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The Involuntary Loss of United States Citizenship of Puerto Ricans Upon Accession to Independence by Puerto Rico

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After four hundred years of Spanish and one hundred years of United States colonialism, Puerto Rico is on the verge of determining its future with the help of the United States. The two states will decide whether Puerto Rico will continue on as a colony, join the United States as another state of the Union, associate itself with the United States as a republic, or join the American community as an independent state. The significance of this choice is not lost on many Puerto Ricans, who long to be citizens of Puerto Rico and nowhere else. Neither is it lost on those who cherish United States citizenship and do not wish to give it up. For this latter group, the question arises, can United States citizenship be taken away from them if Puerto Rico becomes an independent republic? The purpose of this article is to examine the legal ramifications of just that question.

I. INTRODUCTION

Puerto Rico became an unincorporated territory of the United States by right of conquest pursuant to the Spanish-American War of 1898. Under the Treaty of Peace (Treaty of Paris of 1898) agreed upon between the United States and Spain (without consulting the people of Puerto Rico), Spain ceded the island to the United States together with all of its inhabitants. Since that time, the question of Puerto Rico's ultimate future has been the subject of continuous debate in Puerto Rico, the United States and the international community.

This debate has usually centered on whether the island will eventually become a state of the United States, an independent republic, or some other form of political entity sponsored by the United States. The recent access of several trust territories in the Pacific to various forms of independence and associated independence has again raised questions as to which way Puerto Rico will go, either by dint of its own self-determination or at the behest of the United States. Independence is one of the alternatives often considered for Puerto Rico. Another alternative, that of becoming an associated republic, has recently been gaining momentum since its adoption for the Republic of the Marianas.

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Assuming that either full independence or associated independence is established for Puerto Rico, what would be the legal effect of this new political regime on the status of Puerto Ricans as citizens of the United States? Would all Puerto Ricans possessing United States citizenship be entitled to retain it, irrespective of their new status as citizens of Puerto Rico? Would this mean that the independent or the associated republic of Puerto Rico would be populated almost entirely by United States citizens owing allegiance to that state?

There is no question that in a situation of independence, those United States citizens who voluntarily wish to expatriate themselves and renounce their United States citizenship would be able to do so. But, could the United States constitutionally deprive all citizens of Puerto Rico of their United States citizenship without their consent? Could United States citizens born in Puerto Rico be forced to make a choice between Puerto Rican citizenship and United States citizenship?

The problem involves considerations of United States constitutional law, international law, and practical aspects of foreign relations. Can a republic, associated or not, politically tolerate a situation where almost its entire citizenry also owes allegiance to another state, and yet remain a sovereign, independent state itself? If such a republic were to exist, would there in fact or in law be any basis to sustain its character as a republic, subject to the possibility of association or disassociation with another state? These questions go to the very heart of the reality or mere appearance of political independence and true association. They raise the issue of whether such an arrangement is politically and legally feasible, or whether it is really intended to cover up what is simply another form of colonialism.

This article will examine the legal consequences of a determination by the Congress of the United States to create an independent Republic of Puerto Rico (with or without the consent of the People of Puerto Rico), or of a decision by the governments of the United States and Puerto Rico to enter into a relationship of free association[1] with a coordinated decision to establish separate citizenships for the inhabitants of both republics. In either case, the Republic of Puerto Rico or the Associated Republic of Puerto Rico would begin its existence with the necessity of determining what to do about the fact that, legally, all of its citizens are presently citizens of the United States. Thus, a determination to divest Puerto Ricans of their United States citizenship would have to precede a declaration of independence or free association.[2] The question we

1. Or, as it has been called, an "associated republic."

2. Recently, the United States has moved to settle the political future of the islands held in trust in the Pacific. The Northern Mariana Islands have been made into a Commonwealth, the Marshall Islands into a Republic, the Micronesian Islands into the Federated States of Micronesia, and Palau into a Republic.

United States citizenship was accorded the inhabitants of the Commonwealth of the Marianas, but no such provisions were made for the other islands. The problem of with-

are facing is one of determining whether, under United States law, it would be legally permissible to divest citizens of the Republic of Puerto Rico of their United States citizenship at the time of, or shortly before, the proclamation of the Republic of Puerto Rico.

II. THE UNITED STATES CITIZENSHIP OF PUERTO RICANS

In order to examine the United States citizenship of the people of Puerto Rico, we must first examine what is a Puerto Rican, and how these people acquired that citizenship. To answer this question, one must assume at least two criteria as they have been established under federal statutes[3] implementing the Treaty of Paris,[4] whereby sovereignty over the island of Puerto Rico was relinquished by Spain in favor of the United States.

Under the Spanish Constitution, a Puerto Rican was a person born on the island of Puerto Rico.[5] The descendants of these native born Puerto Ricans were also considered to be Puerto Ricans and, as such, Spanish subjects with all of the rights and obligations recognized to them by the Spanish Constitution and the Spanish monarchical decrees. Children born in Puerto Rico to a father who was a foreign citizen acquired the father's citizenship. He and his children were subject to the Spanish Crown as long as they were in Puerto Rico; however, he did not benefit from all of the rights of a Spanish subject, since he was not a subject of the Crown, but rather subject to the Crown. In short, he was not what we would today call a citizen.

As a result of the *Cédula de Gracias* (Royal Charter),[6] issued by

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drawing United States citizenship in these cases is non-existent, since it had not been granted previously. As for United States citizens living on the latter three islands, local citizenship has not been automatically extended to them.

3. These two criteria are essentially birth and domicile.

4. The Treaty of Peace of 10 December 1898, proclaimed on 11 April 1899, put an end to the war undertaken by the United States against Spain in April, 1898. Under the terms of this Treaty, Spain ceded to the United States the island of Guam and the Archipelago of the Philippines in the Pacific, the island of Puerto Rico and related islands in the Caribbean, and granted independence to the island of Cuba. *See* Treaty of Peace, December 10, 1898, United States-Spain, 30 Stat. 1754, T.S. No. 343 [hereinafter Treaty of Paris].

5. Originally named *Isla de San Juan Bautista* by Christopher Columbus on the day of discovery (19 November 1493), the name of the island was later expanded to *Isla de San Juan Bautista del Puerto Rico*, in order to include the excellent harbour and capital city to be found on its north coast. British cartographers shortened the name to Puerto Rico, or Rich Port. The name stuck and now refers to the entire island, with San Juan as the capital.

Included as part of Puerto Rico are other small islands such as Desecheo, Mona, Monito, Culebra, Culebrita, Vieques and others, the larger of which, Culebra and Vieques, are inhabited at present. Traces of habitation have been found on the other islands.

At the time of discovery (or encounter), Puerto Rico was inhabited by Taino "indians." The Spanish invaders soon assimilated or exterminated the native inhabitants and then imported African slaves to work on the island. The basic population of Puerto Rico is made up of these three stocks, with further European and some Asian immigration over the nineteenth and twentieth centuries.

6. *Real Cedula de Gracias*, 15 January 1816 [hereinafter Royal Charter].

King Carlos IV of Spain in 1816, foreign nationals were encouraged to migrate to the island of Puerto Rico. Under the Charter, foreign nationals were promised that they would be allowed to exercise their professions, hold land, ply their trades, establish domicile, and hold and transmit property *inter vivos* and *mortis causa*, without losing their rights of citizenship in their state of origin, nor having to swear allegiance to the Spanish Crown.[7] After being domiciled for a period of five years, those who wished to do so could request Spanish citizenship; however, such citizenship was not a requirement for continued domiciliation nor for the exercise of their professions and trades.

As a result of the Royal Charter, a considerable number of persons took advantage of its terms and migrated to Puerto Rico.[8] Some of these persons eventually adopted Spanish nationality, while others retained their own nationality, establishing their domiciles in Puerto Rico under the terms of the Charter. The children born to the former group were Puerto Ricans and subjects of the Spanish Crown, with all of the rights recognized to them as citizens under the Spanish Constitution. The children born to the latter group were also Puerto Ricans subject to the Spanish Crown, but without the rights of citizens of Spain. While they were beneficiaries of the privileges recognized to them under the Royal Charter, they were still subjects of the foreign state which might have granted them citizenship through that of their parent or parents.[9]

When the United States invaded Puerto Rico on 25 July 1898, there were at least four different categories of persons who were considered to be "Puerto Ricans" by the islanders themselves:

> 1. Persons born in Puerto Rico of Puerto Rican or Spanish ancestry who were subjects of the Spanish Crown and citizens of Spain under the Spanish Constitution;
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> 2. persons born in Puerto Rico of non-Spanish ancestry who were subjects of a foreign state and citizens thereof, and who were domiciled in Puerto Rico pursuant to the Royal Charter of 1816, and thereby subject to the Crown of Spain;
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> 3. persons born outside of Puerto Rico in a country other than Spain, who were subjects and citizens of that state, and were domiciled in Puerto Rico pursuant to the terms of the Royal Charter of 1816; and
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> 4. persons born in Spain, who were Spanish citizens and subjects, and who were domiciled in Puerto Rico.

Of course, there were also other categories of transients, both foreign and Spanish, who were temporarily in Puerto Rico and were thus not consid-

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7. *Id.* arts. 1, 9-10. While allegiance was not required, an oath of fealty (*vassalage*) was.

8. It should be noted that migration to Puerto Rico had already begun towards the end of the eighteenth century. This migration was largely a result of the Family Treaty among the Bourbon monarchs in Europe, which permitted the subjects of one monarchy to migrate to the territory of another.

9. Royal Charter, *supra* note 6, arts. 8-10, 12.

ered Puerto Rican by the Spanish authorities.[10]

Puerto Rico was invaded and conquered by the United States as a result of the latter's war with Spain in 1898.[11] Pursuant to the Treaty of Paris, Spain ceded to the United States the island of Puerto Rico and other islands in the Caribbean West Indies[12] then under Spanish sovereignty.[13] The same Treaty established that:

> Spanish subjects, natives of the [Spanish] Peninsula residing in the territory over which Spain by the present Treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, retaining in either event all their rights of property, including the right to sell or dispose of such property or of its proceeds; and they shall also have the right to carry on their industry, commerce and professions, being subject in respect thereof to such laws as are applicable to other foreigners. In case they remain in the territory, they may preserve their allegiance to the Crown of Spain by making, before a Court of record, within a year from the date of the exchange of ratification of this Treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it and to have adopted the nationality of the territory in which they may reside.[14]

Thus, a Spanish subject born in the Peninsula (Spain) may opt to retain his Spanish citizenship and yet remain a resident of Puerto Rico provided he makes a declaration in that sense before a court of record; if he does not make this declaration, he is deemed to have renounced his Spanish citizenship and thereby acquires Puerto Rican citizenship. It should be noted that he does not acquire United States citizenship with

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10. A fifth category should be kept in mind: Persons born in Puerto Rico who were Spanish citizens and subjects, but who, at the time of the invasion by the United States, were not in Puerto Rico and had not returned there prior to the proclamation of the Treaty of Paris on 11 April 1899.

11. The United States declared war on Spain on 25 April 1898. The invasion of Puerto Rico took place on 25 July 1898, with the Spanish army and the Puerto Rican militia putting up a brave defense. On 12 August 1898, the government of the United States accepted peace proposals advanced by the Spanish government through the French Minister in Washington. As a condition for the cessation of hostilities, the government of Spain agreed to cede the island to the United States. Immediate arrangements were made for the military occupation of the island by the United States. On 13 October 1898, Spanish General Ricardo Ortega, commander of fortress Puerto Rico, turned over his command to United States General John R. Brooke, commanding General of United States forces in Puerto Rico. General Brooke became the first military governor of Puerto Rico. On 10 December 1898, a Treaty of Peace was signed at Paris, France, between the United States and Spain. This treaty was duly ratified and proclaimed on 11 April 1899. On this date, Puerto Rico officially became a United States colony under the guise of "an unincorporated territory of the United States appurtenant thereto," and subject to the Territorial Clause of the United States Constitution.

12. This reference is to Puerto Rico and its related islands of Vieques, Culebra, Mona, etc., and does not include the island of Cuba, which became independent.

13. *See* Treaty of Paris, *supra* note 4, art. 2.

14. *Id.* art. 9, ¶ 1.

this repudiation. In this manner, a form of presumptive voluntary expatriation is introduced, joined to *ipso facto* acquisition of Puerto Rican "nationality."[15]

The foregoing paragraph of the Treaty of Paris refers to people born in Peninsular Spain who reside in Puerto Rico. It does not refer in general to people born in Puerto Rico and residing (domiciled) therein. As to those, the following paragraph leaves it up to the Congress of the United States to determine what their civil and political rights will be: "The civil rights and the political status of the native inhabitants of the territories hereby ceded to the United States, shall be determined by the Congress."[16]

Hence, there are four different situations addressed by the Treaty, all of them relating to Spanish subjects:

1. Those who are born in Spain and expressly choose to retain their allegiance to Spain;

2. those who are born in Spain and expressly renounce their allegiance to Spain;

3. those who are born in Spain and tacitly renounce their allegiance to Spain; and

4. those who are born in Puerto Rico and have no choice.

The last three of these groups are considered to be Puerto Rican "nationals." They do not acquire United States citizenship or "nationality" by virtue of the fact that Puerto Rico is occupied by the United States.

Nothing is said in the Treaty about foreign citizens residing in Puerto Rico. Indeed, nothing had to be said, since these individuals remained foreign citizens residing on the island, and it was up to the United States to decide upon what conditions they were to be allowed to remain there.

The proclamation of the Treaty of Paris, legalizing the cession of Puerto Rico to the United States, also saw the establishment of four different kinds of dwellers on the island:

1. Spanish citizens;

2. United States citizens;

3. other foreign citizens; and

4. natives of Puerto Rico without any citizenship whatsoever recognized under international law or even United States municipal law.

The Treaty of Paris places upon the Congress of the United States the burden of determining the civil rights and the political status of the native inhabitants of the island of Puerto Rico. It is precisely this legisla-

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15. *See generally infra* notes 49-52 and accompanying text.

16. Treaty of Paris, *supra* note 4, art. 9, ¶ 2.

tive body which is charged under the Constitution of the United States with making the necessary arrangements for the government and disposition of the territories of the United States including Puerto Rico:

> The Congress shall have power to dispose and to make all needful rules and regulations respecting the Territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State.[17]

In response to this burden, Congress has passed legislation regarding Puerto Rico on several occasions, each of which must be examined in order to determine what the civil rights and the political status of the inhabitants of Puerto Rico are, insofar as United States citizenship is concerned.

A. *The Foraker Act*

The Organic Act of 1900 (the Foraker Act)[18] established the first civilian government[19] for Puerto Rico under the United States flag. Section 7 of the Act[20] creates a body politic called the People of Puerto Rico, comprised of United States citizens who establish their domicile in Puerto Rico, and those former Spanish subjects and their children who have renounced Spanish citizenship. As to the latter group, nothing is said about acquiring United States citizenship. The Act also does not address those Puerto Ricans who were foreign citizens — nor their children — who were domiciled in Puerto Rico pursuant to the Royal Charter of 1816. Nor is anything said concerning native born inhabitants of the island who, for whatever reasons (such as circumstances of war and military occupation), were absent from the island at the specified date of cession.

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17. U.S. CONST., art. 4, § 3, cl. 2. This is even more applicable to Puerto Rico, which is defined as an unincorporated territory appurtenant to the United States.

18. Organic Act, 31 Stat. 77 (1900) [hereinafter Foraker Act].

19. Nevertheless, some fourteen Governors appointed to the island by the President of the United States were professional military men or had professional military training.

20. Section 7 of the Foraker Act reads:

> That all inhabitants continuing to reside [in Puerto Rico] who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Porto [sic] Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Porto [sic] Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain on or before the eleventh day of April, nineteen hundred, in accordance with the provisions of the treaty of peace between the United States and Spain entered into on the eleventh day of April, eighteen hundred and ninety-nine; and they, together with such citizens of the United States as may reside in Porto [sic] Rico, shall constitute a body politic under the name of The People of Porto [sic] Rico, with governmental powers as hereinafter conferred, and with power to sue and be sued as such.

Foraker Act, *supra* note 18, § 7, at 79.

The legislature of Puerto Rico, created in this same statute,[21] enacted legislation pursuant to the definition of the People of Puerto Rico set forth in the Foraker Act, but which in fact is somewhat different. In its definition, the legislature of Puerto Rico establishes three categories of Puerto Ricans:

> 1. All persons born in Puerto Rico and subject to the jurisdiction thereof;
>
> 2. all persons born out [sic] of Puerto Rico who are citizens of the United States and who have acquired domicile in Puerto Rico; and
>
> 3. all persons who were Spanish subjects and residing in Puerto Rico on the eleventh day of April, eighteen hundred and ninety-nine, and who did not elect to preserve their allegiance to the Crown of Spain on or before the eleventh day of April, nineteen hundred, in accordance with the provisions of treaty [sic] of peace between the United States and Spain, entered into on the eleventh day of April, eighteen hundred and ninety-nine.[22]

From the text quoted above, categories two and three follow the wording of the Foraker Act. However, category one introduces (perhaps more realistically) to Puerto Rican citizenship *all* persons born in Puerto Rico and subject to its jurisdiction. Thus, the foreign citizens and their children who migrated to Puerto Rico pursuant to the Royal Charter, establishing their domicile on the island and submitting to its jurisdiction insofar as they were domiciled on the island pursuant to Spanish law, are included.[23]

Under local law, Puerto Rican citizenship was thus extended to persons who were not technically included within the purview of the Foraker Act; but for whom the United States was responsible under the Treaty of Paris. Neither the Political Code nor the Foraker Act extended United States citizenship to Puerto Ricans, whether they belonged to the first or the third categories. Only those citizens of Puerto Rico who were already citizens of the United States when they became residents of Puerto Rico retained their United States citizenship, for this act of domiciliation did not deprive them of it.

On the other hand, under both federal and local legislation at this period of time, Puerto Ricans who were formerly Spanish citizens lost that citizenship pursuant to the Treaty of Paris, and did not gain another. The same thing happened to those Spanish Peninsulars who did not express before a Court of record their intention to remain Spanish citizens and remained in Puerto Rico. Both of these groups of people be-

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21. *Id.* §§ 15, 27-32, at 80. It should be noted that under the arrangement established by the statute, the legislative process was controlled by Continentals appointed by the President of the United States with the advice and consent of the Senate, and not by the elected representatives of the people of Puerto Rico.

22. Political Code of Puerto Rico, 1 P.R. LAWS ANN., tit. 1, § 7, art. 10 (1954).

23. Spanish law of that period did not require Spanish citizenship for domicile.

came stateless persons under the protection of the United States.

United States citizens and foreign citizens who domiciled themselves in Puerto Rico and retained their foreign citizenship were thus in a different and more advantageous legal situation than the ordinary citizen of Puerto Rico. The former group could travel freely to and from the continental United States; the ordinary citizen of Puerto Rico could not do so without special authorization. The ordinary citizen of Puerto Rico was not entitled to a United States passport in order to travel abroad, and depended on special permission. Hence, the right to travel abroad and to or from the United States was curtailed. Citizens of Puerto Rico who were neither United States citizens nor foreign citizens found themselves essentially confined to the island, and could not move freely between the continental United States or foreign states and Puerto Rico.

In the meantime, the Supreme Court of the United States had occasion to find that Puerto Rico was not an incorporated territory of the United States.[24] This decision meant that Puerto Rico was not properly a part of the United States, but rather property of the United States to be disposed of by the will of Congress.

B. *The Jones Act*

Between 1900 and 1916, Congress refrained from making any further determinations concerning the civil rights and the political status of the inhabitants of Puerto Rico. Despite the opposition of the people of Puerto Rico,[25] as well as that of its elected representatives, United States citizenship was pressed upon the people of Puerto Rico in March of 1917,[26] shortly before the United States entered World War I.[27]

The Jones Act adopts the definition found in the Foraker Act of the term "Citizens of Puerto Rico," and adds to it those natives of Puerto Rico who were absent from the island during the War of 1898 and the following military occupation. These citizens must have since returned to Puerto Rico, and not possess citizenship of a foreign state. The Act declares all such individuals to be not only "Citizens of Puerto Rico," but citizens of the United States as well.[28] United States citizenship could be rejected by express declaration; however, this would have the effect of disenfranchising such persons,[29] removing them from any public office in

24. *See* Downes v. Bidwell, 182 U.S. 244, 21 S.Ct. 770, 45 L.Ed 1088 (1901).

25. *See* 2 J. DE DIEGO, OBRAS COMPLETAS 217-56, 291-334 (1970).

26. Organic Act, ch. 145, § 5, 39 Stat. 951 (1917) [hereinafter Jones Act].

27. On April 4, 1917, President Wilson's war resolution was passed by the Congress, thus placing the United States at war in Europe. The War Department quickly placed Puerto Rican soldiers on alert, and mustered their strength up to regimental size. Conscription was quickly applied to Puerto Ricans, and they immediately saw service abroad. *See* 2 R. HOFSTADTER, W. MILLER & D. AARON, THE AMERICAN REPUBLIC 397 (1959), and P. MILLER, HISTORIA DE PUERTO RICO 425-433 (1922).

28. Jones Act, *supra* note 26, ch. 145, § 5, at 963.

29. *Id.*

Puerto Rico as well as preventing them from running for public office,[30] and making them foreigners within their own country. As for the children of foreign citizens born in Puerto Rico, they could become citizens upon an affirmative action on their part requesting it.[31]

The Jones Act adopts essentially the same categories of Puerto Rican citizenry created by the Foraker Act. The extension of United States citizenship to members of these groups establishes three fundamental categories of United State citizens on the island:

1. Those who acquired citizenship pursuant to the Jones Act;

2. those who, being born in one of the United States or an incorporated territory of the United States, acquired citizenship pursuant to the Fourteenth Amendment to the United States Constitution; and

3. those who, being naturalized United States citizens, acquired citizenship pursuant to the Fourteenth Amendment.

Notwithstanding the new Organic Act, the Political Code of Puerto Rico was not amended to conform to the new statute. However, given the paramount authority of federal law over local law, the Puerto Rican statute must be read in a manner which conforms to the federal statute. Thus, we are now faced with the following categories defining Puerto Rican citizens:[32]

1. United Sates citizens domiciled in Puerto Rico, whether or not they are natives of Puerto Rico or citizens thereof; and

2. all other persons residing in Puerto Rico who are not citizens of the United States or Puerto Rico, although they may be nationals of the United States.[33]

As a result of the Jones Act (when taken in conjunction with the Foraker Act), we can now identify at least five different political categories for the inhabitants of the island of Puerto Rico:

1. Persons who are citizens of both the United States and Puerto Rico;

2. persons who are citizens of the United States, but not of Puerto Rico;

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30. *Id.* ch. 145, § 10, at 954.

31. *Id.* ch. 145, § 5, at 953.

32. *See* Political Code, *supra* note 22, art. 10.

33. Nationals of the United States are persons subject to the United States but who are not citizens thereof. As such, they do not enjoy all of the rights and privileges of United States citizenship.

It should be noted that a citizen of the United States who is not domiciled in one of the fifty states or in the District of Columbia is not allowed to exercise the same rights (such as electing the President or members of Congress) as those who are. In this sense, while United States citizens may be domiciled in the unincorporated territories of the United States (of which Puerto Rico is one), they do not have the right to vote for the President and members of Congress in federal elections.

> 3. persons who are citizens of a foreign state and are domiciled in Puerto Rico;
>
> 4. persons who have renounced their foreign citizenship and have declined United States citizenship, were citizens of Puerto Rico until the Jones Act, and are now stateless; and
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> 5. persons who have retained their foreign citizenship and whose children are native born Puerto Ricans.

As we shall see, when we combine these five categories of inhabitants with the three categories of citizens already discussed, it is not surprising that the United States Immigration and Naturalization Service had so many problems determining the status of Puerto Ricans. This confusion resulted in a great deal of copious legislation on the subject.

C. *Post-Jones Act Legislation*

Between 1917 and 1952, the United States Congress attempted on various occasions to clear up the confusion which its citizenship laws had created in Puerto Rico.[34] Without examining these statutes in detail, let us just mention that a 1952 statute attempted to settle the matter of United States citizenship by enacting the following provision:

> All persons born in Puerto Rico on or after April 11, 1899, and prior to January 13, 1941, subject to the jurisdiction of the United States, residing on January 13, 1941, in Puerto Rico or other territory over which the United States exercises rights of sovereignty and not citizens of the United States under any other Act, are hereby declared to be citizens of the United States as of January 13, 1941. All persons

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34. In 1927, Section 5(a) was added to the Jones Act in an attempt to extend United States citizenship to certain persons temporarily away from the Island at the time the Jones Act was enacted or who were not covered thereby, as well as to aliens who had not sought citizenship but who were domiciled in Puerto Rico pursuant to Spanish Law. *See* 44 Stat. 1418.

In 1934, Section 5(b) was added to the Jones Act, in a further attempt to extend citizenship to stateless persons domiciled in Puerto Rico and to those persons who, for some reason, had lost or not acquired United States citizenship under previous statutes. *See* 48 Stat. 1245.

In 1940, on the eve of the Second World War, the United States Nationality Act, through Sections 202 and 322, amended Section 5 of the Jones Act in an attempt to extend United States citizenship to Puerto Ricans who were domiciled as foreign subjects under Spanish rule, and who had not sought United States citizenship. *See* 54 Stat. 1139, 1148.

In 1948, the 1940 Act was made inapplicable to certain Puerto Rican United States citizens. *See* 62 Stat. 1015.

In 1952, citizenship was extended to all persons born in Puerto Rico after 11 April 1899 and before 13 January 1941. These persons were to be considered United States citizens as of 13 January 1941. Those persons born in Puerto Rico after this date were to be considered United States citizens at birth. No provisions are made for the rejection of this citizenship. *See* 66 Stat. 236., 8 U.S.C. 1402 (1982).

Despite an attempt to settle the matter, those persons born prior to 11 April 1899, and those born outside of Puerto Rico, still remain uncovered. Perhaps the only way this will eventually cease to be a problem is through the passage of time and the call of death.

> born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States, are citizens of the United States at birth.[35]

Thus, as far as Puerto Ricans are concerned, they may derive United States citizenship in any one of several ways:

> 1. Pursuant to the Fourteenth Amendment to the United States Constitution, by being born in one of the fifty states or the District of Columbia;
>
> 2. pursuant to the Fourteenth Amendment to the United States Constitution, by being a naturalized citizen of the United States;
>
> 3. pursuant to the Jones Act, as amended;
>
> 4. pursuant to the 1952 Nationality Act, having been born on the island after 11 April 1899 and before 13 January 1941, thus being considered a citizen as of the latter date;
>
> 5. pursuant to the 1952 statute, having been born on the island after 13 January 1941, thus being considered a citizen at birth; and
>
> 6. pursuant to the Nationality Act of 1940, as amended, persons having been born outside of the United States and its outlying territories, one of whose parents is a Puerto Rican with United States citizenship.

Under the judicial system of the United States, the first two categories are considered to be "constitutional citizenships," while the remaining four[36] are considered to be "legislative citizenships." This is because the former categories are mentioned in the United States Constitution, while the latter are not. This distinction will return to haunt us.

III. "PUERTO RICAN" AS AN ETHNIC AND LEGAL CONCEPT

Since at least the latter part of the eighteenth century, the inhabitants of the island of Puerto Rico have coalesced into a distinct nation[37] within the broader group of Spanish speaking peoples. Despite nearly a hundred years of United States rule, the people of Puerto Rico have maintained their own distinctive characteristics. At the same time, their culture has evolved, absorbing those elements of other cultures which it has found to be desirable. Thus, at the present time, Puerto Ricans remain part of a particular nation, with its own characteristics distinct from

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35. Immigration and Nationality Act, 66 Stat. 163, 236, *codified at* 8 U.S.C. § 1101 (1982).

36. It could be argued that alternatives 3, 4, and 5 are naturalization. However, the procedure followed has not coincided with the usual naturalization procedures required at the period of time in question, and there would thus have to be exceptions to those procedures rendering the argument invalid.

37. As used in this article, the term "nation" is understood to refer to an extremely complex entity, determined according to anthropological, social and cultural elements, which tends to conform to a global societal type which includes political and economic manifestations. *See* TUBELLA & VINYAMATA, DICCIONARI DEL NACIONALISME 92.

either Spanish or Anglo-Saxon nations.

Since its occupation of the island of Puerto Rico, the United States has treated and regarded Puerto Ricans as one more of the many ethnic groups which inhabit the United States.[38] While, as a matter of practice, ethnic differences are recognized in the United States, as a legal matter, the present interpretation of the Constitution rejects any differentiation among them.[39] Thus, whether on the island or the continental United States, Puerto Ricans remain an ethnic group within the United States subject to its laws of citizenship.[40]

This situation points to a certain inconsistency between the legal order of the United States, which claims to make no distinction among ethnic groups, and the society itself, which does establish not only distinctions, but the pre-eminence of the Anglo-Saxon ethos.[41] This legal and social tradition harkens back to the origins of the Republic and has developed with it.

Early in the history of the United States, state citizenship played a very important role. It made quite a difference whether a man was a Vermonter, a Virginian or a Kentuckian. Even if he moved to another state and acquired its domicile, he still was identified by his state of origin. The Civil War put and end to this, as the resultant Amendments to the Constitution made citizenship dependent on United States citizenship plus domicile, instead of on birthright. This evolution has left its mark on the status of Puerto Ricans domiciled in Puerto Rico, those domiciled in one of the fifty states, or those domiciled abroad.[42]

Pursuant to powers granted Congress in governing the territories belonging to the United States, both the Foraker Act and the Jones Act[43] have established that citizens of Puerto Rico are those United States citizens who have established domicile in Puerto Rico. What happens when Puerto Ricans establish domicile in one of the fifty states?

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38. The word ethny, or ethnic group (*etnia* in Spanish) is a group of individuals socially organized on a particular territory and having certain collective characteristics which differentiate them from other human groups. *See id.* at 69.

39. However, even as late as the latter part of the 1950's, Puerto Ricans were classified as a separate "race" which was later to be included within the Spanish-American "race."

40. Full United States citizenship, under the laws of that state, appertain only to those persons who are both citizens of the United States and are domiciled in one of the fifty states or the District of Columbia. Citizens of the United States who are not thus domiciled enjoy most of the rights of citizenship, except those of a political nature (voting rights). Those who are domiciled in Puerto Rico may vote in local elections but not in federal elections, and have no voting representation in either house of Congress.

41. Witness the "English only" movement and its appearance in areas where there are strong Hispanic minorities.

42. Section 9 of the Civil Code of Puerto Rico is reminiscent of the old concepts when it says that the Personal Statute follows Puerto Ricans even if they reside (are domiciled) in foreign countries. *See* Civil Code of Puerto Rico, 31 P.R. LAWS ANN. § 9, at 337 (1954).

43. The sections on citizenship of both these Acts are still in force as amended and modified, and have been continued under the Federal Relations Act. *See* Federal Relations Act, 48 U.S.C. § 731 (1982).

Since Puerto Ricans are now United States citizens, irrespective of the manner in which they acquired citizenship, the requirements of the Fourteenth Amendment apply to them. A Puerto Rican who changes his domicile from Puerto Rico to the state of Virginia, or any other state, becomes a citizen of that state and ceases to be a citizen of Puerto Rico. This is so under the laws of domicile of Puerto Rico, and those of the states of the United States as well.[44] In addition, both under the laws of Puerto Rico and those of the states of the United States, a person may have only one domicile,[45] and therefore he may have citizenship of only one state. Hence, a Puerto Rican who changes his domicile legally ceases to be a Puerto Rican, and becomes a Vermonter, a Texan, a Virginian, a Californian, or whatever he chooses for a domicile. 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.

The population of the United States is very heterogenous. Except for the American Indians who were there originally,[46] the people who now populate the United States are migrants who have come or been brought to the U.S. from all corners of the world. Some of them have maintained their family and national ties with their countries of origin, but most have blended to a lesser or greater degree into a society which is fundamentally of Anglo-Saxon tradition.

Puerto Ricans also share in an extremely heterogenous population. Having come from many lands, they have blended into the dominating Hispanic-Latin tradition, although some do retain ties with their ethnic roots. However, unlike the United States, where racial distinctions are still very strong, in Puerto Rico the races have mixed to such a degree that such distinctions cannot be made with any credibility. This fact is one of the elements which gives Puerto Rico its particular cultural and historical peculiarity, of which difference the Puerto Rican is particularly conscious. In short, Puerto Ricans form a nation within the Hispanic-Latin tradition. The United States, on the other hand, is a great and powerful state, still seeking its national definition within an Anglo-Saxon tradition.

On the island, Puerto Ricans have successfully resisted cultural assimilation by the United States.[47] Even those who have moved to the con-

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44. Political Code, *supra* note 22, art. 10.

45. *Id.* art. 11.

46. While the American Indians were already settled in what is now the United States, they also migrated to this continent many centuries ago. At the time of discovery and thereafter, subsequent settlers, mostly of European stock, took the American Indians' land and either assimilated, exterminated or segregated them to reservations.

47. Early in the period of colonization, at the beginning of the century, the United States attempted to impose English as the vehicular language of learning in the public schools of Puerto Rico; it soon had to abandon this programme. With the creation of the Commonwealth in 1952, an attempt was made locally to establish English and Spanish as the vehicular languages of government; that programme also failed and had to be aban-

tinent have more often than not formed a subculture where their island culture is still very strong. As the Supreme Court of Puerto Rico and federal courts in New York, Connecticut, Massachusetts and Illinois have pointed out, often times the migration of the Puerto Rican to the continental United States is more a matter of economics and employment, where a return to the island is envisioned. Since it is now fairly easy to travel between the continent and Puerto Rico, it is even more difficult to determine in certain cases whether Puerto Ricans working and living on the continent have actually changed domicile, and thereby, have legally lost their status as Puerto Ricans. It is even harder to determine to what extent they have been assimilated into Anglo-Saxon culture, and to what extent they remain culturally joined to their island of origin. Nevertheless, the Puerto Rican presence in the continental United States[48] has resulted in a considerable number of Puerto Ricans having been born in one of the fifty states or the District of Columbia, thereby acquiring constitutional citizenship instead of legislative citizenship.

The legal relationship existing between Puerto Rico and the United States, and the policies of the latter toward the former, have created a maze wherein concepts of citizenship, domicile, residence, nationality and ethnicity are strongly intertwined. It is within this labyrinth that the answer to the question of possible involuntary expatriation lies. Should Puerto Rico become or be made an associated republic or an independent state?

IV. EXPATRIATION

A. *Voluntary Expatriation of Constitutional and Legislative United States Citizens*

A citizen of the United States may lose his citizenship voluntarily or involuntarily, depending on certain acts he must carry out or which Congress may require of him. While in the beginning there was some doubt as to whether a citizen in the United States could expatriate himself by an act of his own without the consent of the state,[49] it is now generally held that a citizen of the United States may voluntarily relinquish, repudiate or renounce his citizenship.[50] However, the burden of proof to show that expatriation has been voluntarily achieved rests upon the expatriate himself.[51]

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doned although the law remained on the books, unenforced.

48. It has been estimated that there are upwards of two million Puerto Ricans living and working in the United States. *See, e.g.*, U.S. DEPARTMENT OF LABOR, MONTHLY LABOR REVIEW (1989).

49. *See, e.g.*, Shanks v. Dupont, 28 U.S. 242, 246, 7 L.Ed. 666 (1830); Inglis v. Trustees of Sailor's Snug Harbour, 28 U.S. 99, 7 L.Ed. 617 (1830).

50. *See, e.g.*, Perkins v. Elg, 307 U.S. 325, 334, 59 S.Ct. 884, 83 L.Ed 1320 (1939); Kennedy v. Mendoza-Martinez, 372 U.S. 144, 159 n. 11; Perez v. Brownell, 356 U.S. 44, 48-49, 78 S.Ct. 568, 2 L.Ed.2d 603 (1958) (Warren, C.J., dissenting).

51. Vance v. Terrazas, 444 U.S. 252, 100 S.Ct. 540, 62 L.Ed.2d 461 (1980), *on remand* to

Where Congress has attempted to establish certain acts as indicative of a citizen's intention to expatriate himself, the burden of proof is shifted to the government alleging voluntary expatriation. It is not enough for Congress to establish the acts under which a citizen may expatriate himself. If challenged by the citizen, the government must prove not only the act itself, but the intention of the citizen to expatriate himself through such an act. The Supreme Court of the United States has stated that, in the last analysis, expatriation depends on the will of the citizen rather than on the will of Congress.[52]

There is no question that by applying United States law to a hypothetical independent state or associated republic of Puerto Rico, Congress could establish conditions under which voluntary expatriation could be achieved by United States citizens wishing to renounce, relinquish or repudiate such citizenship. It is also not ruled out that the legislature of an independent Puerto Rico (whether associated or not to the United States) could require as a condition of Puerto Rican citizenship that individuals holding United States citizenship relinquish, repudiate or renounce it.[53] This would apply to both constitutional and legislative citizenships.

B. *Involuntary Expatriation of Constitutional United States Citizens*

Both *Vance v. Terrazas* and *Afroyim v. Rusk* may be read as cases relating to voluntary expatriation (an act voluntarily done resulting in expatriation) or as cases dealing with involuntary expatriation (expatriation imposed due to certain actions of the citizen). In fact, both Afroyim and Terrazas were fighting expatriation on the grounds that their acts themselves could not result in expatriation without a voluntary renunciation, repudiation or relinquishment of United States citizenship. In those cases, we are faced with the much more difficult question of whether Congress can expatriate United States citizens against their will; the question of involuntary expatriation.

Here, we must divide the question into two areas: (1) involuntary expatriation of constitutional citizens, and (2) involuntary expatriation of legislative citizens. Usually, the problem of involuntary expatriation of United States citizens has centered around the question of whether Congress can take away the citizenship of a person born in one of the fifty states or the District of Columbia, or of a person naturalized according to the procedures established for naturalization. Exercising its power to govern the process of immigration and naturalization, Congress has from time to time legislated in this area. Usually, Congress has established some acts which, if committed by a legislative or constitutional citizen,

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district court, 494 F. Supp. 1017 (N.D. Ill. 1980).

52. *Id.* at 262, *relying on* Afroyim v. Rusk, 387 U.S. 253, 87 S.Ct. 1660, 18 L.Ed.2d 757 (1967). It should be noted that in both *Terrazas* and *Afroyim*, the citizens involved held what is called "constitutional" or Fourteenth Amendment citizenship.

53. Whether or not this type of expatriation would be held by United States courts to be voluntary is an open question.

may result in the loss of citizenship involuntarily. These acts include, among others:

1. Naturalization in a foreign state;

2. oath of allegiance to a foreign state;

3. serving in the armed forces of a foreign state;

4. serving in the government of a foreign state; and

5. voting in the political elections of a foreign state.

The Supreme Court of the United States has had an uneven history of decisions in this area. In *Terrazas*,[54] the oath of allegiance to a foreign state was held to be insufficient *per se* to cause expatriation. In *Afroyim*,[55] the Supreme Court held that voting in the political elections of a foreign state did not *per se* constitute grounds for involuntary expatriation.[56]

In *Trop v. Dulles*,[57] a divided Supreme Court with no majority opinion held a federal statute unconstitutional for establishing involuntary expatriation of a person who, in time of war, deserts from the armed forces. Five years later, a majority of the Court held that Congress could not constitutionally deprive someone of his citizenship on the grounds that he had remained outside the jurisdiction of the United States in time of war or national emergency, in order to avoid his military obligations.[58]

In *Schneider v. Rusk*,[59] a majority of the Court declared a federal statute unconstitutional which expatriated a naturalized citizen on the grounds that she had returned to her country of origin and had continuously resided therein for over three years. The Court uses broad language in its five to four majority opinion in *Afroyim* to indicate that Congress has no general power, either express or implied, to take away citizenship without the consent of the person involved.[60] Writing for the majority, Justice Black relied on the Fourteenth Amendment to point out that the first sentence of the Amendment was intended to protect citizens born or naturalized in the United States, and to give them permanence and secur-

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54. Terrazas, a citizen of the United States, applied for Mexican citizenship. In his application, he expressly renounced his submission, obedience and loyalty to any foreign government, especially to that of the United States. *See Vance*, 444 U.S. at 225.

55. Afroyim, a naturalized United States citizen of Polish origin and Jewish faith, voted in political elections for the Israeli Knesset while in Israel, pursuant to Israeli laws granting automatic citizenship to Jews who reached Israeli territory. *See Afroyim*, 387 U.S. at 253.

56. *See id.* at 254. The Court thus reversed its decision in *Perez*, 353 U.S. at 44, where a five to four majority upheld the constitutionality of a federal statute which deprived Perez, a citizen of the United States by birth in the continental United States, of his citizenship for voting in a Mexican political election, of which country he was also a citizen.

57. Trop v. Dulles, 356 U.S. 86, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958).

58. *See Kennedy*, 372 U.S. at 144.

59. Schneider v. Rusk, 377 U.S. 163,84 S.Ct. 1187, 12 L.Ed.2d 218 (1967).

60. *Afroyim*, 387 U.S. at 257.

ity of citizenship.[61]

The decisions in the preceding cases are the natural outcome of the dictum pronounced by Chief Justice Marshall in *Osborn v. Bank of the United States*,[62] and which it is pertinent to remember:

> [The naturalized citizen] becomes a member of the society, possessing all the rights of a native citizen, and standing, in the view of the Constitution, on the footing of a native. The Constitution does not authorize Congress to enlarge or abridge those rights. The simple power of the national Legislature, is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual.[63]

With regard to the involuntary expatriation of constitutional citizens, the standard of the law of the United States at the present time is twofold. If a person is born in one of the fifty states[64] or the District of Columbia, he is a citizen of the United States by virtue of the first section of the Fourteenth Amendment, and such citizenship cannot be taken away involuntarily. Furthermore, if a person is naturalized in the United States, the same clause confers the same rights.[65]

C. *Involuntary Expatriation of Legislative United States Citizens*

The granting of United States citizenship is not limited to that conferred by the Constitution through birth or naturalization. Congress has also on occasion legislated the granting of United States citizenship to persons born to United States citizens or naturalized outside of the United States. This type of citizenship, called legislative citizenship as opposed to constitutional citizenship, is subject to different treatment.

The leading case on this subject is *Rogers v. Bellei*.[66] Bellei was born in Italy to a United States citizen — his mother. He thus acquired citizenship by *jus sanguinis* pursuant to statutory law; however, to retain the

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61. *Id.* at 261.

62. Osborn v. Bank of United States, 22 U.S. 738 (1824).

63. *Id.* at 827.

64. We are not concerned here with whether such a citizen was born before or after the state attained statehood. Such a question might be interesting historically in relation to those states which were originally sovereign and independent, such as the original 13 colonies, Vermont, the Republic of Texas, the Kingdom of Hawaii, or perhaps those states which were carved out of the Northwest Territory or other incorporated territories. However, it is of little or no significance to the thesis developed herein.

65. However, Congress may establish preconditions for the validity of naturalization procedures and for the grant of citizenship itself. *See* Costello v. United States, 365 U.S. 265, 81 S. Ct. 534, 5 L.Ed.2d 551 (1961); Fedorenko v. United States, 449 U.S. 490, 101 S. Ct. 737, 66 L.Ed.2d 686 (1981).

Some cases have held that Congress has the power to require United States citizens to relinquish their citizenship when it is incompatible with certain acts (such as service in the armed forces of a country at war with the United States). *See Perez*, 356 U.S. at 44. However, this position was definitely rejected in *Vance*, 444 U.S. at 252.

66. Rogers v. Bellei, 401 U.S. 815, 91 S. Ct. 1060, 28 L.Ed.2d 499 (1971).

same, he would have to comply with a condition precedent.[67] The Court again split on a five to four majority, upholding the constitutionality of the statute on the grounds that Congress has the power to impose a condition of subsequent residence in the United States of citizens who do not fall under Fourteenth Amendment citizenship. The Court has not been faced with a case squarely on point with the Puerto Rican situation. Here, there is no question that those deriving citizenship from the Jones Act and its sequel hold what would be characterized as legislative United States citizenship. However, it does not appear that there is an explicit condition precedent attached to this grant of citizenship, unless it is understood that the continued subjection of Puerto Rico is a condition to continued citizenship. This may be argued either way. Nevertheless, it seems to me a stronger argument to oppose acquired rights and the deprivation of rights and privileges without due process of law on the one hand, than to oppose the power of Congress under the Territorial Clause to dispose of United States territory, and under the Treaty of Paris, to determine the political status and the civil rights of the inhabitants of Puerto Rico.

If we assume that United States citizenship as possessed by the inhabitants of Puerto Rico is an acquired right, then Congress would not be able to take away this citizenship without due process of law. On the other hand, if we consider that legislative citizenship does not have the same protection as constitutional citizenship, then there would be nothing to prevent Congress from passing legislation requiring United States legislative citizens in an independent Puerto Rico to make a choice between Puerto Rican and United States citizenship. Congress could include therewith a residency requirement within the territory of one of the fifty states or the District of Columbia.

Congress could also legislate to reverse United States legislative citizenship for Puerto Ricans by instituting a reverse procedure to that established in the Jones Act. In this scenario, citizens who wished to retain their citizenship would have to enter an appearance before a federal court of record in the United States (as such a court would not exist in an independent Puerto Rico, whether associated republic or not), with an additional requirement of residency in the United States. Whatever decision Congress were to make, an independent Puerto Rico could, as a condition to the granting of Puerto Rican citizenship, require that United States citizens who wish to become Puerto Rican citizens renounce, relinquish and repudiate their United States citizenship.[68]

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67. The statute created the obligation of the holder of such a citizenship to reside continuously in the United States for a period of five years between the ages of fourteen and twenty eight. *See* Immigration and Naturalization Act, *supra* note 35.

68. This would apply to constitutional citizenship as well.

V. INTERNATIONAL CRITERIA FOR STATE PROTECTION OF DUAL CITIZENS

Whether or not United States citizenship can be taken away from the inhabitants of Puerto Rico upon the accession of the island to independence is a problem for the United States, not for Puerto Rico. Under international law, a state grants citizenship according to its own laws. The conditions for granting United States citizenship are established in the Constitution and laws of the United States, and are subject to the rules of law as established therein. The same applies to an independent Puerto Rico. It would be up to Puerto Rico to grant its citizenship under the conditions established in its fundamental laws and other legislation.

Under normal circumstances, the rights of a dual citizen are those of the state he is in and to whom he owes allegiance. Thus, a person holding both United States citizenship and Puerto Rican citizenship would be subject to the rights, privileges and obligations imposed by the United States while he is within its jurisdiction, and to those of Puerto Rico while he is within that jurisdiction.

It should be noted that diplomatic protection cannot be exercised in cases of dual citizenship, when the person on whose behalf protection is sought also possesses the citizenship of the state against which the action is being sought. Problems might arise where one of the states attempts to impose its protection on such a dual citizen when he is within the jurisdiction of the other state. The problem may also arise where a third state has to determine which of the states of dual citizenship is to prevail in a situation under the third state's jurisdiction.

The leading case in this area is the *Nottebohm Case*,[69] where the question involved was whether Liechtenstein could seek redress from Guatemala on behalf of a citizen who was a dual citizen of both.[70] The

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69. Liechtenstein v. Guatemala, 1955 I.C.J. 4 [hereinafter Nottebohm Case].

70. Nottebohm was born in Hamburg, Germany, on 16 September 1881. He was a German citizen by birth and held that citizenship when he applied for naturalization in Liechtenstein in October, 1939. He established his domicile in Guatemala in 1905 and lived there continuously until 1943, that is to say until the occurrence of the events which constitute the basis of the dispute. At the date when he applied for naturalization in Liechtenstein, Nottebohm had been a German citizen from the time of his birth. He had always retained his connections with members of his family who had remained in Germany and he always had business connections with that country. Although at the time of application Germany had been at war for a month, nothing in his application indicated that Nottebohm was motivated by any desire to disassociate himself from the government of his country. He was settled in Guatemala from 1905 to 1943, when he was removed therefrom as a result of war measures. After the war, he attempted to return to Guatemala.

The Court held that Nottebohm's actual connections with Liechtenstein were too tenuous, as he had no settled abode and no prolonged residence. After naturalization, he returned to Guatemala until his expulsion. In 1946, he attempted to return to Guatemala which refused to admit him. The court therefore concluded that, despite the grant of citizenship, Nottebohm's ties were not strong enough to oppose the claims of Guatemala, with which he had long standing and close connections, a link which the naturalization in no way weakened.

decision therein rested essentially on the grounds that, citizenship by itself did not establish the duty or right of Liechtenstein to seek the protection of such a citizen, and that such a claim had to be established under substantial links with the citizen.

In the *Mergé Case*,[71] the Italian-United States Conciliation Commission was called upon to determine whether the United States had standing under international law to pursue the claims of a dual national of the United States and Italy.[72] The Commission set forth the two main principles governing such a situation. First, referring to the scope of diplomatic protection as a question of public international law, the Commission found that the sovereign equality of states bars protection on behalf of persons who are simultaneously citizens of the defendant state. The second principle, that of effective citizenship, has its origins in private international law, and was created in relation to the individual in order to deal with those cases in which the courts of a third state had to resolve a conflict of citizenship laws. Both of these principles complement each other.[73]

The principle based on the sovereign equality of states (which excludes diplomatic protection in the case of dual citizenship) must yield before the principle of effective citizenship, whenever such citizenship is that of the claiming state. However, it must not yield when such predominance is not proved, because the first of these two principles is generally recognized and may substitute a criterion of practical application for the elimination of any possible uncertainty.[74] This principle has been adopted in treaty law[75] and applied by the international tribunals.[76] Accordingly, under international law, these concepts (set out especially under the *Nottebohm* and *Mergé* cases), and not principles of constitutional law, would have to be applied in conflicts involving persons in an independent Puerto Rico who possessed both United States and Puerto Rican citizenship.

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71. The Mergé Case (Italy v. U.S.), Italian and United States Conciliation Commission, 14 U.N. Rep. Int'l Arb. Awards 236 (1955).

72. A citizen of the United States married an Italian citizen and, having acquired Italian citizenship, established her domicile in Frascati, Italy. She claimed compensation from Italy for damages for the loss of private property as a result of World War II. The Italian Government rejected the claim on the grounds that Mergé was an Italian citizen by marriage under Italian law. The Commission held in favor of the Italian Government. *See id.* at 443-45.

73. *See id.* at 454.

74. *Id.*

75. 1930 Hague Convention Concerning Certain Questions Relating to the Conflict of Nationality Laws, art. 4. (A state may not afford diplomatic protection to one of its nationals against a state whose nationality such person also possesses).

76. In the Iran-United States Claims Tribunal, the Tribunal declined to apply the principle expressed in Article 4 of the 1930 Hague Convention. The Tribunal based its decision on two grounds: (1) that the claims before it were not of a diplomatic nature; and (2) that the validity of the rule was doubtful considering its age, changes in the international arena, and the few (twenty) states who were parties to the Convention. *See* Iran-United States Claims Tribunal, Case No. A/18, Concerning the Question of Jurisdiction Over Claims of Persons with Dual Nationality, 23 I.L.M. 489 (1984).

VI. CONCLUSIONS

Despite the maze of legislation and the movement of human beings which results in the acquisition of certain rights, in the case of Puerto Rico it may safely be said that there are essentially two kinds of United States citizens inhabiting the island: (1) those who claim United States citizenship derived from the Fourteenth Amendment, and (2) those who claim United States citizenship derived under legislation enacted by the Congress of the United States. The former may be called constitutional citizens, and the latter may be called legislative citizens.

Under United States Constitutional Law, constitutional citizens may expatriate themselves voluntarily; however, they may not be expatriated involuntarily. Under the same law, legislative citizens may be expatriated involuntarily, provided due process of law and the doctrine of acquired rights are observed. These persons may also expatriate themselves voluntarily.

Dual citizenship is a status which results when the laws of two different states confer citizenship upon the same person. Under international law, the principle of sovereign equality of states bars diplomatic intervention on behalf of a person holding dual citizenship by one of the states as against the other. Under international law, and under certain conditions, the principle of effective citizenship may be used to establish the real linkage between a person and the state whose citizenship he claims, where more than one citizenship is held by that person.

In the case of an independent Puerto Rico, persons holding United States constitutional citizenship as of the moment of independence may not be deprived of it by the United States. In the case of an independent Puerto Rico, persons holding United States legislative citizenship as of the moment of independence may be deprived of that citizenship by the United States, pursuant to Congressional legislation consistent with the acquired rights of the person and the observance of due process of law in the taking.

In the case of an independent Puerto Rico, the Republic of Puerto Rico may require, as a condition to granting Puerto Rican citizenship that either United States constitutional citizens or United States legislative citizens, or both, repudiate, renounce or relinquish such citizenship. In the case of an independent Puerto Rico, persons holding dual United States and Puerto Rican citizenship would be subject to the jurisdiction of the state in which they find themselves at a given moment, as citizens of that state.

In the case of an independent Puerto Rico, persons holding dual United States and Puerto Rican citizenship cannot avail themselves of the diplomatic protection of one state while on the territory of the other because of the principle of the sovereign equality of states. In the case of an independent Puerto Rico, persons holding dual United States and Puerto Rican citizenship may, under certain circumstances, show that one of these citizenships prevails over the other by virtue of the principle of ef-

fective citizenship.

In the case of an independent Puerto Rico in free association with the United States (associated republic), the same conclusions apply as those reached for an independent Puerto Rico. In the case of an independent Puerto Rico in free association with the United States (associated republic), provisions for a common citizenship would be subject to the treaty power of the associated states (Puerto Rico and the United States).