

INTERPRETING THE FOURTEENTH AMENDMENT AND HOW IT EXTENDS TO UNINCORPORATED TERRITORIES SUCH AS PUERTO RICO

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I. Introduction

The Fourteenth Amendment of the United States Constitution declares that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside.”¹ Deciphering what the Founding Fathers meant when they created the citizenship clause of the Fourteenth Amendment has been the subject of great debate for decades. The concept of citizenship has traditionally served to define the membership or relationship between persons and their political communities.² There

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¹ U.S. CONST. amend. XIV.

² CHARLES R. VENATOR-SANTIAGO, UNITED STATES CITIZENSHIP IN PUERTO RICO, A SHORT HISTORY 3 (2010).

are different ways to identify citizenship. The United States has used at least five types of citizenship to classify its members.³ The U.S. Constitution only confers two types of citizenship, a naturalized citizenship under Article I⁴ and a *jus soli*⁵, also known as, birth right citizenship under the Fourteenth Amendment.⁶

Naturalized Citizenship refers to all persons not born in the United States where they voluntarily become U.S. citizens through the process of naturalization.⁷ In contrast, birth right citizenship appears to mandate automatic citizenship for people born in the fifty states, the District of Columbia, or territories of the United States that are not otherwise excluded by jurisdictional limitations.⁸ It is important to first understand the difference between the two types of citizenship in order to understand how they apply to U.S. territories.

American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands are the five Islands that currently form today's United States unincorporated territories.⁹ What is the status created by the unincorporated territory? It is a status located somewhere in between a territory and a foreign country.¹⁰ It is a liminal status that enables the U.S. to annex new territories without binding its government to past colonialist or imperialist constitutional precedents.¹¹ In other words, an unincorporated territory is to be caught in limbo although unquestionably subject to American sovereignty.¹² They are considered part of the United States for certain purposes but not for others.¹³ This liminal status allows the U.S. government to selectively treat an unincorporated territory as a possession or as a part of the United States for constitutional purposes.¹⁴ It also enables the United States' global

³ *Id.*

⁴ U.S. CONST. art. I, § 8, cl. 4.

⁵ *Jus soli*, MERRIAMWEBSTER.COM, <https://www.merriam-webster.com/dictionary/jus%20soli> (last visited May 13, 2018) (Jus soli or birth right citizenship is a rule that establishes that the citizenship of a child is determined by the place of its birth).

⁶ CHARLES R. VENATOR-SANTIAGO, *PUERTO RICO AND THE ORIGINS OF US GLOBAL EMPIRE THE DISEMBODIED SHADE* 65 (Routledge Taylor & Francis Group a Glass House Book eds., 2015).

⁷ *Citizenship through Naturalization*, USCIS.GOV, <https://www.uscis.gov/us-citizenship/citizenship-through-naturalization> (last visited May 13, 2018) (defining Naturalization as the process of applying for U.S. Citizenship and is granted to foreign citizens or nationals after he or she fulfils the requirements established by Congress in the Immigration Nationality Act (INA). All applicants must fill out N-400 Form also known as an Application for Naturalization and study for a Naturalization Test).

⁸ U.S. CONST. amend. XIV, § 1, cl. 1.

⁹ *Developments in the Law--The U.S. Territories: Introduction*, 130 HARV. L. REV. 1616, 1617 (2017).

¹⁰ VENATOR-SANTIAGO, *supra* note 6, at 63.

¹¹ *Id.*

¹² Christina Duffy Ponsa, *Are American Samoan's American?* N.Y. TIMES (June 8, 2006), <https://www.nytimes.com/2016/06/08/opinion/are-american-samoans-american.html>.

¹³ *Id.*

¹⁴ VENATOR-SANTIAGO, *supra* note 6, at 63.

empire to choose when to treat territories, such as in the case of Puerto Rico, as a part of the United States or as a separate and unequal possession of the empire.¹⁵

These unincorporated but organized territories exercise self-governance, while still existing subject to the U.S. Congress' plenary power.¹⁶ Due to these territories' extensive history, this article will only focus on one of the five unincorporated territories, that is, the island of Puerto Rico. Citizenship has frequently been a subject of much conversation between Puerto Ricans who live in the United States' and those who reside in Puerto Rico. The issue of citizenship has been of great concern since 1898. Since 1898, the principal view, among U.S. law and policymakers, is that Puerto Rico is located outside of the United States for citizenship purposes.¹⁷ Thus, previous lawmakers such as U.S. Congress Representative Don Young, have argued, that Puerto Rico is not a part of the United States for constitutional purposes, and therefore, naturalization or birth in Puerto Rico is equivalent to birth or naturalization in a foreign locality.¹⁸ It is believed that Puerto Rico's United States' citizenship has shared a unique history with the United States which has conveyed various federal statutes and treaties.¹⁹ The ratification of these federal statutes and treaties not only establish the citizenship status Puerto Rico currently holds, but it also places conditions on the fundamental rights Puerto Ricans are entitled to.²⁰

Throughout the years, the citizenship conditions of those born in Puerto Rico have changed. The nationality laws under the Immigration and Nationality Act ("INA"), form immigration statutes including the citizenship granted to U.S. territories.²¹ Today, Puerto Rico partially applies the U.S. Constitution but also establishes its own government.²² In addition, if one is born in Puerto Rico, the INA establishes that one is entitled to a birth right citizenship.²³ The INA, is the current statute that declares all persons born in Puerto Rico are to be citizens of the United States.²⁴ Specifically, the statute states:

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

¹⁵ *Id.*

¹⁶ *Developments in the Law--The U.S. Territories: Introduction, supra* note 9, at 1617.

¹⁷ VENATOR-SANTIAGO, *supra* note 6, at 65.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Immigration and Nationality Act, 8 U.S.C. § 1402 (2018).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

any other Act, are declared to be citizens of the United States as of January 13, 1941. All persons born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States, are citizens of the United States at birth.²⁵

Since the establishment of Section 1402 of the INA, Puerto Ricans have the right to possess a U.S. passports and can enter in and out the United States with no issue, such as the need to first be inspected by Customs, a requirement for non-US citizens.²⁶ Notwithstanding this right, the principal concern is that despite being United States Citizens, Puerto Ricans are deprived of certain fundamental rights because of the territory's unincorporated status.

Although Congress enacted a statute that has granted Puerto Ricans U.S. citizenship, there are those who question whether U.S. territories are subject to provisions and protection under the United States Constitution such as those jurists in *Downes v. Bidwell* and *Balzac v. Puerto Rico* also known as *Insular Cases*.²⁷ These cases will be discussed later in order to understand (1) how the determination of these cases have excluded Puerto Rico from constitutional rights and (2) how these courts are deficient in identifying or interpreting what rights are granted to territories under the Fourteenth Amendment.

Many lawmakers have argued that Puerto Rico should be excluded from the U.S. Constitution for constitutional purposes, and therefore, naturalization or birth in Puerto Rico is equivalent to birth or naturalization in a foreign locality.²⁸ Under this rationale, persons naturalized or born in Puerto Rico can only acquire a statutory citizenship created by congressional statute not mentioned in the Constitution. The INA is designed to extend access to U.S. citizenship to Puerto Rico and other unincorporated territories.²⁹ Prevailing interpretations, suggest that statutory citizenship designed for Puerto Rico, confers a less than equal status on its bearer within the U.S. global empire.³⁰ It is clear that the series of citizenship laws Congress has enacted from (1900-1940) excludes Puerto Ricans who reside on the Island from access to constitutional citizenship.³¹ The enactment of previous citizenship laws for Puerto Rico excluded Puerto Rico's access to constitutional citizenship because Puerto Rican citizens found themselves as citizens of an unincorporated territory that they belonged to, but not a part of the United States.³² Accordingly, the enactment

²⁵ *Id.*

²⁶ *Id.*

²⁷ 182 U.S. 244 (1901); 258 U.S. 298 (1922).

²⁸ VENATOR-SANTIAGO, *supra* note 6, at 65.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 66.

³² *Id.* at 69.

of these citizenship laws has led many to believe that Puerto Rican citizens may become citizens out of nowhere.³³

Along the forgoing framework, the main point this article seeks to make is how Congress has extended its *jus soli* or birth right citizenship legislation to Puerto Rico through the Citizenship Clause of the Fourteenth Amendment.³⁴ This article will also address a recent report written by Professor Charles R. Venator-Santiago from the University of Connecticut wherein he discusses Puerto Rico's statutory citizenship. Professor Venator-Santiago examines the continued debate of Puerto Rico's statutory citizenship and the refusal of the courts to clarify the constitutional status Puerto Rican citizens currently hold.³⁵ Professor Venator-Santiago's central question regarding the citizenship status of persons born in Puerto Rico is: What is the constitutional source of the citizenship legislation of Puerto Ricans?³⁶ Professor Venator-Santiago references at least six different theories or interpretations that have been subject of debate regarding Puerto Rico's statutory citizenship.

This article will focus only on Professor Venator-Santiago's sixth theory regarding the Fourteenth Amendment Citizenship by Legislation. In his debate, the Professor Venator-Santiago argues that the legislative history of the Nationality Act of 1940 demonstrates that Congress anchored its *jus soli* or birth right citizenship legislation for Puerto Rico in the Citizenship Clause of the Fourteenth Amendment.³⁷ Professor Venator-Santiago's³⁸ interpretation also delves into the "doctrine of extension" which poses that Congress has claimed a plenary power to extend or apply constitutional provisions through legislation.³⁹ While cases, such as *Downes*, have rejected one interpretation of extension, Congress has used the doctrine of extension to enact birth right citizenship legislation that extends the Citizenship Clause of the Fourteenth Amendment to the territories.⁴⁰

This article will first discuss how citizenship became available to territories to further understand where citizenship arose from. This article will then discuss the historical overview of how Puerto Rico established its current citizenship status in

³³ *Id.*

³⁴ Charles R. Venator Santiago, *Statutory Citizenship*, UNIVERSITY OF CONNECTICUT https://www.cga.ct.gov/lprac/pages/LPRAC_IPRLS_PRCit_FinalReport_2010_R4.pdf, 6-7 (last visited May 13, 2018).

³⁵ *Id.* at 1.

³⁶ *Id.* at 6.

³⁷ *Id.* at 6-7.

³⁸ See also Véase Álvarez González, *The Empire Strikes Out: Congressional Ruminations on the Citizenship Status of Puerto Ricans*, 27 HARV. L. LEGIS. 309, 324 n.59 (1990) (This is a previous law review article that discusses Puerto Rican citizenship which would help understand where Professor Venator Santiago is getting his idea of Puerto Rico's Statutory Citizenship and how the doctrine of extension applies to unincorporated territories through the Fourteenth Amendment).

³⁹ *Id.*

⁴⁰ *Id.*

order to understand how Puerto Rico's current U.S. citizenship has not really changed. The article will then address the Citizenship Clause of the Fourteenth Amendment and how the Doctrine of Extension entitles birth right citizens of Puerto Rico to have the same constitutional rights guaranteed under the Fourteenth Amendment to those born in states. The article will also address how, although it has not formally addressed Puerto Rico's incorporation status, Congress' legislative actions can be interpreted as considering Puerto Rico to be in fact an incorporated territory.⁴¹ The main focus of this article is to highlight how the "Doctrine of Extension" has already been extended to Puerto Rico. The article will further discuss, the various Acts and case law that Congress has enacted, and how one can recognize that although Congress has not formally expressed Puerto Rico's statutory citizenship, it is understood that Puerto Rico has been extended statutory citizenship through the Fourteenth Amendment.

This article will also allude to the reasons why U.S. citizens living in Puerto Rico should be entitled to the same fundamental rights granted to those who live on the mainland. Finally, the article will deliberate how unappealing it is for people from the mainland to move to an unincorporated territory such as Puerto Rico because they know that living in an unincorporated territory means that they will be stripped of certain rights otherwise not lost if living in a state.

II. Historical Background

Although unincorporated territories are self-governing territories, they are required to adhere to the U.S. Congress' plenary power.⁴² Long before the INA established citizenship to Puerto Rico, there have been numerous treaties and Acts that have established the citizenship status of people born in Puerto Rico. It is imperative to briefly mention and understand the historical background of how Puerto Rico has reached its current citizenship status with the United States, before attempting to discuss how the doctrine of extension applies to the citizenship clause of the Fourteenth Amendment.

A. Citizenship retained by territories

In order to understand Puerto Rico's current citizenship status, it is important to mention how citizenship became accessible to territories. By 1898, inhabitants of colonial territories could acquire United States' citizenship in at least five ways.⁴³

⁴¹ GUSTAVO A. GELPI, *THE CONSTITUTIONAL EVOLUTION OF PUERTO RICO AND OTHER U.S. TERRITORIES (1898-Present)* 104 (2017).

⁴² *Developments in the Law--The U.S. Territories: Introduction*, *supra* note 9, at 1617.

⁴³ VENATOR-SANTIAGO, *supra* note 6, at 35.

Racially eligible residents of colonial territory typically acquired U.S. citizenship through the initial annexation treaty.⁴⁴ By 1898, birth in an annexed territory was the same as to birth in the United States for citizenship purposes.⁴⁵

In 1868, Congress enacted the Fourteenth Amendment reproducing the citizenship provision of the Civil Rights Act.⁴⁶ Similar to the 1866 Civil Rights Act, the scope of the birth right Citizenship Clause of the Fourteenth Amendment also included the territories.⁴⁷ Following the Civil War, Congress extended the citizenship provision of the Fourteenth Amendment to annexed territories.⁴⁸ In 1898, the Supreme Court ruled in *United States v. Wong Kim Ark* that all persons born in the United States, including persons born in a territory, were entitled to a birth right citizenship.⁴⁹ It is safe to say that by 1898 any person, excluding Native Americans and the children of diplomats, born in a colonial or annexed territory acquired a U.S. citizenship at birth.⁵⁰ It is noteworthy, that by 1898, during the development of citizenship in the United States annexed territories subject to colonialism were governed as constitutional parts of the United States.⁵¹

B. Puerto Rico and the Treaty of Paris

The inhabitants of the island of Puerto Rico were Spanish subjects until April 11, 1898, date on which the Treaty of Paris was signed, thus officially putting an end to the Spanish-American conflict.⁵² In Article II of the Treaty, Spain ceded, along with other territories, the Island of Puerto Rico to the United States. Specifically, Spain ceded to the United States the island of Puerto Rico and other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or *Ladrones*.⁵³ As a result of this relinquishment, Puerto Rico ceased to be a Spanish overseas province and became a territory of the United States.⁵⁴ As a result, the Treaty of Paris was enacted for the people born in the Peninsular Spain who reside in Puerto Rico.⁵⁵ It did not refer to the people born and residing in Puerto Rico. The

⁴⁴ *Id.*

⁴⁵ *Id.* at 36.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ 169 U.S. 693 (1898).

⁵⁰ VENATOR-SANTIAGO, *supra* note 6, at 36.

⁵¹ *Id.*

⁵² Eugenio J. Huot Calderón, *The Concept of Puerto Rican Citizenship*, 35 REV. DER. P.R. 323 (1996).

⁵³ Art. II, Treaty of Paris, Spain-U.S., 1 LPRA Historical Documents, at. 17 (2016).

⁵⁴ Calderón, *supra* note 52, at 323.

⁵⁵ John L. A. de Passalacqua, *The Involuntary Loss of United States Citizenship of Puerto Ricans upon Accession to Independence by Puerto Rico*, 19 DENV. J. INT'L L. & POL'Y. 139, 144 (1990).

Treaty of Paris gave the United States Congress the freedom to determine Puerto Rico's civil and political rights.⁵⁶ The Treaty of Paris was the first instance where the United States Congress was given the task of determining Puerto Rico's citizenship status. In what has become an infamous provision, Article IX of the Treaty states that "the civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress."⁵⁷ Although this treaty did not establish Puerto Rico's current citizenship, it is what recognized Puerto Rico's civil and political status as a U.S. territory.⁵⁸

C. Foraker Act

The first Act that further implemented Puerto Rico's affiliation with the United States was the 1900 Foraker Act.⁵⁹ The U.S. military controlled the Island until Congress passed the Foraker Act.⁶⁰ The Act provided for the establishment of a local government.⁶¹ The Act, among other things, also contained a citizenship provision which expressed that the inhabitants of Puerto Rico shall be deemed and held to be citizens of Puerto Rico.⁶² The Foraker Act set forth the economic principles underlying the relationship between the United States and Puerto Rico.⁶³ Unlike prior organic or territorial acts that treated acquired territories as future states in the making, the Foraker Act treated Puerto Rico as an occupied territory that was not a foreign country or a part of the United States.⁶⁴

The Foraker Act contained a provision that extended a special tax on commercial goods or products that were imported from the Islands into the United States.⁶⁵ More importantly, the Foraker Act provided the Federal Government with virtually complete control of the Island's affairs.⁶⁶ Significantly, the Foraker Act did not treat Puerto Rico as a state-in-the-making nor as a colonial territory.⁶⁷ This Act selectively treated Puerto Rico (an annexed territory) as a foreign country for tax or

⁵⁶ *Id.*

⁵⁷ Art. IX, Treaty of Paris, 1 LPRH Historical Documents, at 20.

⁵⁸ *Id.*

⁵⁹ VENATOR-SANTIAGO, *supra* note 6, at 52.

⁶⁰ Jon M. Van Dyke, *The Evolving Legal Relationships between the United States and its Affiliated U.S.-Flag-Islands*, 14 U. HAW. L. REV. 445, 472 (1992).

⁶¹ *Id.*

⁶² Calderón, *supra* note 52, at 326.

⁶³ Eduardo Guzman, *Comment, Igartua de la Rosa v. United States The Right of the United States Citizens of Puerto Rico to Vote for the President and the Need to Re-Evaluate America's Territorial Policy*, 4 U. PA. J. CONST. L. 141, 151 (1999).

⁶⁴ VENATOR-SANTIAGO, *supra* note 2, at 7.

⁶⁵ *Id.*

⁶⁶ *Puerto Rico v. Sánchez Valle*, 136 S. Ct. 1863, 1880 (2016).

⁶⁷ VENATOR-SANTIAGO, *supra* note 6, at 52.

commercial purposes representing a departure from prevailing interpretations of the Uniformity Clause, which were premised on treating all annexed territories as parts of the United States for constitutional purposes.⁶⁸ This act further recognized Puerto Rico's affiliation with the United States and dependency upon the United States.

D. Jones Act

The second Act, which led to Puerto Rico's current citizenship status is the Jones Act. The Jones Act of 1917, among other things, contains a provision under Section five that makes citizens of Puerto Rico, United States citizens.⁶⁹ Section five of the Jones Act provides that:

That all citizens of Puerto Rico, as defined by section seven of the Act of April twelfth, nineteen hundred, "temporarily to provide revenues and a civil government for Puerto Rico, and for other purposes," and all natives of Puerto Rico who were temporarily absent from that Island on April eleventh, eighteen hundred and ninety-nine, and have since returned and are permanently residing in that Island, and are not citizens of any foreign country, and hereby declared, and shall be deemed and held to be, citizens of the United States. . . .⁷⁰

Section five of this Organic Act collectively naturalized all persons born in Puerto Rico and extended a derivative form of parental or *jus sanguinis*⁷¹ citizenship to those born on the Island.⁷² Under the Jones Act the phrase "citizens of Puerto Rico" has a different connotation.⁷³ The phrase established the dual citizenship which all citizens of continental United States have; national citizenship and that of the state in which they reside.⁷⁴ It no longer implied a general political status, but merely a political status restricted to that of residence in Puerto Rico.⁷⁵ This status was granted to citizens of the United States who reside or who shall hereafter reside in

⁶⁸ *Id.* at 54-55. Uniformity Clause, requires that indirect taxes, such as income taxes and excise taxes be uniform throughout the United States. *See* U.S. CONST. art. I, § 8, cl. 4.

⁶⁹ Jones-Shafroth Act of 1917, Pub. L. No. 64-368, 39 Stat. 951 (1917).

⁷⁰ *Id.*

⁷¹ VENATOR-SANTIAGO, *supra* note 2, at 3. (Jus Sanguinis or blood right is a legislative form of derivative or parental citizenship modelled after the Roman tradition that was later developed by U.S. Congress. Jus Sanguinis citizenship was enacted to extend rights and responsibilities to the children of members or the armed forces and embassy staff serving overseas or outside of the United States).

⁷² VENATOR-SANTIAGO, *supra* note 2, at 11.

⁷³ Jones-Shafroth Act of 1917, Pub. L. No. 64-368, 39 Stat. 951 (1917).

⁷⁴ Calderón, *supra* note 52, at 344.

⁷⁵ *Id.*

the Island for one year.⁷⁶ As a result, Puerto Rican citizens of the United States who reside in Puerto Rico for one year are also citizens of Puerto Rico.⁷⁷ In other words, this Act created some sort of dual citizenship between Puerto Rico and the United States.⁷⁸ Thus, a citizen of the United States who resides in New York is also a citizen of the State of New York.⁷⁹ Consequently, Puerto Rico citizens of the United States who reside in Puerto Rico for one year are also citizens of Puerto Rico.⁸⁰

E. Insular Cases

Consistent with the Jones Act and previous cases, the Supreme Court has constantly been confronted with numerous cases that have questioned the constitutional relationship between the new territories and the rest of the United States.⁸¹ The implementation of establishing the constitutional relationship between the new territories and the United States is what we recognize today as the *Insular Cases*. The concepts of “unincorporated” and “incorporated” territories were introduced in the *Insular Cases* decided by the United States Supreme Court in 1901.⁸² In these decisions, Justice Edward D. White formulated the view that if a government had the power to expand its territory by any means, then that power also included the right to establish and determine the status of the newly-acquired territory.⁸³ A newly-acquired territory does not, therefore, automatically become «incorporated» and does not achieve that status until Congress acts to «incorporate» it.⁸⁴ Throughout the years these, *Insular Cases* have been questioned over and over again in order to find the rationale behind not awarding Puerto Rico the same constitutional provisions as part of the United States that states have.

Noteworthy to address, before going further into the history of the *Insular Cases*, is the fact that Puerto Rico currently has a “commonwealth” status.⁸⁵ According to commentator Jon Van Dyke, the definition of a commonwealth is the following:

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ Calderón, *supra* note 52, at 344.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Kyle Dropp & Brendan Nyhan, *Nearly Half of Americans Don't Know Puerto Ricans are Fellow Citizens*, N. Y. TIMES (Sept. 26, 2017),

<https://www.nytimes.com/2017/09/26/upshot/nearly-half-of-americans-dont-know-people-in-puerto-ricoans-are-fellow-citizens.html>.

⁸² Van Dyke, *supra* note 60, at 445, 449.

⁸³ *Downes v. Bidwell*, 182 U.S. 244, 287-344 (1901).

⁸⁴ Van Dyke, *supra* note 60, at 449.

⁸⁵ *Id.* at 451.

The concept of a “commonwealth” anticipates a substantial amount of self-government (over internal matters) and some degree of autonomy on the part of the entity so designated. The commonwealth derives its authority not only from the United States Congress, but also by the consent of the citizens of the entity. The commonwealth concept is a flexible one designed to allow both the entity and the United States to adjust the relationship as appropriate over time.⁸⁶

There are different meanings to what each commonwealth constitutional status means. Although Puerto Rico’s status has not changed to an incorporated territory, the question raised is whether fundamental rights that apply to a “commonwealth” differ from those unincorporated territories that do not have commonwealth status.

From 1901-1905, the Supreme Court in a series of opinions regarding the *Insular Cases* held that the Constitution extends *ex proprio vigore* to the territories.⁸⁷ The definition of the *ex proprio vigore* doctrine is identified as the Constitution following the flag, this is based off the belief that every provision of the United States Constitution is good for everybody, all the time, everywhere.⁸⁸ Under the same, the Constitution only applied fully to incorporated territories such as Alaska and Hawai’i, whereas it only applied partially in the new unincorporated territories of Puerto Rico, Guam and the Philippines.⁸⁹ Sometime later, courts such as the one in *Downes v. Bidwell*, determined that new states may be admitted by Congress into this Union.⁹⁰ Although these words, of course, carry the Constitution with them, nothing is said regarding the acquisition of new territories or the extension of the Constitution over them.⁹¹ This meant these territories could be governed as colonies, with few constitutional restraints.⁹²

In *Downes v. Bidwell*, the United States Supreme Court addressed the constitutionality of the military tariffs imposed on goods bought from Puerto Rico and imported into the United States after the enactment of the Foraker Act.⁹³ The constitutional issue was whether the Tariff Clause in section three of the Foraker Act violated the Uniformity Clause by imposing the Dingley Act⁹⁴ on goods traded

⁸⁶ *Id.* at 451.

⁸⁷ GELPI, *supra* note 41, at 105.

⁸⁸ Stanley J. Laughlin Jr., *Cultural Preservation in Pacific Islands: Still a Good Idea and Constitutional*, 27 HAW. L. REV. 373 (2005).

⁸⁹ GELPI, *supra* note 41, at 105-06.

⁹⁰ *Downes v. Bidwell*, 182 U.S. 244, 286 (1901).

⁹¹ *Id.*

⁹² *Id.*

⁹³ VENATOR-SANTIAGO, *supra* note 6, at 55.

⁹⁴ Dingley Tariff Act, ch. 11, 30 Stat. 151 (1897) (This act was created in order to provide a schedule of tariff rates on sugar, salt, tobacco, petroleum, and other goods and commodities).

between Puerto Rico and the mainland.⁹⁵ The court determined that Puerto Rico is a territory of appurtenant and belonging to the United States, but not part of the United States within the revenue clauses of the Constitution.⁹⁶ The places affected by the court ruling came to be known as “unincorporated” territories.⁹⁷

Downes v. Bidwell drew a distinction between incorporated and unincorporated territories.⁹⁸ The court established that Puerto Rico had not been incorporated, and that therefore, the Bill of Rights and other constitutional protections therefore did not apply.⁹⁹ However, rights which were “inherent, although unexpressed, principles which are the basis of all free government did.”¹⁰⁰

Subsequently, in *Balzac v. Porto Rico*, the Supreme Court further clarified the Bidwell decision. Specifically, in *Balzac* the Court interpreted the Jones Act to be an Act that provides the authority for Puerto Rico to have a civil government but did not indicate by its title that it has a purpose to incorporate the Island into the Union.¹⁰¹ *Balzac v. Porto Rico*, unanimously confirmed *Downes*’s notion of territorial incorporation.¹⁰² In *Balzac*, the Supreme Court held that Puerto Rico remained an unincorporated territory and that the Sixth Amendment’s guarantee to a trial by jury was not a “fundamental right which goes wherever the jurisdiction of the United States extends.”¹⁰³ Based on such conclusion, the Court held that judges were allowed to convict Puerto Ricans without giving them an option to have their case be heard by a jury.¹⁰⁴

After reading these cases, it is clear that courts have affirmed that certain provisions of the U.S. Constitution, such as the right to a trial by jury, apply to unincorporated territories up to a certain extent unless Congress states otherwise.¹⁰⁵ It is undisputed that the *Insular Cases* are a complex collection of decisions whose combined holdings «cannot easily be summarized.»¹⁰⁶ The question of exactly which rights would apply in the unincorporated territories has proven particularly vexing.¹⁰⁷ After considering the history of the *Insular Cases* it is clear to recognize

⁹⁵ VENATOR-SANTIAGO, *supra* note 6, at 55.

⁹⁶ *Downes v. Bidwell*, 182 U.S. 244, 287 (1901).

⁹⁷ *Id.*

⁹⁸ *Id.* at 265.

⁹⁹ *Developments in the Law--The U.S. Territories: Introduction*, *supra* note 9, at 1620.

¹⁰⁰ *Bidwell*, 182 U.S. at 291.

¹⁰¹ *Balzac v. Porto Rico*, 258 U.S. 308 (1922).

¹⁰² *Developments in the Law--The U.S. Territories: Introduction*, *supra* note 9, at 1620.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Developments in the Law the U.S. Territories: Chapter Three: American Samoa and the Citizenship Clause: A Study in Insular Cases Revisionism*, 130 HAR. L. REV. 1680, 1681-82 (2017).

¹⁰⁷ *Id.* at 1682.

that, being an unincorporated territory is to be caught in an oblivion that is subject to be entitled to certain constitutional provisions or statutes.¹⁰⁸

III. The doctrine of extension and how it applies to Puerto Rico within the Fourteenth Amendment

As previously stated, the Fourteenth Amendment guarantees that “[a]ll persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”¹⁰⁹ Article I, Sec. 8, Clause 4 and the first sentence of the Fourteenth Amendment of the Constitution authorizes Congress to “establish a uniform rule of naturalization.”¹¹⁰ This means that Congress has the power to enact legislation that can provide for the naturalization or the extension of citizenship to persons born outside of the United States.¹¹¹ Congress’ power to enact legislation also extends to U.S. territories including Puerto Rico.¹¹²

Congress has developed a legislative form of derivative or parental citizenship modelled after the Roman tradition of *jus sanguinis* or blood right.¹¹³ For most of its history, this form of parental citizenship required that children of citizens born outside of the United States had to reside for a portion of their life in a state or territory within the Union in order to acquire United States rights.¹¹⁴ Although the Constitution does not contain any language authorizing the extension of parental or birth right citizenship, the Supreme Court has consistently affirmed the power of Congress to develop the necessary legislation to extend this form of citizenship.¹¹⁵ Through the years the evolution of the Fourteenth Amendment has extended citizenship rights to liberated slaves.¹¹⁶ However, when the new amendment was introduced it replaced the state-based form of citizenship and created a national citizenship that was based on the principle of birth right in the United States.¹¹⁷

Statutory forms have also been used to extend or withhold different types of constitutional rights to groups of people living under the sovereignty of the United States.¹¹⁸ For instance, one type of citizenship has been used to govern Native Americans and U.S. citizens residing in unincorporated or outlying territories

¹⁰⁸ Dropp, *supra* note 81.

¹⁰⁹ U.S. CONST. amend. XIV, § 1.

¹¹⁰ VENATOR-SANTIAGO, *supra* note 2, at 3.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 5.

such as Guam, American Samoa, the Northern Mariana Islands, the U.S. Virgin Islands, and most would argue Puerto Rico.¹¹⁹ There have been numerous cases, such as the *Insular Cases*, which have concluded that Puerto Rico is not located in the United States and Puerto Rican born citizens are mere statutory citizens without the same constitutional status as persons born in the United States.¹²⁰ The interpretation of the *Insular Cases* has further concluded that persons born and or naturalized in Puerto Rico are merely entitled to a statutory rather than a constitutional citizenship since Puerto Rican born citizens do not acquire a constitutional citizenship.¹²¹

What the courts have not deemed to acknowledge or simply refuse to discuss is the inequality of Puerto Rico's statutory citizenship. A Congressional Report describes Puerto Rico's particular citizenship brand as the following:

The statutory citizenship status of the inhabitants of Puerto Rico is not equal, full, permanent, irrevocable citizenship protected by the Fourteenth Amendment, Puerto Ricans' lack of voting representing in Congress, lack of voting rights in elections, rights of equal protections and due process have a different application and effect on the territory rather than the rest of the nation.¹²²

Puerto Rico's current status as an unincorporated territory allows Congress to keep these limitations *as is* and use the territory as they see fit and more convenient to them under its plenary power.¹²³

Professor Venator-Santiago has provided a different interpretation to what constitutional source of the citizenship legislation applies to Puerto Rico.¹²⁴ Professor Venator-Santiago's recent report mentions the different theories referring to Puerto Rico's statutory citizenship that have been subject of debate.¹²⁵ As previously mentioned, the only theory being discussed in this article is the sixth theory, in which Professor Venator-Santiago argues how the legislative history of the Nationality Act of 1940, demonstrates how Congress anchored its *jus soli* or birth right citizenship legislation for Puerto Rico in the Citizenship Clause of the Fourteenth Amendment.¹²⁶ In other words, in 1940 Congress began to enact citizenship legislation or statutes

¹¹⁹ *Id.*

¹²⁰ VENATOR-SANTIAGO, *supra* note 6, at 80.

¹²¹ *Id.*

¹²² H.R. REP. NO. 105-131, at 17 (1997).

¹²³ Adriel I. Cepeda Derieux, *A Most Insular Minority: Reconsidering Judicial Deference to Unequal Treatment in Light of Puerto Rico's Political Process Failure*, 110 COLUM. L. REV. 797, 798 (2010).

¹²⁴ Venator-Santiago, *supra* note 34, at 4.

¹²⁵ *Id.* at 4-7.

¹²⁶ *Id.* at 6-7.

for Puerto Rico that extended the Citizenship Clause of the Fourteenth Amendment to the Island.¹²⁷

Within the Nationality Act of 1940, the legislation included specific provisions that retroactively naturalized all persons born in Puerto Rico after April 11, 1898 and extended birth right or *jus soli* citizenship to all persons born in the Island after 1941.¹²⁸ In addition, Section 202 of the Act extended birth right or *jus soli* citizenship to all persons born in the Island without any restrictions.¹²⁹ This law was subsequently codified in 1952 as 8 U.S.C. §1402, 66 Stat. 236 (1952) and remains the main source of U.S. citizenship for all persons born in Puerto Rico.

Professor Venator-Santiago drew his interpretation based on the so called “doctrine of extension”, which establishes that Congress has claimed a plenary power to extend or apply constitutional provisions through legislation.¹³⁰ Meaning that the extension of birth right citizenship, without explicitly changing the unincorporated territorial status of the Island, guarantees that persons born in Puerto Rico can be entitled to a constitutional (Fourteenth Amendment) form of birth right citizenship, a form of *jus soli* citizenship.¹³¹ In addition, birth right citizenship extends to the children of citizens or undocumented migrants alike that are born in the United States.¹³² Most policymakers and academics suggest that Congress merely extended a statutory or legislative form of birth right citizenship to the Island because Congress has never explicitly recognized the extension of the Fourteenth Amendment to Puerto Rico.¹³³ Conversely, others argue that in order to extend *jus soli* citizenship to the Island the Federal government had to treat Puerto Rico as an incorporated territory of the United States.¹³⁴

The interpretation of the doctrine of extension has been rejected before in *Downes v. Bidwell*.¹³⁵ The Supreme Court’s reasoning for not applying the doctrine of extension was because the Constitution had not been extended to Puerto Rico by the Foraker Act, Congress was free to legislate for the Island and it could impose duties on articles coming from Puerto Rico to the United States.¹³⁶ There have also been several other cases which have further affirmed *Balzac* and *Downes*. Consequently, Congress has used this same doctrine of extension to enact birth right citizenship legislation that extends the Citizenship Clause of the Fourteenth Amendment to

¹²⁷ *Id.* at 7.

¹²⁸ VENATOR-SANTIAGO, *supra* note 2, at 13.

¹²⁹ *Id.* at 13-14.

¹³⁰ Venator-Santiago, *supra* note 34, at 7.

¹³¹ VENATOR-SANTIAGO, *supra* note 2, at 14.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Venator Santiago, *supra* note 34, at 7.

¹³⁶ *Downes v. Bidwell*, 182 U.S. 244, 287 (1901).

the territories.¹³⁷ There is evidence of the use of this doctrine by the wide array of organic or territorial Acts that have been implemented in other territories such as Oregon, Alaska, Hawai'i and the U.S. Virgin Islands.¹³⁸ Federal agency reports, memorandums and the legislative histories of some congressional citizenship bills can further confirm that the doctrine of extension is applicable to Puerto Rico.¹³⁹

IV. Congress' legislative actions from 1900 to present and how it has slowly extended Puerto Rico rights that would only apply to an incorporated territory

After reading Professor Venator-Santiago's report and examining Congress' legislative actions throughout the years there are two questions that one must ask when looking at Puerto Rico's current statutory citizenship status. The first question to ask is, whether the Constitution today extends in full to Puerto Rico?¹⁴⁰ The second is, whether the Constitution still permits Congress to continue treating this United States' territory, as well as its four million citizens, separately from stateside jurisdictions and United States citizens therein?¹⁴¹ Actions speak louder than words. Even though Congress has never enacted any affirmative language, such as "Puerto Rico is hereby an incorporated territory," its sequence of legislative actions from 1900 to present has in fact incorporated the territory.¹⁴²

Some examples of how Congress' legislative actions can be interpreted to change Puerto Rico's status as an unincorporated territory are the various Acts and treaties that have been implemented by Congress throughout the years. These treaties and Acts were previously mentioned as the Treaty of Paris, Foraker Act and the Jones Act. Other important legislative actions conducted by Congress is the Elective Governor Act established in 1947 where Puerto Ricans for the first time in over 400 years elected their own governor.¹⁴³ Shortly thereafter, the Puerto Rican Federal Relations Act, also known as Law 600, was enacted in 1950.¹⁴⁴ Law 600 authorized Puerto Rico to draft a Constitution of their own, this enactment currently serves as the organic law for the Puerto Rican government.¹⁴⁵ Subsequently, the enactment of Law 600 was later approved by Congress as Law 477 in 1952.¹⁴⁶ Within the

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ GELPI, *supra* note 41, at 104.

¹⁴¹ *Id.* at 104.

¹⁴² *Id.* at 132.

¹⁴³ *Id.* at 133.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 132.

¹⁴⁶ *Id.* at 133.

same year Congress approved of Puerto Rico's Constitution and the President of the United States appointed the first Puerto Rican Judge to the federal court.¹⁴⁷

Another example showing how Congress' legislative actions treated Puerto Rico as an incorporated territory was during the enactment of Public Law 87-189 of 1961, which granted parties the right to appeal their cases from the Puerto Rico Supreme Court to the United States Supreme Court, just as it is commonly done in cases appealed from State Supreme Courts.¹⁴⁸ Sometime later, Congress created the Article III Courts.¹⁴⁹ Under Article III, also known as the PL 89-571, Congress added seven additional federal judges to the Federal District Court for the District of Puerto Rico.¹⁵⁰ Last but not least, from 1917 to 2008 all United States laws were applied to Puerto Rico unless there was a Congressional exception.¹⁵¹ Congress' implementation of all of these legislative actions clearly support how Puerto Rico has gradually and indirectly been treated as an incorporated territory rather than an unincorporated territory.

The *Insular Cases* have also had a judicial affect in slowly treating Puerto Rico as an incorporated territory. For instance, the *Insular Cases* established that the Constitution applies *ex proprio vigore* to Puerto Rico, however, not all constitutional rights extend to unincorporated territories.¹⁵² *Balzac v. Porto Rico* determined that Puerto Rico continues to be an unincorporated United States' territory where only fundamental constitutional rights apply.¹⁵³ All of these cases have slowly played a part in demonstrating how Puerto Rico is treated to be less of an unincorporated territory and more of an incorporated territory.¹⁵⁴

On the other hand, a recent case such as *Puerto Rico v. Sánchez Valle* further affirms how Puerto Rico and the United States are not separate sovereigns for purposes of the Double Jeopardy Clause.¹⁵⁵ In this case, the court determined that because the ultimate source of Puerto Rico's prosecutorial power was the Federal Government, the Commonwealth and the United States were not separate sovereigns.¹⁵⁶ This case further established how the power that allowed Congress to tailor legislative solutions to a territory's unique circumstances has significantly integrated Puerto Rico into the Nation, but it has also allowed Congress to discriminate against the territory.¹⁵⁷ The

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 123.

¹⁴⁹ *Id.* at 134.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.* at 133.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 225.

¹⁵⁶ *Id.* at 266.

¹⁵⁷ *Id.* at 271-72.

result of *Puerto Rico v. Sanchez Valle* has led many to believe that Puerto Ricans are not free in the sovereign sense: they live under Congress' shadow, in the end subject to its will.¹⁵⁸ After assessing the historical background of Congress' legislative actions since the 1900's, it is evident that Congress has subtly and slowly extended to Puerto Rico constitutional provisions through legislation.¹⁵⁹ As a result, it can easily be inferred that Congress has created citizenship legislation or acts that have extended the Citizenship Clause of the Fourteenth Amendment to Puerto Rico.¹⁶⁰

V. The Effect of excluding Puerto Ricans from having the constitutional provisions granted under Fourteenth Amendment

After discussing the history of Congress' legislative actions it is clear that Congress has extended Puerto Rico's constitutional rights, but it has refused to clarify to what extent the doctrine of extension applies to Puerto Rican residents living on the Island.¹⁶¹ Additionally, the Supreme Court has tied the exercise of constitutional rights to the status of U.S. territories.¹⁶² For instance, as for incorporated territories, the entire Bill of Rights applies, whereas for unincorporated territories, only some of it does.¹⁶³ Overall, the Court's distinction between fundamental and procedural rights deems highly strained and arbitrary.¹⁶⁴ Subsequently, it is important to underline how excluding the United States citizens living in Puerto Rico from constitutional rights under the Fourteenth Amendment impacts residents living there today.

Revealing the types of rights residents currently living on the Island are being deprived of, will further highlight how these residents are being affected by the exclusion of these rights. For instance, current law makes it impossible for the Americans who reside in the territories and commonwealths of the United States to affect laws passed by the federal government through political representation, despite the fact that these residents are subject to all applicable federal laws.¹⁶⁵ Perhaps the most poignant example, because it involves potential death, is that these citizens must register with the Selective Service and subject themselves to United States military service.¹⁶⁶ Citizens residing in the American territories have served with

¹⁵⁸ *Constitutional Law: Fifth Amendment Double Jeopardy Dual Sovereignty Doctrine Puerto Rico v. Sanchez Valle*, 130 HARV. L. REV. 347, 356 (2016).

¹⁵⁹ *Id.*

¹⁶⁰ Venator-Santiago, *supra* note 34, at 7.

¹⁶¹ *Id.* at 4.

¹⁶² Alan Tauber, *The Empire Forgotten: The Application of the Bill of Rights to U.S. Territories*, 57 CASE W. L. REV. 147, 166 (2006).

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 167.

¹⁶⁵ Lisa M. Komives, *Enfranchising a Discrete and Insular Minority: Extending Federal Voting Rights to American Citizens Living in United States Territories*, 36 U. MIAMI INTER-AM. L. REV. 122 (2004).

¹⁶⁶ *Id.*

distinction in every United States armed conflict since 1917, and have served in the war against terror in Afghanistan and Iraq.¹⁶⁷ These citizens, however, can neither vote for the Commander-in-Chief of the military, the President, who controls United States combat, nor do they have voting representation in Congress, the official body which declares war.¹⁶⁸ People living in U.S. territories, such as Puerto Rico are also not entitled to a Sixth Amendment Right to a trial by jury.¹⁶⁹

This exclusion of rights not only applies to American citizens born and residing in the American territories, but also to American citizens who reside in one of the fifty states and move to a United States territory.¹⁷⁰ As previously mentioned when the Jones Act was enacted it established a dual citizenship which not only applied to Puerto Rican citizens residing in the Island but also all those who decided to migrate to Puerto Rico. Meaning that even if a person is born and raised on the mainland and decides to live in Puerto Rico they would not be entitled to the same constitutional rights they had always enjoyed. The new territorial resident is stripped of the right to vote in Presidential or Congressional elections.¹⁷¹ This second-class form of citizenship is based solely on the arbitrary criterion of locale, for even American citizens residing abroad have the right to vote in federal elections under the Uniformed and Overseas Citizens Absentee Voting Act.¹⁷²

Although the American territories are part of the physical geography of the United States, the citizens residing therein are unconstitutionally disenfranchised.¹⁷³ The ability for Congress to strip rights away from a person born and raised on the mainland should be unconstitutional. Additionally, it also makes it uninviting for people from the mainland to consider living in an unincorporated territory such as Puerto Rico. Moreover, it also makes it less appealing for current residents to want to continue living in a U.S. territory that only grants limited rights that they would be afforded if they were to be living on the mainland.

VI. Potential solutions

After examining the case law and legislative actions issues surrounding the debate over the extension of the Constitution to U.S. territories such as Puerto Rico, there are three potential solutions in order to help solve the matter in question.¹⁷⁴

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ Tauber, *supra* note 162, at 147, 166.

¹⁷⁰ Komives, *supra* note 165, at 123.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Tauber, *supra* note 162, at 173.

The first, and most simplistic option, is for Congress simply to pass legislation that extends the “procedural” rights to the territories.¹⁷⁵ This would entail the least change to the current system, and would not extend citizenship to those thought “unfit” to receive it.¹⁷⁶ As the Court has pointed out in the *Insular Cases*, Congress has always retained the right to extend the protections of the Bill of Rights to the territories.¹⁷⁷ Although these rights have never actually been implicitly extended by Congress, insular cases such as *Balzac v. Porto Rico*, have concluded that the creation of a Bill of Rights for Puerto Rico in the Jones Act justifies the conclusion that the federal Bill of Rights does not apply.¹⁷⁸ Passing legislation that unambiguously extends procedural rights to territories would be the easiest and least controversial solution to apply.¹⁷⁹ It would be the easiest solution to apply since it would only require Congress enacting new legislation that would clearly extend constitutional Fourteenth Amendment provisions to Puerto Rico.

The next option would be to fully incorporate the territories currently held by the United States into the Union in preparation for eventual statehood.¹⁸⁰ As the Court has pointed out, and as the treaty language of other acquisitions implies, this has always been the eventual goal.¹⁸¹ Clearly over a century of association with the United States has prepared Puerto Rico for full incorporation.¹⁸² The idea of statehood has been debated about in Puerto Rico for almost two decades, which clearly shows that Congress has considered incorporation in the past.¹⁸³ Applying Puerto Rico incorporation status would not only extend the constitutional statutes or provisions it is currently being deprived of but could eventually lead the Island to become a state.

The final, and most radical, solution would be to grant Puerto Rico independence if they believe that remaining as an unincorporated territory is more harmful than beneficial.¹⁸⁴ Breaking all ties from the United States would most likely be detrimental for any U.S. territory. Based on the interconnectedness of territorial economies with that of the United States, such a move could be disastrous for the territories.¹⁸⁵ Although it is probably the least appealing for any U.S. territory to

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Balzac v. Porto Rico*, 258 U.S. 308, 306-07 (1922).

¹⁷⁹ Tauber, *supra* note 162, at 173.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 174.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 175.

¹⁸⁵ *Id.* at 176.

consider, many believe that cutting all ties from the United States could maybe be the best solution because it would clear the doubt of where the Island stands.

VII. Conclusion

In summary, it is evident that the status of unincorporated territories such as Puerto Rico has never been clarified by Congress or the courts. Much uncertainty remains as to whether persons with birth right citizenship are entitled to constitutional statutory citizenship through the “Doctrine of Extension”. However, one thing is for certain, Puerto Rico’s current statutory citizenship is unreliable, given that Congress can decide at any given point whether to break all ties with the Island.¹⁸⁶ Whether Puerto Rico is part of the United States for purposes of the Citizenship Clause continues unresolved but needs to be determined sooner rather than later.¹⁸⁷

The question that remains unanswered is, whether the extension of birth right citizenship, without officially amending or enacting any new legislation, alters the unincorporated territorial status of the Island. Extending birth right citizenship guarantees that persons born in Puerto Rico are entitled to constitutional Fourteenth Amendment rights.¹⁸⁸ Although there have been numerous cases also known as the *Insular Cases* that have repeatedly expressed that the only rights that Puerto Ricans are entitled to are fundamental constitutional rights. It is evident that due to Congress’ legislative actions from 1900 to present have led many to believe Puerto Rico has been extended constitutional provisions that would only be permissible if it were an incorporated territory.

After learning the different analysis concerning Puerto Rico’s current statutory citizenship, the Citizenship Clause of the Fourteenth Amendment conflicts with the limitations unincorporated territories, such as Puerto Rico have. Although unincorporated territories have been established through treaties and Acts there is no real explanation as to why the Citizenship Clause does not pre-empt fundamental rights being deprived to unincorporated territories. As well as why these unincorporated territories are not entitled to have extended statutory citizenship that have been applied throughout the years to Puerto Rico. After analysing the related case law and legislative actions conducted by Congress through the years, it is evident that the core issue that has prevented Puerto Rico from retaining the same birth right citizenship as those who live on the mainland is Congress. Consequently, the courts failure to interpret what Congress meant when they granted U.S. Citizenship has been a hindrance. Finding a solution to Puerto Rico’s current statutory citizenship

¹⁸⁶ Christina Duffy Ponsa, *Are American Samoan’s American?*, N.Y. TIMES, [newyorktimes.com](https://www.nytimes.com/2016/06/08/opinion/are-american-samoans-american.html), (June 8, 2006), <https://www.nytimes.com/2016/06/08/opinion/are-american-samoans-american.html>.

¹⁸⁷ *Id.*

¹⁸⁸ VENATOR-SANTIAGO, *supra* note 2, at 14.

status is necessary in order to finally define Puerto Rico's political and legal status, where it stands as an incorporated territory or as an unincorporated territory, and whether it is entitled to the same fundamental rights granted to those who live on the mainland. Only time will tell if one of the three solutions presented may finally be the long-awaited answer many have questioned for so long.