly forgotten. But in 1914 things started to improve for the pro-statehood Republicans. They won in twenty-four municipalities and were elected to sixteen of the legislative slots, compared with the Union Party’s nineteen.\(^{51}\)

Another early pro-statehood party was the Partido Socialista Obrero de Puerto Rico (Socialist Workers Party of Puerto Rico), led by Santiago Iglesias-Pantín. This party was formed to participate in the elections of June 16, 1917 (a special election ordered to implement the newly enacted Jones Act).\(^{52}\) The socialistas were left of center (by U.S. standards), anti-capitalist, and pro organized labor. Although its platform expressly advocated the “social democracy of labor” as a “status” solution, in practice, Iglesias-Pantín allied himself with the American Federation of Labor, favored the Americanization project, and generally supported the statehood cause.\(^{53}\) In addition to bringing political variety to the pro-statehood movement, the Socialists’ success in the elections of 1917 and 1920 became the catalyst for a series of seemingly strange multiparty alliances that affected the elections in Puerto Rico between 1924 and 1948.

The Jones Act established a bicameral local legislature and continued the post of resident commissioner as Puerto Rico’s nonvoting representative to the U.S. Congress. Judges and executive officials at the highest levels were still appointed by the U.S. president. In the 1917 elections, 175,006 of 244,530 registered voters went to the polls, with the Unionists receiving 90,155 votes, the Republicans 60,319, and the Socialists 24,468. The Union Party elected the resident commissioner, thirteen senators, and twenty-four representatives; the Republicans five senators and fourteen representatives; and the Socialists one senator and one representative. The Union Party won in fifty-two municipalities, the Republicans in eighteen, and the Socialists in six. In the 1920 elections, 249,431 of 268,643 registered voters went to the polls, and the Union Party received 126,446 votes, the Republicans 63,845, and the Socialists 59,140. Union candidates won the position of resident commissioner as well as that of fifteen senators and twenty-six representatives. The Republicans elected three senators and nine representatives, and the Socialists, one senator and four representatives. Union candidates won in forty-nine municipalities, Republicans in sixteen, and Socialists in eight.\(^{54}\) Although the number of elected officials indicates that the Unionists were the strongest party, some of its leaders noted that their winning margins were razor thin in certain districts and that if added to those received by Republican
candidates, the overall number of votes for the Socialists would have almost matched the Unionist total. This alarmed the Unionists.

Following the deaths of Luis Muñoz-Rivera in 1916 and José de Diego in 1918 and the arrival of the new U.S. governor in 1921, the Union Party abruptly declared its support for some type of autonomy as a permanent status alternative. On February 11, 1922, the party, now led by Antonio R. Barceló, announced that it had “opt[ed] for a new orientation,” which established local self-government under U.S. sovereignty and with U.S. citizenship for Puerto Ricans. The final status solution should be a “State that is Free and Associated with the United States.” This appears to be the first published reference to the concept of estado libre asociado, the label given to the current status in the Puerto Rican constitution of 1952. The Union Party then supported an unsuccessful bill presented by Congressman Phillip Campbell to implement the “state that is free and associated with the United States.”

Why did the Union Party shift away from independence? In 1921 President Warren G. Harding appointed Emmett Montgomery Reily the governor of Puerto Rico. In his inaugural speech, Reily bluntly stated that there was no place in Puerto Rico for an independence movement. Indeed, such a movement was not acceptable to the United States, and the only flag that would be allowed to fly in Puerto Rico was that of the United States. After his speech, he dismissed pro-independence politicians from their government jobs, a move that affected mainly the Union Party. In a letter to the party’s head, Barceló, in which he rejected his nominees for government posts, Reily demanded that Barceló “sever [his] connection with the independence party and become a loyal Porto Rican American [sic], or we cannot have any friendly political relations.” The Unionists finally voted to send a commission to Washington to complain about the governor’s conduct. Indeed, the Reily era was so unpleasant that Puerto Ricans nicknamed him “Moncho Reyes [Monty the Superking].” Reily left his post in April 1923.

It seems clear that the party’s “new orientation” was a response to Reily’s anti-independence campaign, not a real abandonment of the independence cause. Nevertheless, after the “new orientation” statement was issued, some Unionists who favored independence, led by Cayetano Coll-Cuchi, left the Union Party to create the Partido Nacionalista Puertorriqueño (Puerto Rican Nationalist Party). The young lawyer Pedro Albizu-Campos was not part of this group. The future nationalist leader, who never abandoned his pro-independence views, joined the Union
Party in the early 1920s and did not join the Nationalist Party until late in 1924.65

The Republican Party’s leader José Celso Barbosa died in 1921.66 While traveling by ship from the United States to Puerto Rico in 1924, Barceló began talking with the new Republican leader, José Tous-Soto, seeking a political alliance between their two parties.67 The two agreed that the Union and Republican Parties would unite68 and participate in the elections of 1924 as the Alianza (Alliance).69 Although the Alliance supported “self-government to reach sovereignty for the people of Puerto Rico within the sovereignty of the United States,”70 the Republican hierarchy and voters were split between supporters and opponents. Roughly half the party’s leaders and voters abandoned the Republican Party and tried to form a new party called the Partido Republicano Puro (Pure Republican Party). But the election laws did not allow them to use that name, so they called it the Partido Constitucional Histórico (Historic Constitutional Party). The Constitutional Party then joined the Socialists to form the Coalición (Coalition). In addition, a relatively small group broke away from the Union Party, also in response to the Alianza, to form the Partido Federal (Federal Party). The pro-independence Partido Nacionalista (Nationalist Party) had already been created in 1922 by defectors from the Union Party.71

Because the election laws did not allow multiparty groups to participate in the elections, the parties making up the Alianza and the Coalición had to participate separately in the 1924 election. In all, 253,520 of the 326,093 registered voters voted, with the Union party receiving 132,755 votes, the Republican Party 30,286, the Socialist Party 56,103, and the Constitutional Party 34,576. The Alliance, with a total of 163,041 votes, elected the resident commissioner, seventeen senators, thirty-six representatives, and seventy-one municipal governments. The Coalition, with 90,679 votes, elected two senators, three representatives, and five municipal governments. Although the Nationalist and Federal Parties participated in the elections, they won very few votes.72

In its platform for the 1928 elections, the Socialist Party extolled the United States’ “civilizing” influence on Puerto Rico. It also called for the immediate extension to Puerto Rico of the U.S. income tax law, as well as those laws intended “to promote agriculture, industry, education, welfare, and health.”73 For this election, the Republicans and Unionists created a new group named the Alianza Puertorriqueña (Puerto Rican Alliance). After some legislative maneuvering designed to thwart the old
Coalition, its members formed the Socialist-Historical Party for this election, in which 256,335 of 321,113 registered voters went to the polls, 132,826 supported the Alliance, and 123,415 voted for the Socialist-Historical Party. The Alliance elected the resident commissioner, eleven senators, twenty-one representatives, and forty-seven municipal governments. The Coalition elected eight senators, eighteen representatives, and thirty municipal governments. The Nationalist and other parties again failed to receive much support at the polls.74

The 1930s were a difficult decade for Puerto Rico. Two hurricanes, known on the island as San Felipe (1928) and San Ciprián (1932), were devastating, killing hundreds and displacing thousands of people. The U.S.-imposed quotas on sugar production limited the island’s largest cash product, and the Great Depression destroyed the weak local economy.75 Most local politicians of every stripe were frustrated with the continued colonial status of the island and Washington’s nonresponsiveness.76

The Alianza and Coalición broke apart before the 1932 elections. Most of the former Unionists withdrew to form the Partido Liberal (Liberal Party), once again under the leadership of Antonio R. Barceló.77 Some autonomists who had left the Union Party when it created the Alianza rejoined the newly renamed party. The Liberal Party proclaimed that it favored “the immediate recognition of the sovereignty of Puerto Rico . . . thereby establishing the absolute Independence of Puerto Rico in the fraternity of nations.” The Liberal platform also called the “defense of the Spanish language” one of “the most vital problems” facing Puerto Rico.78 The former Republicans remaining in the Alianza joined the Constitutional Historical Party (also known as the Pure Republicans) to form the Partido Unión Republicana (Republican Union Party), under the leadership of Rafael Martínez-Nadal and, among others, Miguel Ángel García-Méndez. The party officially sought a locally elected self-government for Puerto Rico while “the definitive status of the island [was] resolved.”79 As permanent status solutions, the party “aspired” to either statehood or “full internal and external sovereignty [for Puerto Rico] in harmony and fraternity with the United States.” The Socialists refused to list a specific status option in their platform but termed the current form of government in Puerto Rico “colonial” and demanded a locally elected self-government. They repeated their statement, however, that the U.S. influence in Puerto Rico had been “civilizing.”80 The Republican Union and Socialist Parties formed a new coalition for the 1932 elections, in which the Nationalist Party also participated.81
The 1932 elections were the first in Puerto Rico in which women who could read and write were allowed to vote. On November 8, 1932, 452,738 persons were registered to vote, and 383,722 went to the polls. The election was a big victory for the coalition of Republican Unionists and Socialists. Although the Liberal Party got the largest number of votes, 170,168, the 110,794 votes for the Republican Union were added to the 97,438 votes for the Socialist Party, thus putting them over the top. The Socialist leader Santiago Iglesias-Pantín was elected as resident commissioner. The Republican-Socialist coalition elected fourteen senators, thirty representatives, and fifty-one mayors, compared with the Liberal Party’s five senators (including Luis Muñoz-Marín), eight representatives, and twenty-six mayors. Although the Nationalist Party itself received only 5,257 votes, its president and senatorial candidate, Pedro Albizu-Campos, won 11,882, making the Liberal Party the principal voice for independence at the ballot box.82

Following its defeat in 1932, the Nationalist Party’s rhetoric became more and more radicalized. Then in 1935, four Nacionalistas and one police officer died in a confrontation following a political meeting in Río Piedras. In revenge, on February 23, 1936, two Nacionalistas assassinated the police chief, Francis Riggs, and the two killers themselves were murdered while in police custody. Senator Millard Tydings, a personal friend of Riggs and chairman of the U.S. Senate committee responsible for the territories, submitted a bill granting independence to Puerto Rico. The Republican Union leader Martínez-Nadal and the Socialist leader Iglesias-Pantín both opposed the bill. The Liberal leader Antonio R. Barceló supported it, but the Liberal Party senator Luis Muñoz-Marín (the son of Luis Muñoz-Rivera) opposed it, concerned about the economic transition. In his memoirs, Muñoz explained that he supported independence but opposed Tydings because “I also favor marriage, but this bill is a prostitute.” The Tydings bill continued (he kept refiling it after each rejection) to fail to pass.84

Muñoz-Marín, and other leaders in the Liberal Party supported a new retraimiento electoral (electoral boycott) of the 1936 elections. But the party president, Antonio R. Barceló, did not agree, and by just one vote, the party delegates decided to participate in the elections. Nevertheless, Muñoz-Marín and the other dissenters decided not to campaign on behalf of the party in those elections and to seek changes in the Liberal Party’s organization. In August 1936, the Liberal Party met officially to support Barceló and censure the dissidents. On September 16, 1936, the
El Mundo newspaper reported that Muñoz-Marín and others had registered a political organization, Acción Social Independentista (Social Action for Independence). The organizers described its goals as “to defend, by the fastest, most effective and safest methods, exhausting all lawful actions, the independence of Puerto Rico and social and economic justice for the Puerto Ricans.”

Only 549,500 of 764,602 registered voters participated in the November 1936 elections. The Liberal Party again received the most votes of any single party, with 252,467, but it lost by 44,566 votes to the coalition of the Republican Union (152,739 votes) and the Socialist Party (144,249 votes). The coalition elected Santiago Iglesias-Pantín as resident commissioner once again, as well as fourteen senators, twenty-seven representatives, and fifty-eight mayors and city councils. The Liberals elected five senators, twelve representatives, and nineteen mayors and city councils. The other parties on the island did not officially participate in this election.

In 1937, Antonio R. Barceló expelled Muñoz-Marín and his followers from the Liberal Party, signaling the beginning of the party’s demise. Muñoz then founded the Partido Popular Democrático (Popular Democratic Party, PDP), which was registered on July 22, 1938. This political machine dominated politics in Puerto Rico from 1944 to 1967. Muñoz-Marín was an extremely complicated and obviously charismatic figure. His political movement came to be known as muñocismo, and his supporters as muñocistas. Even after its surprising defeat in the 1968 elections and Muñoz’s death in 1980, the Partido Popular remains the architect of and standard-bearer for the commonwealth cause to this day.

Antonio R. Barceló died in 1938, and Santiago Iglesias-Pantín, in 1939. The new leader of the Liberal Party changed its status goal from independence or autonomy to U.S. statehood, hastening the exodus from it to Muñoz’s Popular Democratic Party. Puerto Rico’s speaker of the house, Miguel Ángel García-Méndez, left the Republican Union Party to create the Partido Unión Progresista (Progressive Union Party). Prudencio Rivera-Martínez was expelled from the Socialist Party and formed the Partido Laborista Puro (Pure Labor Party). The newly oriented Liberals and the newly created Pure Labor and Progressive Union groups formed the pro-statehood Unificación Puertorriqueña Tripartita (Tripartite Puerto Rican Union) to participate in the 1940 elections. But the Republican Union and the Socialist Parties remain strong and continued their coalition.
The Popular Democratic Party went to the polls for the first time in November 1940. In its platform for this election, the *populares* announced their mantra, that the “final political status of Puerto Rico [was] not in controversy in these [general] elections.” The party argued that divisions over status only hurt Puerto Ricans, because the United States had made no commitments to act in any way regarding the results of these elections. Accordingly, the party “declared” that it would “not interpret those votes cast in favor of the [PDP] as votes in favor of any political status [option].” It stated that it was up to the people of Puerto Rico to decide the permanent status of the island separate from individual candidacies or political parties. Nevertheless, in a wonderful example of political double-talk, the platform listed the acceptable status options:

Puerto Rico is one of the free peoples of the Americas, and it would not be dignified if it did not aspire to be one of the free peoples of the hemisphere, and it would be senseless and without vision of its own future if it refused to be one of the free confederated peoples of the Americas.

It is conceived that there are two ways for Puerto Rico to be one of the free peoples of the Americas: becoming part of the free people of the United States as a state or constituting itself as one of the free peoples of the Americas and entering into the confederation that will be the inevitable reality of the future.

Scholars, politicians, and Puerto Ricans in general have since been trying to figure out what this means.

The PDP received the most votes, 214,857, of any party in the 1940 election, but it was narrowly defeated by the coalition of the Republican Union, with 134,582, and the Socialists, with 87,841, a total of 222,423 votes. The coalition thus elected the resident commissioner, nine senators, eighteen representatives, and thirty-seven municipal governments. The *populares* elected ten senators, eighteen representatives, and twenty-nine mayors, and the Tripartite Unification received 130,299 votes and elected three representatives and eleven municipal governments. However, with the support of the U.S.-appointed governor, Rexford Guy Tugwell, and by alternating alliances with some members of the tripartite group and some of the coalition, the *populares* became the predominant party in the local legislature.

Before the 1944 election, the presidents of the major political parties signed a joint request for political reforms leading to greater self-govern-
ment for Puerto Rico.96 But status politics still divided them. The Socialist leader, Bolívar Pagán, formally endorsed statehood as his party’s status choice.97 The PDP was the strongest and best-organized party. Its platform of August 1944 repeated that the “status [was] not in controversy” and reiterated its “pledge” not to interpret the votes that it received to favor any one status option. However, it offered to ask for a separate vote for status as soon as the post–World War II “world peace [was] structured.”98 A new coalition was then formed to oppose the PDP. The Pure Labor Party members rejoined the Socialist Party, and Republicans formerly belonging to the Tripartite Unification rejoined the Republican Union, which was renamed the Unión Republicana-Progresista (Republican-Progressive Union). The remaining members of the Tripartite Union were Liberals, while the Liberal Party itself was led by Josefina Barceló de Romero, the first woman to lead one of the major parties on the island. The Liberals, Socialists, and Republican-Progressives formed the anti-PDP coalition for the 1944 elections, but they lost. The populares received 383,280 of the 719,159 votes cast and elected the resident commissioner, Jesús T. Piñero, seventeen senators, thirty-seven representatives, and seventy-eight municipal governments. The coalition elected two senators, two representatives, and four municipal governments. The Republican-Progressive Union received 101,779 votes, the Socialist Party 68,107, and the Liberal Party 38,630.99 The muníocistas were now firmly in power.

The second of Puerto Rico’s modern political parties, the Partido Independentista Puertorriqueño (Puerto Rican Independence Party, PIP), was officially founded on October 20, 1946, under the leadership of Gilberto Concepción-de Gracia. The principal goal of its first platform was “to labor for the immediate recognition of the full sovereignty of the people of Puerto Rico, so that the People of Puerto Rico constitute themselves into a free, independent and democratic Republic.”100

Initially, relations between populares and independentistas were quite cordial. Muñoz-Marín sent a message of support to the Congreso Pro-Independencia (Pro-Independence Congress), the political convention that led to the creation of the party, which had been held in 1943. Prominent leaders of the PDP actively participated in the congresos of 1943 and 1944 as well. But by 1945 Muñoz had decided that membership in the PDP was incompatible with participation in the Pro-Independence Congress. In his political memoirs, Muñoz explained that he was aware that many PDP members were well-meaning independence supporters but that he believed that such open support violated the PDP’s official mantra,
“status is not in controversy,” and its “pledge” not to interpret the votes it received as supporting any status option.\textsuperscript{101} Probably not uncoincidentally, during this period Muñoz and his followers started considering a form of “associated state” status relationship with the United States.\textsuperscript{102} The PIP and the PDP prepared to go to the polls in November 1948. The Progressive-Republican Union party changed its name to Partido Estadista (Statehood Party). The Socialist Party was still being led by Bolívar Pagán. What remained of the old Liberal Party renamed itself the Partido Reformista Puertorriqueño (Puerto Rican Reformist Party). On July 4, 1948, Luis Muñoz-Marín delivered his famous speech opposing both independence and statehood as status alternatives for Puerto Rico. By publicly stating what status options he did not support, Muñoz laid the groundwork for the \textit{estado libre asociado} as the status choice of the PDP. In the elections, the PDP won by an overwhelming margin: 640,714 (73.39\%) of the 837,085 registered voters went to the polls, and 392,386 of them voted for the PDP. The Statehood Party received 89,441 votes, the PIP 65,351, the Socialist Party 64,396, and the Reformists 29,140. Luis Muñoz-Marín became the first governor elected by the people of Puerto Rico, and PDP member Antonio Fernós-Isern was elected resident commissioner. Seventeen senators, thirty-eight representatives, and all but one mayor belonged to the PDP. The Statehood Party elected the remaining one senator and one representative.\textsuperscript{103} The next general elections in Puerto Rico were held under the regime of the \textit{estado libre asociado}.

\textbf{The Estado Libre Asociado and the Politics of the Status Quo}

A special vote before the 1952 elections ratified the new Puerto Rican constitution and led to the establishment of the \textit{estado libre asociado} as Puerto Rico’s new form of government. But the constitution ratification produced a split within the PDP. Soon after being fired, Attorney General Vicente Géigel-Polanco\textsuperscript{104} condemned the new constitution and accused Governor Muñoz-Marín of lying to the people about its meaning and significance. Essentially, Géigel correctly pointed out that the new law did not change the power of the U.S. Congress to pass legislation regarding Puerto Rico. Further, he noted, Muñoz-Marín admitted as much when he testified before Congress, but he said something else during the campaign to persuade Puerto Ricans to ratify the constitution.\textsuperscript{105}
During this same period, Muñoz-Marín reportedly stated that he now opposed independence and that the only acceptable status alternatives for the island were the \textit{estado libre asociado}, or statehood. He apparently described his pro-independence stance as a “youthful indiscretion.”\textsuperscript{106} Nevertheless, although the PDP did not attract many pro-statehood voters, it had always included many politicians who favored independence. Muñoz himself acknowledged this in his memoirs, in which he observed that most of the participants in the 1943 Pro-independence Congress were members of the PDP and that thirty-three of fifty-five PDP legislators and forty-five of its seventy-five mayors had supported the third Tydings pro-independence bill proposed in 1945.\textsuperscript{107} In this context, the PDP’s official position regarding the ratification of the new constitution was carefully articulated by José Trías-Monge, who later became the attorney general and was appointed chief justice of the Supreme Court of Puerto Rico. In a published statement, he explained that Law 600 and the new constitution, “through the principle of voluntary association, establishes a more perfect union between Puerto Rico and the United States, but without closing the way to a federation [statehood] or to eventual separation [independence], if the People of Puerto Rico should so decide.” Trías added that the laws would “help to strengthen, with larger possibilities for creative development, the relationship between the United States and Puerto Rico.”\textsuperscript{108} Hence, most observers concluded that the PDP presented the constitution and law 600 as creating an improved but transitional form of self-government. The transition might lead to statehood, independence, or a “developed” \textit{estado libre asociado}.\textsuperscript{109}

The voting process for law 600 and the Puerto Rican constitution was thus marked by controversy and low voter turnout. On June 4, 1951, law 600 was “accepted” by Puerto Rican voters in a referendum. Of the 781,914 registered voters, only 506,185 (64.74\%) went to the polls, and 387,016 (76.5\% of those voting) approved law 600’s invitation to develop a new type of government for Puerto Rico, compared with 119,169 voting against it. On August 27, 1951, voters again went to the polls to select the representatives to the constitutional convention. Again, the turnout was rather low; only 428,731 voters went to the polls, with 351,946 (82.1\%) voting for the PDP, 50,720 (11.8\%) for the Statehood Party, and 22,505 (5.2\%) for the Socialist Party. The PIP and other independence parties boycotted these elections, principally because of the political repression following the nationalist revolt in October 1950. The Puerto Rican constitution was finally approved by the voters on March 3, 1952. But only
457,572 people voted, compared with the 664,947 who voted in the general elections in November 1952. Nevertheless, the constitution received an overwhelming number of the votes cast, with 374,649 (81.9%) voting to approve it and 82,923 (18.1%) voting against it.\textsuperscript{110}

In June 1952, Miguel Ángel García-Méndez became president of the Statehood Party, and Luis Antonio Ferré, its vice-president. Of the 883,219 registered voters, 664,947 (75.29%) went to the polls, and 441,409 of them voted for the PDP. Interestingly, the Puerto Rican Independence Party received the second-largest number of votes, 126,228; the Statehood Party, 85,591; and the Socialist Party (which dissolved after this election), 21,719. Muñoz-Marín was reelected governor and Fernós-Isern was reelected resident commissioner. The PDP won all the municipalities and all the senatorial and representative seats elected by the districts. Indeed, the party claimed so many of the senators and representatives elected in the cumulative island-wide vote that the constitutional provision forbidding any one party from controlling more than two-thirds of the legislature had to be applied. This provision requires that the additional seats be given to minority parties in proportion to their share of the popular vote. These seats are known as “por adición” (by addition). Accordingly, five senatorial and thirteen representative seats were awarded to the PIP and the Statehood Party, the opposition parties with the most votes, so that twenty-five senators and forty-seven representatives were PDP members. The PIP had three senators elected and two added, and two representatives elected and eight added. For the Statehood Party, one senator was elected and three were added, and two representatives were elected and five were added.\textsuperscript{111}

For the 1956 elections, the Statehood Party changed its name to the Partido Estadista Republicano (Republican Statehood Party) and favored Puerto Rico’s becoming the fifty-first state of the union. The PIP remained under the leadership of Gilberto Concepción-de Gracia. In the November 1956 elections, 696,574 (79.71%) of 873,842 registered voters went to polls. The PDP candidate for governor received 433,010 of the votes cast, the Republican Statehood Party 172,838, and the PIP 86,386. Therefore, Muñoz-Marín and Fernós-Isern were reelected as governor and resident commissioner, respectively. Twenty-three senators, forty-seven representatives, and all the mayors were PDP members. The Statehood Party elected two senators and had four added, and elected three representatives and had eight added. The PIP elected two senators and had one added, and it also elected one representative and had five added.\textsuperscript{112}
In 1959, Resident Commissioner Fernós-Isern and Senator James Murray jointly proposed the so-called Proyecto Fernós-Murray (Fernós-Murray bill) to “clarify” the relationship between Puerto Rico and the United States and to make certain changes in it by amending law 600. Fernós explained that the stated purpose of HR-5926 was to clarify the “extent of the governmental powers that belong respectively to the Federal Government and to the Estado Libre Asociado, and to eliminate confusing, inadequate and obsolete language in [law 600].” The bill failed to pass.

The PDP continued its dominance in the 1960 elections, and the Republican Statehood Party was the main opposition group. Two new independence groups appeared shortly before the election: the Federación de Universitarios Pro Independencia (FUPI, Federation of University Persons for Independence) and the Movimiento Pro Independencia (Pro-Independence Movement, known by its initials in Spanish as MPI). The latter group was founded on November 22, 1959, by a dissident group within the PIP, led by Juan Mari-Bras. The MPI complained about the police-state tactics that targeted the independence movement and called for a boycott of the elections. The MPI instead focused on reopening Puerto Rico’s case at the United Nations and rejoiced in December 1960 when the General Assembly adopted U.N. Resolution 1514, the “Declaration for the Independence of Colonial Peoples and Countries.” This produced great concern among U.S. and Puerto Rican officials, especially when Cuban President Fidel Castro used Puerto Rico as an example of U.S. imperialism in the Americas.

In the November 1960 election, 789,487 (83.90%) of 941,034 registered voters went to the polls, and 457,880 voted for the PDP. Muñoz-Marín was reelected governor, and Fernós-Isern was again resident commissioner. The PDP elected twenty-three senators, forty-seven representatives, and seventy-five of seventy-six mayors. The Republican Statehood Party got 252,364 votes and elected three senators, three representatives, and the mayor of San Lorenzo. The statehood supporters also gained five senators and thirteen representatives by addition. The PIP received only 24,103 votes and did not win a single elective office.

Another party participated in the 1960 elections. The Partido Acción Cristiana (Christian Action Party)—organized by conservative Catholic groups at the behest of the church hierarchy—elected one senator and one representative. The Catholic bishops encouraged the party because they were angry that the PDP had kept religion out of the public schools and
supported a birth control campaign. Warning that the PDP’s “lay” or secular agenda might lead to communism, the bishops even threatened to excommunicate Catholics who voted for the PDP. Nevertheless, the Christian Action Party received only 52,096 votes. Also, because of the discovery of electoral fraud in the party’s official registration, the two representatives elected in 1960 were later removed from office. Finally, Muñoz-Marín made efforts to improve his relationship with the church by appealing directly to the Vatican and meeting with the pope. Afterward, James McManus and James P. Davis, the two U.S.-born bishops who had supported the Christian Action Party, were transferred.

Muñoz-Marín decided to retire from the governorship and nominated Roberto Sánchez-Vilella to be the PDP’s candidate for that office in 1964. Muñoz-Marín and the former resident commissioner, Antonio Fernós-Isern, ran as at-large candidates for the Puerto Rican senate. The Republican Statehood Party fielded candidates; the PIP carried the independence banner; and the MPI and other independence groups continued to boycott the election. Of the 1,002,000 registered voters, 820,975 actually voted. The PDP received 487,280 votes for governor, the Statehood Party 284,627, the PIP 22,201, and the Christian Action Party 26,867. Sánchez-Vilella was elected governor, and Muñoz and Fernós were elected senator. The PDP also elected the resident commissioner, twenty-five senators, fifty-four representatives, and all seventy-six mayors. The Republican Statehood Party elected four senators and gained five by addition, elected four representatives and gained thirteen by addition. The PIP and the PAC did not elect a single candidate.

In the 1960s, Puerto Rico’s colonial status was again discussed on the island and also internationally, especially at the United Nations. In addition to the elections, this discourse produced a complex series of events that culminated in the 1967 status plebiscite.

In 1962, Muñoz-Marín officially asked President John F. Kennedy to appoint a commission to study the political status of Puerto Rico, and Kennedy supported the idea in a letter that was made available in time to be read by Vice-President Lyndon Johnson at the July 25, 1962, celebration of Puerto Rico’s commonwealth status. Congress passed the necessary law in 1963, and the Puerto Rican legislature passed enabling legislation that same year. In proposing the commission, the Puerto Rican legislature described the purpose of this process as “the determination of the final political status of Puerto Rico in such a manner that no doubt may remain about the non-colonial nature of such status.” It also called
on the U.S. Congress to “express the form which it is willing to agree that Commonwealth status may take in consonance with the principles contained [in the resolution],” so that this preaccepted formula could be submitted to the Puerto Rican voters in the plebiscite.125 From the U.S. congressional perspective, the commission would study and report on “the present and future relationship between the United States and Puerto Rico.”126 As members of the commission, Miguel Ángel García-Méndez and Luis A. Ferré represented the statehood option, and Gilberto Concepción-de Gracia, that of independence.127 However, Concepción withdrew because the independence option was not fairly treated in its proceedings, and García-Méndez did not attend the final meetings of the commission and did not sign on to its recommendations. At the final meeting on July 25, 1966, Ferré did sign the report, as did the other members.

The commission recommended a series of ad hoc advisory groups to be appointed jointly at the initiative of the president of the United States and the governor of Puerto Rico. These groups, the commission concluded, should be part of the implementation “in the immediate future of a method that makes it possible to consider proposals [1] for the improvement or development of the Estado Libre Asociado, or [2] the change towards Statehood or [3] Independence.”128 The commission recommended a “plebiscite” in which the Puerto Rican voters could choose which of these three alternatives they thought should be implemented by the ad hoc groups.129 Even the choice of the term plebiscite was controversial to the extent that it might imply some form of binding choice. Legally speaking, any vote by the Puerto Rican voters on the status question is merely advisory for the government of Puerto Rico and, at best, a request of the government of the United States. Therefore, though officially labeled plebiscites, most experts refer to these votes as “consultations” of the Puerto Rican electorate.

Nevertheless, in December 1966, a bill was hurriedly introduced and pushed by the PDP majority in the local legislature. García-Méndez led his party in a mostly successful legislative walkout and refused to participate in this process. Undaunted, the PDP majority passed the law anyway and scheduled the plebiscite for July 1967.130

The PIP, the MPI, and other independence groups called for a boycott of the plebiscite, joined by dissenters within the PDP. They split into essentially two camps. A very small group of PDP members, led by Jesús Hernández-Sánchez, favored eventual statehood for Puerto
Rico and objected to the plebiscite. A larger group of PDP members, known as *vanguardistas* (vanguardists), was accused by the PDP hierarchy of desiring independence; but they claimed that they would boycott the plebiscite because it presented the voters with the existing, not-yet-culminated commonwealth status, rather than the more sovereign version that they desired. The Partido Estadista Republicano, led by Miguel Ángel García-Méndez, officially planned to boycott the plebiscite. But Luis Antonio Ferré and others challenged the decision, arguing that the statehood cause must be represented in the plebiscite. Ferré formed a pro-statehood association, the Estadistas Unidos (United Statehooders), and campaigned for the statehood alternative in the plebiscite. Although the Statehooders lost to the “*estado libre asociado*” of the *populares*, their strong showing prompted Ferré to form the last of Puerto Rico’s principal modern political parties, the Partido Nuevo Progresista (New Progressive Party, NPP). This party became the dominant pro-statehood party in Puerto Rico from that moment until the present day.

The plebiscite law described the *estado libre asociado* alternative as follows:

A vote in favor of the *Estado Libre Asociado* will mean:

1. The reaffirmation of the *Estado Libre Asociado* established by common accord under the terms of Law 600 of 1950 and Joint Resolution 447 of 1952 of the United States Congress as an autonomous community permanently associated with the United States of America.
2. The inviolability of the common citizenship as a primary basis of the permanent union between Puerto Rico and the United States.
3. The authorization to develop the *Estado Libre Asociado* in accord with its fundamental principles to the maximum of self-government compatible with the common defense, the common market, the common currency, and the unbreakable link of United States citizenship.
4. That no change in the relationship between the United States and Puerto Rico will have [an] effect unless it previously receives the acceptance of a majority of [Puerto Rican?] voters participating in a referendum called for that purpose.

The use of the word *permanent* to refer to commonwealth status, with its necessary implication that this would be a final status solution, marked a major change in the PDP’s political doctrine. The party had now completely abandoned the idea that the commonwealth was transitional, in favor of the notion that free association was the permanent status of
Puerto Rico, subject only to improvement and clarification of its legal significance.

Statehood and independence were described as follows:

A vote in favor of statehood will mean:
1. The authorization to request of the Congress of the United States of America the admission of Puerto Rico to the American union as a federated state.

A vote in favor of independence will mean:
1. The authorization to obtain [recabar] from the Congress the independence of Puerto Rico from the United States of America.133

Ignoring calls to require a “supermajority” vote for the winning status option, the PDP legislators provided that a majority of the votes cast in favor of any one status alternative would constitute a “mandate” to the resident commissioner, “to act . . . in accordance with the will of the people [of Puerto Rico] expressed by virtue of this vote.”134

The plebiscite was held on July 23, 1967. Of 1,067,349 registered voters, only 707,293 went to the polls. Both the participation rate of 66.27 percent and the abstention rate of 33.73 percent (360,056 registered persons did not vote) are surprising. The turnout was one of the lowest of any election in Puerto Rico in the twentieth century, and the lowest in any general or status election held since Puerto Ricans were first allowed to vote for governor in 1948. Of the votes cast, 425,132 (60.41%) were for the estado libre asociado, 274,312 (38.98%) were for statehood, and just 4,248 (0.6%) were for independence.135

Before the 1968 elections, there was a bitter ideological and political split, particularly over university reform, between the PDP governor, Sánchez-Vilella, and the PDP senate president, Luis Negrón-López. The matter was further complicated by Sánchez’s interracial, extramarital relationship with the daughter of a prominent PDP leader. In the middle of his term, Sánchez-Vilella divorced his wife and announced his political retirement, which he then retracted. Three internal candidates sought the PDP nomination for governor: Sánchez, Resident Commissioner Santiago Polanco-Abreu, and Senator Negrón-López. In the end, Muñoz-Marín, joined by the rest of the party hierarchy, withdrew his support of Sánchez, and Negrón-López became the PDP candidate for governor. Sánchez, accompanied by a few PDP defectors, then joined the recently created Partido del Pueblo (People’s Party) to run as its gubernatorial candidate in
1968. Luis Ferré was the NPP’s first candidate for governor. One important collateral result of the split in the PDP was that the party delayed the appointment of an ad hoc commission to implement the development of the *estado libre asociado* called for by the plebiscite law. The party did not trust Sánchez to do this and expected its candidate to win the elections in 1968. This was the biggest in a long series of PDP political blunders during this period.

In November 1968, of the 1,176,895 registered voters, 922,822 went to the polls. The New Progressive Party received 390,932 votes; the PDP, 367,901; the Peoples Party, 87,832; the PIP, 24,729; and the old Statehood Republican Party, only 4,057. Luis A. Ferré thus became the surprising winner of the governorship, and the NPP candidate Jorge L. Córdoval-Díaz became resident commissioner. But the senate belonged to the *populares*, who held a fifteen-to-twelve majority over the NPP in that chamber. The NPP controlled the house of representatives, twenty-six to twenty-five over the PDP. The NPP also elected twenty-seven mayors, and the PDP, forty-nine. The PDP’s dominance had come to an end, and *muñocismo* had begun its decline.

The 1967 plebiscite and 1968 election essentially established Puerto Rico’s modern political lines and the status portion of the parties’ platforms. The PIP still favored independence, and the NPP still favored statehood. The PDP still alternated between “the status is not in controversy” and proposals regarding the “culminated,” or new-and-improved, commonwealth. But as the closeness of election results in every election between 1972 and 2000 indicates, the Puerto Rican electorate is as closely divided between the two major parties—the PDP and the NPP—today as it was in November 1968. The PIP has consistently remained a distant, but active, third party.

In its platform for the 1968 election, the NPP indicated that its preferred status option was federal statehood, adding that “the rich culture that Spain gave us will always be source of pride for us” and that “our [Spanish] language” should be preserved. When specifically discussing education, the party stated that “teaching in the public schools will be basically in Spanish, which is the mother tongue of Puerto Ricans. The teaching of English will be intensified . . . so that all Puerto Ricans can [speak] it to perfection.” But the NPP maintained that culture should not be static and that bilingualism would be good for the island. In 1970, Governor Ferré stated that Puerto Rico would “enter into [statehood] with all its characteristics as a Hispanic people.” In response to the polit-
ical debate generated by this statement, NPP party member Reece Bothwell wrote a series of articles under the heading “La Estadidad Jíbara.” Jíbaro is the Spanish term for Puerto Rico’s rural mountain people, and the word is often used to identify something uniquely Puerto Rican. Hence, he was referring to a uniquely Puerto Rican form of statehood, particularly as characterized by the preservation of its Latina/o culture and Spanish language.\textsuperscript{139}

In its current bylaws, approved on August 26, 2001, the NPP states that Puerto Rico is hurt by the current “colonial system” and reiterates that it regards statehood within the United States as the “only guarantee for the permanent union between Puerto Rico and the United States of America; in equality of political rights and in equality of economic opportunities for the Puerto Ricans as American citizens.” The party’s Statement of Purposes adds that it “aspires to a bilingual society” by improving the English skills of islanders. The NPP declares it holds as a “fundamental value the harmonious coexistence of the culture and language of the Puerto Ricans with the language and cultural diversity of our coci-
izens from other states.”\textsuperscript{140}

Because the PDP and the PIP do not regard bilingualism as politically important, they are more strongly committed to the “preservation” of Puerto Rican culture and the Spanish language than is the NPP. The PDP does not officially consider Puerto Rico’s current status to be “colonial,” although it continues to seek its “improvement.” Naturally, the Independence Party disagrees and seeks to end Puerto Rico’s colonial status through independence.\textsuperscript{141}

Just before the 1972 elections, Puerto Rico found itself in the midst of economic and political crises. The relatively positive economic conditions and growth of the early years of its commonwealth status abruptly ended with the economic downturn of the early 1970s. The Ferré administration clashed with the PDP-dominated senate, and it was also mired in political protests by pro-independence university students and faculty, especially those at the University of Puerto Rico’s flagship campus in Río Piedras.

The NPP nominated Ferré for reelection in 1972; the PDP nominated the young senator and former attorney general Rafael Hernández-Colón; and the PIP was now led by former law professor Rubén Berriós-Martínez. In November 1972, 1,308,950 of 1,555,504 registered voters voted, giving the PDP 609,670 votes, the NPP 524,039, the PIP 52,070, and the People’s Party 2,910. The People’s Party disbanded soon after the
elections. Hernández-Colón was elected governor, and the PDP candidate became the resident commissioner. The PDP gained control of the legislature with twenty senators and thirty-seven representatives, and it also elected seventy-three of seventy-eight mayors. The NPP elected six senators and gained two by addition and elected fourteen and gained one additional representative. The PIP elected Berrios as senator and got two representatives by addition.142

The Hernández-Colón administration did not fare any better under the island’s poor economic conditions than the Ferré administration had. Furthermore, it angered voters with strong economic austerity measures, such as increasing taxes and freezing the salaries of government workers. During the elections, the parties’ political strategies changed: the PDP announced that the “status was in controversy,” and the NPP candidate, Carlos Romero-Barceló, campaigned for “regime change.” Romero was trying to take advantage of voters’ anger, whereas Hernández-Colón was trying to capitalize on new status discussions with Congress. Juan Marí-Beras then founded the Partido Socialista Puertorriqueño (Puerto Rican Socialist Party, PSP), uniting the remaining elements of the MPI with defectors from the PIP, principally Carlos Gallisá. The PIP is still led by Rubén Berrios-Martínez.143

The 1976 elections established the NPP as the current alternative to the PDP. Although the PDP’s electoral strength was already well established, the NPP’s victory in 1968 was at least partly attributable to the divisions within the PDP. In November 1976, more than 86 percent of the registered voters—1,464,600 of 1,701,127—voted, 703,968 of them for Romero-Barceló. The PDP received 660,301 votes, the PIP 83,037, and the Socialist Party 10,728. The NPP elected the resident commissioner, Baltasar Corrada-del Río, fourteen senators, thirty-three representatives, and forty mayors. The PDP elected thirteen senators, eighteen representatives, and thirty-eight mayors. One of the NPP senators was former Governor Luis A. Ferré who, following the example set by Muñoz-Marín, spent two terms in the senate after his governorship.144

Romero’s governorship started well. President Gerald Ford publicly supported statehood for Puerto Rico just before leaving office, and Romero considered holding a status plebiscite, which he deferred until after his expected reelection in 1980. Accordingly, one of his campaign promises was to hold a status plebiscite vote in 1981. But the 1980 elections proved to be the most complex and controversial since the start of the century and perhaps since the elecciones pulidas of 1872. A new elec-
tion law caused havoc with registration, and it was later determined that more than 236,000 persons were incorrectly or improperly added to the rolls of eligible voters. The official certified vote count gave Romero 759,926 votes to 756,889 for PDP candidate Hernández-Colón, 87,272 for PIP candidate Rubén Berríos, and 5,224 for Socialist candidate Lausell. Corrada-del Río won the resident commissioner position for the NPP as well. But the PDP took control of the legislature, with fifteen senators and twenty-six representatives, compared with twelve senators and twenty-five representatives for the NPP. The PDP also took control of the cities, electing fifty mayors to the NPP’s twenty-eight. Neither the PIP nor the PSP elected any candidates.

The PDP’s majority in the legislature made it impossible for Romero to carry out his pledge to hold a plebiscite vote in 1981. However, more important for the Romero administration, the PDP used its control of the senate to conduct public hearings about the murder of two pro-independence supporters by police officers at the Cerro Maravilla on July 25, 1978. In dramatic testimony, given under grant of immunity and televised live on national television, a police officer, Miguel Cartagena, confessed that police officers had lured the young men to the site and killed them with shotguns while they begged for their lives. The official wall of silence that had surrounded the killings thus came crashing down. Financial and administrative corruption scandals further darkened Romero’s political future.

Romero-Barceló’s political problems led some members of his party to suggest privately that he should not seek reelection. In a tense and dramatic convention in Ponce, Romero engineered his nomination by “acclamation” rather than submitting to an internal primary process. In accepting his “nomination,” he had harsh words for his putative internal opponent, Hernán Padilla. Padilla and some of his followers then left the NPP to form the Partido de la Renovación (Renewal Party). The stage was thus set for a rematch between Hernández-Colón and Romero-Barceló in the 1984 elections.

The split between Romero-Barceló and Hernán Padilla mirrored that of the 1968 election, in which a PDP splinter group led by Roberto Sánchez-Vilella defected to the Partido del Pueblo, with similar results. On November 6, 1984, 89.17 percent of registered voters—1,741,905 of 1,953,496—voted. Hernández-Colón won 822,703 votes and became governor for the second time. Romero took 768,754, Padilla 69,865, and the PIP candidate, Fernando Martín, 61,316. The PDP elected the resident commissioner, eighteen senators, thirty-four representatives, and
fifty-nine mayors. The NPP elected eight senators, sixteen representatives, and nineteen mayors. Rubén Berrios was elected to the senate with 216,306 votes, and David Noriega-Rodríguez was elected representative, starting the PIP’s pattern of electing one senator and one representative, who received many more votes than did the party’s candidate for governor. Noriega was also the plaintiff in the landmark subversive files opinion issued by Puerto Rico’s supreme court in 1988.149

In the 1988 elections, the NPP nominated San Juan’s mayor, Baltasar Corrada-del Río, for governor. The PDP renominated Hernández-Colón, and the PIP nominated Rubén Berrios-Martínez. On November 8, 1988, 83.45 percent of registered voters—1,791,447 of 2,146,681—went to the polls, reelecting Hernández-Colón with 871,643 (48.65%) to Corrada del Río’s 820,619 (45.80%) and Berrios-Martínez’s 99,185 (5.53%). The PDP elected the resident commissioner, eighteen senators, thirty-six representatives, and fifty-nine mayors. The NPP elected eight senators, fourteen representatives, and nineteen mayors. The NPP also gained one representative by addition. The PIP elected one senator and one representative and gained another representative by addition.150

Using his party’s overwhelming control of the legislature, Hernández-Colón proposed a referendum to “claim democratic rights,” to be held in 1991. “This claim constitute[d] a demand to the government of Puerto Rico for these rights to be included [guaranteed] in the constitution of the estado libre asociado of Puerto Rico and a petition to the president of the United States and Congress for these rights to be respected when acting over our political status.” The so-called democratic rights were described as follows:

The inalienable right to determine [Puerto Rico’s] political status freely and democratically.
The right to choose a status with full political dignity without colonial or territorial subordination to the plenary powers of the U.S. Congress.
The right to vote for the three status alternatives—Estado Libre Asociado, statehood, and independence—based on the sovereignty of the people of Puerto Rico.
The right to require that the winning alternative in any status consulta-
tion receive more than half the votes cast.
The right that any status consultation guarantee, under any alternative, [Puerto Rico’s] culture, language, and self-identity, including interna-
tional sports representation.
The right that any status consultation guarantee, under any alternative, U.S. citizenship safeguarded by the Constitution of the United States of America.\textsuperscript{151}

These “democratic rights” are in fact the aspirations of the leadership of the Popular Democratic Party for an enhanced commonwealth. In his book \textit{La Nueva Tesis} (\textit{The New Thesis}), Hernández-Colón himself described similar prerogatives as essential to his vision of an enhanced commonwealth.\textsuperscript{152} More recently, he indicated that the unilateral imposition of federal law in Puerto Rico was the “\textit{gran falla}” (great failure) of the \textit{estado libre asociado} as currently constituted.\textsuperscript{153}

Only 1,246,663 voters went to the polls on December 8, 1991, compared with the 1,791,447 who had voted for governor in the November 1988 general election that gave Hernández-Colón his third term in office. Of those voting, the majority (660,264, 53.0\%) voted against the governor, and 559,159 (44.9\%) voted for the “yes” alternative.\textsuperscript{154} These results are generally viewed as unfavorable to the \textit{estado libre asociado} and were a political victory for the NPP. But because voters were not given the choice of an affirmative status option, the results cannot be read as clear support for statehood.

Governor Hernández-Colón did not seek reelection in the 1992 election, and Victoria Muñoz-Mendoza, daughter of PDP patriarch Luis Muñoz-Marín, was selected to be its candidate for governor. She had opposed Hernández-Colon’s 1991 referendum, causing some resentment within the PDP, and lost to Pedro Rosselló, who received 938,969 (49.9\%) of the votes cast, to Muñoz’s 862,989 (45.9\%). These results severely damaged the aura of \textit{muñocismo}’s invincibility. Of the 2,235,625 eligible voters, 85.5 percent, or 1,910,561, actually voted. The PIP candidate received 79,219 (4.2\%) of the votes cast. The NPP elected the resident commissioner, former governor Carlos Romero-Barceló, in a surprising political comeback. The NPP candidates won twenty senatorial and thirty-six representative seats, as well as fifty-four mayoralties. The PDP elected six senators and got two by addition and elected fourteen representatives and got two by addition. PDP mayors were elected in twenty-four municipalities. The PIP elected one senator and one representative.\textsuperscript{155}

After his decisive victory in the general elections, Governor Rosselló presented the status question to the voters on two occasions. The first was his call for a new status “plebiscite” to be held in 1993. Each
party’s legislative delegation was responsible for drafting its own meaning of each status option. I use the term *definition* when referring to the descriptions of the status options submitted to the voters, because these statements are often labeled *definitions* by their drafters and in Puerto Rican political discourse more generally. Nonetheless, these descriptions are statements of political views and purposes and should be read as such. They define political positions, rather than actual status options, which are ultimately limited by law and by the power of the U.S. Congress, as discussed in chapter 2.

In the 1993 status plebiscite,

A vote for statehood is a mandate to claim the entry of Puerto Rico as a state of the Union.

**Statehood:**

Is a noncolonial status with full political dignity.

Will allow [Puerto Ricans] to have the same rights, benefits, and responsibilities that the citizens of the fifty states have.

Offers a guarantee of permanent union and an opportunity for economic and political progress.

Offers a permanent guarantee of all the rights granted by the Constitution of the United States of America, including the preservation of [Puerto Rican] culture.

Offers a permanent guarantee of U.S. citizenship, [Puerto Rico’s] two languages, anthems, and flags.

Means full participation in all federal programs.

Offers the right to vote for the president of the United States and to elect no fewer than six Puerto Rican representatives and two senators to the [U.S.] Congress.

In exercising their rights as U.S. citizens, [Puerto Ricans] would negotiate the terms of such admission, which would be submitted to the people of Puerto Rico for their ratification.156

The references to the dual culture and cultural preservation, specifically as they relate to language, have always been controversial to the U.S. Congress. The matter was expressly addressed by the House of Representatives in the plebiscite bill drafted by Alaska Congressman Don Young during the 105th Congress in 1997. The bill included the statement that “it is the policy of the Congress that English shall be the com-
mon language of mutual understanding in the United States,” but the preceding statement was what was submitted to the voters in Puerto Rico. The “definition of the Estado Libre Asociado” provided that

A vote for the Estado Libre Asociado would be a mandate in favor of:

- Guaranteeing progress and security for [Puerto Ricans] and their children within the status, with full political dignity, based on a permanent union between Puerto Rico and the United States, established in a bilateral compact that cannot be altered without mutual consent.

The Estado Libre Asociado guarantees:

- Irrevocable American citizenship.
- A common market, common currency, and common defense with the United States.
- Fiscal autonomy for Puerto Rico.
- A Puerto Rican Olympic Committee and its own international sports representation.
- Full development of the [Puerto Rican] cultural identity: with the Estado Libre Asociado they are Puerto Ricans first.

[Puerto Rico] will develop the Estado Libre Asociado through specific proposals to the Congress. The first proposal would be to

- Reform section 936 [of the U.S. Internal Revenue Code], securing the creation of more and better jobs.
- Extend Supplemental Social Security (SSI) coverage to Puerto Rico.
- Obtain allocations of the [food stamp program] that are equal to those of the states.
- Protect other products of [Puerto Rican] agriculture in addition to coffee.
- All additional changes will be submitted for the approval of the people of Puerto Rico.¹⁵⁸

Not surprisingly, the idea of a so-called mutually binding bilateral compact has not been incorporated into the current commonwealth status. Therefore, this description is yet again an aspiration to the enhanced commonwealth. The strong support of certain elements of puer-torriqueñidad is typical of the PDP and an important factor in its electoral success, even among some supporters of independence who have crossed party lines to oppose statehood and cultural assimilation.¹⁵⁹
The references to specific federal programs also relate to political bread-and-butter discussions in Puerto Rico.

The “definition of independence” reads as follows:

Independence is the right of [the Puerto Rican] people to rule themselves in their own land; it is the enjoyment of all the powers and attributes of sovereignty.

In the exercise of this inalienable and irrevocable right, Puerto Rico will be ruled by a constitution that establishes a democratic government, protects human rights, and affirms its nationality and language. Independence will give to the people of Puerto Rico the powers needed to achieve greater development and prosperity, including the power to protect and stimulate their industry, agriculture, and commerce; to control immigration and negotiate international accords that expand markets to and promote investment from other countries.

A Treaty of Friendship and Cooperation with the United States and a process of transition to independence in accord with the legislation previously approved by the House and the pertinent committees of the federal Senate will provide for the following: the continuation of acquired Social Security, veterans’, and other benefits; Puerto Rican and U.S. citizenship for those who wish to keep it; the right to use our own currency or the dollar; free access to the U.S. market; tax incentives for North American investment; federal contributions at current levels for at least ten years; and the eventual demilitarization of the country.160

The independence movement has always maintained that the colonial power cannot simply abandon Puerto Rico. After exploiting it for a century, the colonial power has undertaken certain obligations to an orderly and economically viable transition. These views are expressed in the description of the independence alternative. The statement, of course, reiterates the PIP’s consistent commitment to a constitutional democracy for an independent republic.

All three definitions are ideals, and none has yet been adopted. Furthermore, the U.S. Congress has the ultimate authority to implement any one of them or none at all. Therefore, at best, Puerto Ricans go to the polls to express their support for a particular request to the U.S. Congress.

On November 14, 1993, Puerto Ricans went to the polls to vote on the three status alternatives. Of 2,312,912 registered voters, only 1,700,990
(73.5%) cast votes. Commonwealth received 826,326 (48.6%), state-
hood 788,296 (46.3), and independence 75,620 (4.2%) of the votes
cast. The result was a victory for the PDP but was met with little en-
thusiasm in Washington.

In 1994, Rosselló again suffered an electoral setback when two
amendments to the Puerto Rican constitution that he favored—one to
eliminate the right to pretrial bail and the other to increase the number of
justices on the supreme court—failed to pass. Nevertheless, on November 5, 1996, Rosselló won reelection with
1,006,331 (51.1%) of the votes cast. The PDP candidate got 875,852
(44.5%) and the PIP candidate 75,305 (3.8%) of the votes cast. Resident
Commissioner Romero-Barceló also was reelected. The NPP elected nine-
teen senators, thirty-seven representatives, and fifty-four mayors. The
PDP elected seven senators and received one by addition; it also elected
thirteen representatives and received three by addition. Only twenty-four
of the seventy-eight mayors were PDP members. The PIP elected one sen-
ator and one representative. By Puerto Rican election standards, this
was a landslide victory. Rosselló instituted a wide-ranging privatization
of previously publicly run services, such as water, telephone, and health.
From a U.S. perspective, this process was socially and politically right of
center, even though Rosselló labels himself as a Democrat in the U.S. po-
litical process. Even after the privatization was completed over Rosselló’s
two terms, it left a trail of controversy, complaints about poor service,
and successful federal and local prosecutions for corruption.

The NPP-controlled legislature forwarded the results of the 1993
plebiscite to Congress in 1994, but it was not until Rosselló’s second term
that Congress took action. The resulting legislative proposal, HR 856,
was approved by the House in March 1998. But the Senate failed to act
on it, thus effectively ending the congressional response to the results of
the 1993 plebiscite. Governor Rosselló once again proposed a plebiscite,
this time using his party’s legislative majority to limit the status defini-
tions of the commonwealth and independence camps. This process began
with the stated purpose of the plebiscite:

Petition to the Government of the United States. We, the People, hereby
and in the exercise of our right under the first amendment to the Con-
stitution of the United States, firmly request of the Congress of the
United States, that with all deliberate speed and after one hundred years
of political subordination, it define in a conclusive manner the political
condition of the People of Puerto Rico and the extent of sovereignty of the United States of America, in order to resolve the current territorial problem of the island, under the following option.

This statement of purpose was followed by four status definitions and a “fifth column” labeled “none of the above.” The four defined alternatives largely, albeit selectively, tracked the findings and provisions of the Young House Plebiscite Bill (HR 856 of the 105th Congress), especially those in section 4 of the House bill.

The alternatives defined statehood as entry into the union as a state and then described the legal effects of statehood, such as Senate and congressional representation and U.S. citizenship rights. Interestingly, the definition also stated: “The provisions of federal law regarding the use of the English language in the agencies and courts of the federal government in the fifty states of the Union will apply equally in the State of Puerto Rico, as occurs now.” Independence also was simply defined as the condition of being an independent, sovereign republic. The definition provided for treaty negotiations of transitional matters, such as military bases, vested federal benefits, and economic transition. It also claimed that

having been born in Puerto Rico or having parents with statutory American citizenship by virtue of birth in the prior territory, will no longer be a basis for American citizenship; except that those persons that had American citizenship will have the statutory right to keep that citizenship for life, by right or choice, as provided by the laws of the federal Congress.

This was similar to the language in section 4, paragraph B(4), of the House bill.

In addition to statehood and independence, the NPP legislators included two forms of “commonwealth” status on the ballot. The definitions supposedly described the legal meaning of the *estado libre asociado* in its current form and predicted the legal effects of a requirement for both independence and an “enhanced commonwealth.” “Territorial” commonwealth, as the current Puerto Rico status is described, allows the U.S. Congress “to treat Puerto Rico differently than the states, as long as a rational basis exists.” The description of noncolonial “free association,” a type of enhanced commonwealth, indicated that it could be
achieved only by treaty. The inclusion of the two definitions of commonwealth was controversial. Cleverly, the minority legislators, unable to fully control their own status options, proposed a fifth alternative: “none of the above.” Because of two previous decisions by Puerto Rico’s supreme court regarding the 1993 plebiscite, the legislative majority correctly felt compelled to include “none of the above” as an alternative in order to save the constitutionality of the plebiscite law.

The PDP campaigned for “none of the above.” The PIP, which had called for the vote to be postponed because of a destructive hurricane that had recently hit the island, nonetheless officially campaigned for the independence alternative, though without much enthusiasm. December 13, 1998, was election day. Only 71.3 percent of the eligible voters participated in the plebiscite, and “none of the above” prevailed, with 787,900 (50.3%) of the votes cast. Statehood received 728,157 votes (46.5%), independence 39,838 (2.5%), “free association” 4,536 (0.3%), and “territorial free associated state” 993 (0.1%). Clearly, the “none of the above” campaign by the PDP was the winning alternative. Nevertheless,

Rosselló, . . . sought to portray the outcome of the vote as an overwhelming mandate to petition the U.S. Congress for statehood.

This subjective interpretation of the results is based upon the argument that “none of the above” was not a valid status option or petition; therefore, according to this peculiar reasoning, statehood, with 94.1% of the 773,524 votes cast for the four status petitions on the ballot, should have been certified as the winning option—despite the fact that the votes obtained by the four petitions account for a minority of 49.4% of the vote total. Moreover, the plebiscite enabling law—written by the New Progressive majority in the Puerto Rican Legislature—clearly defines “none of the above” as a valid alternative, and in fact, the Commonwealth of Puerto Rico State Elections Commission duly certified it as the winner of the December 13, 1998 status plebiscite.

Therefore, the result was again a victory for the PDP and for the commonwealth as the status quo. But much like Hernández-Colón’s 1991 referendum, this plebiscite vote failed to favor any particular prospective status option for the island.

After the plebiscite debacle and the many financial corruption scandals involving members of his administration, Rosselló did not seek reelection in the 2000 elections. Instead, the NPP nominated Carlos I. Pesquera.
In November, 2,022,276 (82.6%) of 2,447,032 eligible voters went to the polls. Sila María Calderón, the PDP candidate for governor, became the first female governor, with 978,860 (48.6%) of the votes cast; the PDP’s candidate for resident commissioner won as well. Pesquera received 919,194 (45.7%), and the PIP candidate, Rubén Berríos, received 104,705 (5.2%) of the votes cast. The PDP elected nineteen senators, thirty representatives, and forty-five mayors. The NPP elected seven senators and got one by addition, and it also elected twenty representatives and thirty-three mayors. The PIP elected one senator and one representative.

At the start of the twenty-first century, Puerto Ricans have an active and sophisticated political life. Interestingly, the same three status movements that were first identified at the start of the nineteenth century remain the predominant political alternatives today. Voter participation in Puerto Rico’s elections over the past two decades has ranged from the mid- to the high-80 percent of eligible voters voting. But sadly, Puerto Ricans still have only the right to petition the United States through this local political process. The United States has consistently limited Puerto Ricans to the current status quo through the legal and political processes just described and through the repression process described next.

**Political Violence, Repression, and Erasure: The Social Construction of Los Subversivos**

No study of Puerto Rican political culture would be complete without addressing the issue of politically motivated violence and governmental repression. From the start of the U.S. colony, Puerto Ricans were viewed as overwhelmingly poor, uneducated people who might nonetheless be “saved” by Americanization, the project to educate Puerto Ricans with an essentialized vision of what it means to be “American.” The Americanization project included persecuting those perceived to favor Puerto Rican independence, and the rejection of American culture meant reconstructing the Puerto Ricans as ungrateful and possibly even dangerous. The policy emphasis then changed from one of cultural indoctrination to one of political control and, sometimes, repression.

From the time of the Ponce Massacre in 1937 to the murder of Santiago Mari-Pesquera and the murders on the Cerro Maravilla and their official cover-up, there has been a history of political violence directed at pro-independence forces in Puerto Rico. The application of the Little
Smith Act and the “subversive files” are the best examples of the anti-independence repression in Puerto Rico.

The history of intelligence gathering on Puerto Rico’s dissenters is long. During World War I, the U.S. War Department created the Military Intelligence Division (MID), divided into two divisions. The first, called the “Positive Branch . . . collected information on military, political, economic, and social condition; and [the second] the Negative Branch . . . investigated and suppressed sabotage and espionage.” In Puerto Rico, MID shifted its focus from alien enemies to political dissenters, and the “intelligence officer for the district simply took over the insular police force of eight hundred men.”

In the early twentieth century, the United States viewed Puerto Rico’s cultural assertiveness as resistance that had to be stopped. In the process, independence was constructed as an unacceptable alternative to the United States and a disaster for Puerto Rico. Arturo Morales-Carrión, for example, noted that the Roosevelt administration approved the filing of the first Tydings bill, imposing a draconian form of independence on Puerto Rico, but not as an initiative of the administration. The U.S. officials’ expectation was that the island’s dire economic situation would scare Puerto Ricans away from independence. The bill was filed at the same time as the second trial—and conviction—of Pedro Albizu-Campos, with a carefully chosen jury. In July 1936, a federal district court convicted Albizu of seditious conduct and sentenced him to ten years in prison. But to the surprise of the U.S. officials, even pro-statehood leaders announced that they would rather starve and might vote for independence. Their announcement reflects the frustration of Puerto Ricans across political boundaries with the island’s colonial status. In this atmosphere, Albizu had become a real threat to the United States.

Violence was also an essential part of this process. For example, on Palm Sunday, March 31, 1937, the pro-independence Puerto Rican Nationalist Party marched through the streets of Ponce. The mayor had initially granted a permit for the march but had tried to rescind it at the last minute after Governor Blanton Winship “ordered the chief of police, Colonel Orbeta, to tell the mayor” to do so. After a shot of “undetermined origin,” the police fired into the crowd, killing nineteen people, including two policemen. “A later inquiry by the American Civil Liberties Union “concluded that there had been a ‘gross violation of civil rights and incredible police brutality.’” The incident is known in Puerto Rico as the Masacre de Ponce (Ponce Massacre).
The nationalists engaged in violence of their own, for example, the assassination of police chief Francis Riggs in 1936. Most seriously, in October 1950, the nationalists staged an armed revolt. Their leader, Pedro Albizu-Campos, had returned to Puerto Rico in 1947 after serving his ten-year sentence in federal prison in the United States “proper.” In late 1950, Puerto Rico was in the midst of discussions over how to react to law 600’s invitation to develop a new form of local government that was still subordinated to the territorial clause. Following the arrest of two nationalists on October 27 after an incident involving Albizu-Campos’s motorcade, events quickly spiraled into violence across the island.

On October 28, there was a mass escape from the island’s main penitentiary. While there has been speculation of a link between the escape from the Oso Blanco (White Bear), as the penitentiary was known, and the revolt, the historical record does not support that conclusion. The two events were simply coincidental.176 Instead, the nationalist revolt began in earnest on Monday, October 30, 1950, in Peñuelas, a town west of Ponce in southern Puerto Rico, with armed encounters reported in at least seven other cities. Around noon on that date, the Puerto Rican governor’s mansion in Old San Juan was attacked. But well-armed police were waiting for the nationalists and killed four of the five attackers. Throughout the revolt, Albizu was at his home, surrounded by police officers. He was arrested on November 2, the date by which the Puerto Rican authorities had fully controlled the revolt.177 The revolt resulted in twenty-eight dead (seven police officers, one national guardsman, and sixteen nationalists) and forty-nine wounded (twenty-three police officers, six national guardsmen, nine nationalists, and eleven others).178 While the loss of life and injuries were not insignificant, the revolt left a far greater emotional and political toll.

The nationalists also staged two attacks in Washington, D.C., during the 1950s. Coinciding with the uprising in Puerto Rico, on November 1, 1950, nationalists “Griselio Torresola and Oscar Collazo, attempt to assassinate President Harry S. Truman at Blair House in Washington. Torresola is killed and his partner and three police officers are wounded. . . . On March 1, 1954 four . . . nationalists fire 30 shots from the U.S. House visitors’ gallery, wounding five congressmen.”179 Albizu-Campos, who had been serving his sentence of seven to fifteen years in jail as a result of his participation in the nationalist revolt, had been given a conditional pardon by Muñoz-Marín in 1953. This pardon was quickly revoked after the attack on the U.S. Congress.180 In March 1954, police and FBI agents
stormed the Nationalist Party headquarters and arrested Albizu and several other nationalists. Albizu spent most of his final years in prison until Muñoz-Marín again pardoned him on November 16, 1964, because the nationalist leader was severely ill. Don Pedro Albizu-Campos died on April 21, 1965, in San Juan.

Starting on November 2, 1950, in the aftermath of the failed revolt, thousands of Puerto Ricans were arrested—without even minimal due process—most of them pro-independence supporters who had had nothing to do with the uprising. The nationalist revolt gave the Muñoz-Marín administration the excuse to abuse the 1948 law 53, known in Puerto Rico as la ley de la mordaza (the gag law) or “the little Smith Act.” In events that led to the constitutional challenge of the statute, Enrique Ayoroa-Abreu was arrested on November 10, 1950, for allegedly violating the law. His crime consisted of attending public political meetings of the Nationalist Party and displaying a Puerto Rican flag in his apartment in Old San Juan. (Because of the criminalization of displaying the Puerto Rican flag, today Puerto Ricans are rather fond of showing the single-star flag, often hanging it on their car’s rearview mirror.)

In addition to widespread abuse of the ley de la mordaza, independence supporters have been the victims of political violence as well. For example, Santiago Mari-Pesquera, the young son of Puerto Rican Socialist Party leader Juan Mari-Bras, was murdered on March 24, 1976, by a person known to have been a paid FBI informant. Also, on July 25, 1978, at the Cerro Maravilla, a mountain in the central part of the island, Carlos Soto-Arrivi and Rubén Dario Rosado were murdered by the Puerto Rico police. As discussed in the previous section, one of the police officers who was there testified that the two were killed after being captured alive. Moreover, they had been lured there by an undercover police officer, who had kidnapped the driver of a carro público (a type of collective taxi) and forced him to transport the three men to the location. A few minutes after the ill-fated independentistas were killed by the police, a reportedly elated governor Carlos Romero-Barceló announced during a Commonwealth Day celebration that a “terrorist attack” on the Cerro Maravilla had been beaten back by police.

The administration of President James P. Carter, who is now known as a champion of civil and human rights, is alleged to have sold out those two lives and participated in the cover-up in exchange for primary votes. The basic allegation is that Carter, then embroiled in a tight contest for the Democratic presidential nomination with Edward Kennedy, wanted
Puerto Rico’s forty-one Democratic convention delegates. “In December 1979, it is known, Romero met with then President Jimmy Carter and Attorney General Benjamin Civiletti. Shortly thereafter, Romero, who had previously backed Republicans, endorsed Carter in his primary election race against Sen. Edward Kennedy.”

The real extent and nature of this anti-independence repression was made apparent by the so-called subversive files litigation, initiated by PIP representative David Noriega-Rodríguez. Persons were deemed to be “subversivos” (subversives) because they favored the independence of Puerto Rico. Puerto Rico’s police used these political views to open a file, a carpeta, to record information about legitimate political activities and expression. The files, and the process that produced them, reflected a well-organized campaign of political surveillance, harassment, and intimidation involving local police, federal law enforcement (mostly the FBI), federal intelligence (U.S. military intelligence agencies and the CIA), and particular political movements. Both the PDP and the NPP governments contributed to the carpeteo process, as did individual political militants, significantly including extreme elements of the Cuban exile community in Puerto Rico. Accordingly, the term subversivo—in its correct meaning—was thrust into the legal consciousness of all Puerto Ricans by the decision of Puerto Rico’s supreme court in Noriega-Rodríguez v. Hernández-Colón, in which it held that the practice of opening police files to investigate persons because of their political views was unconstitutional.

The Puerto Rican Supreme Court appointed a special master to take control of the files and instructed him to return them to their subjects. I had the opportunity to examine several carpetas and have copies of them in my personal files. The file on my father, Pedro Malavet-Vega, is sixty pages long; that of my godfather, José Enrique Ayoroa-Santaliz, is 543 pages long; and that of my fellow lawyer Mario Edmundo Vélez is 247 pages long.

The cover of my father’s carpeta is labeled Oficina de Inteligencia, Office of Intelligence. An “x” indicates that my father was active in a pro-independence movement, but “no,” he was not dangerous. The carpeta also states that his sources of income were beyond reproach. It includes a description of our home and says that my brother, sister and I attended the Colegio Ponceño de Varones, a private Catholic school. We were about seven, eight, and eleven years old, respectively, when the entry was
apparently made. When I first saw Velez’s carpeta, I was horrified to find what appeared to be a Polaroid picture of a target with bullet holes. The police had used an enlarged copy of his picture (which he believes was taken either from his driver’s license or his college student identification) for target practice at the police academy, and they kept a record of it in his file.

The widespread, but illegal, practice, of labeling independence supporters as “subversives” has produced a countermovement. In order to reclaim the term and to expose the illegal campaign that gave birth to it, independence supporters have adopted the subversive label. This is why I proudly call myself a subversivo and am happy that the Supreme Court of Puerto Rico required the disclosure of these files.

The Puerto Rico court’s approach differed substantially from that of the U.S. Supreme Court, which did not find anything wrong with this kind of political “data gathering” by the Subversive Activities Control Board. According to U.S. intelligence agencies, some of which are not authorized to conduct domestic investigations, were heavily involved in Puerto Rico. One example is the FBI’s COINTELPRO operation. In addition, documentary evidence indicates that the U.S. Secret Service, the State Department, the Central Intelligence Agency (which is not authorized to conduct “domestic” espionage), the Office of Naval Intelligence, and the Office of the Assistant Chief of Staff for Intelligence were active in Puerto Rico. The FBI, for example, dedicated most of its agents in Puerto Rico not to investigating bank robberies and other crimes but to follow independentistas and to attempt to sabotage the movement. In March 2000, “FBI Director Louis Freeh stunned a congressional budget hearing by conceding that his agency had violated the civil rights of many Puerto Ricans over the years and had engaged in ‘egregious illegal action, maybe criminal action.’”

The figure or, more accurately, the mythology of Dr. Pedro Albizu-Campos is central to the discussion of the nature of political violence and repression in Puerto Rico.

Pedro Albizu-Campos was born in Ponce, Puerto Rico, on September 12, 1891. He was black. He received his primary education in public schools in Puerto Rico. After receiving a scholarship from a Puerto Rican social organization, he went to the United States “proper” in 1912 to earn a university degree. He completed the 1912/13 academic year at the University of Vermont and was admitted to Harvard in the fall of 1913.
By all accounts a brilliant student, at Harvard he earned degrees in chemical engineering, humanities, philosophy, and military sciences. Albizu entered Harvard Law School in 1916, stopping during World War I to serve in the U.S. Army, first joining the Harvard Cadet Corps and later serving in a “colored” regiment of the U.S. Army that was based in Puerto Rico. He was honorably discharged in 1919, with the rank of first lieutenant. Albizu completed his classes at the law school in 1921. After returning to Puerto Rico, he joined the Union Party; it was not until 1924 that he joined the Nationalist Party and became its vice-president. He was elected president of the Nationalists in 1930.

It was as the leader of the Nationalist Party of Puerto Rico that Pedro Albizu-Campos left an enduring legacy as a political philosopher and articulate proponent of the independence cause. Before Albizu-Campos, the Nationalist Party had been little more than a club in which Unionists discussed the defense and promotion of Puerto Rico’s “Spanish” culture. Albizu, however, turned the organization into political base and platform, which he used to reveal the terrible conditions affecting most Puerto Ricans in his time, to describe the colonial status of the island, and to condemn the police-state tactics used by the U.S.-appointed governments and later by the PDP government. Albizu thus became a respected social and political critic. In that regard, he became the beloved conscience of Puerto Rican politics, a role similar to that played by the independence movement today. Albizu also was respected for the manner in which he endured his political persecution, trials, and incarceration at the hands of the Puerto Rican and U.S. governments. In the eyes of these observers, he never compromised his ideals, despite being the victim of outrageous governmental misconduct.

Albizu’s actions as a revolutionary made him a controversial and complicated figure. His unsuccessful attempts at revolution, particularly the nationalist revolt of 1950—although desperate, deadly, and tragic—were hopelessly quixotic, ill-conceived acts often carried out with amateurish clumsiness. Moreover, these acts were used to justify the wide-ranging crackdown that destroyed the independence movement as a political force at the ballot box. Finally, by declaring Albizu and the Nationalists to be the only pro-independence politician and party of his age and by constructing a misleading portrayal of both, the independence status option was portrayed as unsuccessful at the ballot box and dangerously violent.
Although the independence option is now undeniably weak at the ballot box, it had the strong support of the parties that won the most votes at the end of the nineteenth century and at the beginning of the twentieth: the Union Party and its predecessor, the Partido Autonomista-Liberal.

Independence necessarily had to be supported very carefully in any colonial regime. While their country was a Spanish colony, Puerto Ricans used the pro-autonomy party as their forum for legitimate political activity, and they succeeded at the ballot box. From 1904 to 1924, the Union Party was the dominant force in Puerto Rican politics, much of that time while openly favoring independence as its preferred status option. Even Albizu-Campos—who, unlike Muñoz-Marín, never compromised his pro-independence views—belonged to the Union Party. And the Union Party, later named the Liberal Party, was an extremely strong force at the ballot box—usually getting the most votes of any one party—during most of the era of alliances and coalitions that preceded the PDP era starting in 1948. Then, in the elections of 1948, 1952, and 1956, the new Puerto Rican Independence Party showed electoral strength and won even more votes than the Statehood Party did in 1952. Moreover, many members of Muñoz’s PDP favored independence as a permanent status option during the party’s first decades of existence.

Unfortunately, the historical strength of the independence movement at the polls and among mainstream political parties has often been purposely erased. The “official” narrative of the pro-independence movement deprives it of a legitimate historical basis and relegates it to the fringe of poor electoral results and violent sedition. The “natural” response to the violence—“terrorism” in today’s parlance—is vigilance by law enforcement and prosecutorial zeal. The independence movement has been the target of politically motivated, often illegal, repression and violence, perpetrated or promoted by the governments of the United States and Puerto Rico. This political repression, combined with fear and the denial of independence as a realistic status alternative by the United States, largely accounts for the movement’s current electoral weakness. Political debate in Puerto Rico is intentionally “chilled” when it turns to this alternative.

As a result of this campaign of repression and electoral failure, the pro-independence party is clearly the minority party in Puerto Rico today. But it serves an important function as a political check within the legislative body. It also performs important work through litigation, such
as that regarding the illegal anti-subversive activities discussed earlier. Finally, the party performs many symbolic, consciousness-raising functions. For example, it was PIP Senator Rubén Berrios-Martínez who occupied the peace camp in the Vieques training range for nearly a year. It also was his dedication that energized Puerto Ricans across political boundaries to launch a campaign of civil disobedience that led to the end of bombing without representation on that island.

Still, over the past forty years, the pro-commonwealth and pro-statehood parties have alternated in winning Puerto Rico’s elections and controlling the local government. Each party has won five of the ten terms for governor since Muñoz-Marín’s retirement from the governorship before the 1964 elections. Starting in 1984, by electing at least one senator and representative, the independence party has been able to pursue its fiscalization and consciousness-raising role at least partly from elected positions.

In conclusion, Puerto Rico has a sophisticated and complex local political process which is, however, is undermined by the manipulation of the United States, which has used legal and political, as well as illegal and violent, means to maintain the current status quo. Moreover, despite Puerto Ricans’ attempts to petition the U.S. government, Congress has allowed them to vote only in favor of the current so-called *estado libre asociado* during the one hundred years of the second colony. The only special status elections that have been jointly pursued by the U.S. Congress and the Puerto Ricans are those related to law 600 of 1950, which culminated with the “approval” of the Commonwealth Constitution, as amended by the U.S. Congress. To a lesser extent, the 1967 plebiscite, which also “approved” the *estado libre asociado*, was undertaken after the work on the jointly appointed status commission. But the stated purposes of the commission and the plebiscite articulated by the United States and Puerto Rico are so substantially different that this vote was merely yet another form of petition by the Puerto Ricans to the U.S. government to develop a final status option. Item 3 in the *estado libre asociado* option that was “approved” in that plebiscite specifically called for the “development of the *Estado Libre Asociado*,” but Puerto Rico’s status has not changed at all since 1952. In fact, despite Puerto Rico’s electoral process, because of congressional inaction the island’s constitutional status has not changed from that of an unincorporated territory since the start of the second colony.

In addition to preventing any development of the *estado libre asociado*, and perhaps paradoxically, the United States has constructed inde-
pendence as dangerous to its interests and to those of the Puerto Ricans and has refused to consider federal statehood. The reasons for the paradox of a U.S.-dominated island that cannot be independent and cannot become a state may be found in the “American” desire to possess the island, on the one hand, and its rejection of the Puerto Ricans and their culture, on the other.
When the *estadounidenses* landed on the shores of Guánica Bay on July 25, 1898, they were greeted by the cultural citizens of Puerto Rico, not simply the inhabitants of a distant Spanish outpost. This was reminiscent of the Spaniards being met by the Taino people when they arrived on the shores of Puerto Rico. However, unlike the Taino culture, which was destroyed by the Spanish, Puerto Rican culture has managed to survive the new “American” conquistador. In 1898, the Puerto Ricans politicked, studied, prayed, sang, and loved in Spanish. More than a century later, they still do, despite concerted and consistent efforts by the U.S. government to destroy this culture, most notably during the first few decades of occupation.

Even though Puerto Rico is not a sovereign nation, an identifiable Puerto Rican cultural national consciousness developed during the four hundred years of Spanish colonial rule.¹ Although the Taino had lived in Boriquén for centuries before the arrival of Columbus, they were nearly annihilated during the first few years of the Spanish conquest. Therefore, any remaining native influence is quite attenuated, and it was the process of conquest and colonization by the settlers who were brought to or allowed to settle on the island that produced the Puerto Rican people. The distinction between *criollas/os* (native-born Puerto Ricans) and *peninsulares* (Spaniards born in Spain) was made very early in the colony. Ultimately, the *puertorriqueñas/os* emerged as an identifiable people during the nineteenth century, before the U.S. invasion.²

What does it mean for people to “belong” to a cultural community—to what extent are individuals’ interests tied to, or their very sense of identity dependent upon, the particular culture? And do people have a legiti-
mate interest in ensuring the continuation of their own culture, even if other cultures are available in the political community—is there an interest in cultural membership which requires independent recognition in a theory of justice?3

In Puerto Rico, cultural citizenship “requires independent recognition in a theory of justice” because under contemporary communitarian theory, a cultural form of nationhood combined with an identifiable territory must be legally recognized in order to achieve true justice. Indeed, the existence of Puerto Rican cultural citizenship has resulted in the construction of Puerto Ricans as “others” relative to “real” “Americans,” that is, the people of the United States.4 To attain justice and full citizenship, this “othering” must differentiate and empower, not marginalize. To put it simply, the U.S. Congress must recognize the right of Puerto Ricans to self-determination by taking the initiative to change Puerto Rico’s status.

Negatively constructing a minority, like the Puerto Ricans, as a different (and lesser) “other” is a tool often used by the normative group to marginalize a different culture.5 For example, as discussed in chapter 2, the dominant U.S. legal and political culture has legally constructed Puerto Ricans as second-class citizens. But the Puerto Ricans have nonetheless developed their own political discourse and culture. That political activism, combined with their cultural self-identification and formation, clashes with the expectations of the United States. This is not the only possible outcome of the Puerto Ricans’ political and cultural existence. They can also use “othering” positively to empower themselves, provided that they then avoid creating an essentialized version of the group that sees “othering” as an end in itself6 rather than as a step on the way to a just society.7

The Meaning of Puerto Rico’s Cultural Narrative

Culture has many forms of expression, found in literature, history, economics, music, law, the arts, folklore, dance, religion, education, language, and politics,8 including “the institutions, prejudices, ideals, attitudes, tools, superstitions, truths, errors and operating projects within the community.”9 This chapter focuses specifically on popular culture, as opposed to “high culture” or “mass-media culture.” As Adam Kuper explained, “high culture”
is the gift of educated taste that marks off a lady or a gentleman from
the upstart. For those in the Marxist tradition, culture has its place in
the larger class war. High culture cloaks the extortions of the rich. Ersatz
mass culture confounds the poor. Only popular cultural traditions can
counter the corruption of the mass media.\textsuperscript{10}

I describe popular culture using a philosophically communitarian,\textsuperscript{11}
cultural studies view, meaning that
culture is a whole way of life (ideas, attitudes, languages, practices, insti-
tutions, structures of power) and a whole range of cultural practices:
artistic forms, texts, canons, architecture, mass-produced commodities,
and so on. Culture means the actual grounded terrain of practices, repre-
sentations, languages, and customs of any specific historical society. Cul-
ture, in other words, means not only “high culture,” what we usually
call art and literature, but also the everyday practices, representations,
and cultural productions of people and of postindustrial societies.\textsuperscript{12}

This cultural exploration might, however, raise legitimate concerns
over the dangers of nationalism descending into fascism, on the one hand,
and cultural imperialism, on the other. According to Ronald Beiner, “Ei-
ther fascism is a uniquely evil expression of an otherwise benign human
need for belonging; or there is a kind of latent fascism implicit in any im-
pulse towards group belonging.”\textsuperscript{13} LatCrit theory tries to find a balance
between identifying cultural flaws that require remediation and imposing
a cultural imperialism that seeks a homogenized normativity perpetuat-
ing the supremacies promoted by the colonial power.

LatCrit encourages the concept of cultural nationhood or citizenship
to differentiate the colonized peoples from their colonial oppressors be-
cause it can be used as a source of empowerment, consciousness, and
pride. Hence, “othering” can be used as a subversive force to empower
marginalized colonial peoples by identifying their shared identity.

By “shared identity” I mean to refer to an identity that bonds together,
partially and contingently, minorities and majorities, such that different
cultural and ethnic groups are seen, and see themselves, as networks of
communication where each group comes to understand its distinctiv-
ness as well as the fact that distinctiveness is to a large degree defined in
terms of its relationship with the Other.\textsuperscript{14}
I want to identify the positive cultural shared identity of the Puerto Rican people in order to subvert the culturally imperialistic narrative about them constructed in and by the United States. I do so as part of a process that, I hope, will end in political and legal understanding between the two peoples. In other words, if both sides respect each other, the cultural Puerto Ricans and the multicultural “Americans” can have a shared political and legal identity.¹⁵

For estadounidenses, the musical West Side Story is probably the dominant narrative of the Puerto Rican story. An untitled essay attributed to Mort Goode describes the song “America” as a “playful argument . . . between Anita ([played by] Chita Rivera) and two homesick Puerto Rican girls [played by unidentified actresses] over the relative merits of life back home and in Manhattan.” Although the lyrics might be described as “interesting,” the manner in which this song was performed is offensive, with affected language that reflects the worst stereotypes of Puerto Ricans. Moreover, West Side Story presents Puerto Rican men only as poor, uneducated gang members. Puerto Rican women are poor and violent as well, and they also are the objects of racialized desire.

The current Latin music craze has changed the dominant narrative of West Side Story on balance for the better. I use the label “Latin music craze” here to refer to the current popularity of Latina/o artists in the United States, as exemplified by musicians and performers like Carlos Santana, Ricky Martin, Enrique Iglesias, Christina Aguilera, Marc Anthony, and Jennifer López.¹⁶ Even so, neither West Side Story nor the Latin music craze represents Puerto Rican culture accurately.

Is it possible to promote and protect the Puerto Rican cultural identity without creating an essentialized narrow version of that culture that enforces just another version of dominance? Reconciling the essentialist critique and the nonessentialist desire to identify the Puerto Rican culture accurately as possible is the necessary first step. My goals are to produce a nonessentialist, unromanticized representation of Puerto Rican culture that can be contrasted with U.S. culture.

Because I am using narrative, some scholars might argue that my argument is “unscientific.”

[Critics claim that] narrative seeks to change perspectives of the dominant group through stories instead of reason. Thus the use of narrative is anti-reason. This argument is not persuasive. The storyteller’s reliance on something other than rational argument to change points of view is
consistent with scientific practice . . . [Thomas] Kuhn has argued that scientific revolutions occur when there is a paradigm shift. During a shift, scientists begin to look at the world in different ways. Such a paradigm shift is a conversion experience which Kuhn contends cannot be produced by rational argument or reason. Thus, the position of the advocates of narrative is at least as strong as actual scientific practice.  

Indeed, psychology has long recognized that narrative is the primary form by which human experience is made meaningful. Narrative meaning is a cognitive process that organizes human experiences into temporally meaningful episodes. Because it is a cognitive process, a mental operation, narrative meaning is not an “object” available to direct observation. However, the individual stories and histories that emerge in the creation of human narratives are available for direct observation.

The Puerto Rican people’s expressions of themselves—what I call a people’s popular cultural narratives—are a look into their lives, into their island’s cultural nationhood, and into the Puerto Rican citizenship self-construct.

In the debate about the treatment of people and cultures in legal and political philosophy, self-determination in mapping cultural nationhood and citizenship is crucial to the process of liberation and democratization. For example, the International Covenant on Civil and Political Rights provides that “ethnic, religious or linguistic minorities [have a right] to enjoy their own culture, to profess and practice their own religion, [and] to use their own language.” Differently located epistemological narratives are essential to the culture debates about citizenship and nationhood that are pertinent to this book.

More important, as I explained in chapter 1, I use the reality of Puerto Rican cultural nationhood as a vehicle to speak to the dominant U.S. society. Thus the narrative of Puerto Rican cultural nationhood serves as an antidote to the normative narrative promoted by the United States and serves to justify the right of the Puerto Ricans to determine their own political future.
Nationhood: Gringos, Puertorriqueños, and Niuyoricans

Puerto Rico is a group of islands bordered by the Atlantic Ocean and Caribbean Sea and has been a U.S. territory since 1898. Puerto Ricans are statutory U.S. citizens, a status that has produced substantial relocation by Puerto Ricans to the United States. Thus, there are at least two large Puerto Rican communities that interact with and are distinguished from the estadounidenses (citizens of the United States): that of the Puerto Ricans in Puerto Rico and that of the Puerto Ricans in the United States.

The Latin music craze of recent years reflects the existence of these two communities: singer Ricky Martin was born and raised in Puerto Rico, and singer Marc Anthony and actor and singer Jennifer López were born and raised in New York City. In the Latin music craze, all three artists play mostly for an Angla/o-estadounidense audience. In Puerto Rico, the terms used to distinguish these three groups of U.S. citizens are gringo (used to refer to a non-Latina/o citizen of the United States who is not Puerto Rican), niuyorican (also spelled nuyorican, which, although specifically referring to New York City, is also used to refer to persons of Puerto Rican descent born anywhere in the United States), and isleño (used to refer to Puerto Ricans from the island). Besides distinguishing themselves from “gringas/os,” puertorriqueñas/os also distinguish themselves from the niuyoricans. Puerto Ricans who are U.S. citizens but not cultural “Americans” are those the United States seeks to “other.” In response, Puerto Ricans have culturally embraced their distinction from the gringas/os and rejected the United States’ attempts to “Americanize” them.

One interesting example of the conflict among social constructions of culture is the competing definitions of the word gringo. One theory is that it comes from “green coats,” a reference to the uniforms worn by U.S. soldiers during the Mexican war. Another theory is that the term came from the song “Green Grows the Grass” that the U.S. soldiers invading Mexico in 1847 sang. Even though the origin of the term is not clear, it is clear that the word itself predates the Mexican–U.S. conflicts. As early as the eighteenth century, the word was reported in use in Spain as a bastardization of the word griego (Greek) and was used to refer to anyone speaking a foreign tongue or with a foreign accent.20 This usage is analogous to the American phrase “it’s Greek to me.”

Spanish dictionaries describe gringo as a simple adjective.21 In Spain in contemporary usage, it is used to refer to a foreigner, especially one who
speaks English. In Argentina, it is used to refer to white, blonde Europeans. Elsewhere in the Americas, it is used to refer to citizens of the United States. But English dictionaries uniformly define it as a word used “disparagingly” or as a “contemptuous” reference to English speakers generally and U.S. citizens in particular. To most Spanish-speaking Latinas/os, gringo is simply a term used to refer to U.S. citizens, because the United States is one of very few nations in the world that lacks a specific country name. Nonetheless, English speakers are uniformly told that they are being insulted rather than properly identified. Just as their empowering native language is negatively presented to English speakers, Puerto Ricans construct themselves positively and in turn are negatively constructed by the United States.

**Cultura Popular Puertorriqueña (Puerto Rican Popular Culture)**

Reflecting a social consciousness distinct from that of its two colonial rulers, Puerto Rican popular culture is both the product and the prisoner of five hundred years of history under Spanish and U.S. colonial rule. Before the first estadounidense came ashore in 1898, the puertorriqueñas/os were not culturally Spanish, and they are not now culturally “American.” Culturally, Puerto Rico was a Latin American country when the first U.S. troops came ashore in Guánica in 1898. Today, it is still a culturally Latin American country, populated by Latinas and Latinos, despite the great effort to “Americanize” the country during the early part of the U.S. colony.

The Spanish colony of 1493 to 1898 created the culture found in Puerto Rico today. But this is not the culture of the Taino natives who greeted Columbus; it is not the culture of the Africans, free and enslaved, who came or were brought to the island; and it is not the culture of the conquistadores, Spanish or estadounidense. Rather, it is a separate and distinct hybrid. The Spaniards effectively designed the blueprint for Puerto Ricans’ gender, cultural, religious, ethnic, and racial mix by destroying the natives, raping or entering into consensual relationships with the native women, bringing in settlers, allowing immigration, and importing African slaves. The Spanish then legally defined and organized their practically constructed local society.

Within this complex context, the Puerto Ricans started to construct a Puerto Rican selfhood, a separate and distinct history. As a result of that
process, the prevailing society in Puerto Rico is today Spanish speaking, largely Catholic, and racially diverse. Unfortunately, like many other societies, Puerto Rican culture is also heteropatriarchal, sexist, racist, homophobic, and elitist.

An empirical study of Puerto Rican “intolerance” found that the test subjects were openly willing to admit a strong dislike of homosexuals, the group most likely to suffer from discrimination. The same study also identified xenophobia and class discrimination among Puerto Ricans, although these often are codes for racism in Puerto Rican society. Nevertheless, Puerto Rican culture is different; it is “other”—used here in a positive sense—than the normative narrative about the Anglo U.S. culture and about the Puerto Ricans within it.

In order to create the distinction that is important here, I contrast Puerto Rican culture with the American culture reflected in, for example, *Balzac v. People of Porto Rico*, which assumed the existence of a common-law, Anglo-Saxon, and probably Protestant “American” culture. I do not compare the positive and negative aspects of each culture. And I do not intend in any way to declare some kind of “natural” “moral” victory or inherent superiority of Puerto Rican culture over the U.S. culture, beyond the Puerto Rican culture’s existence and ability to survive.

Starting with those imposed by the Spaniards, Puerto Rico’s laws and legal institutions are an important part of its culture, as both reflect a mixture of its two colonial rulers. Puerto Rico’s constitutional, criminal, administrative, and procedural law is based on that of the United States. But in its private law, especially those areas covered by the Civil Code, Puerto Rico bears an unmistakable Spanish influence. Despite the occasional clash of the two different legal cultures, Spanish civil law on the one hand, and Anglo-American common law on the other, both have managed to coexist, producing a uniquely Puerto Rican mixed-law approach.

Although the rules of law reflect a multicolonial mixture, the language used in the law is Spanish, which is the dominant language on the island and also the language of local administration and public education. In fact, since Spanish is used routinely, the two acts that enabled local government for Puerto Rico, the Foraker Act and the Jones Act, needed to stipulate that proceedings in the U.S. district court and appeals from the Supreme Court of Puerto Rico to the circuit had to be conducted in English. In *People v. Superior Court*, an opinion issued in 1965 by the
Supreme Court of Puerto Rico, the litigant’s request to proceed in English rather than in Spanish in the local court was denied, even though both English and Spanish were official languages. The Puerto Rican high court explained that “the means of expression of our people is Spanish, and that is a reality that cannot be changed by any law.”37

Spanish is also the language of Puerto Rico’s popular arts and hence its culture. As I will show, Puerto Rico’s dietary and celebratory, including musical, culture are uniquely puertorriqueñas/os. For example, dietary practices have long been considered an essential part of a culture, including Puerto Rico’s. Although the Puerto Rican population contains Jews and Muslims, the strict dietary rules of those religions do not apply to the customary Puerto Rican diet.38 Accordingly, pork is a featured item, especially on celebratory occasions, and shellfish and all other kinds of seafood are traditional, as one would expect in a tropical island. Rice, red beans, tostones or mofongo made from plantain, and bread are staple foods. Panaderías (bread stores) can be found in almost every neighborhood, invariably offering pan de agua (bread made with water) or pan de manteca (bread made with lard) known as pan sobao. Rum, made from sugarcane, is the national alcoholic drink. Piraguas, shaved ice covered in syrup and served in a cup, and ice cream made with local fruits are very popular in the tropical heat and are traditionally bought from vendors traveling around the neighborhood.

Shared celebrations, such as fiestas patronales (Catholic patron saint festivals) and important holidays, also mostly religious, such as Christmas and Holy Week, mark the Puerto Rican culture. Patron saint festivals are held in every town in Puerto Rico and even are regulated by Puerto Rico’s laws.39 The celebration always includes food, drink, and music of all kinds, but it is the dance music, especially salsa, that attracts the most people. Traditionally, one day of the patronales is dedicated to honoring and remembering the ausentes (absent persons), usually persons who have moved away from the town. In fact, many Puerto Ricans living in the United States choose this date to return to their hometown.

As an example of a U.S. influence adapted to the Puerto Rican way, Thanksgiving is now celebrated, but mostly as the start of the Christmas holiday. The content and length of the Christmas celebration are much different from that in the United States. Parrandas, very common during Christmas, are basically large moving parties in which a musical serenade is brought to a friend’s or family member’s home. In exchange for good music and the company of friends, the home owner welcomes the group
into the house and gives them food and drink. The traditional Christmas foods are lechón asado (roast pig), arroz con gandules (rice with pigeon peas), pasteles (a mixture of yucca and plantain stuffed with beef, pork, or chicken and wrapped in banana leaves); and, for dessert, coquito (Puerto Rican coconut eggnog) and arroz con dulce (rice flavored with coconut milk and spices sweetened with brown sugar). The Christmas holidays include Epiphany, the visitation of the Three Wise Men on January 6, and is when children usually get toys. Nochebuena, the night before Christmas, has always been celebrated. Now that the “American” tradition of Santa Claus has reached Puerto Rico, gifts are given to children on December 25. This new custom is often justified in practical terms; that is, it allows children more time to play with their toys before having to go back to school. Nevertheless, toy sales are strongest between December 26 and January 5. The Christmas celebration lasts beyond Epiphany into the octavas and octavitas, eight more days of partying or religious observance, depending on the participants.

**Music in Puerto Rico**

Popular music particularly represents the Puerto Rican identity. Notwithstanding the contemporary globalization of música latina (Latin music), prominently displaying Puerto Ricans like Marc Anthony, Jennifer López, and Ricky Martin, there is general agreement on the many diverse forms of Puerto Rican popular music. There is a heated debate, however, over whether there is a single specific Puerto Rican “national music.” It is driven by the defenders of “high culture” versus those of “popular culture,” and it is often reduced to questions of class and race.

The traditional view is that the danza, a waltz-like salon dance usually composed by classically trained musicians, is Puerto Rico’s national music. The adoption of the danza can be seen as a racist and classist construct when looking at the audience that listens and dances to it, which is clearly the social construct built around the cult of the danza. But the association of danza with whiteness and privilege is more difficult to understand when looking “behind the music” at the most famous composers of danzas, many of whom were black, classically trained, musicians who were not members of the upper class. The danza is part of a long social construction of Puerto Rican art as being white because it was made for whites. But it ignores the fact that those making the art were
often blacks, whose contribution is often devalued by stating that the composers, musicians, or other artists were slaves who were given instruments or otherwise trained by their masters. But these statements do not stand up to critical scrutiny, as the contribution of persons of color to Puerto Rican culture is undeniable.  

Although danza is definitely Puerto Rican, it is the music adopted by and associated with the upper class and so cannot be fairly considered the "national" music in the context of popular culture. The alternative candidates for the title of national music are salsa, or its predecessors bomba and plena, especially favored by those who defend the African influence in Puerto Rican culture, and the seis, a musical form produced by the Puerto Rican jíbaro, the agricultural peasant of the mountains. In his critical essay El País de cuatro pisos, José Luis González bemoans both the classist and racist use of danza, with its inherent denial of the African experience, as well as the cult of the jíbaro, which he likewise associates with an enforced preference for whiteness.

The jíbaro seis, however, has a powerful and legitimate claim to being a part of Puerto Rico’s national popular music that is neither classist nor racist. (1) It was the music of the true jíbaro, the poor peasant farmer of Puerto Rico; (2) it originated in Puerto Rico in the nineteenth century; (3) it has had a strong and long-standing influence on Puerto Rican music generally; (4) it is easily identified by most Puerto Ricans as “Puerto Rican music”; and (5) it is still popular today. In addition, the seis uses the most important native musical instrument, the cuatro. Long before salsa or its historical antecedents like the plena appeared, the seis was the music of poor, that is, most puertorriqueñas/os.

Music and dance link the three major influences on the Puerto Rican people. The Taino natives’ dances often were designed to tell important tribal stories, called areytos. Indeed, the Puerto Rican criolla/o was often accused of being much too interested in dancing. Even the now-much-too-respectable danza was considered “scandalous” by some conservative criollas/os, who criticized the closeness of the dancers and their movements. Today, salsa and merengue keep the puertorriqueñas/os moving together fast, and boleros (slow ballads), a bit more slowly.

There is some controversy over the origin of the salsa. Was salsa really born in the Caribbean as a variant of the guaracha, or in the barrios of New York, as what my dad calls the himno nacional del barrio latino de Nueva York (the national anthem of the Latina/o barrio in New York)? There is even some doubt about the origin of the term salsa as applied to
the Latina/o musical genre. It first became popular in Venezuela in the mid-1960s through a disc jockey and a record entitled *Llegó la salsa*, issued in 1966. The FANIA movie *Salsa*, filmed during a concert in New York City in 1971, also made the term popular. Finally, the 1970s were the beginning of the great migration from New York to Puerto Rico of salsa musicians, especially the FANIA All Stars.46

Music is an essential element of daily life as well as of special occasions. It can be designed for dancing, listening, or both. The result is the constant presence in Puerto Rico of big bands that play dance music and of smaller groups that play music to be listened to rather than danced to. The best example of the latter are the *tríos* (three-person groups) who specialize in boleros, slow ballads that can be a slow dance but more often are listened to. Initially the big bands were the precursors of salsa and are now the main practitioners of it, with the Sonora Ponceña and El Gran Combo de Puerto Rico, surviving in the business for four or five decades. Today, salsa is undoubtedly the most popular form of Puerto Rican music, on and off the island.

Popular music is a part of the cultural fabric of the Puerto Ricans not simply because of its capacity to entertain and make people move. It also often presents a candid look at the realities and hardships of daily life. For example, the *baquiné* is a party to celebrate that a baby who died during or shortly after birth has gone to heaven without suffering the hardships of life on earth. The book *Navidad Que Vuelve* (*Christmas Returns*) examines the song “Los Reyes no llegaron”47 (The Wise Men/Kings Did Not Arrive), which is a perfect description of the level of poverty in Puerto Rico in the 1950s. “Los Reyes” tells the story of a young orphan who thinks that the Wise Men have forgotten him because they did not bring him a present.48 Another poignant example of a song carrying a message of economic hardship is “Lamento Borincano” (Puerto Rican Lament), a song that describes the toil involved in a day in the life of a farmer in Puerto Rico at the beginning of the twentieth century.49

Music sometimes contains political subtexts. It can also be a teaching tool that allows the singer to bypass society’s problems, such as illiteracy, and still manage to educate. In 1951, songs were written to instruct people on how or why to fill out a ballot—*Referéndum, referéndum, referéndum quiere decir.../la consulta que se le hace al pueblo*—is a song explaining that a referendum is a consultation with the people by ballot. This song was commissioned by the Popular Democratic Party and was used to support the approval of Puerto Rico’s 1952 constitution.50
The oral tradition of Puerto Rican popular music represents an important form of resistance in a repressive colonial society. During the Spanish colony period, for example, the song “El Ciclón” (The Hurricane) was in fact a reference to the Spanish colonial rulers. It describes how the singing birds in their cages—a reference to the many persons put in jail by the new government imposed by Spain—stop singing when the ciclón is coming.\(^5\) Songs also recognized Puerto Rico’s wish for independence and its self-awareness as a people. For example, *El Grito de Lares / se ha de repetir / y todos sabremos / vencer o morir* (The Cry of Lares / shall be repeated / and we all shall know [how] / to win or to die) is part of a song recalling the attempted anti-Spanish revolt in Lares, Puerto Rico, on September 23, 1868.\(^5\) The opening lyrics of Lola Rodríguez-de Tío’s version of “La Borinqueña,” the Puerto Rican national anthem, call on Puerto Ricans to fight for independence: ¡Despierta boriqueño, / que han dado la señal! / ¡Despierta de ese sueño, / que es hora de luchar! (Wake up boriqueño / the signal has been given! / Wake up from that dream/sleepiness / it is time to fight!). *Boriqueño* can also be spelled *borinqueño*, a reference to the inhabitants of Boriquén or Borinquen, a bastardization of the native term for Puerto Rico.\(^5\)

Puerto Ricans have also used songs to convey their opposition to the U.S. colonial rulers. In the late 1960s and 1970s, the *música de protesta*, music of [political] protest, included a heavy dose of pro-independence sentiment. For example, Andrés Jiménez’s “El Jíbaro” demands that Puerto Ricans stand up to “American” tyranny by exclaiming: ¡Coño, despérit boricua!, which is loosely translated as “Damn, wake up people of Puerto Rico!” Not surprisingly, pro-independence artists like Lucecita Benítez, Roy Brown, Américo Boschetti, Antonio Cabán-Vale, Sharon Riley, Andrés Jiménez, and Danny Rivera were targeted for surveillance (anti-subversive *carpeteo*) by the police because of their pro-independence positions.\(^5\)

The survival of Puerto Rican culture as reflected in the examples discussed here is the definitional schism between the United States and the Puerto Rican peoples. Puerto Rican culture is clearly different from the dominant culture in the United States. The assimilationist attempts to destroy and to replace the Puerto Rican culture with an essentialized version of “American” culture have failed. Cultural assimilation has been—and luckily will continue to be—impossible for the United States to achieve. As a result, the practical choices left to the United States and the Puerto
Ricans are either some form of political assimilation and cultural coexistence or political separation and cooperation, through independence.

**The Failure of “Americanization” and Cultural Imperialism**

Nearly four million Puerto Ricans occupy just 8,959 square kilometers of land area on the islands, compared with 9,158,960 square kilometers for the fifty states and the District of Columbia. Even during the earliest days of the U.S. occupation, it was apparent that because of its large population and limited territory, Puerto Rico—unlike, say, Alaska—did not offer the United States the opportunity of exporting “its own” Anglo-Saxon people and culture to the island. Nevertheless, because the United States wanted to use the territory of Puerto Rico and control its people, this resulted in the legal construction of second-class citizenship for the Puerto Ricans in *Balzac v. People of Porto Rico*.56

In addition to the impossibility of creating an Anglo-Saxon majority on the island, because of the construction of Puerto Ricans as belonging to an inferior “race” and their lower level of citizenship, U.S. “imperialists deployed liberalism, republicanism, and racism to contend that America’s lucky new subjects should be tutored in enlightened civilization and self-governance.” The purpose of this process was cultural, although not necessarily legal and political, assimilation. U.S. officials in fact did not expect the assimilation to be difficult because most Puerto Ricans were illiterate and, the *estadounidenses* believed, receptive (or perhaps vulnerable) to the message. For example, the education commissioner, Martin Braumbaugh, stated in his 1901 report that most Puerto Ricans did not even speak “real Spanish” and only a minority were educated, mostly in Europe. Therefore, as Victor Clark, president of the Insular Council on Education, stated: “The great mass of Porto Ricans is still passive and plastic. . . . Its ideals are in our hands to be created and molded. If we Americanize the schools and inspire the teachers and students with the American spirit . . . the island will become in its sympathies, view and attitudes . . . essentially American.” But Mr. Clark and other U.S. officials underestimated the depth and breadth of the Puerto Rican culture. The U.S. officials made a huge, albeit rather obvious, mistake when they equated literacy with culture. In particular, they underestimated the oral tradition in Puerto Rico, especially in its popular music.
The “Americanization” project included “attempts to transplant American school curricula to Puerto Rico.” The most obvious effort to reconstruct the Puerto Rican identity was the imposition of English as the language of administration and instruction. It is difficult to determine exactly how English-language instruction was imposed because, as Aida Negrón-de Montilla, the author of the most thorough study of this phenomenon, reports, many of the regulations were issued by the commissioners in letters. The Foraker Act gave the commissioner a great deal of discretion, including the determination of the language of instruction, and section 23 of the first Public Schools Act of 1901 also gave him a great deal of authority. Accordingly, during the first decades of the twentieth century, the language of instruction in Puerto Rico’s public schools was English, by order of the U.S.-appointed commissioner of education.

Officially, English and Spanish coexisted by law, as the Official Language Act of 1902 established English and Spanish as coequal official languages in Puerto Rico. This law was briefly repealed by the Hernández-Colón administration in 1991, in a controversial attempt to make Spanish the sole official language. But official bilingualism was quickly reinstated by the Rosselló administration in 1993. The original law was approved by the Puerto Rico legislature on February 21, 1902, and provided that “in all the Departments of the Insular Government and in all the Courts of this Island, and in all public offices the English language and the Spanish language shall be used indiscriminately.” Although Spanish and English were in theory coequal, the U.S.-appointed administration tried to create a preference for English. Even the Puerto Rican Supreme Court ruled that the English version of a Puerto Rican Civil Code provision would take precedence when it conflicted with the Spanish version, even though the law had originally been drafted in Spanish.

In addition to the law, public education was used as a weapon against the Puerto Rican cultural and political consciousness. As the first U.S.-appointed commissioner of education for Puerto Rico stated in his annual report: “The spirit of American institutions and the ideals of the American people, strange as they do seem in Porto Rico, must be the only spirit and the only ideals incorporated in the school system of Porto Rico.” One scholar described this attempt at “silencing the [Puerto Rican] culture” as follows:
Probably nowhere was the U.S. economic development plan for Puerto Rico more consciously promoted than in the public schools. Through a rationalization of the perceived necessary prerequisite of the Americanization of the culture for economic and social development, the grounds were established for the legitimacy of arguments and policies requiring English as the language of instruction and centralized public school administration.68

The official attempts to “Americanize” Puerto Rico included well-orchestrated efforts to encourage an “American,” rather than a Puerto Rican, form of patriotism.69 This included the celebration of U.S. holidays70 and the “American” way of celebrating them, such as using the figure of Santa Claus to replace the reyes, the Three Wise Men in the giving of toys to children for the Christmas holiday. This produced one of best short stories in Puerto Rican literature: “Santa Clo va a la Cuchilla,” by Abelardo Díaz-Alfaro. This story describes how Santa Claus’s Christmas visit to a public school in the barrio Cuchilla in a town in the central Puerto Rican mountains ends with all the Puerto Ricans—the children and their parents—scattering in horror at the sight of the fat, white, red-nosed Santa Claus.71

Public displays of pro–United States “patriotism” and honoring “American” symbols were required. For example, in his annual report for 1901, the commissioner of education mentions “saluting the [U.S.] flag,” “[playing] the [U.S.] National Anthem,” “acts with the flag,” “patriotic readings,” “patriotic songs,” and “marches and presentations by the band.”72 Celebrating the “heroes” of the United States was encouraged by, among other means, songs taught to young schoolchildren. I have never forgotten the song that I was taught in kindergarten in Puerto Rico: “Yo nunca, nunca digo una mentira, pues quiero ser igual a Jorge Washington, quien fue el mas grande los hombres, y nunca, nunca dijo una mentira” (I never, never tell a lie, because I want to be just like George Washington, who was the greatest of all men, and never, never told a lie”). But the fact that this song is now taught in Spanish is a good example of the overall failure of the “Americanization” project.

Imposing the new language of instruction included substituting Spanish-language textbooks for American English-language texts, as well as requiring English-language proficiency for all teachers, who, as well as students, were urged to study in the United States.73 The process also
included encouraging assimilation of the island into the United States and opposing its independence, including expelling “from the school system students or teachers involved in what, in the judgment of the department of education, was anti-American activity.”

Nevertheless, Puerto Rican identity and culture proved resilient enough to survive “Americanization.” By 1949, the newly elected local government of Luis Muñoz-Marín changed the language of instruction to Spanish. The failure of *americanización* was a definitional moment in the relationship between the United States and Puerto Rico. To the extent that the United States viewed Americanization as a prelude to assimilation, the failure of the former precluded proceeding with the latter.
Puerto Rican cultural nationalism may conflict with the traditional ideals of individuality and coexistence held by both classical and modern liberalism in their approach to citizenship. The tension arises out of liberalism’s failure to take seriously the problems of nondominant cultural groups, which results in the imposition of a monolithic universality on colonized peoples. This chapter develops a proposal to reform the traditional liberal theory of citizenship. I use critical race theory in general and LatCrit theory in particular to critique and reform liberalism to recognize that if it chooses to value group identity, it will not be at odds with a communitarian vision of citizenship. This reformed vision will help Puerto Rican cultural citizenship and nationhood to become Puerto Rican sovereignty, that is, true legal citizenship and nationhood.

The Failure of “American” Liberal Citizenship

Puerto Ricans’ current legal and political plight can be directly attributed to the failure of “American” liberal citizenship. The future of the puertorriqueñas/os will largely depend on the United States’ view of citizenship in the new millennium. The purpose of this book is to empower Puerto Ricans by redefining their citizenship and, necessarily, their “nation.” I will do so by applying a LatCrit communitarian critique to “American” liberalism, which Ronald Dworkin described as follows:

I argue that the constitutive morality of liberalism “is a theory of equality that requires official neutrality amongst theories of what is valuable in life. That argument will provoke a variety of objections. It might be
said that liberalism so conceived rests on skepticism about theories of the good, or that it is based on a mean view of human nature that assumes that human beings are atoms who can exist and find self-fulfillment apart from political community. . . . [But] liberalism cannot be based on skepticism. Its constitutive morality provides that human beings must be treated as equals by their government, not because there is no right and wrong in political morality, but because that is what is right. Liberalism does not rest on any special theory of personality, nor does it deny that most human beings will think that what is good for them is that they be active in society. Liberalism is not self-contradictory: the liberal conception of equality is a principle of political organization that is required by justice, not a way of life for individuals.”

Critiques of liberalism are generally founded on skepticism or even a rejection of liberal claims of egalitarianism and neutrality. Accordingly, “liberal” responses to theorists’ critical attacks on liberalism often point to the use of incorrect or overly “selective” definitions of liberal theory. For example, Dworkin accuses critical legal studies (CLS) scholars in general, and Mark Tushnet in particular, of misconstruing the fundamental tenets of liberalism.2 Dworkin argues that CLS’s contentions “about the incoherence of liberalism, have so far been spectacular and even embarrassing failures” because “they begin and end in a defective account of what liberalism is, an account supported by no plausible reading of the philosophers they count as liberals.”3 In the specific debate about multiculturalism and citizenship, the liberal stalwart Will Kymlicka writes that “critics of ‘the liberal tradition’ are often attacking different targets.” He explained that

some discussions are directed at the articulated premises of specific liberal theorists, others at the habits and predispositions of liberal-minded politicians and jurists, yet others at some more nebulous world-view which underlies Western culture generally, not just our political culture. These different aspects of the liberal tradition are often in conflict with each other, as they are in any such tradition.4

It is equally difficult to discern a clear definition of “liberal theory” from the defenses of liberalism mounted by self-mapped liberals. Dworkin wrote the definition quoted at the opening of this section to counter what he characterized as Tushnet’s “mistaken” characterizations
of his views. Kymlicka is intentionally elusive in describing the purpose of his reticence:

Firstly, my concern is with liberalism as a normative political philosophy, a set of moral arguments about the justification of political action and institutions. . . .

Secondly, my concern is with what liberals can say in response to these recent objections [by communitarians, socialists, and feminists], not with what particular liberals actually have said in the past. Still, as a way of acknowledging intellectual debts, if nothing else, I hope to show how my arguments are related to the political morality of modern liberals from J. S. Mill through to Rawls and Dworkin.

Kymlicka finally acknowledges that the political morality of liberalism he is defending claims that “our essential interest is in leading a good life, in having those things that a good life contains.”5

Dworkin and Kymlicka present important objections to the critiques of liberal theory that challenge its critics to prove the shortcomings of liberalism and/or to admit that they are using liberal theory to construct a new paradigm for a more complicated world.6 Therefore, in order to avoid these analytical shortcomings, I have devised a working definition of liberalism(s).

“Classical liberalism” refers to a legal and political philosophy7 that “focuses on the idea of limited government, the maintenance of the rule of law, the avoidance of arbitrary and discretionary power, the sanctity of private property and freely made contracts, and the responsibility of individuals for their own fates.”5 Historically, the credit for liberalism is given to John Locke, Adam Smith, Alexis de Toqueville, and Friedrich von Hayek,9 but its roots can be traced to ancient Athens, especially as depicted in Aristotle’s Politics, in which the Greek philosopher states that by “nature” some men rule and others are ruled and men are meant to rule over women.10 “For Aristotle, . . . the citizen must be a male of known genealogy, a patriarch, a warrior, and the master of the labor of others (normally slaves), and these prerequisites in fact outlasted the ideal of citizenship, as he expressed it, and persisted in Western culture for more than two millennia.”11 Accordingly, classical liberalism historically has defined individual “destinies” in supremacist and heteropatriarchal ways, thus creating an unequal type of citizenship in which some men rule over other men and over all women.
Reflecting its classical liberal origins, the U.S. Constitution enshrined into law an exclusive and unequal form of citizenship that accepted slavery, dispossessed Native Americans, and disenfranchised women. Even though the drafters purposely avoided using the term *slave* in the Constitution, it was clear that three key provisions in it were designed to protect the institution of slavery. Accordingly, Article I, section 2, clause 3, provides that one slave contributed three-fifths of his or her master’s entitlement to congressional representation; Article I, section 9, clause 1, limited the power of Congress to restrict the slave trade; and Article IV, section 2, clause 3, meant that slaves who escaped from bondage had to be returned to slave states. The U.S. Supreme Court’s decision in 1856 in *Scott v. Sanford* held that African slaves imported into the United States and their descendants, free or otherwise, are not included, and were not intended to be included, under the word “citizens” in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and whether emancipated or not, yet remained subject to their [sic] authority, and had no rights or privileges but such as those who held the power and the Government might choose to grant them.

In addition, the U.S. Constitution did not count Native Americans for apportionment purposes, and the Supreme Court legally and formally justified the use of violence to dispossess them of their land. Finally, not until the Nineteenth Amendment was ratified on August 18, 1920, were women in this country allowed to vote. In sum, “American constitutional liberalism” reserved full “citizenship” solely for white males.

Modern liberalism, however, “is exemplified by John Stuart Mill’s *On Liberty*, with its appeal to ‘man as a progressive being’ and its romantic appeal to an individuality that should be allowed to develop itself in all its ‘manifold diversity.’” In contrast to socialism, modern liberalism is not theoretically confiscatory, but its clearest legal/political achievement is the modern democratic welfare state. “Negatively, the aim is to emancipate individuals from the fear of hunger, unemployment, ill-health and a miserable old-age, and positively, to attempt to help members of mod-
ern industrial societies to flourish in the way Mill and von Humboldt wanted them to.” 17 Kymlicka and Dworkin position themselves among modern liberals.18

Liberalism “is not always a progressive doctrine, for many classical liberals are skeptical about the average human being’s ability to make useful advances in morality and culture.”19 Its modern form, however, can point to apparently neutral theories of justice vis-à-vis the individual. But these arguments ignore the effects of liberal theories’ historical shortcomings. Classical liberalism in general and American classical liberalism in particular were explicitly based on flawed notions of white/racial and male/gender supremacies. Conversely, modern liberalism, especially the U.S. form of modern liberalism, suffers from the cultural imposition of supremacies that are often enforced by law.

Section 1 of the Fourteenth Amendment reads, in part: “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.”20 To the extent that this provision creates formal universal U.S. citizenship, it is belied by the reality of that citizenship, which is often constructed on the basis of faultlines defined by essentialized notions of race. Universal citizenship means a general entitlement to the formally equal citizenship that is basic to liberalism. However, as the case study I use later shows: “Appeals to universal reason typically serve to silence, stigmatize and marginalize groups and identities that lie beyond the boundaries of a white, male, Eurocentric hegemon. Universalism is merely the cover for an imperialistic particularism.”21 A comparison of the treatment of former Mexican citizens under the Treaty of Guadalupe Hidalgo22 and the treatment of Puerto Ricans under the Treaty of Paris, illustrates this point.23

The Treaty of Guadalupe Hidalgo ended the war between the Republic of Mexico and the United States in 1848, just as the Treaty of Paris ended the war between Spain and the United States in 1898. The effect of both wars and treaties was U.S. control of the conquered lands and of the people who had been living there before the conquest. But the normative regime created by the Treaty of Paris legally constructed Puerto Ricans as second-class citizens. Chicanas/os, in contrast, obtained what on the surface appeared to be a more favorable formal legal regime as a result of the Treaty of Guadalupe Hidalgo, because they received U.S. citizenship as expressly promised in article IX of that treaty.24 However,
rather than admit Mexicans into the Union “as soon as possible” [the
original language], the Senate made their admission more discretionary,
[by inserting] “at the proper time,” to be judged by Congress. The origi-
nal language raised the scary (to Anglos) prospect of Mexicans on an
equal legal footing with whites. To avoid equality, the Senate gave Con-
gress discretion to admit states containing Mexicans whenever Congress
deemed it “proper.”

As detailed by Guadalupe Luna, Mexicans were dispossessed of their
land despite their formal U.S. citizenship and their legal rights.

From the time the Founders signed the United States Constitution to the
present, considerations of race have governed the agricultural agenda
and the resulting control of the nation’s natural resources. The counter-
story presented here reveals that throughout most of American legal his-
tory, biased interpretations of the law created a system that dispossessed
and disenfranchised individuals of Mexican background. Moreover,
Constitutional directives protecting property rights were held hostage to
the whims of the interpreters of law. Alienated from their property, Chi-
canas/Chicanos were treated as foreigners and disallowed full citizenship
status. In the aggregate, their stories present complex analytical issues.
The governmental practices involved in their dispossession played a sig-
nificant role in determining their current economic status in ways that
are difficult to reconcile with present understandings in property law.

Initially, article VIII of the Treaty of Guadalupe Hidalgo appears to guar-
antee the rights of Mexicans who choose to stay in the United States. An
indication of things to come was given when the United States removed
the proposed article X—which guaranteed the property rights of Mexi-
cans who stayed in what now was the United States—from the Treaty
of Guadalupe Hidalgo. Eventually, whatever rights were granted to
Mexicans who stayed in the United States mattered little in U.S. courts.

United States v. San Jacinto Tin Company includes an unusually candid
and powerful description of the dispossession of Chicanas/os:

Those familiar with the notorious public history of land titles in this
state need not be told that our people coming from the states east of the
Rocky Mountains very generally denied the validity of Spanish grants
. . . and, determining the rights of the holders for themselves, selected
tracts of land wherever it suited their purpose, without regard to the
claims and actual occupation of holders under Mexican grants. . . .
Many of the older, best-authenticated, and most-desirable grants in the
state were thus, more or less, covered by trespassing [“American”] set-
tlers.29

Despite their formal citizenship, Chicanas/os were constructed as
“racially” inferior. In fact, U.S. politicians like Senator John Calhoun ini-
tially opposed the Mexican war on the basis that it presented a clear and
present danger to white supremacy and thus, to their “American” repub-
lic. “The final, revised language [of the treaty] quieted the racial fears of
Calhoun, concerned over the Mexican racial threat to white rule in the
United States. The revised language also relieved public angst over possi-
ble political participation by Mexicans.”30 The promises of citizenship
were heavily conditioned, and finally, as discussed earlier, Mexicans were
denied their legal property rights despite their citizenship. By the time the
United States reached Puerto Rico, it did not even promise citizenship to
Puerto Ricans; it simply took the land and denied citizenship to the resi-
dents.

Cornel West described the normative paradigm of “American” liber-
alism that produced these injustices:

The historical articulation of the experiential weight of African slavery
and Jim Crowism to forms of U.S. patriarchy, homophobia, and anti-
American (usually communist and socialist) repression or surveillance
yields a profoundly conservative culture.

The irony of this cultural conservatism is that it tries to preserve a
highly dynamic corporate-driven economy, a stable election-centered
democracy, and a precious liberties-guarding rule of law. This irony con-
stitutes the distinctive hybridity of American liberalism (in its classical
and revisionist versions).31

The construction of Puerto Rican citizenship reflects a failure of liber-
alism, in any form, to devise a postcolonial citizenship theory for the
Puerto Rican people that properly accounts for their cultural nation-
hood. With its underlying cultural conservatism, “American” liberalism
could not possibly produce such a construct of citizenship. Rather, its ap-
proach to Puerto Rico, using the territorial clause of the Constitution,
was analogous to the legal construction of slaves as noncitizens in the
Those who advocated overseas expansion faced this dilemma: What kind of relationship would the new peoples have to the body politic? Was it to be the relationship of the Reconstruction period, an attempt at political equality for dissimilar races, or was it to be the Southern “counterrevolutionary” point of view which denied the basic American constitutional rights to people of color? The actions of the federal government during the imperial period and the relation of the Negro to a status of second-class citizenship indicated that the Southern point of view would prevail. The racism which caused the relegation of the Negro to a status of inferiority was to be applied to the overseas possessions of the United States.32

In Puerto Rico, the United States acted in an imperialistic manner that devalued the Puerto Rican culture and even the puertorriqueñas/os’ self-discipline. Although I will explore this in more detail in the concluding chapter, here I shall use Governor Rexford G. Tugwell, the last gringo appointed to this position, to illustrate the point. Before he was appointed, Tugwell had already expressed his dismay that the Puerto Rican “mulatto people” might be needed or tolerated by the United States to supplement its “falling fertility.”33 In addition to his views on hypersexuality and racial inferiority, Tugwell thought that learning English was “unpopular” among Puerto Ricans “because it required discipline,” which the Puerto Ricans lacked. More generally, President Franklin D. Roosevelt’s appointee noted that the United States saw itself as the economic and cultural “savior” of Puerto Rico. In return, “America” demanded assimilation as the price of its “generosity.” Resisting cultural assimilation, especially learning English, would mean that U.S. “subsidies were not going to keep coming to a hostile, suspicious, foreign country.”34 Thus, Puerto Ricans, despite being U.S. citizens, were constructed as too sexual, brown, dumb, and foreign to satisfy the “liberal” New Dealer.

In their current status, Puerto Ricans suffer from America’s positive toleration and unfortunately lack the power to benefit from or to enforce any negative toleration that might help restrain the colonial rulers.35 At best, what the United States displays toward Puerto Rico can be classified as “paternalistic toleration,” so called
because the toleration is one extended by the majority as an act of self-restraint by the majority (as an act of social generosity) to share a social space with a culture that the majority believes does not merit to share such social space. For minorities, paternalistic toleration is often purchased at the heavy price of not being recognized as equal participants in the polity, ironically the very thing that toleration is meant to cure.36

The problem with paternalistic toleration is that it is based on the notion of the inherent superiority of the tolerator over the tolerated people, which “does not provide for, and is in fact hostile to, the notion of the tolerator taking the tolerated group seriously.”37

Puerto Rico’s statutory second-class citizenship constitutes a “contradiction between universal rights and restricted citizenship [that is] impossible to sustain.”38 Moreover, because of the underlying defects of “American” liberalism, even formally equal U.S. citizenship—to the extent that such a notion exists—will not resolve the problems inherent in the current statutory citizenship, because of the U.S. culture of privilege perpetuated by “American” liberalism. A solution to this citizenship problem requires a new theoretical paradigm free from the liberal perpetuation of privilege, in general, and “American” cultural conservatism, in particular.

Puerto Rican Citizenship through a Reformed Liberalism

In producing a new theory of alternative citizenships for Puerto Rico, I will initially focus on the fundamental question of replacing or reforming liberalism. After that, I will propose a general framework for a redefinition of Puerto Rican citizenship informed by contemporary communitarian theory.

The first difficult analytical problem can be summarized as follows: “American liberalism diffuses the claims of American radicals by pointing to long-standing democratic libertarian practices, despite historic racist, sexist, class, and homophobic constraints. Hence, any feasible American radicalism seems to be but an extension of American liberalism.”39 Postmodernism points out the theoretical shortcomings of current philosophical movements and warns against the mistakes of extremism at both ends of the philosophical spectrum. For example, Beiner described what he called the “universalism/particularism conundrum,” which he
defined as follows: “To opt wholeheartedly for universalism implies deracination—rootlessness. To opt wholeheartedly for particularism implies parochialism, exclusivity, and narrow-minded closure of horizons.” Nevertheless, in the current deconstructionist postmodern age, the idea of liberal universalism is rejected as being “merely a cover for imperialistic particularism.”

In order to redefine Puerto Rican citizenship, we must first redefine the Puerto Rican nation as a state. Such an approach implies a rejection of the ideal of cosmopolitan, that is, universal, supranational citizenship. Cosmopolitan citizenship theorists would construct the Puerto Ricans as “citizens of the world” rather than of Puerto Rico, but this would constitute an imposed homogeneity, the natural product of the cultural conservatism inherent in traditional liberalism.

Initially, it is critical to acknowledge that the nation-state is still relevant despite external and internal challenges to its sovereignty. External challenges to sovereignty lead countries to surrender it, at least partially, to supranational organizations. The nations of Europe, for example, have surrendered part of their sovereignty to the European Union. At the same time, internal challenges to sovereignty may lead to a decentralization of governmental power. For example, within the limits set by the present Spanish constitution, each of the country’s regions is allowed to construct a more or less autonomous local government based on the desires of the voters in those regions.

The processes designed to empower local communities and peoples are not, however, always intended to promote internal diversity within the nation. In fact, when these changes are not driven by a progressive political theory, they may well have the opposite effect: they may simply constitute a takeover of the nation-state by a particular group intent on dominating the other groups, as we have recently seen in the Balkans and in Fiji. Nevertheless, to the extent that this book advocates citizenship and nationhood, or at least offers to Puerto Ricans the choice of having them, it first must redefine the island as a sovereign nation. As discussed in the next chapter, this may be an end in itself or a prelude to a legitimate free choice to join the United States in some form of permanent political union, as either a state or an affiliated state, in a real bilateral compact.

Some people might argue that such a paradigm shift requires an internal redefinition of the state. Because this theory is intended to apply to both a new Puerto Rican state and the existing United States, it does indeed require the United States as a nation-state to change its basic view
of justice and morality. Specifically, it requires the United States to abandon the cultural conservatism of “American” constitutional liberalism and to choose a more multicultural, communitarian vision. This is the nature of paradigmatic shifts. According to Professor George Martínez, philosophical paradigm shifts can be compared with a religious conversion because they both are fundamentally subjective processes:

[A] scientific revolution occurs when one paradigm is replaced by another. Paradigm shifts cause scientists to view the world in new and different ways. During scientific revolutions, then, scientists experience perceptual shifts. According to [Thomas] Kuhn, the transition from one paradigm to another is a conversion experience that cannot be compelled by logical argument.48

Whether the product of faith or logic, any sensible citizenship theory must also decide how to view individuals vis-à-vis both the state and themselves. “We can simplify the history of the concept of citizenship in Western political thought by representing it as an unfinished dialogue between the Aristotelian and the Gaian formulae, between the ideal and the real, between persons interacting with persons and persons interacting through things.”49 Comparative legal analysis is important to this statement, because in Roman law and its heir, civil law, “things” includes a broader conception of property rights and adds moral obligations to the basic notion of contracts. Accordingly, the Gaian (and, really, Roman) legal vision is that of a state providing rules and citizens living by them or seeking the state’s assistance in resolving disputes. The Aristotelian ideal is a citizen belonging to and participating in the body politic, and the Gaian reality was citizenship as the legal, formal existence of the individual as the controller of rights and assets.

The definition of Puerto Ricans’ rights is controlled by the United States, as is the definition of the polity to which they are entitled. Puerto Ricans are unable to participate in the process of defining the sovereign state, the nation, or their citizenship. They lack the power to define the Puerto Rican nation, and they are not allowed to participate in the electoral process in the United States. Inclusion and empowerment in the democratic process are the only solutions to this fundamental problem.

Still, one could argue that Puerto Ricans should simply strive for better treatment within the United States and completely abandon any desire for independence. This is an application of the general communitarian
rule that persons should strive to get along rather than move for seces-
sion. Certainly, the recent history of ethnic strife in the Balkans might be
a good example. But Puerto Rico clearly constitutes an exception to the
rule, and independence should be one of the possibilities available to it.
Because Puerto Rico is an identifiable territory occupied by an identifiable
culture, the possibility of independence or secession is physically possible
and theoretically defensible.

Communitarian theoretical principles generally provide the best solu-
tion to the Puerto Rican citizenship problem, starting by identifying the
shortcomings of liberal citizenship. “The relationship between the right
and the good in liberalism: The individualism that underlies liberalism is
valued at the expense of our social nature of our shared community.”
Traditional liberal theory simply fails to recognize the rights of a colo-
nized people to exist as a free people rather than to be assimilated as in-
dividuals.

Adeno Addis has been helpful in explaining the failure of traditional
liberal theory to recognize and promote group rights. First, Addis ac-
knowledges colonialism and its resulting multiculturalism. “Whether the
multiplicity is the ‘unintended’ consequence of colonialism or the orga-
nizing principle, the defining feature, of the particular nation-state, the
uncontroverted fact is that most nations are indeed multiethnic and mul-
ticultural.” Addis then describes the general opposition to secession by
suggesting that

as a general response to diversity in political units, however, separation
seems as impractical as it is dangerous. It is impractical partly because
not all groups that believe themselves to be marginalized and excluded
from the social and political life of the polity live in a defined territorial
unit. In such circumstances, secession will not be a viable answer to the
problem of exclusion and discrimination. Indeed, it is true that not all
notions of separation under these conditions are likely to lead to a
process of ethnic cleansing. It is also true that not all groups that have
grievances against a dominant majority want to secede, even if that were
practically possible. They simply wish to participate equally and fully in
the life of the political community.

Of course, because Puerto Rico is an island populated overwhelmingly by
Puerto Ricans, it is the kind of territorial unit in which secession might be
acceptable, even on the basis of Addis’s thesis. At the same time, however,
a sensible theory of justice cannot ignore the possibility that given a truly free choice, Puerto Ricans might wish to remain in the United States and simply choose political participation within the American nation. In addition, nationalism, either Puerto Rican or “American,” cannot become dogma. Just as Puerto Ricans should be respected as a minority culture within the United States, we should respect disenfranchised communities within the Puerto Rican peoples under either U.S. or Puerto Rican sovereignty.

If communitarian coexistence is the chosen model, traditional liberal toleration is inherently inadequate for colonized peoples because it undermines their cultural rights. Addis indicates that while it avoids the extremes of nationalism, pluralistic solidarity—that is, cultural coexistence and political cooperation—is the solution to this failure of liberal citizenship. He uses this concept to support his opposition to the assimilation or removal of ethnic minorities. As I indicated earlier, this concept must be construed as precluding only the “forced” removal of the colonized people by the colonizing power. It should not be used to limit the right of the colonized people to remove themselves from the colonizer’s body politic. The Puerto Ricans must thus be able to develop “shared identities” within their own community as citizens of the Republic of Puerto Rico or within the U.S. community as citizens of the United States.

I am thus arguing that nationalism may be deployed as a positive force as long as it is limited by a communitarian consciousness. To put it more simply, nationalism does not have to be inherently fascist. Puerto Ricans should be able to choose to be Puerto Rican patriots, or, more generally, peoples of the world should be able to choose a national affiliation. This assertion implies a rejection of the notion that being Puerto Rican (or American or Irish) first and a citizen of the world second is morally questionable or irrelevant.

Martha Craven Nussbaum’s idea that the emphasis on cosmopolitanism teaches our children to share is a typically flawed example of liberalism. Instead, sharing built on the recognition of and respect for difference is a superior theoretical model for a diverse world. In my view, this is a better way to deal with the paradox of difference. To the extent that in the past, difference was legally constructed and today is socially constructed and legally protected, a multicultural society must accept and respect difference rather than attempt to control it. As Iris Marion Young sees it,
equal treatment requires everyone to be measured according to the same norms, but in fact there are no “neutral” norms of behavior and performance. Where some groups are privileged and others oppressed, the formulation of law, policy, and the rules of private institutions tends to be biased in favor of the privileged groups, because their particular experience implicitly sets the norm. Thus, where there are group differences in capacities, socialization, values, and cognitive and cultural styles, only attending to such differences can enable the inclusion and participation of all groups in political and economic institutions.59

The resulting vision of citizenship is a pluralist, communitarian, and, yes, nationalistic form of citizenship. It is universal in that the rights of all citizens within the polity are recognized.60 Recognition is not based on the traditional liberal view of the individual as an island but on that of the individual as a person and a member of particular communities. I am not advocating a “cultural fragmentation of citizenship”61 but the respectful legal and political empowerment of the cultural citizen to provide justice in a multicultural society.

Justice requires Puerto Ricans living in the United States to be allowed to choose the nation to which they wish to belong. Justice also requires that the Puerto Ricans not marginalize women, blacks, and homosexuals—to name a few internally disadvantaged groups. This last notion is very important for the sake of consistency, since Puerto Ricans should treat themselves as they would want to be treated if they chose to remain under U.S. sovereignty. Nevertheless, the fundamental result of the theory of justice discussed here is that as cultural citizens of a defined territory, Puerto Ricans should be given the choice of defining their nation and their allegiance to either Puerto Rico or the United States.

Puerto Ricans would be choosing between legal sovereignty for themselves or cultural sovereignty within a supranational political culture. The latter system would require the United States to live up to Jürgen Habermas’s ideal of a diverse “political culture” that exercises “constitutional patriotism,” which Habermas defines using the United States as an example:

Examples of multicultural societies like . . . the United States demonstrate that a political culture in the seedbed of which constitutional principles are rooted by no means has to be based on all citizens sharing the same language or the same ethnic and cultural origins. Rather, the polit-
ical culture must serve as the common denominator for a constitutional patriotism which simultaneously sharpens an awareness of the multiplicity and integrity of the different forms of life which coexist in a multicultural society.\textsuperscript{62}

This new vision of Puerto Rican citizenship can be realized if the United States recognizes the sovereignty of the Puerto Rican people as a necessary prerequisite for Puerto Ricans to freely redefine themselves and their national sovereign allegiance. It would be illegitimate to require Puerto Ricans to make this decision while still under colonial rule, because that would be inconsistent with the theories of justice developed here. Puerto Ricans’ choice cannot continue to be the flawed “American” liberalism that is currently enshrined in U.S. law. By setting us free, only the United States can empower Puerto Ricans to make a free choice.
This chapter provides an overview of the legal alternatives for a postcolonial Puerto Rico, although for the most part I have chosen to ignore public international law as it might apply to Puerto Rico. The reason is that the international legal regime is totally powerless to enforce any rule against the United States, especially in relation to Puerto Rico’s status. Although international law might be relevant to the implementation of some or all the alternatives that I discuss here, I believe that the U.S.–Puerto Rican colonial relationship can be resolved only through the United States’ internal law and legal and political systems. While I expect that many scholars will vehemently disagree with this conclusion, I will leave it to them to develop the international legal issues.

A Judicial End for the Unconstitutional “Commonwealth”

In order to produce an acceptable permanent status for Puerto Rico, the legal alternatives must be defined and then tested for consistency with the theory of justice developed in the following section. To the extent that the available philosophical and legal alternatives require the acceptance of a paradigm that, at the very least, makes the current status unacceptable, the implementation of the law will be difficult, for reasons that an observer of the human condition identified long ago:

It must be considered that there is nothing more difficult to carry out, nor more doubtful of success, nor more dangerous to handle, than to initiate a new order of things. For the reformer has enemies in all those who profit by the old order and only lukewarm defenders in all those who would profit by the new order, this lukewarmness arising partly from fear of their adversaries, who have the laws in their favour; and
partly from the incredulity of mankind, who do not truly believe in anything new until they have had actual experience of it.\textsuperscript{1}

Although undeterred by such resistance, the following framework might rightly strike many readers as legally obvious, given the analysis in the previous chapters. But as the preceding quotation indicates, not everyone shares the same definition of “obvious” in matters as political as the construction of Puerto Rico’s status.

Some people on and off the island continue to defend Puerto Rico’s current status as not colonial because the people of Puerto Rico agreed to it in the referendum of 1952 and the plebiscite of 1967 (and perhaps even the two special votes engineered by Governor Rosselló in the 1990s). At the same time, at least some of these people argue that there is a binding bilateral compact between Puerto Rico and the United States. The furor in the summer of 2003 over a federal trial in Puerto Rico in which the defendants could have been subjected to the death penalty if convicted illustrates the political argument, the legal reality, and Puerto Ricans’ frustrations with both.\textsuperscript{2}

Article II, section 7, of Puerto Rico’s constitution provides in part that “the death penalty shall not exist.”\textsuperscript{3} In 2000, a U.S. district judge in Puerto Rico ruled that because of the “bilateral compact” between Puerto Rico and the United States, Puerto Rico’s constitutional prohibition against the death penalty prevented the federal statute from being applied on the island. On appeal, the First Circuit Court of Appeals reversed that ruling, reiterating that the Puerto Rican constitution does not limit the power of the U.S. Congress to impose law on the island. The court also rejected the argument that the federal death penalty was invalid because Puerto Ricans are not able to vote for president or to elect a voting congressional delegation to the U.S. House and Senate. District Judge Salvador E. Casellas put it this way: “It shocks the conscience to impose the ultimate penalty, death, upon American citizens who are denied the right to participate directly or indirectly in the government that enacts and authorizes the imposition of such punishment.”\textsuperscript{4}

But in reversing Casellas’s ruling, the circuit judges concluded that there is no such legal constraint on Congress’ ability to impose penalties for federal crimes. There is no disagreement that Congress has the power to apply the federal criminal laws to Puerto Rico. With that power, of necessity, comes the power to set the penalties for violations of those
laws. Indeed, it would be anomalous for Congress to grant the people of Puerto Rico American citizenship and then not afford them the protection of the federal criminal laws. The argument made by defendants and amici is a political one, not a legal one.5

The “protection” of the federal laws in this case is widely viewed in Puerto Rico as the imposition of the death penalty, which Puerto Ricans abhor.6 Yet again, the federal law is supreme, and after the acquittal of the two defendants by a San Juan jury, Puerto Ricans are again discussing the political implications of the opinions and the trial.

Partly because of this political discussion, some readers may see my attempts to preclude certain status alternatives as anti-democratic. But one of the purposes of my book is to help move the current status debate from the political to the legal arena. Only the absolute, if perhaps ruthless, clarity of the law will allow the Puerto Rican status issue to move beyond political attempts to justify and defend the current “commonwealth” status, which is a legally and morally flawed regime. Conversely, only the clarity of the legal alternatives will enable a truthful and legitimate political debate.

I am well aware that the U.S. government’s executive and legislative branches have consistently perpetrated the social and legal constructs of Puerto Rican subordination with the blessing of the courts. Despite their U.S. citizenship, Puerto Ricans on the island do not have a congressional delegation, just one nonvoting representative in the U.S. Congress, and they cannot vote in presidential elections. This “democratic deficit” in the U.S.–Puerto Rican relationship makes any appeal to the political branches of government unlikely to succeed. Therefore, a legislative/executive, that is, political, solution to U.S. colonialism may not be possible for this relationship without judicial intervention, at least as a catalyst.

In order to maintain its imperial authority, the United States often states that its territories have the level of sovereignty that the territories desire. Accordingly, the colonial power—the United States—shifts to the colonized people—the Puerto Ricans—all the legal burdens implicated in ending the colonial occupation. Puerto Ricans thus must bear the burden of pleading for a postcolonial status, the burden of producing arguments in favor of it, and the burden of proving that they are entitled to any remedy at all. The colonizer thus completely avoids the responsibility of justifying the continuation of the colonialist occupation as legal or moral.
The death penalty and the Vieques protests (discussed further in chapter 7) show that Puerto Ricans do not have the level of sovereignty they desire. But because the political branches of the U.S. government insist that it is up to the Puerto Ricans to end their own colonial imprisonment, I remain convinced that—in the absence of an armed struggle, which I do not favor—only the formalism of law through judicial action will force the political branches of the U.S. government to decolonize Puerto Rico. So far, the courts have not been helpful to Puerto Ricans, but because of the democratic deficiency in the U.S.–Puerto Rican relationship, the judiciary is the only branch of government in which Puerto Ricans might have even a small chance.

My judicial remedy for the current status quo is simple: It is unconstitutional for the United States to remain a colonial power for more than one hundred years. In other words, the unfettered authority of the U.S. government regarding the territorial clause of the U.S. Constitution has a time limit. Because of Congress’s failure to change Puerto Rico’s colonial status after more than a reasonable period following the occupation of the island and the first insular cases, it is now up to the U.S. courts to order Congress to construct a nonterritorial, constitutional status for the people of Puerto Rico. As discussed in chapter 2, some language in the insular cases suggests such a possibility. For example, in *Downes v. Bidwell*, Justice Edward D. White, whose concurring view became dominant after *Balzac*, stated:

The presumption necessarily must be that [the Congress], which within its lawful sphere is but the expression of the political conscience of the people of the United States, will be faithful to its duty under the Constitution, and, therefore, when the unfitness of particular territory for incorporation is demonstrated the occupation will terminate. I cannot conceive how it can be held that pledges made to an alien people can be treated as more sacred than is that great pledge given by every member of every department of the government of the United States to support and defend the Constitution.

The “alien people” are, of course, the U.S. citizens of Puerto Rico. The alien/citizen paradox notwithstanding, the constitutional oath taken by the legislators of the United States might set them free by imposing on the members of the U.S. House and Senate the obligation to devise a nonterritorial status for Puerto Rico. The principal attraction of this alternative
for the United States is that it does not require the Supreme Court to over-
rule or abandon the insular cases. I am simply asking that the Court im-
pose a one-century time limit on territoriality and thereby free the four
million U.S. citizens of Puerto Rico from colonial bondage. This result
seems attractive in an era when the U.S. government deems it necessary
to invade and to control foreign countries, for example, Afghanistan and
Iraq.9

What should replace the “commonwealth”? The communitarian the-
ory of justice developed in chapter 5 establishes that the legal and social
construction of Puerto Ricans as second-class citizens is unacceptable.
Puerto Rico’s continued territorial status could be held to be unconstitu-
tional without totally overruling the insular cases. Moreover, the current
commonwealth status is not an acceptable alternative for the permanent
resolution of the problem of Puerto Rican citizenship. Independence, the
entry of Puerto Rico as the fifty-first state of the union, or a truly binding
bilateral compact between an independent Puerto Rico and the United
States would end the island’s colonial status and establish a legally sound
and egalitarian relationship between the United States and Puerto Rico.
A reconstruction of the Puerto Rican state along those lines would also
reform Puerto Rican legal citizenship as required by a pluralistic commu-
nitarian theory of justice that empowers Puerto Rican cultural citizens
while preventing the deployment of culture as dogma. Accordingly,
Puerto Ricans would freely choose a form of political solidarity rather
than having an essentialized vision of “getting along” imposed on them
by the United States.

To be fully consistent with my theory of justice, the status must be cho-
sen under conditions that ensure Puerto Rico’s self-determination. The
most effective way to do this is through independence or, at the very least,
the assurance of it by the United States. In other words, unconditional in-
dependence—and the accompanying power for the Puerto Rican people
to exercise their free and sovereign will—is an essential prerequisite to a
permanent decision about Puerto Rico’s status and citizenship.10 Alterna-
tively, the guidelines set by the U.S. Supreme Court in declaring a perma-
nent or an overly long territorial status to be unconstitutional might also
produce acceptable results.
Postcolonial Alternatives: Nonassimilationist Redefinitions of Puerto Rican Citizenship

Independence is the one alternative that is acceptable under any applicable legal regime. However, the experience of Cuba and the Philippines after receiving independence from the United States underscores the need to not allow any remaining legal influence by the United States to be incorporated into the new Puerto Rican constitution. In addition, as the recent situation in East Timor showed, the process of independence needs to be carefully structured and thought out. Finally, besides a secure transfer of power, a political and economic transition will be needed to make independence workable.

Another transitional issue is dealing with those “American” citizens of Puerto Rican descent, in both Puerto Rico and the United States, who wish to stay in the United States. For Puerto Rico, the issue is defining citizenship in a manner that welcomes the displaced peoples of Puerto Rico, both on and off the island, and invites all persons who have chosen to make the island their home to stay. Retirement and health plans such as Social Security, Medicare, veterans’ benefits, and private retirement programs will have to be turned over to Puerto Rico as well.

These transitional matters would likely be dealt with by mutual agreement between an independent Puerto Rico and the United States, as the Puerto Rican Independence Party has consistently advocated and as the Young plebiscite bill likewise provides. If these matters are handled by treaty or by statute, they would be subject to congressional approval or change, though carefully crafted dispute-resolution provisions might prevent or at least deter unilateral congressional action. Nevertheless, since a Puerto Rican republic does not seek a permanent mutually binding relationship with the United States, a treaty would be a better alternative here than it would be for a free associated state.

Conversely, statehood would mean legal and political equal protection under the U.S. Constitution. Of course, this would not necessarily guarantee real equality, because of the failures of American liberalism and constitutionalism discussed earlier. Nevertheless, statehood would mean access to the courts and to the opportunities afforded by the “American” legal and political processes. This status would be legally and philosophically much superior to the current colonial condition, and it would essentially eliminate the democratic deficit of the current U.S.–Puerto Rican relationship.
Under U.S. domestic law, the path to statehood is legally straightforward. The U.S. Constitution expressly anticipates the admission of new states, which has already occurred thirty-seven times in the history of the republic. Problems might arise, however, because of conditions placed on the entry into statehood. Decisions by the U.S. Supreme Court gave Congress the power to impose conditions on admission into statehood, but they can be enforced only before admission. Congress has consistently threatened to impose an official-language (English) requirement on Puerto Rican statehood and in fact did so in the 1997 Young bill. But to be consistent with my theory of justice, Congress cannot impose conditions on Puerto Rico’s statehood that would compromise Puerto Ricans’ cultural identity, because that would be internally anti-communitarian and fundamentally immoral and unjust. Puerto Ricans should not have to choose between being culturally Puerto Rican and legally “American.” Moreover, the hundred-year history of Puerto Rico as a Spanish-speaking U.S. territory and of Puerto Ricans as Spanish-speaking U.S. citizens who are able to serve as federal employees and U.S. military personnel belies arguments that multilingualism is necessarily bad for the nation. The real question here is whether Congress is capable of accepting not a Spanish-speaking or even a bilingual Puerto Rico but merely the reality of a multicultural United States.

The final alternative is something between statehood and independence that is superior to the current illegitimate colonial regime described in chapter 2. Such a status can be effected only by a truly bilateral compact, that is, an agreement that is equally binding on both the people of Puerto Rico and the people of the United States. A binding agreement between the Puerto Ricans and the estadounidenses can be drawn up under either U.S. law or international law and probably would be most effective under a combination of the two systems.

Currently three states, or “nations,” have different forms of “free association” with the United States: Palau, the Federated States of Micronesia, and the Marshall Islands have statutory relationships with the United States that are known as free associated states, and they also are recognized as members of the international community by the United Nations. Nothing that I can see in the statutory regimes between those polities and the United States would limit, under U.S. law, the power of Congress to pass legislation affecting them.

In my view, only an amendment to the U.S. Constitution could produce an agreement that, under domestic U.S. law, would be binding on
the United States and Puerto Rico. The amendment would authorize Congress to negotiate a new act to establish the relationship between Puerto Rico and the United States and to provide the requirements for its general parameters and its passage. Once the act was negotiated and ratified, the agreement would become binding on both sides and, by express provision of the amendment, could not be amended unilaterally by either side. The amendment could also provide a time limit for its ratification and for agreement on a U.S.–Puerto Rican pact.20

A treaty is another possible alternative. In theory or, more accurately, under public international law, a treaty would be mutually binding on the contracting parties. The Pacta sunt servanda rule of article 26 of the Vienna Convention on the Law of Treaties of May 23, 1969, provides that “every treaty in force is binding upon the parties to it and must be performed by them in good faith,” and “a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”21 Again, independence for Puerto Rico would be a necessary prerequisite for a treaty, since only internationally recognized nations can enter into treaties.22 The benefit of a treaty regime would be the international recognition of Puerto Rico’s sovereignty and the enforceability of the treaty through international legal processes.

Under the U.S. legal regime, however, a treaty would have a fundamental weakness in that it would be subject to subsequent unilateral congressional action under U.S. law. The supremacy clause of the U.S. Constitution provides that treaties must be ratified by the president and receive the advice and consent of a two-thirds majority in the Senate.23 Although an approved treaty takes precedence over inconsistent state laws, the treaty itself can be overridden by a subsequent act of Congress, provided that Congress’s intent to abrogate the treaty is clearly stated in the law.24 Therefore, in order to produce an agreement that is bilaterally enforceable under both domestic U.S. and international law and one in which Puerto Rico’s sovereignty is clear, an associated status would probably require both a constitutional amendment and a treaty between the United States and a republic of Puerto Rico. Other alternatives simply would not be compatible with the theory of justice developed in this book because they would not produce mutually binding effects on the United States and Puerto Rico and receive international recognition. The constitutional amendment would therefore have to authorize the entry into a treaty between the proposed republic of Puerto Rico and the United States of America.25
The basic paradigm shift required by my theory of justice is that the Puerto Rican people must be free to redefine their legal citizenship. This means that an essential prerequisite to redefining Puerto Rican citizenship is redefining the state. Puerto Rico must become a sovereign state in order for Puerto Ricans to be able to redefine their citizenship vis-à-vis their relationship with the United States and their relationship among themselves.

It might seem paradoxical or even contradictory to allow Puerto Rico to remain in the United States after acquiring nationhood and independence, especially after criticizing “American” citizenship for its flawed foundation. My theories of citizenship and the state are intended to apply to any society, however; I am using Puerto Rico only as a specific case study. To allow for a future under U.S. citizenship in statehood or under a lesser form of U.S.–Puerto Rican citizenship under an affiliated republic(s) model is to enable Puerto Ricans to choose the legal regime under which they wish to build a just society. The purpose of my theory is to allow a society to strive for a balance of justice and morality. At the same time, the formal legal regime within which this takes place must be chosen by the people. The process must be mutual, involving the people of both Puerto Rico and the United States. And it must be free for both.

**Implementing the New Status: Postcolonial Reparations**

The change in sovereignty along one of the lines described earlier is only the starting point in a complex process of implementation. The economic implications of all three alternatives involve expenditures by the colonial power, the United States, to compensate the colonized people, the Puerto Ricans. These payments are necessary both to construct Puerto Ricans’ sovereignty and to create a viable Puerto Rican economy that supports real equal opportunity, thus repairing the legacy of political, economic, and psychological colonization by the United States.

Contrary to the proposal for judicial action at the start of this chapter, the new reparations theory is largely based on a pessimistic—albeit largely accurate—view of the willingness and ability of the U.S. courts to fashion appropriate remedies for enduring U.S. racism. To put it simply, fitting neatly within the legal requirements of civil rights protections, as defined and enforced by the courts, has not worked well for people of color, especially in the current age of conservative backlash. Accordingly,
reparations theory views this remedy as a mostly legislative process, which thus is not tightly bound by such requirements and is given great leeway in action.\textsuperscript{26}

Legislative reparations theory implies that the victims seeking compensation through reparations have the capacity to influence the political branches of government and that those institutions have the will to act on their behalf. Unfortunately, these political venues are largely closed to the Puerto Ricans because of the democratic deficit of the U.S.–Puerto Rican relationship.

Nevertheless, the actual implementation of a postcolonial future for \textit{mi isla} (my island) will require legislative and executive actions well informed by the current scholarship regarding reparations. Reparations scholarship may help design a transition to sovereignty and empowerment for Puerto Ricans that gives them true political citizenship while allowing them to maintain a separate and distinct cultural citizenship. My LatCrit definition of the term \textit{reparations} and how they might apply to the colonized people of Puerto Rico is based on the groundbreaking works of Mari Matsuda, Robert Westley, and Eric Yamamoto.\textsuperscript{27}

As I use the term here, \textit{reparations} are a general remedy implemented through a judicial or legislative allocation of public resources to create programs allowing a previously marginalized group to acquire full economic, political, and social citizenship within the national polity, by repairing the harm(s) caused by the normative (dominant) legal and political culture.

“The basis of the claim for . . . reparations is not need, but entitlement. Need is not irrelevant, but it is by no means central to the claim. Reparations as a norm seeks to redress government-sanctioned persecution and oppression of a group.”\textsuperscript{28} In the case of Puerto Rico, the colonization of the island and the legal definition of Puerto Rican citizenship as second class are the most obvious elements of oppression. The social construction of Puerto Ricans as being unassimilable because they belong to a single, inferior, nonwhite race is both the basis for identifying the victimized group and one of the harms caused to it by the United States.

It also is important to understand “reparations not as compensation, but as ‘repair’—the restoration of broken relationships through justice.”\textsuperscript{29} Reparations allow marginalized groups to “position themselves as creditors seeking payment of an overdue debt, rather than as racial supplicants seeking an undeserved preference,” for example, to counter the reactionary deconstruction of affirmative action through the myth of
meritocracy. In the context of Puerto Rico, this positioning would counter the political myth that Puerto Ricans are ungrateful recipients of “foreign aid,” or undeserved welfare, as discussed in the conclusion. Accordingly, modern reparations theory seeks to empower outsider groups to coalesce as communities affirming real equality around development of a legal norm in the United States that mandates reparations to groups victimized by racism that is not group specific. Such a norm would apply to any group that could show the requisite degree of harm from racism, linked to an international standard of human rights, plus a reliable estimate of damages.

Yamamoto explains further that the repair paradigm of reparations focuses on (1) historical wrongs committed by one group, (2) which harmed, and continue to harm, both the material living conditions and psychological outlook of another group, (3) which, in turn, [have] damaged present-day relations between the groups, and (4) which ultimately [have] damaged the larger community, resulting in divisiveness, distrust, social disease—a breach in the polity. Within this framework, reparations by the polity and for the polity are justified on moral and political grounds—healing social wounds by bringing back into the community those wrongly excluded.

Depending on the nature of the damages, reparations are not necessarily strictly monetary, but they necessarily involve an allocation of governmental resources in one way or another. For example, the grant of sovereignty is a political/legal act that in itself does not involve direct expenditures. The provision of full disclosure of information also might not in itself involve money. But almost any governmental action, with the possible exception of an apology, requires some reallocation of resources and has at least some opportunity cost, if not a direct expenditure.

As Westley indicates, reparations have to be a general remedy, paid by the government as the principal perpetrator, using general taxpayer revenues as spent by the legislature. In the case of Puerto Rico, reparations initially might be ordered by the court. If they are monetary reparations, they should not be individual payments, since those would be inconsistent with the group vindication that is the basis of the claims and the thesis of this book. Nevertheless, intragroup class differences must be con-
sidered when designing any economic remedy to resolve the problems of the marginalized. That is, reparations should focus on “the poorest among us [who] should be compensated first and through a meaningful (not symbolic) monetary transfers.”34 In framing its objectives and beneficiaries, reparations theory recognizes the difference between legal and political citizenship, on the one hand, and cultural and social citizenship, on the other.35 By focusing on marginalized groups, reparations theory continues the communitarian challenge to traditional liberalism seen in the citizenship debates discussed in chapter 5.

In the case of Puerto Rico, and in most colonial situations, the concept of cultural nationhood or citizenship can be used to differentiate the colonized peoples from their colonial oppressors; it can also be used as a source of empowerment, consciousness, and pride, that is, the “subversive” use of “othering” identified by Adeno Addis.36 This concept leads to a crucial interrogation in the reparations debate, “whether reparations are regressive in the sense that they entrench biological fictions of race.”37

Westley cites Justice Joseph P. Bradley to illustrate the often unarticulated view of white “Americans” regarding African Americans:

> When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men’s rights are protected.38

Paradoxically, ignoring its heteropatriarchal components, this statement of the legal meaning of citizenship represents in some ways what Puerto Ricans aspire to, given that their citizenship is legally constructed as inferior to that of any citizen of the United States who does not reside in the territory of Puerto Rico. Westley, however, is discussing the search for real citizenship for African Americans within the United States. In so doing, he constructs a response to Justice Bradley that can be applied to Puerto Ricans’ search for equal citizenship:

> As Justice [John M.] Harlan expressed then in dissent, and we today may acknowledge, “It is scarcely just to say that the colored race has been the special favorite of the laws” and less than twenty years out from slavery, in any event, did not mark the point in Black progress at
which equality with whites no longer should have been a national con-
cern. The maintenance of a system in which “any class of human be-
ings” is kept “in practical subjection to another class, with power in the
latter to dole out to the former just such privileges as they may choose to
grant marks Justice Bradley’s statements as not only unreasonable, but
also unjust.” It is no less unreasonable and unjust today.\textsuperscript{39}

Critical race and LatCrit theorists recognize that traditional liberals and
modern reactionaries often oppose group or identity rights.\textsuperscript{40} Robert
Westley notes that “the irony posed by the very question of Black na-
tional group status is that in ordinary social and political discourse, Blacks are treated as a group for every purpose other than rights-recog-
nition.”\textsuperscript{41} In the case of Puerto Ricans, they are treated as a group for the
purpose of a seemingly oxymoronic constitutional deprivation of the con-
istitutional rights guaranteed to every U.S. citizen who resides in the
“United States proper,” but not for the purpose of an equal allocation of
the public resources spent on “regular” U.S. citizens.\textsuperscript{42} The Puerto Ricans
thus generally bear every burden of their U.S. citizenship, but not the ben-
efits of it.

The group entitled to reparations should include all island-born Puerto
Ricans who live on the island, the isleños, because they constitute an iden-
tifiable cultural nation with a definable territory that is entitled to sover-
eignty. I am willing to allow mainland-born Puerto Ricans to have to
move to Puerto Rico in order to become citizens, with probably a one-
year residency requirement. I would also consider naturalization for any
other U.S. citizen, native or naturalized, and for foreign citizens living in
Puerto Rico.\textsuperscript{43} But without a return to the island, I have purposely cho-
sen to exclude those who reside in the United States “proper” because the
migration from la isla to the “states” results in more legal and political
rights, at least in theory, than those enjoyed by Puerto Ricans on the is-
land. In any case, despite the realities of marginalization in the U.S. main-
land, the truth is that Puerto Ricans in Puerto Rico represent the “poor-
est among us” and are thus the group most entitled to reparations.

Reparations would be designed to repair the damages caused by colo-
nial exploitation. Reparations are not necessarily just economic; they can
also be political and psychological. Puerto Ricans are entitled to a con-
struction of their country’s sovereignty and a reconstruction of their citi-
zenship through constitutional legal reform. Puerto Ricans also are enti-
tled to have repaired the damage done to its reputation by the United
States’ essentialized social construction as well as the emotional damage caused by that and the imperialist occupation of the island.

The reparations relevant to the Puerto Rican–U.S. colonial context are (1) the construction of sovereignty, (2) the return of property and monetary compensation for the occupation, (3) the disclosure of information, and (4) apology.

All these postcolonial status alternatives require basic institutional reform for their implementation. Eric Yamamoto provides an important warning about reparations and institutional reform:

Reparations by government or groups should be aimed at a restructuring of the institutions and relationships that gave rise to the underlying justice grievance. Otherwise, as a philosophical and practical matter, reparations cannot be effective in addressing root problems of misuse of power, particularly in the maintenance of oppressive systemic structures, or integrated symbolically into a group’s (or government’s) moral foundation for responding to intergroup conflicts or for urging others to restructure oppressive relationships. This means that monetary reparations are important, but not simply as individual compensation. Money is important to facilitate the process of personal and community “repair.”

Community repair for Puerto Ricans on the island means the construction of real political power for themselves and their territory. Puerto Ricans should be able to choose to be Puerto Rican patriots, and they should be able to choose a national affiliation to an independent republic of Puerto Rico, to a free associated state of Puerto Rico, or to the United States as the U.S. state of Puerto Rico. The keys to a future postcolonial legal relationship between Puerto Rico and the United States are the preservation of Puerto Rican cultural identity and the grant of full political power to Puerto Ricans.

Reparations must include the return of the military lands to the Puerto Ricans and their environmental cleanup. For example, the U.S. military tested Agent Orange in the El Yunque National Rain Forest before using it in Vietnam. The navy’s training in Vieques reportedly included the use of napalm and environmentalists say Vieques’ delicate coral reefs have been largely obliterated. Long stretches of its once-pristine beaches now stand littered with tons of shrapnel, unexploded shells,
discarded military hardware and even the radioactive debris of bombs that the U.S. Defense Department now admits were tipped with depleted uranium. Using uranium-tipped weapons is a direct violation of Pentagon rules.46

Puerto Rican authorities have recently reiterated the need to clean up lands abandoned by the U.S. Navy, including those in the small island of Culebra, which the navy abandoned in 1975.47 In addition, the Puerto Rican economy must be adapted to work for Puerto Ricans, not just for U.S. taxpayers and investors. Currently, the Puerto Ricans on the island have a mean per capita income of less than one-third of the national U.S. average (the mean per capita household income in 1989 was $4,099 in Puerto Rico, and the U.S. average was $14,052).48 These numbers have not changed substantially since then. Puerto Ricans receive only a fraction of the federal benefits to which other U.S. citizens are entitled. Reparations theory can help resolve these land and economic problems.

Just as important as—and perhaps even more important than—money is the full disclosure by the U.S. government of the benefits that it has derived from the century-old U.S.–Puerto Rican relationship, in both the private and public economy. This is essential to repudiating the myth of Puerto Rico as a dependent welfare state.

Full disclosure of the political repression the United States has perpetrated and encouraged also is needed, especially the anti-independence violence and police-state tactics targeting any political dissent that the United States has chosen to label “anti-American.” The distinction between public enemy and political opponent is especially important since September 11, 2001. With a full disclosure, Puerto Ricans will be able to evaluate the adequacy of other reparations.

Finally, one other step might help undo the effects of imperialism: an apology. For example, the apology given to Japanese Americans interned during World War II indicates that apology can be an important reparation.49
Conclusion

The United States views Puerto Rico’s cultural and political assertiveness as resistance that must be stopped or controlled. This has resulted in a campaign of cultural and political repression. In the process, independence has been constructed as an unacceptable alternative for the United States and a disaster for the Puerto Ricans. Full incorporation into the United States, which would politically empower Puerto Ricans, also is not acceptable, because their cultural identity conflicts with the idealized “American” norm. In choosing to retain their cultural identity, Puerto Ricans are regarded as “stubborn” and “ungrateful” to the United States.

This chapter analyzes the consequences of the U.S. colonial regime over Puerto Rico, especially the misleading social and political narratives about the Puerto Ricans that it has produced.

The Mythology of “American” Imperialism in Puerto Rico

Republican Senator James Inhofe (Okla.) recently complained that “they” (the Puerto Ricans) “kick[ed] us out of our range” in Vieques.1 While the closing of the Vieques Training Center may yet prove to be the single most important event in the U.S.–Puerto Rican relationship in the last one hundred years, the history of the United States’ military use of Puerto Rico is the best example of the United States’ desire for Puerto Rican land and the contempt for its people. Since the beginning of its colonization, it was evident that the United States’ interest in conquering land did not extend equally to the colonized peoples.2 Historically, the United States has viewed Puerto Rico as “its” land and Puerto Ricans as, at best, “ungrateful” “foreign” laborers and consumers and, at worst, dangerous subversives and revolutionaries.
Contrary to the view that Puerto Rico was a mere afterthought in the Spanish-American War and is now a forgotten American colony, *la isla* is in fact a colony that the United States wanted and has never forgotten at policymakers levels. The historical record reveals that one of the *estadounidenses*’ main interests in their defeat of the Spanish in the Spanish-American War was acquiring Puerto Rico. In President William McKinley’s instructions to the U.S. delegation that negotiated the Treaty of Paris, the only full territory that he ordered them to demand from the Spanish was the islands of Puerto Rico. Although the islands were important to the United States for military and economic reasons, their principal attraction was their strategic location when the Spanish-American War broke out. Indeed, the acquisition of Puerto Rico was contemplated from the very conception of the new “American empire” that resulted from the Spanish-American War, as illustrated by the following correspondence:

Assistant Secretary of the Navy Theodore Roosevelt, in a personal letter to Senator Henry Cabot Lodge, wrote: “. . . do not make peace until we get Porto Rico.” Lodge replied: “Porto Rico is not forgotten and we mean to have it. Unless I am utterly . . . mistaken, the administration is now fully committed to the large policy that we both desire.”

Nevertheless, Puerto Rico is often erased in any discussion of the purposes and effects of the Spanish-American War. This social construction is exemplified by a documentary aired on PBS. *Crucible of Empire: The Spanish-American War* was a film purporting to tell the story of that conflict, but it focused almost exclusively on Cuba and the Philippines. PBS’s Web site describes the historical moment as follows: “Victorious over Spain in Cuba and the Philippines, the United States, a nation founded in opposition to imperialism, grappled with its new role as an imperial power.” In fact, the film and its Web site at www.pbs.org make only token references to Puerto Rico and Guam, even though the Puerto Ricans and the Guamanians are the only peoples colonized during that war that are still part of the “American empire.”

After acquiring it, the United States designed a process of governance that hid Puerto Rico in plain view. Puerto Rico’s carefully crafted legal regime was intended to conceal the true colonial status of the island because it is part of the U.S. legal structure but different and apart from it. Such a dichotomy was necessary in order for the United States to lobby after World War II for people’s self-determination. The United States
needed to hide its own colonial empire from allies, to whom it was preaching about decolonization, and from the United Nations. At the same time, the U.S. government hid the island’s status from most “Americans.” Ediberto Román correctly labeled Puerto Rico a “forgotten colony” in his important article “Empire Forgotten” because Puerto Rico has been forgotten and, frankly, is simply unknown by most Americans. But Román noted that U.S. policymakers did not forget Puerto Rico; rather, “the United States has attempted to elude the colonizer label through legal fictions such as the incorporation doctrine and the creation of the commonwealth status and the half-truths repeatedly told to the international community.”

Since 1898, the United States has continuously used its hidden colony of Puerto Rico as a military outpost. For example, until very recently, the Roosevelt Roads Naval Base officially included the well-known Vieques training area. The navy base itself, which is located on the east coast of the main island of Puerto Rico, has three bays that can accommodate the navy’s largest ships, its nuclear aircraft carriers. In the 1960s, the U.S. Navy tried to persuade the local government to give it the entire islands of Culebra and Vieques for military training. Puerto Rican officials code-named their negotiations with the U.S. military the “Plan Drácula” (Dracula Plan), after the literary vampire, because of the military’s demand that all the coffins be removed from the cemeteries on the islands of Vieques and Culebra if they were transferred to the United States. The Puerto Rican government refused the navy’s request and gave it only certain parts of Culebra and Vieques for its training.

In the 1980s, six thousand people lived on Roosevelt Roads Naval Base, including 2,575 active military personnel. On average, it held 200,000 military visitors and received 45,000 flights, 1,200 ships, and 5,400 small vessels every year. It housed a communications complex with five underground levels. The base has served as a staging area for operations in Guantánamo, Cuba, and the Panama Canal. It coordinated operations along the coasts of South America. It hosted joint exercises with NATO and with the air and naval forces of Central and South America. Other U.S. bases in Puerto Rico include Fort Buchanan, Sabana Seca (a communications center), Camp Tortuguero (a training center), and Salinas (a training center mainly used by the National Guard). The National Guard, however, uses other bases throughout the island, in the cities of Bayamón, Puerto Nuevo, San Juan, Isla Verde, Punta Salinas (Toa Baja), Aguadilla, Yauco, Ponce, Salinas, and Caguas. The Aguada
Navy Communications Base has a long-range transmitter to communicate with submerged submarines. Aguada, Isabela, and Sabana Seca also enable communications with surface combatants. Puerto Rican bases provide tracking and telemetry data for missiles test-fired from Cape Canaveral, and the Point Borinquen station helps monitor solar emissions and their effect on military communications.\textsuperscript{10}

In the 1980s and 1990s, when the United States’ bases on the Philippines were closed and the Panama Canal Zone was turned over to the Panamanians, Puerto Rico became even more strategically important to the United States\textsuperscript{11} as a place for military training and a location for military installations.\textsuperscript{12} The well-known protests over the use of Vieques as a naval training site put the military uses of Puerto Rico in general, and of that island in particular, in the “national” spotlight in the United States.

Vieques is a small island off the southeastern coast of Puerto Rico’s main island, which the U.S. Navy had been using for live-fire military exercises for more than sixty years. On April 19, 1999, a stray bomb dropped by a marine aviator hit Navy Observation Post OP-1, near the entrance of the navy’s training center, killing David Sanes-Rodríguez, a Puerto Rican civilian guard who was manning that guardhouse.\textsuperscript{13} This tragedy brought to the surface the local people’s simmering resentment of the use of their island by the U.S. Navy. Despite their protests, Pentagon officials continued to call Vieques the “only place its Atlantic fleet can hold simultaneous land, air and sea exercises using live fire.”\textsuperscript{14} Because the United States has 12,375 miles of coastline, compared with Puerto Rico’s 311,\textsuperscript{15} and considering Puerto Rico’s politically weak position in the United States, the navy’s claim must be viewed with great skepticism. But the campaign of civil disobedience succeeded, and the training center was closed at the end of April 2003 and other military operations on the island have been curtailed.\textsuperscript{16} Vengeful Republican lawmakers are reportedly even trying to close the Roosevelt Roads Naval Base.\textsuperscript{17} Although it is too soon to know whether these changes and closures will actually be carried out, the successful Vieques protests could become the most significant catalyst for change in the U.S.–Puerto Rican relationship in more than a century.

Besides its record of dependence on Puerto Rico for military bases and training, the United States has a long history of disregard for Puerto Ricans’ legal and political rights and dignity. Perhaps the greatest damage caused by the United States to the people of Puerto Rico can
be labeled their “crisis of self-confidence.” This form of internalized oppression that afflicts the people of Puerto Rico has led them to conclude that they are incapable of self-government. That is, Puerto Ricans believe that they lack the economic power to create an independent nation and lack the discipline and intellectual and moral capacity for government.

Oppression is internalized when a group that is oppressed by the normative society—as the Puerto Ricans are by the dominant United States—uses the same kinds of discrimination to marginalize members of its own community that the normative group uses. For example, the men in this group might subordinate the women, and African Americans develop a preference for lighter skin. Oliva Espín described the paradox of a group that is the object of discrimination marginalizing members of its own community:

The prejudices and racism of the dominant society make the retrenchment into tradition appear justifiable. Conversely, the rigidities of tradition appear to justify the racist or prejudicial treatment of the dominant society. These “two mountains” reinforce and encourage each other. Moreover, the effects of racism and sexism are not only felt as pressure from the outside; like all forms of oppression, they become internalized.  

The oppression internalized by Puerto Ricans can be seen in the legal, social, and political constructs imposed by the United States. Besides legally constructing Puerto Ricans as second-class citizens, the United States has reinforced this devaluation of Puerto Rican dignity by using stereotyping narratives about Puerto Rican differences and “otherness” and conducting a campaign of political repression. The United States’ principal narrative about Puerto Ricans cultivates the view that despite their U.S. citizenship, the people of Puerto Rico are too brown, too Latina/o, and too “foreign”—that is, too unassimilable—to be incorporated into the United States.  

Theodore Roosevelt Jr., who was appointed governor of the island by President Herbert Hoover in 1929, called the Puerto Ricans “shameless by birth” and added that he did not “know anything more comic and irritating than Puerto Rico.” In 1932, a letter written by a cancer researcher at the Rockefeller Institute, Dr. Cornelius P. Rhoads, was published in Puerto Rico. He wrote that working in Puerto Rico
would be ideal, except for the Porto Ricans. They are beyond doubt the dirtiest, laziest, most degenerate and thievish race of men ever inhabiting this sphere. It makes you sick to inhabit the same island with them. They are even lower than Italians. What the island needs is not public health work but a tidal wave or something to totally exterminate the population. It might then be livable. I have done my best to further the process or extermination by killing off 8 and transplanting cancer into several more. The latter has not resulted in any fatalities so far. . . . The matter of consideration for the patients’ welfare plays no role here—in fact all physicians take delight in the abuse and torture of the unfortunate subjects. . . . Rhoads admitted he had written the letter . . . but explained that it was only a form of personal recreation; he wrote fictitious letters expressing the anti–Puerto Rican sentiment among some continental residents he knew, intending to use the material someday in a novel.21

Rhoads went on to become the director of the Memorial Sloan-Kettering Clinic, and for years, young cancer researchers eagerly accepted the prestigious Cornelius P. Rhoads Award.22 Then in 2002, after Puerto Rican scholars and politicians demanded its withdrawal,23 the American Association of Cancer Researchers decided to remove Rhoads’s name from the award.24 Although the matter is currently under review by medical researchers, an investigation at the time did not link any suspicious deaths or cases of cancer to Dr. Rhoads.25 Therefore, on the record, the incident appears to reflect reprehensible attitudes rather than genocidal conduct. Nonetheless, Dr. Rhoads’s boasts about killing Puerto Ricans were taken seriously because of a long history of the United States’ disregard for the health of the island’s residents.26

Statements by New Dealer Rexford G. Tugwell reveal the United States’ racialization of Puerto Ricans. When Tugwell was the secretary of agriculture, he accompanied First Lady Eleanor Roosevelt on her trip to Puerto Rico in March 1934, about which he wrote:

I rather dislike to think that our falling fertility must be supplemented by these people. But that will probably happen. Our control of the tropics seems to me certain to increase immigration from here and the next wave of the lowly . . . succeeding the Irish, Italians and Slavs . . . will be these mulatto, Indian, Spanish people from the south of us. They make poor material for social organizations but you are going to have to reckon with them.27
Tugwell’s statements are important because he was the last gringo appointed governor of the island. Serving from 1941 until 1946, he was one of the “liberal” members of Franklin Delano Roosevelt’s “brain trust,” and he is widely viewed as “sympathetic” to Puerto Rico’s incorporation into the union.28

Tugwell also articulated “America’s” view of Puerto Ricans’ cultural resistance. In his book about Puerto Rico, The Stricken Land, he quotes a “continental” educator who taught on the island as stating that “talk about [Puerto Rican] culture” as a justification for resisting English-language instruction was “insincere, an invented reason for not doing a difficult but necessary thing, an excuse for having failed to follow a course which every practical consideration dictates.” Although he demanded that Puerto Ricans adopt English monolingualism, Tugwell was willing to accept bilingualism elsewhere: “Spanish to the south, and English to the North,” he asserted. Nevertheless, resistance to English meant that Puerto Rico was “isolat[ing] itself culturally and defy[ing] the world.”29

Tugwell then cited the alien/citizen paradox of the Puerto Ricans: they are citizens of the United States who are nonetheless socially and politically constructed as “foreign” to the United States.30

Foreigners [Tugwell wrote] did not interest us. It was true that Puerto Ricans had been made citizens in 1917 on the only occasion when serious revision of the Organic Act [before law 600] was undertaken after 1900, but it was done in a sudden realization of strategic possibilities, not as part of a policy, and, significantly enough, in time of war when Puerto Rican loyalty was important. Americans generally had not come to think of Puerto Ricans as real citizens—rather, when they thought of them at all, as citizens of a sort of second class.31

According to Tugwell, by rejecting English in particular and Americanization in general, Puerto Ricans had chosen to maintain their “foreignness.” In turn, Puerto Ricans could obtain only the status of unincorporated territory because statehood would not be granted to foreign people and Puerto Ricans could not choose independence. “To be American citizens without a State to live in, without representation in the Congress, without even incorporation of their Territory, was to exist in a monstrously illogical situation.” But Puerto Rico could not be an independent republic, either. The island, “with two million people on her small acreage,” was not self-sufficient and thus depended on emigration to
work in the United States and on “the most generous subsidy from her rich Northern associate.” The inferior Puerto Rican “race” had chosen to remain Latinas/os by rejecting Americanization, and it would therefore remain an unincorporated territory of the United States, unacceptable for statehood and unable to be independent.

The narrative of Puerto Rico also contains an important contemporary political dimension. For example, more recently, Puerto Ricans have been portrayed as “unpatriotic” and “ungrateful” in the public discourses regarding the release of Puerto Rican political prisoners and the protests of the navy’s use of Vieques.

In 1999, while “chairing a Vieques hearing . . . , Sen. John Warner [R-Va.] said that, doing their patriotic duty, his own constituents in Quantico sit closer to an active live-fire range than do residents of Vieques.” Senator Warner’s statement should be compared with that by Lieutenant General William Tangney, deputy commander in chief of the U.S. Special Operations Command (SOCOM), who indicated that the training on Vieques was much more intense than that taking place at any other training site. Now that the training center has been closed, the choice of the phrase “patriotic duty” becomes significant because the U.S. citizens of Puerto Rico rejected the training center.

The debate over the use of Vieques is about patriotism, but not in the manner in which Senators Inhofe and Warner believe. Puerto Rican patriots who believe in their own nation are protecting their right to control their own land. Conversely, the many Puerto Ricans who want a permanent relationship with the United States, who embrace their U.S. citizenship, and who also oppose the bombing are “American patriots” as well. For example, Norma Burgos, the Puerto Rican senator of the pro-statehood party, spent sixty days in jail for peacefully protesting on navy land on Vieques. At first, Senator Burgos was sentenced to forty days in jail, but U.S. District Judge Héctor Laffitte added twenty days after she stated:

More than 700 people to this day have come and passed before this court to be judged by all of you, you as the judges, with evidence that demonstrates that the ones who are violating the greater law are the members of the Navy. What are you waiting for in order to come and arrest them and judge them?

Rafael Cordero-Santiago, the mayor of Ponce and a leader of the pro-commonwealth PDP, spent thirty days in jail for a similar offense.
gos, Cordero-Santiago, and other members of their parties who also protested in various ways, were challenging “bombing without representation” and demanding that their rights as U.S. citizens and as human beings be respected by the colonizer. In fact, they were demanding that the United States live up to the rhetoric of democracy in its treatment of its own citizens. Many U.S. observers failed to note that the agreement to close the training center—which to his credit President George W. Bush has insisted on honoring—was initially reached between President William J. Clinton and the strongly pro-statehood governor Pedro Rosselló.38

The Vieques situation brings into relief a fundamental democratic deficit in the U.S.–Puerto Rican relationship, the breakdown of the constitutional separation of powers. While federal executive officials and the military were able to conduct military maneuvers in Vieques, the U.S. District Court for Puerto Rico could impose harsh sentences on people who took principled, nonviolent positions in opposing them.39 But no Puerto Rican legislative delegation at the federal level is able to bring official balance to the federal power over the island. I say official political powerlessness of the Puerto Ricans because on the one hand, I am well aware of the legal regime that governs the U.S.–Puerto Rican relationship and because on the other hand, I am not unmindful of the positive effects of the Puerto Ricans’ campaign of civil disobedience in opposition to the bombing. The bombing of Vieques for sixty years is the best example of what is wrong with the U.S.–Puerto Rican relationship. If Puerto Rico were indeed a “foreign” country, it would have the sovereign power to control the use of its territory. If Puerto Rico were a state, it would have official political representation in the legislative branch that was consistent with the basic tenets of “American” constitutional democracy. If the U.S. citizenship of the Puerto Ricans were not second class, their concerns would not have been so easily overridden sixty years ago and repeatedly ignored ever since.

The economic narrative about Puerto Rico is even more misleading. In the United States, the traditional story about Puerto Rico is that the Puerto Rican isleños “have the best of both worlds” because “they” do not pay federal taxes and nonetheless receive federal benefits. Moreover, the protests against the navy and pro-independence activity reveal the Puerto Ricans’ lack of the “gratitude” to the “Americans.” On Sunday, September 13, 1999, the New York Times ran an article headlined “Hundreds Gather to Welcome Pardoned Militants in Puerto Rico.” The last
paragraph of the story reads as follows: “As residents of a United States commonwealth, Puerto Ricans do not pay Federal taxes but receive $11 billion annually in Federal aid. They are United States citizens but cannot vote for President.”\(^{40}\) This statement is incorrect. Puerto Ricans do not pay federal income taxes, but they do have to pay Social Security and other taxes and duties on income earned in Puerto Rico. In the early 1990s, when what the New York Times labeled “federal aid” to Puerto Rico was estimated at about $5 billion, Resident Commissioner Romero-Barceló estimated that Puerto Rico paid more than $2.5 billion to the U.S. Treasury in taxes and duties. In addition, “the local personal income tax in Puerto Rico is higher than in most states, including both federal and local contributions.”\(^{41}\) Thus the Puerto Ricans bear a disproportionately high level of taxation relative to their income. They also locally pay for their services in a way that relieves the federal government from having to do so while at the same time maintaining the narrative of a dependent welfare state. Finally, the narrative about taxation is misleading because, given the level of poverty in Puerto Rico, few of the island residents would be required to pay any federal income tax at all.

But more important, the New York Times article implies that those who believe in independence for Puerto Rico are being ungrateful to the United States for its “generosity” in providing “federal aid.” This characterization was carefully calculated to create a false impression of all Puerto Ricans as living off the “generosity” of the United States. Puerto Rico is a U.S. territory, and Puerto Ricans are U.S. citizens. Therefore, the United States is simply fulfilling its obligations to citizens of the United States; it is not providing “aid.” In fact, the U.S. citizens residing in Puerto Rico receive fewer federal benefits than do citizens living in the United States proper, in accordance with a ruling by the U.S. Supreme Court.

The narrative of U.S. economic generosity toward Puerto Rico is completely false. I find the claim absurd that the United States would continue to maintain Puerto Rico as a territory if it were a substantial drain on the treasury. It seems inconceivable that U.S. legislators and executive officials would engage in this one-hundred-year history without having a substantial federal purpose (or purposes). For both private economic gain and the public use of Puerto Rican land for military and other federally defined public purposes, the island has produced substantial profits and economic services to the United States during the more than one hundred years of occupation.
Even a cursory economic analysis indicates that federal spending in Puerto Rico is not as high as many believe, that the Puerto Ricans are the poorest “Americans,” and that their economy is fully at the service of the United States.

A comprehensive economic study of the island in the 1990s found that the United States transferred $5,025.2 million to Puerto Rico. Of that amount, $2,414.1 million (48%) was for Social Security payments, $382.4 million (7.6%) was for veterans’ benefits, and $100.2 million (1.99%) was for federal pension payments.\(^4^2\) While the dollar amounts of these benefits have risen since then, the relative percentages have not changed dramatically. For fiscal year 2002, Puerto Rico received approximately $9,800 million in federal funds, of which $4,634 (47.3%) was for Social Security payments, $1,433 (14.6%) was for Medicare, and $518 (5.3%) was for veterans’ benefits.\(^4^3\) As I have already noted, Puerto Ricans pay into the Social Security fund and pay Medicare taxes. They also serve in the U.S. armed forces, which is why some are entitled to veterans’ benefits. Therefore, the bulk of the federal government’s payments are for vested or accrued benefits rather than for “aid” or welfare.

The Puerto Ricans are also the poorest “Americans.” Puerto Ricans on the island have a mean per capita income of less than one-third of the national U.S. average, and many would certainly qualify for federal benefits if they lived in a U.S. state. In 1989, the mean per capita household income was $4,099 in Puerto Rico, which was just 29.17 percent of the U.S. average of $14,052.\(^4^4\) For 2001, the CIA World Factbook estimated that the per capita income in the United States was $36,300, compared with $11,200 for Puerto Ricans, showing that Puerto Rico still had only 30.85 percent of the U.S. national average.\(^4^5\) Puerto Rico’s gross internal product is similar to Chile’s\(^4^6\) and is fully at the service of the United States, which consumes 88.2 percent of Puerto Rican exports and produces 53.4 percent of its imports.\(^4^7\) For example, nine out of ten pharmaceuticals consumed in the United States are produced in Puerto Rico by a U.S.-controlled, $27 billion industry.\(^4^8\)

Finally, the United States has substantial assets on the island. For example, Roosevelt Roads covers 37,000 acres on the main island of Puerto Rico and 22,000 acres in Vieques.\(^4^9\) And even if it curtails or completely ceases military operations on those bases, the United States intends to retain its substantial landholdings or to dispose of them in such a way that Puerto Ricans do not benefit. For example, the navy’s lands in Vieques have been transferred to the U.S. Department of the Interior partly in an
effort to keep them away from the local people.\textsuperscript{50} Also, economists and planners in Puerto Rico have concluded that closing Roosevelt Roads would have a strongly positive impact on the local economy if the base were turned over to Puerto Rican authorities.\textsuperscript{51} But rather than turning the base over to the local government or providing a transition package to reduce the economic impact of the closure, Republican lawmakers want to sell the land.\textsuperscript{52}

As explained by the U.S. Supreme Court in \textit{Balzac} in 1922, even though Puerto Ricans are U.S. citizens, they are nonetheless viewed as social and legal “others.” The United States hides Puerto Rico from “mainland” “real estadounidenses” by socially constructing Puerto Ricans in the United States as greedy immigrants\textsuperscript{53} and Puerto Ricans in Puerto Rico as ungrateful foreigners. At the same time, the United States legally constructs Puerto Ricans as second-class citizens by giving them statutory U.S. citizenship, which—far from being an act of democratic kindness—has proved to be the empire’s ultimate weapon. The United States imposes on Puerto Ricans every obligation or duty of “American” citizenship, such as taxation, military service, and the criminal laws of the United States.\textsuperscript{54} But at the same time, the United States gives to the “American” citizens who live in Puerto Rico few of the benefits of their legal citizenship. That is, Puerto Ricans cannot vote for the president, vice-president, or a congressional delegation. And they receive the fewest federal benefits and services of any citizen living in the states “proper.” Finally, the United States has the power to change Puerto Rico’s legal and political condition but has so far refused to exercise it.

\textit{Postcolonial Possibilities}

The islands of Puerto Rico were populated by \textit{puertorriqueñas/os} when the \textit{estadounidenses} arrived in 1898. They still are. Current population estimates put the Puerto Rican population at nearly four million. The 2000 census—which provides the most current detailed information—indicates that more than 3.8 million persons live in Puerto Rico, of whom 98.8 percent describe themselves as “Hispanic” or “Latino” and 95.1 as “Puerto Rican.”\textsuperscript{55} Puerto Ricans, therefore, remain culturally \textit{puertorriqueñas/os} and make up the majority of the island’s residents. History, politics, culture, and demographics suggest that this will not change. The United States has legal authority over the Puerto Ricans and, with power,
comes responsibility. “Americans” need to make a simple moral choice: they either can accept Puerto Ricans as they are and give them full political citizenship or set them free.

The second century of the U.S. colony in Puerto Rico started on a few hopeful notes. For me, the year 2000 was marked by the “Latin music craze,” in which Latina/o artists (many of them Puerto Ricans) became the darlings of MTV and of the U.S. mass media more generally. More important, during 2001 before the tragedies of September 11, Puerto Ricans progressed, in the collective U.S. mind, from singing and dancing to exercising their legitimate right to political activism. Their protests over the use of Vieques as a training site for the U.S. Navy became the most common public image of Puerto Ricans in the U.S. mass media. It was a wonderful example of their using their new public visibility and consciousness to subvert existing power hegemonies.

Unfortunately, Puerto Ricans’ protests over Vieques soon revealed the limitations of having to work within the dominant culture in which they are the legal and cultural “others.” As long as they are entertaining, in the manner that estadounidenses find alluring, Puerto Rican visibility was acceptable. But as soon as the message became political, a backlash was quick to follow. The finest moment in Puerto Rican patriotism(s) during the period of the U.S. colony is being presented by U.S. politicians who feel free to mis/represent the Puerto Ricans’ status to advance their own political needs.

Before September 11, 2001, I had become cautiously optimistic about the end of Puerto Rico’s colonial status because the United States’ uses of Puerto Rico seemed to be waning. The army had announced the transfer of important military operations away from Puerto Rico, and President George W. Bush had stated that he intended to close the Vieques training center in early 2003. But after September 11, Congress passed legislation prohibiting the closing of the training range, and military officials expressed a strong interest in continuing to use Vieques. We now know that the president’s decision to close the training center did not change, and so my optimism is returning. Because the Vieques training center has closed, U.S. lawmakers are issuing what they intend as a threat to close down all military operations on the island. But I take that as a promise of demilitarization that might be extremely good for the future of Puerto Rico. If the public and military uses of Puerto Rico are substantially reduced, as it now appears they will, how will that change the economics of colonial exploitation for the United States? Will Puerto
Rico still represent a net private profit and an essential site for public affairs, especially “national defense,” for the United States? If the answer to this last question is no, then this might provide the strongest incentive in the entire period of the U.S. colony for the estadounidenses to decide on Puerto Rico’s future status.

The current colonial status into which the United States has legally constructed Puerto Rico is simply unacceptable in a new paradigm of “American” constitutional patriotism that allows conservative U.S. constitutional liberalism to become a progressive communitarian legal theory. Moreover, the clarity of the law, informed by a new philosophical vision, could break the political construct that hides the Puerto Rican colony in plain view. Even the insular cases, with their conservative cultural approach to constitutional liberalism, suggest that Puerto Rico as a permanent unincorporated territory, which it has been during the one hundred years of U.S. rule, may be constitutionally unacceptable. In *Downes v. Bidwell*, the dissenters called on their brethren to resist giving Congress too much power over its new empire. While the majority refused to heed this warning, Justice Edward D. White indicated that there would come a time when the U.S. Congress would be required, at least morally and perhaps constitutionally, to make a choice about Puerto Rico’s entry into the Union as an incorporated territory and/or a state. In other words, with legislative power comes responsibility, under both the U.S. Constitution and fundamental notions of justice and morality.

The obligation to request a decision cannot be imposed on Puerto Rico. Some commentators have reached essentialized conclusions indicating that it is the Puerto Ricans who are at fault in perpetuating their colonial status. It is important to understand that the ultimate decision on status belongs to the U.S. Congress, which makes its decision based on the interests and values of the elected legislators (by definition, representatives of jurisdictions other than territories like Puerto Rico). Before the Spanish-American War and the United States’ acquisition of Cuba, the Philippines, Guam, and Puerto Rico, territorial status was generally considered a prelude to statehood. In this context, the granting of statehood is a fundamentally political process determined by the existing states and their federal elected officials, not by the territory. Only seventeen of the thirty-seven states that have been added to the union held votes of any kind to allow the public to express its opinion on the petition for statehood. “Vermont, Kentucky, Ohio, Louisiana, Alabama and Missouri were admitted without the benefit of a single statehood referendum, pub-
lic opinion poll or a constitutional ratification process that would tend to show widespread popular support for admission.”

More fundamentally, it is simply preposterous to suggest that it is up to a people under colonial occupation to obtain a specific, noncolonial solution. Puerto Ricans are carefully monitored for any indication of pro-independence sentiment and are constantly told to fear losing their culture in statehood and economically and politically floundering under independence. At the same time, the United States says that the people of Puerto Rico are free to choose their status and that until they make a clear choice, Congress is not obligated to act. While colonized peoples should be free to demand freedom, they cannot be required to do so. The choice to end its colonial occupation of other territories must be made by the imperial power, not by the occupied nation. It is the constitutional obligation of the U.S. Congress to decide whether or not Puerto Rico should cease being a colony. Congress clearly has the power, and to do so, Congress must first define the Puerto Rican cultural nation as a legal nation. This is the only way for the United States to recognize and to respect the cultural citizenship and nationhood of Puerto Ricans and to enable them to freely make a final status decision.

One positive step toward recognizing Puerto Rican nationhood and citizenship would be for Congress to give to Puerto Ricans the protections of the U.S. Constitution that apply to an incorporated territory. But this must be only a short transitional step on the way to Puerto Rico’s nationhood, a necessary step on the way to a permanent resolution of the status issue that is freely accepted by the Puerto Rican people. Accordingly, it would be consistent with my theory of justice for Puerto Rican nationhood to be a prelude to a permanent relationship with the United States that was truly empowering and respectful of the Puerto Ricans’ cultural existence, that is, a nonassimilationist form of statehood or associated state. Both countries and peoples can negotiate the morally and legally acceptable alternatives that I have outlined. In this way, Puerto Ricans will have the choice of negotiating with the people of the United States a postcolonial future that is consistent with contemporary theories of justice that ensure a legal respect of culture(s) and a multicultural political coexistence.
NOTES TO THE INTRODUCTION

1. See 48 United States Code sec. 731 (1999): “The provisions of this Act [48 USCS sec. 731 et seq.] shall apply to the island of Puerto Rico and to the adjacent islands belonging to the United States, and waters of those islands; and the name Puerto Rico as used in this Act shall be held to include not only the island of that name but all the adjacent islands as aforesaid.”


7. See Balzac v. People of Porto Rico, 258 U.S. 298 (1922). The Supreme Court expressly indicates that as long as they choose to remain on the island, Puerto Ricans, who are U.S. citizens, will not enjoy the full rights of American citizenship, thus distinguishing between Puerto Ricans as individual U.S. citizens and as collective inhabitants of Puerto Rico. As individuals, they are free “to
enjoy all political and other rights” granted to U.S. citizens if they “move into the United States proper” (258 U.S. at 311). But as long as they remain on the island, they cannot fully enjoy the rights of U.S. citizenship.


11. The phrase “obvious change” is used here because Puerto Rican statutory U.S. citizenship does in fact change legally whenever a Puerto Rican moves from the island to one of the fifty states.

12. The Graduate Fellowship Program for Future Law Professors is designed “to attract candidates who can bring under-represented perspectives to the development of legal scholarship and increase the diversity of the law teaching profession.” See http://www.law.georgetown.edu/graduate/fellowships.html#3.

13. The fellows work with at least one faculty mentor to develop a scholarly agenda and to coteach in their courses. Professor James V. Feinerman and Professor John R. Schmertz were my mentors. Professor and Associate Dean Eliza-
beth Patterson and Professor Emma Coleman Jordan were especially active in this program. Professors Susan Low Bloch, Michael Gottesman, William Vukovich, Charles Abernathy, and Charles Gustafson also were helpful. My immediate predecessor in the program, Nancy Ota, now a professor at Albany, was especially supportive.

14. This represents an increase in the overall number of Latina/o law professors, as well as an increase of two more Puerto Ricans in the past six years. See also Michael A. Olivas, “The Education of Latino Lawyers: An Essay on Crop Cultivation,” University of California at Los Angeles Chicano-Latino Law Review 14 (1994): 117, 129 (when this article was published, there were seventeen Puerto Rican and 140 Latina/o law professors in the United States). Naturally, these numbers do not include those teaching in the four law schools in Puerto Rico because that would provide a misleading picture of Latinas/os in the U.S. legal academy.

15. See Malavet, “Accidental Crit I,” 1327: “What I had not learned until recently, is that when a white American looks at me, he or she sees a persona de color [colored person]—and it sure is not a statement in favor of making the Diaspora normative.” In this discussion, I explained that my dad had pelo malo (bad hair)—a reference to curly or kinky hair, which reflects an essentialist preference for white features. However, after reading that draft, my father has hastened to point out that he has medium-bad hair, which is better than pelo malo but worse than pelo lacio (straight hair).


17. For some background on the Dupont litigation, see generally In Re Recticel Foam Corporation, 859 F.2d 1000 (1st Cir. 1988); In Re San Juan Dupont Plaza Hotel Fire Litigation, 859 F.2d 1007 (1st Cir. 1988); In Re: Two Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litigation, 994 F.2d 956 (1st Cir. 1993); In Re: Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litigation, 56 F.3d 295 (1st Cir. 1995).

18. The United States District Court for the District of Puerto Rico was created by section 34 of the Organic Act of 1900.


judicial district. Court shall be held at Mayaguez [sic], Ponce, and San Juan”; see 28 United States Code sec. 41 (1999). The First Circuit covers Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island.


Notes to Chapter 1


2. Each of the previous seven LatCrit conferences has produced a symposium issue published by one or more law reviews. For a complete, updated listing of LatCrit symposium publications, visit the LatCrit Web site at http://www.latcrit.org. We are currently working on the symposium issue for the


6. As Ediberto Román pointed out: “I am concerned over the amount of time and energy we spend on our differences [as Cubans, Puerto Ricans, whites, blacks, men, women, heterosexuals, homosexuals, Catholics, agnostics] as compared to the time and energy we spend acknowledging common ground.” Ediberto Roman, “Common Ground: Perspectives on Latino/Latina Diversity,” *Harvard Latino Law Review* 2 (1997): 483, 484.


9. I have chosen the term *decolonization* over my own personal choice, independence, because Puerto Ricans broadly agree that the current status of Puerto Rico is colonial. But because the choice of a postcolonial solution is a deeply divisive issue among Puerto Ricans, I have chosen to study postcolonial organizations that fit within the three general status alternatives advocated by political parties in Puerto Rico.

10. In his influential reparations article, Westley cites many works favoring reparations for African Americans. See Westley, “Many Billions Gone,” 432, n. 10.


16. See Espinoza and Harris, “Embracing the Tar-Baby”; Elizabeth M. Iglesias and Francisco Valdés, “Afterword: Religion, Gender, Sexuality, Race and


18. See Mutua, “Shifting Bottoms.” This technique of “looking to the bottom” can produce important insights because “examining carefully and critically the sources, workings and effects of power by focusing on the sectors of society where power is wielded with most license and impunity. This technique of ‘looking to the bottom’ to inform antisubordination theory makes sense because ‘the bottom’ is where subordination is most harshly inflicted and most acutely felt.” Iglesias and Valdés, “Afterword,” 516.

19. As Dorothy Roberts explained in her LatCrit III Symposium article: “Writing about Black people is not essentialist in and of itself. It only becomes essentialist when the experiences discussed are taken to portray a uniform Black experience or a universal experience that applies to every other group.” Roberts, “BlackCrit Theory,” 857. She further noted that “the problem of essentialism [in feminist legal theory] did not derive from studying the lives of particular women; it derived from claiming that the lives of a particular groups of women represented all women” (856–57).

20. According to Iglesias and Valdés, LatCrit must avoid “racing to the bottom” in a counterproductive search for “comparative victimhood.” LatCrit must work “despite and beyond the complex intersections of privilege and subordination that may otherwise tear it asunder along the multiple fissures that too-often are produced by conclusory, abstract and uncritical assertions of comparative victimhood—whether real or apparent.” Iglesias and Valdés, “Coalitional Theory,” 516 (note omitted). See also Valdés, “OutCrit Theories,” 1316–21; Mutua, “Shifting Bottoms,” 1177–78, n. 2: Focusing on “the people at the bottom” is not a surrender to victimization but a celebration of survival. “At the same time, I do not think of survival or victimhood as all that binds, or should bind, these various groups. I believe these groups have similarities that transcend oppression”; Westley, “Many Billions Gone,” 457.

21. *LatCritical* is a term that I believe captures its scholarly approach. I was introduced to the word by Berta Esperanza Hernández-Truyol.


28. The phrase “speaking truth to power” was made famous by Professor Anita Hill’s book of that title in which she describes her experience during the confirmation hearings for Supreme Court Justice Clarence Thomas, but it had been used before. See Anita Hill, Speaking Truth to Power (New York: Doubleday, 1997); Manning Marable, Speaking Truth to Power: Essays on Race, Resistance, and Radicalism (Boulder, Colo.: Westview Press, 1996); Aaron B. Wildavsky, Speaking Truth to Power: The Art and Craft of Policy Analysis (Boston: Little, Brown, 1979).
29. To the best of my knowledge, the term LatCritter was coined by Professor Celina Romany during her closing keynote speech at LatCrit IV. It has now become a part of the LatCrit lexicon.
30. By popular culture, I mean the culture of the people, by the people, for the people, not commercially imposed mass-distribution culture. I also distinguish popular culture from folklore. See generally Pedro Malavet-Vega, La Velonera esta directa: Felipe Rodríguez (La Voz) y los años cincuenta (Santo Domingo: Editora Corripio, 1987), 27–30; Pedro Malavet-Vega, Historia de la canción popular en Puerto Rico (1493–1898) (Santo Domingo: Editora Corripio, 1992), 37–49.
33. See, e.g., Juan F. Perea, “Demography and Distrust: An Essay on Ameri-


44. To the extent that this book develops the concept of Puerto Rican cultural nationhood, I am at least partially using ethnicity as a marker for a particular form of citizenship. In the citizenship debates in political and legal philosophy, this is an attempt to define what Ronald Beiner calls the “elusive synthesis of liberal cosmopolitanism and illiberal particularism, to the extent that it is attainable, is what I want to call ‘citizenship.’” In arriving at this definition, he

45. Ronald Beiner ponders the alternative abyss: “Either fascism is a uniquely evil expression of an otherwise benign human need for belonging; or there is a kind of latent fascism implicit in any impulse towards group belonging” (Introduction to Theorizing Citizenship, 19).

46. The communitarian concept of citizenship views the “citizen as a member of a community. . . . This conception strongly emphasizes that being a citizen means belonging to a historically developed community. Individuality is derived from it and determined in terms of it.” Moreover, “identity and stability of character cannot be realized without the support of a community of friends and like-minded kindred.” Herman Van Gunsteren, “Four Conceptions of Citizenship,” in The Condition of Citizenship, ed. Bart van Steenbergen (Thousand Oaks, Calif.: Sage, 1994), 41.

47. Brigadier General George W. Davis, who was the military governor of Puerto Rico, made this statement while opposing any initiative that would have given Puerto Rico independence. See Aída Negrón-De Montilla, La Americanización en Puerto Rico y en el sistema de instrucción pública 1900/1930 (Río Piedras: Editorial Universitaria, Universidad de Puerto Rico, 1977), 17.

48. Sovereignty is used here in its positivistic sense to refer to the authority to impose law within the national territory.

49. Legally speaking, Puerto Rico is a colony: “The term ‘colony’ is generally defined by the international community through the ‘salt water theory’ of colonialism. Under this theory a territory and its population are considered a colony if a body of salt water separates it from the ruling country. The U.N. effectively accepted the salt water theory when the General Assembly adopted Resolution 1541, which defined a dependent territory as a ‘territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it.’ . . . Unlike independent states, colonies are possessions of the parent country, having no separate statehood or sovereignty. The parent state alone . . . possesses [the] international personality and has the capacity to exercise international rights and duties.’ The parent state may, nonetheless, grant or bestow upon its colony a degree of internal autonomy and even grant autonomy over certain external affairs. These rights, however, are generally considered revocable at the discretion of the parent state.” Román, “Empire Forgotten,” 1137–38 (citations omitted).


NOTES TO CHAPTER 2

5. Columbus left Puerto Rico on November 22, 1493. In 1504 Vicente Yáñez-Pinzón returned to the island at the head of a privately financed expedition, and in 1505 the king of Spain appointed him governor. However, he did not last long. Colonization is generally thought to have started in earnest on July 12, 1508, when Juan Ponce de León set sail from the Dominican Republic to Puerto Rico, under appointment from the Spanish crown. See Ribes-Tovar, Chronological History, 13–14. However, some historians challenge this notion. For example, Aurelio Tió argued that Ponce de León had made a previous unauthorized trip to Puerto Rico, landing on June 24, 1506. Aurelio Tió, Nuevas fuentes para la historia de Puerto Rico; documentos inéditos o poco conocidos cuyos originales se encuentran en el archivo general de Indias en la ciudad de Sevilla, España (San Germán: Ediciones de la Universidad Interamericana of Puerto Rico, 1961). After a thorough review of the historical record, a more recent biographer of Ponce de León agrees with this conclusion. See Robert H. Fuson, Juan Ponce de León and the Spanish Discovery of Puerto Rico and Florida (Blacksburg, Va.: McDonald and Woodward, 2000), 71–75.
8. Wagenheim, eds., The Puerto Ricans, 18–22.
10. Ibid., 68.
11. Fray Yñigo Abbad y Lasierra, Noticias de la historia geográfica, civil y
política de la isla de San Juan Bautista de Puerto Rico (Madrid, 1788), in Wag- genheim, eds., The Puerto Ricans, 34.


15. See generally Pedro Malavet-Vega, Evolución del derecho constitucional en Puerto Rico (Santo Domingo: Editorial Centenario, 1998), 21–22. Puerto Rico was freed from reporting to the Cabildo of Santo Domingo when the island of Hispaniola was ceded by Spain to France. The cession was part of the Treaty of Basel between France and Spain. The previously French side of Hispaniola was at this time occupied by Haitian independence forces, and the Spanish gave the eastern end of the island to the French. See Edilberto Marbán-Escobar, Curso de historia de América, 2nd ed. (New York: Minerva Books, 1966), vol. 2, 187. The actual transfer of the island did not occur until 1801, because Napoleon was otherwise occupied in Europe. A French expeditionary force landed in 1801, commanded by Napoleon’s brother-in-law Charles Leclerc. The French forces surrendered on November 9, 1803. Although the French maintained a small presence in eastern Haiti until 1809, the republic was officially declared on January 1, 1804. See New Encyclopedia Britannica, 15th ed. (Chicago: Encyclopedia Britannica, 1984), vol. 8, 551. The Haitians and the Dominicans continued to fight until the independence of Santo Domingo (the Dominican Republic) was declared in 1821. See Marbán-Escobar, Curso de historia de América, 187–88.

16. In Spanish, this is known as the Constitución de Bayona, the Spanish name of the French city of Bayonne, in southwestern France. After the French invaded Spain in 1808, King Charles IV abdicated in favor of his son, Ferdinand VII, who then fled to Bayonne. Under the influence of Napoleon Bonaparte, Ferdinand “gave back” the throne and his father then abdicated in favor of Napoleon. Napoleon then imposed the Bayonne Constitution, naming his brother Joseph Bonaparte as the king of Spain. See Juan Regla, ed., José Terrero: Historia de España (Barcelona: Editorial Ramón Sopena, S.A., 1972), 394–97. For a transcript of this constitution, see Julio Montero-Díaz, ed., Constituciones y códigos políticos españoles 1801–1978 (Barcelona: Ariel, 1998), 21.


19. Although universal suffrage was also established, members were indirectly elected by a rather convoluted system. See José Trías-Monge, Historia


22. Regla, ed., José Terrero: Historia de España, 427–28. This sad pattern of fighting between the nobility and clergy, who favored the absolute Catholic monarchy or dictatorship, on the one hand, and those who favored a liberal Republic, on the other, marked Spanish history for two centuries.

23. The Spanish empire in the Americas was almost totally lost between 1821 and 1824. The viceroyalty of New Spain and the captaincy of Guatemala (Mexico and Central America) were lost in 1821 when the Cortes refused to ratify a treaty between Mexican leader Agustín de Iturbide and the viceroy, which would have granted Mexico independence but under the Spanish king as the nominal ruler. On September 27, 1821, Iturbide and his army entered Mexico City. Mexico was free. Central America, which was part of the viceroyalty of New Spain and the captaincy of Guatemala, also became free with Mexican independence. The defeat at Ayacucho, in the Andes, on December 9, 1824, sealed the fate of the army of the viceroy of Perú and marked the end of the wars of liberation in South America. Cuba and Puerto Rico were still under Spanish control. Regla, ed., José Terrero: Historia de España, 456–58.

24. During the reign of Alfonso XII. See Montero-Díaz, ed., Constituciones, 145.


27. Article 1 of the Decree of 9 November 1897 gives Spanish citizenship, on an equal footing with residents of the Peninsula, to the Spanish subjects in the Antilles. See García-Martínez, ed., Leyes fundamentales, 93.

28. Title I, article 2, of the Charter of Autonomy reads: “The island shall be governed by an insular parliament, consisting of two chambers, and by the Governor-General, representing the mother country, who shall exercise supreme authority.” See “Historical Documents,” in Puerto Rico Laws Annotated (San Juan: Lexis Publishing Puerto Rico, 1999), vol. 1, 16. In order to avoid confusion with the numbering of the laws themselves, I use P.R. Laws Ann., vol. 1, p. xx when citing specific pages in this important historical volume of the Puerto Rico Laws Annotated, which transcribes in English many fundamental laws and historical documents that are essential to the discussion in this book. However, when citing Puerto Rican laws generally, I provide the legal citation for the statutes by using the abbreviation P.R. Laws Ann. followed by the appropriate title and section.

30. Article 2 of the “additional articles” at the end of the Carta Autonómica provided that any changes to the constitutions of Cuba and Puerto Rico could be made only by legislation issued by the Cortes and only at the request of the islands’ legislatures. “When the present Constitution shall be once approved by the Cortes of the Kingdom for the islands of Cuba and Puerto Rico, it shall not be amended except by virtue of a special law and upon the petition of the insular parliament.” “Historical Documents,” in *P.R. Laws Ann.*; see also García-Martínez, ed., *Leyes fundamentales*, 113 (text in Spanish).


32. Ibid., 129–39.

33. Title III, arts. 5 and 6 of the charter, *P.R. Laws Ann.*, vol. 1, 2–3.


37. President William McKinley signed the resolution on April 20. On April 21, the U.S. ambassador to Spain delivered an ultimatum to the Spanish government, giving it until noon on April 23, 1898, to pacify Cuba or leave. Ángel Rivero, *Crónica de la guerra Hispano Americana en Puerto Rico* (New York: Plus Ultra Educational Publishers, 1973), 18–24.


41. For an excellent map of the campaign, see Rivero, *Crónica*, 544.


45. The official title is the Treaty of Peace between the United States of America and the Kingdom of Spain. See *P.R. Laws Ann.*, vol. 1, 16; see also Juan F. Perea et al., eds., *Race and Races: Cases and Resources for a Diverse America*.
(St. Paul: West Group, 2000), 327. Article II of the treaty reads: “Spain cedes to the United States the island of Porto Rico [sic] and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones.” Perea et al., eds., Race and Races, 327. The editors of the Puerto Rican legal collection changed the references to “Porto Rico” included in the original English to “Puerto Rico.” See P.R. Laws Ann., vol. 1, 17.


49. See generally Foraker Act, secs. 18–27, 33, and 34, P.R. Laws Ann., vol. 1, 36–39, 42–44. Sec. 27 provides that the council shall be one of the two houses of the legislative assembly (P.R. Laws Ann., vol. 1, 39). The Executive Council is argued to have been the most important element in the process of “Americanizing” Puerto Rico. See Cabán, Constructing a Colonial People, 122–26.


56. The necessary and proper clause: “[Congress shall have the power] to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.” U.S. Constitution, Art. I, sec. 8.

57. Under international law, Puerto Rican citizenship is not recognized. Carr, Colonial Experiment, 36 (citing Congressional Record, 56th Cong., 1st sess., April 5, 1900, 4954).

58. The court narrowly construed the question presented in the case: “This case raises the single question whether territory acquired by the United States by cession from a foreign power remains a ‘foreign country’ within the meaning of the tariff laws.” DeLima v. Bidwell, 182 U.S. at 174. In his dissenting opinion, Justice Joseph McKenna indicates that the status of Puerto Rico thus represented “a relation to the United States between that of being a foreign country absolutely and of being domestic territory absolutely.” DeLima v. Bidwell, 182 U.S. at 220 (McKenna, J., dissenting).

59. Downes v. Bidwell, 182 U.S. at 287. The Foraker Act required “the payment of ‘fifteen per centum of the duties which are required to be levied, collected and paid upon like articles of merchandise imported from foreign countries’” (182 U.S. at 247–48).

60. In other words, the equal taxation provision of the Constitution did not benefit Puerto Rico. Compare U.S. Constitution, Art. I, sec. 8, cl. 1 (“The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the Common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States”).

61. 182 U.S. at 391 (Harlan, J. dissenting).

62. 182 U.S. at 374–75 (Fuller, Chief Justice, dissenting).

63. 182 U.S. at 346. This position was eventually adopted by a majority of the Court in Balzac v. People of Porto Rico.

64. 182 U.S. at 343–44 (italics added).

65. See Jones Act of 1917, sec. 5, P.R. Laws Ann., vol. 1, 72–73 (conferring U.S. citizenship on all “citizens of Porto Rico [sic]”; it adopted the definition of Puerto Rican citizenship included in sec. 7 of the Foraker Act).


69. The court explained the applicability of fundamental rights to the unincorporated territories: 258 U.S. at 312–13. Balzac itself rules that trial by jury was not one such right. See also De Lima v. Bidwell, 182 U.S. 1 (1901); Downes v. Bidwell, 182 U.S. 244 (1901) (both cases concerning taxation).

70. Puerto Rico is thus classified as an “unincorporated” but “organized” territory. This means that Congress has not affirmatively incorporated the territory into the union but that it has created a local government. Incorporation of a territory without statehood has only occurred once in U.S. history, with Alaska. See Rassmussen v. United States, 197 U.S. 516 (1905); Stanley K. Laughlin Jr., The Law of United States Territories and Affiliated Jurisdictions (Rochester, N.Y.: Lawyers Cooperative Publishing, 1995), 89–91 (discussing the incorporation experience and the unincorporated but organized territories).


72. 258 U.S. at 309 (italics added).

73. Again, the Supreme Court is rather clear in Balzac: “The jury system needs citizens trained to the exercise of the responsibilities of jurors. . . . Congress has thought that a people like the Filipinos or the Porto Ricans, trained to a complete judicial system which knows no juries, living in compact and ancient communities, with definitely formed customs and political conceptions, should be permitted themselves to determine how far they wish to adopt this institution of Anglo-Saxon origin, and when.” 258 U.S. at 310–11.


75. P.R. Laws. Ann., title 1, sec. 7 (as amended by sec. 1 of law 132 of Nov. 17, 1997); see also Pedro Malavet-Vega, Introducción al Constitucionalismo Americano (1998), 179, n. 485 (the note discusses the controversy that arose as a result of the rather curious timing of the amendment to the statute).

76. Act of May 17, 1932, chap. 190, 47 Stat. 158: “That from and after the passage of this resolution [May 17, 1932] the island designated ‘Porto Rico’ in the Act entitled ‘An Act to provide a civil government for Porto Rico, and for other purposes,’ approved March 2, 1917, as amended, shall be known and designated as ‘Puerto Rico.’ All laws, regulations, and public documents and records of the United States in which such island is designated or referred to under the name of ‘Porto Rico’ shall be held to refer to such island under and by the name of ‘Puerto Rico.’” The act is now codified as 48 United States Code sec. 731a (1999).


83. “Resolution No. 23,” P.R. Laws Ann., vol. 1, 136–37 (“Having full political dignity the Commonwealth of Puerto Rico may develop in other ways by modifications of the Compact through mutual consent”).


86. See “Proclamation: Establishing the Commonwealth of Puerto Rico,” in P.R. Laws Ann., vol. 1, 141–42. July 25, 1952, the date of the proclamation, is also the anniversary of the U.S. invasion of Puerto Rico.


88. In order to enable the People of Puerto Rico to vote to amend the constitution, art. VII, sec. 3, was implemented as originally drafted, but only for the purpose of allowing its amendment, as well as the amendment of art. II, sec. 5. See Public Law 447, July 3, 1952, chap. 567, 66 Stat. 327, reprinted in P.R. Laws Ann., vol. 1, 138–39.


92. See “Memorandum by the Government of the United States of America Concerning the Cessation of Transmission of Information under Article 73(e) of the Charter with Regard to the Commonwealth of Puerto Rico,” Department of


94. A special delegation composed of State Department officials, members of Congress, and Puerto Rico government officials was sent to defend the nonreporting decision of the United States. José Trías-Monge, Puerto Rico: The Trials of the Oldest Colony in the World (New Haven, Conn.: Yale University Press, 1997), 123.


98. In a telephone conversation on Tuesday, October 15, 2002, the former Puerto Rico solicitor general, Héctor A. Colón–Cruz, who was responsible for arguing this case on behalf of the commonwealth, confirmed to me that the defendant in this case was Torres-Lozada; that is, his paternal last name was correctly identified as Torres.


100. 435 U.S. 1 (1978).

101. 435 U.S. at 2–3 (citations omitted).


How curious that the court uses the language of the war on poverty to justify the denial of funds to the poorest American citizens.

103. First, while Puerto Ricans do not pay federal income taxes, they do pay Social Security and other federal taxes, and second, it is difficult to conceive how $300 million for children’s welfare would negatively disrupt the Puerto Rican economy. See Harris v. Rosario, 446 U.S. at 652.


106. See De La Rosa v. United States, 842 F. Supp. 607, 609 (D. Puerto Rico


108. Leibowitz, Defining Status, 224.


110. Compare Immigration and Naturalization Service v. Chadha, 462 U.S. 919 (1983) (“a legislative veto” requiring a supermajority of Congress to overrule executive actions taken pursuant to congressional legislative delegation of authority was “a convenient shortcut” but unconstitutional because Congress cannot legislatively bind future Congresses). See also Torres v. Puerto Rico, 442 U.S. at 470 (describing judicial reluctance to the general application of constitutional safeguards to Puerto Rico).


112. Igartúa de la Rosa v. United States, 229 F. 3rd 80 (1st Cir. 2000).

NOTES TO CHAPTER 3


3. Electoral decrees were the official calls to an election. They were issued by the Ministerio de Ultramar (Overseas Ministry), either on its own authority or by order of the monarch or the Cortes. See, e.g., “Real decreto del 1ro de abril 1871 para la celebración de las elecciones de senadores y diputados a Cortes,” in Puerto Rico: Cien años de lucha política, ed. Reece B. Bothwell-González (Río Piedras: Universidad de Puerto Rico, Editorial Universitaria, 1979), vol. 1-1, 92–94.

4. De Castro was governor from 1795 to 1804. See Tesauro de datos históricos: Índice compendioso de la literatura histórica de Puerto Rico, incluyendo algunos datos inéditos, periodísticos y cartográficos, preparado en la oficina del índice histórico de Puerto Rico, bajo la dirección de Adolfo de Hostos, ed. Oficina del Índice Histórico de Puerto Rico and Adolfo de Hostos (Río Piedras: Editorial de la Universidad de Puerto Rico, 1990), vol. 1, 405.


7. One person was the actual legislator, the other person selected was an al-


17. Ibid., 69.

18. For an analysis of this period, see generally, Bayrón-Toro, *Elecciones y partidos políticos de Puerto Rico*, 1–110. Bothwell-González, ed., *Lucha política* (especially vols. 1-1 and 2). The political manifestos, bylaws, and constitutions of these parties are contained in his five-volume collection. The term opportunist, which has essentially the same meaning in English and Spanish, was not considered a negative reference during this period.


36. The official minutes of the convention can be found in Reece Bothwell-González, ed., *Lucha política*, vol. 1-1, 282–85.

37. This last group was the most important native economic power on the island. It was principally represented by Eduardo Giorgetti, one of the island’s wealthiest men, and a political patron of Luis Muñoz-Rivera. Giorgetti was a successful candidate for office for the Union Party in 1906, 1908, 1910, 1912, 1914 and 1917. Bayrón-Toro, *Elecciones y partidos políticos de Puerto Rico*, 128, 132, 137, 141, 144, 150.


40. The reference to a U.S. protectorate over the island appears intended to avoid charges of sedition.


43. Ibid., vol. 1-1, 288.

44. On May 6, 1917, the Union Party issued an official resolution welcoming the U.S. citizenship that was granted by the Jones Act. This resolution also reiterates support for the three-stage process described in the Resolución de Miramar. “Resolución y programa de la unión de Puerto Rico,” May 6, 1917, in Bothwell-González, ed., *Lucha política*, vol. 1-1, 357–61.

45. “Programa de la unión de Puerto Rico,” November 22, 1913, in Bothwell-González, ed., *Lucha política*, vol. 1-1, 340–41. This statement was proposed by De Diego and approved by a Union Party convention held on that date.


52. Ibid., 148.

53. Bothwell-González transcribes the party’s platform for 1919, indicating where it differs from that of 1917. “Programa del partido socialista (1919),” in Bothwell-González, ed., Lucha política, vol. 1-1, 362–69. This was Puerto Rico’s first socialist party. and it should not be confused with the pro-independence Partido socialista puertorriqueño, which was founded in the 1970s. See also Bayrón-Toro, Elecciones y partidos políticos de Puerto Rico, 148.


59. Political patronage was an important subcurrent in Puerto Rican politics in the twentieth century. As one observer noted, some people in Puerto Rico are registered in the national budget before they are noted in the demographic registry (which records births and deaths). (This observation is generally attributed to Puerto Rican scholar and political analyst Juan Manuel García-Passalacqua.)

60. Morales-Carrión, Puerto Rico, 205.


67. In separate statements in 1920, the two parties had expressly rejected any alliance. See “Asamblea del Partido Unión de Puerto Rico celebrada del 11 al 12 de septiembre de 1920. Resolución aprobada en respuesta a otra que aprobó el Partido Republicano Puertorriqueño en su asamblea de Ponce,” September 13, 1920, in Bothwell-González, ed., *Lucha política*, vol. 1-1, 393.


70. See ibid., vol. 1-1, 448 (italics in original).


72. Ibid.


76. See generally Bayrón-Toro, *Elecciones y partidos políticos de Puerto Rico*, 181.

77. Initially, the former Unionists wanted to continue to use the Union Party name and its symbols. But in what is widely viewed as a politically motivated act, the U.S.-appointed Puerto Rican attorney general, James A. Beverly, denied them the right to their old name and symbols. Bayrón-Toro, *Elecciones y partidos políticos de Puerto Rico*, 176. The matter was appealed to the Puerto Rican Supreme Court, whose U.S.-appointed justices ruled that Beverly was correct, that the symbols and Union name were committed to the Alianza. See *Barceló v. Secretario Ejecutivo*, 42 P.R. Dec. 226 (1931). The author of the opinion was Chief Justice Emilio del Toro-Cuevas, the prosecutor in the *turbas*-related trial of Union Party founder Luis Muñoz-Rivera in 1900.


82. Ibid., 177–80.
83. Luis Muñoz-Marín, Memorias: Autobiografía pública 1898–1940 (San Juan: Universidad Interamericana de Puerto Rico, 1982), 149–51.
85. There is some evidence to suggest that this vote was the result of an agreement between the Barceló and Muñoz camps. However, the agreement appears to have broken down later when the Muñoz group failed to campaign for the party during these elections, which eventually led Barceló to expel him from the party.
86. Bayrón-Toro, Elecciones y partidos políticos de Puerto Rico, 182–85.
87. “Se inscribe en secretaría la entidad ‘Acción Social Independentista’ (16 septiembre de 1936),” El Mundo, September 16, 1936, in Bothwell-González, ed., Lucha política, vol. 1-1, 594. Though Muñoz later denied this, it appears that this organization laid the groundwork for the formation of the Partido Popular two years later.
89. Bayrón-Toro, Elecciones y partidos políticos de Puerto Rico, 185–90.
90. Ibid., 192.
91. I have to confess that Luis Muñoz-Marín is the most enigmatic of all the Puerto Rican political leaders that I have studied. Frankly, his political career puzzles me. It is very difficult to reconcile his conflicting political views expressed during his lifetime. Muñoz-Marín started his political life with the pro-statehood Socialists, of Santiago Iglesias-Pantín. Later, after adopting a strong pro-independence stance, he joined his father’s Union Party and went with it when it changed its name to the Liberal Party. He opposed the Tydings pro-independence bill, reportedly because he found its economic transition provisions too Draconian for the island. Nevertheless, his objection to the Tydings bill and his call to boycott the elections in 1936 were open opposition to the Antonio R. Barceló and the hierarchy of the Partido Liberal. Then Muñoz-Marín created the expressly pro-independence group Social Action for Independence, two years later, he founded the Partido Popular Democrático and became the architect of the estado libre asociado and an enemy of the pro-independence movement. People still argue that Muñoz-Marín intended the estado libre asociado to be a transitional status toward independence (though others have argued that it was a transition to a better form of estado libre asociado). For different visions of Luis Muñoz-Marín, see generally Evelyn Vélez-Rodríguez, Proyecto V-C, negociaciones secretas entre Luis Muñoz-Marín y la Marina: Plan Drácula (Río Piedras: Editorial Edil, 2002); Carmelo Rosario-Natal, Luis Muñoz-Marín y la independencia de Puerto Rico (1907–1946) (San Juan: Producciones Históricas, 1994); Luis Muñoz-Marín, Memorias: Autobiografía pública, 1940–1952 (San Germán: Universidad Interamericana de Puerto Rico, 1992); Juan Manuel García Passalacqua, La Cri-


94. Ibid., 623 (my translation).


96. Ibid., 200.


103. Ibid., 208–14.

104. In a letter dated February 1, 1951, Governor Muñoz-Marín “requested and accepted” Géigel’s resignation from his post. Muñoz blamed his “loss of confidence” in his appointee on problems related to the insular jail. Géigel replied with a letter also dated February 1, “accepting” his already accepted resignation and pledging continued support as a “citizen.” Both letters, as they were published in the *El Mundo* newspaper on February 2, are transcribed in Bothwell-González, ed., *Lucha política*, vol. 4, 3–7.


110. Though there is some evidence that supports this conclusion, it is not at all clear that even such an “improved” commonwealth status was at this time viewed as a permanent status option even by some in the PDP. Moreover, as future discussions indicate, the specific meaning of a “developed,” “improved,” “clarified,” or “culminated” commonwealth status is difficult to establish.


112. Ibid., 224–28.


114. Bayrón-Toro, Elecciones y partidos políticos de Puerto Rico, 229.

115. The term in Spanish is universitarios, which can be read narrowly to refer only to university students. However, the FUPI expressly chose to interpret the term more generally because it accepts university faculty, staff, and students as members. Today, the official name has changed to use the word universitaria, meaning “of the university.” Therefore, the organization is now the University Federation for Independence.


117. Juan Ángel Silén, Historia de la nación puertorriqueña (Río Piedras: Editorial Edil, 1980), 427–502 (describing the creation of the MPI and its contribution to Puerto Rican political discourse from 1959 until after the elections of 1968; the author self-maps as an MPI member).

118. Mari-Bras, El Independentismo en Puerto Rico, 136–42.


120. Bayrón-Toro, Elecciones y partidos políticos de Puerto Rico, 238. In its report, issued on May 23, 1961, a special commission of the Puerto Rico Senate recommended that the Christian Action senator not be allowed to take his seat.

121. Henry Wells, La Modernización de Puerto Rico: Un análisis político de valores e instituciones en proceso de cambio (Río Piedras: Editorial Universitaria, 1979), 278–79.

122. Bayrón-Toro, Elecciones y partidos políticos de Puerto Rico, 239–44.

123. This process is generally described and analyzed in Carmen Ramos-de Santiago, El Gobierno de Puerto Rico (Río Piedras: Editorial de la Universidad de Puerto Rico, 1986), 163–219.


127. The legislation and names of the appointees are printed in P.R. Laws Ann., vol. 1, 144–53.


129. Ibid., 412.

130. Law 1, December 23, 1966.


132. The bitter split between García-Méndez and Ferré, as well as the plebiscite process and later development of the New Progressive Party were analyzed by Ferré’s former press secretary. See Antonio Quiñones-Calderón, Del Plebiscito a la Fortaleza (Hato Rey: Ediciones Nuevas de Puerto Rico, 1982). See also Antonio Quiñones-Calderón, En los Pasillos del poder: Testimonio íntimo de un secretario de prensa (Puerto Rico, 1998) (an account of his work as press secretary).


134. http://EleccionesPuertoRico.org./referencia/plebiscito67.html. The original in Spanish reads: “Un voto mayoritario a favor de cualquiera de las fórmulas de status constituye un mandato del pueblo de Puerto Rico al comisionado residente, como su representante en la esfera federal, para actuar en el desempeño de sus funciones oficiales de acuerdo con la voluntad del pueblo expresada a virtud de dicho voto.”


136. See generally Ismaro Velázquez-Net, Muñoz y Sánchez Vilella (Barcelona:
141. The detailed PIP platform is available online at http://www.independencia.net.
143. Ibid., 261–64.
144. Ibid., 241, 249, 265–69, 292.
145. Bayrón-Toro explains that in addition to creating the possibility of electoral fraud, these improper registrations improperly inflated the number of registered voters, thus artificially reducing the percentage of voter participation. He concludes that if the improper registrations were removed, more than 88 percent of the properly registered voters went to the polls in the 1980 elections. Bayrón-Toro, *Elecciones y partidos políticos de Puerto Rico*, 290–91, n. 319 and accompanying text.
147. Ibid., 301–7.
149. Ibid., 309–16.
150. Ibid., 332–44.
157. Sec. 3(b) of HR 856, 105th Cong., 1st sess., 1997.
159. This phenomenon is known as *melonismo* (melon-ism) in Puerto Rico,
referring to the colors of a watermelon: red and white on the inside and green and white on the outside. White and green are the colors of the PIP, and red and white are the colors of the PDP. Therefore, the reference to a melon suggests that a person who claims to support independence nonetheless votes for the PDP.


164. As discussed elsewhere in this book, the definition of territorial commonwealth was, as far as it went, legally correct. But the limitation of the methods to obtain noncolonial free association only through a treaty is not legally defensible. Moreover, including two different options for free association and not allowing the party that advocates that status alternative to participate in its definition are troubling. If the definitional process is going to be legislative, and therefore political, it must be open in any system that claims to be a democracy. It would be different, however, if the process of definition were more objectively legal, a judicial decision, for example.

165. For example, a recent report by the U.S. Department of Housing and Urban Development concluded that Puerto Rico overpaid by $35 million for just one project to privatize public housing. See Sandra D. Rodríguez-Cotto, “Informe oficial revela contratos dudosos con privatizadoras de viviendas; contratos dudosos según HUD,” El Nuevo Día (Puerto Rico), April 2, 2003.

166. In Sánchez-Vilella y Colón Martínez v. ELA, 134 P.R. Dec. 445 (Nov. 4, 1993) (Sánchez-Vilella I) and Sánchez-Vilella y Colón Martínez v. ELA, 134 P.R. Dec. 503 (Nov. 10, 1993) (Sánchez-Vilella II, denying motions for reconsideration), the Puerto Rico Supreme Court rules that an individual voter has standing to challenge the manner in which any “electoral event” is held. This includes general elections as well as special elections such as plebiscites. Voters also have the absolute right to reject all status alternatives presented to them via plebiscite. If “none of the above” is not expressly included in the ballot, the court instructed that the electoral commission had to count blank ballots cast as favoring “none of the above.” These two opinions led the legislature to include the “none of the above” alternative in the 1998 plebiscite ballot.


169. Rosselló quickly left Puerto Rico to live in the United States after the official handover of power in January 2001. Rosselló recently returned to party politics in Puerto Rico and is seeking the NPP nomination for governor in 2004. He stated that he feels betrayed by the corruption of members of his past


171. Each political party posts a Web site from which interested persons can get official information about its views. The PIP: www.independencia.net; the NPP: www.pnppr.org; the PDP: www.ppd.org (I was unable to access this site properly despite many attempts to do so over several weeks).


175. Ibid., 238.


177. Acosta-Lespier, La Mordaza, 114–16.


180. The pardon cited Albizu’s poor health and age as the governor’s motivation. Pueblo v. Albizu, 77 P.R. Dec. 888 (1955) (ruling that the pardon, which is quoted in the opinion, could be conditional and could therefore be revoked by the governor for violation of those conditions).


186. See *People v. Burgos*, 75 P.R. Dec. 535 (1953) (the ley de la mordaza was constitutional under both the Puerto Rican and U.S. Constitutions, and it was not preempted by the Smith Act). Mr. Ayoroa-Abreu was the uncle of my godfather and law partner, José Enrique Ayoroa-Santaliz.

187. See Acosta-Lespier, *La Mordaza*, 124–25. In a note handwritten on the inside cover of this book, my godfather recounts the seizure of the “evidence” of his uncle’s patriotism, and thus the violation of the law, the Puerto Rican flag that he displayed on top of his bed in his apartment in Old San Juan. For an excellent collection of the legal documents related to the landmark “subversive” files decision by the Puerto Rico Supreme Court, see Ramón Bosque-Pérez and José Javier Colón-Morera, eds., *Las Carpetas: Persecución política y derechos civiles en Puerto Rico: Ensayos y documentos* (Río Piedras: Centro para la Investigación y Promoción de los Derechos Civiles, 1997). See also José Martínez-Valentín, *Cien años de carpeote en Puerto Rico, 1901–2000* (San Juan, 2001).


189. EFE News Services, “Recuerdan muerte Mari Pesquera y Piden Esclarecimiento Caso,” March 24, 2002 (wire service, available on Lexis). When Don Juan went to collect his subversive carpeta, in several boxes, he found that all the documents accumulated during the period of his son’s murder had been removed, apparently by the FBI.


192. See generally Martínez-Valentín, *Cien años de carpeote*. 
194. 122 P.R. Dec. 650 (1988). See also Noriega-Rodríguez v. Hernández-Colón, 92 JTS 85 (1992). The files could not be edited to remove the names of undercover agents or other informants before being returned to their subjects.
195. See Communist Party v. Subversive Activities Control Board, 351 U.S. 115 (1956) (Smith Act activities against the Communist Party not held unconstitutional); and Laird v. Tatum, 408 U.S. 1; 92 S. Ct. 2318; 33 L. Ed. 2d 154 (1972) (existence of “data-gathering system” in which the Pentagon created files on persons it deemed dangerous did not unduly chill the files’ objects’ First Amendment rights).
198. See, e.g., Suárez, Requiem on Cerro Maravilla, 348–50.
201. The United States declared war on Germany on April 2, 1917. More than 236,000 Puerto Ricans were registered by the Selective Service, and 18,000 were selected to serve. A racially segregated Puerto Rican regiment of 4,000 men was sent to Panama after becoming part of the U.S. Army in May 1917. See Morales-Carrión, Puerto Rico, 201. Albizu, it appears, enlisted in the Harvard Cadet Corps, probably in 1917, and was later commissioned as a second lieutenant in the U.S. Army. (He was clearly not alone, as the number of students in his Harvard Law School class dropped by two-thirds during this time period, likely as a result of enlistments.) Albizu then asked to serve with a Puerto Rican unit. While waiting for his appointment, he ran a “Home Guard” unit, at his own expense, in which 200 men trained to become noncommissioned officers. He was later sent to the 375th infantry regiment based in Puerto Rico. Albizu himself recounts this in a sworn statement that he filed when requesting admission to the Puerto Rican bar. See Carmelo Delgado-Cintrón, “El Derecho en Albizu Campos,” in Huracán del caribe, 72–73 (transcribing the pertinent portions of the affidavit). The 375th was one of three “colored” regiments in the island. All the officers were white, and the service members black
or mulatto Puerto Ricans. The highest rank that the Puerto Ricans could reach was that of first lieutenant, and Albizu was one of the first black Puerto Ricans to do so. See Pedro Malavet-Vega, *De las bandas al trio borinquen* (Santo Domingo: Editora Centenario, 2002), 183; María Eugenia Estades-Font, *La Presencia militar de Estados Unidos en Puerto Rico, 1898–1918: Intereses estratégicos y dominación colonial* (Río Piedras: Ediciones Huracán, 1988, repr. 1999), 194–97.


203. In her book, Blanca Canales, one of the Nationalists who participated in the revolt, describes the events in detail. Although I do not think this was her intent, the clumsiness of the planning and execution of the attacks is patently obvious. See Blanca Canales, *La Constitución es la revolución* (San Juan: Congreso Nacional Hostosiano, 1997), 27. The same conclusion applies to the book by Heriberto Marín-Torres. Heriberto Marín-Torres, *Coabey, el valle heróico* ([Puerto Rico]: 1995), 80–81 (reporting that he was not given a weapon while on his way to “take” the town of Jayuya; when the group found more weapons, there was no ammunition for them).

204. See generally Pablo Marcial Ortiz-Ramos, *Con Rubén en La Playa: Un diario de Vieques* (San Juan, 2000).

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**Notes to Chapter 4**


6. This could be the undesirable, and perhaps unintended, product of
misguided forms of communitarianism. See Addis, “On Human Diversity,” 127 (communitarians make the mistake of viewing “the notion of shared identity” as “a final state of harmony”).


8. See Los Problemas de la cultura en Puerto Rico: Foro del ateneo puertorriqueño, 1940 (Río Piedras: Editorial Universitaria, Universidad de Puerto Rico, 1976). The symposium was held in 1940, but the text was published in 1976.


20. The “Green Grows the Grass” derivation has been widely rejected by etymologists. See Jorge Mejía-Prieto, Así habla el mexicano: Diccionario básico de mexicanismos ([Mexico]: Panorama Editorial, 1984), 83; The Random House
Dictionary of the English Language, 2nd ed. (New York: Random House, 1987), 841. A dictionary published in 1765 explained that *gringo* was a term used in Málaga, Spain, to refer to foreigners unable to speak Spanish easily and was probably a bastardization of “Greek,” which was generally used to mean “incomprehensible language.”


36. Foraker Act, sec. 34 (“All pleadings and proceedings in [U.S. District Court for Puerto Rico] shall be conducted in the English language”); Jones Act, sec. 42 (“All pleadings and proceedings in the District Court of the United States for Puerto Rico shall be conducted in the English language”).

38. On the Puerto Rican diet generally, see Carmen Aboy-Valldejuli, Cocina Criolla, 40th ed. (Gretna, La.: Pelican, 1983). This is a classic Puerto Rican cookbook; hereafter, I will refer to my own copy, which is a reprint edition issued in 1992. This book also is available in English: Carmen Aboy-Valldejuli, Puerto Rican Cookery (Gretna, La.: Pelican, 1980). Also see Marta Coll-Camalez, Elizabeth Sánchez-Flores, and Esther Seijo-de Zayas, Siluetas que pueden cambiar: Calorías en platos y alimentos de uso frecuente en Puerto Rico y en otros países de América y el Caribe, 4th ed. (San Juan: ZAVESA, 1991). This is a dietary and caloric guide based on the traditional Puerto Rican diet, with a bilingual index.

39. See, e.g., P.R. Laws Ann., title 15, sec. 80 (allowing for “picas” (kiosks for gambling) only during patron saint celebrations); P.R. Laws Ann., title 21, sec. 4559(8) (“patron saint feast days” celebrations excluded from limitation on election-year spending by municipalities); P.R. Laws Ann., title 21, sec. 4309 (municipal governments may adjust their budgets with revenues from patron saint feast days). The attorney general of Puerto Rico issued an opinion indicating that “there is no [constitutional] prohibition against participation of the Church in programming certain activities which are traditionally performed at municipal fiestas.” Opiniones del Secretario de Justicia (1983): no. 14.


42. Malavet-Vega, Historia, 243–48, 315–18, 469–78.

43. González specifically criticizes the “jibarism” of the plantation owners who yearn to return to the “good old days” of Spanish classism and racism. See González, El País de cuatro pisos.


45. Merengue was a name initially given to what today is known as danza
Puerto Rico. However, its contemporary usage refers to a form of dance music with a definitely Afro-Caribbean beat that is most closely associated with the Dominican Republic.


47. Pedro Malavet-Vega, *Navidad que vuelve* (Santo Domingo: Editora Corripio, 1987), 133.

48. See generally ibid., 27.


51. Ibid., 352–57.

52. Ibid., 265, 273.

53. Ibid., 266–68.

54. See generally ibid., 115–50, 21.


57. Smith, *Civic Ideals*, 429.


59. Aida Negrón-De Montilla, *La Americanización en Puerto Rico y en el sistema de instrucción pública 1900/1930* (Río Piedras: Editorial Universitaria, Universidad de Puerto Rico, 1977), 9–10 (my translation), also 15. This also included “attempts to copy both the structure and legal organization of the American school system.”


61. Foraker Act, sec. 25 (“That the Commissioner of Education shall superintend public instruct; throughout Puerto Rico, and all disbursements on account thereof must approved by him; and he shall perform such other duties as may prescribed by law, and make such reports through the Governor as may required by the Commissioner of Education of the United States, which shall annually be transmitted to Congress”).

62. “The Commissioner of Education . . . shall prepare and promulgate all courses of study; conduct all examinations; prepare and issue all licenses or certificates to teachers; select and purchase all school books, supplies and equipment necessary for the proper conduct of education; . . . and formulate such rules and regulations as he may from time to time find necessary for the effective administration of a system of schools in Puerto Rico.” *Laws of Puerto Rico 1901–1905*, 36–37.

64. Laws of Puerto Rico 1901–1905. But the local courts continued to function in Spanish.

65. See generally Solís, Public School Reform, 47.

66. Cruz v. Domínguez, 8 P.R. Reports 551, 555–56 (1905) (“There can be no doubt that the English text, which was signed by the Governor, is the law which must govern”). But this is no longer the case by express provision of an amended Civil Code of Puerto Rico. P.R. Civil Code art. 13, P.R. Laws Ann., title 31, sec. 13.


68. Ibid., 47.

69. Dr. Aida Negrón-de Montilla has conducted one of the most comprehensive studies of this process and its effect on public education in Puerto Rico. See generally Negrón-de Montilla, La Americanización. In the introduction to her book, she provides a listing that I discuss in this book.


72. Negrón-De Montilla, La Americanización, 65.

73. Negrón-De Montilla, La Americanización, 9–10. This process also included hiring “American teachers, instead of Puerto Ricans,” and sending “Puerto Rican teachers to study in the United States.” In addition, the first legislative assembly in Puerto Rico approved a bill requiring that public funds be spent to send students to study in the United States, HR 35, approved January 30, 1901.

74. Negrón-De Montilla, La Americanización, 9–10 (my translation).

75. Amílcar A. Barreto, Language, Elites, and the State: Nationalism in Puerto Rico and Quebec (Westport, Conn.: Praeger, 1998), 118. Puerto Rico’s schools are divided into elementary school (K–grade 6), intermediate school (grades 7, 8, and 9), and high school (grades 10, 11, and 12). P.R. Regulations sec. 31–91. The language of instruction for junior high school is Spanish (5). “Every subject in the elementary schools, except English, shall be taught in the Spanish language” (P.R. Regulations sec. 31–93).
2. Ibid., 274–75, 440–41, n. 19.
3. Ibid., 274.
5. Ibid., 9–10 (italics in the original).
6. For example, Kymlicka would argue that the recognition of community and culture is a process of the evolution of liberalism rather than a competing paradigm that requires the rejection of liberalism. “Considering the nature and value of cultural membership not only takes us down into the deepest reaches of a liberal theory of the self, but also outward to some of the most pressing questions of justice and injustice in the modern world.” Kymlicka, *Liberalism Community and Culture*, 258. In addition, he has addressed the needs of cultural minorities within larger polities, which he labels *substate nationalisms* through the refinements of liberal theory. Kymlicka has specifically studied the problems of the Puerto Ricans through theories of “liberal nationalism” and “multination federalism” in works such as *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship* (New York: Oxford University Press, 2001).
7. “My concern is with liberalism as a normative political philosophy, a set of moral arguments about the justification of political action and institutions.” Kymlicka, *Liberalism Community and Culture*, 9.
9. Ibid.
12. See generally Juan F. Perea et al., eds., *Race and Races: Cases and Resources for a Diverse America* (St. Paul: West Group, 2000), 103–4: “Despite the protections of slavery in the Constitution, its drafters were careful not to use the word ‘slave’ at all, despite language that was understood by all to refer to slaves.”
13. U.S. Const. Art. I, sec. 2, cl. 3 (slaves contribute three-fifths to their mas-
ters’ entitlement to congressional representation); U.S. Const. Art. I, sec. 9, cl. 1 (limiting the power of Congress to restrict the slave trade); U.S. Const. Art. IV, sec. 2, cl. 3 (runaway slaves had to be returned to slave states).

14. Scott v. Sanford, 60 U.S. 393, 404–5 (1856). This case is often referred to as “Dred Scott v. Sanford.” Even this label is an exercise in racist condescension, since it is not customary to use the first name of the litigant.

15. See U.S. Const. Art. I, sec. 2, cl. 3 (stating that Native Americans do not count for apportionment purposes); Johnson v. M’Intosh, 21 U.S. 543, 5 Wheat. 543 (1823) (subjecting Native Americans to whites’ “right” to conquer their land and to expel them by force). See also U.S. Const. Amend. 19 (“The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.”).


17. Ibid., 295.


20. U.S. Const. Amend. 14, sec. 1. The section continues as follows: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”


24. Title IX of the Treaty of Guadalupe-Hidalgo, as ratified by the U.S. Senate, reads in part: ‘The Mexicans . . . shall be incorporated into the Union of the United States and be admitted, at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the


27. The article that was originally agreed to reads: “All grants of land made by the Mexican government or by the competent authorities, in territories previously appertaining to Mexico, and remaining for the future within the limits of the United States, shall be respected as valid, to the same extent that the same grants would be valid, if the said territories had remained within the limits of Mexico.” Upon the recommendation of President James Polk, however, the Senate refused to consent to it and deleted it. See Perea et al., eds., *Race and Races*, 261.

28. To quiet the ensuing protests of Mexicans, who presumably feared that preexisting land titles would not be honored in the absence of article X, the United States issued the following statement of protocol: “The American government by suppressing the Xth article of the Treaty of Guadalupe Hidalgo did not in any way intend to annul the grants of lands made by Mexico in the ceded territories. These grants . . . preserve the legal value which they may possess, and the grantees may cause their legitimate (titles) to be acknowledged before the American tribunals. Conformable to the law of the United States, legitimate titles to every description of property, personal and real, existing in the ceded territories, are those which were legitimate titles under the Mexican law of California and New Mexico up to the 13th of May, 1846 and in Texas up to the 2nd of March, 1836.” Perea et al., eds., *Race and Races*, 261.


30. Perea et al., eds., *Race and Races*, 263 (citing Senate Executive Documents, 30th Cong., 1st sess., no. 52, 27) (internal citation omitted).


37. Ibid., 121.


41. As Professor Beiner explains: “Theorizing citizenship requires that one take up questions having to do with membership, national identity, civic allegiance, and all the commonalities of sentiment and obligation that prompt one to feel that one belongs to *this* political community rather than *that* political community.” Beiner, introduction to Beiner, ed., *Theorizing Citizenship*, 19–20.

42. Martha Nussbaum advocates cosmopolitan citizenship: “The accident of where one is born is just that, an accident; any human being might have been born in any nation. Recognizing this, [Diogenes’] Stoic successors held, we should not allow differences of nationality or class or ethnic membership or even gender to erect barriers between us and our fellow human beings. We should recognize humanity wherever it occurs, and give its fundamental ingredients, reason and moral capacity, our first allegiance and respect.” Martha C. Nussbaum, “Patriotism and Cosmopolitanism,” in *For Love of Country: Debating the Limits of Patriotism*, Martha C. Nussbaum with Respondents, ed. Joshua Cohen (Boston: Beacon Press, 1996), 7.

43. Michael Ignatieff argues that the nation-state is in fact more important at the moment: “The paradox of the global economy is that the nation state becomes *more* not *less* important as our instrument for defending our interests and solving our problems in the international sphere. Any tendency to balkanize spheres or to concede self-determination to provincial interests puts us in a dilemma. We want a strong local government to be responsive to our local needs and we need a strong federal government to speak for us in the global sphere.” Ignatieff, “The Myth of Citizenship,” 76 (italics in the original).


46. A good example of this occurred in Fiji when a multiracial democracy had, reportedly, been replaced by the surrender of the nation to a particular ethnic group, for the express purpose of disenfranchising all other ethnic groups. See “Fiji Signs Pact with Rebels in Hostage Standoff,” *New York Times*, July 10, 2000, A-3.

47. For example, as described by Professor Beiner, Michael Walzer advocates the civil society model: “The basic idea here was that active involvement in an autonomous civil society composed of a multitude of voluntary associations separate from (or opposed to) the sphere of the state, represents a superior form of citizenship as compared with the decayed citizenship of subservience to an all-pervasive paternalistic state.” Beiner, introduction to Beiner, ed., *Theorizing Citizenship*, 4. Professor Walzer himself explains this antipositivism notion as the “antipolitics alternative.” “The words ‘civil society’ name the space of uncoerced human association and also the set of relational networks—formed for the sake of family, faith, interest, and ideology—that fill this space.” Michael Walzer, “The Civil Society Argument,” in Beiner, ed., *Theorizing Citizenship*, 153.

48. George A. Martínez, “Philosophical Considerations and the Use of Narrative in Law,” *Rutgers Law Review* 30 (1999): 683, 701 (notes omitted). Professor Martínez concludes, “Since racial divisions are founded in something other than reason—i.e., deeply held prejudices and sentiments—perhaps it can only be undone by techniques, such as narrative that do not depend on reason” (705, notes omitted).


50. Kymlicka, *Liberalism Community and Culture*, 2. Kymlicka goes on to defend liberal political theory: “Contemporary liberals do not, in general, discuss the difference between nation states and multinational states, and obviously do not think of cultural plurality as facing you with difficult issues for liberal theory of equality. But that first impression is misleading, for thinking about cultural plurality raises a host of important questions about the nature of liberal individualism and equality” (3).

51. Kymlicka notes that “any of these claims would, if sound, pose a serious challenge to liberal beliefs about culture and community. Taken together, they suggest that liberalism is obviously inadequate in these matters, that liberals are denying the undeniable, neglecting the most readily apparent facts of the human condition. And this neglect is exacting a high price: liberals, in a misguided attempt to promote the dignity and autonomy of the individual, have undermined
the very communities and associations which alone can nurture human flourishing and freedom. Any theory which hopes to respect these facts about the way in which we are socially constructed and culturally situated will have to abandon the atomistic and individualistic premises and the principles of liberal theories of justice.” Kymlicka, *Liberalism Community and Culture*, 2.


53. “Toleration comes in abundance only after the tolerated group has been redescribed so as to rob it both of its significance and the nature of its complaints.” Addis, “On Human Diversity,” 125.

54. By this Addis means that solidarity alone is not enough, that solidarity must manage to respect diversity: “Emphasis on solidarity without providing the mechanism through which the fact of pluralism (and difference) can be recognized and normatively affirmed is to commit the error of the communitarian, who simply asserts solidarity, with the consequence that minorities will be either forcibly assimilated or forcibly removed. Either option is not, and ought not to be, attractive to minorities.” Addis, “On Human Diversity,” 126.


56. Walzer describes this type of nationalism: “The quality of nationalism is also determined within civil society where national groups coexist and overlap with families and religious communities (two social formations largely neglected in modernist answers to the question about the good life) and where nationalism is expressed in schools and movements, organizations for mutual aid, cultural and historical societies. It is because groups like these are entangled with other groups, similar in kind but different in aim, that civil society holds out the hope of a domesticated nationalism. In states dominated by a single nation, the multiplicity of the groups pluralizes nationalist politics and culture; in states with more than one nation, the density of the networks prevents radical polarization.” Michael Walzer, “The Civil Society Argument,” 166.

57. Nussbaum writes: “[Richard] Rorty urges Americans, especially the American left, not to disdain patriotism as a value, and indeed to give central importance to ‘the emotions of national pride’ and ‘a sense of shared national identity.’ Rorty argues that we cannot even criticize ourselves well unless we also ‘rejoice’ in our American identity and define ourselves fundamentally in terms of that identity. Rorty seems to hold that the primary alternative to a politics based on patriotism and national identity is what he calls a ‘politics of difference,’ one based on internal divisions among America’s ethnic, racial, religious, and other subgroups. He nowhere considers the possibility of a more international basis for political emotion and concern.” Nussbaum, “Patriotism and Cosmopolitanism,” 4.

58. In answering the question “What should we teach our children?” Nussbaum writes, “Most important, should they be taught that they are, above all, citizens of the Untied States, or should they instead be taught that they are,
above all, citizens of a world of human beings, and that, while they happen to be situated in the United States, they have to share this world with the citizens of other countries?” Nussbaum, “Patriotism and Cosmopolitanism,” 6.


60. Clearly, Professor Nussbaum would find this argument unconvincing. Speaking of American citizenship, she wrote: “We say that respect should be accorded to humanity as such, but we really meant that Americans as such are worthy of special respect. And that, I think, is a story that Americans have told for far too long.” Nussbaum, “Patriotism and Cosmopolitanism,” 15. The defect in this analysis is the failure to value the nation-state. While a global community that gets along is a desirable goal, most human interactions occur at the local level. The advantages of multiculturalism and civil society models are that they account for diversity at both the macro (global/nation) and the micro (nation/community) levels.


**Notes to Chapter 6**


7. See U.S. Const., Art. IV, sec. 3, cl. 2 (“The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any claims of the United States, or of any particular state”).


9. Nevertheless, places like Afghanistan and Iraq are more likely dominated
by precedents from the Mexican-American war, providing that temporary military occupation did not constitute incorporation into the United States. See, e.g., Fleming v. Page, 50 U.S. (9 How.) 603, 614 (1850) (Mexican territory conquered and occupied by U.S. forces remained “foreign” land).

10. This is not the only way of establishing statehood. A plebiscite bill that guaranteed nonassimilationist statehood might be acceptable.

11. As distinguished from the Platt amendment in the Cuban constitution and the defense provisions of the Philippine constitution. Basically, when granting independence to both Cuba and the Philippines, the United States made them include in their constitutions provisions allowing the U.S. Congress to overrule decisions made by those purportedly independent nations. This limitation on their sovereignty allowed the United States to pursue its own interests over those of the Cubans and the Filipinas/os.


13. The ballot language referring to independence in HR 856 of 1997 provides, in part, that if independence is chosen, then “(6) Puerto Rico is eligible for United States assistance provided on a government-to-government basis, including foreign aid or programmatic assistance, at levels subject to agreement by the United States and Puerto Rico; (7) property rights and previously acquired rights vested by employment under laws of Puerto Rico or the United States are honored, and where determined necessary such rights are promptly adjusted and settled consistent with government-to-government agreements implementing the separation of sovereignty.” HR 856, sec. 4(a), ballot item B(6) and (7) (105th Cong., 1st sess. 1997).

14. For example, the signatories to the North American Free Trade Agreement (NAFTA), devised several different dispute-resolution schemes to address specific problems. See Ralph H. Folsom et al., Handbook of NAFTA Dispute Settlement (Ardsley, N.Y.: Transnational Publishers, 1998).

15. U.S. Const., Art. IV, sec. 3, which reads: “New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.”

16. Coyle v. Smith, 221 U.S. 559 (1911): “The constitutional provisions concerning admission of new states is not a mandate, but power to be exercised with discretion”; and after becoming a state, the Oklahoma legislature could change the location of its capital, despite the congressional statehood condition that it be located elsewhere.
17. Again, the 1997 Young plebiscite bill provided that for statehood: “(7) English is the official language of business and communication in Federal courts and Federal agencies as made applicable by Federal law to every other State, and Puerto Rico is enabled to expand and build upon existing law establishing English as an official language of the State government, courts, and agencies.” HR 856, sec. 4(a), ballot item C(7) (105th Cong., 1st sess., 1997).


20. While the idea of an “unconstitutional constitutional amendment” is oxymoronic under current U.S. law, the Puerto Rico–United States Post-Colonial Legal Regime Constitutional Amendment could require approval in the manner traditionally used to amend the U.S. Constitution and require further approval by the people of Puerto Rico as well. There is precedent for making a particular principle or provision of a constitution not subject to amendment. The “eternity clause” is article 79, paragraph 3 of the German Basic Law (the German constitution). It “bars any amendment to the Basic Law that would tamper with the principle of federalism or impinge upon ‘the basic principles laid down in Articles 1 and 20.’ Article 1 . . . sets forth the principle of human dignity and imposes upon the state the affirmative duty ‘to respect and protect it,’ whereas Article 20 proclaims the basic principles governing the polity as a whole—i.e., federalism, democracy, republicanism, separation of powers, the rule of law, popular sovereignty, and the social welfare state.” See Donald Kommers, “German Constitutionalism: A Prolegomenon,” Emory Law Journal 40 (1991): 837–38.


22. Puerto Rico would have to be a “state” under international law in order to enter into such an agreement. See Vienna Convention on the Law of Treaties, Art. 1, UN Doc. A/Conf. 39/27, Art. 1 (a state is a party to the treaty).

23. U.S. Const., Art. VI, cl. 2: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land”; U.S. Const., Art. II, sec. 2, cl. 2: The President “shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur.”

and the UN because Congress failed expressly to state that this was its intention, See generally Barry Carter and Phillip Trimble, *International Law* (Boston: Little, Brown, 1991), 166.

25. Independence for Puerto Rico could be accomplished by statute before the amendment is passed or could be included in the amendment itself.

26. According to Robert Westley, “a tight fit with the individual rights paradigm may be considered a legal prerequisite to success only in the context of judicially imposed redress. A tight fit is not a moral prerequisite, nor is it a legal barrier to legislative redress. It is noteworthy that even Japanese-American claims were denied by courts and ultimately awarded by Congress.” Robert Westley, “Many Billions Gone: Is It Time to Reconsider the Case for Black Reparations?” *Boston College Law Review* 40 and *Boston College Third World Law Journal* 19 (1998): 452.


31. Ibid.


33. I very much agree with Bob Westley’s opposition to individual payments. See Westley, “Many Billions Gone,” 468. My project is to put Puerto Ricans in a position to earn money by controlling their own sovereignty and economy, not just to feed them for day or two.


(1997): 263, 268 ("The alien represents a body of rules passed by Congress and reinforced by popular culture. It is society, often through the law, which defines who is an alien, an institutionalized ‘other,’ and who is not. It is society through Congress and the courts that determines which rights to afford aliens" [268]). See generally Ibrahim J. Gassama et al., foreword to Symposium, “Citizenship and Its Discontents: Centering the Immigrant in the Inter/National Imagination,” Oregon Law Review 76 (1997): 207, 209.


40. Yamamoto, for example, explains how traditionalists resisted reparations claims arguing for strict requirements of individual liability and individual entitlement. Yamamoto, “Racial Reparations,” 489.

41. Westley, “Many Billions Gone,” 469.

42. See the discussion of Harris v. Rosario, 446 U.S. 651 (1980); and Califano v. Torres, 435 U.S. 1 (1978), the Supreme Court cases that allowed the U.S. Congress to discriminate against Puerto Ricans on the island by allocating to them dramatically lower levels of federal funding, or no funding at all.

43. To become a resident of the island, I would require at least five years of legal residence after any change in status.


Notes to Chapter 7

2. As previously discussed, the Treaty of Paris, through which Spain ceded Puerto Rico to the United States, unlike the Treaty of Guadalupe Hidalgo, which ceded conquered Mexican territory, did not guarantee U.S. citizenship for the inhabitants of Puerto Rico. In fact, the Spaniards on the island could choose to retain their citizenship, but everyone else on it was left in a legal limbo. See Ediberto Román, “Empire Forgotten: The United State’s Colonization of Puerto Rico,” *Villanova Law Review* 42 (1997): 1119.

3. “Instructions of the President to the United States Peace Commissioners,” September 16, 1898, in *Papers Related to the Treaty with Spain*, U.S. Senate, 56th Cong., 2nd sess., doc. no. 148, 1901), 3–4, microfiche (Sanford, N.C.: Microfilm Corp. of America, 1982). These papers initially were secret, but on February 5, 1901, the Senate lifted the “injunction of secrecy” and ordered the publication of three thousand volumes. Ibid. at 1. I state “full” territory because the U.S. did demand the cession of individual islands in the Ladrones and Philippine archipelagoes. Ibid. at 4, 7 (Guam in the Ladrones and Luzón in the Philippines).


6. See, e.g., *Department of State Bulletin*, April 20, 1953, U.S./U.N. press release, March 21, 1953. This process had begun with the eight principles of the Atlantic Charter signed by President Franklin Delano Roosevelt and British Prime Minister Winston Churchill in August 1941. The text of the charter may be found at http://www.ssa.gov/history/acharter2.html.


through the Panama Canal and the Gulf of Mexico.” James N. Cortada and James W. Cortada, _U.S. Foreign Policy in the Caribbean, Cuba, and Central America_ (New York: Praeger, 1985), 1.


13. Pablo Marcial Ortiz-Ramos, _Con Rubén en la playa: Un diario de Vieques_ (San Juan, 2000), 1.

14. “Despite Protests, Navy Resumes Shelling of Puerto Rican Island,” _New York Times_, June 26, 2000, A-10. Before the training center closed, Lieutenant General William Tangney, deputy commander in chief, U.S. Special Operations Command (SOCOM), stated that “with the non-availability of Vieques, which, of course, was a combined live fire range which is traditionally used by the carrier battle groups and the fleet as part of their work-ups, I am not aware of any facilities on the East Coast where you could do comprehensive, live fire that involved all of the formations in a joint task force. You can do that to a certain extent at Camp LeJeune, North Carolina. You can do a little bit at Fort Bragg, North Carolina. But you really don’t have the full access and terrain to pull it all together with the airspace to make it happen.” Transcript of House Government Committee Hearing, May 16, 2002, _FDCH Political Transcripts_ (available on Lexis).


17. Lakely, “End of Live Bombing.”

18. Oliva M. Espín, _Women Crossing Boundaries: A Psychology of Immigra-
tion and Transformation of Sexuality (New York: Routledge, 1999), 8.


24. In a statement issued on April 23, 2003, the AACR stated: “The question of why Dr. Rhoads, whose career otherwise was marked by both distinction and compassion, made the unacceptable statements in the 1931 letter probably never will be answered fully. Nonetheless, based on those statements made by the young Dr. Rhoads, the Board has concluded that he, unfortunately, is an unsuitable exemplar for the young researchers that the AACR’s award is meant to recognize. Accordingly, Dr. Rhoads’ name will no longer be associated with the award. The award itself will be renamed and will continue to be conferred upon young researchers in the future. With the review process completed and the question before the Board answered, the AACR now looks forward to directing its energies to the goals that the award is intended to serve.” See American Association of Cancer Researchers, “Statement of the AACR Board of Directors: The AACR-Cornelius Rhoads Memorial Award,” April 23, 2003 (copy on file with author).

25. Clark, Puerto Rico and the United States, 211.


30. Ediberto Román coined the phrase alien/citizen paradox in his article “Empire Forgotten.”


32. Ibid., 71, 481.


37. “Presos Churumba y Lolita Lebrón,” *El Nuevo Día*, April 27, 2001 (reporting the mayor’s arrest); see also Julio Ghigliotty, “Grupo de ponceños da apoyo a ‘Churumba,’” *El Nuevo Día*, August 13, 2001 (reporting on a demonstration by persons from Ponce in support of the mayor while he served his thirty-day sentence in the federal detention center in Guaynabo, Puerto Rico).


39. I am aware that some acts of violence occurred during these protests. But in fact, most of the time, the protesters were being attacked with impunity by a small band of violent pro-navy counterprotesters and by military personnel, who routinely fired tear gas at the people occupying public property, who posed no threat to the navy. Also, there was some exuberance on the last day of the navy’s official occupation that caused property damage. Some prosecutions are currently pending. The federal employees on the island will assuredly perform their duty to the empire by continuing to criminalize the Vieques protests, even after the navy is gone.


44. Rivera-Bátiz and Santiago, Island Paradox, 65, tables 4.2 and 7.7.


49. Meyin and Rodriguez, Aparato militar, 38–41; also Vélez-Rodríguez, Plan Drácula, 151–58.

50. See letter by Hansford T. Johnson, acting secretary of the navy, to Craig Manson, assistant secretary of the interior for fish, wildlife and parks, April 30, 2003.


52. Lakely, “End of Bombing.”


58. See Roman and Lytle, “Lawmakers Kill Vieques Deal.”


60. For example, during a news briefing on September 16, 2002, Defense Secretary Donald Rumsfeld stated that “Vieques is an important location for us, and we intend to continue to operate on a basis that’s consistent with our obligations, and we hope others will continue to cooperate in a manner that’s consistent with their obligations.” http://www.defenselink.mil/news/Sep2002/t09162002_t0916sd.html.

61. See, e.g., _Puerto Rico_, 11.


63. Ibid., 77, n. 40.

64. In a moment of candor, President Clinton stated that “the unwillingness of the Congress to give a legislatively sanctioned vote to the people of Puerto Rico to let them decide the status of Puerto Rico” was one of the causes of the “Vieques issue.” The White House, Office of the Press Secretary, Press Conference by the President, February 16, 2000, http://www.pub.whitehouse.gov.

65. The Supreme Court can also contribute to this process by taking the earliest possible opportunity to issue its first comprehensive decision on the status of Puerto Rico since _Balzac v. People of Porto Rico_ was decided in 1922 (258 U.S. 298). The recent Supreme Court decisions discussed in chapter 2 were _per curiam_ opinions.

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