The Legal Recognition of the National Identity of a Colonized People: The Case of Puerto Rico

Lisa Napoli

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Recommended Citation
THE LEGAL RECOGNITION OF THE NATIONAL IDENTITY OF A COLONIZED PEOPLE: THE CASE OF PUERTO RICO

Lisa Napoli*

I. INTRODUCTION

This Article will examine how the national identity of a colonized people is legally recognized and will analyze the conflict surrounding such recognition from the perspectives of the colonizer and the colonized. Using the specific case of Puerto Rico, this Article will discuss the concept of national identity and how the conceptualization of a colonized people's national identity impacts on the exercise of their legal rights.

The conflict over legal recognition of a colonized people within a larger State takes many forms. The most common form of conflict is that, to the extent that a colonized people is recognized as having a distinct status within the State, there may be analytic resistance to according different, and perhaps greater, rights to a national minority. Most States operate under the legal precept that all citizens should be

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*The author is a staff attorney at the U.S. Court of Appeals for the Second Circuit. The views expressed herein are those of the author and do not necessarily represent the policies of the Second Circuit. Thanks to Natalie Kabasakalian and Peter Leo for their help and criticism.

1 The terms "people" and "nation" will be used frequently. For the purposes of this essay, a "people" is defined as "the whole body of persons constituting a community, tribe, race, or nation because of a common culture, history, religion, or the like . . . ." WEBSTER'S ENCYCLOPEDIC UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE 1068 (1989).

2 This Article will refer to both the "states," such as those that make up the United States of America, and "States," such as France or Colombia. To distinguish between the two, "State," using all lower case letters, will refer to the sub-units of a larger "State," using initial capitalization.

3 A "national minority" is a national group existing within a State. See Will Kymlicka, Liberalism and the Politicization of Ethnicity, 4 CAN. J.L. & JUR. 239, 239-41 (1991) (discussing polyeth-
treated equally, and if some are to be treated differently than others, there must be a principled reason for doing so.\(^4\)

Additionally, the identity of the colonized is usually degraded as part of the act of colonization: a colonizer often denies the colonized the use of their native language or prohibits the practice of key cultural identifiers such as religious ceremonies.\(^5\) This degradation makes legal recognition problematic on a practical level because identifying and distinguishing the group becomes elusive. Furthermore, the colonizer typically cultivates the dependence of the colonized so that the relationship can be exploited.\(^6\) This dependence creates forces within the colonized who wish to maintain the benefits of the relationship with the colonizer, even at the expense of their own liberty.

This Article will focus on the national rights of Puerto Ricans within the State of the United States of America and how this group is legally recognized. The premise of this Article is that Puerto Rico is a nation under the colonial domination of the United States.\(^7\) Puerto Ricans, a group bound together not only by the sheer fact that they live within a delineated area of land, but also by a common history,

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\(^4\) See, e.g., U.S. CONST. amend. XIV, § 1, cl. 4.

\(^5\) For example, England actively discouraged the learning of Irish history and the continued use of the Irish language in Ireland:

> In the government-financed National Schools established after 1831, "[t]he chief lesson to be learned by the school children was ignorance—not to say contempt—of Ireland and everything Irish, and reverence for England and everything English. Even in districts where Irish was the only language spoken, the children were taught that English and not Irish was their native tongue."

Kerby A. Miller, Emigrants and Exiles: Ireland and the Irish Exodus to North America 75 (1985) (citations omitted). Slavery, a form of subjugation similar to colonialism, provides yet another illustration. Africans brought to the Americas in slavery were prohibited from practicing their religious traditions. So, for example, the Yoruba brought to Cuba continued to practice their religion by disguising their deities as Catholic saints (Chango's counterpart is Saint Barbara, Babalú-Ayé's is Saint Lazarus), thus creating the religion of Santería. See Hernando Calvo Ospina, ¡Salsa! Havana Heat: Bronx Beat 9 (Nick Caistor trans., Latin American Bureau 1995) (1992).

\(^6\) See, e.g., Tim Pat Coogan, The IRA: A History 194–95 (1994) (stating that the standard of living in British-occupied Northern Ireland rose because of British ties and this was "driving a wedge between North and South" as Southern Republicans tried to persuade Northern Catholics to break those ties).

\(^7\) See Lisa Napoli, Note, The Puerto Rican Independentistas: Combatants in the Fight for Self-Determination and the Right to Prisoner of War Status, 4 CARDOZO J. INT'L & COMP. L. 131, 133–45
heritage, and culture, are, therefore, unlike the residents of the fifty states of the United States and should be accorded different rights by law.

Puerto Ricans' status as a people qualifies them for national minority rights—rights that serve and promote the preservation of their cultural identity. Furthermore, the accordance of national minority rights to Puerto Ricans would advance the United States' compliance, as the country which administers Puerto Rico, with international law, which requires the achievement of self-determination for colonized peoples.

The legal recognition of who is a "Puerto Rican" typically arises, and is especially relevant, in the context of plebiscites on Puerto Rico's political status, because the purpose of these plebiscites is the exercise of self-determination. The issue of who may vote in plebiscites has been the focus of an ongoing dispute. One position is that only

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8 "[N]ational minorities'[] typically wish to maintain themselves as distinct societies alongside the majority culture, and demand various forms of autonomy or self-government to ensure their survival as distinct societies." WILL KYM LiCKA, MULTICULTURAL C I T I Z E N S H I P 10 (1995).


General Assembly resolutions are not "law" in and of themselves, but are evidence of international law:

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


10 A plebiscite is usually the form for determining the will of a people as to their political status. See LOUIS HENKIN ET AL., INTERNATIONAL LAW CASES AND MATERIALS 305 (3d ed. 1993).
the residents of Puerto Rico may vote, and the other is that Puerto Ricans living in the United States should be permitted to vote as well.\textsuperscript{11} Puerto Rico's political status is critical because, under international law, Puerto Rico, which was considered a colony at the United Nations' inception,\textsuperscript{12} can only progress from colonial status by exercising self-determination through the free and genuine choice of a legitimate political status.\textsuperscript{13}

After examining the scope of the problem presented by failing to include the Puerto Rican diaspora in status plebiscites, this Article will analyze Puerto Rico's national identity, how the United States as the colonizer has tried to destroy that identity,\textsuperscript{14} and Puerto Rico's resistance to such domination. This resistance will be discussed specifically in the context of the conflict over U.S. versus Puerto Rican citizenship.

\textsuperscript{11} See generally Institute for Puerto Rican Policy, The Plebiscite and the Diaspora: The Status Debate on Puerto Rico and Puerto Ricans in the United States (1993) [hereinafter The Plebiscite and the Diaspora]; see also Molly Gordy, Nuyoricans Get Eager, N.Y. Newsday, Oct. 7, 1993, at A6 (describing the unofficial parallel plebiscite held in United States for Puerto Ricans living in the United States who were barred from voting in the Puerto Rican plebiscite).

\textsuperscript{12} In 1946, the General Assembly passed a resolution in which Puerto Rico was among 74 territories formally designated as colonies. See G.A. Res. 66, U.N. Doc. A/64/Add.1, at 124–25 (1946); see also infra note 21 and accompanying text (discussing Puerto Rico's removal from list of non-self-governing territories). "The admitted colonial powers were Australia, Belgium, Denmark, France, the Netherlands, New Zealand, the United Kingdom, and the United States." Roger S. Clark, Self-Determination and Free Association—Should the United Nations Terminate the Pacific Islands Trust?, 21 HARV. INT'L LJ. 1, 40 n.239 (1980). The colonial powers were required by a specific provision of the United Nations Charter to report on the "economic, social, and educational conditions" in the territories for which they were responsible. U.N. Charter art. 73, para. e. The initial compliance of the colonial powers was short-lived, and they began to display resistance to accepting responsibility for the continued possession of non-self-governing territories:

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

Clark, supra, at 40–41 (citations omitted).

\textsuperscript{13} See Western Sahara, 1975 I.C.J. 12, 31–32 (Oct. 16) (discussing requirements for progress from colonial subjugation). For a more detailed discussion of legitimate political status, see infra note 54 and accompanying text.

\textsuperscript{14} For a discussion of how a colonizer attempts to destroy a people's identity and psyche, see generally Frantz Fanon, The Wretched of the Earth (Constance Farrington trans., Grove Press 1963) (1961).
Several Puerto Ricans have legally renounced U.S. citizenship, thus challenging the definition of "Puerto Rican" by opening up the possibility of a Puerto Rican citizenship status.\(^\text{15}\)

This Article concludes that since Puerto Ricans are a colonized people, their rights must be viewed differently than, for example, the rights of members of an ethnic group within the United States, in order to encompass their unique status as a people within the multinational State of the United States.\(^\text{16}\) They should, therefore, be entitled to vote in plebiscites in Puerto Rico as if Puerto Rico were a nation to which they held dual citizenship with the United States.\(^\text{17}\)

\(^{15}\) See infra notes 136–43 and accompanying text.

\(^{16}\) The United States is such a multinational State:

Many Western democracies are multinational. For example, there are a number of national minorities in the United States, including the American Indians, Puerto Ricans, the descendants of Mexicans (Chicanos) living in the south-west when the United States annexed Texas, New Mexico, and California after the Mexican War of 1846–8, native Hawaiians, the Chamorros of Guam, and various other Pacific Islanders. These groups were all involuntarily incorporated into the United States, through conquest or colonization. . . .

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

These groups also have rights regarding language and land use. In Guam and Hawaii, the indigenous language (Chamorro and Hawaiian) has equal status with English in schools, courts, and other dealings with government [see, e.g., Haw. Const. art. XV, § 4], while Spanish is the sole official language of Puerto Rico [but see infra notes 113–14 and accompanying text]. Language rights were also guaranteed to Chicanos in the south-west under the [Treaty of Guadalupe-Hidalgo, Feb. 2, 1848, U.S.-Mexico, 9 Stat. 222], although these were abrogated as soon as anglophone settlers formed a majority of the population. Native Hawaiians, Alaskan Eskimos, and Indian tribes also have legally recognized land claims . . . . In short, national minorities in the United States have a range of rights intended to reflect and protect their status as distinct cultural communities . . .

Kymlicka, supra note 8, at 11–12. Not mentioned above are African-Americans, who arguably are also a national minority. African-Americans present a unique question since their national origins have been eradicated by the brutality of slavery, leaving them without their history, their languages, their customs, and their religions.

\(^{17}\) Many commentators have noted that the indigenous peoples of the United States have a sort of dual citizenship. See, e.g., Rebecca Tsosie, Separate Sovereigns, Civil Rights, and the Sacred Text: The Legacy of Justice Thurgood Marshall's Indian Law Jurisprudence, 26 Ariz. St. L.J. 495, 523–24 (1994).
II. The Legal Recognition of the “Puerto Rican” Identity for the Purpose of Voting in Plebiscites and How the Current Law Is Not Consonant with International Law

A. The Status Plebiscites

Status plebiscites are a means of compliance with international law’s mandate that colonialism be eradicated through the exercise of self-determination and the achievement of an acceptable measure of autonomy. Puerto Rico was officially recognized as a colony until 1952 when it became a “commonwealth,” or “Estado Libre Asociado” (“ELA”) in Spanish, as the result of a 1951 plebiscite. In 1953, the United Nations General Assembly resolved to remove Puerto Rico from the list of non-self-governing territories. Subsequent plebiscites held in 1967 and 1993 approved versions of the ELA.

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18 See supra note 12 and accompanying text.
20 See Wagenheim, supra note 19, at 79.
Members of the United States delegation . . . expected the Soviet bloc to object to the cessation of information on Puerto Rico. Statements made, however, by such nations as Burma, Guatemala, Honduras, Indonesia, and Mexico, which felt that Puerto Rico had not yet achieved full self-government, came as a surprise to some United States delegates. The delegate from Mexico hoped that the case of Puerto Rico would emphasize the need to ensure that no peoples in the world are forced to sacrifice their dignity in order to live. He declared that politically Puerto Rico had less self-government than when under Spanish domination.
India suggested that the committee was witnessing a new form of colonialism and offered proposals calling for future investigation of the whole Puerto Rican question.

22 The 1967 vote was 60.5% in favor of the ELA, 38.9% in favor of statehood, and .6% in favor of independence. See Wagenheim, supra note 19, at 264. In the 1993 plebiscite, 48.4% voted in favor of an “enhanced” ELA, 46.2% voted in favor of statehood, and 4.4% voted in favor of independence. See John F. Talbot, Puerto Rico Says “Yes” to Commonwealth Status, AMERICA, Dec. 18, 1993, at 4. The 1993 plebiscite’s commonwealth option promised several ameliorations of the current status, see S. Con. Res. 75, 103d Cong., 140 Cong. Rec. S13887 (daily ed. Sept. 12, 1994),
The 1993 plebiscite showed that the Puerto Rican populace is nearly evenly divided on the Island's political identity. United States and Puerto Rican lawmakers immediately began advocating that another plebiscite be held, both to resolve and to exploit the dissatisfaction evidenced by the closeness of the last vote.

In 1996, Representative Don Young (R-Alaska) proposed that a plebiscite be held in 1998. The Young bill was dropped amidst constitutional concerns when Representative Gerald Solomon (R-NY) insisted on adding a clause making English the sole official language of Puerto Rico and the language of instruction in public schools. The clause was then removed and the bill was revived with the hope that but was illusory because the U.S. Congress had never approved or committed itself to supporting any of the changes.

The Commonwealth Party in Puerto Rico presented Puerto Rico’s citizens with a series of vain promises regarding the island’s future relationship with the United States. . .

. . . If, as I believe, this formula was neither politically, economically, nor constitutionally viable, the people of Puerto Rico must be given this signal, so that they may promptly choose a path of association that is both realistic and consistent with constitutional principles.

Id. at S13888 (statement of Sen. Simon).

A referendum was held in 1991, authorized by the P.R. Legislature but not the U.S. Congress, in which resident Puerto Ricans voted "yes" or "no" to several rights: to freely and democratically choose their political status; to vote for one of the three status alternatives (statehood, commonwealth, and independence) "based on the sovereignty of the People of Puerto Rico"; to choose a "status of full political dignity without colonial or territorial subordination to the full powers of the Congress"; to preserve their culture, language, and identity; and to have any plebiscite guarantee that their U.S. citizenship would be safeguarded. 1991 P.R. Laws 86, § 3. The "no" votes won after a campaign by the Partido Nacionalista Progresista ("PNP" or National Progressive Party), the pro-statehood party, in which they "[ran] advertisements warning that voting 'yes' in the referendum could jeopardize Puerto Ricans' U.S. citizenship and even welfare benefits." Rose Marie Arce, Sovereignty Bid Defeated in PR., N.Y. NEWSDAY, Dec. 9, 1991, at 8.

23 "Enhanced" commonwealth and statehood were only two percentage points apart. See Talbot, supra note 22, at 4. This is a significant change from the 1967 plebiscite when commonwealth received 60.5% of the vote while statehood received only 38.9%. See Wagenheim, supra note 19, at 264. The difference in numbers for the support for statehood shows that a growing number of Puerto Ricans are dissatisfied with the current status. The unanswered question is whether the U.S. Congress will approve a vote by the Puerto Rican people to become the fifty-first state. There is substantial indication they will not. If Puerto Rico became a state, it would have two senators and six representatives. It is widely believed all of these would be Democrats. See Puerto Rico Stands Pat, SACRAMENTO BEE, Nov. 23, 1993, at B6; see also J. Jennings Moss, Puerto Ricans Vote Today on Status, WASH. TIMES, Nov. 14, 1993, at A1.

24 See, e.g., Robert Friedman, Torricelli Drafts Bill on Status for Congress, SAN JUAN STAR, July 25, 1994, at 3 (discussing Torricelli's motivation as a statehood supporter in proposing another plebiscite as the momentum from the 1993 plebiscite swings in favor of statehood).


the 105th Congress would resolve to conduct a plebiscite.\textsuperscript{27} Currently, the Senate is considering the "Puerto Rico Self-Determination Act of 1997" while the House of Representatives is considering the "United States-Puerto Rico Political Status Act," both of which provide that a status plebiscite be held before December 31, 1998.\textsuperscript{28}

\section*{B. Who Can Vote in Status Plebiscites}

Status plebiscites have traditionally excluded nonresident Puerto Ricans and defined a "Puerto Rican" as someone who is domiciled on the Island, a voter qualification much like that required of the citizens of a state in order to vote on issues relating to that state.\textsuperscript{29} Popular debates on this issue focus on two arguments. One side argues that only those residing on the Island should be able to vote, whereas the other side says that Puerto Ricans living in the United States, members of the Puerto Rican diaspora,\textsuperscript{30} should also be allowed to vote.\textsuperscript{31} There

\begin{itemize}
\item\textsuperscript{27} See \textit{Radican Nuevamente el Proyecto Young}, \textit{El Diario} (N.Y.), Oct. 4, 1996, at 11.
\item\textsuperscript{28} See S. 472, 105th Cong. § 2(c) (1997); H.R. 856, 105th Cong. § 4(a) (1997). Both bills provide that if the ELA is chosen, there will continue to be periodic referenda on Puerto Rico’s status. \textit{See S. 472, § 3(b)(2); H.R. 856, § 5(c).} Both bills appear to indicate that Congress will abide by Puerto Rico’s choice of either statehood or independence. In the case of either of those options being chosen, the bills provide for transition plans to be drawn up, approved by the U.S. Congress and the people of Puerto Rico, and implemented. \textit{See S. 472, § 3(c); H.R. 856, §§ 4(b)-(c), 6.}
\item\textsuperscript{29} Puerto Rico’s elections are run by the Comisión Estatal de Elecciones ("CEE"), which is made up of election commissioners representing each of Puerto Rico’s main political parties and a Commission Chairman, elected by the commissioners but required by law to be a member of the same party as the Governor. \textit{See U.S. General Accounting Office, Puerto Rico: Commonwealth Election Law and Its Application to a Political Status Referendum, reprinted in 3 Puerto Rico Federal Affairs Administration, Proceso Plebiscitario 1989–1991/Political Status Referendum 1989–1991, at 399, 412 (1992) [hereinafter 3 Proceso Plebiscitario].} Puerto Rican electoral law requires special implementing legislation for every status plebiscite, which includes designating voter qualifications. \textit{See id. at 416, 428.} In the last plebiscite, although the CEE considered changing the qualifications so that nonresident Puerto Ricans could vote, voter eligibility was based on existing electoral law. \textit{See id. at 428; see also P.R. Laws Ann. tit. 16, § 3053 (1985 & Supp. 1991) (qualified voters are those who are citizens of Puerto Rico); P.R. Laws Ann. tit. 1, §§ 7–8 (1982) (citizens of Puerto Rico are those who are domiciled there).} Puerto Rican law requires domicile, see P.R. Laws Ann. tit. 1, § 8 for definition, but does not specify a specific duration, an aspect of the residency requirement employed by many states, \textit{see, e.g., Cal. Elec. Code § 321 (West 1996) (must have state residency for at least 29 days prior to election); N.Y. Elec. Law § 5–102 (McKinney 1978 & Supp. 1997) (residency requirement is 30 days).}
\item\textsuperscript{31} Prior to the 1993 plebiscite, these debates broke along party lines with statehooders
is, in fact, precedent for allowing nonresident members of a national group to vote in status plebiscites: when the Republic of Palau voted on a compact of free association with the United States, nonresident Palauans were permitted to vote. 32

Who comprises the "self" of Puerto Rico, depends on how a "Puerto Rican" is conceptualized. Is a "Puerto Rican" the resident of a physical area, with an identity much like that of a New Yorker or an Iowan? Or is a "Puerto Rican" the member of a people with a national group identity? If a "Puerto Rican" is conceived of as the former, then it makes sense analytically to restrict the ability to vote in plebiscites to those who reside in Puerto Rico. If, however, "Puerto Ricans" are a people, then those who can establish bonds through descent to the people of Puerto Rico should be able to vote in plebiscites. 33

Other colonized peoples have embraced the diaspora model and used it to maintain identity, as have groups whose diasporas resulted from their forced removal from their countries of origin, such as the Jewish people and people of African descent. For example, the Irish who left Ireland prior to partition saw themselves as exiles, forced to generally taking the position that only the residents of Puerto Rico should be able to vote, while supporters of the ELA and independence favored the inclusion of nonresident Puerto Ricans. See Larry Rohter, Puerto Rico's Identity, Up for a Vote, N.Y. Times, Aug. 8, 1993, § 4, at 5. This is significant given the parties' influence and the overwhelming influence of the party of the Governor, which currently is and was at that time the PNP. See supra note 29 (describing the CEE).


32 See Thomas Memorandum, supra note 31, at 196–97 & n.17 (also pointing out that Palauans are not U.S. citizens). Palau is part of the Trust Territory of the Pacific Islands, the only trust administered by the United States. See Lynn B. Wilson, Speaking to Power: Gender and Politics in the Western Pacific 25 (1995). Trust territories have not begun the process of decolonization, and their administration is overseen by the Trusteeship Council. See Napoli, supra note 7, at 143 n.54. For a discussion of Palau's troubled history of voting on compacts of free association with the United States, see Morgan Guaranty Trust Co. v. Republic of Palau, 924 F.2d 1237, 1238–41 (2d Cir. 1991).

33 This is only one means of defining a "people," but it is the one that makes the most sense when speaking of a nation which has had such an enormous outward migration. The Island's population is approximately 3.3 million people, and it is estimated that 2.5 million Puerto Ricans
leave as the result of colonial domination by Britain. The Irish in Ireland have maintained strong ties with the Irish in America precisely through this conceptualization of themselves as a people flung worldwide by British domination and occupation. Moreover, the Republic of Ireland grants Irish citizenship not only to the Irish in the six counties which comprise Northern Ireland, but also to those who can prove familial ties to the Irish people no matter where they reside.

live in the United States, half of whom were born in Puerto Rico. See Angelo Falcón, Introduction to The Plebiscite and the Diaspora, supra note 11, at 6, 7 (relying on statistics from the 1980 census). In contrast, the Basque people have discarded the conception of “Basque” as being defined by blood or differing physiognomy to being defined by one’s commitment to and involvement in Basque culture and radical nationalist politics. See Sharryn Kasmir, The Myth of Mondragon 104–07 (1996).

This sentiment has been evidenced historically in popular discourse: Throughout the nineteenth and early twentieth centuries, Irish and Irish-American newspapers and orators characterized those who left Ireland as “exiles,” compelled to emigrate—either directly or indirectly—by “English tyranny” . . . . Thus, Irish emigration was “not natural but artificial,” claimed Alexander Sullivan of Chicago, “since the poverty of Ireland is produced by English law, and not by the law of nature”; in short, he concluded, Irish emigration was “not a social necessity, but a political oppression.” As a British ambassador to the United States lamented, the “great majority” of Irish-Americans “looked upon themselves in their exile as victims of British misgovernment.”

Miller, supra note 5, at 4–5.

An example of this connection is seen in a recent interview with an Irish Republican:

Q: Why should U.S. citizens care about what goes on in Northern Ireland?
A: Well, because there’s a Statue of Liberty in the bay of New York. Human rights abuses have been going on in Ireland for the past 25 years. And there are over 40 million Irish descendants in this country. They should care about what's going on in the country their forefathers had to leave. And they should sit down and look at the history of why they're over here. It was solely because of British interference in Irish affairs.


Ireland was partitioned into two entities by treaty in 1921: the Irish Free State, comprised of 26 of the country’s 32 counties, which later became the Republic of Ireland, and “Northern Ireland,” the six remaining counties that were retained by Britain. See Miller, supra note 5, at 452–53; James T. Kelly, The Empire Strikes Back: The Taking of Joe Doherty, 61 FORDHAM L. REV. 317, 321–22 & n.8 (1992). The Republic of Ireland extends citizenship to all in the 32 counties which constitute Ireland; thus the Irish in the six counties are citizens of the Republic as well as the United Kingdom of Great Britain and Northern Ireland. See J.M. Kelly, The Irish Constitution 62–63 (3d ed. 1994). Furthermore, those who have a parent or grandparent born in Ireland, “Ireland” being the entire 32 counties under the Republic’s Constitution, are citizens of the Republic. See Irish Nationality and Citizenship Act, No. 26, § 6(2) (1956); John R. Quinn, The Lost Language of the Irish Gay Male: Textualization in Ireland’s Law and Literature (or The Most Hidden Ireland), 26 COLUM. HUM. RTS. L. REV. 553, 651–52 (1995).
The main issue is whether Puerto Rico is properly conceived of as a nation under colonial domination with Puerto Ricans as her people, no matter where they are physically (like the Irish around the world), or whether Puerto Rico is analogous to a state. Many people hold dual citizenship and vote in U.S. elections as well as elections in their native countries. Living outside of a country does not divorce one from a great interest in, and commitment to, that country's affairs. Since the United States allows people to vote in U.S. elections and elections in that person's native country if they hold dual citizenship, then the same should hold true for Puerto Rico if it is viewed as a national entity. There is precedent in the United States for according a national minority a status that is similar to dual citizenship: Native Americans possess a status that has been described by some as a dual citizenship with their respective nations, which have a quasi-sovereign status known as "domestic dependent nations," and the United States.

37 "The concept of dual citizenship recognizes that a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both. The mere fact that he asserts the rights of one citizenship does not without more mean that he renounces the other." Kawakita v. United States, 345 U.S. 717, 723–24 (1952); see also Afroyim v. Rusk, 387 U.S. 253 (1967) (expatriation on basis of voting in foreign election is unconstitutional because element of specific intent to renounce citizenship is not evident).

The relevance of Kawakita and Afroyim to Puerto Rican-U.S. dual citizenship may be by analogy only. In both cases, the Court held that U.S. citizens derived their citizenship pursuant to the Fourteenth Amendment. But people who derive their U.S. citizenship by virtue of their birth on the Island of Puerto Rico may be statutory citizens with less protections against involuntary expatriation. See infra notes 81–84 and accompanying text. The nature of native-born Puerto Ricans' U.S. citizenship is unclear. See, e.g., Memorandum from American Law Division, Congressional Research Service, Library of Congress, to the Honorable Bennett Johnston, Discretion of Congress Respecting Citizenship Status of Puerto Ricans (Mar. 9, 1989) [hereinafter American Law Division Memorandum], in 2 PROCESO PLEBISCITARIO, supra note 31, at 81–85.

38 See Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe, 498 U.S. 505, 509–10 (1991); see also, e.g., Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1977) (holding that the United States does not have the right to intrude on the internal matters of the Santa Clara Pueblo even when tribal ordinance conflicted with Indian Civil Rights Act's equal protection guarantee). The United States' legal relationship with the Native American nations is distinct from its legal relationship with Puerto Rico. The United States has conferred a de jure status of nationhood on the Native American nations by entering into treaties with them, which supersede conflicting state laws pursuant to the Supremacy Clause and can only be entered into by the federal government. See U.S. CONST. art. VI, cl. 2; Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 561–62 (1832). In contrast, U.S. legislators exercise direct control over Puerto Rico. See infra note 67 and accompanying text (discussing Congress' plenary authority over Puerto Rico as a territory).

39 As discussed above, see supra note 17, Native Americans have a quasi-dual citizenship that is analogous to the dual citizenship this essay proposes for Puerto Ricans. While there is a debate over the quality of Puerto Ricans' U.S. citizenship, the U.S. Supreme Court has clearly stated that Native Americans are statutory citizens as opposed to constitutional citizens. See Elk v. Wilkins, 112 U.S. 94, 102–04 (1884).
The residency requirement for status plebiscites was challenged in *Sola v. Sánchez Vilella* and found permissible under the U.S. Constitution and the Treaty of Paris, the agreement in which Spain ceded Puerto Rico to the United States. In *Sola*, fifteen Puerto Ricans living in New York, New Jersey, and Massachusetts, challenged a law barring them from voting in the upcoming 1967 plebiscite due to a residency requirement. The plaintiffs claimed an interest in the plebiscite on the bases of being “citizens of the United States and of the Commonwealth of Puerto Rico and qualified voters and taxpayers of the Commonwealth.”

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

> Plaintiffs are in no different position than a citizen and resident of New York, or New Jersey, or Massachusetts, who was born, for example, in Missouri, and to economically better himself moved to another state and became a citizen and resident of this state, and who, although owning property in Missouri and having nostalgia for Missouri, can not meet the citizenship and the residential requirements for voting in a Missouri held election, even though the Missouri election may be on such fundamental matters as amending the State Constitution or adopting a new one.

There are many problems with the court's analogy and reasoning: U.S. law does not generally treat Puerto Rico like a state and, furthermore, the situation described by the court is dissimilar.

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40 270 F. Supp. 459 (D.P.R. 1967), aff'd, 390 F.2d 160 (1st Cir. 1968). This case challenged an electoral law promulgated by the CEE for the 1967 plebiscite which confined voter eligibility to the residents of Puerto Rico. See id. at 460–61; see also supra note 29 (describing the CEE).


42 See 270 F. Supp. at 460.

43 Id. at 462.

44 Id. (citation omitted).

45 See, e.g., Harris v. Rosario, 446 U.S. 651, 651–52 (1980) (per curiam) (Puerto Rico can be treated differently from the states as long as there is a rational basis for the distinction); see also Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 668–69 n.5 (1974) (stating that while due process guarantees apply to Puerto Rico, the Court refrains from deciding whether these protections arise from the Fifth or Fourteenth Amendments). The U.S. Supreme Court's reluctance to qualify the nature of U.S. citizenship acquired by birth in Puerto Rico has led to a debate over whether these Puerto Ricans have statutory citizenship, with fewer attendant protections of their U.S. citizenship, or constitutional citizenship. See Carlos R. Soltero, *Is Puerto Rico a “Sover*
The treatment of Puerto Rico like a state is erratic. United States courts have historically viewed Puerto Rico as an “unincorporated territory”: 46 “Incorporated territories are destined to become states and are subject to the full application of the U.S. Constitution. Unincorporated territories are not intended for statehood and are only subject to fundamental parts of the U.S. Constitution.” 47 While there is some disagreement as to whether its status has changed since the creation of the ELA, 48 the weight of the authority appears to be that Puerto Rico remains an unincorporated territory. 49 Moreover, the ramifications of ceasing to be “Puerto Rican” under the law is unlike becoming a New
Yorker when one used to be an Iowan. As one commentator observed, "Whatever may be the legal consequences for a Puerto Rican who becomes domiciled in one of the states, it is quite another matter what happens to his ethnicity or nationality."50

The court evidences the weakness of its reasoning in Sola by its choice of analogy. The court's implication is that even in a vote deciding the adoption of a new state constitution—the most important matter in state sovereignty—a relocated resident does not have a sufficient interest or connection to vote. However, state constitutions do not embody rights guaranteed by international law, except to the extent that such rights are already guaranteed by the federal constitution. Puerto Rican status plebiscites, unlike a vote on a state constitution, are a necessary component of Puerto Rico's exercise of the right to self-determination under international law.51

The bills currently before the U.S. Congress regarding a status plebiscite in Puerto Rico include sections on voter eligibility. The Senate bill states that an eligible voter must have "the nationality and citizenship of the United States and meet other applicable residency and voter eligibility requirements under Federal or territorial law."52 The House bill is less stringent, stating that "[t]he referenda held under this Act shall be conducted in accordance with the applicable laws of Puerto Rico, including laws of Puerto Rico under which voter eligibility is determined and which require United States citizenship and establish other statutory requirements for voter eligibility of residents and nonresidents."53 Thus, the current proposals do not bring the definition of who is a "Puerto Rican" for the purposes of voting in a status plebiscite into conformity with the conceptualization of Puerto Ricans as a national minority, but maintain the conception of Puerto Rico as being like a state.

The underlying issue in status plebiscites is the valid exercise of Puerto Rico's right to self-determination. In addition to a plebiscite that reflects the free and genuine will of the people of Puerto Rico, Puerto Rico's options for political status must conform to certain requirements in order for Puerto Rico to achieve self-determination.

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51 See supra notes 12–13 and accompanying text.
International law permits three options out of colonial status: "(a) emergence as a sovereign independent State; (b) free association with an independent State; or (c) integration with an independent State."\textsuperscript{54} Puerto Rico is clearly not integrated with the United States nor is it independent.\textsuperscript{55} The only legitimate status it could have, under current conditions, is that of associated free state.

An examination of the criteria of free association reveals, however, that Puerto Rico's political status does not meet the definition on some key points: among them, that Puerto Rico's status was not chosen freely and through a democratic process, Puerto Rico is not free to modify its relationship with the United States, and Puerto Rico is not represented in the main legislative body of the United States on the same basis as other inhabitants of the United States.\textsuperscript{56} Failure to meet these requirements renders Puerto Rico's political status illegitimate, and, thus, the exercise of Puerto Rico's right to self-determination is outstanding. Puerto Rico's plebiscites are, therefore, all the more important because the exclusion of Puerto Ricans who do not live in Puerto Rico further denies the "self" of Puerto Rico and frustrates Puerto Rico's exercise of autonomy.

III. THE NATIONAL IDENTITY OF PUERTO RICO AS EVIDENCED BY COLONIAL SUBJUGATION AND RESISTANCE TO THAT SUBJUGATION: THE IMPORTANCE OF DEFINITION AS A PEOPLE AND RECOGNITION AS SUCH UNDER INTERNATIONAL LAW

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


\textsuperscript{55} If Puerto Rico was integrated into the United States, it would be a state. Independence means a separate, sovereign nation. See Rodriguez-Orellana, \textit{supra} note 19, at 464--66, 485--88.

a circumscribed territory; and discrete political, juridical, and economic systems. 57

Puerto Rico easily meets these criteria. Puerto Rico's primary religion is Catholicism, but with a distinct cultural quality reflective of Puerto Rico as Latin American. 58 The primary language of Puerto Rico is Spanish. 59 Puerto Ricans are descended mainly from Taínos, Africans, and predominately Spanish Europeans. 60 Puerto Rico is an island, a distinct and circumscribed territory.

Puerto Rico has a distinct national identity with cultural expressions that distinguish it from other nations. 61 Puerto Rico has its own flag, which is omnipresent at the New York Puerto Rican Day Parade and flies next to the U.S. flag in Puerto Rico. There is a national anthem, *La Borinqueña.* 62 Also, the political expression of Puerto Rico is unlike that of the United States. While Puerto Rico has Republican and Democratic parties for the purposes of U.S. presidential primaries, the main parties are different and are distinguished on the basis of their positions on Puerto Rico's political status: the *Partido Popular Democrático* ("PPD" or Popular Democratic Party) is the party of the ELA, while the *Partido Nacionalista Progresista* ("PNP" or National Pro-

57 A *prima facie* obligation to transmit information about a territory, in accord with Article 78(e) of the U.N. Charter, see supra note 12, exists when the territory is "geographically separate and is distinct ethnically and/or culturally from the country administering it." See G.A. Res. 1541, supra note 56, at Annex, Principle IV. Once a *prima facie* case is established, additional elements "of an administrative, political, juridical, economic or historical nature" may be considered. *Id.* at Annex, Principle V.

58 Catholics make up 85% of the population. *See Moss,* supra note 23, at A1. The manner in which the Catholic faith is expressed is particularly Latin American, which sets Puerto Rico apart from the United States. *See Joseph P. Fitzpatrick, Puerto Rican Americans: The Meaning of Migration to the Mainland* 118–21 (2d ed. 1987); *Leibowitz,* supra note 45, at 136–37.

59 English has recently become one of the official languages of Puerto Rico, along with Spanish. *See infra* notes 110–14 (chronicling the history of English and Spanish as Puerto Rico's official languages).

60 *See Leibowitz,* supra note 45, at 130–36.

61 For example, *bomba* and *plena* are two uniquely Puerto Rican musical forms. *See Los Pleneros de la 21, Somos Boricuas/We Are Puerto Rican* (Henry Street Records 1996) (describing *plena* and *bomba*); *Los Pleneros de la 21 & Conjunto Melodia Tropical, Puerto Rico, Puerto Rico, Mi Tierra Natal* (Shanachie Records 1990) (giving a brief history of *plena* and *bomba*). The Puerto Rican identity is personified in the *jibaro,* a simple countryperson who is romanticized in poems and songs, *see Wagenheim,* supra note 19, at 217–20, and used as an emblem by the the *Partido Popular Democrático* ("PPD," or Popular Democratic Party), *see Ronald Fernandez, Prisoners of Colonialism: The Struggle for Justice in Puerto Rico* 51 (1994). Puerto Rican food has distinctive dishes, such as *pasteles* (like a tamale) and *alcapurrias* (a fried food with fillings such as crab or meat). *See Carmen Aboy Valldejuli, Puerto Rican Cookery* 126, 171 (1994).

62 *See Wagenheim,* supra note 19, at 136.
gressive Party) favors statehood and the Partido Independentista Puertorriqueño ("PIP" or Puerto Rican Independence Party) advocates independence.\textsuperscript{63} Puerto Rico’s legal system is a mix of civil law and common law and is unique among the majority of jurisdictions within the United States.\textsuperscript{64}

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

A. The Attacks on Puerto Rico’s Self by Colonial Domination

The United States’ domination of Puerto Rico, which is unlike the federal government’s posture towards any state, is further evidence that Puerto Rico is a distinct nation. The United States has wholly subordinated Puerto Ricans as a group and as individuals, it has invaded the physical integrity of Puerto Rico, it has assailed Puerto Rico’s linguistic identity, and it has undermined Puerto Rico’s ability to reproduce itself as a people. These attacks on Puerto Rico’s identity are all means of maintaining colonial domination.

1. Subordinate Status of the Group Rights of Puerto Ricans

Subordination of the group and the individuals that comprise the group is a key means of subjugating a people; subordinate status is, in and of itself, a means of control.\textsuperscript{65} Puerto Rico is not represented in

\textsuperscript{63} See Raymond Carr, Puerto Rico: A Colonial Experiment 108 (1984); see also infra notes 66–67 and accompanying text (outlining Puerto Ricans’ political voice in U.S. legislature).

\textsuperscript{64} See U.S. General Accounting Office, Puerto Rico: Information for Status Deliberations, reprinted in 3 Proceso Plebiscitario, supra note 29, at 1, 66–68. As a former French colony, Louisiana has a similar system. See id. at 68. Puerto Rico’s distinctive legal tradition was recognized in Balzac v. Porto Rico, in which the Court held that the right to trial by jury in the criminal context did not apply to Puerto Rico: “[While] the United States has been liberal in granting to the Islands acquired by the Treaty of Paris most of the American constitutional guaranties, [it] has been sedulous to avoid forcing a jury system on a Spanish and civil-law country until it desired it.” 258 U.S. 298, 311 (1922). For a comprehensive discussion of Puerto Rico’s judicial autonomy, see generally Manuel Del Valle, Puerto Rico Before the United States Supreme Court, 19 Rev. Jur. U.I.P.R. 13 (1984).

\textsuperscript{65} The international community recognizes that subordination is a key facet of colonial
the U.S. Congress on an equal basis with the residents of the metropole: Puerto Rico has no vote in the U.S. Senate or the U.S. House of Representatives. The U.S. Congress may decide the rights of Puerto Ricans and the status of Puerto Rico. The residents of Puerto Rico cannot vote to elect the U.S. President, although they may vote in presidential primaries.

Despite this lack of representation, U.S. legislative bodies are ultimately governing Puerto Rico and promulgating laws that are binding on its residents. Those in support of allowing the U.S. legislative and executive branches to impose decisions on Puerto Rico without giving Puerto Rico a voice would argue that the residents of Puerto Rico do not pay federal taxes. But Puerto Ricans assume many of the duties of citizenship, such as military service, and they do pay other federal taxes as well as an elevated rate of local income tax which amounts to an indirect payment of the federal income tax:

The local personal income tax in Puerto Rico is higher than in most states, including both federal and local contributions. The people of Puerto Rico also pay other federal taxes and user fees such as Social Security, unemployment and Medi-
care taxes, and customs duties. According to Barceló [the Resident Commissioner], the U.S. Treasury collected $2.5 billion from the island in 1993. 69

Puerto Rico’s subordinate status is also seen in the way the United States wields its economic power over Puerto Rico. The residents of Puerto Rico receive benefits (such as public assistance) from the United States, and the fear among the populace is that being cut loose from the United States would result in the loss of this money which they feel they need desperately. 70

The rights accruing by virtue of U.S. citizenship are different depending on where one is within the United States’ territory; those that stand on Puerto Rico’s soil have a second class citizenship. In Igarúa De La Rosa v. United States, some of the plaintiffs were United States citizens who had resided outside of the country, but now resided in Puerto Rico and were no longer able to vote in presidential elections. 71 These plaintiffs challenged the Uniformed and Overseas Citizens Absentee Voting Act on due process and equal protection grounds. 72 Under this statute, U.S. citizens, including Puerto Ricans, who move to a foreign jurisdiction may vote in U.S. presidential elections. 73 A U.S. citizen who moves to Puerto Rico, however, loses that ability to vote. 74

The U.S. Court of Appeals for the First Circuit applied the rational basis standard of review to the statute and found the consequences of the Act were not due to the Act itself, but to the absence of any constitutional right of Puerto Rican residents to vote in presidential elections. 75 This is a recurring outcome: one loses the rights of citizenship as one steps onto the soil of Puerto Rico and one accrues rights as one steps onto the United States.

70 See Carlos Noya Murati, En Defensa de la Autodeterminación, 60 REV. JUR. U.P.R. 753, 757 (1991); Arce, supra note 22, at 8.
71 32 F.3d 8, 10 (1st Cir. 1994). The other plaintiffs were residents of Puerto Rico who were challenging the constitutionality of their inability to vote in United States presidential elections. See id. at 9–10. The court reasoned that because Puerto Rico did not have the status of a state, its residents did not have the right to vote in the presidential election. See id.
72 See id. at 10.
73 See id.
74 See id.
75 See id. at 10–11.
The public benefits to which U.S. citizens are entitled are not guaranteed to the U.S. citizens who reside in Puerto Rico. In *Harris v. Rosario*, the U.S. Supreme Court upheld a lower level of reimbursement for Aid to Families with Dependent Children ("AFDC") to Puerto Rico and dismissed the argument that such a funding cap was violative of the equal protection guarantee of the Fifth Amendment.\(^76\) The Court reasoned that the provision of a lower level of AFDC monies was not unconstitutional because Congress, deriving its power from the Territory Clause, may treat Puerto Rico differently than the states as long as there is a rational basis.\(^77\) The Court found the distinction to be rational because "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."\(^78\)

A Puerto Rican in any of the fifty states is entitled to receive AFDC benefits if she qualifies, but residents of Puerto Rico who qualify will receive what other U.S. citizens are guaranteed only if Puerto Rico has not overspent its cap.\(^79\) Puerto Rico is revealed to possess a truly subordinate citizenship when one looks at entitlements such as these: until very recently, legal permanent residents living in the United States were entitled to receive several public benefits that U.S. citizens living in Puerto Rico were not.\(^80\)

The quality of U.S. citizenship conferred on Puerto Ricans by virtue of their birth on the Island is distinct. Anyone born in the states or the District of Columbia, or naturalized in the United States, is a citizen of the United States pursuant to the Fourteenth Amendment's

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\(^76\) 446 U.S. 651 (1980) (per curiam).

\(^77\) See *id.* at 651-52.

\(^78\) *Id.* at 652.

\(^79\) See 42 U.S.C.A. § 1308 (West Supp. 1997) (setting forth the funding caps for various territories, including Puerto Rico). Some benefits programs simply do not extend to Puerto Rico at all, such as SSI. See 20 C.F.R. § 416.1603 (1997) (stating that applicants must prove they reside in "the 50 States, the District of Columbia, [or] the Northern Mariana Islands").

\(^80\) Until the passage of the recent welfare reform legislation, legal permanent residents and people "permanently residing in the United States under color of law" ("PRUCOL")—the definition of which varies from program to program but can include refugees, asylees, and those who have been granted a suspension of deportation or who have been paroled into the United States—were eligible for many public benefits. See, e.g., 42 U.S.C. §§ 602(a)(33) (AFDC), 1382c(a)(1) (SSI) (1996). The recent welfare reform legislation has greatly reduced the eligibility of legal permanent residents and placed a limitation on the amount of time that others, such as refugees, can receive benefits. See *Personal Responsibility and Work Opportunity Reconciliation Act of 1996*, Pub. L. No. 104-193, 110 Stat. 2105.
Citizenship Clause. "Statutory" or "legislative" citizenship, as opposed to "constitutional" citizenship, is conferred on persons born outside the United States to U.S. citizens or naturalized outside of the United States. Statutory citizens can be stripped of their citizenship involuntarily or be forced to fulfill a condition precedent to the maintenance of U.S. citizenship. It is unclear whether Puerto Ricans who derive their U.S. citizenship from birth on the Island are constitutional or statutory citizens, thus leaving their status and its attendant rights uncertain. The lack of clarity is, in and of itself, reflective of the devaluation of citizenship derived from birth on Puerto Rican soil.

This degradation of Puerto Rico presents several conflicts with international law. The second class citizenship of those who reside in Puerto Rico clearly contradicts a factor of free association: "[c]itizenship without discrimination on the same basis as other inhabitants." The American Declaration of the Rights and Duties of Man includes the right to equal protection of the law, and the right to vote and to take part in government. The Universal Declaration of Human Rights.

\[^{81}\] See de Passalacqua, supra note 50, at 156.

\[^{82}\] See id.

\[^{83}\] See id. at 156–57 (discussing Rogers v. Bellei, 401 U.S. 815 (1971), the leading case on the issue). In order to be naturalized, one may be asked to fulfill certain conditions precedent, but in such cases one already has a nationality which is being relinquished as opposed to being divested of nationality without necessarily having another.

\[^{84}\] See Soltero, supra note 45, at 193–94 (stating that the quality of citizenship is unclear since the U.S. Supreme Court has refrained from applying the equal protection guarantee to Puerto Rico through the Fifth or Fourteenth Amendments); de Passalacqua, supra note 50, at 156–57 (stating that it is possible for Congress to expatriate or place certain conditions on the U.S. citizenship of native-born Puerto Ricans should Puerto Rico opt for independence); see also American Law Division Memorandum, supra note 37, at 81.

\[^{85}\] G.A. Res. 742, supra note 56, at Annex, Part III(B)(3).


\[^{87}\] See American Declaration, supra note 86, arts. II, XX.

which has similar provisions,\textsuperscript{89} states specifically that no distinction shall be made in the accord of rights set forth in the Declaration "on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."\textsuperscript{90}

2. The Violation and Degradation of the Physical Self

Puerto Rico is physically invaded by the United States and its agencies. For example, the U.S. military is a substantial presence in Puerto Rico.\textsuperscript{91} On the island of Vieques alone, the U.S. Navy controls 26,000 out of 33,000 acres on the island.\textsuperscript{92} Moreover, the physical presence of the colonizer is more than mere presence, but a destructive force. An example of this is the use of the islands of Culebra and Vieques by the U.S. Navy. The Navy used to test its artillery and bombs

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\textsuperscript{89} See Universal Declaration, supra note 88, arts. 7, 21. As stated above, see supra note 88, the Universal Declaration has, in the view of some commentators, achieved the status of customary international law. These provisions are not included in the Restatement's listing of principles of customary law accepted by the United States. See Restatement (Third) of Foreign Relations Law § 702 (1987 & Supp. 1996). While it is persuasive authority, inclusion in the Restatement is not among the criteria for status as customary international law. To achieve the status of customary international law, there must be \textit{opinio juris} (defined as a State's belief in its legal obligation) and state practice. See Henkin, supra note 10, at 55.

\textsuperscript{90} Universal Declaration, supra note 88, art. 2. The preamble also states that the purpose of the Declaration is to "secure [the] universal and effective recognition and observance [of the rights enumerated in the document], both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction." Id. at preamble.


\textsuperscript{92} See The Vieques Lands Transfer Act: Hearing on H.R. 3831 Before the Subcomm. on Insular and International Affairs of the Comm. on Natural Resources to Authorize and Direct the Transfer of Certain Lands on the Island of Vieques, Puerto Rico, to the Municipality of Vieques, and for Other Purposes, 104th Cong. 8 (1994) (statement of Carlos Romero Barceló, P.R. Resident Commissioner).

Since the Navy's occupation of 78 percent of the territory, the island has suffered a prolonged and ever increasing economic crisis[,] . . . a massive out-migration[,] and[,] an unemployment rate of close to 50 percent . . . .
on the island of Culebra, but Culebrans fought back.93 "[B]y late 1972, the Navy was forced to give up Culebra and concentrate its operations in Vieques."94 Now, "[t]raining on Culebra has ceased, but the continued use of Vieques has drawn protest from all political parties."95 Viequenses recently mounted fierce opposition to the proposed building of a radar by the United States to catch narcotics traffickers.96

The colonial presence is also a policing force. In 1950, a series of uprisings97 in Ponce, Jayuya, Naranjito, and Utuado, and attacks on the Arecibo police station and La Fortaleza98 in San Juan,99 were put down by U.S. military personnel using "machine guns, bazookas, and

... [I]t is fair to say that the current situation is due largely to the U.S. military, whose occupation of two-thirds of the territory necessarily strangles the island's economic development.

Id. at 9.

93 "[T]he fishermen staged 'fish-ins' at the impact areas. A flotilla of about a dozen boats would anchor off a beach scheduled to be bombarded or the demonstrators would wade ashore on the impact area forcing cancellation of that day's Navy exercises." MANUEL SUAREZ, REQUIEM ON CERRO MARAVILLA: THE POLICE MURDERS IN PUERTO RICO AND THE U.S. GOVERNMENT COVERUP 101 (1987).


95 COMPTROLLER GENERAL, REPORT TO THE CONGRESS OF THE UNITED STATES, PUERTO RICO'S POLITICAL FUTURE: A DIVISIVE ISSUE WITH MANY DIMENSIONS 98 (1981). For a chronicle of the resistance by Viequenses and Culebrans to the U.S. Navy's appropriation of their islands, see FERNANDEZ, supra note 61, at 116-34.

96 See Marion Lloyd, Puerto Ricans: Navy Turns Island into a Battleground, HOUSTON CHRON., June 8, 1997, at 4.

97 The 1950 insurrection was organized by the Partido Nacionalista, a militant, pro-independence organization, in response to the planned 1951 plebiscite which omitted the option of independence. See WAGENHEIM, supra note 19, at 79-80. The 1950 nacionalista uprisings took place after President Truman's refusal to hold a plebiscite on the issue of status in 1946. See FERNANDEZ, supra note 61, at 78. Truman had just signed the bill which would allow Puerto Rico to write its own constitution. See WAGENHEIM, supra note 19, at 78-79. Pedro Albizu Campos, President of the Partido Nacionalista, organized the insurrection in direct response to the planned plebiscite, which he saw as a "continuation of the colony": "Outraged by what [Albizu] considered the falsehood of giving the impression to the international community that Puerto Rico had exercised its free choice, he organize[d] the Jayuya uprising." Consuelo Corretjer, The Legacy of Don Pedro Albizu Campos, EL DAILY NEWS EN ESPAÑOL (N.Y.), Sept. 12, 1995, at E8 (Corretjer is the daughter of Juan Antonio Corretjer, the renowned poet and Secretary of the Partido Nacionalista while Albizu was President).

98 La Fortaleza is the Governor of Puerto Rico's residence. See WAGENHEIM, supra note 19, at 79.

99 See id. at 78-79. The insurrection lasted 72 hours and the nacionalistas managed to take Utuado and Jayuya, where the Republic of Puerto Rico was declared by Blanca Canales Torresola. See MIÑI SEIJO BRUNO, LA INSURRECCION NACIONALISTA EN PUERTO RICO—1950, at 125 (1989).
tanks." Recently, that police force has been used to arrest *independentistas* and evict Viequense families.

3. Erosion of the Linguistic Identity

Language is a critical facet of national identity. Unlike the United States, Puerto Rico's populace is Spanish-speaking: "[F]our-fifths of all Puerto Ricans do not speak English beyond a basic level. Local courts and government agencies conduct business in Spanish."

The imposition of U.S. law regarding language presently leads to nonsensical outcomes. For example, the requirement that jurors in U.S. federal courts speak English leads to the disqualification of "roughly 75%" of the jury pool in Puerto Rico.

Linguistic identity is a component of Puerto Rico's identity that stands not only in opposition to that of the United States, but establishes its identity as unique, even among Latin American countries. Puerto Ricans have a particular accent which sets them apart from other Latin Americans (although the Puerto Rican accent is generally discernible as Caribbean), and Puerto Ricans have specific expressions that mark them as Puerto Rican.
The issue of language has always been a contentious one for Puerto Rico. Ever since the United States installed a military government in Puerto Rico after the Treaty of Paris was signed, the United States has engaged in a series of active campaigns to suppress the Spanish language, particularly in the area of education, in the name of "Americanizing" the populace. Different Puerto Rican governors have also manipulated language to further their political ends, most recently pro-statehood Governor Rossello.

The United States made English and Spanish the official languages of Puerto Rico in 1902. In 1909, the colonial government attempted to prohibit public school instruction in Spanish, to which schoolchildren responded by going on strike and refusing to attend classes held in English. A law passed in 1952 made English and Spanish the languages of local government, but this was a failure and the law went unenforced until 1991 when then-Governor Hernández Colón signed a law making Spanish Puerto Rico's sole official language.

In 1993, English was again added as one of the Island's official languages under Rossello's pro-statehood administration. Diminishing Puerto Rico's linguistic "difference," and therefore Puerto Rico's

RePLICADO, Ahora Me Da Pena, on Henry Fiol, Fe, Esperanza y Caridad (Guajiro Records 1990) (lamenting that Puerto Ricans are "victims of ay, bendito").

See The Language Policy Task Force, English and Colonialism in Puerto Rico, in LANGUAGE LOYALTIES: A SOURCE BOOK ON THE OFFICIAL ENGLISH CONTROVERSY, supra note 103, at 63, 64. Education is itself another powerful means of dominating and attacking a people's identity.

See infra notes 113-14 and accompanying text.


See Cayetano Coll y Cuchi, Ireland in America?, in THE PUERTO RICANS 179, 181 (Kal Wagenheim with Olga Jiménez de Wagenheim eds., 1973). The José de Diego Institute was established by activists so that children expelled for refusing to attend classes in English could be taught in Spanish for free. See id.

See de Passalacqua, supra note 50, at 152 n.47 (1952 law); Lugo, supra note 110, at 287 (1991 law).

See 139 CONG. REC. H328-30 (daily ed. Feb. 2, 1993) (statement of P.R. Resident Commissioner Romero Barceló). This law still retained Spanish as "the language of instruction in the island's public school system" and "reaffirm[ed] that Spanish will be the principal language used in island courts." Id. at H328. However, a government project was instituted in Puerto Rico's public schools for the 1997-98 school year in which many classes were taught in English, sparking fear and resentment among students and teachers:

Teachers worry they will lose their jobs because they are not proficient in English. Students fear they won't be able to maintain grades. And parents say it will be difficult to help their children with homework.
distinct identity, is seen by pro-statehood forces as a way of Americanizing Puerto Rico and making the prospect of admitting Puerto Rico to the union as the fifty-first state more palatable to the U.S. Congress and to the U.S. populace.\textsuperscript{114}

An interesting turn in the question of language and the Puerto Rican identity is presented in \textit{Katzenbach v. Morgan}.\textsuperscript{115} In this case, a group of New York voters challenged the constitutionality of the Voting Rights Act of 1965 because it would prohibit enforcement of a New York law requiring that a voter read and write English in order to be eligible to vote, thus violating the U.S. Constitution's Tenth Amendment.\textsuperscript{116} The Court determined that section 4(e) of the Voting Rights Act:

\begin{quote}
may be regarded as an enactment to enforce the Equal Protection Clause. Congress explicitly declared that it enacted Sec. 4(e) "to secure the rights under the fourteenth amendment of persons educated in American-flag schools in which the predominant classroom language was other than English." The persons referred to include those who have migrated from the Commonwealth of Puerto Rico to New York and who have been denied the right to vote because of their inability to read and write English . . . . More specifically, Sec. 4(e) may be viewed as a measure to secure for the Puerto Rican community residing in New York non-discriminatory treatment by government—both in the imposition of voting qualifications and the provision or administration of govern-
\end{quote}

\textsuperscript{114} See Walzer, \textit{supra} note 104, at 21. It appears, however, that statehood supporters will not accept the establishment of English as the sole official language of Puerto Rico. \textit{See supra} note 26 and accompanying text (discussing demise of Young bill because of amendment making English Puerto Rico's sole official language). More importantly, the populace appears to be against the adoption of English as its sole language. \textit{See Rechaza Ser el Estado 51 de EEUU}, \textit{El Diario} (N.Y.), Aug. 13, 1997, at 11 (stating results of poll finding 76\% of Puerto Ricans do not want English as Puerto Rico's sole official language).

\textsuperscript{115} 384 U.S. 641 (1966).

\textsuperscript{116} \textit{See id.} at 643–46.
mental services, such as public schools, public housing and law enforcement.\textsuperscript{117}

Thus, this case and related cases\textsuperscript{118} illustrate a recognition of the Puerto Rican identity, as manifested by language, by U.S. law.\textsuperscript{119}

4. Destruction of a People's Ability to Recreate Itself

Yet another means of attacking a people's identity is to attack their ability to biologically reproduce.\textsuperscript{120} The Puerto Rican government, using funds from the U.S. government and privately-funded U.S. foundations, sterilized over one-third of the women of child-bearing age in Puerto Rico over a thirty-five-year period ending in 1968.\textsuperscript{121} It was a procedure so commonly performed that Puerto Ricans referred to it simply as "la operación."\textsuperscript{122}

Not only does sterilization abuse curtail a people's ability to reproduce, but sterilization is a means of degradation.\textsuperscript{123} The underlying attitude is that the person is worth so little that her physical integrity can be violated without her consent, and her individual right to exercise self-determination can be encroached upon.\textsuperscript{124} Puerto Rican wo-

\textsuperscript{117} Id. at 652.
\textsuperscript{118} See, e.g., Puerto Rican Org. for Political Action v. Kusper, 490 F.2d 575 (7th Cir. 1973); Torres v. Sachs, 381 F. Supp. 309 (S.D.N.Y. 1974). In Kusper, Puerto Ricans challenged their denial by the Chicago Board of Election Commissioners to voting assistance in Spanish. See 490 F.2d at 576. Part of the court's analysis was based on Puerto Ricans' status as U.S. citizens and the facts that they are educated in Spanish in schools under the U.S. flag and are not required to pass an English proficiency test in order to acquire citizenship. See id. at 578-79; see also Immigration and Nationality Act ("INA") § 312, 8 U.S.C.A. § 1425 (West Supp. 1997) (English proficiency requirement for naturalization). Without voting assistance in their language, the court found that Puerto Ricans were unable to effectively vote. See Kusper, 490 F.2d at 580. The court concluded that no Illinois law prohibited the Board of Election Commissioners from giving voting assistance in Spanish, and if such a law existed, it would be in violation of the Voting Rights Act of 1965 and its 1970 amendments. See id. at 578.

\textsuperscript{119} English and Spanish were the official languages of Puerto Rico at the time of Morgan, but that law was largely unenforced. See de Passalacqua, supra note 50, at 152 n.47. The holding of Morgan is still relevant, especially since English is once again one of Puerto Rico's official languages.

\textsuperscript{120} "[B]y 1976 some 24 percent of all Indian women of childbearing age had been sterilized. 'Our blood lines are being stopped,' [Dr. Connie Uri, a Choctaw physician] told the Senate committee, 'Our unborn will not be born ... This is genocidal to our people.'" ANGELA Y. DAVIS, WOMEN, RACE & CLASS 218 (1981) (citations omitted).

\textsuperscript{121} See Helen Rodríguez-Trias, The Women's Health Movement, in REFORMING MEDICINE 107, 122 (Victor W. Sidel & Ruth Sidel eds., 1984).

\textsuperscript{122} LA OPERACION (Latin American Film Project & Skylight Pictures 1982).

\textsuperscript{123} "[T]he nature of the colonial relations between Puerto Rico and the United States made coercion possible through a population control program." Rodríguez-Trias, supra note 121, at 125.

\textsuperscript{124} Sterilization has been used historically "as a means of eliminating the 'unfit' sectors of
men are among a number of communities of women that have been devalued to this degree.\textsuperscript{125} Aside from robbing women of their autonomy, sterilization is a means of obtaining cheaper labor or other resources.\textsuperscript{126} In the case of Puerto Rico, women were sterilized so they would stay in the labor force, thus boosting the Island's economy because they could be paid less money than men.\textsuperscript{127}

B. \textit{The Resistance of Puerto Rico's Self to Colonial Domination and Its Further Definition Through Resistance}

Puerto Rico's historical defiance of domination is further evidence that it is a nation. Puerto Rico actively distinguishes itself from the colonizer, despite the United States' efforts to Americanize its subjects, by resisting the imposition of language and citizenship in the pursuit of its self-determination, even resorting to armed insurgency in its resistance.\textsuperscript{128}

Puerto Ricans have targeted their most pointed resistance at the imposition of U.S. citizenship, further emphasizing their self-identification as a nation.\textsuperscript{129} In 1917, the Jones Act imposed U.S. citizenship upon the people of Puerto Rico,\textsuperscript{130} who until that point had the status the population." Davis, \textit{supra} note 120, at 215; see also \textit{id.} at 202–21 for a discussion of the impact of racism on reproduction control.

\textsuperscript{125} Dr. Rodríguez-Trias, a leader in the movement to end sterilization abuse, credits the experience of Puerto Rican women for increasing awareness among all women of the use of sterilization abuse as a means of effecting control and subjugation. As a result, "Black women spoke of the increased sterilization in the South, the use of hysterectomy as a way of sterilizing young black women, and the move in at least ten states to pass laws permitting the compulsory sterilization of welfare recipients." Rodríguez-Trias, \textit{supra} note 121, at 123; see Davis, \textit{supra} note 120, at 216–18 (discussing the case brought by the Relf sisters and that case's impact); see also Relf v. Weinberger, 565 F.2d 722 (D.C. Cir. 1977) (per curiam).

\textsuperscript{126} Numerous communities of women have been subjected to sterilization for the purposes of economic exploitation:

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

 Rodríguez-Trias, \textit{supra} note 121, at 123.

\textsuperscript{127} \textit{La Operacion}, \textit{supra} note 122; see also Davis, \textit{supra} note 120, at 220.

\textsuperscript{128} See Napoli, \textit{supra} note 7, at 150–57 (chronicling Puerto Rico's armed resistance to colonial domination); Guevara, \textit{supra} note 7, at 714–17 (same).

\textsuperscript{129} For a detailed discussion of the history of the different rights attendant upon Puerto Ricans' U.S. citizenship, depending on how it was obtained, and the legislative remedies that have been attempted to rectify the contradictions and gaps in citizenship coverage, see de Passalacqua, \textit{supra} note 50.

\textsuperscript{130} See ch. 145, § 5, 39 Stat. 951, 953 (1917).
of Puerto Rican citizenship.131 "Puerto Ricans had [at that time] a single, and rather distasteful, option. They automatically became U.S. citizens unless they signed a document refusing it. But this refusal deprived them of numerous civil rights, including the right to hold public office, and made them aliens in their birthplace."132 This imposition was met by adamant resistance. The Puerto Rico House of Delegates stated:

We maintain firmly and loyally our opposition to our being made, against our express will and without our express consent, citizens of any country that is not our beloved land to which God gave us an inalienable right.

We, like all Puerto Ricans, believe in the existence of God and an eternal life, but if there were a celestial citizenship by which we could obtain eternal happiness and if that citizenship were offered to us in exchange for ours, we would hesitate in accepting it . . . ."133

In 1994, three hundred Puerto Ricans renounced their U.S. citizenship in a symbolic ceremony and issued themselves Puerto Rican passports. "[T]he recent renunciations are thought to be the first since 1917, when 288 local activists protested to local authorities following imposition of the Jones Act, which made Puerto Ricans U.S. citizens without their consent."134 There are several Puerto Ricans who have

132 WAGENHEIM, supra note 19, at 69; see also Jones Act, ch. 145, § 10 (all judicial officials must be U.S. citizens), § 35 (one must be a U.S. citizen in order to vote), § 36 (P.R. resident commissioner must be a U.S. citizen), § 44 (all jurors must be U.S. citizens). Several hundred people refused U.S. citizenship and chose to retain Puerto Rican citizenship. All of these people have since died. See Frank Gaud, Una Aspiración Cumplida, EL DIARIO (N.Y.), Dec. 5, 1995, at 3. Puerto Ricans who declared themselves Puerto Rican citizens were not "aliens" within the meaning of U.S. immigration law, but non-citizen U.S. nationals. See Gonzales v. Williams, 192 U.S. 1, 13 (1904) (citizens of Puerto Rico were neither United States citizens nor aliens); José Julian Alvarez González, The Empire Strikes Out: Congressional Ruminations on the Citizenship Status of Puerto Ricans, 27 HARV. J. ON LEGIS. 309, 313 n.14 (1990) (citing authority for different positions in the debate over the difference between the concepts of "citizenship" and "nationality"); see also infra note 156 and accompanying text (discussing how Puerto Ricans who have recently renounced U.S. citizenship may be considered "aliens" within meaning of U.S. immigration law).
134 Robert P. Walzer, Act of Defiance: Group Renounces Citizenship, N.Y. NEWSDAY, Jan. 10, 1994, at A18. Denoting the ceremony as "symbolic" does not undermine the commitment of those who have renounced their U.S. citizenship in this manner, but simply distinguishes this type of renunciation from one done in accordance with U.S. law. Those renouncing "symbolically"
now taken this one step further and have legally renounced their U.S. citizenship. 135

The first, independentista activist Juan Mari Brás,136 went to Venezuela and renounced his U.S. citizenship before the U.S. ambassador there, as required by U.S. law.137 On December 2, 1995, he was notified that his renunciation had been accepted by the United States.138 Several other Puerto Ricans have legally renounced their U.S. citizenship,139 among them Paquita Pesquera,140 Antonio Cabán Vale,141 and Alberto Lozada Colón, the PIP candidate for mayor of Mayagüez,142 although typically do not recognize U.S. authority over Puerto Rico and so renouncing in accordance with U.S. law would be meaningless to them.

135 Fufi Santori has tried to renounce his U.S. citizenship and become a non-citizen U.S. national. He has not renounced his U.S. citizenship as required by U.S. law although he has made his request in the federal court system. See Santori v. United States, No. 94-1162, 1994 WL 362221, at *1 (1st Cir. June 28, 1994) (unpublished disposition). His position is that U.S. immigration law makes a distinction between U.S. nationals and U.S. citizens and that he wishes to renounce his citizenship but remain a U.S. national. See Brief for José "Fufi" Santori at 7–13, Santori, 1994 WL 362221 (on file with author); see also INA § 308, 8 U.S.C.A. § 1408 (West Supp. 1997) (defining those who are nationals, but not citizens, of the United States); supra note 132 and accompanying text (discussing rights of Puerto Ricans considered non-citizen U.S. nationals). Santori, a popular sportswriter, is head of the Unión Nacional Pro-Patria, which issues the Puerto Rican passports that have come to be known as "Fufiportes."

136 Mari Brás is not only a prominent figure in the independence movement, but a lawyer, professor of law, and author.


138 See Gaud, supra note 132, at 3.


140 See Lillian Rivas, Renuncia Primera Mujer a Ciudadania, El Diario (N.Y.), Feb. 28, 1996, at 14. Pesquera is Mari Brás’ first wife and the mother of Santiago Mari Pesquera, whose 1976 murder has been attributed to members of the police force as a means of silencing his father. See, e.g., Caribbean News Briefs, UPI, Dec. 17, 1984, available in LEXIS, News Library, Archives File; see also Napoli, supra note 7, at 141 n.45 (quoting FBI memorandum directing that Mari Brás be targeted as part of a campaign to discredit the independence movement), 156 n.122 (discussing the 1978 murders at Cerro Maravilla and the role of the police, in collusion with the FBI and CIA, in infiltrating and attempting to destroy the independence movement).

141 See Josué R. Rivas, Dicen las Malas Lenguas, El Diario (N.Y.), Sept. 15, 1996, at 33. Cabán Vale is the popular singer and musician, known as "El Topo," who wrote "Verde Luz," considered by independentistas to be Puerto Rico’s unofficial national anthem. See Fernandez, supra note 61, at 311 (describing how the sound of a street band playing"Verde Luz" drifted through the courtroom window as the jury was about to announce its verdict of "not guilty" in Machetero Filiberto Ojeda Ríos’ trial for armed resistance to his arrest by the FBI).

142 See U.S. Citizenship Not Prerequisite, supra note 139; see also Mandamus Petition for Lozada
only one other person besides Mari Brás has received a certificate of loss of nationality.143

These renunciations have already and will continue to result in legal actions to clarify the status these individuals have, which could be conceived as "statelessness" or as *de jure* or *de facto* Puerto Rican citizenship. The renunciations raise the questions of what status exists when one strips away U.S. citizenship, whether a status of Puerto Rican citizenship exists, and what rights are attendant on Puerto Rican citizenship.

The first option is that Puerto Ricans without U.S. citizenship are "stateless." People who are stateless have neither the rights nor the protections that accompany citizenship: they cannot vote or travel internationally, they have no State to protect their rights in the international arena, and they will encounter serious difficulties in obtaining employment.144

Statelessness arises when someone is involuntarily stripped of her citizenship, such as when the Nazi government in Germany removed citizenship from Jews in 1941,145 or when a person voluntarily renounces citizenship without claiming another.146 Statelessness also arises through conflicts between different countries' nationality laws: a person born in a country whose nationality law is *jure sanguinis*147 of parents from a country whose law of nationality is *jus soli*148 will, theoretically, be stateless, although in practice there are remedies to resolve this. The main problem with this option is that it is counterintuitive since it is absurd to say that these Puerto Ricans are not Puerto Ricans just because they say they are not U.S.-Americans.149

Colón, pt. IV, ¶ 1, Lozada Colón v. Department of State (No. 97-cv-1831) (on file with author) [hereinafter Lozada Colón Mandamus Pet.].

143 See Lozada Colón Mandamus Pet., supra note 142, pt. IV, ¶ 8.

144 See Catheryn Seckler-Hudson, *Statelessness: With Special Reference to the United States* 244–50 (1934) (describing the significance of being a stateless individual). The United States, for example, requires proof of legal status in order to obtain employment and employers who hire unauthorized aliens are subject to sanctions. See INA § 274A, 8 U.S.C.A. § 1324a (West Supp. 1997).

145 See Paul Weis, *Nationality and Statelessness in International Law* 119 (Sijthoff & Noordhoff2d rev. ed. 1979). Mass denationalization of minorities has occurred in Czechoslovakia, Poland, and Yugoslavia as well. See id. at 120.


147 *Jure sanguinis* means citizenship that is derived from the parents' nationality. See Seckler-Hudson, supra note 144, at 10.

148 *Jus soli* means citizenship that is derived from one's birthplace. See id. at 9.

149 The Puerto Rican Department of Justice ("DOJ") has issued an opinion on Juan Mari
Mari Brás argues that a de jure Puerto Rican citizenship exists because the U.S. citizenship imposed by the Jones Act did not supersede the pre-existing Puerto Rican citizenship, which was recognized by the Foraker Act,\(^{150}\) and therefore is still in force.\(^ {151}\) The basis of this argument is that, under international law, U.S. citizenship could only have displaced the pre-existing Puerto Rican citizenship by the Puerto Rican people’s consent—a consent which was clearly lacking.\(^ {152}\) The final option is that a de facto Puerto Rican citizenship exists. De facto citizenship has arisen in other, similar situations. In 1977, a delegation of Chiefs, Clan Mothers, and others from the Haudenosaunee Six Nations Confederacy issued themselves passports and traveled to Geneva, Switzerland for a United Nations event. They presented their passports at customs in Switzerland and, after brief deliberation, were permitted entry by Swiss officials.\(^ {153}\)

The existence of a de facto Puerto Rican citizenship is already evident. In 1994, a family of four, who had symbolically renounced their U.S. citizenship, traveled between Puerto Rico and Aruba with Puerto Rican passports: the passports were accepted by both U.S. Department of Agriculture officials and Aruban customs officials.\(^ {154}\) In April of 1996, Beatriz Berrocal renounced her U.S. citizenship at the U.S. embassy in Mexico and returned to Puerto Rico with her Puerto

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\(^{150}\) See ch. 191, § 7, 31 Stat. 77, 79 (1900).

\(^{151}\) See Michael E. Deutsch, Presentation at the University of Puerto Rico 5–7 (Feb. 1, 1996) (transcript on file with author) (Deutsch is Legal Director of the Center for Constitutional Rights and Mari Brás’ legal advisor); see also Mari Brás Acudirá al Tribunal si Se Le Impide Votar, El Diario (N.Y.), Apr. 2, 1996, at 9 (quoting Mari Brás on his legal position regarding the existence of Puerto Rican citizenship) [hereinafter Mari Brás Acudirá].

\(^{152}\) See Mari Brás Acudirá, supra note 151, at 9; see also supra notes 132–34 and accompanying text.


\(^{154}\) See Family Goes to Aruba Using P.R. Passport, San Juan Star, May 5, 1994, at 9; Fuji Santori, Pasaporte Puertorriqueno Pasa la Prueba, El Nuevo Dia (San Juan), Apr. 30, 1994, at 84.
Rican passport which was stamped by customs in Mexico City and at Miami International Airport.\textsuperscript{155}

A state of confusion exists as to what status and rights Puerto Ricans who have renounced U.S. citizenship now possess. Regarding Mari Brás, the Department of Justice issued an opinion on February 2, 1996 stating that he is an alien for the purposes of U.S. civil and political rights and that it is up to the INS to grant Mari Brás legal permanent residency.\textsuperscript{156} The DOJ opinion said that Mari Brás may continue to practice law since U.S. citizenship is not required,\textsuperscript{157} but he may not vote since Puerto Rican law requires that one be a U.S. citizen in order to exercise that right.\textsuperscript{158} To further add to the confusion, the INS has yet to make a determination as to Mari Brás' "alien" status,\textsuperscript{159} while the INS's San Juan Office has made the curious contention that it still considers Mari Brás a U.S. citizen even though the U.S. Department of State no longer does.\textsuperscript{160}

The first legal action has occurred in Puerto Rico's insular courts involving Mari Brás' right to vote. The leader of a pro-statehood organization sued to prevent Mari Brás from voting in the November 5, 1996 Puerto Rican elections. In November 1997, the Puerto Rico Supreme Court, the Island's highest court, found in Mari Brás' favor.\textsuperscript{161} A lower court held that the provisions of Puerto Rican election law which require that an elector be a United States citizen were unconstitutional.\textsuperscript{162} The P.R. Supreme Court vacated the lower court judgment, finding that the election law provisions were constitutional in that the Puerto Rico Legislature was authorized to regulate who was qualified to vote in Puerto Rico and that U.S. citizenship was a valid requirement.\textsuperscript{163} However, the court also found that the P.R. Legislature could not have meant to exclude voters such as Mari Brás: a person residing in Puerto Rico and born in Puerto Rico of Puerto Rican parents—in

\textsuperscript{155} See \textit{Mujer Regresa}, supra note 139, at 13.

\textsuperscript{156} See Letter from Pedro R. Pierluisi, Secretary of Justice, P.R. Dep't of Justice, to Hon. Pedro Rosselló, Governor of Puerto Rico 4-5 (Feb. 2, 1996) (on file with author).

\textsuperscript{157} See \textit{id.} at 6.

\textsuperscript{158} See \textit{id.} (citing P.R. LAWS ANN. tit. 16, § 3053).


\textsuperscript{160} See \textit{id.} (quoting Robert Bowles Molinary, Executive Director, San Juan Office, INS).

\textsuperscript{161} See Ramírez de Ferrer v. Mari Brás, No. CT-96-14, slip op. at 3-4 (P.R. Nov. 18, 1997) (Hernández Denton, J., concurring).


\textsuperscript{163} See Ramírez de Ferrer v. Mari Brás, No. CT-96-14, slip op. at 23-51 (plurality opinion).
other words, a citizen of Puerto Rico. The court recognized Puerto Rican citizenship as a *de jure* status and held that Mari Brás, as a Puerto Rican citizen, had the right to vote in local elections.

The other legal action currently pending which involves the question of Puerto Rican citizenship is the case of Alberto Lozada Colón in the U.S. District Court for the District of Columbia. Lozada Colón renounced his U.S. citizenship in accordance with U.S. law and claimed the nationality of Puerto Rico. He filed a petition for a writ of mandamus to compel the Department of State to issue his certificate of loss of nationality.

The Department of State recently informed Lozada Colón that his renunciation was legally insufficient because he had evidenced the intent to remain in Puerto Rico, which in their view is in the United States. The Department of State further stated, "The Department has concluded that the intention to relinquish U.S. nationality for purposes of section 349(a) of the INA does not exist where a renunciant plans or claims a right to reside in the United States, a right that is inherent in U.S. nationality, unless the renunciant demonstrates that residence will be as an alien properly documented under U.S. law."

The Department has not specified what immigration status Lozada Colón could possess, and it is difficult to speculate what status he would qualify for given his unique situation. Two possible options are that he could apply for legal permanent residency if he wants to live in the mainland United States, or he could be deemed an "alien" while in the United States but recognized as a Puerto Rican citizen while in Puerto Rico. Regarding Lozada Colón's mandamus petition, the Department of State has now moved to dismiss the petition, arguing that there was an administrative proceeding which was completed upon the adjudication of Lozada Colón's application.

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164 See id. at 51–64.
165 See id. at 54–59, 65–66.
167 See generally id.
168 See Letter from Katherine H. Peterson, Acting Deputy Assistant Secretary, Overseas Citizens Services, U.S. Department of State, to Alberto O. Lozada Colón (Jan. 27, 1998) (on file with author). This requirement was not made of the other two who were issued certificates of loss of nationality.
169 Id. at 2.
170 Telephone Interview with Manuel Rivera, Jr., attorney for Lozada Colón (Jan. 30, 1998).
171 Id.
intends to file papers in opposition to the State Department's motion.\textsuperscript{172}

There are other possible fora for legal action, depending on the circumstances in which Puerto Rican citizenship's attendant rights are asserted. For example, if the INS makes the determination to give Puerto Ricans who renounce U.S. citizenship the status of legal permanent resident or if any of the renouncers are put into deportation proceedings when they try to re-enter the United States or Puerto Rico, then there could be an INS proceeding and subsequent appeals in the federal court system.\textsuperscript{173} For his part, Mari Brás has stated that he intends to apply to the Puerto Rican Department of State for a Puerto Rican passport, which could spark another Puerto Rican judicial proceeding.\textsuperscript{174}

There is also the possibility that this issue could be brought to the Inter-American Commission on Human Rights for violations of the \textit{American Declaration on the Rights and Duties of Man}.\textsuperscript{175} In order to petition the Inter-American Commission for redress, one must exhaust the remedies available under domestic law;\textsuperscript{176} thus, the U.S. federal courts will, in this scenario as well, consider the legal issues raised regarding Puerto Rican citizenship status and its attendant rights.

\section*{V. Conclusion: Who Is a "Puerto Rican"?}

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

\textsuperscript{172}Id.

\textsuperscript{173}Mari Brás points out that "U.S. law says undocumented aliens must be deported to their country of origin, and my country of origin is Puerto Rico." \textit{Quoted in} Larry Luxner, \textit{Putting Puerto Rican "Passports" to the Test}, \textit{SAN JUAN STAR}, Mar. 17, 1994, at 10.


\textsuperscript{176}See American Convention, \textit{supra} note 175, art. 46(1)(a).
The conception of "Puerto Rican" as a national minority with a type of dual citizenship brings U.S. and Puerto Rican law closer to conformity with international law's prohibition on all forms of colonialism. The future development of the Puerto Rican citizenship status promises to challenge Puerto Rican and U.S. legal conceptions of who is a "Puerto Rican" and what rights that individual has. While a Puerto Rican citizen is currently statutorily defined by domicile, the recent renunciations of U.S. citizenship may prompt that definition to include descent. This indicates a move toward the definition, under Puerto Rican law, of "Puerto Rican" as a national identity.

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

177 The P.R. Supreme Court decision in Ramirez de Ferrer v. Mari Brás gave local voting rights to native-born Puerto Ricans domiciled on the Island and born of Puerto Rican parents. See supra notes 161–65 and accompanying text.

178 See supra notes 18–22 (examining Puerto Rico's status plebiscites and the options presented); Napoli, supra note 7, at 135–38 (discussing appropriate methods under international law for conducting a status plebiscite and the importance of a plebiscite that offers Puerto Rico its true options).

As this Article went to press, the status plebiscite bill (discussed supra at notes 52–53 and accompanying text) passed in the House by one vote. See Mark Lacey, House Narrowly OKs Statehood Vote in Puerto Rico Enfranchisement, L.A. TIMES, Mar. 5, 1998, at A11. At the last minute, Representative José Serrano (D-NY) attempted to amend the bill to include as eligible voters those born in Puerto Rico but residing in the United States. His amendment was modified slightly by José V. Gutiérrez (D-IL), but was nonetheless voted down by the House. See generally 144 Cong. Rec. H812–38 (daily ed. Mar. 4, 1998). "Senate Majority Leader Trent Lott (R-Miss.) has indicated that it is unlikely the Senate will consider similar legislation this year, a sentiment probably enhanced by the closeness of the House vote." Lacey, supra, at A11.