



Citizens Without A State: Executive Summary

By Howard Hills

Foreword by former U.S. Attorney General Dick
Thornburgh

Dedication

Jose Celso Barbosa was raised in poverty under Spanish colonial rule, and became the first black student at the Jesuit Seminary. He was Valedictorian at University of Michigan Medical School, and the first U.S. educated medical doctor in Puerto Rico. As a territorial Senator he advocated U.S. citizenship and

statehood, was founder of island's Republican Party. Renowned as a healer, humanitarian, and statesman, Barbosa smashed every barrier. To his courageous vision of a free and democratic Puerto Rico under the American flag this project is dedicated.

Foreword: Dick Thornburgh

President Reagan said it best in 1980: "As a 'commonwealth' Puerto Rico is now neither a state nor independent, and thereby has an historically unnatural status." As a corollary, Howard Hills articulates the inescapable truism that "the primary democratic rights of national citizenship under the U.S. Constitution can exercised only through State citizenship."

For only citizens of a State admitted to the Union on equal footing with all other States are able to vote in federal elections, and thereby give consent to be governed by our nation's leaders under the supreme law of the land. To Hills that means one thing: "Something called 'U.S. citizenship' without federal voting rights and equal representation in the federal political process is a cruel historical hoax."

*Howard Hills is the author of the book, Citizens Without A State. This is an Executive Summary of the book.

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Prologue

For 119 years U.S. citizens of Puerto Rico have thrived as a distinctly accomplished American community within the national borders of the United States. Yet, unless our fellow citizens move to a State, full and equal U.S. national citizenship is out of reach.

Imagine citizens in the States waking up tomorrow, owing allegiance to the USA but denied the right to vote in the election of leaders who make national laws.

Imagine citizens from a State living under a territorial “commonwealth” regime, denied equal rights and opportunities guaranteed to other citizens and States, as society spirals into economic arrest. That’s life in Puerto Rico today due to denial of an equal footing in the nation with the States.

No wonder there is an exodus of citizens voting for statehood with their feet by moving to a State. U.S. citizen in Puerto Rico should have a choice other than being forced to leave home to live in freedom somewhere else in our nation.

Because there is no true liberty without equality, and our Constitution secures full equality only in the States, national citizenship is not complete without citizenship in a State.

If U.S. sovereignty and citizenship are to continue in Puerto Rico, full integration into the nation on terms ratified by Congress and the voters of the territory is the only course to redeem promise of America in Puerto Rico.

H. H.

Chapter 1

Puerto Rican Identity and

American Democracy

Soon after the American era began, local elected leaders in Puerto Rico petitioned for U.S. citizenship, but only if it would lead to statehood, the only non-colonial status option under the U.S. Constitution. In 1917, Congress took what was, historically, the first step leading to statehood, by giving U.S. citizenship to all persons born in Puerto Rico.

Today the U.S. citizen population of Puerto Rico is more than three million, more than the population of twenty States. Another five million U.S. citizens from Puerto Rico live throughout the fifty States. The

total population of U.S. citizens from Puerto Rico on the island and in the States combined is greater than the populations in thirty-five States.

Puerto Rico forms the southeastern border of our nation, less than half the distance from Florida than the expanse of ocean between California and Hawaii. Our last large island possession after Hawaii became a State, Puerto Rico is an epicenter of American interests astride strategic sea- lanes between the Western Hemisphere and Europe.

In nearly a century since Congress conferred U.S. citizenship in Puerto Rico, federal law and policy gradually led to de facto incorporation of Puerto Rico into our nation. Residents in Puerto Rico pay billions annually in the same federal payroll taxes for Social Security and Medicare as their fellow citizens in the States, but Congress provides a lower level of benefits and services for citizens in the territory compared to the States.

The U.S. citizens of Puerto Rico serve in America's military at a far higher rate than most States. They pledge allegiance to our flag, live under our form of government, and the U.S. Constitution is the supreme law of the land. In most respects U.S. governance of Puerto Rico has been a political, economic and cultural success story.

Political, social, economic and cultural bonds between the U.S. citizens of Puerto Rico and the rest of our nation are stronger today than those that existed for thirty-two other territories that became States between 1796 and 1959.

A local territorial constitution was adopted in 1952, but all local law is subject to supremacy of federal law made by Congress, in which millions of U.S. citizen voters in the territory have no voting representation. Our fellow U.S. citizens in the territory do not vote for the President, and in 1980 the U.S. Supreme Court held discrimination impermissible in States was allowed because the federal constitutional rights apply in Puerto Rico only as determined by Congress.

Despite decades of federal subsidization, the "commonwealth" model of territorial rule has led to economic crisis reminiscent of a failed client State. Yet, the anti-statehood party in Puerto Rico is aligned with island and mainland political and corporate special interests opposed to any change of status.

Millions are spent annually on both anti-statehood and anti-independence propaganda and political campaign spending. All that money is spent to convince Congress and the public that a real change of status to achieve fully democratic self-government is not only too hard, but impossible.

History teaches that Puerto Rico's convergence with the U.S. national standard of living can be achieved only through full economic integration. If that is not going to happen, then separate sovereign nationhood is the only status that will serve the best interests of Puerto Rico and the U.S. by ending the current failed client state syndrome.

Either way, clearly the time has come to transition from a territorial status fostering dependency instead of growth, and to end our nation's century long experiment governing a large U.S. citizen population outside the framework of the U.S. Constitution.

Chapter 2

Consent of the Governed

Protracted and indefinite denial of voting rights in federal elections, less-than-equal civil rights, and the lack of voting representation in Congress has created a dilemma that must be resolved by instituting government by consent of the governed at the federal level.

Decades of confused and inconclusive local votes focused on formulations of the political status question politically contrived to prevent informed self-determination on the real options. After decades in which no option won a majority, in a 2012 locally sponsored status vote, a clear majority of our fellow U.S. citizens in Puerto Rico freely and democratically expressed their aspirations to complete the island's integration into our nation by becoming the 51st State of the Union.

An impressive seventy-eight percent of registered voters participated in the referendum, in which 54% voted on the first ballot question to seek a new political status rather than continue to be a U.S. territory. On a separate ballot question 61% voted for statehood, and 38% voted for separate sovereign nationhood (independence with or without a treaty of "free association").

The new political reality is that the 2012 vote for statehood on the second question was greater than the vote for Puerto Rico's current status on the first question, leaving no reasonable doubt about the meaning of the vote.

Of course, the anti-statehood political party in Puerto Rico and its allies in Washington went so far as to assert that ballots left blank on the choice between statehood and nationhood should be counted as votes against statehood!

The White House and Congress recognized the certified results of the 2012 vote, and in a bipartisan 2014 federal law Congress authorized the first federally sponsored vote to confirm the future political status choice of 3 million U.S. citizens in Puerto Rico.

Chapter 3

America's Anti-Colonial Tradition

The Declaration of Independence affirmed just powers of government exist only with consent of the people. Under the U.S. Constitution that principle was applied to U.S. territories by the Northwest Ordinance.

The Northwest Ordinance was adopted because only State citizens have federal voting rights and representation under the Constitution, and it was road map for all thirty-two territories populated by U.S. citizens to establish democratic government and petition for full equality through statehood.

The alternative status model for territories is separate nationhood leading to independence. The independence faction in Puerto Rico is no more representative of the population than the independence movements in Texas, Vermont, Alaska and Hawaii, during the transition to statehood.

In the Post-World War Two era, an "independence option" has been offered and accepted by voters only in U.S. governed territories whose native inhabitants were never U.S. citizens.

In the last century the U.S. ruled but did not confer U.S. citizenship in Cuba, Philippines, Palau, Micronesia and the Marshall Islands. Today each is a sovereign nation, the last three are U.S. affiliated free associated states.

The last century also saw U.S. citizens rely on the Northwest Ordinance tradition of incorporation under the U.S. Constitution lead to statehood for the territories of Arizona, Oklahoma, New Mexico, Alaska and Hawaii.

Chapter 4

Self-Determination in U.S. Territories

Fourteen territories that became states sponsored local self-determination as a step to statehood. Other territories have been admitted without a status referendum per se. Congress accepted votes to ratify a statehood constitution and petitions by a territorial government for statehood as sufficient self-determination for admission.

Puerto Rico's 2012 vote more than satisfies historical precedent for Congress to adopt a statehood enabling act, or even an admissions act. Congress has authorized another vote to confirm the 2012 votes for statehood as opposed to separate sovereign nationhood.*

By doing so, Congress finally has rejected the court's ruling in Balzac holding that our great nation could govern a subclass of citizens with less than equal rights indefinitely.

Forging a new State in the crucible of the Constitution in a new century will augur nothing less than a restorative affirmation of the American political creed. Enabling millions of U.S. citizens to re-enact the essential ritual of government by consent with equal liberty for all, we most surely will rediscover the transcendental meaning of our nation's consecrated calling to serve the cause of human freedom.

As President Ronald Reagan predicted in a message from the White House on January 12, 1982: "In statehood, the language and culture of the island—rich in tradition—would be respected, for in the United States the cultures of the world live together with pride...To show the world that the American idea can work in Puerto Rico is to show the world that our idea can work everywhere."

U.S. Senator Ron Wyden agreed with Reagan in remarks on August 1, 2013: "For Puerto Rico to meet its economic and social challenges and to achieve its full potential, this debate over status needs to be settled. Puerto Rico must either exercise full self-government as a sovereign nation, or achieve equality among the States of the Union."

* This will take place in 2017.

Chapter 5

True Meaning of U.S. National Citizenship

In 1789, the new Constitution did not define national or state citizenship, or how either would be acquired. State citizenship was left to the states, and national citizenship was defined by Congress under the Uniform Naturalization Clause in Article I, Section 8, Clause 4 of the Constitution.

The Bill of Rights defined freedom and protected the rights of individuals and States against excessive government. However, the paramount affirmative rights and powers of national citizenship were to give or withhold consent to government actions under laws in the new nation.

Thus, Article I, Section 2 provided for government by consent of the governed through representation of the people of each State in Congress. Article II, Section 1 provided for representation of the people of each State in the Electoral College that chooses the President based on election results in the States of the Union.

In the early period of our history under the Constitution, the Congress acted under the Uniform Naturalization Clause to recognize “natural born” birthright citizenship in the States. Congress also enabled aliens to take an oath of allegiance and become U.S. citizens on terms and conditions prescribed by Congress.

The word “naturalization” means citizenship granted to a person who did not acquire it at birth, for persons otherwise eligible under U.S. naturalization laws. Naturalized citizens have freedoms and protection from the excessive exercise of government powers guaranteed to all citizens, just like natural-born birthright citizens.

However, the paramount affirmative rights and powers of citizenship can be exercised by all citizens - natural born or naturalized - only upon qualifying for State citizenship under the constitutions and laws of each State. This is because the right to government by consent through federal voting rights is not apportioned equally among all persons with U.S. national citizenship.

Rather, it is apportioned among and can be exercised exclusively by citizens of the States. The simplistic notion that all persons with U.S. national citizenship should have equal federal voting rights “no matter where they reside” is constitutionally illiterate, because Article I and Article II expressly limit the one person one vote rule to persons voting as citizens of the States.

The Constitution established federation model for State-by-State voting. Counting votes by citizens not eligible to vote in a State would dilute the voting power of every citizen in every State. If our Constitution were amended to allow federal elections to be decided by direct national majority vote the alignment and realignment of States in an ever-changing but stable balance of power sustaining federal union would cease to exist.

Chapter 6

U.S. Nationality in Territories

The story of U.S. citizenship in the territories began in 1787, with the Northwest Ordinance, a blueprint for territorial government enacted under the Articles of Confederation.

That road map for application of the Constitution and federal law to U.S. citizens migrating to the western territories was then adopted by the First Congress of the United States, assembled under the Constitution in 1789.

The Northwest Ordinance defined the status and rights of citizens in territory owned or claimed by the U.S. and federal government but not within a State. It regulated organization of local government in stages, until the territory could develop politically and adopt a republican form of government under a constitution like the States, and thus be admitted to the union as a State.

During the period of incorporation leading to statehood the Constitution applied to the fullest extent deemed practicable by Congress and the courts. As a result, citizens had basic rights under the Constitution, including due process and equality under law applicable in the territory.

That did not include the rights and powers of national citizenship to give or withhold consent to national law that can be exercised only by citizens of the States. Rather, the right to vote in federal elections, or to be represented in Congress, exists under provisions of the Constitution that apply only after transition to statehood is complete.

As imperfect as incorporation was due to denial of federal equal federal voting rights, it enabled territories to establish readiness to join into the more perfect union under the Constitution through statehood. That model was successful for thirty-two territories between 1796 and 1959.

Soon, however, an even less perfect form of union emerged under the federal court-made doctrine of territorial non-incorporation. Originally non-incorporation applied only to non-citizens in federal territorial possessions ceded to the U.S. by Spain to end the Spanish-American War in 1889, including the Philippines, Puerto Rico and Guam.

Under U.S. Supreme Court rulings known as the Insular Cases, including *Downes v. Bidwell* in 1901, the court ruled the Constitution does not apply to territories that are not incorporated according to the Northwest Ordinance model.

In the 1904 case of *Gonzalez v. Williams* the court clarified the status of non-citizens in the unincorporated territories to be that of persons under U.S. sovereign national protection, referred to as “nationals,” but not recognized as U.S. citizens.

The Insular Cases non-incorporation doctrine worked imperfectly but well enough for the non-citizen population of the Philippines to make the transition to nationhood and independence.

Then in the 1922 case of *Balzac v. Puerto Rico*, the courts extended “unincorporated territory” status in Puerto Rico after citizenship was conferred by Congress in 1917. By imposing an unprecedented status on U.S. citizens in a federally governed territory the U.S. Supreme Court exceeded all previous limits of its constitutional jurisdiction.

In so doing the court decided a singularly political question within the power over territories vested not in the court, but in the Congress under the Territorial Clause.

That was why Article IX of the 1899 treaty with Spain ceding Puerto Rico to the U.S. expressly 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.”

Yet, the political question of Puerto Rico's future was hijacked by the U.S. Supreme Court in 1922, because the Chief Justice, William Howard Taft, decided that the issues of citizenship, application of the Constitution and political status were too important to be left to Congress.

As a former judge and Governor in the Philippine territory at the time the Insular Cases were handed down, Taft opposed applying the Northwest Ordinance model in Puerto Rico as in the case of Hawaii and Alaska, and used his position to impose his will on the court Congress and Puerto Rico.

Taft’s opinion for the court was so shrewdly written that more than nine decades later Congress and even the courts have never solved the puzzling mystery conjured up in the Supreme Court’s 1922 ruling. Unless its spell is broken the case will stand for denial of equal rights in virtual perpetuity for citizens of the nation simply by leaving them indefinitely without citizenship of a State.

The court’s 1922 ruling separating citizenship from the U.S. Constitution was politically sudden and legally unprecedented. No sooner had Congress granted U.S. citizenship in 1917, than the court ruled that Puerto Rico would remain in “unincorporated” limbo.

Under the Balzac ruling Puerto Rico became the first U.S. territory with a U.S. citizen population excluded from the anti-colonial tradition of the Northwest Ordinance. Before Balzac, conferral of citizenship triggered incorporation the Constitution, leading eventually to full and equal rights through statehood and the powers of State citizenship.

Chapter 7

Constitutional And Statutory Citizenship

In 1886, the 14th Amendment was adopted, defining a constitutional right to both national and State citizenship. Federal immigration and naturalization statutes adopted by Congress no longer were the only source of lawful U.S. citizenship.

However, the 14th Amendment applied only to persons born or naturalized in a State, so it was decided not to repeal the Uniform Naturalization Clause power. This allows Congress if it chooses to grant citizenship to persons who are deemed deserving and made eligible, but not qualified under the 14th Amendment due to birth outside a State.

Into that well-ordered law of citizenship came 1922’s Balzac ruling, creating a class of persons with statutory U.S. national citizenship granted by Congress to people living within U.S. borders, but placed outside application of the Constitution. For the first time in history Balzac makes U.S. citizenship insufficient for incorporation leading to more perfect union through statehood.

National citizenship without citizenship in a State is a dead end, a condition of limbo. Citizenship without a path to statehood is a cruel hoax.

It was to avoid that very scenario the First Congress of the U.S. adopted the Northwest Ordinance, which applied the Constitution to U.S. citizen populated federal territories, and led to statehood. Also to avoid that scenario, the court cases that invented the unincorporated territory doctrine applied only to territories populated by non-citizens.

As it had in Louisiana, Alaska and Hawaii, persons who acquire U.S. national citizenship directly under the National Citizenship Clause added to the Constitution by the 14th Amendment at the same time also acquire the rights of citizenship in any State of residence. This is due to the State Citizenship Clause that also appears in Section 1 of the 14th Amendment.

“Balzac citizenship” was extended to three other unincorporated territories that are within U.S. national borders but outside the States of the Union (Guam, Commonwealth of the Northern Marianas and U.S. Virgin Islands).

Congress retains full power under the Uniform Naturalization Clause to amend or repeal statutory law conferring U.S. citizenship in unincorporated territories. In the absence of a federal statutory citizenship law, persons born in an “unincorporated” U.S. territory would have the same status as “nationals” in the Philippines before independence, and Puerto Rico before U.S. citizenship was granted in 1917.

Currently, the status of “nationals” applies to persons born in unincorporated territories where Congress does not grant U.S. citizenship, at present only American Samoa.

However, under Balzac the U.S. citizens in Puerto Rico and other unincorporated territories do not have rights of national citizenship under the 14th Amendment as applicable in the States, or even as applicable in incorporated territories to which the U.S. Constitution applies directly and by its own force.

Chapter 8 Restoring Northwest

Ordinance Principles for Puerto Rico

Since Congress has never corrected the flawed jurisprudence and injustice of Balzac, it appears the best remedy for the nation and the U.S. citizens of Puerto Rico is to end territorial status through democratic self-determination.

In doing so, Congress should be reminded that Louisiana was admitted in 1812, when Spanish and French were dominant languages, Catholicism the dominant religion, the economy was underdeveloped, and the U.S. was at war. Still, the treaty ceding the Louisiana territory to the U.S. gave the people full citizenship, so Congress concluded the only outcome worse than statehood was to deny equality to its U.S. citizens.

The only remedy for the injustice of the Balzac doctrine is statehood or sovereign nationhood based on informed democratic self-determination, without delay.

Historically, the Northwest Ordinance was an enabling act for statehood. It was applicable to a region that eventually was divided into Ohio, Indiana, Illinois, and other territories which became States. It constituted a compact of assurance by Congress for U.S. citizens in the territories, defining the criteria for statehood.

Enabling acts in the Northwest Ordinance tradition include the following requirements for statehood:

- ★ Geographic size and population as large as existing States
- ★ Republican form of government under a statehood constitution
- ★ Economic provisions and political transition to statehood
- ★ Puerto Rico already exceeds historical criteria for statehood and is far more integrated into the union today than most if not all 32 territories admitted under Northwest Ordinance model
- ★ Puerto Rico's population (3.5 million) is greater than that of twenty-one states, which does not include population of citizens from Puerto Rico living in the fifty states (5 million).

- ★ U.S. citizenship at birth has been federal law in Puerto Rico for 98 years, soon a century of common citizenship with the rest of America.
- ★ Republican form of local government under a constitution ratified by the people and U.S. Congress has been in effect for 63 years.
- ★ The Constitution, laws and treaties of the United States have been supreme law of the land in territory for 114 years.
- ★ Puerto Rico voted for statehood by sixty-one percent in 2012, with more votes cast separately for statehood than for current status, which was rejected by fifty-four percent in separate up or down vote.
- ★ Government and private studies show a private sector encumbered by limitations of current status, but predict stability, and sustainable growth under statehood, enabling Puerto Rico to pay its way in the Union.
- ★ Puerto Rico is three times the size of Rhode Island, larger than Delaware, with the same combined land and waters as Connecticut, and Puerto Rico's coastal marine zone equals Georgia's, but is larger than that of South Carolina's, New Jersey, Pennsylvania.
- ★ Federal court rulings have recognized virtual incorporation of the territory, citing Congressional confirmation of federal judges in Puerto Rico under U.S. Const. Art. III, appointment of U.S. citizens from Puerto Rico as U.S. Ambassadors under Art. II, and noting U.S. citizens from Puerto Rico in the U.S. armed forces are appointed to rank of General and Admiral like U.S. citizens from States, not to mention that a U.S. citizen from the territory now serves on the U.S. Supreme Court.

Congress should treat U.S. citizens of Puerto Rico like other statehood eligible territories throughout history, including adoption of an enabling act defining conditions for attaining statehood, followed by an admissions act based on voter acceptance of terms acceptable to Congress.