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INTRODUCTION / INTRODUCCIÓN

U.S. Citizenship in Puerto Rico: One Hundred Years After the Jones Act

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On March 2, 1917, nineteen years after the United States (US) annexed Puerto Rico, Congress enacted the Jones Act, an organic or territorial law providing for the collective naturalization of the archipelago's inhabitants. Whereas prior US treaties of territorial annexation and organic or territorial government legislation contained provisions either providing for or promising the future collective naturalization of the inhabitants of annexed territories, in the case of Puerto Rico and the other ultramarine possessions annexed during the Spanish-American War of 1898, the United States invented a local citizenship to rule the inhabitants of the newly annexed Spanish territories. Although individual Puerto Ricans were able to acquire a US citizenship via individual naturalization prior to 1917, the Jones Act is the first organic act to provide for the collective naturalization of the inhabitants of Puerto Rico.

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Yet, while the Jones Act changed the legal and to some degree political status of Puerto Ricans, it did not change the territorial status of Puerto Rico. Following the Spanish-American War of 1898, United States jurists and policymakers invented a new territorial status to govern the newly annexed Puerto Rico, Guam, and the Philippines, territories primarily inhabited by non-Anglo-Saxon or "alien races." Also known as the unincorporated territory, the new territorial status enabled U.S. law and policymakers to selectively rule Puerto Rico as a foreign possession in a domestic or constitutional sense. Stated differently, because Puerto Rico was not "incorporated," U.S. law and policymakers could govern Puerto Rico as a territorial possession that belonged to, but was not a part of, the United States. Local supporters of a stronger relationship between the archipelago and the mainland believed that the collective naturalization of Puerto Ricans "incorporated" or made Puerto Rico a part of the United States, a precondition for eventual statehood. A century later, and recently reaffirmed by the U.S. Supreme Court, Puerto Rico remains an unincorporated territory, and U.S. law and policymakers continue to argue that Puerto Ricans are unequal citizens that belong to, but are not a part of the United States. Using the Jones Act as a point of departure, this volume seeks to rethink the legacy of the collective naturalization of Puerto Ricans.

In anticipation of the centennial of the Jones Act of 1917 (1917–2017), the Center for Puerto Rican Studies at Hunter College, CUNY sponsored a symposium titled "One Hundred Years of the Jones Act and Puerto Rican U.S. Citizenship" on October 15–16, 2015. The two-day symposium brought together scholars to offer critical reflections on various dimensions of the Jones Act of 1917 and its legacy. Central to this symposium was an effort to

create an interdisciplinary space where scholars could offer new reflections on the Jones Act citizenship and its impact on Puerto Ricans. To date, this has been the only and most comprehensive forum dedicated to a reflection of the Jones Act citizenship debates.

Ancillary to the conference was also the creation of special volume that could provide interested scholars, students, and members of the community at large with a helpful guide to study the Jones Act citizenship. Participants were invited to subsequently submit revised versions of their presentations for publication in a special issue of the *CENTRO Journal*. The articles included in this volume were selected after a rigorous peer reviewed process and provide new perspectives on the history and legacy of the Jones Act citizenship of 1917.

Although the articles in this volume address a wide range of issues, three common threads persist throughout. All contributions recognize the unequal nature of the Jones Act citizenship, a congressional statute that naturalized the inhabitants of Puerto Rico without changing the island's territorial status. To varying degrees, the authors recognize a mutually constitutive relationship between Puerto Rico's territorial status and the citizenship status of Puerto Ricans. More importantly, the articles recognize how the case of Puerto Rico can expose the limits and contradictions of US territorial law and policy. To this extent, this volume challenges the reader to recognize the undemocratic nature of the Jones Act citizenship.

Notwithstanding the consistent overlap(s) of the contributions, the articles are divided in four loosely defined sections. The first article or note provides an overview of the history of the debates over the extension of US citizenship to Puerto Rico. The next four articles address various conceptual, theoretical and interpretive debates over the status of insular or archipelago-born citizens. The following three articles address both historical dimensions of the Jones Act citizenship and the intersection with US immigration/migration law and policy. The final two articles focus on the question of the historical intent of the citizenship clause of the Jones Act of 1917.

Drawing on the symposium's introductory remarks, Charles R. Venator-Santiago sketches in broad strokes the history of the citizenship legislation and policies developed to govern the Puerto Rican archipelago. This note begins with a clarification of Puerto Rico's territorial status. In addition, Venator-Santiago maps the enactment of legislation extending four different types of citizenship to Puerto Rico, namely a Puerto Rican citizenship (1898/1900–1938); access to individual naturalization (1906–); collective naturalization

(1917–1940); and *jus soli* or birthright citizenship (1941–present). The note concludes with a discussion of the contemporary debates over the statutory nature (post-1989) of the US citizenship available to persons born in Puerto Rico. This note is intended to provide a historical and conceptual context for the articles included in this volume.

Smith's contribution drew upon his keynote address to argue that the Jones Act of 1917 "created a then-novel form of differentiated citizenship" for the inhabitants of an unincorporated territory, that is for the inhabitants of "a territory that Congress has not put on the path to statehood."

Rogers M. Smith's contribution, "The Unresolved Constitutional Issues of Puerto Rican Citizenship," uses the concept of "differentiated citizenship" to explain the unequal nature of the statutory citizenship status of persons born in Puerto Rico. Professor Smith is the author of *Civic Ideals* (1997), one of the most important contemporary histories of United States citizenship, and one of the most influential political scientists writing about citizenship in the U.S. academy. Smith's contribution drew upon his keynote address to argue that the Jones Act of 1917 "created a then-novel form of differentiated citizenship" for the inhabitants of an unincorporated territory, that is for the inhabitants of "a territory that Congress has not put on the path to statehood." Smith's argument rests on the premise that the citizenship legislation extended to Puerto Rico merely confers a "statutory" rather than a constitutional status on persons born in Puerto Rico. Central to his argument is an interpretation of three dimensions of the legal nature of the US citizenship extended to Puerto Ricans.

First, Smith contends that the source of US citizenship extended to Puerto Rico is statutory and not constitutional. From the outset, Smith recognizes that the Nationality Act of 1940 replaced the Jones Act of 1917, subsequently conferring a birthright (or *jus soli*), rather than a naturalized (or *jus sanguinis*), citizenship on all persons born in Puerto Rico after January 13, 1941. However, despite Christina Duffy-Burnett's (2005) important dismissal of the constitutional distinction between incorporated and unincorporated territorial statuses, Smith reasons, because Puerto Rico remains an unincorporated territory the ensuing birthright citizenship is merely statutory rather than the Citizenship Clause of the Fourteenth Amendment, the constitutional source of

jus soli or birthright citizenship. Smith's interpretation not only suggests that the United States has the power to create a hierarchy of birthright citizenships (a constitutional and a statutory/territorial), but also that Congress, a creature of the constitution, can enact a birthright citizenship statute that is not anchored on the Fourteenth Amendment, the only source of birthright citizenship in the US constitution. Notwithstanding, the statutory nature of this citizenship confers an unequal and fragile citizenship status on Puerto Ricans.

Second, Smith further examines two dimensions of the possible denaturalization of Puerto Ricans. Smith begins by echoing or rather amplifying an interpretation offered by John H. Killian (1992) in a 1989 Congressional Research Service Memorandum affirming the power of Congress to enact legislation that would unilaterally denaturalize persons born in Puerto Rico should the island become a sovereign republic. Notwithstanding José Julián Álvarez-González (1990) response to the 1989 CRS Memo and his interpretation of Supreme Court precedents such as *Afroyim v. Rusk* (1967), barring Congress from collectively denaturalizing Puerto Ricans, Smith concludes that the ability of Congress to strip Puerto Ricans of their birthright citizenship creates an unequal differentiated citizenship. In addition, Smith revisits his prior (2001) critique of the failed efforts by Puerto Ricans to seek a certificate of loss of naturalization to further explain how the statutory nature of the U.S. citizenship for Puerto Rico places Puerto Ricans in an unequal situation. To be sure, soon after the 1989 CRS Memo (Killian 1992) was released, advocates of Puerto Rican independence sought to self-expatriate by seeking a certificate of loss of naturalization. Under prevailing law, citizens seeking to self-expatriate were required to travel outside of the United States and begin a process of renouncing their citizenship. Several Puerto Ricans attempted to do this, but United States Federal Courts refused to allow Puerto Ricans to self-expatriate. As Smith notes, the differentiated citizenship status of Puerto Ricans ascribes on its bearer an unequal status, subject to the arbitrary denaturalization by a unilateral act of Congress and simultaneously barred from self-expatriating.

Finally, drawing on T.H. Marshall's (1950) classic interpretation of citizenship as a vehicle for the acquisition of civil, political, and social rights, Smith explains that Puerto Rico's unincorporated status historically enabled the US government to limit the extension of civil, political, economic and social rights. To be sure, the basic premise of the doctrine of territorial incorporation established that Congress can enact legislation to extend or withhold

constitutional provisions as well as Federal programs more generally (USGAO 1991). Likewise, as Smith notes, because Puerto Rico is an unincorporated territory its inhabitants do not possess the same political rights available to the residents of states. Again, as Duffy-Burnett (2005) has previously demonstrated, the choice to extend or withhold constitutional provisions or Federal programs is political and not a constitutional requirement. To this extent, Smith's underlying interpretation is a bit overly broad. However, Smith analysis is historically accurate and reinforces the ways that Congress and the Federal government have used an unequal or second-class citizenship to govern Puerto Ricans within the US polity. Smith's contribution is especially important because it provides a comprehensive analysis of the unequal status ascribed to Puerto Ricans by the prevailing interpretation of the citizenship statutes enacted for Puerto Rico. Short of granting statehood on Puerto Rico, Smith's argument concludes with a hopeful claim that the U.S. will not abandon Puerto Ricans.

In "Citizenship and Equality in an Age of Diversity," renowned constitutional scholar Sanford Levinson examines how the case of Puerto Rico pluralizes nationalist legal and political narratives of United States identity and equality. Levinson's contribution is divided in two parts. The first part draws on the Puerto Rican experience to challenge historical nationalist narratives of U.S. identity anchored on founding documents such as the *Federalist*. The second part compares and contrasts various dimensions of the statutory citizenships of Puerto Ricans and Native Americans.

Levinson begins by discussing how the case of Puerto Rico challenges prevailing founding narratives of national identity and their homogenizing tendencies. To be sure, founding nationalist narratives have been premised on the ability to create a national sense of "We the People" by fostering the assimilation of an otherwise diverse population and promising equal membership in the United States political community. The case of Puerto Rico offers an interesting challenge to these founding myths. For more than a century, US law and policymakers have governed Puerto Rico as an unincorporated territory, a territory not meant to become a state of the Union. More importantly, for more than a century law and policy has affirmed the unequal status of Puerto Rico within the U.S. polity. Levinson's contribution examines how on the one hand the nationalist narratives of U.S. identity seek to homogenize diverse members of the polity as a precondition for equal membership, while simultaneously affirming the unequal and exclusionary diversity of Puerto Ricans.

Moreover, whereas Native Americans have been excluded barred from acquiring a Fourteenth Amendment citizenship on account of their allegiance to a semi-sovereign political community, Puerto Ricans are able to acquire a Fourteenth Amendment citizenship as a result of birth in the United States.

In the second part of his article, Levinson compares and contrasts some dimensions of the statutory citizenships of Puerto Ricans and Native Americans. Like T. Alexander Aleinikoff (2002, 98), Levinson begins by establishing some clear distinctions between the experiences of Puerto Ricans and Native Americans. To be sure, whereas Native American spaces have been ascribed a semi-sovereign status, Puerto Rico is an unincorporated territory subject to Congress. Moreover, whereas Native Americans have been excluded barred from acquiring a Fourteenth Amendment citizenship on account of their allegiance to a semi-sovereign political community, Puerto Ricans are able to acquire a Fourteenth Amendment citizenship as a result of birth in the United States. Echoing the prior work of Aleinikoff, Levinson compares several dimensions of the statutory citizenships of Native Americans and Puerto Ricans who acquired their citizenship under the terms of the Jones Act of 1917. This comparison further demonstrates how both Native Americans and Puerto Ricans have been excluded from equal membership in the U.S. polity. For example, Levinson notes, Congress has chosen to enact legislation extending special civil rights to each population rather than to recognize the application of the Constitution's bill of rights in each territorial space. At the same time Levinson opens the door for a reexamination of the possibilities of rethinking Federal notions of rights in different cultural contexts, largely driven by the autonomic status created by the unequal and exclusionary treatments of these two populations. Stated differently, Levinson's argument suggests that the exclusion Native American domestic dependent nations and Puerto Rico's unincorporated status may create local opportunities to develop more expansive and egalitarian (in a cultural context) citizenships.

Judge Juan R. Torruella's contribution, "To Be or Not to Be: Puerto Ricans and Their Illusory US Citizenship," explains how Puerto Rico's territorial status has resulted in the creation of a separate and unequal citizenship for Puerto Ricans. Judge Torruella is not only an important legal scholar in his own right, but in his capacity as Judge for the First Circuit Court of Appeals

has also been a protagonist in ongoing jurisprudential challenges to Puerto Rican's subordinated status. Judge Torruella's article draws from his opening keynote speech and incorporates an analysis of a number of court rulings and laws enacted in the intervening period. His article is divided in two parts. Judge Torruella begins by explaining how the Insular Cases jurisprudence has enabled the creation of a separate and unequal citizenship for Puerto Ricans. He then provides a series of important critiques of contemporary Federal jurisprudence and legislation for Puerto Rico that ascribes a subordinated status on Puerto Ricans and other U.S. citizens residing in the island. Judge Torruella's article illustrates the contradictory, and to a certain degree, undemocratic nature of the U.S. laws and policies used to rule Puerto Ricans.

In the first part of his article, Judge Torruella argues that underlying the logic of the Insular Cases, the Supreme Court rulings that have historically shaped the contours *and* substance of the status of Puerto Rico within the United States were based on a racist ideology that sought to create a separate and unequal territorial status to govern non-white populations. In other words, the unincorporated territorial status ascribed to Puerto Rico was designed to treat the island as a territory that belonged to but was not a part of the Anglo-American polity. The ensuing development of a doctrine of territorial incorporation further enabled law and policymakers to rule US citizens residing in Puerto Rico as separate and unequal members of the US polity. Through a lucid and clear reading of the historical development of the doctrine of territorial incorporation, Judge Torruella explains how the Federal court rulings in the aftermath of the Spanish-American War of 1898 not only created a subordinated territorial and membership status, but how Supreme Court rulings have subsequently continued to reaffirm the unjust and unequal treatment of Puerto Ricans. The present separate and unequal status of U.S. citizens residing in Puerto Rico, Judge Torruella demonstrates, rests on the perpetuation of racist Federal jurisprudence that has since been rejected in the U.S. mainland.

Like Smith, in the second part of his article Judge Torruella explains how the separate and unequal status of Puerto Ricans has been used to legitimate the enactment of discriminatory laws and policies for Puerto Rico. Central to Judge Torruella's argument is an examination of continued use of the doctrine of territorial incorporation to justify the creation of unequal funding and discriminatory treatment of U.S. citizens residing in Puerto Rico in an array of areas including Medicare and Medicaid funding, the extension of bankruptcy

protections, the historical use of shipping laws, and the imposition of an unelected and undemocratic financial control board to exert plenary control over the island's budget. Judge Torruella's argument demonstrates how these discriminatory laws and policies create unequal conditions in Puerto Rico that undermine the ability of Puerto Rico and Puerto Ricans to develop a vibrant local economy and democracy. Judge Torruella's contribution to the debates is especially important because it exposes the how a racist ideology has endured for more than a century and continues to be the source of law governing the relationship between the United States and Puerto Rico.

In "Citizenship in the U.S. Territories," Neil Ware argues that United States sovereignty extends to all of its territories and therefore the Citizenship Clause of the Fourteenth Amendment applies *ex propio vigore* or on its own force in Puerto Rico and the other territories. Ware is the lead attorney for the *We the People Project*, a non-profit organization that has been at the forefront of various Federal lawsuits on behalf of U.S. territorial citizens. Ware's contribution is divided in three parts. The first part provides an overview of ongoing litigation seeking to recognize the application of the Citizenship Clause of the Fourteenth Amendment in American Samoa. Linked to this case is also a historical overview of the legal history of US territorial citizenship. The article concludes with a critique of the Insular Cases and its unconstitutional application to Puerto Rico and the other U.S. territories. This article revisits the anti-imperialist critique of U.S. territorial law and policy.

Ware's argument harkens back to a series of legal debates over the constitutional status of the Spanish ultramarine territories (Guam, Puerto Rico and the Philippines) annexed in the aftermath of the Spanish-American War of 1898 (Torruella 1988, 24–32). For the most part, the debates were divided in three camps with three distinct interpretations of the status and legal sources of power available to rule the newly annexed territories. Imperialists generally argued that territories in general were not a part of the United States for constitutional purposes; and therefore the Federal government possessed an extraconstitutional power to govern Puerto Rico and the other annexed territories. In contrasts, anti-imperialists generally invoked past precedents to argue that once a territory was annexed it became a part of the United States and all constitutional provisions not locally inapplicable (e.g., political participation) were operative *ex propio vigore* or on their own force. A so-called "Third View" suggested that Congress possessed a plenary power to "incorporate" a territory into the Union at which point the all- constitutional

provisions not locally inapplicable would become operative in the territory. However, if Congress did not enact legislation incorporating a territory, then only fundamental rights were operative in the territory. Legal scholars generally agree that the so-called Third View interpretation was embraced by Congress and the Supreme Court providing the ideological foundations of the U.S. territorial law and policy used to govern all territories annexed, occupied, or leased after 1898. Ware's argument offers a contemporary critique of the imperialist and Third View interpretations.

Stated differently, citing a series of key Court rulings, Ware contends that all US territories are located within the US sovereignty for purposes of Citizenship Clause of the Fourteenth Amendment, the constitutional provision that grants birthright citizenship to most persons born in the United States.

Central to Ware's argument is a textualist reading of two Supreme Court precedents and their application to the territories. More precisely, Ware argues that in several nineteenth-century Supreme Court cases, including *Loughborough v. Blake* (1820), the Court establishes that territories are a constitutional part of the United States. In addition, in rulings like the *Slaughter-House Cases* (1872) and *U.S. v. Wong Kim Ark* (1898), the Court unequivocally established that territories were a part of the United States soil for birthright or *jus soli* citizenship purposes. Stated differently, citing a series of key Court rulings, Ware contends that all US territories are located within the US sovereignty for purposes of Citizenship Clause of the Fourteenth Amendment, the constitutional provision that grants birthright citizenship to most persons born *in* the United States.[1] In sum, Ware contends, birth in Puerto Rico, Guam, American Samoa, the US Virgin Islands, and the Commonwealth of the Northern Mariana Islands is tantamount to birth in New York or any other state of the United States.

Drawing on the latter reading of nineteenth-century precedents, Ware proceeds to critique the doctrine of territorial incorporation and, like Judge Torruella, dismisses the legacy of the Insular Cases as unconstitutional and inconsistent with prevailing precedents. Ware notes that the Insular Cases do not address the question of the application of the Fourteenth Amendment in the territories. More importantly, because Puerto Rico is located within

the sovereignty of the United States, the doctrine of territorial incorporation is unnecessary and unconstitutional. To this extent, Ware further reasons, Congress enactment of the collective naturalization provision of the Jones Act of 1917 was unnecessary because the Fourteenth Amendment was already applicable on its own in Puerto Rico. Accordingly, Federal Courts should reject the legacy of the doctrine of territorial incorporation and should begin to treat US territories as constitutional parts of the United States polity.

In "Dual Consciousness About Law and Justice: Puerto Ricans' Battle for U.S. Citizenship in Hawai'i," Susan Serrano looks at one instance in the experience of Puerto Rican migrants in the United States regarding claims of U.S. citizenship. She examines the obstacles faced by Puerto Ricans as they demanded recognition of their status as citizens and its related rights, in this case the right to vote in Hawai'i. This intersection between migration and citizenship assertion is an important area in understanding the meanings and consequences of U.S. citizenship to Puerto Ricans.

Migration to Hawai'i represents the earliest migration of Puerto Ricans to the US after 1898. The status of Puerto Ricans within the American polity before and after the grant of citizenship by the 1917 Jones Act reflects the dilemmas faced by island migrants going to the U.S. mainland and its territories like Hawai'i. Although not citizens before 1917, they were deemed to be US subjects, and the 1904 US Supreme Court decision in *Gonzales v. Williams* declared them to be not aliens with respect to US immigration laws. By hiring Puerto Ricans, US agricultural interests in places like Hawai'i and Arizona sought to circumvent laws prohibiting the contract of foreign labor (McGreevey 2008). Although US "nationals" (the bureaucratic category that came to define their citizenship status in the US after 1904), Puerto Ricans were deemed to be "foreign in a domestic sense" to US employers and communities, a labor force that could be subordinated and exploited due to their lack of citizenship. Making them citizens in 1917 complicated their status in the labor force for many U.S. employers and communities.

This is the story that Serrano's article highlights. She explores the status of Puerto Rican laborers in Hawai'i before and after the grant of citizenship in 1917. Serrano uses the events related to the struggle of Puerto Ricans in Hawai'i to gain the right to vote in *Sanchez v. Kalaoukalani* (1917) to reflect on how islanders aspired to use their recently gained citizenship rights to further their political and social status in the Pacific territory. As it happened in other parts of the United States, the grant of citizenship by the Jones Act did not

lead to their recognition as citizens nor to the acknowledgment of their rights by employers and government officials (McGreevey 2008; Thomas 2010). Such recognition could lead to their empowerment and thus to aspirations of changing their political and social status, as the issues in *Sanchez* point out. When Manuel Olivieri Sánchez decided to register to vote weeks after the Jones Act was enacted in Puerto Rico, the Honolulu city clerk David Kalaoukalani refused to register him. The Hawaiian bureaucrat refused to acknowledge Olivieri Sánchez as a U.S. citizen. This decision was sustained by the First Circuit Court judge who saw the case, basing his decision on the many confusing elements of the collective naturalization implemented by the Jones Act. He claimed that the Jones Act had naturalized only Puerto Ricans residing on the island at the time that the law was enacted; Olivieri Sánchez had lived in Hawai'i for many years. His lawyer declared that this decision made Olivieri Sánchez "a citizen of no country," a statement similar to that of proponents of Puerto Rican citizenship before 1917 who declared that they were "a people without a country." Hawai'i's Supreme Court later reversed the lower court's decision and held that Olivieri Sánchez had become a U.S. citizen according to the Jones Act and that he had the right to register and vote in Hawai'i.

For Serrano, this case reflects more that the struggle of Puerto Ricans to assert their U.S. citizenship and its concomitant rights. She contends that their struggle shows a "double consciousness" about their view of the law and rights, i.e., that at the same time that they struggled to assert their newly gained rights they were also aware of the law's limitations in transforming their social and economic status and in protecting them from exploitation, discrimination and prejudice. Serrano insists that the struggles of Puerto Ricans in Hawai'i to assert their political rights agree with the views of critical race theorists that emphasize the importance of rights assertion for subordinate groups—particularly for peoples of color in the United States—while at the same time acknowledging the role of the law in maintaining the status quo order.

Serrano tells of the 1919 petition by Puerto Rican workers in Hawai'i to the Puerto Rican government detailing their situation in that island and requesting more protection and support for island workers from this government. As she mentions, it led to an investigation by the Puerto Rican legislature. This incident led to the first Puerto Rican law in 1919 regulating the hiring of Puerto Rican workers on the island and providing some minimal guarantees of protection when they were hired to work in the United States. This is the historical precedent for the 1947 migration law approved by the Popular

Democratic Party (PPD—in Spanish) government that greatly influenced the flow of island migrants in the "great wave" of postwar migration to the United States. That Puerto Rican migrants in Hawai'i in 1919 sought support from Puerto Rico's government is indicative of a phenomenon that was repeated in other US Puerto Rican communities for many decades. In many instances migrants, would not be protected in their claims of rights or were even acknowledged as citizens, and often there were no institutions to support them or even hear their claims at all (McGreevey 2008). In most cases Puerto Rican migrants organized to redress their grievances; in others, they sought the protection or support of the Puerto Rican government or of US allies like Vito Marcantonio.

In "Acting Like an American Citizen," Daniel Acosta Elkan examines the claims made by several Puerto Ricans during the 1930s to Congressman Marcantonio regarding the charges made by U.S. agencies that they were—although born in Puerto Rico—not US citizens. This article, besides focusing once again on the issue of citizenship and Puerto Rican migrants in the US, also explores some of the inconsistencies created by the collective naturalization of Puerto Ricans by the 1917 Jones Act. The Jones Act collectively naturalized those declared to be "citizens of Porto Rico" in the 1900 Foraker Act. It also allowed for the individual naturalization of aliens and children of alien parents born in Puerto Rico. The Jones Act collectively or individually naturalized those residing in Puerto Rico at the moment the law went into effect. Those living or working outside of Puerto Rico, as well as some children of aliens born on the island, were not made US citizens under the Jones Act. Many of these Puerto Ricans found out about their status when applying for passports or other documents or when they tried to enter the United States or Puerto Rico coming from a foreign country. The anomalies of this status affected the lives of many well into the 1940s, as the articles in this *CENTRO Journal* issue by Elkan and Venator-Santiago illustrate. These two authors review the several revisions made to the Jones Act in order to clarify the status of those who—although they had been born in Puerto Rico—were excluded from citizenship in 1917.

Elkan uses the claims made by several Puerto Ricans to Marcantonio to explore what he calls the "narratives of citizenship." That is, how these individuals—whose citizenship status was questioned even though they were born in Puerto Rico—used traditional elements in the discourse on citizenship—belonging, participation, assertion of rights—to claim their right

to live not only in the United States but in Puerto Rico as well. Elkan also points out to what seems to be an apparent contradiction: how supporters of Puerto Rico's independence sustained the right of Puerto Ricans to be acknowledged as US citizens. Marcantonio was by this time the strongest supporter of independence in Congress (where he submitted several bills in this respect). María Más Pozo, one of the cases discussed by Elkan, expressed her strong support for independence to Marcantonio at the same time that she requested his support for her plea of US citizenship. The claims of US citizenship in these cases were related to the demands made by individuals to live in their own homeland or to enter freely into the metropolitan territory in search of jobs and a better economic future. These are issues that go to the heart of the relationship between citizenship and colonialism in Puerto Rico at this time: how can someone be an alien in the land where he or she was born? The inconsistencies of US territorial laws and policies and the character of the citizenship acquired via collective naturalization in the Jones Act produced this kind of dilemma.

The article by Elkan raises again the issue of representation for Puerto Ricans migrants in the US. Why these requests from Puerto Ricans asking support and help from Marcantonio? His congressional district included Puerto Rican El Barrio, and most Puerto Ricans saw him as the only representative and supporter of their interests in the United States. Puerto Ricans were not represented in Congress or even in places like New York City, where the dominant political institutions excluded them or limited their citizenship rights (Meyer 2002; Thomas 2010). Elkan points to the apparent contradiction that a strong supporter for Puerto Rico's independence like Marcantonio was also asserting the rights of Puerto Ricans to US citizenship. But for Marcantonio there was no contradiction: asserting their right to claim US citizenship was a means of fighting Puerto Ricans' status as "second-class" citizens in the United States—one that allowed for discrimination and prejudice—and of safeguarding their unrestricted entry into the United States in search for jobs that were not available in Puerto Rico in large measure due to US colonial policies.

Most of the analysis and public debate with respect to Puerto Ricans' US citizenship has focused on the grant of citizenship by the Jones Act. But as the background essay by Charles Venator-Santiago in this issue illustrates, the discussion in the United States regarding citizenship for Puerto Ricans go back to the moment the United States took over the island in 1898; furthermore,

deliberations on the citizenship status of many islanders continued for decades after the Jones Act was enacted. The latter—which collectively naturalized Puerto Ricans—was amended in 1927, 1934, and 1938, and was superseded in 1940 when the Nationality Act extended *jus soli* or birthright citizenship to Puerto Ricans. Thus, the Jones Act, as important as it might be, represents a specific moment in the history of US citizenship in Puerto Rico,

In "A Note on the Puerto Rican De-Nationalization Exception of 1948," Venator-Santiago examines the multiple amendments to the Jones Act during the 1920's and 1930s, and also the 1940 Nationality Act and the 1952 Immigration and Nationality Act that granted Puerto Ricans a *jus soli* citizenship. It is important to remember that the Jones Act collectively naturalized a group of people that lived in what was and is still regarded as an "unincorporated territory." Since under this legal perspective the island was not considered to be "a part of" the United States, being born in Puerto Rico—before or after 1917—was not considered to grant these people a *jus soli* or birthright citizenship. After two court decisions in Puerto Rico—one by the island's Supreme Court and the other by the federal district court—ruled that Puerto Rico had been incorporated after the grant of citizenship, the US Supreme Court intervened and declared in the 1922 decision of *Balzac vs the People of Porto Rico* that the grant of citizenship to the inhabitants of this territory did not implied territorial incorporation.

Puerto Ricans working or living abroad who had acquired U.S. citizenship through the Jones Act were at risk of losing their citizenship.

Congress amended the Jones Act in 1927, 1934, and 1938 to correct the inconsistencies created by collective naturalization in an unincorporated territory. Due to several reasons, some groups of people born in Puerto Rico before or after 1917 were excluded from US citizenship. Under the 1940 Nationality Act, an effort by the Roosevelt administration to revamp the multiple citizenship and naturalization statuses, birthright citizenship was extended to people born in Puerto Rico after the act's enactment. The 1940 legislation required that naturalized citizens living abroad for more than five years had to return to the United States or they would lose their citizenship. Puerto Ricans working or living abroad who had acquired U.S.

citizenship through the Jones Act were at risk of losing their citizenship. In 1948, under a bill proposed by then Resident Commissioner Bolívar Pagán, Congress amended the 1940 Nationality Act to exclude Puerto Ricans from its denationalization clause.

In this article Venator-Santiago also reviews an issue that is still widely discussed and remains a source of continued public and scholarly debate. He provides ample documentation to argue that Congress declared Puerto Rico an incorporated territory for purposes of citizenship since the 1940 Nationality Act. This raises the question of what is the constitutional source for birthright citizenship in Puerto Rico, a territory that is still considered to be an unincorporated territory by Congress and the Supreme Court. Venator-Santiago reviews the different theories presented in this debate, from the one that holds that Puerto Ricans' U.S. citizenship is statutory (emerging from the plenary powers of Congress), to those that propose that it is based on the Constitution's territorial clause, on the Constitution's power to naturalize citizens, or on the notion that US territories are within the constitutional bounds of the nation and thus birth in Puerto Rico is tantamount to a Fourteenth Amendment citizenship. Venator-Santiago insists that the only constitutional anchor for birthright citizenship is the Fourteenth Amendment, a perspective he contends is supported by the legislative history of the 1940 Nationality Act.

The articles by Pedro Cabán and by Bartholomew Sparrow and Jennifer Lamm lead us to that area of the literature that deals with the "causes" or "reasons" for the United States to grant citizenship via collective naturalization to Puerto Ricans in the Jones Act. In other parts of this volume—particularly in Venator-Santiago's review of the history of US citizenship legislation in Puerto Rico—we have discussed the process—the particular events and legislation and courts decisions—leading to the Jones Act. Although this process is as important (although not as well known) to understanding the Jones Act as the alleged reasons for the grant of citizenship, the debate on U.S. citizenship for Puerto Ricans—particularly in Puerto Rico—has focused on the latter aspect. Important among the alleged causes for the grant of citizenship in 1917 is the historical context: World War I, the need to recruit soldiers in Puerto Rico, and the growth in the independence fervor on the island are usually cited in this context. The strategic imperatives of the U.S. in maintaining its presence in Puerto Rico as an essential element in preserving its hegemony in the Caribbean is perhaps the alleged reason most alluded to explain the grant of citizenship to Puerto Ricans in 1917.

In his article "Puerto Ricans as Contingent Citizens: Shifting Mandated Identities and Imperial Disjunctures," Cabán examines the changing discourses on the debates regarding US citizenship for Puerto Ricans and links them to US colonial policies in the continental territories (before gaining statehood) and to those in the overseas territories acquired in 1898 (Puerto Rico and the Philippines). He pays particular attention to the role that race and racism played in framing US colonial policies and on the extension of US citizenship to peoples of color in both the continental and the overseas territories. He argues that, although racism was present in the construction of US colonial policies, strategic considerations were more important in explaining the grant of citizenship to Puerto Ricans. Cabán contends that racialized groups in the US are positioned differently within the racial hierarchy that defines American society and that the status of a specific group depends on how it is located within the imperial project. In an argument, similar to Lanny Thompson's (2002) study of the American imperial archipelago, he affirms that the US implemented different territorial policies in its overseas territories (Hawai'i, the Philippines, Puerto Rico) based on the racial differences ascribed to these populations.

For Cabán, although US policies towards the Philippines influenced those implemented in Puerto Rico, nevertheless, US policymakers differentiated between Puerto Rico and the Pacific territory. Puerto Ricans were considered to be closer to the mainstream ideal in the American racial hierarchy and continuum than Filipinos; thus, Puerto Ricans merited consideration for citizenship while Filipinos did not. He maintains that Puerto Ricans were granted citizenship only after the racial animus against them diminished among members of Congress. Cabán maintains that Mexicans in the former territories of Mexico and Puerto Ricans—because of their Hispanized backgrounds and alleged Europeanized civilizational traits—were considered by the American elite and US functionaries as better prepared to fulfill the duties of citizenship and be Americanized than other subordinated racial groups in the US.

Cabán also compares and differentiates Puerto Rico and the Philippines with Hawai'i and the other continental territories where the native populations were conquered and supplanted by white settlers. The latter territories became states of the union, although in the case of Hawai'i, Arizona and New Mexico it took decades for this to happen until whites were a dominant majority. The author holds that it was race—the number of white settlers in the territory—that determined the process and timing of incorporation as a state for the

continental territories. A white majority of the population implied that the territory was prepared for self-government and statehood. Cabán claims that although the impossibility of massive migration by white settlers to Puerto Rico was enough to prevent the territory from becoming a state, it was not enough to prevent the US government from granting citizenship to Puerto Ricans.

Cabán points to a contradiction in the discourse presented by US government officials and colonial functionaries: although they justified the subordination and exclusion of the new colonial subjects based on their supposed racial inferiority and incapacity for self-government, this fact nevertheless, did not prevent the US government from making these same subjects citizens in the case of Puerto Rico. He raises an issue that is often missed in the debates and the literature on Puerto Rico's colonial structure and citizenship: that the American government is not a homogenous entity and that very often the deliberations regarding colonialism and citizenship are fraught with dissensions and strong debates. Cabán concludes by arguing that the US government created a "contingent citizenship" in Puerto Rico, one that is unique in this country. A citizenship that is particularly defined by the territory where Puerto Ricans live and that assumes a different character once Puerto Ricans move to the US mainland. As contingent, it is one that could be taken away, since it is not rooted in the Fourteenth Amendment. He agrees with other scholars that U.S. citizenship has not implied equality of rights for Puerto Ricans, nor that it has eradicated colonialism from Puerto Rico.

In "Puerto Ricans and US Citizenship in 1917: The Imperatives of Security," Sparrow and Lamm make the argument that the main reason why the US granted citizenship to Puerto Ricans in 1917 was the strategic imperative that the United States was facing with the coming world war. They hold that US military planners and civilian policymakers sought to secure this Caribbean strategic outpost by granting citizenship to its dissatisfied inhabitants thus inducing a sense of loyalty among Puerto Ricans that would curtail the independence fervor growing at the time and also ease the conscription of young men into the military forces. The authors acknowledge that this argument has been made before by scholars (mostly Puerto Rican) but in their view without any significant proof, which they seek to provide. They rely on and try to expand the work by María Eugenia Estades on World War I and the grant of citizenship to Puerto Ricans (Estades Font 1988). Sparrow and Lamm also contend that the strategic imperative was the reason for the other measures included in the Jones Act related to government reform. Their argument

that the grant of citizenship was but one measure among several others that increased self-government in Puerto Rico to encourage the loyalty of Puerto Ricans to the US in order to secure the US permanence on the island.

They argue that it was the Philippines' military vulnerability in the Pacific in the face of other major imperial powers like Japan that led the US government to consider a future Filipino independence as conceived in the Philippines Jones Act of 1916.

Going back to 1898, Sparrow and Lamm review the strategic importance of Puerto Rico to US interests in the Caribbean as presented by military officers and policymakers from the executive and Congress and colonial functionaries like governor Arthur Yager and BIA's Frank McIntyre. In order to sustain their strategic argument regarding Puerto Rico, the authors compare this territory to U.S. military interests in the Philippine Islands. They argue that it was the Philippines' military vulnerability in the Pacific in the face of other major imperial powers like Japan that led the US government to consider a future Filipino independence as conceived in the Philippines Jones Act of 1916. To Sparrow and Lamm, although the main reason why the Jones Act was enacted in 1917 was the coming war, other factors in the historical context need to be considered. They indicate how Puerto Rican leaders like Luis Muñoz Rivera—then Puerto Rico's Resident Commissioner in Washington and president of the majority Union Party— supported the Jones Act more for the measures of self-government included in the act than for grant of citizenship itself. For the authors, the death of Muñoz Rivera during the bill's debate in Congress in 1917 was another factor in explaining the timing for the Jones Act, given that Puerto Ricans supported the act as a tribute to the dead leader. Sparrow and Lamm assert that governor Yager saw an urgent need to pass the Jones bill in order to deter the growing independence faction within Union Party, which Muñoz Rivera had struggled to contain. They also support the thesis that citizenship was granted to Puerto Ricans in 1917 to facilitate the conscription of Puerto Ricans for military service to fight in the war. Sparrow and Lamm conclude that the Wilson White House gave in to the recommendations of the War and Navy departments to grant citizenship to Puerto Ricans based on strategic reasons, and that citizenship was not a main objective of Jones Act but went along with the other measures to grant self-government to Puerto Ricans.

There is no doubt that U.S. strategic and military interests played a part in the debate regarding the extension of citizenship to Puerto Ricans in 1917. But it is important to consider that there were other factors as well. It is no surprise that these interests came to the fore in these deliberations given Puerto Rico's role in the American imperial project in the Caribbean and elsewhere. But we have to keep in mind that the American state is not homogenous, it is an institution with many different political, ideological and economic factions representing diverse interests and views. We propose that looking at the historical debate in the United States regarding the extension of U.S. citizenship to Puerto Ricans and a careful look at the process that led to the Jones Act provides a more nuanced perspective on the reasons for granting citizenship to Puerto Ricans in 1917. US policymakers and colonial functionaries presented several reasons besides military/strategic interests to justify making Puerto Ricans citizens during the decade and half debate that led to the Jones Act. Additionally, several factors—including US and Congressional politics—delayed the approval of the Jones Act so that it coincided with the onset of US intervention in World War I.

A common thread among contributions in this volume is a concern with the ways that the citizenship provision of the Jones Act of 1917 reaffirmed the unequal status of Puerto Ricans within the Anglo-American polity. To be sure, even though the Jones Act made Puerto Ricans members of the Anglo-American polity, it also did so without changing Puerto Rico's territorial status. In many ways, the Jones Act citizenship legitimated the separate and unequal treatment of the inhabitants of Puerto Rico, and unincorporated territory. Both the conceptual and historical analysis of the Jones Act citizenship show some of the ways that the Federal government has used the notion of citizenship to affirm the inclusion of Puerto Ricans within the U.S. empire, while simultaneously excluding them from equal membership within the polity. Ironically, the legacy of the collective naturalization of Puerto Ricans has been one of selective and unequal exclusion.

The Jones Act also created a series of legal, political, economic, social,l and conceptual anomalies that have yet to be resolved. These anomalies expose the contradictions of U.S. law and policy toward Puerto Rico. At times they show both the undemocratic status of Puerto Ricans within the US polity and the democratic possibilities that are available to those who wield a US citizenship. The fissures created by the ensuing anomalous status of Puerto Ricans in turn open opportunities for further research and critique.

Historical debates over the resolution of the political status of Puerto Rico have in large measure been anchored to the ensuing effects on the citizenship status of Puerto Ricans. As previously noted, Puerto Rico has remained an unincorporated territory since its annexation. For more than a century, Congress has refused to enact legislation that would change Puerto Rico's territorial status. The collective naturalization provision of the Jones Act did not change Puerto Rico's territorial status. Two questions have dominated these debates, namely: Does Congress possess the power to unilaterally expatriate or denaturalize Puerto Ricans should the island become a sovereign nation? Could Puerto Ricans retain a dual citizenship should Puerto Rico become a sovereign nation? Most Federal status legislation for Puerto Rico debated in Congress after the enactment of the Jones Act give Puerto Ricans the choice to retain both a US and a Puerto Rican citizenship. More importantly, as José Julián Álvarez González (1990) has demonstrated, the prevailing US Supreme Court jurisprudence protects naturalized citizens from arbitrary denaturalization. Notwithstanding, contemporary academics, and legal and political actors, continue to argue that Congress could unilaterally enact special expatriation or denaturalization legislation targeting persons born in Puerto Rico, thus barring their ability to retain a US citizenship or transfer it to their children should Puerto Rico become a sovereign nation. The latter assertions continue to foster a century-old precarious citizenship status, a citizenship status contingent on the whims of US law and policymakers.

In the case of Puerto Rico, however, according to the prevailing interpretations of US academics, law and policymakers, the Congress created a hierarchy (constitutional and territorial) of birthright citizenship that ascribes Puerto Ricans a citizenship status inferior to that of naturalized citizens.

The case of Puerto Rico also challenges prevailing conceptual debates over contemporary notions of the hierarchies of citizenship. For example, prevailing liberal narratives of citizenship emphasize the notion that birthright citizens possess a superior status than naturalized immigrants. To be sure, whereas birthright citizenship presumably confers an automatic right to property that is protected under the prevailing liberal ethos embraced by modern-nation states, naturalized citizens are subject to the arbitrary processes

of exclusion that can potentially bar them from membership in a political community (Shachar 2009). In the case of Puerto Rico, however, according to the prevailing interpretations of US academics, law and policymakers, the Congress created a hierarchy (constitutional and territorial) of birthright citizenship that ascribes Puerto Ricans a citizenship status inferior to that of naturalized citizens.

The liminal nature of the Puerto Rican citizenship also challenges prevailing characterizations of the hierarchies of citizenship. Prevailing liberal narratives ascribe a second-class citizenship status on Puerto Ricans tantamount to a "semi-citizenship" (Cohen 2009). This description ignores the role that mobility can have on the citizenship status of Puerto Ricans. To be sure, after the enactment of the Jones Act, local legal actors argued that the collective naturalization of Puerto Ricans had made them members of the US polity and therefore incorporated or changed Puerto Rico's territorial status. The Supreme Court subsequently rejected this interpretation in both *Tapia/Murratti* (1918) and *Balzac v. the People of Porto Rico* (1922), establishing that only an express act of Congress could incorporate or change Puerto Rico's territorial status. In *Balzac*, however, invoking a legal narrative of Anglo-American exceptionalism, the US Supreme Court went one step further and established that the citizenship status of Puerto Ricans was contingent on the territorial status of their residence. In other words, while US citizens resided in Puerto Rico they would be subject to discriminatory laws and policies designed to govern a racially inferior territory. Alternatively, the moment that a Puerto Rican touched US soil, he or she would acquire all of the rights and privileges of an Anglo-American citizen. It followed that the inferior (*de jure* or legal) citizenship status of a Puerto Rican was contingent on his or her residency. To this extent, the citizenship status of Puerto Rican is liminal and subject to change based on his or her residency. While Puerto Ricans who reside in Puerto Rico may possess a semi-citizenship, the moment that the citizen touches US soil s/he will acquire an equal citizenship status, or so the logic of *Balzac* goes.

The liminal citizenship status of Puerto Ricans has other implications. Puerto Ricans with the necessary financial resources can move unhindered through the United States and have access to the same legal and political rights available to a birthright US citizen. Puerto Ricans gained the ability to migrate to a state unhindered by their citizenship status and enjoy the financial rights and benefits available to any US citizen. As residents of a state, they can

participate in the Federal political process, a process that is not available to the residents of Puerto Rico. The Jones Act granted Puerto Ricans access to the U.S. polity, an access that is not available to naturalized immigrants.

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NOTES

1 The Supreme Court has historically excluded Native Americans from acquiring a Fourteenth Amendment citizenship by claiming that they owe allegiance to a nation other than the United States. See generally *Elk v. Wilkins* (1884).

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