

LA DIVINA COMEDIA

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A non-introduction

My assigned theme is **Civil Rights and the Insular Cases**.

Puerto Ricans are code switchers,¹ we swap languages seamlessly, and given that languages have implicit codes, we change codes, also seamlessly. Not always do we realize we have changed language or code. It's a Proteic curse.

Nuts and bolts

Rights are a rallying point for many in Puerto Rico. It is no longer the exclusive property of a literary genre called Independence Party.

Why would this be? It's a theme repeatedly chosen by statehood governors but also the sheer numbers, the growth in statehood advocates, which have gone from one fifth of the voting population fifty six years ago to approximately half of said population.

1. Don Luis Ferré claimed that maintaining our culture was a right.² He developed the theme of *Estadidad Jíbara*.
2. Carlos Romero Barceló claimed the right to federal transfer payments. He gave us *Estadidad para los pobres*.
3. Pedro Rosselló, without abandoning the theme of 'La patria se hace trabajando,' re-treaded the theme of rights of the previous statehood governors with *la estadidad es asunto de derechos civiles*.

In 1900 statehood was the goal of all political parties. But the rejection of the U.S. and its policies, not the least of which was benevolent assimilation without any possibility of political integration as a state, led many to fall out of love. Still, Republicans maintained their uncritical support. If statehood were to have a moniker for the first part of the 20th century, I would call it, with the assurance of 20-20 hindsight, *estadidad ciega*.

Secretary of War Elihu Root gives me a base for this assertion,³

"The principal difficulty now in the Island of Porto Rico is that the transfer of the island from Spain to the United States has not resulted in increase in prosperity, but the reverse."

Independent observers from the Diffies through the Roosevelt think tank members⁴ to John Gunther, the author of many travelogues, confirm Root's sentence through the 20s, 30s and 40s. By the late 50s one fourth of the population had voted with their feet and moved to the States. U.S. stewardship ranged from adequate to disastrous.

We were uncritically Americans until the first of the Insular Cases told us we could not be Americans. Not the least of the problems we found was bigotry. Nowadays, nativism has substituted bigotry; it is not the same thing, but its signs and end results are not dissimilar. Governor Pedro Rosselló refers to the current end product as apartheid, a much too vicious

word for our relatively benign system if compared to South Africa's former deadly regime.⁵

Remarkably, many on the Island share the fear of change with nativists; some of them are home grown nativists with the U.S. being the object of their rejection.

In the spirit of conviviality that now races through the Nation, I'll paraphrase Samuel Huntington⁶: America is inconsistent but changeability does not make it a lie. Its contradictions generate disappointment and hope. This makes for an ever changing balance between conflicting ways of being, thinking and acting.

This is something statehood advocates ignored at the turn of the 19th century, disregarded it throughout the 20th, and are just beginning to accept it in the 21st century. What you see is what you get – beauty marks and warts.

The population knows that the rights and privileges gained under the colonial condition are significantly greater than those of other people in the Caribbean. We cherish them and, while not satisfied with what we have, we are reluctant to go a separate way. It's in our interest⁷ to remain under the U.S.

Sovereignty, as a right, is increasingly rhetorical as the weight and influence of the stateside population.⁸ Furthermore, Americanization during the *estadidad ciega* or Americanization policy was not unlike that for the immigrants.⁹ We are now being Hispanized or Latinized *a la americaine* by the children of our Diaspora?¹⁰ Americanization, now, is part of familial, social, business ties and communications; it runs on a more effective motor.

This brings us to a key concept in Puerto Rican politics, but from a new perspective. Do members of a culture have a right to ignore cultural concepts, norms and even language tied to a traditional point of view?¹¹

As we delve into the issue of rights, we might consider that they can be dangerous to ethnic groups immersed in a larger society, but they can also be liberating.

Beauty marks and warts in America

I'll address briefly the Insular Cases and then the issue of Civil Rights. I'll come back to put them together like all the king's horses and all the king's men.

The Insular Cases is that corpus of decisions by the U.S. Supreme Court which began with Downes v. Bidwell in 1901 and culminated with Balzac in 1922, including some decided on issues in Hawaii and Alaska that helped determine the one-way formal relationship of the U.S. with Puerto Rico.

Plessy v. Ferguson, shameful decision in the history of the Nation, and the Insular Cases are not separable: they are of the same spirit and reasoning, because the initial Insular

Cases were decided essentially by the jurists that saddled the nation with Plessy v Ferguson.

The idea, more elegantly argued and proffered, is Judge Juan A. Torruellas'. He says the doctrine of separate and equal established by Plessy was converted into separate and unequal by the Insular Cases. So if we are to speak of Civil Rights and the Insular Cases we should not avoid systematic references to Plessy and what it did to the rights of African Americans. I could stop here and suggest you ask our brethren about Civil Rights and the immediate predecessor of the Insular Cases.

Now, I move to the other part of the theme: Civil Rights.

We participate in two grand legal traditions: common law and civil law. California and Louisiana share a mixed heritage also.

Common law. Legal rights are sometimes called civil rights in common law jurisdictions. They were wrested from the sovereigns and developed through custom and use ending up being guaranteed by the state. In the Constitution there are references to natural or human rights; because they are part of our human condition they are inalienable.

If the Federal and state governments become selective in their defense, they became dead letter for all inhabitants but generally only for a class of persons; this is and was the case of: Native Americans, African Americans, Mexican American and Islanders from Puerto Rico and the Western Pacific.

USA. The Bill of Rights and the Civil Rights define the rights of Americans and residents of the Nation, the Voting Rights Acts, HAVA and others the rights of American voters.

Those in the Bill of Rights include, the protection of peoples' physical integrity; procedural fairness in law, individual freedom of belief, speech, association, and the press; and political participation. They were initially a protection from the federal government, not the state governments. After the Civil War, they were extended to protect individuals from the state governments, but political expediency and the Hayes-Tilden entente allowed for the Jim Crow era that negated such rights.

Political expediency can trump rights.

Civil Rights Act protects persons from discrimination based on gender, religion, race, and national origin. They protect individuals that exhibit certain group characteristics. This is not the same as collective rights.

There are other individual rights that are not properly civil; the right to abortion being one of them. This right is a creation of the Supreme Court.

Still, collective rights have come in through the back door. Daniel Patrick Moynihan alerts us about unintended consequences of electoral laws. "The Civil Rights Act of 1982 sought

to strengthen minority representation in Congress but provided '(T) hat nothing in this (act) establishes a right to have members of a protected class elected in equal numbers to their proportion in the population.' But came the next decennial census and the attendant congressional redistricting, and this is precisely "the right that was asserted. 'Protected classes' had entered the vocabulary of American electoral law. What are now known as 'majority-minority' congressional districts came into being during reapportionment."¹²

Rights created by the Supreme Court are as contingent on its composition as those created by Congress. This does not mean that we could go back to the status quo ante bellum for nothing else but that the Constitution follows elections.

The change mantra can house many things. Could we go back to Camelot and its idea of a structure outside the federal relationship? This is a question of policy and interpretation of law. Will the cause of independence, now practically dead at home, be strengthened by the influence of its stateside supporters?

Power can trump right.

Puerto Rico. We fall under the U.S. Constitution and legal system but our Bill of Rights was "largely patterned after the Universal Declaration of Rights approved by the United Nations and the American Declaration of the Rights and Duties of Man of the Organization of American States."¹³

Furthermore, Article 20 of the Puerto Rico Constitution was stricken by Congress. It stated that depending on the fiscal resources of the government, there would have been a right to social protection in the event of unemployment, sickness, old age, and disability; the right to obtain work; the right to an adequate standard of living; and the right of mothers and children to special care and assistance.

Not stricken was the right to elementary public education to the extent the resources of government could provide it. For the past fifty years, the state government has funded junior and senior high schools and vocational schools; it also has a magnificently funded university; but is not funding elementary school properly. So, the right to an elementary education as well as to an education that leads to the development of personality is worth exactly what the politicians assign it in the budget.¹⁴

But I would expect the right to health to be better funded locally than the right to elementary education. Why? Rights are contingent on voter support, not on heavenly directives.

Votes can trump rights.

Extension of the Bill of Rights

The Insular Cases came up with yet another applicable definition: fundamental rights. Fundamental rights have been important in securing some important liberties; perhaps this is why civil rights and liberties are sometimes thought of being one and the same thing.

According to the Dean of our premier law school, fundamental rights are freedom of expression, due process of law, equal protection of the law, the right to travel, and the protection against unreasonable searches and seizures.¹⁵ They are distinct from political rights which would be particular to our condition as citizens, -- peculiar citizens, at that.

Let's peruse one of our non-rights in the Bill of Rights.

One of the Insular Cases says that we do not have a right to a trial by jury because something in our tradition, culture or race would not allow us to comprehend such a concept. The assertion of our incapacity and the elimination of said right was made after we had had several trials by jury, notwithstanding.

To this, Federal District Judge Gustavo Gelpí, in his recent decision on the right to Medicaid funding would say balderdash! But then, *dicta* is a catch all for the judges' preferences, independent of the law. Gelpí says that Puerto Rico has been effectively, but not really, incorporated by Federal actions. This is exactly the same argument that Carl J. Friedrich developed for Commonwealth in the 1950s, that the actions of Congress and the Executive, and indirect actions of the Supreme Court, would effectively draw Puerto Rico into a different type of autonomy. We would have, de facto, a different relationship.

It's disingenuous to believe that Gelpí expects to change minds in Congress or the Supreme Court; he is no Quixote charging the windmills, but he said what has to be said repeatedly: decisions on the Insular Cases were based on race, ethnic differences and religion. Allowing such reasoning to stand unchallenged speaks ill of America.

He is quite aware that unincorporation can be changed only through Federal legislation and the direct expression of the people in a referendum. But he does not have to say the process which brought us here was fair.

He has been preceded in this thrust by pertinent decisions by Judge Juan A. Torruellas and the scholarly writings of Judge Jose A. Cabranes, plus a most singularly by a voice claiming in the Puerto Rican political desert, Gregorio Igartúa, who has taken up the issue of presidential vote and representation to the Boston Court of Appeals several times only to be shot down. In left field is Christina Duffy Burnett, a remarkable scholar, and center field is Howard Hills, a unique human being interested in our predicament. They have steadily built the basis for a change in the Insular Cases within the system.

If the Bush Administration is at all attuned to Puerto Rico issues, it would not appeal the decision; but it must be made aware of the implications of not appealing it.

Let's see yet another Insular Case.

At the time that Balzac came around, citizenship effectively incorporated a territory according to an early Insular Case. But in Balzac, the Chief Justice argued that it was the same but not the same so Puerto Rico remained unincorporated after islanders became citizens by the grace of Congress and the need to secure permanently the Island in the eve of World War I.

The decision, even though it was in 1922, still had some of the earlier references to our dullness as a people. This was the time when eugenics, a racist pseudoscience, was sweeping the Nation; incorporation meant eventual statehood, and that, according to the principles of eugenics and racial superiority, it could not be countenanced for America.

Racism can trump rights.

The Supreme Court told us in Downes that the Bill of Rights was not fully applicable to Islanders. Residence was the impediment, although repeated references to the ethnic, cultural and racial characteristics of the Island inhabitants speak otherwise.

What Downes proved to us was that classes of persons, if cloaked under a residential concept, can be the object of discrimination for ethnic, racial and religious differences.

Let's look at yet another Case.

Gonzales v Williams the Supreme Court, beside establishing the right of Puerto Ricans to enter the Nation, highlights the right of Spaniards in Puerto Rico to continue being Spanish subjects or become naturalized citizens of the U.S., but Puerto Ricans, *criollos*, were not given the same right. Christina Duffy Burnett ties the decision with race.¹⁶

Somewhere in my files I have an answer from Congressman Young in which I asked that he present a private Bill naturalizing me a citizen so I would be protected in my citizenship by the Constitution. He advised me that I was already a citizen so it was not possible. How about this catch 22?

In spite of this inglorious treatment by the Supreme Court, there is a perception on the Island that

“civil liberties may only be preserved by maintaining a close association with the United States (which) partially explains the growth of the prostatehood movement.”¹⁷

It's not that we are incapable understanding the basic ideas of American government, as suggested in the various Insular Cases, but that, as a rule, we have found the state and local governments (the politics therein) more abusive than the Federal. The U.S. is not only the ultimate guarantor of said liberties but may be the only effective guarantor.

“... the discourse of rights has also contributed to reproduce American hegemony within Puerto Rican population. To the extent that 'rights' have been associated with the American presence, that presence has been legitimated.”¹⁸

Is voting for the Commander in Chief and the ultimate lawmakers a right? No. In one of the Igartúa Cases the Court of Appeals pointed out that the people do not elect the President, only the Electoral College, and we have no right to membership in it. That's the federal aspect.

The Voting Rights Act and HAVA notwithstanding, during the 2004 elections the State Board of Elections did not send off the ballots to the soldiers within the specified time and the instructions led the soldiers to invalidate the ballots.

None of the political parties cared about the rights of soldiers. The Civil Rights Commission (does it still exist?) was mum on the subject. The Bar Association was singularly uncaring. The ACLU and the Puerto Rican rights watchers in the Nation were also mum. Statehood advocates seem to be children of another god if compared with independence advocates.

Electoral needs can trump rights, but also ideology can trump them.

On questioning Lee Atwater on the importance of the Puerto Rican vote to the planned Republican takeover in 1980, he answered "you all live in the wrong place." We heeded him and moved from Puerto Rico and the Northeast and Midwest cities to Florida. We are now invading Georgia and the Carolinas. If winter's here, can Virginia be far behind?

As President Bush learned in time, the I-4 corridor decides Florida; Senator McCain did not learn it on time.

Collective rights and self-determination

Is statehood a right? The Northwest Ordinance recognized the right to statehood when the territory met two criteria: size of population and capacity for self-government. Puerto Rico certainly meets these conditions, incorporated or not. But Congress retained the right to determine when a territory becomes a state.

Do a people have a right to self-determination?

Woodrow Wilson defended this right after World War I from anyone and for everyone but Puerto Rico. It's not that we were not a people but that national interest was otherwise.¹⁹

National interest can trump rights.²⁰

By World War I, the U.S. had completed the dispossession of the Native Americans. Yes, they were considered different, and they were not considered of the same humanity as the rest of the nation so they could only be wards of the state, and the concept of self-determination is accorded only to those that are putatively equal.

Economic interest trump rights.

Would it have been possible to bring in the new states in the 19th century if the majorities were non-Anglo? The policy was otherwise; to be a state the population had to resemble that of existing states...²¹

There is yet another right, if rights and freedom are synonymous. Amartya Sen, winner of the Nobel Prize, advises us that²²

“our freedom to assert our personal identities can sometimes be extraordinarily limited in the eyes of others, no matter how we see ourselves.”

The failure to teach English is but one of the signs of our chosen apartheid. Hence, our treatment resembles that of an alien minority.²³ Consequently, accommodation has been found outside the federal system with the ensuing denial of full rights.

“...in so far as national minorities in the U.S. have achieved self-government, it has been outside – and to some extent in spite of – the federal system, though non-federal units such as the ‘commonwealth’ of Puerto Rico, the protectorate of Guam, or the domestic dependent nations status of American Indians.²⁴

Full rights and insistence on ethnic singularity seem to be opposed to each other in the traditional American way. Will the wave of change sweeping America undo it?

What is this so called right of self determination?

First of all, it's the contrary to domination. Self determination is participating in determining decisions which affect one's actions, and the condition of one's action. But it also entails in making the collective regulations to prevent domination.²⁵

That is certainly different from what we have.

What do we have? A right to expression and a right to petition, but these are not collective rights but individual rights. Our act of self-determination is nothing more than a right to confirm an action by Congress through an action of our own. A civil right, it decidedly is not.

Former U.S. Attorney General, Richard Thornburg, proposes a solution to the quandary of the Insular Cases which is not too demanding of the Supreme Court:²⁶ This is issuing a declaratory relief recognizing as a fundamental right a procedure for self-determination and status resolution. He says that the Insular Cases are open to it, but they did not make a closure of the issue.

This is exactly the first step in the Serrano-Fortuño Bill.

Can we go another way in order to secure full rights like seeking the formal incorporation of Puerto Rico? Without a vote, it would be the high-jacking of the will of a people. This is no longer politically feasible. Still, it would be well for our nation to put behind such a sorry history.²⁷

Under the Insular Cases, last revisited indirectly through the Boumediene decision of Chief Justice Roberts a few months ago, the Insular Cases seemed to be validated, but the decision also quotes Reid v. Covert which clearly opens the way to statehood.

“...the recent Guantánamo case also cites the 1956 Reid vs. Covert case, which defined unincorporated territory status as “temporary,” until democratic “traditions and institutions” similar to America’s were established... Both the U.S. Supreme Court and the White House have formally recognized Puerto Rico as “like a state...”²⁸

Congressman, and now Governor-Elect Fortuño, in this article, threw in another ingredient in the punch, equal rights of national citizenship.

The Serrano-Fortuño Bill would do away with the status conundrum. It is the product of a Republican White House paper on status that went nowhere in the House even though it had unanimous support in Committee.

Is the Serrano-Fortuño Bill still viable? Does it have to be Obamanized for passage? Lobotomized? The first time it died because it failed to pass the Speaker’s bar.

To consider anything but the Fortuño-Serrano solution would bring Babel on us. When one is enamored of a specific way, the learning curve is so steep as to be impossible.

Actions and decisions, such as those carefully built up by the judges and scholars I have mentioned, are blocks that adequately mortared and placed, build a house. Brown v Board did not occur overnight; it required a change in strategy from trying to prove that the separate facilities were not adequate to trying to prove that having separate facilities were destructive. Change is generally brought in through additional ways of doing things, not through substitution of old ways.

So much for Civil Rights and the Insular Cases.

Race

I am going to talk about race and racial attitudes in Puerto Rico. After all, race allows for civil rights of individuals in a protected class.

Puerto Rico as a separate entity from anything else is as much the invention of the United States as of the colonial elites of the past century. Under Spain the history of Puerto Rico, even by *criollos*, was not conceived as separate from the history of Spain. It is possible that as Carlos Dalzina Guillermetey argues that the autonomist movement precluded conceptions of separateness in the local elites.

During the 20th century, *la Hispanidad* became a useful tool to redefine the separateness that the Americans imposed on us. José de Diego, Tomás Blanco, and Antonio Pedreira,

the canon of *la Hispanidad*, are part of an increasing list of recognized racists.²⁹ This is not revisionism, but unconditional insurrection. History is always contingent.³⁰

De Diego objected to Barbosa's appointment to the American civil government because he was black.³¹

The concept of *la Hispanidad*³² allowed for color differences that the colonial elite needed in their claim to power in a racist system where they were not deemed white enough to be Americans.³³ Through it, *la Hispanidad*, they established that they were more white than the less white, the common people and also of superior intelligence, a corollary of the racism of the times.

The literature they quoted as foundational of Puerto Rican character was carefully selected. The emphasis on *El Jíbaro*, Alonso's opus on the independent peasant of Spanish extraction, became a symbol because it allowed for the perpetuation of the racial theme; *el jíbaro* is Puerto Rico's symbol of uniqueness and he is white. Works such as "La Cuarterona," which had a mulatto female the heroine, were left outside the canon.

The overwhelming acceptance of the canon did not allow for questioning of the myth that there were no racial problems in Puerto Rico until the 1960's.³⁴ The tie of the literary and political elites was much too strong to allow it. All the thinking and looking after were done from the top; to all questions there was an answer, and for all needs, the necessary provision was made.³⁵

You might want to counter that José Celso Barbosa was the foremost leader of the Republican Party. It's well known that Barbosa was not able to study medicine in Spain because of he was black,-- so much for Puerto Rico under the Spanish regime.

Let's go to Puerto Rico under the American regime. On asking doña Pilar Barbosa, his daughter, biographer and PhD in history, why her father, the undisputed leader of the republicans under Spain and the Republicans under the U.S., was never the president of the party, her answer was, "Race, the Republicans would have been sentenced to permanent oblivion (*olvido*) if a black person presided the party." Barbosa died in 1921.

When Pedro Albizu Campos was proposed for Senator later in the 20s to the principal Unionist leader of the Alianza, the answer was, "*No. Ya tenemos suficientes negros en el Partido.*" This is a direct quote from my father, proponent of Albizu.

Pilar Barbosa was offered the post of Assistant Dean for Ladies (that was the actual title) of the University of Puerto Rico in the early 30s; she declined because one of the expected roles was to accompany the ladies to the dances in segregated clubs in San Juan, and she would not have been allowed entrance.

In the 40s and 50s, black leaders in all major parties hit a glass ceiling. Only the Speakership of the House, the popular chamber; was open to them. The Supreme Court,

the Presidency Senate and the Governorship have been out of bounds from time immemorial.

While we speak of civil rights, we fail to recognize that our structure of power has not been unlike that of America.³⁶

Closing

In the midway of our mortal life, I found me in a gloomy wood, astray, gone from the path direct... Thus begins the first canto of Dante's Hell,³⁷ which could well be applied to the story of Civil Rights and the Insular Cases.

I'll end with the closing lines of Purgatory, for we must purge our sins, "I returned from the most holy wave, regenerate, even a new plants renewed with foliage new, pure and made apt for mounting to the stars.

¹ June Erlick, Editorial in **The Politics of Identity. Revista, Harvard Review of the Americas** Vol. VII, Number 3.

² "When powerful majorities to restrict the cultural practices of less powerful minorities when those practices do no injustice to others constitutes a kind of tyranny..." Amy Gutmann, **Identity and Democracy**. Princeton, 2003. Page 198.

³ Quoted in Ronald Fernandez's, **The Disenchanted Island: Puerto Rico and the United States in the 20th Century**. Second edition. Praeger, 1996. Page 7.

⁴ Harold Ickes, Secretary of Interior charged with Puerto Rico said that the experiment in non-incorporation had worked out not for the welfare of the Puerto Rican people but for the Profit of American corporations." Quoted in Maria Del Pilar Arguelles, **Morality, and Power, The U.S. Colonial Experience from 1898 to 1948**. University of Virginia, 1996. Page 57.

⁵ The Governor need not apologize for this excess, not that he'll ever apologize for anything. Just compare the accusations in the presidential sweepstakes with the statements of Senator McCain and President-elect Obama after the vote and you'll have an idea of the importance of skirting untruth in politics through inflated rhetoric. Anyone, not in politics, exhibiting such behavior would be suspect of a serious personality disorder. But cordiality is now the name of the game.

⁶ **American Politics: The Promise of Disharmony**. Harvard. P. 262

⁷ Anthony Maingot, **The United States and the Caribbean, Changes to an Asymmetrical Relationship**, Westview Press, 1994. On explaining the colonial powers' relationships with Caribbean islands and nation-states, says that super-ordinate-subordinate relationships are as welcome by the Caribbean islands just as they are in the interest of the metropolitan powers. To him the binding bonds are based on business, the economy, on society and community, on religion, etc. and one-sided political relationships exist as long as there is benefit to the metropolis.

⁸ Ramon Grosfogel, "Recolonization, or Decolonization?" **The Politics of Identity. Op.cit.** Grosfogel speaks of several impasses between the U.S. and Puerto Rico.

"Thus, there exists a second impasse between the Puerto Rican people and imperial elites: the people would vote overwhelmingly for statehood in a decolonial referendum that follows the guidelines of international law (without the ELA as an option), in order to not lose (through a neo-colonial republic) access to previously won rights and resources, while imperial elites would support a neocolonial sovereign option to cut back federal costs on the island, reduce rights such as federal environmental laws and the minimum wage, and eliminate the possibility of a Latino state, thereby improving the conditions of exploitation for transnational capital on the island while maintaining military control.

"Faced with this situation, what are we to do? One option is what native Puerto Rican elites choose: accept that imperial elites don't want us and opt for neo-colonial independence or autonomy. That is, to support

the imperial neo-colonial recolonization of the island, because: 1) this would eliminate federal transfers to popular sectors so that this money might instead fall into the hands of local capitalists through foreign aid from the U.S. Department of State (crumbs in the millions of dollars for the pockets of local elites instead of the billion that the popular sectors now receive); 2) it would eliminate restrictive federal laws, thereby making the economy more competitive and cheaper for foreign investment (corporations and transnational banks) 3) it would allow entry into the WB and the IMF (whose neoliberal plans and interventions have led to devastation and bankruptcy in many Third World countries).

“This option would make exploitation and imperial domination of Puerto Rico cheaper for the United States, of which the only beneficiaries would be imperial and associated local elites. Facing such a situation, the question is the same one that thousands of Puerto Rican workers ask: sovereignty for whom? This neo-colonial sovereignty would consolidate the alliance between local capitalist elites (who would control the Puerto Rican national state) and transnational capitalist elites (who would control economic, military, and political operations). Fewer than 5 percent of the island’s voters support this option.”

⁹ Amilcar Antonio Barreto, “Nationalism, Language Policy and Nested Games in Puerto Rico,” **Caribbean Studies**, Vol. 30, # 1, January-June 2002. Page 22.

¹⁰ Juan Duchesne Winter, **The Politics of Identity**, *op.cit.*

However, the colonial cultural gap has been gradually bridged, not by hybridization (as it was under Spain), nor by assimilation, but by a convergence between island Puerto Ricans and U.S. Latino cultures in the mainland. At this point of the 21st century, Puerto Rico is not immersed in a passive process of Americanization (and, arguably, it never was), but it certainly is engaged in its active *Latinoization*. The Latino sphere has offered island Puerto Ricans a relatively non-conflictive entrance into the larger sphere of United States *ethnocracy*. The only significant exception is a small fraction of the top elites related to American business, among them, the denizens of the Guaynabo City enclave, who conscientiously pursue miscegenation-assimilation through mixed marriages with Anglo-Americans.

¹¹ Amy Gutmann, **Identity, and Democracy**. Page 77.

¹² **Pandemonium, Ethnicity in International Politics**. Oxford, 1993. Page 171-172.

¹³ José Trías Monge, *Puerto Rico: The trials of the Colony in the World*. Yale University Press, 1997. Pages 115-116.

¹⁴ Remarkably, as a result of the Great Society and its latter reincarnations, all of these purported rights have been somewhat funded by the federal government. As of late, and in spite of the fact that the right to a public education is a sham, there has been talk of a Constitutional right to health which has been partly covered by federal funds, and might be fully funded if President Obama delivers his promise of additional transfers.

¹⁵ Efrain Rivera Ramos, **The Legal Construction of Identity, the Judicial and Social Legacy of American Colonialism in Puerto Rico**. American Psychological Association, 2001. Page 212)

¹⁶ “They say I am not an American...’ The Noncitizen National and the Law of American Empire.” *Virginia Law Journal*, 48:4. Page 705-705.

¹⁷ *Op.Cit.* Efrain Rivera Ramos, **The Legal Construction of Identity**. Page 221.

¹⁸ *Ibid.* Page 221.

¹⁹ The initial words of the Preface of Raymond Carr’s **Puerto Rico: A Colonial Experiment**, A Twentieth Century fund Study, Vintage, 1984

“In Puerto Rico,’ Dean Acheson told his French colleagues in 1952, “we had the problem of moving from a colonial relationship to something else.”

His careful wording of change is what brings us together. The times demanded change, much like our times demand change, and the U.S. morphed Puerto Rico into something else. That we acquiesced and that we did not know what we were getting into is not important. We got it.

²⁰ National security is the one element present thought decisions on Puerto Rico. It was clearly expressed at the time Islanders were given citizenship, and throughout the next decades. When Tugwell was appointed governor during World War II, this national security was his main thrust. María Del Pilar Arguelles, **Morality, and Power**. Page 121.

²¹ Will Kymlicka, **Politics in the Vernacular, Nationalism, Multiculturalism and Citizenship**. Oxford, 2000. Page 98. ““It would have been quite possible in the 19th century to create states dominated by the Navajo, for example, by Chicanos, Puerto Ricans or native Hawaiians. At the time these groups were incorporated into the United States, they formed majorities in their homelands. However, a deliberate decision was made not to use federalism to accommodate the self-government rights of national minorities.

Instead, it was decided that the territory would not be accepted as a state unless these national groups were outnumbered within that state.”

²² **Identity and Violence: The Illusion of Destiny.** W.W.Norton, New York, 2006. Page 6.

²³ Seyla Benhabib, **The Claims of Culture, Equality and Diversity in the Global Era.** Princeton, 2002. Page 177. “The rights of foreigners and aliens, whether they be refugees or guest workers, asylum seekers or adventurers, indicate the threshold, that boundary, at the site of which identity of ‘we the people,’ is defined and renegotiated, bounded and unraveled, circumscribed or rendered fluid.”

²⁴ Kymlicka, *op.cit.* Page 99.

²⁵ Iris Marion Davis, **Inclusion, and Democracy.** Oxford, 2000. Pages 32-33. Page 32-33.

²⁶ **Puerto Rico’s Future,** Center for Strategic and International Studies, 2006, Page 90. “This author does not suggest that the courts make judicial determinations imposing a political status on Puerto Rico, nor does he suggest that the courts resurrect the Northwest Ordinance model of territorial incorporation for Puerto Rico by judicial edict, for to do so would only repeat the Supreme Court’s mistake in the Insular Cases. Instead the courts should use their powers to issue declaratory relief to recognize that the ‘fundamental rights’ principle expressed even in the Balzac ruling must include some procedure under federal law for democratic self-determination and status resolution.”

²⁷ Even for the minimal impact suggested, a stage must be set for the Supreme Court to make a momentous decision. We have not done our work, for the Supreme Court does not work in a professional and scholarly vacuum. We need Judge Torruellas’ and Judge Jose A. Cabranes’ views (also of similar mind) to be disseminated throughout legal schools, think-tanks, and institutions and adopted as the new standard before our own Plessy is remanded to history. These two stalwart champions of equality have now been joined by a remarkable scholar, Christina Duffy Burnett who is quoted by Chief Justice Roberts in the Boumediene decision.

²⁸ **Luis G. Fortuño, Caribbean Business, Letter to the Editor, “Let the People decide Puerto Rico’s destiny,” August 7, 2008. Page 34.**

²⁹ Aixa Merino Falú, Capítulo II, ‘El discurso racial en Puerto Rico.,’ **Raza, género y clase social; el discrimen contra las mujeres afro puertorriqueñas.** Oficina de la Procuradoras de las Mujeres, Puerto rico, 2004.

³⁰ Alberto Moreiras, **The Exhaustion of Difference, The Politics of Latin American Cultural Studies.** Duke University Press, 2001, Pages 297-298.

³¹ Kelvin A. Santiago-Valles ‘**Subject People’ and Colonial Discourses, Economic Transformation and Social Disorder in Puerto Rico, 1898-1947.** p. 97

³² I draw a parallelism with the idea of Latin America in Walter D. Mignolo’s **The Idea of Latino America** (Blackwell, 2005. Page 67. “>>> the idea of ‘Latin’ America twisted the past, on the one hand, and made possible to frame the imperial/colonial period as proto-national histories, and, on the other, it made possible to ‘make’ into ‘Latin America’ historical events that occurred after the idea was invented and adapted.”

³³ Walter Mignolo, **The Idea of Latin America.** *Op.cit.* “The racial discourse that justified the war against Spain relied on selling the inferiority of ‘Latin’ Americans as White but not White enough.” Page 153.

³⁴ Jorge Duany, **Puerto Rican Nation on the Move: Identities on the Island and in the United States.** University of North Carolina Press, 2002. Page 243 *et passim.*

³⁵ This is a quote from **The Undiscovered Self** by Carl Jung quoted in Volodymyr Walter Odajnyk’s **Jung and Politics, The Political and Social Ideas of C.G.Jung.** New York University Press, 1976.in Page 48-49. The indictment seems to have been based on the development of Puerto Rico under this elite, “The individual is slowly deprived of initiative and self-reliance. He no longer makes any decisions about how he should live his life, ‘and instead is ruled, fed, clothed, and educated as a social unit and amused in accordance with the standards that give pleasure and satisfaction to the masses.’ As a result, he soon loses the capacity for introspection and feels totally dependent on his environment. ‘He thinks the meaning of existence would be discovered if food and clothing were delivered to him gratis on his own doorstep or if everybody possessed and automobile. Instead of concern for individual and moral development, all attention is centered on the promotion of public welfare and the raising of the living standard/ Because individual development becomes secondary to the policy of the state, the decisions of the state take the place of the moral responsibility of the individual.’ His code of ethics is replaced by knowledge of what is permitted or forbidden or ordered.”

³⁶ Miriam Jimenez Roman, “Boricuas vs. Nuyoricans – Indeed! **The Politics of Identity.** *Op.cit.*

Puerto Rico as a “Latin” country exempts itself from racism even as it distances itself from its Blackness, identifying “real” Blackness as somehow inconsistent with Hispanic history and culture— or with history and culture, more generally. This perspective has become the official line, made real by repetition rather than concrete experience or the historical record. The contradictions have provided space for and encouraged the creation of a Taino revival movement overwhelmingly composed of second and third generation stateside Puerto Ricans who, by laying claim to indignity and thus the most “original” roots, propose to out-authenticate the islanders. It is a view that leaves unexplained why a people ostensibly so proud of their racial mixture overwhelmingly reject mixed race classifications. Revealingly, and to the consternation of many, more than 80% of islanders self-identified as white in the 2000 census.

³⁷ This translation of the Divine Comedy was published by Doubleday in 1947. The translator’s name is not given.