A POLITICALLY NEUTRAL AND LEGALLY OBJECTIVE JURIDICAL HISTORY OF PUERTO RICO

1899-2025

(1) By Resolution of Congress signed by the President on April 25, 1898, the United States made a Declaration of War against the Kingdom of Spain (30 Stat. 364), followed by military action of American armed forces against Spanish imperialism, colonialism, genocide and slavery worldwide.

(2) On July 25, 1898, armed forces of the United States conducted combat operations against military forces defending the of Spain's rule in Puerto Rico, ending centuries of undemocratic Spanish colonial rule and oppression, including slavery that continued after involuntary servitude was ended in the United States.

(3) On August 12, 1898, the U.S. and representatives of Spain signed an instrument of armistice suspending combat between opposing forces, in which instrument Spain renounced its claim of sovereignty over Puerto Rico and the inhabitants.

(4) United States national sovereignty in Puerto Rico was established by the Treaty of Paris ending the state of war between the United States and the Kingdom of Spain (30 Stat. 1754), signed on December 10, 1898, which entered into force on April 11, 1899.

(5) Article IX of the Treaty of Paris provided "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."

(6) On April 12, 1900, the U.S. Congress, in an exercise of its authority and responsibility under the Territorial Cause in Article IV, Section 3, Clause 2 of the U.S. Constitution, approved a federal territorial statute known as the Foraker Act (31 Stat. 77), establishing a territorial government for civil administration of Puerto Rico.

(7) Section 7 of the Foraker Act defined the political status of territorial inhabitants born in Puerto Rico before and after the cession to be that of "citizens of Puerto Rico," thereby "entitled to protection of the United States," who "together with such citizens of the United States as may reside in Puerto Rico, shall constitute a body politic under the name of the People of Puerto Rico, with government powers as hereinafter conferred."

(8) The Foraker Act did not declare the nationality of inhabitants classified as citizens of the territory who were born in Puerto Rico, did not define civil rights and political status of persons born in Puerto Rico under laws of national applicability, and did not include terms enabling conferral of U.S. citizenship for inhabitants born in the territory.

(9) Interpreting the Foraker Act in *Downes v. Bidwell*, 182 U.S. 244 (1901), the opinion of the United States Supreme Court and concurring opinions in that case held that the U.S. Constitution would not apply in Puerto Rico directly of its own force, except upon "express or implied assent of Congress" confirming its intent to "incorporate" the territory into the Union.

(10) The court's opinion in *Downes* stated Puerto Rico was not "incorporated" into the Union, but rather "appurtenant and belonging to…but not a part of the United States," and thus it was "within the power of Congress" to define "civil rights and political status" of residents in the unincorporated territory of Puerto Rico as constitutionally inferior to the status and rights of residents in territories the court declared "incorporated."

(11) In contrast to Puerto Rico's non-incorporation under the *Downes* interpretation of the Spanish cession treaty, in *Hawaii v. Mankichi*, 190 U.S. 197 (1903) the court inferred "incorporation" of Hawaii under the territorial organic act recognizing conferral of U.S. citizenship (31 Stat. 141), and in *Rassmussen v. United States,* 197 U.S. 516 (1905) the court declared Alaska "incorporated" by the Russian cession treaty (15 Stat. 539) similarly mandating U.S. citizenship conferred under the Uniform Naturalization Clause in Article I, Section 8, Clause 4 of the U.S. Constitution.

(12) The judicial mandate for incorporation for Alaska and Hawaii followed the 1803 precedent under the French cession treaty for the territory of Louisiana (8 Stat. 200), including provisions enabling conferral of United States citizenship for the people of Louisiana, also followed for the formerly foreign territories classified upon acquisition by America as incorporated and later admitted as states, including Florida (1819), as well as New Mexico, Arizona, Utah, Nevada and California (1848).

(13) The Supreme Court of the United States again exercised its power of judicial review regarding the Foraker Act in *Gonzales v. Williams*, 192 U.S. 1 (1904), a ruling reversing a lower federal court ruling that failure of Congress to confer U.S. citizenship under the Foraker Act meant that persons born in Puerto Rico, though classified under locally applicable federal law as "citizens of Puerto Rico," were "aliens" under U.S. immigration laws, unless Congress might otherwise provide.

(14) In the *Gonzales* ruling, the court held that the term "citizens of Puerto Rico" under Section 7 of the Foraker Act did not define a national political status, thereby requiring the court to infer from Article IX of the treaty of cession that all persons born in Puerto Rico owe "allegiance" to the U.S. and "became entitled to its protection," but that Puerto Rico remained an unincorporated territory under the *Downes* ruling.

(15) The Jones-Shafroth Act (39 Stat. 951), effective March 2, 1917, provided in Section 5 that all persons defined as "Citizens of Puerto Rico" under Section 7 of the Foraker Act and persons born in Puerto Rico "…not citizens of a foreign nation, are hereby declared…citizens of the United States," except upon declaration of "intention not to become a United States citizen" and instead remain a "Citizen of Puerto Rico" under U.S. national status without citizenship.

(16) In the case Balzac v. Puerto Rico, 258 U.S. 298 (1922), the Supreme Court of the United States held that conferral of statutory U.S. citizenship under the Jones Shafroth Act did not express, imply or otherwise provide grounds for "inference" by the court of Congressional intent to "incorporate" the territory into the Union, but that undefined "fundamental rights" of citizens

under the Constitution of the United States would continue to apply in Puerto Rico as an "unincorporated" territory under the *Downes* ruling, as determined by Congress and the federal courts.

(17) Under the 1922 *Balzac* ruling, persons in Puerto Rico classified by federal statute as "U.S. citizens" based on birth in an "unincorporated" territory continued to have the same "civil rights and political status" as non-citizens under the doctrine of the *Downes* and *Gonzales* rulings, as explicitly confirmed in the court's *Balzac* holding: "It became a yearning of the Porto Ricans to be American citizens…this Act [Jones-Shafroth] gave them the boon. What additional rights did it give them? It enabled them to move into the continental United States and becoming residents of any state there, to enjoy every right of any other citizen of the United States, civil, social and political."

(18) The United States Supreme Court's ruling in the 1922 *Balzac* case expanded the 1901 *Downes* and 1904 *Gonzales* rulings that applied only to non-citizen nationals in unincorporated territories, and denied incorporation under the U.S. Constitution after Congress conferred U.S. citizenship in Puerto Rico, with such "fundamental rights" as Congress and the courts recognize for U.S. nationals and citizens in unincorporated territories under the *Balzac* doctrine.

(19) The U.S. Congress in 1950 approved a federal statute known as the Puerto Rico Federal Relations Act (64 Stat. 319), with provisions "fully recognizing the principle of government by consent" and "adopted in the nature of a compact" authorizing an "island-wide referendum" conducted under local law for approval by majority vote among "qualified voters of Puerto Rico" of a process for calling a "constitutional convention" to organize a republican form of government in Puerto Rico.

(20) On June 4, 1951, a majority of qualified voters in Puerto Rico approved a constitutional convention as provided under local law, after which a duly-constituted convention proposed a constitution approved by a majority in another island-wide referendum on March 3, 1952, followed a Joint Resolution of the U.S. Congress on July 3, 1952, (66 Stat. 327), pursuant to which the local constitutional convention ratified amendments to the proposed constitution as prescribed by Congress to confirm future conformity the U.S. Constitution and federal law, culminating in proclamation of the Constitution of the Commonwealth of Puerto Rico on July 25, 1952.

(21) On November 27, 1953, the United Nations General Assembly adopted Resolution 748 (VIII), by a recorded vote of member states, 22 in favor, 18 not in favor and 19 abstaining, recognizing as "appropriate" cessation of U.S. informational reports to the General Assembly on Puerto Rico as a non-self-governing under Article 73(e) of U.N. Charter Chapter XI, based on a finding that a "mutually agreed association" formed through adoption of a constitution for internal self-government, noting that "due regard will be paid to the will of the people…in the event either of the parties…desire changes in the terms of this association."

(22) Under the United Nations Charter, all member states have accepted obligations to promote human rights and freedoms, including through responsibilities under the International Convention for Civil and Political Rights (ICCPR), Part I, Article 1, Section 1, to promote recognition and respect for the principle that "All peoples have the right to self-determination," and "to freely determine their political status," as well as "pursue their economic, social and cultural development."

(23) Under ICCPR, Part III, Article 25, the U.S. recognizes our national responsibility to ensure all Americans "…shall have the right and the opportunity…[to] take part in the conduct of public affairs, directly or through freely chosen representatives…" and "…to vote and to be elected at genuine periodic elections which shall be by universal suffrage…guaranteeing the free expression of the will of the electors."

(24) Under Article I, Section 2 and Article II, Section 1 of the United States Constitution, voting rights in federal elections for full and equal representation in Congress and the Electoral College are allocated to persons eligible to vote under federal and state law in a state of union, under a representational scheme that includes apportionment of voting rights based on state population.

(25) Notwithstanding the adoption of the Constitution of the Commonwealth of Puerto Rico through a self-determination process "in the nature of a compact" (64 Stat. 319, 66 Stat. 327), the "unincorporated" territory doctrine of the *Downes* ruling, as it applied to Puerto Rico and non-citizens in the territory until 1922, continues to define the "civil rights and political status" of Puerto Rico and U.S. citizens in Puerto Rico.

(26) The "unincorporated" territory status of Puerto Rico consistently has been confirmed by all federal territorial statutes approved by Congress and all rulings of the U.S. Supreme Court on the status of Puerto Rico since 1922, including, *Reid v. Covert*, 354 U.S. 1 (1957); *Examining Bd. v. Flores de Otero*, 426 U.S. 572 (1976); *Boumediene v. Bush*, 553 U.S. 723 (2008); *Puerto Rico v. Sanchez Valle*, 579 U.S. __ (2016); *FOMB v. Aurelius*, 590 U.S. __ (2020);

(27) Since 1900, the U.S. Congress has never approved legislation authorizing or enabling a process or mechanism for democratic self-determination by the People of Puerto Rico on political status options recognized by Congress as sufficient to secure government by consent of the governed as a right of national citizenship, or that made a commitment to implementing an option recognized as compatible with the U.S. Constitution and federal law if approved by a majority of the qualified voters of Puerto Rico in an island-wide referendum.