



BIRLING
CAPITAL ADVISORS, LLC

Think Strategically

The Conditional Citizenship of Puerto Ricans: Historical Foundations and the Shameful Insular Cases

March 24, 2025

Francisco Rodríguez-Castro, President & CEO

A Question of Belonging in an Unequal America

As the United States enters a pivotal moment in 2025, the country faces a crisis of policy and identity. A growing number of Americans—both native-born and naturalized—are questioning what it truly means to "belong" in a nation where the rule of law often yields to the power of perception.

Nowhere is this tension more visible than in the current climate of aggressive immigration enforcement and rising anti-immigrant rhetoric. While these actions are ostensibly aimed at undocumented individuals, the reality is that they increasingly target anyone who "looks or sounds different" from White, English-speaking US citizens, who, more often than not, do not understand the differences. Latino communities across the United States—regardless of legal status—face heightened scrutiny, suspicion, and discrimination.

For Puerto Ricans, this climate presents a particularly dangerous contradiction. Puerto Ricans are US citizens by birth, a status granted by Congress in 1917. Yet despite this legal reality, many Puerto Ricans are still treated as foreigners in their own country—profiled at airports, challenged in voter registration offices, or subjected to questions about their right to work, vote, or live in the mainland United States. These indignities are compounded for other Latinos—those who are naturalized citizens, permanent residents, or born in the States to immigrant parents—who are too often presumed to be "illegal" simply because of their name, accent, or appearance.

This growing atmosphere of cultural suspicion and racial bias erodes the foundations of American citizenship and exposes its unequal application. It also underscores a grim truth: not all citizens are treated as equals under the law, and not all citizenships are regarded as permanent or respected. These realities are especially urgent for Puerto Rico, a US territory whose residents have been citizens for over a century, yet whose citizenship is not constitutionally guaranteed but granted by an act of Congress—the Jones Act of 1917.

In this volatile national climate, where immigration, race, and national identity are fiercely contested, the question must be asked: **What protections does US citizenship truly offer when prejudice overrides legality?**

The answers begin with a return to history—specifically, to the colonial logic and racial assumptions embedded in the Insular Cases and the architecture of Puerto Rico's relationship with the United States. Only by confronting this legacy can we redefine what it means to be American in the 21st century—for everyone, equally.



Historical Foundations of Puerto Rican Citizenship

The historical foundation of Puerto Rican citizenship is rooted in the complex legacy of imperialism, war, and evolving US territorial law. To fully grasp the meaning and limitations of citizenship in Puerto Rico, one must start with the events of the late 19th century, when Spain's colonial grip on the Americas was fading, and the United States was emerging as a global power.

Puerto Rico under Spanish Rule

From 1493 to 1898, Puerto Rico was a colony of Spain. The island's inhabitants were considered subjects of the Spanish Crown, not full citizens. Unlike in modern democratic systems, subjects of the Spanish Empire had no constitutional rights. However, 1897, after growing demands for autonomy throughout the Spanish Empire, the Spanish government granted Puerto Rico a Carta Autonómica (Autonomy Charter), giving the island limited self-government and a potential path toward Spanish citizenship. But this window of self-rule was abruptly closed by the following year's events.

The Spanish-American War and the Treaty of Paris (1898)

The Spanish-American War—fought in 1898—was a turning point. After defeating Spain, the United States acquired Puerto Rico, Guam, and the Philippines through the Treaty of Paris on December 10, 1898. For Puerto Rico, this marked the end of Spanish colonialism and the beginning of US sovereignty. Article IX of the Treaty of Paris stated that the "civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress." This vague and open-ended clause created a legal gray area in which Puerto Ricans were now neither fully foreign nor fully American, and their rights depended entirely on Congressional discretion.

Early U.S. Administration: The Foraker Act of 1900

The Foraker Act, passed by Congress in 1900, was the first organic law governing Puerto Rico under US rule. It established a civil government on the island, with a governor appointed by the President of the United States and a partially elected legislature. Critically, the act created a distinct Puerto Rican citizenship—a legal identity that existed separately from US citizenship.

This local citizenship was symbolic in nature. It allowed Puerto Ricans to carry Puerto Rican passports but did not grant the rights, protections, or mobility of US citizenship. Importantly, Puerto Ricans at this time were considered "nationals" of the United States—affiliated with the US, but not citizens.

Introduction of US Citizenship: The Jones-Shafroth Act of 1917

On the eve of America's entry into World War I, Congress passed the Jones-Shafroth Act in 1917. Among other provisions, it granted statutory US citizenship to all persons born in Puerto Rico. This was not an extension of the 14th Amendment (which guarantees birthright citizenship to those born in the US or its incorporated territories) but a legislative act of Congress, meaning it could be modified or even repealed. It is important to emphasize that this grant of citizenship was not based on constitutional rights—it was a political decision. As such, Puerto Rican US citizenship remains inherently vulnerable because it is grounded in statute, not in the Constitution.

Comparison of the Two Types of Citizenship

From 1900 onward, Puerto Ricans have held two forms of citizenship:

- **Puerto Rican Citizenship** – Created by the Foraker Act, this localized form of identity continues today as a legal status. While not functionally equivalent to nationality in most modern states, it reflects Puerto Rico's unique legal and cultural standing within the US framework. Today, Puerto Rican citizenship is often invoked in contexts such as public office eligibility or certain nationality disputes.

- **US Citizenship (Statutory)** – Created by the Jones Act in 1917, this form of citizenship enables Puerto Ricans to:
 - Carry U.S. passports
 - Serve in the US Armed Forces
 - Migrate freely to and from the mainland of the US.
 - Participate in federal programs such as Social Security and Medicare.
 - However, this citizenship does not guarantee full constitutional rights. Puerto Ricans cannot vote for President, do not have voting representation in Congress, and do not receive equal treatment under federal programs such as Medicaid or Supplemental Security Income (SSI).

This bifurcated citizenship is a direct result of the Insular Cases, a series of Supreme Court rulings that defined the relationship between the United States and its newly acquired territories, often using racially charged and imperialist logic.

The Insular Cases: Legal Architecture of Colonialism and Racism

The Insular Cases (1901–1922) are a group of Supreme Court decisions that interpreted the legal status of territories acquired by the United States after the Spanish-American War—particularly Puerto Rico, Guam, and the Philippines. These rulings established the doctrine of "unincorporated territories," stating that full constitutional protections do not automatically apply to these regions.

The core logic was that these territories "belonged to but were not a part of" the United States—a contradiction that created a class of Americans who could be denied full rights under the law.

- **Downes v. Bidwell (1901):** This case involved whether tariffs could be imposed on goods coming from Puerto Rico. The Supreme Court ruled that Puerto Rico was not a part of the US for constitutional purposes and that Congress had the discretion to treat it differently than the states. The ruling was steeped in racist and imperialist reasoning. Justice Edward Douglass White wrote in his concurring opinion: "It is obvious that in the annexation of outlying and distant possessions, grave questions will arise from differences of race, habits, laws, and customs of the people". He warned against applying the Constitution to such populations: "If those possessions are inhabited by alien races differing from us in religion, customs, laws, methods of taxation, and modes of thought... the administration of government and justice, according to Anglo-Saxon principles, may for a time be impossible". This line of thinking—rooted in the belief that non-white, non-Anglo populations were incapable of self-rule or undeserving of constitutional protections—enshrined a legal caste system within American constitutional law.
- **Balzac v. Porto Rico (1922):** Even after Puerto Ricans were granted US citizenship in 1917, the Supreme Court ruled in Balzac v. Porto Rico that constitutional protections like trial by jury did not apply in Puerto Rico.
- **Chief Justice William Howard Taft wrote:** "It is locality that is determinative of the application of the Constitution, in such matters as judicial procedure, and not the status of the people who live in it". This reasoning confirmed that citizenship alone did not guarantee constitutional rights—a position that continues to define the second-class status of US territories.
- **Dissenting Voices: Justice Harlan**
Justice John Marshall Harlan, who famously dissented in Plessy v. Ferguson, also dissented in the insular Cases. He wrote: "The idea that this country may acquire territories anywhere upon the earth... and hold them as mere colonies or provinces, the people inhabiting them to enjoy only such rights as Congress chooses to accord to them, is wholly inconsistent with the spirit and genius, as well as with the words, of the Constitution". Harlan warned that the Court's logic violated the foundational principles of American democracy and set a dangerous precedent—one that remains uncorrected more than a century later.

Enduring Consequences and the Value of the U.S.-Puerto Rico Union

The Insular Cases have never been overturned, and they remain the legal foundation for the unequal treatment of US citizens in Puerto Rico. This includes:

- No voting rights in presidential elections
- No voting representation in Congress
- Limited access to federal programs (e.g., SSI, Medicaid, SNAP)
- Statutory, revocable citizenship, not guaranteed by the Constitution

Despite these structural inequalities, the permanent union with the United States has provided Puerto Rico with benefits not enjoyed by many nations in the region: access to US markets, the dollar, federal funding, constitutional order, and the freedom to move and work anywhere in the US.

Before turning toward models of government based on independence or socialist ideologies, Puerto Ricans must consider the consequences of such systems in other parts of the world.

The U.S.-Puerto Rico relationship must evolve, but anchoring it in democratic values, constitutional protections, and mutual prosperity is far preferable to paths that risk political or economic disintegration.

The Final Word: Puerto Rico, Citizenship, and the Fight for Full Equality

Puerto Rican citizenship—both local and American—has been shaped by a legal and political framework riddled with racial bias, imperial logic, and constitutional ambiguity. The Insular Cases remain a stain on American jurisprudence—an institutionalized justification for treating US citizens in Puerto Rico and other territories as less deserving of full constitutional rights. These decisions, steeped in the language of racial and cultural superiority, continue to disenfranchise millions and uphold a colonial relationship long overdue for reform. Puerto Ricans have spoken clearly and repeatedly through democratic means, calling for an end to their second-class political status and seeking full inclusion in the American political system. In 2024, a non-territorial status plebiscite offered three defined options: Statehood, Free Association, and Independence. The results were decisive:

- Statehood: 58.61%
- Free Association: 29.57%
- Independence: 11.82%



A clear majority reaffirmed the island's desire to become a state, with nearly six in ten voters supporting full admission into the Union. However, what has been notably absent from recent and past plebiscites is the inclusion of Puerto Rico's current form of government—*Estado Libre Asociado*, or "Commonwealth". While some argue that the Commonwealth status no longer merits a place on the ballot, I believe the only way to defeat any position—whether strong or weak—is to face it directly.

Despite several democratic mandates, Congress has yet to act. The ongoing inaction not only disregards the will of US citizens in Puerto Rico—it undermines the very principles of democracy and equal representation that the United States claims to uphold.

The value of a permanent, just, and modernized union with the United States becomes not only apparent—it becomes essential. Puerto Rico cannot thrive under the weight of second-class status. It

deserves a future built on equality, dignity, and inclusion. The time has come to correct these historical injustices, and Anything less is not only unjust—it is un-American.

Sir Winston Churchill said it best: "The lesson of history is that no one learns the lessons of history".



Francisco Rodríguez-Castro, President & CEO • frc@birlingcapital.com
PO Box 10817 San Juan, PR 00922 • 787.247.2500 • 787.645.8430

Think Strategically © is a publication prepared by Birling Capital LLC and is a summary of certain recent geopolitical, economic, market and other developments that may be of interest to clients of Birling Capital LLC. This report is intended for general information purposes only, is not a complete summary of the matters referred to, and does not represent investment, legal, regulatory or tax advice. Recipients of this report are cautioned to seek appropriate professional advice regarding any of the matters discussed in this report considering the recipients' own situation. Birling Capital does not undertake to keep the recipients of this report advised of future developments or of changes in any of the matters discussed in this report. Birling Capital. The man and log symbol and Birling Capital are among the registered trademarks of Birling Capital. All rights reserved.