U.S. CITIZENSHIP IN PUERTO RICO:
ONE HUNDRED YEARS AFTER THE JONES ACT
CONTENTS

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U.S. CITIZENSHIP IN PUERTO RICO:
One Hundred Years After the Jones Act
Guest Editors:
Charles R. Venator-Santiago and Edgardo Meléndez

Preface: U.S. Citizenship in Puerto Rico:
One Hundred Years After the Jones Act
—Edwin Meléndez

Introduction: U.S. Citizenship in Puerto Rico:
One Hundred Years After the Jones Act
—Charles R. Venator-Santiago and Edgardo Meléndez

Mapping the Contours of the History of the Extension
of U.S. Citizenship to Puerto Rico, 1898–Present
—Charles R. Venator-Santiago

The Unresolved Constitutional Issues of
Puerto Rican Citizenship
—Rogers M. Smith

Citizenship and Equality in an Age of Diversity:
Reflections on Balzac and the Indian Civil Rights Act
—Sanford Levinson

To Be or Not to Be: Puerto Ricans and Their
Illusory U.S. Citizenship
—Juan R. Torruella

Citizenship in U.S. Territories: Constitutional Right
or Congressional Privilege?
—Neil Weare

Dual Consciousness About Law And Justice:
Puerto Ricans’ Battle For U.S. Citizenship In Hawai’i
—Susan K. Serrano

“...Acting Like an American Citizen”: Discursive and
Political Resistance to Puerto Rican U.S. Citizenship
Anomalies in the 1930s
—Daniel Acosta Elkan

A Note on the Puerto Rican De-Naturalization
Exception of 1948
—Charles R. Venator-Santiago

Puerto Ricans as Contingent Citizens: Shifting
Mandated Identities and Imperial Disjunctures
—Pedro Cabán

Puerto Ricans and U.S. Citizenship in 1917:
Imperatives of Security
—Bartholomew Sparrow and Jennifer Lamm

Comments on the Jones Act and the Grant of U.S.
Citizenship to Puerto Ricans
—Edgardo Meléndez
The authors included in this special volume of CENTRO Journal offer the most current elucidation of the history, interpretation, and implications of the granting of U.S. citizenship to Puerto Ricans in 1917. As Professor Venator-Santiago indicates in his article, “The Jones Act of 1917 was neither the first nor the last law enacted by Congress containing a citizenship provision for Puerto Rico.” That statement is more accurate today than ever. Puerto Rican U.S. citizenship is as contested now as it was in the decade preceding the enactment of the Jones Act. In part, its contention is given by the territorial status of Puerto Rico. However, regardless of the future political status of Puerto Rico, the granting of citizenship to Puerto Ricans in 1917 cemented the permanent and irreversible incorporation of its people into the American polity.

When Centro organized a symposium in anticipation of the centennial of the Jones Act in October of 2015, we did not anticipate the turn of events surrounding the history and implications of granting of U.S. citizenship to Puerto Ricans. It is important to briefly review this context and the ensuing debate about Puerto Rican U.S. citizenship and by implication the political status question.

Last summer, in a span of a few days, the Supreme Court decided two cases that further clarified Puerto Rico’s status as a territory and the demarcation of autonomy or self-government. The first case, indirectly addressing the status question, involved double jeopardy in a criminal prosecution for firearms sales. Prosecutors in Puerto Rico wanted to charge two men who had already pleaded guilty in federal court. The U.S. Supreme Court, with Justice Sonia Sotomayor in the minority, decided against Puerto Rico’s government and by implication reaffirmed Puerto Rico’s status as a territory, such as Guam, American Samoa, and the U.S. Virgin Islands.

In a second case, Commonwealth of Puerto Rico v. Franklin California Tax-Free Trust, the Supreme Court considered whether the Commonwealth government could enact its own bankruptcy law under a local statute. Facing a public debt that analysts estimate to be over $70 billion, the Commonwealth enacted a law allowing public corporations in Puerto Rico to declare bankruptcy and enter into a Puerto Rican court process to restructure their debt. Public corporations account for about $20 billion of the total public debt in Puerto Rico but have not been covered by U.S. bankruptcy laws since 1984 (for reasons that are unclear). The U.S. Supreme Court upheld the decision of the lower court, siding with the bondholders who opposed the Commonwealth’s enactment of the bankruptcy law allowing debt restructuring. As in the first case, again with Justice Sonia Sotomayor in the minority, the U.S. Supreme Court affirmed Congressional authority over bankruptcy proceedings. At the time, this decision was the clearest indication that without Congressional action, such as with the subsequent enactment of PROMESA, Puerto Rico would not have a legal recourse to restructure its public debt.

Clearly, the recent U.S. Supreme Court decisions elucidate any questions that anyone may have about the territorial status of Puerto Rico. These recent decisions by the U.S. Supreme Court and the ongoing economic, fiscal, and succeeding humanitarian crises set up the stage for renewed interest—if that is even possible—on the status options for Puerto Rico, and more specifically for statehood as a permanent solution to the political status.

As was the case in 2012, the government earlier this year enacted a law for a non-binding plebiscite on the status of Puerto Rico. Since the United States invasion in 1898, Congress has debated upwards of status and plebiscitary bills, but has yet to pass legislation providing for a “binding” status plebiscite—a plebiscite in which the status options to choose from and the process toward Congressional endorsement and adoption of the chosen option are clearly delineated. Throughout this period, the Puerto Rican legislature has authorized four non-binding status plebiscites (1967, 1993, 1998, and 2012). The 2017 status plebiscite, a non-binding measure conducted by the Puerto Rican legislature lacking the endorsement of minority political parties as was the case in the 2012 referendum, will be the fifth time that Puerto Ricans vote to seek resolution of the island’s political status.

The narrative in favor of statehood is simple: as U.S. CITIZENS (emphasis added), Puerto Ricans are denied equality as long as Puerto Rico remains a territory. For statehood advocates, statehood for Puerto Rico is “a civil rights issue.” Prominent legal and academic scholars support this view. For Judge Juan R. Torres-ella (U.S. Court of Appeals for the First Circuit, in this issue), Puerto Ricans born in Puerto Rico, especially those who continue to reside in Puerto Rico, are not truly U.S. citizens in the full constitutional and legal sense. And for Professor Rogers Smith (University of
Pennsylvania, in this issue), the Jones Act created a form of U.S. citizenship for Puerto Ricans that is constitutionally “second-class” in all of citizenship’s most important legal dimensions.

Achieving statehood, in this view, is a way not only to bring political equality but also to guarantee U.S. citizenship permanently for Puerto Ricans. Concomitant with this view is that statehood will bring parity in federal funds and thus serve as a catalyst to drive Puerto Rico out of its economic crisis. Whether political opposition to the plebiscite and the way the status options are defined in the legislation delegitimizes the outcome of the upcoming referendum or whether Congress would consider of any relevance the outcome of a “non-binding” process remains to be seen. The important issue to consider is that the concept of citizenship and preserving U.S. citizenship are very much at the core of contemporary political discourses about Puerto Rico and Puerto Ricans.

In this context, the publication of this special issue of the CENTRO Journal is extremely timely to contextualize the history, nature, and implications of Puerto Rican’s U.S. citizenship. From a historical perspective, the authors in this volume debate the reasons the granting of citizenship to Puerto Ricans. It is apparent from this debate that U.S. policymakers favored granting citizenship to Puerto Ricans not for military recruitment or narrow strategic interests generated by the war but for broader rationalities that encompassed supporting U.S. permanence in Puerto Rico and augmenting a “bond” with Puerto Rico. Citizenship was also seen as solidification of the governance of the territory. As Professor Edgardo Melendez concludes, at the time granting citizenship to Puerto Ricans was not seen [emphasis added] as a step toward the incorporation of Puerto Rico as a territory or as a step toward statehood.³

After a century of Puerto Rican U.S. citizenship, it is clear that the main goal of the Jones Act of augmenting a “bond” with Puerto Rico (and Puerto Ricans, I may add) by granting citizenship has been clearly achieved. For one, according to the most recent data from the U.S. Bureau of the Census, two-thirds (66.6%) of Puerto Ricans now reside stateside, and the overwhelming majority of those (70%) were born stateside.⁴ And, even in the context of an unprecedented wave of migration from Puerto Rico to the U.S. during the last decade, only a small fraction of six percent of those residing stateside declare that they do not speak English—an indicator of social integration or lack thereof. In this context, regardless of the present or future status of Puerto Rico, one can argue that, having acquired U.S. citizenship by birth,⁵ for stateside Puerto Ricans citizenship is undoubtedly permanent and irreversible.

Yet, as the ongoing debates about citizenships and the articles on the subject included in this volume testify, the question of whether citizenship is permanent and irreversible for island residents has been called into question. The prevalent doctrine on this subject is summarized on a 1989 letter written by John H. Killian from the Congressional Research Service to Senator Bennett Johnston during the 1989–1991 plebiscitary debates over the future political status of Puerto Rico. In the letter, Killian provided a couple of critical points regarding “Discretion of Congress Respecting Citizenship Status of Puerto Ricans.”⁶ In his interpretation of prevailing law, Killian talks about what José Rodríguez Suárez labeled as the “what Congress gives, Congress takes away” doctrine in regard to Puerto Rico as a territory.

Killian begins by contending that persons born in Puerto Rico acquired their U.S. citizenship under the terms of the Jones Act of 1917. He then proceeds to argue that the Insular Cases established that Puerto Rico, an unincorporated territory, belonged to, but was not part of the United States. It followed that persons born in Puerto Rico were not born in the United States for purposes of the Birthright Citizenship Clause of the 14th Amendment.

Citing the precedent established in Rogers v. Bellei, 401 U.S. 815 (1971), Killian reasoned, that because Puerto Rico was not located in the United States, persons born in the island were not born or naturalized in the United States and consequently their citizenship was statutory rather than constitutional. Thus, Killian concluded, if Puerto Rico became a sovereign nation, Congress could enact legislation that unilaterally expatriated any person born in Puerto Rico. Stated differently, island-born Puerto Ricans’ citizenship was linked to the island’s political status.

At least three scholars have refuted Killian’s interpretation. All begin by establishing that the Jones Act of 1917, which conferred a naturalized citizenship, was replaced by the Nationality Act of 1940, which extended the rule of jus soli or birthright citizenship to Puerto Rico. According to the Nationality Act of 1940, for citizenship purposes, birth in Puerto Rico was tantamount to birth in the United States. During the 1989–1991 plebiscitary debates, Harvard Law Professor Lawrence H. Tribe argued that the Nationality Act of 1940 treated Puerto Rico as a part of the sovereignty of the United States for the purposes of the Birthright Citizenship Clause of the 14th Amendment.⁸
Alternatively, Professor José Julián Álvarez González, then acting as an advisor to the Puerto Rican Independence Party (PIP), argued that rather than Bellei, Congress should look to the precedent established in Afroyim v. Rusk, 387 U.S. 253 (1967). In Afroyim, the Supreme Court established that once a person was naturalized he or she acquired constitutional protections that limited Congress ability to enact expatriation or denaturalization legislation.

Professor Venator-Santiago’s article in this volume offers a third interpretation. He argues that the legislative history of the Nationality Act of 1940 unequivocally established that the Citizenship Clause of the 14th Amendment was the constitutional source for the Act’s birthright or jus soli citizenship provision. Stated differently, in 1940 Congress extended the Citizenship Clause of the 14th Amendment to Puerto Rico through legislation. Unfortunately, and notwithstanding subsequent interpretations, Killian’s argument has become incorrectly the dominant interpretation informing Federal law and policymakers as well as mainstream scholars.

The revisionist interpretation of constitutional and case law exposed by leading legal and academic scholars supports the interpretation that—whether since 1940 Puerto Ricans acquired citizenship by birthright, or since the U.S. Supreme Court decided in Afroyim v. Rusk that Congress cannot enact expatriation or denaturalization legislation, or because of 14th Amendment protection was extended to Puerto Ricans through the Nationality Act of 1940—Congress does not have the legal authority to extricate citizenship from island-born Puerto Ricans.

So, what are the implications of debunking the “what Congress gives, Congress takes away” dogma about Puerto Rican U.S. citizenship from contemporary policy and political debates? For one, it changes a core premise of the political status debate, namely, that statehood is the only way to insure the continuation of Puerto Ricans’ U.S. citizenship. If indeed Puerto Ricans have birthright U.S. citizenship, then it follows that U.S. citizenship cannot be taken from island-born Puerto Ricans residing in Puerto Rico or their children by an act of Congress even if their children are born after a change of political status to other than statehood. In this view, Puerto Rican U.S. citizenship is permanent and irreversible.

Even if we accept the premise that Puerto Rican U.S. citizenship is permanent and irreversible, the questions of inequality of American citizens residing in the territory or of the political status of Puerto Rico continue to be unresolved. But the emphasis in the political discourse shifts from the permanent “bond” between the Puerto Rican people and the United States initiated a century ago with the enactment of the Jones Act, but to other costs and benefits of the political status options for both Puerto Rico and the American people, including all Puerto Ricans. This might be the topic of a future symposium and special issue of the CENTRO Journal.

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1 The Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) was enacted by the United States Congress to establish an oversight board and a process for restructuring public debt in order to mitigate the Puerto Rican government-debt crisis. It was signed into law by President Barack Obama on June 30, 2016.
4 American Community Survey, 2015.
On April 11, 1899, Spain ceded Puerto Rico and Guam, and sold the Philippines to the United States under the terms of the Treaty of Paris of 1898. Section 9 of the Treaty of Paris invented a non-citizen nationality to govern the insular-born residents of Puerto Rico, Guam and the Philippines. Prior U.S. treaties of territorial annexation contained provisions either providing for the collective naturalization of the residents of the newly annexed territories or providing for the future naturalization of these residents.

The United States imposed a military government to rule Puerto Rico between July 25, 1898 and April 2, 1900. The military was charged with creating political institutions to administer the island under a permanent U.S. rule. During this period, as the Supreme Court established in Delima v. Bidwell (1901) the United States governed Puerto Rico as an incorporated territory.

On April 2, 1900, Congress enacted the Foraker Act, an organic or territorial statute designed to provide a civil government for Puerto Rico. The Foraker Act implemented the recommendations of the military generals. The act also contained two important provisions that would shape subsequent debates about the status of Puerto Rico and Puerto Ricans. Section 3 imposed a tariff on merchandise trafficked between the island and the mainland, effectively treating Puerto Rico as a foreign country in a domestic or constitutional sense. Section 7 invented a Puerto Rican citizenship based on the language of Section 9 of the Treaty of Paris. Whereas peninsular (Spain – born residents of Puerto Rico were given the options of retaining their Spanish citizenship, acquiring a Puerto Rican or a U.S. citizenship, island or insular (Puerto Rico) – born residents were barred from either retaining their Spanish citizenship or acquiring a U.S. citizenship.

Supreme Court Justice Edward D. White’s concurring opinion in Downes v. Bidwell (1901) established what is generally known as the doctrine of territorial incorporation or the constitutional interpretation of the status of Puerto Rico and other unincorporated territories. The doctrine contains three basic elements. First, it recognizes a difference between incorporated (meant to become states) and unincorporated territories. Second, Congress is granted a plenary power to enact legislation extending or withholding constitutional provisions. Only fundamental constitutional rights are guaranteed in unincorporated territories. Third, unincorporated territories can be selectively governed as foreign locations in a domestic or constitutional sense. Since then, the United States has governed Puerto Rico as an unincorporated territory.
In 1906, Congress began to enact legislation containing individual naturalization exceptions for persons born in Puerto Rico and the other unincorporated territories. The Bureau of Immigration and Naturalization Act (BINA) of 1906 was the first law enabling persons born in Puerto Rico to naturalize and acquire a U.S. citizenship.

Puerto Rican soldiers were granted access to a U.S. citizenship long before Congress enacted the Jones Act of 1917. The Naval Service Appropriations Act of 1914 amended the BINA and included special waivers enabling Puerto Ricans and other insular-born soldiers to naturalize. Honorably discharged Puerto Rican soldiers who served in the U.S. Revenue-Cutter (later Coast Guard) Service or the Navy, were allowed to treat 3 years of service as residence in a state or territory of the United States for naturalization purposes. Although the U.S. armed forces did not require its soldiers to be citizens, citizenship enabled its bearer higher wages and the opportunity to become an officer.

On March 2, 1917, Congress enacted the Jones Act providing for the collective naturalization of the inhabitants of Puerto Rico, a territory that was then governed as a foreign possession of the United States. This was the first time that Congress enacted legislation for the collective naturalization of the inhabitants of an annexed territory that was not meant to become a state of the Union. The Jones Act of 1917 amended the Foraker Act and included a collective citizenship provision enabling the inhabitants of Puerto Rico to choose between retaining their Puerto Rican or other citizenship and acquiring a U.S. citizenship. Because the Jones Act did not change Puerto Rico’s territorial status, persons subsequently born in the island could only acquire a derivative form of parental or jus sanguinis (blood right) citizenship. At the time, birth in Puerto Rico was tantamount to birth outside of the United States.

Between 1927 and 1940, Congress enacted three corrective amendments to Section 5 of the Jones Act. Also known as Section 5a, the 1927 Amendment enabled the children of aliens born in Puerto Rico and Puerto Rican citizens who previously chose to retain their non-citizen national status to naturalize and acquire a U.S. citizenship.
The 1934 Amendment to the Jones Act, Section 5b, also contained two naturalization clauses. The first one retroactively naturalized all persons, who were not citizens or nationals of any other country, born in Puerto Rico between April 11, 1899 and the enactment of this amendment. The second clause enabled Puerto Rican women who had lost their “American nationality” as a result of their marriage to an alien prior to the enactment of the Jones Act of 1917, to naturalize and acquire a U.S. citizenship.

In 1940, Congress began to enact legislation conferring birthright or *jus soli* citizenship on persons born in Puerto Rico. This legislation both amended and replaced the Jones Act. The *Nationality Act of 1940* established that Puerto Rico was a part of the United States for citizenship purposes. Since January 13, 1941 birth in Puerto Rico is tantamount to birth in the United States for citizenship purposes. Whereas prior to 1940 persons born in Puerto Rico could acquire a naturalized citizenship status, after 1940 persons born in Puerto Rico acquired a native or natural-born citizenship status.

Between 1941 and 1948, a significant number of Puerto Ricans residing outside Puerto Rico and the United States more generally were automatically denaturalized for their failure to comply with the prevailing 5-year residency rule for naturalized citizens. At the time, naturalized citizens who resided outside of the United States for a period longer than 5-years were automatically denaturalized. In 1948, Congress addressed this problem by amending both Section 5 of the *Jones Act* and Section 404(c) of the *Nationality Act* retroactively establishing that all persons born in Puerto Rico were entitled to a special non-naturalized citizenship status. The 1948 amendment reaffirmed the principle that after 1940, birth in Puerto Rico was tantamount to birth in the United States and that Puerto Ricans were native-born citizens of the United States.
The Immigration and Nationality Act of 1952 (INA) was the last law enacted by Congress containing a citizenship provision for persons born in Puerto Rico. Section 302 establishes that persons born in Puerto Rico acquire a U.S. citizenship at birth. In an accompanying House Report, lawmakers explain that the “citizenship status of persons born in Puerto Rico… is set out in the Nationality Act of 1940 and is carried forward in the bill” (H. R. Rep. No. 1365, 76). Suffice it to say that the INA of 1952 did not change or modify the birthright citizenship provision for Puerto Ricans. Although Federal lawmakers have since debated a number of bills containing citizenship provisions for Puerto Rico, Congress has not enacted any citizenship law for the island since 1952.

In 1989, at the behest of Senator Bennett Johnston (D-LA), the Congressional Research Service (CRS) issued a Memorandum addressing the question whether Congress’ power to enact legislation providing for the collective denaturalization of Puerto Ricans was constitutionally limited. The 1989 CRS Memorandum concluded that Congress possesses a plenary power to enact legislation to unilaterally denaturalize all persons born in Puerto Rico should the Puerto Ricans change the island’s territorial status to other than statehood. Notwithstanding the legislative history of the citizenship and naturalization laws enacted after the Jones Act of 1917, U.S. law and policymakers have since wrongly embraced the notion that Puerto Ricans are mere statutory citizens, subject to the plenary authority of Congress.

In 1993 Pro-independence leader Juan Mari Brás and a number of Puerto Ricans began to renounce their U.S. citizenship and solicit certificates of loss of nationality. Puerto Rican independentistas sought to live as Puerto Rican citizens in Puerto Rico. However, a central requirement for the issuance of a Certificate of Loss of Nationality is that the person seeking to self-expatriate must establish a residency outside of the United States. In Lozada Colón v. U.S. Department of State the U.S. District Court for the District of Columbia concluded that the INA of 1952 “makes it unmistakably clear that Puerto Rico is a part of the United States” [2 F. Supp. 2d 43, 45-46 (1998)]. Stated differently, Puerto Rico is located in the United States for the purposes of preventing Puerto Ricans from renouncing their U.S. citizenship and seeking to live as Puerto Rican citizens or non-citizen nationals.

Federal Courts have also barred Jennifer Efron, a native of Puerto Rico from acquiring a constitutional citizenship in Florida. She moved to Dade County, Florida where she established a 5-year residency. She subsequently sought to undergo an individual process of naturalization in order to acquire an “irrevocable” constitutional citizenship. Citing the Nationality Act of 1940 as the key source of citizenship in Puerto Rico, in Efron v. United States [1 F. Supp. 2d 1468 (1998)] a Federal Court concluded that Ms. Efron was already a citizen.
March 9, 2009
Governor Luis Fortuño signs Public Law 7, which declares a State of Fiscal Emergency and establishes a Comprehensive Fiscal Stabilization Plan.

November 8, 2016
Governor Candidate Ricardo Rosselló wins the election with 42% of the votes. Electoral participation decreased to 55.45%, one of the lowest in history, possibly due to the effects of the fiscal and economic crisis on migration and trust of Puerto Rico’s government.

December 20, 2016
The Congressional Task Force on Economic Growth releases its final report on policy options for the economic growth of Puerto Rico.

January 25, 2017
Governor Ricardo Rosselló signs Public Law 4, known as Labor Transformation and Flexibility Act, which looks to reduce benefits to workers in the private sector with the intention of creating a more competitive labor force.
ABSTRACTS
GUEST EDITORS: Edgardo Meléndez (Hunter College, CUNY) and Charles Venator-Santiago (University of Connecticut, Storrs)

Author: Pedro Cabán (University at Albany, State University of New York)
Title: Puerto Ricans as Contingent Citizens: Shifting Mandated Identities and Imperial Disjunctures
Abstract: In 1917 the United States Congress imposed citizenship on the inhabitants of Puerto Rico. It was a contingent citizenship subject to legal redefinition and tailored to Puerto Rico's colonial status within the U.S. empire. Many scholars have argued that racism was determinative in the decision to consign Puerto Ricans a diminished citizenship. But it is necessary to point out that the U.S. had crafted an adaptive racial narrative that distinguished among racialized people under its sovereignty in terms of their capacities for self-government and ability to comprehend Anglo-Saxon political and legal institutions. Moreover, in addition to racism, strategic considerations and territorial policies and legal precedents figured prominently in the decision to impose an unprecedented citizenship status on Puerto Ricans.

Author: Daniel Acosta Elkan (Bowling Green State University)
Title: “…Acting Like an American Citizen”: Discursive and Political Resistance to Puerto Rican U.S. Citizenship Anomalies in the 1930s
Abstract: This paper analyzes a number of cases in which Puerto Rico-born individuals found that they lacked Jones Act citizenship, twenty-two years after the passage of the law. Letters written to Congress by Vito Marcantonio reveal that these petitioners utilized narratives of citizenship to counteract their lack of legal and social belonging and dominant discourses which placed the Puerto Rican community outside of the boundaries of the North American body politic. Acting on instrumental, rather than ideological grounds, the petitioners fought to protect the most crucial rights of Puerto Rican U.S. citizenship—namely, mobility and right of abode. The seeming contradictions between their political positions on the rightful status of Puerto Rico and their self-advocacy should be seen, instead, as efforts to ensure conditions that would allow for their empowerment and continued work toward their vision of the Puerto Rican cause.

Author: Sanford Levinson (University of Texas, Austin)
Title: Citizenship and Equality in an Age of Diversity: Reflections on Balzac and the Indian Civil Rights Act
Abstract: From the very beginning of the self-conscious existence of “The United States,” the question of pluralism has been central. What, after all, did it mean to be the “one people” that declared independence from the British in 1776? Why did Publius, writing The Federalist in 1787, emphasize that our “united people” was far more similar than the evidence, easily available to him as well as to us, could possibly support? What is the meaning of our national motto, e pluribus unum? Puerto Rico is especially useful as a means of examining such questions. The most obvious issues are presented by language, but other factors as well contributed to the unwillingness of the United States, following the Spanish-American War, to treat its conquests as new territories on the way to statehood. Instead, obviously, the Court created the differentiation between “incorporated” and “unincorporated” territories, with attendant consequences for a host of issues, including whether residents of Puerto Rico would be treated as citizens of the United States with whatever rights attached to that status. From one perspective, this particular problem was resolved, with regard to citizenship, by the Jones Act of 1917. But, as with the statutory grant of citizenship to American Indians in 1924, many questions remained about the actual rights that would be enjoyed by Puerto Ricans. Among other things, these controversies reveal the extent to which “citizens” persons have never been treated as necessarily equal in all respects. Puerto Rico therefore raises fundamental questions that deserve the attention of anyone interested in American constitutional development.

Author: Susan K. Serrano (University of Hawai‘i, Mānoa)
Title: Dual Consciousness About Law And Justice: Puerto Ricans’ Battle For U.S. Citizenship In Hawai‘i
Abstract: In Sanchez v. Kalauokalani, Manuel Olivieri Sánchez and Hawai‘i’s Puerto Ricans became U.S. citizens pursuant to the Jones Act. Centering on Sanchez and its aftermath, this article investigates their fight for U.S. citizenship—both its attainment and the realization of the supposed benefits of that citizenship—in the face of laws and policies that legitimized unequal treatment. Drawing on critical theory insights, it explores how Hawai‘i’s Puerto Ricans held both a deep criticism of law as a tool of the powerful, as well as a transformative vision of law as a vehicle to validate their place in the U.S. polity. Embracing a “double consciousness” about law and rights assertion, they fought for legal rights in Sanchez, but recognized that U.S. citizenship would not mean immediate freedom from discriminatory treatment. They therefore pushed for the attendant rights of that citizenship, and against cultural vilification and inferior treatment in their daily lives.
citizenship, which policymakers calculated would under-
Act accomplished this by granting Puerto Ricans U.S.
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vital importance because of its important location in the
States in the First World War suddenly made the Island of

Abstract: The form of U.S. citizenship created for Puert-
ero Rican citizenship in the near-term future.

Authors: Bartholomew Sparrow (University of Texas, Austin) and Jennifer Lamm (Texas State University)

Title: Puerto Ricans and U.S. Citizenship in 1917: Imperatives of Security

Abstract: Puerto Rico had long been of strategic interest
to U.S. policymakers, but the pending entry of the United
States in the First World War suddenly made the Island of
vital importance because of its important location in the
Caribbean Sea. Leading members of Congress, officials
in the Bureau of Insular Affairs and Navy Department, and
the American governor of Puerto Rico all wanted to bind
Puerto Rico more closely to the United States. The Jones
Act accomplished this by granting Puerto Ricans U.S.
citizenship, which policymakers calculated would under-
mine the Puerto Rican independence movement. More
importantly, President Woodrow Wilson, officials in the
War and Navy Departments, and the American governor
of Puerto Rico thought the Jones Act, which granted
Puerto Rico more self-government, would assuage
Puerto Ricans’ political demands. The looming engage-
ment of the United States in the world war was the
overwhelming impetus for the Jones Act, but President
Wilson’s personal intervention and the death of Puerto
Rican leader Luis Muñoz Rivera in November 1916 also
helped assure the passage of the Jones bill.

Author: Juan R. Torruella (U.S. Court of Appeals for
the First Circuit)

Title: To Be or Not to Be: Puerto Ricans and Their
Illusory U.S. Citizenship

Abstract: Are Puerto Ricans born in Puerto Rico, espe-
cially those who continue to reside in Puerto Rico, truly
U.S. citizens in the full constitutional and legal sense?
This Article considers this question in light of Puerto
Rico’s history under, first Spain, and then the United
States, and analyzes the nature of the citizenship con-
ferred on Puerto Ricans by each of these sovereigns. It
draws upon a wide array of sources, from Supreme Court
precedent to the ratification by the U.S. Senate in 1966
of the International Covenant on Civil and Political Rights.
It takes aim at diverse targets, from President-cum-Chief
Justice Taft and the Yale and Harvard scholars of yore,
who were instrumental in providing the academic support
for the crucial actions of the U.S. Government and the
Supreme Court, to the current enactments of Congress.

Author: Charles R. Venator-Santiago (University of
Connecticut, Storrs)

Title: A Note on the Puerto Rican De-Naturalization
Exception of 1948

Abstract: In 1948, Congress enacted corrective leg-
islation amending the citizenship provisions of both
the Jones Act of 1917 and the Nationality Act of 1940.
Under prevailing naturalization laws, a person born
in Puerto Rico who acquired a U.S. citizenship under
the terms of the Jones Act was given a naturalized
citizenship status. It followed that Puerto Ricans, like
other naturalized citizens, who continuously resided or
worked outside of the United States for five or more
years were automatically denaturalized. The Pagán
Amendment of 1948 sought to correct this problem by
establishing that Puerto Ricans were not naturalized
immigrants. Drawing on publicly available archival doc-
uments, this note explains the key debates shaping the
legal contours of the Pagán Amendment of 1948.

Author: Neil Weare (We the People Project)

Title: Citizenship in U.S. Territories: Constitutional
Right or Congressional Privilege?

Abstract: Absent the 1917 Jones Act, would people
born in Puerto Rico today be U.S. citizens? The Su-
preme Court has yet to provide a definitive answer to
this question. But it may be presented the opportunity
to do so as the result of a legal challenge to federal laws
that deny recognition of citizenship to individuals born
in the U.S. territory of American Samoa. The status of
people born in American Samoa today has parallels to
the status of Puerto Ricans prior to the 1917 Jones Act:
neither citizens nor aliens. This article argues that the
Citizenship Clause of the Fourteenth Amendment guar-
antees birthright citizenship throughout the territorial
sovereignty of the United States: States, Territories, and
the District of Columbia alike. Congress has no pow-
er to deny citizenship to people born in Puerto Rico,
American Samoa, or any other U.S. territory. Resolving
the question of citizenship in U.S. territories may also
provide the Supreme Court an opportunity to finally
reconsider the Insular Cases and their controversial
doctrine of “separate and unequal” status for residents
of so-called “unincorporated” U.S. territories.

The special number will also have an introduction and
a postscript by the guest editors
In a recent poll, 41 percent of respondents said they did not believe that Puerto Ricans were U.S. citizens, and 15 percent were not sure. Only 43 percent answered that Puerto Ricans were U.S. citizens. Today, being born in Puerto Rico is tantamount to being born in the United States. But it wasn’t always that way, and a lot of ambiguity still remains.

Contrary to what many people believe, the Jones Act, which Congress passed 100 years ago, was neither the first nor last citizenship statute for Puerto Ricans. Since 1898, Congress has debated 101 bills related to citizenship in Puerto Rico and enacted 11 overlapping citizenship laws. Over time, these bills have conferred three different types of citizenship to persons born in Puerto Rico.

I’m part of an ongoing collaborative project that seeks to document and clarify the laws around citizenship for Puerto Ricans. For the first time, we’re making available to the public all citizenship legislation that has been debated between 1898 and today in a web-based archive.

These archives show that U.S. law still describes Puerto Rico as an unincorporated territory that can be selectively treated as a foreign country in a constitutional sense. This contradiction is at the heart of a range of discriminatory laws and policies used to govern Puerto Rico and the more than 3.5 million U.S. citizens living on the island.
The State of Puerto Rico
Debates over the citizenship status of persons born in Puerto Rico are usually centered around the territorial status of Puerto Rico.

The United States annexed Puerto Rico during the Spanish-American War of 1898. Between 1898 and 1901, U.S. academics, lawmakers and other government officials began to invent a new tradition of territorial expansionism. It enabled them to strategically annex territories throughout the world like Guam, American Samoa, the U.S. Virgin Islands and the Mariana Islands, for military and economic purposes without binding Congress to grant them statehood. To support this effort, they also created interpretations of the Constitution that would allow them to govern Puerto Rico and the other territories annexed during the Spanish-American War.

As the Supreme Court first established in Downes v. Bidwell (1901), territories annexed after 1898, those mostly inhabited by nonwhite populations or so-called “alien races,” would be ruled as “unincorporated territories,” or territories that were not meant to become states.

In Downes, the court was asked to rule on the constitutionality of a tariff on goods trafficked between the island of Puerto Rico and the mainland imposed by the Foraker Act, a territorial law enacted to govern Puerto Rico in 1900. Opponents of the tariff argued it violated the Uniformity Clause of the Constitution, which barred tariffs on goods trafficked within the United States. A majority of the justices, however, concluded that Puerto Rico was not a part of the U.S. for the purposes of the Uniformity Clause and affirmed the tariff. In effect, the U.S. treated Puerto Rico as a foreign country.

A lingering question in this case was, how does the Constitution apply to unincorporated territories? Specifically, does the Citizenship Clause of the 14th Amendment apply?

Are Puerto Ricans Constitutional Citizens?
Supreme Court Justice Edward D. White attempted to answer this question when he wrote a concurring opinion in Downes v. Bidwell. His opinion is regarded by scholars as the source of the doctrine on territorial incorporation. The doctrine contains three basic elements.

First, it recognizes a difference between incorporated territories – those meant to become states – and unincorporated territories.

Second, Congress is granted absolute power to enact legislation extending or withholding constitutional provisions. In other words, only fundamental constitutional rights are guaranteed in unincorporated territories, not the full application of civil rights.
Third, unincorporated territories can be selectively governed as foreign locations in a constitutional sense. That means that so long as Congress is not violating the fundamental constitutional rights of Puerto Ricans, Congress can choose to treat Puerto Rico as a foreign country for legal purposes.

The prevailing consensus to this day is in line with White's interpretation – that the Citizenship Clause of the 14th Amendment does not extend to Puerto Rico. Since the Downes ruling, for 116 years, Congress has governed Puerto Rico as a separate and unequal territory.

The Foraker Act at the heart of the Downes case had also imposed Puerto Rican citizenship on persons born in Puerto Rico. People who were born in Spain and residing in Puerto Rico were allowed to retain their Spanish citizenship, acquire Puerto Rican citizenship or U.S. citizenship. Island-born were barred from retaining their Spanish citizenship, the citizenship that they acquired while Puerto Rico was a province of Spain, and from acquiring a U.S. citizenship.

But there was a big problem. At the time, persons seeking to naturalize and become U.S. citizens were required to first renounce their allegiance to a sovereign state. For Puerto Rican citizens, this meant renouncing their allegiance to the U.S. in order to acquire U.S. citizenship. This contradiction effectively barred Puerto Ricans from acquiring U.S. citizenship.

In 1906, Congress added a section in the Bureau of Immigration and Naturalization Act that waived the requirement to renounce an allegiance to a sovereign state. As my research shows, in 1906 Puerto Ricans began to naturalize in U.S. district courts throughout the mainland.

The Jones Act of 1917 included a collective citizenship provision. It enabled people living in Puerto Rico to choose between keeping their Puerto Rican or other citizenship, or acquiring a U.S. citizenship. Because the Jones Act did not change Puerto Rico’s territorial status, persons subsequently born on the island were considered U.S. citizens by way of “jus sanguinis” (blood right), a derivative form of U.S. citizenship. In other words, persons born in Puerto Rico were born outside of the United States but still considered U.S. citizens.

It wasn’t until 1940 that Congress enacted legislation conferring birthright, or “jus soli,” (right of soil) citizenship on persons born in Puerto Rico. Whereas persons born in Puerto Rico prior to 1940 could only acquire a naturalized citizenship if their parents were U.S. citizens, anyone born in Puerto Rico after 1940 acquired a U.S. citizenship as a direct result of being born on Puerto Rico soil. This legislation both amended and replaced the Jones Act. The Nationality Act of 1940 established that Puerto Rico was a part of the United States for citizenship purposes. Since Jan. 13, 1941, birth in Puerto Rico amounts to birth in the United States for citizenship purposes.

However, the prevailing consensus among scholars, lawmakers and policymakers is that Puerto Ricans are not entitled to a constitutional citizenship status. While Puerto Ricans are officially U.S. citizens, the territory remains unincorporated. This contradiction has enabled the governance of Puerto Rico as a separate and unequal territory that belongs to, but is not a part of, the United States.

On June 11, Puerto Ricans will vote in a nonbinding status plebiscite deciding whether Puerto Rico should become a state or a sovereign country. If a majority votes for statehood, the question is whether Congress will grant 3.5 million U.S. citizens the ability to live in the 51st state.

This article was written by Charles R. Venator-Santiago, associate professor of political science and the Institute for Latino Studies, University of Connecticut, for The Conversation. It has been republished with permission.
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**U.S. CITIZENSHIP IN PUERTO RICO:**

One Hundred Years After the Jones Act

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