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„Negotiating Difference:
The evolving discourse of identity and difference
in Puerto Rico and the United States"

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0. Introduction: The first step to solving anything…

Despite being born and raised in the United States, until very recently I hardly knew anything about Puerto Rico, other than assuming from the name that it was somewhere in Latin America and that they spoke Spanish there. Even once I stopped mistaking it for Costa Rica, I still did not know what its relationship to the rest of the country was, and I wasn't alone among U.S.-Americans in my ignorance. In recent years, scattered events have brought the island some more attention, including the appointment of Justice Sonia Sotomayor, daughter of Puerto Rican-born parents, to the Supreme Court in 2009 (see Supreme Court of the United States: Current Members), the enormous success of the musical *Hamilton* and its writer and star Lin-Manuel Miranda, of Puerto Rican descent (see *Town & Country* 09.05.2018), and the devastation caused by Hurricane Maria in September 2017 and the ongoing recovery efforts (see *The New York Times* 27.11.2019).

The more I learned about Puerto Rico, how it came to be a possession of the United States, and its current political status, the more confused I got. It didn't seem to make sense that the self-proclaimed defender of democracy that had itself revolted against its colonizers because of "taxation without representation" held colonies of its own, taxed them, and did not allow them true representation in Congress or the right to vote in federal elections, constituting "a colonial system entirely foreign to the genius of our government and abhorrent to the principles that underlie and pervade the Constitution" (*Hawaii v. Mankichi* 190 U.S. (1903): 240; see also *The Hispanic Outlook on Higher Education* 2006: 80; Rueda 1998: 89). In order to understand how the current relationship came about, I decided to investigate the discourse that helped define that relationship from the beginning and how it has evolved in the intervening 120 years. If Puerto Rico is still something like a colony today, held under different circumstances and subject to different laws than the States, then it stands to reason that discourse—particularly legal, juridical and political discourse that directly affects the political status of the territory and its relationship to the rest of the country—would portray it as something distinct and separate. On the other hand, much has changed since the United States' acquisition of Puerto Rico, both practically in the Puerto Rico-U.S. relationship and socially in terms of along what lines it is acceptable to differentiate and separate groups of people. Puerto Rican literary discourse has already evolved to reflect some of these changes, discarding its earlier homogeneous and exclusive portrayal of Puerto Rican society for a more diverse and inclusive representation. It is my hypothesis that other discourse planes have undergone a similar evolution, and I hope to ascertain to what

extent. This thesis will therefore explore the discursive portrayal of the initial definition and subsequent evolution of Puerto Rico's political status to see what has been said and sayable about it since U.S. acquisition of the territory.

1. Background: From colony to territory to Commonwealth

The following historical overview is intended to provide some background for the ongoing status debate regarding Puerto Rico and the United States' other island territories, as well as to serve as a basis for situating the discourse strand that will be the subject of analysis in its historical and cultural context.

1.1. The Spanish-American War

By 1898, Puerto Rico had been a Spanish colony for just over 400 years and was, together with Cuba, one of Spain's last outposts in the Americas. In the preceding decades, Spain had started to adjust the way it governed these islands, beginning with an article in the Constitution of the Spanish Monarchy of 1876 that would allow Cuba and Puerto Rico representation in the Cortes (the legislative body in Spain) once laws to that effect were passed. However, the troubled political climate in Spain delayed such action and it was not until November of 1897 that Spain granted Puerto Rico some self-government and extended Spanish citizenship and the civil rights guarantees of the Spanish constitution to the island's inhabitants. Elections were held in March of 1898, and Puerto Rico's first partially-popularly-elected government came into being in July, mere weeks before war broke out between Spain and the United States (see Malavet 2008: 115-117). Those few weeks in July of 1898 were the peak of Puerto Rican self-determination during the five and a quarter centuries between Christopher Columbus' arrival on the island in 1493 and the present day: Puerto Ricans had attained full Spanish citizenship with accompanying equal rights, could elect some members of their local government and were represented by three senators and sixteen deputies in the Spanish Parliament (see Torruella 2013: 79).

Political unrest in Cuba at the end of the 19th century was seen as cause for concern in the United States as it could affect trade in the Caribbean. These concerns, combined with a prevailing imperialist attitude within the U.S., led political leaders to declare their support for the Cuban insurgents and, more generally, for the defense of liberty even beyond their own borders. Tensions boiled over when the USS *Maine*, a warship that had been sent to support the insurgents, exploded off the coast of Cuba in February of 1898. U.S. newspapers were quick to paint what had probably been an accident as a deliberate attack by Spain, and

Congress soon issued an ultimatum: the Spanish were to leave Cuba or there would be war. Spain did not want to let their last American holdings go so easily, and there ensued what the later U.S. secretary of state John Hay deemed a "splendid little war" (see *The Nation* 31.01.2018). The war itself lasted only a few weeks but proved the military advantage of controlling islands in the Caribbean, which strengthened U.S. imperialists' desire to acquire them. As peace negotiations commenced, two leading imperialists, soon-to-be Vice President Theodore Roosevelt and Senator Henry Cabot Lodge, exchanged letters declaring their determination not to accept peace unless the treaty involved the cession of Puerto Rico to the United States (see Malavet 2008: 122-123). The Treaty of Paris, ratified in December of 1898, did indeed include the cession by Spain not only of Puerto Rico and Cuba, but also of Guam and the Philippines to the United States. This assertion of U.S. military power was an important step toward establishing the United States as a strong player on the international stage (see Malavet 2008: 121), and in a speech announcing the Treaty, President William McKinley expressed the views that continue to underlie the country's characterization of itself as a selfless defender of liberty: "the United States never goes abroad in search of selfish advantage; it seeks only to help less fortunate peoples, even if they cannot understand that they are being helped; and it always acts in accordance with noble ideals" (*The Nation* 31.01.2018).

1.2. The Insular Cases

Once acquired, the United States was unsure how to proceed with its new island territories. Up until this point, all territorial acquisitions had been added with the explicit intention of eventually making them into States, but no such provision was included in the Treaty of Paris (see *The Atlantic* 13.06.2017). Additionally, all former Territories that had already become States had been contiguous to the existing States and, perhaps more importantly at a time when imperial expansion seemed so desirable, had been largely uninhabited, allowing for the spread of U.S. people and values. The new territories ceded by Spain, on the other hand, were remote islands with established populations differing from U.S. society in culture, race, language, religion and legal systems, which led many in the United States to oppose the idea of incorporating them as part of the country with all accompanying rights and privileges (see Torruella 2013: 62-63).

> Some argued that direct application of the Constitution would needlessly hinder congressional flexibility in carrying out the Empire project. Others thought that the Constitution must apply wherever the federal government acts—in the phrase of the day, "the Constitution followed the flag." Interestingly, this latter claim was sometimes pressed by anti-imperialists, not with the intent of ensuring that Filipinos or Puerto Ricans in fact possessed U.S. constitutional rights, but rather to put obsta-

> cles in the way of Empire. Few Americans thought that the residents in the newly acquired territories were "civilized" enough to participate in American political institutions. Thus, a conclusion that they were entitled to full constitutional protections (and perhaps representation in Congress) would provide Congress with a strong incentive to cast off the territories. (Aleinikoff 1994: 24-25)

On top of that, keeping *colonies* was not an option, since

> for historical reasons the term "colonialism" was anathema [to Americans], [so] the answer to this conundrum had to be cloaked in an American constitutional mantle of facial respectability. The de facto colonial status had to be validated by a legal regime that would de jure allow the United States to govern the new lands and their people with a free hand, untethered by the constitutional constraints that normally restrained the governmental structures of the continental United States. (Torruella 2007: 290)

Thus the question became *to what degree* the U.S. Constitution applied in the new territories and whether they truly formed part of the United States or just belonged to it.

Article IX of the Treaty of Paris declared 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" (Treaty of Paris, Dec. 10, 1898, art. IX). One of Congress's first moves regarding the new territory of Puerto Rico was to pass the Foraker Act in 1900, setting up a civil government as well as a set of taxes on goods shipped from the U.S. to Puerto Rico, with the resulting revenue designated to fund the administration of the territory (see Torruella 2013: 65-66). This gave rise to the first of the "Insular Tariff Cases" (as the Supreme Court referred to them, see *DeLima v. Bidwell* 182 U.S. (1901): 2) or simply the "Insular Cases" (as they were referred to in the media at the time and have since come to be known; the word "insular" was chosen over "territory" to distinguish the island possessions acquired from Spain in the Treaty of Paris from those Territories that existed before the war and that were, as stated above, already accepted as (future) States, see Malavet 2008: 124-125). The first six Insular Cases, decided on May 27th 1901, officially revolved around such taxes and duties as those set up according to the provisions of the Foraker Act and whether or not they violated the clause of the U.S. Constitution requiring that "all Duties, Imposts and Excises shall be uniform throughout the United States" (U.S. Const. art. I, §8, cl. 1). Deciding the answer to this question meant determining whether the (whole) Constitution applied to the new territories or, more generally, whether the territories were included in the term "United States" even though they were "territories," not "States" (see Torruella 2013: 66). One of these cases, *Downes v. Bidwell* (1901), provided the answer in the form of a new doctrine and consequent new subcategories of territory: the incorporation doctrine distinguishes between incorporated Territories (those that are considered part of the United States and on the path to statehood) and unincorporated territories like Puerto Rico that merely belong to the United States, where only "fundamental rights" apply and where Congress's

power is otherwise unlimited—to an extent that would be considered unconstitutional in relation to States or incorporated Territories (see Lluch Aguilú 2018: 291; Torruella 2013: 73; Jiménez 2015: 77-78). Thus, in the process of deciding that the non-uniform tax plan set up by the Foraker Act was constitutional, the U.S. Supreme Court also affirmed what the Treaty of Paris had established: that Congress had full control over the new territories and their inhabitants, limited only by certain parts of the U.S. Constitution (*which* parts would be determined on a case-by-case basis; see Torruella 2013: 74) and the will of the people of the United States as expressed through their votes for or against members of Congress (see *Downes v. Bidwell* 182 U.S. (1901): 283). Subsequent Supreme Court cases that dealt with whether other clauses of the Constitution applied to the U.S. island territories are often included under the term "Insular Cases" and continued to hone the nature of the territorial relationship of the former Spanish colonies with the United States.

After the 1901 cases, the first significant change to Puerto Rico's constitutional status was the Jones Act of 1917, which, among other things, granted U.S. citizenship to all residents of Puerto Rico (see Lluch Aguilú 2018: 293). Many expected this development to go hand in hand with incorporation of the territory as a future State: the U.S. Supreme Court had already ruled that Hawaii had become incorporated when its inhabitants were granted citizenship in 1900 and that Alaska had been incorporated since acquisition because the treaty in which Russia ceded the Territory stipulated that Alaska's inhabitants be granted the full rights of U.S. citizenship. However, President William Howard Taft had insisted that any grant of citizenship to the Puerto Ricans be dissociated from any guarantee of future statehood (see Torruella 2013: 75), and William Jones (from whom the Act got its name) had stated that the intention of the Jones Act was not to give Puerto Ricans full control over internal affairs (as the States had) just yet, but rather "to give them the fullest measure of self-government that, in the opinion of the committee, ought to be bestowed upon them, taking into consideration the interests of the United States" (Fors 1975: 241), making it clear that mainland interests trumped those of the territory and that the United States did not yet consider Puerto Rico mature enough for incorporation. By the time the Jones Act came up for interpretation in the U.S. Supreme Court case *Balzac v. Porto Rico* in 1922, President Taft had become Chief Justice Taft; under his influence the Supreme Court unanimously ruled that the Act's grant of citizenship did not extend all constitutional rights to the inhabitants of Puerto Rico (see Torruella 2013: 74-77). In addition to reaffirming Congress's legal and political power over the islands, *Balzac* is significant because, while "[t]he *Insular Cases* revealed much diversity of opinion in this Court as to the constitutional status of the

territory acquired by the Treaty of Paris ending the Spanish War" (*Balzac v. Porto Rico* 258 U.S. (1922): 305), *Balzac*'s unanimous ruling implies that any qualms presented by the dissenting Justices about the nature of Puerto Rico's political status in the 1901 Insular Cases had been disregarded or put to rest by 1922.

1.3. La generación del treinta

Many Puerto Ricans had welcomed the arrival of U.S. troops in 1898 and the ensuing change of sovereignty, for they saw the United States in much the same way that President McKinley would portray it in his speech announcing the Treaty of Paris: as a great democratic nation eager to spread the "blessings of civilization" (Acosta 12.09.2014). However, the new regime did not live up to their expectations as the U.S. Supreme Court ruled that Puerto Rico belonged to the United States without being part of it and the federal government instituted policies to Americanize the new territory and thus instill loyalty to U.S. interests. These policies met with resistance, particularly the decree that education be conducted in English only, which directly encroached on one of the main symbols of Puerto Rican cultural identity: the Spanish language (see Pousada 1996: 501). Puerto Rico's sense of a separate national identity continued to develop and intensify, often in direct opposition to the United States and its administration of the territory, and more than one Puerto Rican political party adopted independence as an objective on its platform. The granting of citizenship to Puerto Ricans in the Jones Act of 1917 did little to dampen anti-U.S. sentiments and fierce Puerto Rican nationalism (see Duany 2000: 6, 9; Acosta 12.09.2014). This nationalism found expression in the defense of local customs and values in the face of "Yankee imperialism" on the island and gave rise to the literary movement known as the *generación del treinta* in the 1930s (see Duany 2000: 10). The authors of this movement focused on defining what it meant to be Puerto Rican, on finding the essence of Puerto Ricanness both on the island and in relation to the rest of the world, questions that Antonio S. Pedreira explicitly asked at the beginning of his *Insularismo*, the principle work of the movement: "What are we? Or how are we Puerto Ricans globally considered?"[1] (Pedreira 1942: 10; English translation in Duany 2000: 11). In answering these questions, the *generación del treinta* contributed greatly to the national and nationalist discourse in Puerto Rico, establishing its main ideological principles: (1) Spanish lies at the heart of Puerto Ricanness (and English must not be allowed to corrupt it), (2) geography protects the Puerto Rican culture from the threats that lie beyond the island, (3) a sense of common origin defines the culture,

[1] Original: "[…] ¿cómo somos? o […] ¿qué somos? los puertorriqueños globalmente considerados."

(4) a sense of shared history helps resist U.S. influence, and (5) local cultural images and artifacts are powerful symbols of Puerto Ricanness to be juxtaposed but never mixed with U.S. cultural images and artifacts (see Duany 2000: 11). Some consider the establishment of a literary canon by the *generación del treinta* to be more than mere literary activity, saying that the movement compensated for the loss of political hegemony to the United States Congress by establishing a sort of literary national constitution and thus making up for the absence of an independent national government (see Sancholuz 1997: 3). Within the first few decades after Puerto Rico was ceded to the United States, the leading political discourse on both sides of this new relationship had firmly established the two cultures and peoples as fundamentally distinct and separate, focusing on their seemingly insurmountable differences to justify their continued political and cultural separation.

1.4. The political status debate, continued

The first fifty years after the Spanish-American War saw "legislative and executive power devolving from Washington to San Juan in fits and starts" (*Harvard Law Review* 2016: 347). First, the Foraker Act of 1900 had set up a U.S.-appointed civil government for the island to replace the military one established immediately after the Spanish-American War; 17 years later the Jones Act granted Puerto Ricans U.S. citizenship, extended a bill of rights to the island and allowed for more government positions to be popularly elected (see Malavet 2008: 128; Aleinikoff 1994: 17-18). The following thirty years were uneventful in terms of changes in Puerto Rico's government; during that time Puerto Ricans did enjoy a few small victories such as the reversion to the correct spelling of the island's name (it had been spelled "Porto Rico" in the United States since an early draft of the Foraker Act and was not changed back until 1932, see Malavet 2008: 129) and the administration of the territory becoming the responsibility of the Department of the Interior rather than the War Department (see Fors 1975: 230). The next significant status change came in 1947, when the Elective Governor Act provided for the popular election of Puerto Rico's governor (see Lluch Aguilú 2018: 293). In 1946 President Harry Truman appointed Jesús Toribio Piñero Jiménez, the last presidentially appointed governor and first Puerto Rican to serve as governor; he was succeeded in 1949 by Luis Muñoz Marín, the first popularly elected governor of Puerto Rico (see Grupo Editorial EPRL 11.09.2014). This change was part of a U.S. strategy (backed by Muñoz Marín) to both assuage Puerto Rico's growing separatist movement and comply with growing international pressure to grant self-determination to the world's remaining colonies, as the UN considered Puerto Rico to be (Acosta 12.09.2014). In addi-

tion to allowing Puerto Rico to elect its own governor, the U.S. Congress passed Public Law 600 in 1950, allowing Puerto Rico to draft its own constitution and hold a popular referendum to approve the resulting document; after the incorporation of a few amendments imposed by the U.S. Congress and subsequent re-approval by the Puerto Rican people, the Constitution was adopted in 1952 (see Aleinikoff 1994: 18-19). With it came a new designation for the territory: the Commonwealth of Puerto Rico, or *Estado Libre Asociado* (ELA; "free associated state") in Spanish. These nominal changes were enough to permit the governments of Puerto Rico and the United States to appear before the United Nations and assert that Puerto Rico was sufficiently self-governing to not be considered a colony any longer. However, though Puerto Ricans did now have more influence over the local government of the island, the relationship between Puerto Rico and the United States did not change and can still be defined as colonial (see Torruella 2013: 80-81).

Muñoz Marín had hoped the changes would bring the status debate to a close (see Acosta 12.09.2014), but "[d]espite the 1952 constitution, the status issue has proven to be perennial and has repeatedly been the subject of partisan debate and popular vote in Puerto Rico since 1952" (Garrett 07.06.2011: 13), as has the exact meaning and legitimacy of calling Puerto Rico a Commonwealth or an *Estado Libre Asociado* (Acosta 12.09.2014). Puerto Rico's three main political parties, the *Partido Democrático Popular*, the *Partido Nuevo Progresista* and the *Partido Independentista* have each come to be closely associated with one of the three political status options considered in this ongoing debate, namely an expanded version of the current Commonwealth status, statehood and independence, respectively (see Garrett 07.06.2011: 13). Despite the fact that Congress still has complete authority over Puerto Rico's political status and is not required to take into account the desires of its inhabitants, five status referendums have been held since the establishment of the ELA—in 1967, 1993, 1998, 2012 and 2017—none of which had the support of the federal government nor were legally binding on it (see Garrett 07.06.2011: 13-15; Lluch Aguilú 2018: 293-294). Due to boycotts, unclear or unconstitutional definitions of the various status options, or the ambiguous meaning of blank ballots, none of these referendums produced conclusive results (see Garrett 07.06.2011: 13-15; Lluch Aguilú 294, 299). However, while the results of the first three referendums were interpreted as falling in favor of the Commonwealth status, i.e. the status quo (see Garrett 07.06.2011: 13-15), by 2009 a Puerto Rican professor observed that "practically no one dares to say publicly in Puerto Rico that he or she favors the current status quo without any modifications. Statehooders, as well as independentistas, openly use the term colonialism to describe the present relationship with the US" (Álvarez

González 2009: 240) and the response to the first of the two questions in the 2012 referendum (whether Puerto Rico should keep its current territorial status) showed that

> a clear majority (54 percent) of Puerto Rican voters repudiated the current *status quo*. The current ELA is no longer a legitimate political status, as a clear majority think it is inadequate. Yet, there has been no constructive response from the federal government, aside from the often-repeated pleasantries about how Puerto Ricans should decide their own future. (Lluch Aguilú 2018: 294)

Thus the political status of Puerto Rico in relation to the United States remains unresolved and the subject of ongoing debate.

1.5. A shift in discourse

Upon reading analyses of the Insular Cases and of the literature of the *generación del treinta*, a pattern of similarities emerges. Both sets of texts not only seek to define Puerto Rico in relation to the United States, they seize on many of the same elements to exhibit the differences between the two cultures and peoples, concluding in both cases that these are indeed two separate and undeniably distinct cultures and peoples and that too much interaction would be detrimental to one or the other or both. The elements used by both sides to define the other side's otherness include language, geography, ethnicity/race, and religion (see e.g. Torruella 2013: 62-63, 89 and Malavet 2008: 143 for the Insular Cases, Duany 2000: 10-11 and Sancholuz 1997: 3 for the *generación del treinta*). These coincide to a large degree with the characteristics generally cited in describing a nation, particularly shared territory, language and history (see Duany 2000: 8), and are profoundly linked to the question of Puerto Rico's political status and sense of national and cultural identity.

In his analysis of Puerto Rican national identity and discourse, Jorge Duany (2000) argues that increasing migration between Puerto Rico and the mainland United States over the decades, including both one-way migration and those who move back and forth multiple times, has undermined each of the criteria that form the basis of the Puerto Rican view of Puerto Ricanness as established by the *generación del treinta*. He points out that by the end of the 20th century, nearly half of people of Puerto Rican origin lived on the mainland rather than on the island and that there were no more barriers to travel or trade between the United States and Puerto Rico, thus nullifying the idea of common Puerto Rican territory or clearly delineated geographical separation; many of those living on the mainland speak mainly or only English rather than Spanish and language can therefore no longer distinguish Puerto Ricans from non-Puerto Ricans; after the change of sovereignty in 1898, Catholicism was one of the elements of Spanish heritage that remained an important part of Puerto Rican culture, but as migration brought Puerto Ricans into more frequent contact with the predomi-

nantly Protestant U.S., many both on the island and on the mainland converted to Protestantism; and finally, while the Puerto Rican population has been racially mixed at least since the arrival of the Spanish at the end of the 15th century, migration has added new elements to the population's racial makeup and the formerly chiefly Anglo-Saxon mainland population now has a significantly higher proportion of people identifying as Hispanic. Duany concludes that, while the Puerto Rican sense of national and cultural identity is still strong, the criteria that defined it for the *generación del treinta* can no longer distinguish Puerto Ricans so sharply from residents of the mainland United States. Carolina Sancholuz's (1997) examination of the expression of national identity in Puerto Rican literature indicates that the discourse in Puerto Rico began to reflect these changes in the 1960s, moving from the *generación del treinta*'s exclusionist attitude that rejected internal differences in order to define Puerto Ricans as a homogeneous group that needed to resist outside (particularly United States) influences, to a broader and less reductionist model that highlights Puerto Rico's heterogeneity and multiracialism.

Meanwhile, the U.S. Supreme Court's discourse regarding Puerto Rico has not remained constant over the last century either, evolving with the changing attitude toward the Insular Case rulings and Puerto Rico's metamorphosing political status. As alluded to above, the original six 1901 Insular Case rulings were by no means unanimous decisions;

> with the exception of *Huus v. New York & Puerto Rico Steamship Co.*, initially these issues were decided by five-to-four pluralities. Thus, even at the colonial regime's inception, the rules by which it was to be administered, in effect to this very day, were very much in doubt. In fact, the dissenting opinions were the most intellectually unified, coherent, and constitutionally sound, and they gathered more votes than any individual plurality opinion. This is particularly true of the dissents of Chief Justice Fuller and Justice Harlan in the key case of *Downes v. Bidwell*. (Torruella 2013: 68)

One of the most important elements to come out of *Downes v. Bidwell* has come to be almost synonymous with the original Insular Cases, and that is the incorporation doctrine suggested by Justice White in his concurring opinion, according to which the type of territory in question (incorporated or unincorporated) determines whether particular provisions of the U.S. Constitution apply to it (see Torruella 2007: 308). This doctrine has been elaborated upon in subsequent texts, so that it is now understood that the entire Constitution applies within the United States (defined as the States, Washington D.C. and incorporated Territories) while only fundamental provisions of the Constitution apply to unincorporated territories (see Duffy & Cepeda 2009: 667-668) and that the main difference between the two types of territory is that incorporated Territories are on track to become States while unincorporated territories are not (see Jiménez 2015: 78). Though five of the six original Insular Cases in 1901 were decided by plurality rather than majority, indicating ambiguity of

circumstances and that the decisions reached were anything but clear-cut or obvious, a series of Insular Cases from 1903 to 1922 reiterated the rulings of the 1901 cases and continued to shape the constitutional doctrine regarding the territories and incorporation; in the 1904 case *Dorr v. United States* a majority reaffirmed White's incorporation doctrine, and by 1922 that doctrine was unanimously accepted by the court in *Balzac v. Porto Rico* (see Malavet 2008: 136-138), cementing the nature of the relationship of unincorporated territories to the federal government and entrenching the Insular Case doctrine.

Some years later, however, political and societal changes, both domestic and international, called that doctrine into question once more and though the regime established by the Insular Cases is still controlling today, the unanimity found in *Balzac* fractured again in later cases. For one thing, after the Second World War

> the frank racism and enthusiastic colonialism that formed part of the explicit justification of the *Insular Cases* could no longer be maintained in the postwar environment. Where nineteenth-century international law had recognized the sovereign prerogative of European powers to dominate weaker populations, modern international law recognized the right of all peoples to self-determination and the mandate for decolonization. (Neuman 2001: 189)

In this new political climate and with the formation of the United Nations in 1948, the issues of sovereignty and self-determination for colonized peoples came to the forefront of political debates and led to discussions of Puerto Rico's status and eventually to the adoption of Public Law 600 in 1950 and subsequently of Puerto Rico's Constitution in 1952 (see Jiménez 2015: 284-287). A change in status so radical that it allowed Puerto Rico to be removed from the United Nations' list of non-self-governing colonies (see *The Atlantic* 10.06.2016) called for a reevaluation of Puerto Rico's political relationship with the United States. This began in the lower federal courts between 1952 and 1970, where various justices discussed Puerto Rico's new Commonwealth status at length; though they did not all take the same position on the matter, their discussions suggested a strong interest in resolving the questions raised by this entirely new political entity that Puerto Rico's Constitution had declared the island to be (see Saavedra Gutiérrez 2011: 976-977; *Puerto Rico v. Sanchez Valle* 579 U.S. (2016): Kagan 4). These questions specifically regarding Puerto Rico did not reach the U.S. Supreme Court until 1970 (see *Pueblo v. Sánchez Valle* 192 D.P.R. (2015): Martínez 45; Álvarez González 2009: 242); however, some Justices of the highest federal court had already begun questioning the Insular Case doctrine in earlier cases unrelated to Puerto Rico, with echoes of the dissenting opinions from the original Insular Cases of 1901 sometimes resurfacing in their arguments (see Saavedra Gutiérrez 2011: 974, 977). In some of

these cases the U.S. Supreme Court Justices performed "juridical acrobatics"[2] to avoid using the Insular Cases as precedent, perhaps uneasy about a doctrine that they recognized was not in keeping with contemporary relations between the United States and its territories (see Saavedra Gutiérrez 2011: 977, my translation), and in other cases they explicitly questioned the Insular Cases and their rulings. The first case to explicitly challenge the validity of that doctrine was *Reid v. Covert* in 1957: in writing the opinion of the Court, Justice Hugo Black not only rejected the use of the Insular Case doctrine that the federal government had proposed, pointing out that the case at hand had nothing to do with the relationship between the United States and its territories and thus the Insular Cases did not apply (see Saavedra Gutiérrez 2011: 977-978), but also added that "neither the [Insular C]ases nor their reasoning should be given any further expansion" (*Reid v. Covert* 354 U.S. (1957): 14). Two decades later, similar concerns were raised in a case specifically involving Puerto Rico: *Torres v. Puerto Rico* (1979) resulted in a unanimous decision that the Fourth Amendment protections against unreasonable searches and seizures (see U.S. Const., amend. IV) applied to Puerto Rico, but the Justices did not agree on the use of the Insular Case doctrine in their reasoning: five Justices applied that doctrine, while the other four felt that, whatever the validity of the Insular Cases in their original context, they were now outdated and no longer a sound basis for determining application of the U.S. Bill of Rights to Puerto Rico (see Saavedra Gutiérrez 2011: 979; *Torres v. Puerto Rico* 442 U.S. (1979): 475-476). The following year, Justice Thurgood Marshall's dissenting opinion in *Harris v. Rosario* (1980) specifically evoked that close five-four split among the Justices in *Torres* and once again questioned the validity of the Insular Cases (see Lluch Aguilú 2018: 294-295; *Harris v. Rosario* 446 U.S. (1980): 653-654). Evidently the U.S. Supreme Court

> has been hesitant to expand the application of the *Insular Cases*—with good reason. The territorial incorporation doctrine established in the *Insular Cases* is unpersuasive as a matter of constitutional analysis, and the antiquated notions of racial inferiority and imperial expansionism on which those cases are based have no place in modern constitutional analysis. […] If the *Insular Cases* are to remain on the books, courts should be especially cautious not to extend them any further than they warrant. (Brief for Scholars of Constitutional Law et. al. at 15-16, Tuaua v. United States (2016))

Yet "[t]hus far, despite continuing criticism of the *Insular Cases* doctrine, its approach has been subtly transformed rather than overruled" (Neuman 2001: 185), and in cases such as *Torres* and *Harris* the U.S. Supreme Court upheld the incorporation doctrine despite the protests expressed in the dissenting opinions, ruling that Puerto Rico remained an unincorporated territory subject to the nearly unlimited power of Congress (see Malavet 2004: 46). In

[2] Original: "malabares jurídicos"

some subsequent cases, such as *Boumediene v. Bush* in 2008, a majority of the U.S. Supreme Court has explicitly quoted or referenced specific Insular Cases, admiring their doctrine as an adaptable solution to questions of territorial government (see Lluch Aguilú 2018: 295; *Boumediene v. Bush* 553 U.S. (2008): 756-759). Even in *Boumediene*, however, Justice Anthony Kennedy's opinion of the Court tiptoed around the Insular Cases to some extent, realizing that their doctrine is weakening and should perhaps not be revived (see Saavedra Gutiérrez 2011: 981); likewise, in *Puerto Rico v. Sanchez Valle* (2016)—"the most important Supreme Court decision on Puerto Rico's political status since *Boumediene v. Bush*" (Lluch Aguilú 2018: 294)—the opinion of the Court avoided directly mentioning the Insular Cases and "[i]n the end, Justice Kagan seemed to find herself jammed between a rock and a hard place" as she composed the opinion of the Court, bound as she was by precedent to uphold the Insular Case doctrine yet "acutely cognizant of [a subordinate] doctrine's heavy cost to the people of Puerto Rico" and how that doctrine "denies the Constitution's promise of democratic self-rule in its focus on classifications of political entities over the people who created them" (*Harvard Law Review* 2016: 354-355 & 352). The Insular Case decisions are still good law and will remain so unless or until reversed and "relegated to the historical trash bin" (Malavet 2008: 144), but "no contemporary scholar, of any methodological or political inclination, defends them" (Lluch Aguilú 2018: 291) and the U.S. Supreme Court Justices' support for them—initially sharply divided but unanimous within two decades of the original Insular Cases—has wavered in recent decades as both the political and social status and relationship between the United States and its territories has evolved. As questions surrounding Puerto Rico's Commonwealth status continue to make their way through the courts, the manner in which they are discussed will most likely evolve to reflect the changing practical relationship between the territory and the mainland, if it has not already.

At the beginning of the 20th century, the discourse both on the mainland and on the island defined Puerto Ricans as "other" than U.S.-Americans, a view that was reflected in the burgeoning political and legal relationship between the two. During the intervening century the situation has practically changed and weakened the criteria that both discourses used to distinguish and separate the two cultures. In the face of these changes, Puerto Rican literary discourse began to evolve from an intercultural, homolingual view of two easily distinguishable and fundamentally different cultures to a transcultural, more heterolingual perspective of hybrid cultures that defy the pinpointing of a border where one ends and the other begins; meanwhile, the U.S. Supreme Court has begun to question the reasoning behind the Insular Cases that established and found constitutional justification for the

incorporation doctrine that helped cement and maintain those early perceptions of insurmountable differences between the U.S. island territories and the mainland United States. This decrease in explicit support of the segregating Insular Case doctrine and its tenets could indicate that modern legal and juridical discourse, like Puerto Rican literary discourse, is evolving to reflect the practical increase in (the acceptance of) heterogeneity, hybridity and interaction in the Puerto Rico-U.S. relationship.

2. Theory: Negotiating difference through discourse

The Spanish-American War and resulting change of sovereignty converted Puerto Rico into something of an unknown quantity, an undefined entity floating in limbo until its new status could be established. The identity of the territory, both individually and in relation to its new sovereign, was unclear, leaving plenty of room for redesignation, a void that discourse in both Puerto Rico and the mainland United States would soon begin to fill. "Discourses structure both our sense of reality and our notion of our own identity" (Mills 1997: 15). Individual, collective and national identities are negotiated through discourse and in turn determine the behavior and discourse of those same individuals and groups. As Christiane Marxhausen notes, identity both motivates our actions and is expressed through those actions, while also helping us to interpret our social context. Socially produced collective identities and categories allow individuals to orient themselves within their environment: a range of discursively negotiated social representations is available to each individual or group to choose from in order to construct their own identity (see Marxhausen 2010: 46, 52, 58). In particular the elements that distinguish between the identity of the Self and that of the Other are human inventions that are both a product of and upheld through discourse. They "can be conceived only as discursive positivities. Because these unities are discursive *a prioris*, they emerge and disappear as discourse itself changes" (Sakai 2005: 21-22). In order to examine the formation and evolution of a relationship such as that between the United States and Puerto Rico—to determine how that relationship has been embodied and experienced, perceived and portrayed over the decades—one must examine the interplay of discourse and identity.

2.1. Discourse

> [A] discourse is not a disembodied collection of statements, but groupings of utterances or sentences, statements which are enacted within a social context, which are determined by that social context and which contribute to the way that social context continues its existence. Institutions and social context therefore play an important determining role in the development, maintenance and circulation of discourses. (Mills 1997: 11)

Referencing Michel Foucault, Sara Mills goes on to say that discourses do not exist in a form that can be analyzed, but that they produce analyzable utterances, concepts and effects. The opinions and ways of thinking common among those utterances indicate a discursive structure inherent to that social context (see Mills 1997: 17). Siegfried Jäger is also of the opinion that discourses cannot be analyzed in their entirety, and instead names a list of analyzable aspects of discourse whose background is the discourse of the society as a whole, so that analyzing those aspects can be seen as taking steps toward the analysis of the overall societal discourse (see Jäger 2012: 88). Among those aspects are discourse fragments (texts or parts of texts addressing a certain theme), discourse strands (groups of discourse fragments with the same theme), entanglements of discourse strands (the association of discourse strands with each other, as when one text addresses or references multiple themes), discourse planes (the social location from which the text emanates, such as the media, everyday life, politics, science(s), administration, etc.), and the discourse position of the actors taking part in the discourse (that is, their individual worldviews or ideological positions, molded and shaped by the different discourses with which they have come into contact throughout their lives) (see Jäger 2001: 47-49). An individual's or a group's discourse position determines their mindset regarding any given theme and thus also influences the direction of any discourse strands in which that individual or group is involved. Because the fragments composing a particular discourse strand at a particular time allow us to identify what is or was "said" and "sayable" about that theme at that time, the discourse positions of those taking part manage and administer the fields of what can be said in a given discourse, which in turn nourish those discourse positions and discourse strands (see Jäger 2001: 47, 49-51).

A person's discourse position and "knowledge" stem from the discursive context in which he or she lives and has lived and form the basis of his or her interpretation and shaping of reality. Here lies the power of discourses, for they transport a society's knowledge and thus influence not only other discourses and individual as well as collective behavior in that society, but also that society's perception of the world (see Jäger 2001: 33, 37-38). "[A] particular discourse includes assumptions about what there is, what is the case, what is possible, what is necessary, what will be the case, and so forth" (Fairclough 2003: 58). Many "consider discourses to be principally organised around practices of exclusion. Whilst what it is possible to say seems self-evident and natural, this naturalness is a result of what has been excluded, that which is almost unsayable" (Mills 1997: 12). Truth, or what is taken to be truth, is produced through discourse and regulated principally through processes of exclusion such as the avoidance or prohibition of taboo topics, dismissal of contributions by

those considered irrational or insane, and the exclusion from a society's knowledge of that which is considered to be untrue (see Mills 1997: 18, 64-66). Only that which can be defined or said under the ruling discourse is perceivable because we are only capable of understanding and communicating anything—whether linguistic or otherwise—through language (see Wrana & Langer 2007: paragraph 14). The perception of "reality" depends on the linguistic representation of it, and that in turn depends on the discourse position of the discursive actors. Norman Fairclough illustrates this with the specific example of the news media and by extension narrators of history, for he describes the generation and impact of news narratives as similar to that of historical narratives. Neither the news nor history makes sense until that sense is laid upon them because in order to explain the way the world works one has to establish cause and effect and the connections between events. This

> is more fundamentally a matter of construing what may be fragmentary and ill-defined happenings as distinct and separate events, including certain happenings and excluding others, as well [as] setting these constructed events into particular relations with each other. Making news [or narrating history] is a heavily interpretative and constructive process, not simply a report of 'the facts'. […N]ews narratives, like historical narratives, have a 'referential intention' which makes them open to questions about the relationship between story and actual events, questions of truth. They also have, one might say, an 'explanatory intention' which we can liken to 'focalization': to make sense of events by drawing them into a relation which incorporates a particular point of view. If we see news as part of the apparatus of governance […], this highlights the sense in which news stories are oriented to regulating and controlling events, and the ways in which people respond to events. (Fairclough 2003: 85)

Thus, those who narrate the news or history have substantial influence over the formulation of perceived reality and their presentation of events usually counts as objective facts. These become part of the "knowledge" of a society, the meanings and content that help shape and interpret its reality, make up its consciousness and induce individual or collective action (see Jäger 2001: 33, 38). Similar manipulation of collective memory and knowledge occurs in politics and government: collective historical memory is a political act, and political action in turn means creating and asserting a representation of the social world that then influences that social world (see Liebhart 2010: 275-276). Only the elements of history that fit into and function in a society's current frame of reference can form part of that society's collective knowledge or memory, and the manner of evocation of past political events and the choice of what is remembered and how molds and legitimizes current political regimes and power relations (see Liebhart 2010: 276). Legal discourse is similarly intertwined with the production and maintenance of power relations, helping to produce the "truth" of the society in question; yet "'truth is not 'neutral'—especially legal truth, which […] is plainly socially constructed as a result of normativity and essentialism. Thus narratives can be and are used by the dominant group to enforce their 'truth' and to undermine minority rights" (Malavet

2000: 51-52). Collective identities and the definition of the Other are constructed through the struggle between conflicting societal power structures and patterns of interpretation surrounding the appropriation of the past (see Sommer-Siegharts: 2006: 159). "People derive this 'knowledge' from the respective discursive contexts into which they are born and in which they are involved for their entire existence" (Jäger 2001: 33) because discourses are agents and transporters of that knowledge, but both discourse and knowledge are the result of a power struggle to validate one particular worldview or another.

2.2. Identity

According to Stuart Hall (see 1996: 339-340), identity used to be considered something stable and enduring that anchored people in their reality despite an ever-changing world. As something outside of discourse, identity offered continuity; now, however, identity is seen as a product of discourse and, like discourse, is constantly developing and changing. Therefore Hall conceives of identity as a "*process of identification*", that is, as "something that happens over time, that is never absolutely stable, that is subject to the play of history and the play of difference" (Hall 1996: 344, original emphasis). Nevertheless, people still seek stability through identity and react to apparent threats by creating or upholding collective identities. Anne McClintock (1996: 260) describes nationalisms in much the same way

> as systems of cultural representation whereby people come to imagine a shared experience of identification with an extended community, they are historical practices through which social difference is both invented and performed. Nationalism becomes in this way radically constitutive of people's identities.

Social difference and the historical aspect of nationality—both that national identities are historically constructed and that they are heavily reliant on the perception of a shared history—are commonly reflected in definitions of nationality. For instance, John Stuart Mill's definition emphasizes the feeling of community within and difference without, and cites national history as the main constitutive factor of national identities:

> A portion of mankind may be said to constitute a nationality if they are united among themselves by common sympathies which do not exist between them and any others - which make them co-operate with each other more willingly than with other people, desire to be under the same government, and desire that it should be government by themselves, or a portion of themselves, exclusively. This feeling of nationality may have been generated by various causes. Sometimes it is the effect of identity of race and descent. Community of language and community of religion greatly contribute to it. Geographical limits are one of its causes. But the strongest of all is identity of political antecedents; the possession of a national history, and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past. (Mill 2011: 106)

Similarly, Fukuzawa Yukichi seeks to define nationality, which he calls *national polity*, by first defining *polity* as "a structure in which things are collected together, made one, and

distinguished from other entities," so that *national polity* is "the grouping together of a race of people of similar feelings, the creation of a distinction between fellow countrymen and foreigners, the fostering of more cordial and stronger bonds with one's countrymen than with foreigners" (Fukuzawa 2008: 30). Like Mill, Fukuzawa also emphasizes sharing an emotional connection to a common past as well as similarity in any or all of a list of factors including geography, religion, language and physical characteristics (see Fukuzawa 2008: 30). Drawing on both Mill and Fukuzawa, Naoki Sakai sums up the feeling of nationality as being "constituted through representations of community conveyed through a regime of fantasies and conceptual forces; it is the sentimental feeling of the 'we' enabled by these regimes within modern national communities" (Sakai 2005: 3). Other identities are constructed and maintained in the same way, and indeed the factors most often cited as composing or influencing nationalism and nationality also play an important role in the construction of other collective and individual identities, including geographical and political situation, race and ethnicity (see Lewandowski & Dogil 2010: 389). Additional elements such as tradition, history and memory are also drawn upon to help uphold collective identities in the face of accelerating social and cultural change that is often experienced as a threat to identity (see Liebhart 2010: 275).

2.3. Othering, bordering & the schema of cofiguration

Building such a group or collective identity always involves the production and definition of an outgroup, of an Other, which in turn amounts to a definition of the Self, in that "the attributed characteristics of Other refract contrasting characteristics of Self, and vice versa […] because our representations of the Other are important ingredients of our own identities" (Miles & Brown 2003: 19). Naoki Sakai (see 1997: 15-16 & 2012: 353) refers to this as the "schema of cofiguration", a discursive apparatus that defines one unity (such as a nation, an ethnicity, a culture or a language) in contrast to another, equivalent unity, establishing both as distinct but comparable, internally homogeneous unities and thus providing "a means by which a national community represents itself to itself, thereby constituting itself as a subject" (Sakai 1997: 15). Taking Japanese as an example, he contends that the concept of a uniform Japanese language spoken universally by the Japanese people did not come into being until the eighteenth century, when the great dialectical variety among the various communities and social classes living on the Japanese archipelago was discursively subsumed into one "Japanese language" by intellectuals seeking to protect their nation's literature from perceived contamination by elements of the Chinese language.

The schema of cofiguration is a method of establishing what elements belong to one entity's identity or definition and what elements belong to another and are therefore excluded from the first, as in Sakai's example of the Japanese language coming into being through the identification and exclusion of elements considered to belong only to the Chinese language (see Sakai 1997: 15-16).

> Once the notion of the Japanese language has been invented, it becomes possible to regard the unthinkable as that which always emanates from *outside* a determinable area (such as Japan). Those things that resist thought (or create difficulties or failures in expression and understanding) are established in advance as coming "from outside," and incapable of arising within the "interior" (Sakai 2005: 21, original emphasis).

The foreign is established through discourse via the schema of cofiguration, and is excluded from the ingroup's discourse as that which cannot be comprehended, which does not make sense and does not belong. The Self and the Other are presented as equivalents that resemble each other yet are conceptually different, so that distinctions can be chosen, emphasized and made significant, thus not only distinguishing the Self from the Other but also establishing one's superiority (see Sakai 1997: 15-16). The concept of race also developed along these lines as a way of defining the Other; in the case of race, that otherness became increasingly associated with skin color and encompassed a variety of negative characteristics—a point of view that discursively established the inferiority of the "other races" and thus the superiority of the classifying group. Originally accepted by science as a legitimate and biological (and therefore objective) category, the concept of "race" did not lose its scientific credibility until after the Second World War (see Miles 1999: 42-43, 52). It is now recognized that races are "not a given, natural division of the world's population, but the application of historically and culturally specific meanings to the totality of human physiological variation" (Miles & Brown 2003; 89) and specifically to the chosen trait of skin color. "Thus, the use of the word 'race' to label groups so distinguished by some combination of phenotypical and cultural attributes is one moment in the ongoing social construction of reality: 'races' are socially imagined rather than biological realities" (Miles & Brown 2003: 89). Stuart Hall agrees: "People are all sorts of colors. The question is whether you are *culturally, historically, politically* Black. *That's* who you are" (Hall 1996: 345; original emphasis). Thus the idea of race is above all a construction of meaning, a product of discourse, and "[r]aces are not, then, simple expressions of either biological or cultural sameness. They are imagined—socially and politically constructed" (Gilroy 1996: 353). Taking up the specific example of ethnic and racial identities, Sakai explains how this invented and performed social differ-

ence, rather than real experienced difference, is responsible for the extreme incarnation of such attitudes, namely discrimination:

> When ["foreigners" or "outsiders" '] ethnic and racial identities are not known, they are safe. But they are turned into objects of discrimination as soon as their ethnic or racial origins are discovered. The knowledge that they belong to another "species" distinguishes "them." The most subtle differences are perceived after the fact as ethnic or racially specific difference in such a way that, when these are taken as indices of difference, these people become objects of discrimination. It is only when, through discourse, specific differences come to be seen that it becomes possible to mobilize the specific differences of ethnos and race for social discrimination. That is to say, people are not discriminated against on the basis of experienced difference. Rather, discrimination takes place when the positivities of ethnos and nation, which themselves can never be experienced, function as givens or preconceptions. In the absence of such preconceptions, all these varied differences would never be problematized. Indeed, immigrants and migrant workers are not, in the first place, discriminated against because of different customs or incomprehensible behavior. Discrimination against them arises from the stereotyped understanding of the difference between "them" and "us." (Sakai 2005: 29)

The same is true not only for the discursive positivity of race but also for the other elements repeatedly used to distinguish collective identities and nationalisms, such as geographical limits, language and even shared national history, for "[t]he cultural shreds and patches used by nationalism are often arbitrary historical inventions" (Gellner 2006: 55) and "the meaning and symbols of culture have no primordial unity or fixity; […] even the same signs can be appropriated, translated, rehistoricized, and read anew" (Bhabha 1995a: 208), so that "all meaningful reality is existent for us because we make it meaningful or because it has been allocated some meaning by our ancestors or neighbours and is still important to us" (Jäger 2001: 42). Though these distinguishing factors may be based on naturally occurring distinctions or dividing lines, the importance allotted to some and denied others is entirely contrived and discursively sustained until they become "naturalized, as though the institutions marking the border of the national community—national territory, national language, national culture and so forth—had been naturally inherited" (Sakai 2012: 345).

> Typical markers of collective identities, such as "territory," "culture," "history," or "religion," appear as autonomous entities. Identified by these markers, interconnected peoples come to lead separate lives whose defining properties appear to emerge from the intrinsic attributes of their "histories," "cultures," or "motherlands." (Coronil 1996: 77)

Yet borders between nations or their respective peoples do not exist naturally but rather come into being through the act of bordering, that is, when people create the borders through certain social interactions. Even though borders separate and often distance or even discriminate, they cannot come into being without an initial interaction between the people (or nations) in question, for

> a border is always man-made and assumes human sociality. […] Only where people agree to *border* can we talk about a border as an institution. Thus, *bordering* always precedes the border.
> Prior to bordering, it is impossible to conceptualize the national border. Thus, the national territory is indeterminate prior to *bordering*. Similarly, it is impossible to determine a national language prior to *bordering*. (Sakai 2012: 348-349, original emphasis)

The discursive mechanisms of bordering, othering or the schema of cofiguration not only produce and maintain social difference between groups, but also artificially homogenize the interior of the groups thus separated and segment and hierarchize them in relation to each other "according to gradients of majority/minority relations composed on the basis of gender, class, ethnicity, race and postcolonial or civilizational difference" (Solomon 2007) in concurrence with "our sense of the historical identity of culture as a homogenizing unifying force, authenticated by the originary Past, kept alive in the national tradition of the People" (Bhabha 1995a: 208). Indeed, these acts of bordering must establish not only the limits between the Self and the Other but also a sense of homogeneity within those categories—particularly that of the Self—for how can social cohesion be upheld without the metaphor of *the many as one*, without treating categories such as race, class or gender as social totalities (see Bhabha 1995b: 177)? Yet

> it is impossible for any one person to have one identity. "Indian," "woman," "Muslim," "American": these are nothing more than points of departure. The belief that a person can have a single pure identity is, if anything, the product of a brilliant fusion between imperialism and culture […]. It results from the way identity and culture were combined and fixed as imperialism attained a global scale, allowing individuals to think that they were exclusively white or black, western or eastern. Of course, just as people create their own histories, so too they create their own identities. (Kang 2005: 128)

Thus, neither the internal homogeneity of a category such as a culture, a language, a nation or a race, nor those categories themselves and the distinction between them, exist independently of humanity and our social relations, but rather are generated and negotiated through those social relations, through discourse.

> We have thus far seen that, in the absence of a culturalism that regards culture as an organic unity pervasive throughout the nation, it is impossible to stipulate the homogeneity of a national body that shares common customs and a common culture. We have also seen that the identity of community cannot be directly equated to the identity of language. How can one determine what constitutes the "same" language? Language is capable of countless divisions; it is a positivity whose content changes constantly throughout history. If this is the case, then the assumption that a given community is homogeneous and constituted by "the same" people must once again be submitted to rigorous revision. (Sakai 2005: 26)

2.4. Inter-/transcultural communication, homo-/heterolingual address

Regarding cultures and languages as organic unities pervasive throughout their respective nations and assuming that such national, cultural or linguistic communities are internally homogeneous and easily distinguishable from other, equivalent, equally internally homogeneous communities is characteristic of what Sakai (1997: 5-6, 15-16 & 2005: 21) refers to as the "regime of homolingual address". Though he challenges the assumption of the plurality and the internal homogeneity of all such unities, "[t]he critique of culture as a

unity cannot be accomplished without asking how language can be represented as a unity. Unless the concept of language is submitted to critical examination, all critiques of national culture will invariably remain incomplete" (Sakai 2005: 18). Thus, Sakai's explication of the regime of homolingual address focuses mainly on the assumption of natural linguistic communities and the theories of translation that arise from such a perspective, maintaining that the regime of homolingual address has been established in part through the widely accepted *representation* of translation propounded in such theories and which he contends is "radically heterogeneous" to the *practice* of translation (Sakai 1997: 15). Along the same lines as intercultural communication or intercultural translation, which is considered to take place between "individuals and communities assumed to belong to different, clearly distinguishable cultures" (Buden et. al. 2009: 200), the homolingual perspective posits language communities as separate from each other and thus allows translation to be represented as the transfer of meaning from one pre-existing, internally homogeneous language into another distinct one (see Sakai 1997: 5-6). The homolingual assumption is that, because of the internal homogeneity of each natural language community, each member of one such community will understand each other member of that same community simply because they speak the "same" language and have the "same" cultural background, and therefore any utterance—i.e. the moment someone addresses—counts as communication because any other members of the "same" language community who are present to hear it will automatically receive and understand it. "Theories of communication, normative by necessity, regularly obscure the fact of address in communication. They are derived from the extra-linguistic assumption that supposedly 'we' should be able to 'communicate' among ourselves if 'we' are a linguistic community" (Solomon 2007). In the homolingual view, failures of communication arise when members of different language communities wish to communicate but cannot understand each other due to the language barrier, at which point translation becomes necessary (see Buden et. al. 2009: 204). Yet

> [s]trictly speaking, it is not because two different language unities are given that we have to translate (or interpret) one text into another; it is because translation *articulates* languages so that we may postulate the two unities of the translating and the translated languages as if they were autonomous and closed entities through *a certain representation of translation*. (Sakai 1997: 2, original emphasis)

Likewise, "[i]t is not because the objects of knowledge are preparatorily given that certain disciplines are formed to investigate them; on the contrary, the objects are engendered because the disciplines are in place" (Sakai 1997: 40-41); in this way, the discipline of translation studies has influenced and upheld the perception of languages as unities and translation as bridging gaps between them, due to the *representations* of communication and translation

that the discipline propounds. Academic disciplines act as regulators of discourse by determining what is regarded as true and factual within each discipline and thus "what methods, form of propositions and arguments, and domain of objects will be considered to be true. This set of structures allows for new propositions to be articulated, but only within certain discursive limits" (Mills 1997: 69), and according to Sakai, in the study of translation those discursive limits tend to correspond to the regime of homolingual address. Early theories of communication tended to be linear and unidirectional, based on the simple transfer of a message from a sender to a receiver (see e.g. Claude E. Shannon's model of a communication system (Shannon 1998: 33-34) or Harold D. Lasswell's communication formula (Lasswell 1948: 37)), which gave rise to many similarly linear and unidirectional translation models and theories. A prime example that Sakai cites in multiple works is Roman Jakobson's linguistic categorization of translation, or the

> three ways of interpreting a verbal sign: it may be translated into other signs of the same language, into another language, or into another, nonverbal system of symbols. These three kinds of translation are to be differently labeled:
> 1) Intralingual translation or *rewording* is an interpretation of verbal signs by means of other signs of the same language.
> 2) Interlingual translation or *translation proper* is an interpretation of verbal signs by means of some other language.
> 3) Intersemiotic translation or *transmutation* is an interpretation of verbal signs by means of signs of nonverbal sign systems. (Jakobson 1959: 233, original emphasis)

Without the homolingual presupposition of distinct language unities, these distinctions would have no meaning because there would be no different languages to translate into or out of in interlingual translation, nor would it be possible to say where one language's borders lie in order to define intralingual translation as taking place solely within them. Even the distinction between verbal and nonverbal signs loses precision in the face of such examples as a calligraphic text, leaving the category of intersemiotic translation problematic as well (see Sakai 2012: 350 & 1997: 10). Over the years such rigid, linear, unidirectional theories and models have been tweaked and elements added or subtracted to attempt to encompass the dynamic acts of communication and translation, expanding for instance to take into account interdependencies that earlier models ignored (see Salevsky & Müller 2011: 23), include the situational and sociocultural context (see Reiß & Vermeer 1984: 151-152), cover nonverbal and text-external elements in addition to verbal and text-internal ones (see Nord 2009: 39), and so on. Otto Kade found the purely linguistic translation models to be inadequate and sought to include situational factors in his version, rejecting the linear attitude of direct equivalency between languages because communicative equivalence "is not determined by relations between autonomous sign systems but by relations within the overall web

of constraints of the bilingual mediated communication" (quoted in Salevsky & Müller 2011: 25, English translation by Bernd Zöllner). Likewise, Justa Holz-Mänttäri moved away from focusing on the inhuman elements of the translation process to focus instead on the actors and actions involved in translation, among the defining characteristics of which she included crossing cultural barriers (and thus the presence of a culture (and language) other than that of the translation initiator), or analytical, evaluative and creative action among different cultures directed towards overcoming the distance between them (see Holz-Mänttäri 1984: 84-87). Nevertheless, even such expanded models still conform to the regime of homolingual address in that they rest on the *representation* of translation that allows us to "construe the process of translation as a transfer of some message from 'this' side to 'that' side, as a dialogue between one person and another, between one group and another, as if dialogue should necessarily take place according to the model of communication" (Sakai 1997: 15), for even these models defined translation as involving a culture and language other than that of the translation initiator (see Holz-Mänttäri 1984: 86) or as bilingual communication as distinguished from normal, monolingual communication (see Kade 1968: 61). Such a homolingual perspective gives rise to further assumptions, for if "translation is understood to be a transfer of a message from one clearly circumscribed language community into another distinctively enclosed language community", then "[u]nder this regime, an utterance must be delivered first, it is translated secondarily. It postulates a sphere of linguistic homogeneity where 'communication' is guaranteed and taken to be anterior to 'address.'" (Sakai 1997: 6). Thus, the authentic form of communication is that which takes place directly between addresser and addressee within one medium and language community, so that "speech addressed by or to a foreign language speaker is put aside as secondary […] or as an exceptional case outside the normalcy", and translation, since it takes place secondarily and requires adding a new language or medium to the equation, "cannot be either primordial or originary" (Sakai 1997: 6). This regime goes hand in hand with "the myth of the monoethnic society," that is, the assumption that individual cultures, like languages, are easily recognizable and distinguishable, that compassion, communication and mutual understanding are guaranteed among the people of one nation, ethnos and linguistic community, and that communication with "foreigners" will never be so smooth (see Sakai 2005: 2). A model of communication or indeed translation based on such assumptions has no room for "[t]he scene where one speaks without assuming that everybody among the addressees will understand what is delivered by the speaker" (Sakai 1997: 6), i.e. the heterolingual address.

The idea of heterolingual address arose from Sakai's experiences writing for multiple linguistic communities, namely by publishing texts in both English and Japanese. His focus is not the traditional translational process between such languages, but the complexity of addressing oneself to an audience without assuming that audience will immediately or entirely understand the text because of a shared linguistic or cultural background (see Buden et. al. 2009: 203-204). Among other things, this demands consideration of the use of "we" in address: under the regime of homolingual address, the invention of a national language or shared mother tongue "makes possible both consciousness of an ethnocentric 'we' and the nationalistic sense that this 'we' exists as an archetype." (Sakai 2005: 21). Heterolingual address thus involves the conscious decision not to limit such collective terms to an audience assumed to be in a position to immediately receive and comprehend the addresser's statements simply because all of "us" belong to one language community. Instead, the addresser is aware that reception of his or her message will not be uniform among the audience, whether that audience belongs to one and the same supposed language community or not.

> Thus, "we" comprise an essentially mixed audience among whom the addresser's relation to the addressee could hardly be imagined to be one of unruffled empathetic transference, and to address myself to such an audience by saying "we" was to reach out to the addressees without either an assurance of immediate apprehension or an expectation of uniform response from them. (Sakai 1997: 4)

The regime of homolingual address, meanwhile, disregards the difference between both translation practice and the invocation of "we" and their respective representations in discourse and communication models. If in homolingual address languages and the corresponding language communities are internally uniform and externally separate and distinct, then translation is only necessary when two such communities meet, while "we" are always all members of one such community and can and do fully expect mutual understanding within "our" community. "To equate not being 'in' communication to the notion that addresser and addressee are not 'in' the same social group is to confuse potentiality with representation. Being 'out' of a social group concerns a question of status that can only be verified through protocols of representation" (Solomon 2007). Such a representation of the communicative situation equates addressing with communication and fails to take into consideration the multitude of possible reasons for failures in communication, any number of which can occur within one supposed language community. Under the regime of homolingual address, when what we perceive to be a language barrier exists between interlocutors, then we assume that is the reason for our inability to comprehend each other and we cease to consider other possibilities. But in reality, the very fact that we fail to communicate precludes the possibility of determining the cause of that failure. Only if communication is (re)established can we

retrospectively work out the cause of the failure, by which time it no longer exists (see Sakai 1997: 5, 6, 8-9, 14; Solomon 2007). "In contrast, the heterolingual address does not abide by the normalcy of reciprocal and transparent communication, but instead assumes that every utterance can fail to communicate because heterogeneity is inherent in any medium, linguistic or otherwise" (Sakai 1997: 8). Thus, from a heterolingual perspective, Sakai equates the difference between addressing and communicating with that between aiming and striking: in order to strike a target one must first aim at it, and various factors could still cause one to miss; in the same way, one must address before one can communicate, and it is possible to fail to communicate because *addressing* does not guarantee the message's arrival, whereas *communication* presupposes reception of the message (see Sakai 1997: 4, 8). So just as Christiane Nord suggested that a text does not become a text until reception and that the manner of reception depends on the receiver's background, knowledge and expectations, so that there are as many versions of a text as there are receivers of it (see Nord 2009: 17-18),

> [i]n the heterolingual address, […] the act of inception or reception occurs as the act of translation, and translation takes place at every listening or reading. Whereas translation is necessary only between the interior of a homogeneous medium and its outside in the case of the homolingual address, it is upheld in the heterolingual address that, in principle, translation occurs whenever the addressee accepts a delivery from the addresser.
> Thus differentiated, the two addresses respectively suggest the two alternative attitudes with regard to the otherness of the addressee. (Sakai 1997: 9)

Any examination of translation from such a perspective cannot rely so heavily on the more linear and unidirectional theories and models that portray translation as a dehumanized process of simply transferring meaning from one language unity into another; instead, the heterolingual perspective fosters the conception of translation as a social relation. "What the practice of heterolingual address evoked in me was not the sense of peculiarity of writing for two linguistically different readerships; rather, it made me aware of other social and even political issues involved in translation" (Sakai 1997: 2). Seeing languages and cultures as pre-existing, separate and internally homogeneous entities as under the regime of homolingual address makes it all too easy to hierarchize these unities, for the moment we start to compare them—which, Sakai argues, is how language unities are discursively fabricated in the first place through the schema of cofiguration—it is practically inevitable that the qualities attributed to each side of the comparison will *not* be equivalent and neutral (see Sakai 1997: 15-16 & 2012: 354-355). In homolingual address, translation is generally seen as being employed to bridge the gap between pre-existing distinct languages, but if, as Sakai suggests, the homolingual representation of translational practices constructs such language unities (and by extension ethnic, national and cultural unities) in the first place, it also con-

structs the perceived gap between them (see Sakai 1997: 14-15 & 2012: 349-350; Buden et. al. 2009: 204; Solomon 2007). The self-evidence of precisely these unities and gaps—not only in the spectrum of language but also that of other discursive positivities, for "such unities as ethnos, nation, race and national/ethnic culture may be thought of as produced by nearly identical regimes" (Sakai 2005: 22)—is what Sakai invites us to question by adopting the attitude of heterolingual address.

> Rejected in monolingual address is the social character of translation, of an act performed at the locale of social transformation where new power relations are produced. Thus the study of translation will provide us with insights into how cartography and the schematism of co-figuration contribute to our critical analysis of social relations, premised not only on nationality and ethnicity but also on the differentialist identification of race, or the colonial difference and discriminatory constitution of the West. (Sakai 2012: 356)

Though apparently organic and immutable once established, positivities such as geographical borders, racial difference and national language come into being socially through discourse and are thus subject to change. What currently distinguishes the ingroup from the outgroup was not always and will not remain the point of distinction; perceived bridges can turn out to be wedges, and chasms in turn can narrow and close.

> Thought of in terms of social practices rather than in terms of rendition, an investigation into translational processes cannot be reduced to the paradigm of communication, which precisely suggests pre-existing "linguistic communities" that enable communication on the one hand, and "failures of communication" that necessitate the work of translators on the other. Instead, it has to start from an analysis of different modes of address that are established on the grounds of a heterolingual condition. This once again foregrounds linguistic and translational processes as based on a social relation, namely the relation between the addresser and the addressee. […] [I]t also allows for an analysis of […] the regime of homolingual address […], which can be examined in terms not only of its theoretical and practical suppositions, but also of its direct political and social implications in terms of the ways that it configures the interrelations between different subjects and subject groups. (Buden et. al. 2009: 204)

Examining translation as a social relation from a heterolingual perspective allows us to question the self-evidence of traditional homolingual portrayals of the translation process as taking place between two separate and naturally occurring language unities and, by extension, to question the pre-existence of those language and cultural unities as well as other discursive positivities, "and thereby explore those ethicopolitical assumptions and habituated regimes that serve to sustain this position" (Sakai 1997: 10-11).

3. Method

This thesis centers on the political and legal relationship between Puerto Rico and the mainland United States, but more precisely on the discursive portrayal of that relationship. The hypothesis that lies at the heart of this investigation is that Puerto Rico's political status since changing sovereignty at the end of the Spanish-American War has reflected and

been reflected in discourse both on the island and on the mainland, whereby the legal and juridical discourse planes would be some of the most influential, having as they do direct and explicit repercussions on extra-discursive action and interaction due to their normative function. In the first decades after the Spanish-American War, discourse both on the island and on the mainland portrayed Puerto Ricans and U.S.-Americans as two separate and fundamentally different groups, each distinguishing between "them" and "us"; this view was reflected in and fed by early legislation regarding the new territory and its treatment as compared to that of the States, as well as influencing and being influenced by the reception of that legislation and treatment in the territory. Thus the initial relationship was homolingual and intercultural, in that the two populations were seen as naturally distinct groups that would not bear more than limited and controlled interaction due to their inherent disparateness. Since 1898, the relationship between Puerto Rico and the mainland United States has changed both socially through increased contact and interaction, and legally through incremental concessions to self-determination. In the face of such changes it is likely that this discourse strand would undergo a corresponding evolution. Given the increased interaction of the populations and the corresponding closer legal and political relationship, it is to be expected that this discourse strand would evolve from that initial intercultural, homolingual view of two easily distinguishable and fundamentally different cultures to a more transcultural, heterolingual perspective of hybrid cultures that defy the pinpointing of a border where one ends and the other begins. To determine if and to what extent that is the case, this thesis will explore bordering strategies, definitions and delineations of the Self and the Other, the intended audience and manner of address, and other related elements of the discursive portrayal of the Puerto Rico-U.S. relationship in the early 20th century and again in the early 21st. Thus, the empirical portion of this thesis will consist of a diachronic discourse analysis composed of two pairs of more or less synchronic analyses of the discourse strand of Puerto Rican political status in both Puerto Rican and (mainland) United States texts (see Jäger 2001: 47). The subjects of analysis of the first synchronic cut towards the beginning of the 20th century will be the written opinion of the United States Supreme Court in the Insular Case *Balzac v. Porto Rico* (258 U.S. 298 (1922), hereafter cited as "*Balzac*") and a chapter selected from Antonio S. Pedreira's *Insularismo* (originally published in 1934, hereafter cited as "*Insularismo*"; in the following, all quotes from this work will be my translations unless otherwise indicated). Analyses of discourse fragments from the early 21st century will follow, namely of the written opinion of the Supreme Court of Puerto Rico in the case *Pueblo v. Sánchez Valle* (192 D.P.R. ___ (2015), hereafter cited as "PR *Sánchez*

Valle"; while the original Spanish text will be the subject of analysis, in the following, all quotes from this work will be taken from the certified English translation by Margot A. Acevedo, with page numbers given for both versions) and the opinion of the Court in the same case when it went to the United States Supreme Court as *Puerto Rico v. Sanchez Valle* (579 U.S. ___ (2016), hereafter cited as "US *Sanchez Valle*").

"Once again we want to emphasize that this is 'more than just' a linguistic analysis, since linguistics is but one of the fields in which ideological horizons of homogeneity have been conceptualized" (Buden et. al. 2009: 206). Sakai himself does not limit his investigation of bordering and homolingual address to language unities, for his "is a discursive analysis that goes beyond the domain of the linguistic. Accordingly, it involves the questions of figuration, schematism, mapping, cartographic representation, and the institution of strategic positions" (Sakai 2012: 349). Determining whether address is homo- or heterolingual requires analysis not only of linguistic segmentation but of all related borders and bordering processes, for all such factors contribute to the classification of an internally homogeneous group of addressees distinct from other potential addressees in homolingual address, or remain permeable and of secondary importance in heterolingual address. These analyses will therefore focus on processes of bordering not only between language unities but also between other discursive positivities such as culture and race, paying particular attention to whom such bordering processes include and exclude among the discourse fragment's group of addressees. To fit the particular parameters of the topic under consideration, the discourse analysis will draw on certain aspects of different models proposed by various authors. The broad scope of Jäger's (2001: 52-53) suggested method of discourse analysis encompasses and indeed emphasizes the need to identify the knowledge of the society on the topic of the particular discourse strand and thus to locate the strand within the context of that society's overall view and history. Following the characterization of the discourse strand within the broader discursive context, aspects of Jäger's (see 2001: 54-56) more specific analytical "toolbox" and of Norman Fairclough's (see 2003: 191-194) textual discourse analysis checklist will narrow the focus of the analysis and aid in the examination and comparison of the particular discourse fragments within the chosen texts. For this particular topic, Fairclough's questions regarding orientation to difference, intertextuality, assumptions, the representation of social events and actors, modality, and the values underlying all of the above will be especially useful, as will his contemplation of the manner of address and the use of "we" and "I" in texts (see Fairclough 2003: 162, 191-194). The general framework of a study that Ruth Wodak conducted with Rudolf de Cillia and Martin Reisigl on discourse

regarding nation and national identity in Austria will also help structure this analysis, because like theirs it is "concerned with the analysis of the relationships between the discursive construction of national sameness and the discursive construction of difference leading to political and social exclusion of specific out-groups" (Wodak 2001: 71). Their short list of questions to determine the discursive strategies upholding a group's positive portrayal of the Self and negative portrayal of the Other (see Wodak 2001: 72-73) will supplement Fairclough's (see 2003: 192) questions about the discursive portrayal of difference, helping to pinpoint the relevant discourse fragments within the chosen texts and to analyze how Puerto Ricans and mainland U.S.-Americans expressed (and may still express) their rejection of the other.

Knots and entanglements of discourse strands (see Jäger 2001: 47-48) will also be relevant to this analysis because, though the main topic of interest is the political status of Puerto Rico and its relationship to the mainland United States, the various bordering processes and the criteria on which they rely to construct sameness or difference will correspond to other related themes. A preliminary compilation of such themes to watch for—a list that will be compared among the texts under analysis and edited accordingly—includes the inventory of discrimination-related topoi mentioned by Wodak (see 2001: 74), the various elements of nationalism and national identity discussed above in Section 2.2 such as race or ethnicity, language, religion, national history, and geographical location and limits (see Mill 2011: 106; Fukuzawa 2008: 30), and factors in the negotiation and construction of collective identities such as generation, political reality or collective memory (see Lewandowski & Dogil 2010: 389; Liebhart 2010: 275). Jorge Duany (see 2000: 10-11) argues that preservation of Puerto Rican national identity in the face of "Yankee imperialism" has been an integral part of Puerto Rican discourse since 1898 and has contributed to the homogenizing image of the Puerto Rican collective identity that ignores heterogeneity within Puerto Rico; thus any or all of the aforementioned factors involved in the creation and preservation of national and collective identities and of sameness and difference may play important roles in the texts to be analyzed. The extent to which either side still defines the other as "other" cannot be separated from the status debate, since that is what legally determines how equal the two sides are, and many of the above factors have already been shown to be intertwined with the status question: language policy in Puerto Rico, e.g. the issue of when and how English is taught in schools, cannot be truly resolved until Puerto Rico's political status has been definitively established (see Pousada 1996: 502; *Insularismo*: 100); the permeability of the border between the United States and Puerto Rico – that is, the island's geographical "lim-

its" – depends on how close their political relationship is and is a key issue in the Puerto Rican debate about whether to seek statehood or independence (see Duany 2000: 8); and race, religion and customs were some of the main factors cited by the U.S. Supreme Court as reasons not to incorporate territories full of "savage tribes" (*DeLima v. Bidwell* 182 U.S. (1901): 119) or "alien races, differing from us in religion, customs, laws, methods of taxation, and modes of thought" (*Downes v. Bidwell* 182 U.S. (1901): 287), while Puerto Rican nationalism

> has historically set up an artificial binary opposition between American and Puerto Rican culture—one English-speaking, the other Spanish-speaking; one Protestant, the other Catholic; one Anglo-Saxon in origin, the other Hispanic; one modern, the other traditional, and so on. But such a rough dichotomy no longer exists in Puerto Rico, if it ever did anywhere. (Duany 2000: 10)

So the question remains, does that dichotomy still exist in the discourse surrounding Puerto Rico's political status?

4. Analysis

The four primary texts are presented here in chronological order, each situated first in the corresponding historical, societal and political context before being subjected to a discourse analysis.

4.1. *Balzac v. Porto Rico* (1922)

The first quarter century of U.S. rule over Puerto Rico saw many changes in the legal and political relationship between the island and the mainland as the United States government adjusted and tweaked its approach, seeking equilibrium. After acquisition from Spain, Puerto Rico remained under military rule for a year and a half under supervision of the War Department before Congress passed the Foraker Act in April of 1900, which authorized the United States to establish Puerto Rico's civilian government and gave the U.S. President the power to appoint that government's more powerful members, including the governor, the justices of the supreme court, and the members of the Executive Council or upper house of the Legislative Assembly (the lower house was popularly elected; see Malavet 2008: 128; Aleinikoff 1994: 17). An early draft of the Foraker Act had also included a grant of citizenship, but due to a concurrent insurrection in the Philippines that sparked debate and acrimony toward the new territories acquired by the Treaty of Paris—not only in Congress but throughout the country—the citizenship provision was removed before the Foraker Act was passed (see Torruella 2007: 297-299). The nationwide debate regarding the wisdom of having acquired the new territories from Spain and the question of what to do with them became

a central issue in the following presidential election of 1900, so that when William McKinley, an Imperialist and President during the Spanish-American War, easily won reelection (with Spanish-American War hero Theodore Roosevelt as his new vice presidential running mate) against anti-Imperialist William Jennings Bryan, it was considered by some to signal national approval of these territorial acquisitions (see Torruella 2007: 299; Malavet 2008: 124). Nevertheless the debate continued, fueled by racism and particularly Filipino-phobia on one side and the conviction that the Constitution automatically extended to all territory under the sovereignty of the United States on the other (see Torruella 2007: 300), and culminating in the initial group of Insular Cases in May of 1901. *Downes v. Bidwell*, to this day often considered the most important of the Insular Cases (see Malavet 2008: 111), consolidates the Supreme Court's conclusions in those first six cases thus:

> The result of what has been said is that, while in an international sense Porto Rico was not a foreign country, since it was subject to the sovereignty of and was owned by the United States, it was foreign to the United States in a domestic sense, because the island had not been incorporated into the United States, but was merely appurtenant thereto as a possession. (*Downes v. Bidwell* 182 U.S. (1901): 341-342)

Possibly the most important term in that sentence is "incorporated," for with the Insular Cases incorporation became the deciding factor in the status of new territories acquired by the United States. Though the Insular Cases never seem to specifically define the term *incorporation*, they have successively narrowed down its parameters so that it has become clear that incorporated Territories of the United States (retroactively defined as contiguous mainland Territories, Hawaii and Alaska, see *The Atlantic* 27.04.2016) are on track toward statehood while unincorporated territories are not (see Jiménez 2015: 78), that incorporation has to be a step taken by Congress (see Kent 2018: 375), and that incorporated Territories enjoy the full rights and protections of the Constitution while only the *fundamental* constitutional guaranties (as opposed to personal freedoms, unless and until Congress chooses to extend those as well) apply in unincorporated territories (Malavet 2008: 138; Torruella 2013: 74; "fundamental rights" is incidentally just as nebulous a concept as "incorporation", for the Insular Cases never specify which of the rights and guaranties enumerated in the U.S. Constitution are "fundamental" but rather leave that up to the U.S. Supreme Court to decide on a case by case basis as needed, see Kent 2018: 380; Torruella 2013: 74, 78 & 2007: 325). As noted above in Section 1.5, five of the initial six Insular Cases were decided not unanimously nor even by majority, but by five-to-four pluralities: five Justices either joined in the opinion of the Court or submitted concurring opinions (having arrived at the same decision via different reasoning) while four Justices dissented, so that

no single opinion was backed by a majority (see Torruella 2013: 68). Thus, the future application of the newfound incorporation doctrine was initially uncertain, but then the composition of the Supreme Court changed with the appointments of Justice Oliver Wendell Holmes in 1902 and Justice William R. Day in 1903, consolidating a majority favoring the incorporation doctrine promoted in the 1901 cases (see Torruella 2007: 312). The importance of the Insular Case decisions—both those already decided by then and potential future ones—in U.S. territorial policy and government can be seen in then-President Theodore Roosevelt's insistence on knowing how Holmes would vote in future Insular Cases before nominating him to the Supreme Court (see Malavet 2008: 145). Roosevelt lamented that the results of the 1901 cases were largely "without satisfactory unanimity" and that

> [t]he minority—a minority so large as to lack but one vote of being a majority—have stood for such reactionary folly as would have hampered well-nigh hopelessly this people in doing efficient and honorable work for the national welfare, and for the welfare of the islands themselves, in Porto Rico and the Philippines. […] Now I should like to know that Judge Holmes was in entire sympathy with our views [on the Insular Cases…] before I would feel justified in appointing him. (Roosevelt 1951: 289)

Among the Insular Cases decided after Justices Holmes and Day joined the Supreme Court were *Hawaii v. Mankichi* in 1903 and *Rassmussen v. United States* in 1905, which held and then reiterated (respectively) that the deciding factor in determining whether a territory was "incorporated" was the granting of citizenship to the inhabitants of that territory (see Torruella 2007: 314-315; Saavedra Gutiérrez 2011: 974). Over the following decades the composition of the Supreme Court changed many more times, so that by the time *Balzac v. Porto Rico* was decided in 1922, not a single Justice involved in the factionalized 1901 Insular Cases remained (see Torruella 2007: 317, 320-321). Despite the "glaring inconsistencies and incongruities in the *Balzac* decision" written by William Howard Taft (who had been appointed Chief Justice the previous year), and despite the presence of Justices Holmes and Louis Brandeis, who generally would not have been expected to join in such a "legally faulted opinion" and often found themselves ideologically at odds with Taft in other cases (see Torruella 2007: 325), the *Balzac* case boasts one of the few unanimous opinions among the Insular Cases. This could be due to the unprecedented influence over all three branches of Government that Taft exercised as Chief Justice, which in turn can be ascribed to his extensive background in insular and territorial affairs and government as well as to the general outlook of the country during his tenure, a situation that "would prove unfortunate for the U.S. citizens of Puerto Rico, for the ruling of the Court in *Balzac* clearly bears his imprint and his personal biases" (Torruella 2007: 323).

While the Supreme Court continued to hone the definition and determining factors of the newfound incorporation doctrine, the Legislative and Executive branches of the U.S. government were also discussing Puerto Rico's future. Between 1901 and 1917, twenty-one bills proposing U.S. citizenship for Puerto Ricans were introduced in Congress, receiving varying degrees of enthusiasm from the various Presidents during that period; in addition to any altruistic reasons for the proposals, they were motivated in part by the growing strategic importance of the island for maintaining the safety of the Panama Canal (opened in 1914) and in the face of the first stirrings of world war (see Torruella 1988: 85 & 2007: 319). Importantly for the following analysis, in 1912 then-President Taft qualified his approval of the demand for citizenship for Puerto Ricans by saying

> it should be remembered that the demand must be, and in the minds of most Porto Ricans is, entirely disassociated from any thought of statehood. I believe that no substantial approved public opinion in the United States or in Porto Rico contemplates statehood for the island as the ultimate form of relations between us. (Whitney 2003: 350)

Personal experience had negatively colored Taft's attitude toward the island territories over the years. He became the first civilian governor of the Philippines in 1900 during the very insurgency there that influenced the removal of the citizenship provision from the Foraker Act for Puerto Rico. After his return to the mainland he continued to be involved in territorial administration (particularly regarding the Philippines and Puerto Rico) in his capacity as Theodore Roosevelt's Secretary of War (see Torruella 2007: 321). By the time of the Puerto Rican Appropriation Crisis of 1909 (a dispute in which Puerto Rico's popularly elected lower legislative house protested against decisions made by the presidentially-appointed governor by refusing to approve the annual budget, see Torruella 2013: 76), Taft had become President. That dispute soured his opinion of Puerto Ricans and he retaliated by proposing changes to the civil government established by the Foraker Act (which were opposed on the grounds of being a step backwards in Puerto Rican autonomy, see Torruella 1988: 88) and by putting Puerto Rico back under the supervision of the War Department, which resulted in many of the "civilian" governors subsequently appointed to the island being former naval or military men. "Thereafter, in a message to Congress, Taft accused Puerto Rico's elected leaders of irresponsibility and political immaturity, stating that Puerto Ricans had been given too much power 'for their own good'" (Torruella 2013: 76). Taft lost reelection in 1912 to Woodrow Wilson, whose administration endorsed granting Puerto Ricans the same rights and privileges enjoyed by U.S. citizens in other territories (such as Hawaii and Alaska) without mention of any of the restrictions Taft had advocated; in March of 1917, Wilson signed the Jones Act into law and thus granted U.S. citizenship to Puerto Ri-

cans (see Torruella 2007: 318-319). While citizenship was the most significant provision of the Jones Act (see Malavet 2008: 138), the act also adjusted the civil government established by the Foraker Act to allow more offices to be popularly elected, including both houses of the Legislative Assembly (see Torruella 2007: 319-320), and included a bill of rights for Puerto Rico that covered almost all of the rights in the federal Constitution except for the right to bear arms, the rule against quartering soldiers in private homes, and the jury guarantees (see Kent 2018: 445). However, the federal government maintained significant control over all three branches of Puerto Rico's government: the Legislative Assembly's legislation could be vetoed by the governor (still appointed by the U.S. President) or by the President himself and all laws had to be submitted to the U.S. Congress for approval, the governor's cabinet was appointed by either the U.S. President or the presidentially-appointed governor (see Fors 1975: 239-240), and the supreme court justices were still appointed by the U.S. President (see United States Congress 1917: 965). Once Puerto Ricans had been granted citizenship and the Insular Cases *Mankichi* and *Rassmussen* had established that such a grant was indicative of incorporation, it was only a matter of time before the question of Puerto Rico's political status reached the Supreme Court again (see Saavedra Gutiérrez 2011: 975).

Considered by many to be the last of the Insular Cases because subsequent U.S. Supreme Court cases involving the U.S. island territories simply reiterated the conclusions reached in this and the preceding Insular Cases (see Malavet 2008: 138), *Balzac v. Porto Rico* (1922) centered on the question of whether the constitutional right to a jury trial applied in Puerto Rico. Jesús M. Balzac, editor of the daily newspaper *El Baluarte* in Arecibo, Puerto Rico, was charged with libel for articles he published in April of 1918 that criticized the governor of Puerto Rico, Arthur Yager (see Torruella 2013: 77; *Balzac*: 300; Jiménez 2015: 93). Relying on his status as a U.S. citizen after the Jones Act had been passed the year before, Balzac requested a jury trial as guaranteed by the Sixth Amendment to the U.S. Constitution (see Torruella 2013: 77; U. S. Const., amend. VI). However, the Code of Criminal Procedure of Puerto Rico only required jury trials for felonies, and since Balzac was being tried for a misdemeanor, his request was denied (see Aleinikoff 1994: 26; *Balzac*: 300). He was convicted, after which he appealed to the Supreme Court of Puerto Rico in 1920 and then to the U.S. Supreme Court in 1922, both of which upheld the decision that Balzac was not entitled to a jury trial (see Torruella 2013: 77; *Balzac*: 300). The U.S. Supreme Court's decision upheld and further refined the incorporation doctrine, determining that incorporation cannot be inferred from a grant of citizenship but rather must be the *explicit* intention of Congress (see Saavedra Gutiérrez 2011: 976; *Balzac*: 306), and that, while

the fundamental rights protected by the Constitution automatically apply to unincorporated territories, personal freedoms such as the right to a trial by jury do not apply unless specifically extended (see Malavet 2000: 29). The *Balzac* opinion is well suited to the purposes of this thesis because it consolidates some of the more scattered and divided thoughts on territorial possessions and incorporation expressed in the previous Insular Cases into one unanimous opinion. Furthermore, its subject is specifically Puerto Rico as opposed to any of the other island territories (its numerous extraneous references to the Philippines notwithstanding) and it clearly demonstrates the different treatment that Puerto Rico received in comparison with other territories such as Hawaii, Louisiana or Alaska, allowing for an exploration of the criteria that the U.S. Supreme Court relied upon at the time to make those distinctions.

4.1.1. Incorporation: a collection of bordering strategies

One of the most cited and arguably the most important of the Insular Cases is *Downes v. Bidwell* (1901) and particularly the concurring opinion written by Justice Edward Douglass White, in which he proposed the incorporation doctrine (see Malavet 2008: 111; Torruella 2007: 308). Though the doctrine "constituted a significant departure from [the Supreme] Court's prior conception of the Constitution's application to the territories," (Brief for Scholars of Constitutional Law et. al. at 16, Tuaua v. United States (2016)) and was disputed from its very inception (Justice John Marshall Harlan expressed his consternation in his dissenting opinion in the *Downes* case itself: "I am constrained to say that this idea of 'incorporation' has some occult meaning which my mind does not apprehend. It is enveloped in some mystery which I am unable to unravel"; *Downes v. Bidwell* 182 U.S. (1901): 391), it came to pervade the Insular Cases. *Balzac v. Porto Rico* validated the doctrine by citing Justice White's opinion from *Downes* as having "become the settled law of the Court" (*Balzac*: 305) and thus turned it "into normative constitutional doctrine, and still quite applicable precedent. The court unanimously affirmed *Downes*, citing Justice White's opinion and the incorporation doctrine as controlling, which helped to clarify the constitutional relationship between Puerto Rico and the United States" (Malavet 2008: 138). That doctrine of incorporation is indeed the main apparently objective and unprejudiced argument used to justify different treatment of the people of the U.S. island territories and those of the mainland United States, and the *Balzac* opinion relies heavily on it: one of the central questions of the case is whether Jesús M. Balzac should have been granted a jury trial as guaranteed by the U.S. Constitution, which can only be answered by determining whether the entire

Constitution applies to Puerto Rico, i.e. whether Puerto Rico is an incorporated Territory. Indeed, practically two thirds of the opinion (see *Balzac*: 304-313) is spent examining and refuting the arguments that Balzac's counsel had raised to support the claim that Puerto Rico had been incorporated; the remainder is dedicated to summarizing the facts of the case (see *Balzac*: 300), determining the jurisdiction of the U.S. Supreme Court with regard to the case (see *Balzac*: 301- 304) and briefly discussing whether Balzac's articles were truly libelous (see *Balzac*: 314). The fact that previous cases had not provided a straightforward definition of incorporation and that the status of unincorporated territory "is a judicial and statutory creation, not a constitutionally entrenched level of government" (Lluch Aguilú 2018: 289) meant that there was room to continue honing the doctrine according to contemporary views towards the territories in the U.S. Supreme Court with each new Insular Case. This makes the incorporation doctrine an excellent example of bordering, or "the processes of drawing a border, of instituting the terms of distinction in discrimination, and of inscribing a continuous space of the social against which a divide is introduced" (Sakai 2012: 343). Indeed, "[m]ost contemporary scholarship about the *Insular Cases* and the doctrine of territorial incorporation sees them as examples of discrimination, domination, and denial of rights" (Kent 2018: 381). Looking specifically at *Balzac*, Taft's written opinion reveals his personal biases against the territories acquired from Spain (especially towards the Philippines, as discussed above in Section 4.1), which may account for many of the inconsistencies in his arguments (see Torruella 2007: 325). Explicitly he focuses on incorporation and his points are made in service of that argument, distinguishing between how contemporary incorporated and unincorporated territories came to occupy their respective statuses, and advocating prudence and forethought in deciding whether to incorporate—not only for the sake of the United States but also to avoid unfair treatment of the territory in question. However, upon closer examination, much of his reasoning seems arbitrary and contradictory, as if he were "blinded by his desire to reach a predetermined outcome" (Torruella 2007: 326).

4.1.1.1. Timing & provenance

If that desired outcome was making *unincorporated territories* practically synonymous with *the territories acquired during the Spanish-American War*, then he succeeded, for Taft's argumentation conspicuously carves out the former Spanish colonies from the rest of the United States' former and contemporary territories. While this was already more or less understood from the 1901 Insular Cases (see Torruella 2013: 74), some intermediate cases had not treated it as an unmitigated distinction, continuing to include deliberations as

to whether territories not acquired during the war, such as Hawaii (see *Hawaii v. Mankichi* 190 U.S. (1903): 211) and Alaska (see *Rassmussen v. United States* 197 U.S. (1905): 521-522), had been incorporated; *Balzac* revived the Spanish-American War as the distinction and made it more explicit. Note in the following that *Balzac v. Porto Rico*, as the name suggests, did not involve any of the island territories ceded by Spain other than Puerto Rico, yet Taft tends to refer to those territories collectively, treating them as one unit—similar to each other and disparate from all other U.S. territories—and that this reinforces his distinction between the unincorporated territories acquired during the war and the incorporated Territories otherwise obtained (this will be covered in greater detail in Section 4.1.2). Taft's very first paragraph concerning the notional application of relevant provisions of the U.S. Constitution to Puerto Rico (and, by the middle of the paragraph, to the Philippines) ends with an indication that the Insular Cases and resulting incorporation doctrine only apply to the former Spanish colonies:

> The *Insular Cases* revealed much diversity of opinion in this Court as to the constitutional status of the *territory acquired by the Treaty of Paris ending the Spanish War*, but the *Dorr* case shows that the opinion of Mr. Justice White of the majority, in *Downes v. Bidwell*, has become the settled law of the Court. (*Balzac*: 305, emphasis added)

He later repeats this specification when he writes that "the United States has been liberal in granting to *the islands acquired by the Treaty of Paris* most of the American constitutional guarantees, but has been sedulous to avoid forcing a jury system on *a Spanish and civil law country* until it desired it" (*Balzac*: 311, emphasis added). In both of these instances he specifically mentions the Treaty of Paris, laying a solid foundation for a legal differentiation of incorporated and unincorporated territories focusing on how the terms of that treaty differed from those of other treaties by which the U.S. gained territory. Indeed, Taft alludes to such an argument with regard to the treaties by which the U.S. purchased the Territories of Alaska and Louisiana when he acknowledges that if a provision in a treaty or a law of Congress declares an intention to make the inhabitants of a new territory U.S. citizens, then that may be interpreted as incorporation of that territory in the absence of evidence suggesting that incorporation was not the intention (see *Balzac*: 309). However, instead of expanding on the comparison of treaty provisions, the *Balzac* opinion seems to consider other distinctions to be more convincing proof that the former Spanish colonies had not been incorporated when other territories had.

As he continues to distinguish between these two types of territory, Taft relies more heavily on the timing of a territorial acquisition and its provenance than on the provisions of the treaty involved: he draws an apparent temporal demarcation line coinciding with the end

of the Spanish-American War—Territories acquired before the war were incorporated while those acquired as a result of the war were not—and repeatedly specifies that he is referring to the territories acquired from Spain as a result of that war. He uses these arguments to underpin his conviction that any intention to incorporate new territory must be explicit on Congress' part—a new stipulation that *Balzac* added to the incorporation doctrine (see *Consejo de Salud Playa Ponce v. Rullan* 593 F. Supp. 2d 386 D.P.R. (2009): 389-391), for the consensus after the original Insular Cases from 1901 had been that Congress could give "express *or implied* assent to the incorporation of such territory into the United States" (Rowe 1901: 60, emphasis added).

> Few questions have been the subject of such discussion and dispute in our country as the status of our *territory acquired from Spain in 1899*. The division between the political parties in respect to it, the diversity of the views of the members of this Court in regard to its constitutional aspects, and the constant recurrence of the subject in the Houses of Congress fixed the attention of all on the future relation of *this acquired territory* to the United States. (*Balzac*: 306, emphasis added)

Because of the unprecedented controversy surrounding these particular territorial acquisitions, Taft argued that it was no longer possible to simply infer that Congress had intended to incorporate a territory into the Union when Congress had not explicitly declared such an intention.

> *Before the question became acute at the close of the Spanish War*, the distinction between acquisition and incorporation was not regarded as important, or at least it was not fully understood and had not aroused great controversy. *Before that, the purpose of Congress might well be a matter of mere inference from various legislative acts; but in these latter days, incorporation is not to be assumed without express declaration, or an implication so strong as to exclude any other view*. (*Balzac*: 306, emphasis added)

However, "the *Balzac* opinion is riddled with inconsistencies, inaccuracies, and plain misinformation" (Torruella 2013: 78), and one of those inconsistencies concerns this temporal boundary, for Taft seems to abandon it a few pages later (though he maintains the distinction of provenance), saying that the Supreme Court is still not convinced of Congress'

> intention to incorporate in the Union these distant ocean communities *of a different origin and language from those of our continental people*. Incorporation has *always* been a step, and an important one, leading to statehood. Without in the slightest degree intimating an opinion as to the wisdom of such a policy, for that is not our province, *it is reasonable to assume that, when such a step is taken, it will be begun and taken by Congress deliberately, and with a clear declaration of purpose, and not left a matter of mere inference or construction*. (*Balzac*: 311, emphasis added)

This contradicts his earlier statements that incorporation only became important after the Spanish-American War and that, prior to that, Congress's intention to incorporate could be inferred in the absence of an explicit declaration. However, the complete lack of active human subjects as well as the absence of any explanation as to how or when the Court arrived at the conclusion that timing and provenance made a difference in the doctrine of incorpora-

tion (let alone who was involved in that decision) presents these statements as the only logical conclusion, which therefore need not be questioned or justified. Note for example that the first two of the above quotes give no clear legal or constitutional reasons for choosing 1899 as the temporal boundary between when incorporation could be inferred and when it had to be declared, and in all three quotes Taft's use of nominalization and passive voice implicitly excuses all human actors from responsibility for any problems or questionable reasoning regarding the incorporation doctrine, presenting incorporation as an existing, fixed, natural step leading to statehood, as opposed to a policy put in place, upheld, and expanded by human decisions (including those made in *Balzac*). The series of nominalizations that Taft uses in the first quote (the "division" between parties, the "diversity of views" in the Court, and the "constant recurrence" of the topic in Congress) and the passive voice in the second (the incorporation distinction "was not regarded as important," "was not fully understood and had not aroused great controversy") ultimately imply that the status controversy and incorporation doctrine themselves are the active parties while the people of the country and members of the government are simply swept along by them, waiting for the solution to present itself. By making arbitrary distinctions appear to be objective statements of fact, the opinion simultaneously avoids the need to justify this decision and sets up a new hurdle on the track to incorporation and statehood that no previously acquired territories would have to jump. More specifically, in the third quote Taft frees the U.S. Supreme Court from the need to comment on the wisdom of a policy first suggested by that very Court, and Congress from the possibility of accidental and precipitate incorporation of an unprepared or undesired territory, since incorporation is (now) too important a step to be inferred.

Note, however, that Taft implies that Congress has *never* actively incorporated a territory, for it must be "assumed" that such a step will be taken in a certain manner, leaving one to wonder how the United States' other territories had achieved an acceptable level of incorporation. It is worth pointing out that whenever Taft explicitly names the United States or specifically Congress as the party responsible for the decision to "incorporate" a territory into the Union or "make it a part of the United States," both of those terms only appear in active voice either to deny that Congress has incorporated or intended to incorporate Puerto Rico, or in hypotheticals about how incorporation *would* take place *if* it happened (see *Balzac*: 305, 306, 311, 313). At no point in *Balzac* does Taft mention Congress having actively made any territory part of the United States, but rather incorporated Territories seem to have acquired that designation in retrospect, expressed through passive voice and nominalization. In the case of Alaska, for example, Congress's declared intention to grant Alaska's inhabit-

ants citizenship "may be properly interpreted to mean an *incorporation* of it into the Union" and thus "Alaska *had been incorporated* in the Union" (*Balzac*: 309, emphasis added). The *Balzac* opinion reiterates multiple times the requirement that Congress make any intention to incorporate any territory explicit, but the fact that several territories had already been made a part of the United States without Congress explicitly incorporating a single one would seem to indicate that this was a new and arbitrary requirement devised to single out the most recent acquisitions among the U.S. territories. Indeed, Juan R. Torruella (2007: 326) argues that the *Mankichi* and *Rassmussen* cases had clearly linked citizenship with incorporation and eventual statehood, and that "Congress was cognizant of this when it granted U.S. citizenship to Puerto Ricans. The total disregard by Taft of *Rassmussen* and *Mankichi* placed a mantle of legality over an act of judicial usurpation of legislative intent in granting U.S. citizenship to the inhabitants."

The reference to *Hawaii v. Mankichi* (1903) in particular highlights the arbitrary nature of the distinction between incorporated and unincorporated territories: Hawaii and Puerto Rico were initially treated identically in the Insular Cases, with two cases concerning the same issue in each territory (*Goetze v. United States* and *Crossman v. United States* dealt with tariff impositions in Puerto Rico and Hawaii, respectively) lumped together and decided as one in 1901, yet the two territories thereafter followed separate paths, Hawaii toward statehood and Puerto Rico toward political limbo (see Torruella 2007: 304-305). In 1903 the U.S. Supreme Court retroactively determined that Hawaii had been incorporated by an act of Congress on June 14th 1900 (see *Hawaii v. Mankichi* 190 U.S. (1903): 211)—before the incorporation doctrine had even been established in *Downes v. Bidwell* in 1901—while Taft insists in *Balzac* that Congress had not intended similar provisions of the Jones Act to have the same effect on Puerto Rico (see *Balzac*: 306-308, 313). Hawaii was annexed just days before the Spanish-American War and resembled Puerto Rico both geographically as a group of distant, small islands with an established population, and legally as a territory whose inhabitants had been granted U.S. citizenship (see Jiménez 2015: 78, 97; Torruella 2007: 289, 326), so that the factors that best allow Taft to overlook or simply ignore the similarities between Hawaii and the unincorporated territories (other than the ethnicity of the inhabitants, to be discussed below in Section 4.1.1.4) are the provenance of the latter and the timing of their acquisition after "the close of the Spanish War" (*Balzac*: 306).

4.1.1.2. Geography & distance

The distinguishing factor to which Taft dedicates the most text in the *Balzac* opinion is also the most literal of the bordering strategies employed: he repeatedly uses geography and distance to differentiate between the mainland United States and the island of Puerto Rico in order to justify not applying all of the provisions and guaranties of the U.S. Constitution to the residents of the latter—in other words, not considering the territory incorporated—even after granting them United States citizenship. "It goes without saying that the border cannot exist naturally; physical markers such as a river, a mountain range, a wall, and even a line on the ground become a border only when made to represent a certain pattern of social action" (Sakai 2012: 348), yet distance and physical barriers such as, in this case, an ocean do help to make the socially performed borders between nations and communities seem naturally inherited and thus indisputable. Perhaps that is why Taft forgoes providing grounds to support his most categorical statement on the significance of location and geography, presenting it as an accepted fact that

> *[i]n Porto Rico*, however, the Porto Rican cannot insist upon the right of trial by jury except as his own representatives in his legislature shall confer it on him. The citizen of the United States *living in Porto Rico* cannot *there* enjoy a right of trial by jury under the federal Constitution, any more than the Porto Rican. *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*. (*Balzac*: 309, emphasis added)

The implied distinction between "the Porto Rican" and "[t]he citizen of the United States" even after Puerto Ricans had become U.S. citizens with the Jones Act five years earlier will be discussed below in Section 4.1.1.5; here, the point in question is Taft's conviction that the location of an individual's residence has greater influence over that individual's legal rights than does his or her citizenship status, and that Taft at no point names the source of this conviction, despite the *Balzac* opinion being bestrewn with references to and quotes from other texts, particularly previous Supreme Court cases that serve as precedents for the decisions made here. This lack of sources to support his assertions seems to indicate that they are statements of fact, of common knowledge shared with his audience and therefore in no need of explanation or justification. Much of his argumentation throughout the *Balzac* opinion seems to rest on this statement that locality and not the political status of the people determines the application of the Constitution, for when differentiating between incorporated and unincorporated territories and their respective inhabitants, Taft often (both implicitly and explicitly) references geography and location as a determinative factor and persuasive argument. On the previous page, for example, while expounding on the advantages that U.S. citizenship had given the Puerto Ricans, he explains that the Jones Act allows them to move

to and take up residence in "any state" of the "continental United States" and "there" enjoy all rights of U.S. citizenship, including those not available to them "in Porto Rico" (*Balzac*: 308-309). The opinion later returns to this topic, saying that the Jones Act was meant to make Puerto Ricans equal to "citizens from the American homeland" and give them the opportunity to move to "the United States proper" (see *Balzac*: 311), the implication being that the island of Puerto Rico is outside of and separate from the American homeland or United States proper. The following paragraph reiterates this distinction, calling for an explicit declaration of intention should Congress decide to incorporate "these distant ocean communities of a different origin and language from those of our continental people" (*Balzac*: 311). Setting aside for the moment the references to separate origin, language and "our" people, this once again shows how important the geographical boundary between the mainland United States and the island of Puerto Rico was, as well as the distance between the two. Two pages earlier, Taft had evaluated the same factors with regard to Alaska, which the Supreme Court had concluded in *Rassmussen* was an incorporated Territory:

> But Alaska was a very different case from that of Porto Rico. It was an enormous territory, very sparsely settled, and offering opportunity for immigration and settlement by American citizens. It was on the American continent, and within easy reach of the then United States. It involved none of the difficulties which incorporation of the Philippines and Porto Rico presents, and one of them is in the very matter of trial by jury. (*Balzac*: 309)

It is unclear from the *Balzac* opinion what relevance such geographical preoccupations have to the issue of whether Puerto Ricans had the right to a jury trial (see Torruella 2013: 78-79). As mentioned above, Taft could have expanded on the constitutional and legal bases of his argument by comparing the provisions of the treaties ceding Puerto Rico and Alaska, as had been done in *Rassmussen*:

> The treaty concerning Alaska, instead of exhibiting, as did the treaty respecting the Philippine Islands [and Puerto Rico], the determination to reserve the question of the status of the acquired territory for ulterior action by Congress, manifested a contrary intention, since it is therein expressly declared, in Article 3, that:
> "The inhabitants of the ceded territory . . . shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property and religion." (*Rassmussen v. United States* 197 U.S. (1905): 522, quoting the Treaty concerning the Cession of the Russian Possessions in North America by his Majesty the Emperor of all the Russias to the United States of America, Mar. 30, 1867, art. III)

However, Taft chose instead to dwell on the geographical advantages that Alaska had over Puerto Rico in terms of value to the United States as a Territory, which are "totally lacking in legal and factual content" (Torruella 2007: 326) and indicate that "[c]learly, the reasons the Supreme Court had to draw up the doctrine of incorporation were political and not legal. This was demonstrated when the Court distinguished Puerto Rico's case from Alaska's [in the *Balzac* opinion]" (PR *Sánchez Valle*: Fiol 48 ES, footnote 139/122a EN, footnote 114).

Indeed, the geographical arguments have nothing to do with constitutionality and only hold up at all because Taft completely ignores Hawaii here, a Territory that shared with Alaska the fact of having become incorporated through a grant of citizenship, but differed from it in each and every one of the geographical advantages Taft attributes to Alaska: Hawaii is small, was already populated, and is not on the American continent nor within easier reach of the United States than was Puerto Rico.

> Additionally, by emphasizing the geographical divide and distinguishing
>
> between the rights of U.S. citizens living in Puerto Rico and those of U.S. citizens living in "the United States proper[" …] *Balzac* thus distinguished between Puerto Ricans as individual U.S. citizens and Puerto Ricans as collective inhabitants of Puerto Rico. As individuals, they were free "to enjoy all political and other rights" granted to U.S. citizens *if* they "move[d] into the United States proper," but as long as they remained on the island, they could not fully enjoy the rights of U.S. citizenship. (Malavet 2008: 143)

Taft insists that the United States has the good of the individual inhabitants of Puerto Rico in mind when legislating for them, but as a collective whole it seems that those inhabitants cease to be citizens and become a multitude that simply occupies a potentially useful landmass, thus representing a hindrance to the "immigration and settlement by American citizens" of that territory (*Balzac*: 309). Moreover, the repeated references to Puerto Rico as a landmass rather than to the Puerto Ricans as a group of people drives home the message that, according to the *Balzac* opinion, geography and location are more important in determining the constitutional rights of residents than the citizenship status of those residents. Although the central question in *Balzac v. Porto Rico* is whether the Sixth Amendment applies in Puerto Rico (i.e. do Puerto Ricans have the right to a jury trial in all criminal prosecutions, see U.S. Const., amend. VI) and thus revolves around the rights of the *people* living there, the opinion refers to "Porto Rico," "the island," "it" (Alaska is also referred to by this pronoun multiple times), and "the territory" (again, Alaska is also referred to thus; in the case of Puerto Rico, the references to "territory" lump it together with the other islands acquired from Spain, as will be discussed in greater detail in Section 4.1.2) about three times as often as it refers to Puerto Ricans as people. *Balzac*'s focus on the land rather than on the residents thereof facilitates the distinction between the (residents of) the mainland and the island and is a subtle reminder that the question of incorporation is one of weighing potential benefit to the United States, not one of altruism toward the people of its territories.

4.1.1.3. Language

One differentiating factor that comes up comparatively little in *Balzac* is that of language. Taft only explicitly mentions it once when he describes the former Spanish colonies

as "distant ocean communities of a different origin and language from those of our continental people" (*Balzac*: 311), yet this single sentence contains more than enough information to mark it as being born of a homolingual mindset.

> In most cases of homolingual address in publication, the writer's language is also the reader's so that the writer and the readers are both presumably embraced within the putatively unitary community of a single language. This kind of regime of address entails the insider dialogue of a member of an English-[…]speaking society addressing other members of the same society. (Sakai 1997: 5)

It is clear throughout the *Balzac* opinion that the intended addressees are mainland U.S.-Americans, and while Taft does not specify the languages spoken by "our continental people" or "these distant ocean communities" (an omission that further indicates an assumption of community between himself and his addressees, for he expects them to share his knowledge and suppositions in this regard), the sentence makes it clear that he subscribes to the view of a plurality of distinct language unities that allow for the easy classification by language of "our" community and "theirs." Taft's statement posits two language communities as separate and distinct from one another, so that his message would reach his own community without fear of miscommunication but would have to be transferred to the other by translation as a sort of secondary mode of communication (see Sakai 1997: 5-6). Such views ignore both the permeability of the borders thus established between groups and the heterogeneity within those groups, making it seem as though all of "our continental people" share the same origin and the same language, just as all inhabitants of "these distant ocean communities" must share a (distinct) language and origin—not to mention the corollary that, if the myth of the (monolingual, monoethnic, monocultural) homogeneity of U.S. society is to be maintained (see Sakai 2005: 1-2), any Puerto Rican who took the opportunity "to move into the United States proper" would necessarily shed the markers of his or her distinct origin and language upon crossing that threshold and dissolve into the supposedly uniform mass of "our continental people" without a trace (*Balzac*: 311). The population of Puerto Rico, however, had mixed origins, the three main elements being Spanish, African and indigenous ancestry, and though they had been a colony of Spain for four centuries and Spanish had been the sole language of most of the population during that time (see Gonzales Rose 2011: 504, 515), they were no more homogeneously Spanish than the North American colonies were homogeneously British before the Revolutionary War (see Fors 1975: 29; Austin et. al. 2015: 31-32). Even after gaining independence, the United States certainly was not and is not homogeneous, neither in origin nor in language. Indeed, Louisiana, another former Territory with which Taft contrasts Puerto Rico in *Balzac*, initially presented exactly the same challenges to the country's supposed homogeneity when acquired a century earlier:

"All previous U.S. territories had been peopled in the main by English-speaking Protestants who shared a British tradition of self-government" while the people of Louisiana were "from radically different cultures who spoke other languages, practiced another religion than the vast majority of U.S. citizens, and had no experience whatsoever with representative government" (Schafer 2014: 108). Yet Taft considers that Territory to have been incorporated (see *Balzac*: 309) and it became a State within ten years of its acquisition (see Schafer 2014: 107), adding people "of a different origin and language" to "our continental people". Thus language differences are clearly not a barrier to incorporation, even though Taft presents them as such.

Where this distinction could have been a legitimate point regarding the equity of governance and the judicial system is in the sections of *Balzac* explaining why a jury system should not be forced upon a community unprepared to take on such a responsibility. According to the Language Act of 1902, the government, courts, and public offices of Puerto Rico were to use Spanish and English indiscriminately, with translation or interpretation as necessary to allow all interested parties to understand the proceedings (see Gonzales Rose 2011: 504-505), meaning that proceedings in local courts could be held in Spanish. The federal courts, on the other hand, were English-only, with both the Foraker Act of 1900 and the Jones Act of 1917 specifically stating that all proceedings in the U.S. District Court for the District of Puerto Rico would be conducted in English (see Malavet 2000: 58), and among the Jones Act's requirements for any juror in that court was the stipulation that he "have a sufficient knowledge of the English language to enable him to serve as a juror" (United States Congress 1917: 966). In such a court, the fact that most Puerto Ricans spoke a different language to that of most inhabitants of the mainland—and more importantly to that used by the court—could indeed diminish the benefits and fairness of a jury trial, for a jury that cannot understand the proceedings cannot reach a verdict based on all of the evidence presented, and a jury selected from the small minority of Puerto Ricans sufficiently proficient in English may well not be a jury of the defendant's peers (even today after over a century of U.S. rule, around 90% of Puerto Ricans otherwise eligible for jury duty do not meet the English-proficiency requirement, which also disproportionately excludes the poor and people of color, see Gonzales Rose 2011: 497, Pousada 2008: 5). While this argument did not apply specifically to Balzac's case as it did not go to *federal* court in Puerto Rico, it would not have been out of place as part of Taft's general reasoning for not immediately extending the constitutional guarantees of a jury trial to the residents of the former Spanish colonies—reasoning that he wrote was based on the "needs or capacities of the people" of the territo-

ries and the concern that "forcing a jury system on a Spanish and civil law country" would do more harm than good (*Balzac*: 309-311). The arguments that he actually includes in these sections revolve around the Puerto Ricans' supposed unfamiliarity with jury trials and resulting inability to be competent jurors, yet

> Judge William Holt (1900-04) found that Puerto Rican jurors "performed as fairly, honestly and efficiently as jurors acting in the United States," and noted that "Porto Ricans favor" the use of juries. The only prominent complaint came from judges concerned about the difficulty of procuring qualified jurors. English was the official language of the federal court system, and in the early years after the American takeover, relatively few native Puerto Ricans spoke it fluently enough. (Kent 2018: 446)

Taft presents language as a distinguishing factor separating the people of the mainland and those of Puerto Rico, but he lists it among the arguments justifying the hesitation to incorporate new territories—an area where language differences had not obstructed incorporation in the past (e.g. the Territory of Louisiana)—and ignores the language factor everywhere else in *Balzac*, including among the arguments justifying delaying the extension of the right to a jury trial to the territories—an area where language differences did and do present an obstacle to the administration of justice in the territory. Once again it would seem that the focus of *Balzac* is on the advantages and disadvantages that incorporation of new territories would mean for the United States rather than meeting the "needs or capacities of the people" of the territories in question. The reference to language serves to further establish the inhabitants of Puerto Rico as separate and distinct from those of the mainland and each as a linguistically homogeneous group, yet distinguishing the two groups by language community is just as arbitrary as separating them by degree of geographic isolation or by timing of acquisition, for all are artificial distinctions that require ignoring all overlap or internal variety for the sake of emphasizing difference and establishing grounds for exclusion. Indeed, the way that the *Balzac* opinion picks and chooses which of Puerto Rico's distinctive characteristics to highlight or ignore depending on the object of comparison demonstrates the heterogeneity among incorporated Territories and even the States, for none of the former or contemporary Territories mentioned can be distinguished from Puerto Rico on *all* counts.

4.1.1.4. Race & ethnicity

> Many commentators have found that the Court's decisions in the Insular jury cases—holding in *Mankichi*, *Dorr*, *Balzac* and other cases that constitutional jury rights were not fundamental and not applicable in unincorporated territory—must have been motivated by extra-legal views sounding in racism and cultural chauvinism. Those factors certainly played a role in policymaking by U.S. officials during the era of the *Insular Cases*. (Kent 2018: 451-452)

Indeed, "the inhabitants of the territories were all perceived to be so racially and culturally different as to justify their permanent exclusion from the American polity" (Cabán 2002:

115), and in the early Insular Cases race was one of the factors repeatedly used to distinguish the inhabitants of the territories from those of the States, for "[i]t 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" (*Downes v, Bidwell* 182 U.S.: 282). Additionally, the congressional discussion of the Jones Act preceding its passage had included the "construction of Puerto Ricans as being mostly of African descent and, thus, belonging to 'an inferior race,' which made incorporation into the United States as a state impossible for some legislators" (Malavet 2000: 31) because, in the eyes of those legislators, that 'racial inferiority' called into question Puerto Ricans' competency for self-government (see Malavet 2000: 52, footnote 221). Therefore it would not be surprising to find such explicit references to race in *Balzac* as well—being as it is a descendant of those earlier Insular Cases and considering the importance of the Jones Act to the central question in the case—but this is another distinguishing factor made conspicuous by its absence among the factors to which Taft explicitly refers. This is not to say, however, that the *Balzac* opinion is entirely devoid of racial or ethnic arguments, such as the passage discussed in the previous section that cites the Puerto Ricans' "different origin" as an obstacle to incorporation and a reason "not lightly to infer […] an intention to incorporate" on Congress's part without an unambiguous declaration of such an intention (*Balzac*: 311). Some suggest that Taft intentionally steered away from the more blatantly racist and ethnocentric discourse of his peers; when he argues that

> a people like the Filipinos, or the Porto Ricans, trained to a complete judicial system which knows no juries, living in compact and ancient communities, with definitely formed customs and political conceptions, should be permitted themselves to determine how far they wish to adopt [the jury system, an] institution of Anglo-Saxon origin, (*Balzac*: 310)

it strikes Aleinikoff (1994: 27) that "Taft's words here appear carefully chosen. He seems unwilling to join the generally held opinion of the day that Puerto Ricans simply were not 'civilized' enough to understand or operate under Anglo-Saxon traditions", deferring instead to local legislators; yet Taft's argumentation here still relies more heavily on perceived differences of customs, conceptions and lifestyles than on the actual situation in the territory, where felony cases had been tried by jury since 1901, making it clear that even such an ethnically disparate "people like […] the Porto Ricans" was perfectly capable and willing "to adopt this institution of Anglo-Saxon origin". This example will be discussed in greater detail in the next section, as will Taft's implication that Puerto Ricans are not the sort of American citizens that the United States wants populating its territories and that that is why Alaska, being "very sparsely settled, and offering opportunity for immigration and settle-

ment by American citizens" (*Balzac*: 309), was a better candidate for incorporation. Torruella (see 2007: 289) argues that the hesitation to incorporate the territories acquired during the Spanish-American War was due to the mostly or entirely non-white populations on the islands, while Alaska was almost empty when acquired and thus did not pose any significant dilemma of racial assimilation. Hawaii, meanwhile, was already populated, but that population included a large number of U.S. expatriates as well as white European settlers, many of whom had fomented the revolution that overthrew the Kingdom of Hawaii and sought the U.S. annexation of the territory (see Jiménez 2015: 78-79; Torruella 2007: 289). The lack of explicit references to race in *Balzac* does not dissuade Jiménez (2015: 96) from contending that "fear of the island's mixed-race inhabitants remained the logic the *Balzac* Court relied upon to keep Puerto Rico out of the U.S. body politic. Taft's language echoes Brown's in *Downes*." That intertextuality should be noted, for while *Balzac* does not specifically refer to race, it does build on the previous Insular Cases and in particular references and paraphrases *Downes v. Bidwell* (1901), a set of opinions riddled with concerns of the racial conflict and impurity that would result from the incorporation of the former Spanish colonies. "Some may consider a 1901 case to be ancient history, but *Downes* and its progeny still govern all of" the U.S. island territories (Malavet 2008: 113); because U.S. Supreme Court decisions build upon each other, each relying on precedents established in earlier cases, the *Downes* arguments distinguishing the inhabitants of the island territories from those of the mainland based on race implicitly form part of the reasoning of any subsequent opinion that relies on its precedents—any of *Downes*' "progeny"—and that includes *Balzac*. "The correlation between culturalism and racism, furthermore, is exceedingly clear", for there is a widespread "conception of culture as something that overlaps with ethnic and racial groups", fostering "the myth of the mono-ethnic society" (Sakai 2005: 8). The same artificial internal homogenization explored with regard to language unities in the previous section also occurs with race, ethnicity and culture, once again producing apparently easy and natural distinctions between the two communities that justify excluding racial and cultural "others" from "our" society—likewise artificially discursively established as uniform and untarnished. While *Balzac* may not explicitly mention race, the text still reveals a strong sense of ethnic difference between Puerto Ricans and mainland U.S.-Americans—with each of the two groups portrayed as internally ethnically and culturally homogeneous and thus easily distinguishable from each other—and a reluctance to precipitously accept a whole group of ethnic "others" into the "self" or mainland United States.

4.1.1.5. Citizenship, the false positive

In *Balzac*'s references to the residents of Puerto Rico (as opposed to the references to Puerto Rico the territory) there is often an undertone—sometimes subtle, sometimes less so—of exclusion, separating residents of Puerto Rico and of the mainland United States into two distinct categories. "The paradox of citizenship for Puerto Ricans is rather striking. On the one hand, they are citizens of the United States, but on the other hand, they are socially constructed as being 'foreign'" (Malavet 2000: 52, footnote 223). The *Balzac* opinion states that Congress made Puerto Ricans U.S. citizens out of a

> desire to put them as individuals on an exact equality with citizens from the American homeland, to secure them more certain protection against the world, and to give them an opportunity, should they desire, to move into the United States proper, and there without naturalization to enjoy all political and other rights. (*Balzac*: 311)

Yet the goal of "exact equality" has clearly not been the effect, not even in the discourse of the man who wrote that sentence nor indeed within the confines of the sentence itself, ending as it does by saying that Puerto Ricans must move if they wish to enjoy not just the formal status but also the full rights of that citizenship (see Malavet 2008: 143). Taft sings the praises of United States citizenship throughout *Balzac* but never cites any specific benefits that such a status would entail, specifying only that it does *not* mean incorporation and that the possibility of moving to and settling in the continental United States without need for naturalization is an "*additional* right" rather than being an inherent part of citizenship (see *Balzac*: 311 & 308, emphasis added; indeed, even before the Jones Act, Puerto Ricans had already had the right to move to the mainland and enjoy full rights there pursuant to the decision in the 1904 U.S. Supreme Court case *Gonzales v. Williams*, see Jiménez 2015: 95). United States citizenship itself does not seem to provide any benefits, but rather to be simply a new name for the same status. Even a later governor of Puerto Rico, Rexford Guy Tugwell, did not think the grant of citizenship had had much effect on the practical situation in Puerto Rico: "To be American citizens without a State to live in, without representation in the Congress, without even incorporation of their Territory, was to exist in a monstrously illogical situation" (Tugwell 1947: 53). Furthermore, many of the references to U.S. citizens throughout the *Balzac* opinion clearly do not include Puerto Ricans: in explaining his assertion that location rather than status determines the residents' rights (see Section 4.1.1.2), Taft writes "[t]he *citizen of the United States* living in Porto Rico cannot there enjoy a right of trial by jury under the federal Constitution, any more than *the Porto Rican*" (*Balzac*: 309, emphasis added). According to the Jones Act of 1917—the very act whose provisions Taft is in the midst of explaining here—Puerto Ricans had become citizens of the United States five

years prior to this case, yet in this sentence "the Porto Rican" is clearly a separate category to "the citizen of the United States". The following paragraph includes the list of reasons as to why Alaska was a more acceptable candidate for incorporation than Puerto Rico, one of which is that it offered "opportunity for immigration and settlement by American citizens" (*Balzac*: 309). Before 1917 that argument, though nativistic, would indeed have distinguished the sparsely populated Alaska from the more densely populated Puerto Rico, but since the Jones Act made substantially all citizens of Puerto Rico into American citizens, the island was now *already* settled by American citizens. Thus the distinction between Alaska and Puerto Rico

> clearly assumes that Puerto Rican U.S. citizens are not the "American citizens" who could resettle an "American" state. While recognizing the impossibility of creating an Anglo-Saxon majority in Puerto Rico, the Court also constructed Puerto Ricans as "others." Because Puerto Ricans are so "other," the incorporation of the territory into the United States could not be inferred; it had to be clearly expressed by Congress. (Malavet 2008: 143-144)

Indeed, by specifying that U.S. citizens living in Puerto Rico had fewer rights than those living on the mainland, *Balzac* makes clear that the citizenship of those living on the island is a second-class citizenship (see Malavet 2000: 30) and establishes that Puerto Ricans are not the same sort of "American citizens" whose settlement of a U.S. territory makes that territory more appealing as a future State; in fact, Puerto Ricans seem to be in the way of the sort of American citizens that the U.S. Supreme Court felt should settle the territories and make them more acceptable candidates for incorporation.

Taft's choice of pronouns also reveals this apparent disinclination to think of Puerto Ricans and U.S.-Americans as belonging to the same category, even as he explains Puerto Ricans' newly acquired U.S. citizenship. The most obvious examples of this are his use of variations of "we;" most of the time he uses this pronoun to refer to himself and the other Justices of the U.S. Supreme Court in relating their deliberations on questions raised by the case, yet occasionally he does also use "we" and "our" to refer to the (mainland) United States and its government or people: "Few questions have been the subject of such discussion and dispute in *our country* as the status of *our territory* acquired from Spain in 1899" (*Balzac*: 306, emphasis added). No such relationship of possession can exist without hierarchy, thus placing Puerto Rico and the other territories acquired during the Spanish-American War on a different, lower level than that of "our country." As is the case in this example, these uses of "we" and "our" often appear in conjunction with references to location, which has already been established as an important factor in distinguishing between the United States and its territories. Another example is the distinction between "these distant ocean

communities" and "our continental people" (*Balzac*: 311), where it could not be clearer that *we* live on the mainland while *they* live on far away islands. This distance and difference is further emphasized on the next page when Taft touches on the earlier Insular Cases' deliberations on the applicability of the Constitution to Puerto Rico and the Philippines "when *we* went *there*" (*Balzac*: 312, emphasis added). In the very next sentence he mentions a cause for litigation "in *our own* country" that was expected to be just as controversial "*in Porto Rico*" (*Balzac*: 313, emphasis added), so again "our own country" refers here to the mainland United States and specifically does not include Puerto Rico. An earlier reference to "this country" (*Balzac*: 308) directly contrasts the United States to the Philippines, but indirectly also to Puerto Rico, for it is part of an explanation that a resident of the Philippines must be naturalized before he or she can settle and vote in the mainland United States while a Puerto Rican no longer has to deal with that obstacle; yet this immediately follows a reminder that Puerto Ricans do have to settle in "this country" (i.e. move to the mainland from Puerto Rico) in order to enjoy all the rights of U.S. citizenship, including voting in many elections. Even as Taft enumerates the advantages that Puerto Ricans gained with the Jones Act, he gives to understand that "they" are still in a separate and disadvantaged category from citizens residing on the mainland. Despite the explicit statements that Puerto Ricans had been made U.S. citizens and that that had put them on an equal footing with other U.S. citizens, the discourse of the *Balzac* opinion still clearly maintains two separate unities within that category: Puerto Ricans on the one hand and mainland U.S. citizens on the other.

Additionally, Section 4.1.1.2 already discussed Taft's illogical preoccupation with distance, geography and locality as he explains the Supreme Court's ruling that jury trials were not required in Puerto Rico even after the Jones Act's grant of citizenship, but even when he sets aside geography to give people-related reasons for this ruling, those reasons are both based on inaccurate information and inconsistent within the *Balzac* opinion. Taft claims that "the United States […] has been sedulous to avoid forcing a jury system on a Spanish and civil law country" whose inhabitants are incapable of understanding the responsibility of jurors and of assuming the necessary impartial attitude for jury duty due to that civil law background (*Balzac*: 310-311), yet there was already a jury system in place in Puerto Rico with jury trials having been conducted there in certain types of cases since 1899 and at no point "had the existence of any inability by the members of those juries to comprehend their responsibilities been reported" (see Torruella 2007: 326-327). Taft even acknowledges these jury trials earlier in *Balzac*, mentioning both that Puerto Rico's Code of Criminal Procedure granted jury trials for felony cases at the time of Jesús M. Balzac's misdemeanor trial and

that the law had been changed in 1919 to include jury trials for misdemeanor cases as well (see *Balzac*: 300, 303). Just before enumerating the difficulties that "a people like the Filipinos, or the Porto Ricans" (*Balzac*: 310) would have adapting to a jury system, Taft quotes a passage from *Dorr v. United States* (1904) that indicates that "Congress, in framing laws for outlying territory," is conscientious about "the needs or capacities of the people", "the preference of the people […], their established customs", and about avoiding instituting "a system of trial unknown to them and unsuited to their needs" (*Balzac*: 309-310, quoting *Dorr v. United States* 195 U.S. (1904): 148). Yet the misinformation or lack of information regarding Puerto Rico's jury practices and the capacity of Puerto Ricans to participate in those practices indicates that the "needs or capacities of the people" were not evaluated before these decisions were reached. Beyond these inconsistencies and misinformation, both Aleinikoff (see 1994: 27) and Torruella (see 2007: 327) point out that *Balzac*'s insistence that geography and locality are relevant to the application of a jury system passes into the realm of absurdity when Taft's contention that locality trumps citizenship status in determining civil rights and his hypothesis that Puerto Ricans are unprepared for the jury system are synthesized and taken to their logical conclusion: since Puerto Ricans are free to move to the mainland and there "enjoy every right of any other citizen of the United States" (*Balzac*: 308) thanks to the Jones Act, it seems that Puerto Ricans living in Puerto Rico are incapable of comprehending the jury system, but that a simple move to the mainland will somehow miraculously instill into them what in common law countries has resulted from "centuries of tradition," namely "a conception of the impartial attitude jurors must assume" (*Balzac*: 310). No matter how benevolent and selfless Taft portrays the United States' treatment of its territories (more on that in Section 4.1.3), the apparent disconnect between the situation in Puerto Rico and the U.S. Supreme Court's knowledge of it, as well as the irrationality of Taft's argument tying constitutional rights to location rather than status, once again indicates that the distinction between unincorporated territories and the rest of the country is not ultimately intended to benefit those territories.

4.1.2. So what *is* Puerto Rico?

Having established that Puerto Rico is still a separate entity from the mainland United States and that its residents, despite now being United States citizens, are generally left out of that category in the U.S. Supreme Court's discourse unless they move to the mainland, another question arises: if Puerto Rico isn't part of the United States, what is it? The early Insular Cases do not answer this question satisfactorily (recall, for example, that

Downes had determined that Puerto Rico "was foreign to the United States in a domestic sense"; *Downes v. Bidwell* 182 U.S. (1901): 341) and *Balzac* hardly settles the matter. Naoki Sakai suggests that the apparently natural and pre-existing unities into which we divide the world, such as national languages, are created through the schema of cofiguration by which we define one unity by comparing and contrasting it with a chosen parallel unity, for one unity "is never given in and of itself, but in relation to another. One can hardly evade dialogic duality when determining the unity of a language; language as a unity almost always conjures up the co-presence of another language" (Sakai 2012: 355). However, the boundaries of what we consciously recognize as one unity "will change according to the contrastive term with which it is paired" (Sakai 2005: 20), and perhaps for this reason *Balzac v. Porto Rico* does little to narrow down the definition of what Puerto Rico is, alternating as it does between comparing Puerto Rico to assorted other United States territories of varying status and distinguishing it as a unique example bearing no resemblance to those other territories. Most generally, as mentioned in Section 4.1.1.1, Taft refers to the collective "territory acquired by the Treaty of Paris ending the Spanish War" (*Balzac*: 305), "our territory acquired from Spain in 1899" and "this acquired territory" (*Balzac*: 306), implying that Puerto Rico need not be distinguished from the other islands ceded by Spain during the Spanish-American War because those islands are interchangeable and their status and relationship to the mainland identical—an implication that had been rendered inaccurate by the Jones Act's grant of citizenship to Puerto Ricans in 1917, at the latest. Note also that the distinction between Territories and territories is crucial: Territories with a capital "T" are incorporated, territories with a lower-case "t" are unincorporated (see *Palmyra Atoll*), and "[i]t is well settled that these provisions for jury trial in criminal and civil cases apply to the Territories of the United States. […] But it is just as clearly settled that they do not apply to territory belonging to the United States which has not been incorporated into the Union" (*Balzac*: 304-305). Thus every mention of Puerto Rico as a single territory or as part of the territory ceded by Spain distinguishes it from the incorporated Territories. Yet in some ways the territory of Puerto Rico is similar to at least one Territory: in determining whether the *Balzac* case came to the U.S. Supreme Court by an appropriate route, the opinion mentions three times that the Supreme Courts of both Puerto Rico and Hawaii had been put on an equal footing not only with each other but also with the State courts of last resort in terms of appellate jurisdiction of the U.S. Supreme Court in respect to their decisions (see *Balzac*: 301, 302). This comparison seems to indicate a strong similarity in status and forensic jurisdiction between Puerto Rico, Hawaii and even the States; Hawaii is not mentioned

again for the remainder of the text, leaving nothing to contradict this implied similarity between the two island territories despite the fact that in reality they had very different relationships with the mainland, Hawaii being incorporated and on the path to statehood while Puerto Rico remained unincorporated (see Jiménez 2015: 78). Some pages later, musing once more on whether incorporation may be inferred or must be explicitly declared, Taft acknowledges that if there is no evidence to the contrary and an intention has been declared to make the inhabitants of a new territory U.S. citizens, then incorporation may indeed be inferred, as it had been in the cases of Alaska and Louisiana. Then, abandoning Louisiana, he contends that Alaska cannot be compared with Puerto Rico for various reasons, mostly geographical in nature (as discussed above in Section 4.1.1.2), and comes to the conclusion that Alaska "involved none of the difficulties which incorporation of the Philippines and Porto Rico presents" (*Balzac*: 309). Consequently, whatever Puerto Rico might be, it certainly is not Alaska. Finally, "[a]lthough the Jones Act had made the status of the Philippines and its inhabitants legally and factually irrelevant" (Torruella 2007: 325-326), mentions of the Philippines in conjunction with Puerto Rico abound in *Balzac*. Most of these name the two island territories in the same context, giving to understand that they occupy the same political status: a reference to two previous cases establishes that neither territory had been incorporated (see *Balzac*: 305), the incorporation of both territories would involve (presumably similar) difficulties (see *Balzac*: 309), "a people like the Filipinos, or the Porto Ricans" (*Balzac*: 310) would have similar difficulties grappling with an unfamiliar judicial system involving jury trials, the United States has taken care in setting up governments for—and choosing which constitutional protections to extend to—"the islands acquired by the Treaty of Paris" (*Balzac*: 311, a designation which technically also included "other islands now under Spanish sovereignty in the West Indies, and the island of Guam in the Marianas or Ladrones" (Treaty of Paris, Dec. 10, 1898, art. II), though only the Philippines and Puerto Rico are mentioned by name earlier in the sentence), the previous Insular Cases dealt with how much of the Constitution was applicable in "the Philippines or Porto Rico" (*Balzac*: 312), certain constitutional guaranties "had from the beginning full application in the Philippines and Porto Rico" (*Balzac*: 313), and finally an argument for inferring that Puerto Rico has been incorporated is dismissed because the same argument could be made for "the Philippines, which are certainly not incorporated in the Union" (*Balzac*: 313). Though the *Balzac* case has nothing to do with the Philippines, the two sets of islands are repeatedly mentioned in the same breath, lumped together as if indistinguishable from each other. Only once does the comparison reveal a difference between the two: "A citizen of the

Philippines must be naturalized before he can settle and vote in this country. […] Not so the Porto Rican" (*Balzac*: 308). Without that one distinction, the repeated pairing of the two territories strongly implies that Puerto Rico and the Philippines shared a status and definition, whatever those might turn out to be. However, the Jones Act gave Puerto Ricans rights that the Filipinos did not have, and the single mention of that fact negates the other comparisons between the two territories, for if they do not share something so fundamental as U.S. citizenship and the right to move freely within the United States, they clearly do not share the same political status. So by comparison, Puerto Rico is like the incorporated Territory of Hawaii and even the States but different from the incorporated Territories of Alaska and Louisiana, and is practically interchangeable with the Philippines except that the Puerto Rican has more rights and greater mobility than the Filipino.

Turning to the parts of the text that name Puerto Rico on its own rather than in conjunction with other U.S. territories, determining what Puerto Rico is does not become any easier. The question of whether Puerto Rico has been implicitly incorporated comes up repeatedly, and the negative answer only adds to the definition of what Puerto Rico is *not* (see *Balzac*: 305-307, 311, 312, 313). Furthermore, Puerto Ricans were no longer subjects of the King of Spain (see *Balzac*: 308), Puerto Rican (as opposed to U.S.) citizenship was "an anomalous status" (*Balzac*: 308), people in Puerto Rico do not have the right to jury trials (see *Balzac*: 309), "the United States district court [in Puerto Rico] is not a true United States court" (*Balzac*: 312), and the U.S. Constitution is in force in Puerto Rico except the parts of it "that are not always and everywhere applicable" (*Balzac*: 312). It seems that the only positive statements involving Puerto Rico's status are those saying that Puerto Ricans are United States citizens (see *Balzac*: 307, 308, 311) and that Puerto Rico belongs to the United States (see *Balzac*: 304, 305). Yet even those statements do little to define Puerto Rico: as discussed in the previous section, the grant of citizenship seemed to be a change in name alone without in any other way contributing to the definition of Puerto Ricans' status and did not in and of itself bring any perceptible benefits to the inhabitants of Puerto Rico. Meanwhile, the assertions about the territory "belonging to" the U.S. are somewhat indirect, serving simply as another point of contrast to the rest of the country (e.g. previous Insular Cases had concluded "that neither the Philippines nor Porto Rico was territory which had been incorporated in the Union or become a part of the United States, as distinguished from merely belonging to it"; *Balzac*: 305) and thus receiving its own negative definition: "belonging to" the United States is synonymous with neither incorporation nor becoming "part of" the United States. In line with the previous Insular Cases, *Balzac* defines what

Puerto Rico is not but does not clarify what it is, thus confirming the fears expressed by Justice Fuller in his dissenting opinion in *Downes v. Bidwell*: "the contention seems to be that […] Congress has the power to keep [acquired territory], like a disembodied shade, in an intermediate state of ambiguous existence for an indefinite period" (*Downes v. Bidwell* 182 U.S. (1901): 372). Intermediate, ambiguous and indefinite may be the most precise classifications for Puerto Rico that one can glean from the *Balzac* opinion. What *is* clear is that whatever they are, *they* are not *us*, for they do not share our language or origin, they live there while we live here, they are not familiar with and cannot learn our jury system, etc. Puerto Rican individuals have the possibility of becoming part of "us" (though only by shedding their otherness and assimilating into the homogeneous population and consolidated territory of "the American homeland"), but as a collective population, the residents of Puerto Rico are so inherently "other" that Taft's discourse seems unable to portray them in any other way, assigning them most readily to that amorphous "other" of residents of unincorporated territories (ignoring the heterogeneity of political status within that category) and incapable of including them within the concept of "U.S. citizens" even as he explicitly declares them to be part of that group and equal to all other members of it.

4.1.3. U.S. self-definition

"The nation constructs itself as culturally homogeneous by 'externalizing' alien cultures. […] Homogeneity within the nation can, moreover, only be posited as a negative reflection through accounts of other nations, races and ethnic groups" (Sakai 2005: 30). In defining the territories' characteristics (or leaving those characteristics undefined but establishing their disparity to those of the mainland United States), Taft inevitably also describes the United States itself by contrast, for "our representations of the Other are important ingredients of our own identities" (Miles & Brown 2003: 19) and a "critical thing about identity is that it is partly the relationship between you and the Other" (Hall 1996: 345). In addition to being portrayed as geographically contiguous and culturally, linguistically, and ethnically homogeneous, the country that emerges in Taft's representation is powerful yet benevolent, concerned both with expanding its influence and avoiding becoming an overbearing administrator of its territorial possessions. This view is in line both with the interest at the time in building an American Empire through "the acquisition and control of island territories for the sake of legal, political, and military control, rather than for national territorial expansion" (Malavet 2008: 120) and the professed intention of helping the

less fortunate and spreading democracy to new territories (see *The Nation* 31.01.2018; Torruella 2013: 79).

The *Balzac* opinion's more conscious and explicit statements on incorporation and on the relationship between the United States and its territories portray the Supreme Court's persistent distinction between and dissociation of the mainland and the territories (and their respective residents) as being the act of a responsible government, arguing that recognizing inherent difference is essential in determining the appropriate way to govern such disparate peoples. While explaining that the people and customs of Puerto Rico are sufficiently different from those of the mainland as to keep Puerto Ricans from fully understanding and appreciating the jury system, Taft quotes an earlier Insular Case (*Dorr v. United States*, decided in 1904) in saying that "the result [of automatically establishing trial by jury in unincorporated territories] may be to work injustice and provoke disturbance, rather than to aid the orderly administration of justice"; furthermore, if the territory has "an established system of jurisprudence, where jury trials are unknown, but a method of fair and orderly trial prevails under an acceptable and long established code, the preference of the people" must not be disregarded nor their customs ignored in coercing them to accept "a system of trial unknown to them and unsuited to their needs" (*Balzac*: 309-310). The multiple references to the differences between the inhabitants of the mainland and territories throughout the *Balzac* opinion are thus portrayed as being made in deference to the latter, born out of a desire to understand their disparate needs and govern them justly. "Hence the care with which […] the United States has been liberal in granting to the islands acquired by the Treaty of Paris most of the American constitutional guaranties, but has been sedulous to avoid forcing a jury system on a Spanish and civil law country until it desired it" (*Balzac*: 311). The wording that Taft uses here clearly establishes the United States' benevolence in its treatment of the territories, for all the guaranties that have been extended were "granted," while the government sought to "avoid forcing" those guaranties not yet extended on an unprepared population. One must wonder why the rest of the constitutional guaranties were not a burden "forced" upon the territories or why the guaranty of a jury trial could not be "granted." The section of the Jones Act that made Puerto Ricans U.S. citizens is also presented as the result of the United States observing Puerto Rico's development and finding the territory both eager and ready for expanded rights: "It became a yearning of the Porto Ricans to be American citizens, therefore, and this act gave them the boon" (*Balzac*: 308), granting citizenship out of the express desire to guaranty the Puerto Ricans equality with mainland citizens, the full protection of their sovereign, and the opportunity to achieve full rights upon moving to the

mainland (see *Balzac*: 311). Thus, the United States seems to be a responsible, caring and protective guardian, gradually allowing its ward Puerto Rico more liberties as it deems the territory mature enough to be trusted with such freedom. Note, however, that Taft never substantiates these claims: it is unclear how he knows what Congress did or did not specifically intend the grant of citizenship to achieve (recall for example that Torruella (2007: 326) asserts that Congress was fully aware of the link between citizenship and incorporation when it passed the Jones Act, implying that that act was also intended to incorporate Puerto Rico, a possibility that Taft categorically denies elsewhere in *Balzac*), nor is it clear how Taft knows that Puerto Ricans wanted to be U.S. citizens or what they expected from that status (Torruella (2013: 89) also indicates that, despite an enduring affinity with Spanish culture and traditions, Puerto Ricans did admire U.S. democratic institutions and anticipate access to them upon becoming citizens, yet that "boon" may have fallen short of expectations given that *Balzac*'s arguments and Puerto Rico's continued unincorporated status limited that access for Puerto Ricans who did not move to the mainland; furthermore, as discussed in Section 4.1.1.5, Taft's own discourse reveals that the Jones Act did not achieve all of the goals Taft claims Congress intended to reach upon passing it, for even as U.S. citizens Puerto Ricans are not "on an exact equality with citizens from the American homeland" (*Balzac*: 311)). Thus this evidence of the United States' attunement to Puerto Rico's needs and desires may well be merely Taft's own conjectures and assumptions, presented with such conviction that they appear to be common knowledge and widely accepted facts in no need of corroboration.

This depiction of a conscientious imperial power concerned with the well-being of its territories and reluctant to impose forms of government on them before they are ready arises from the more explicit statements in *Balzac* and most likely represents the country's conscious view of itself and the image it wishes to project. However, other statements in the text undermine this image, instead portraying the United States' thoughts and concerns as centering on its own well-being and the potential benefit of possessing but not incorporating territory. Though he does not specifically mention empire, Taft's discourse does hint at the country's imperial mentality as he points out the surge in importance of the question of incorporation after the Spanish-American War (see Section 4.1.1.1). His arguments to that effect serve as a reminder of the United States' power over its newly acquired territories, for Taft mentions the deliberations of all three branches of the federal government as well as of "all", i.e. the entire country, on the matter without here alluding to the territories' opinion. It is thus clearly the United States who will decide the fate of the territories without any appar-

ent obligation to consult them first, and the decision will be made based on the United States' interests, not those of the territories. This is also apparent in his discussion of the differences between Alaska and Puerto Rico and why the former was incorporated while the latter was not, for Taft only mentions factors beneficial to the United States and its expansion (see Section 4.1.1.2): Alaska's large size, sparse population, proximity and ease of access made it ideal for settlement by Americans (see *Balzac*: 309). Puerto Rico, on the other hand, was a "distant ocean communit[y] of a different origin and language from those of our continental people" (*Balzac*: 311) that therefore did not offer the same benefits and thus required more careful deliberation as to its relationship to the United States. Such deliberations reveal what characteristics the United States was looking for in new territory, but beyond that also expose aspects of the country's process of self definition, for in distinguishing the territories along those lines and determining which territories are eligible to become States and which are unincorporated and therefore not "part of the United States," the country is filtering out characteristics that mark some territories as not (yet) American enough to join the Union, thereby also defining what *is* American. Proximity, origin and language are thus some of the factors that the United States considers important not only in determining the degree of otherness (and therefore of desirability or incorporability) of the various territories but also in the establishment of a uniform self-definition, and the *Balzac* opinion makes clear that it is essential to think twice before meddling with the nation's (supposed) geographic, ethnic and linguistic homogeneity by adding excessively foreign elements.

Sometimes this process of self definition seems to cause Taft to lose sight of the main subject of *Balzac*: even though the case revolves around Puerto Rico and the rights and political status of its residents, Taft's focus repeatedly shifts more to the mainland, revealing his greater concern for (and knowledge of) its interests over those of the territories and further indicating that his text is addressed to the mainland and not Puerto Rico. An interesting departure from the multitude of arguments establishing the differences between the inhabitants of the territory and the mainland comes as Taft explains the function of federal courts in Puerto Rico:

> The guaranties of certain fundamental personal rights declared in the Constitution, as, for instance, that no person could be deprived of life, liberty, or property without due process of law, had from the beginning full application in the Philippines and Porto Rico, and, *as this guaranty is one of the m[o]st fruitful in causing litigation in our own country, provision was naturally made for similar controversy in Porto Rico.* (*Balzac*: 312-313, emphasis added)

Despite the compulsion to point out the differences between the two places and peoples, here Congress's legislation (or Taft's interpretation thereof) seems to have unconsciously

projected the United States' own behavior on the territories, expecting their inhabitants to react the same way as inhabitants of the mainland. Taft's wording sounds as though providing for similar judicial proceedings in Puerto Rico as in the rest of the United States is an obvious and natural step to take, but the unattested assumption of similarity on which that provision is based—and which the rest of the *Balzac* opinion refutes—indicates inconsistency in the process of making decisions regarding the government of the territories, as well as suggesting the possibility that those decisions are made based more on assumptions of the territories' needs or customs than on their actual needs or customs. Additionally, even this anomalous assumption of affinity between the two populations is intertwined with some of the bordering strategies discussed above that maintain the distinction and separation of the territory and the mainland (see Section 4.1.1.5 for a discussion of how Taft's discourse indicates that "in Porto Rico" and "in our own country" are separate and distinct categories, and Section 4.1.2 for how he seems to consider Puerto Rico and the Philippines interchangeable (and equally disparate from the mainland), as if they both belong to one homogeneous "other," despite his own admission that Puerto Ricans had been granted more rights than Filipinos). Another segment of the *Balzac* opinion in which Taft focuses disproportionately on the characteristics of mainland residents—to the point of briefly losing sight of the territorial residents whose governance and rights he is actually discussing—is in his explanation of the requirements of a jury system (see *Balzac*: 310). Over the course of half a paragraph he expounds the responsibilities of jurors and once again distinguishes between inhabitants of the mainland and of the territories by saying that growing up in a common law country such as the United States prepares all citizens to assume an impartial attitude if called upon to sit on a jury, while a civil law citizen (i.e. a resident of one of the territories acquired from Spain) who has not grown up under a popular government does not have the adequate training to assume such responsibilities. In the midst of this description comes a sentence praising the democratic aspects of the jury system, saying that "[o]ne of its greatest benefits is in the security it gives the people that they, as jurors, actual or possible, being part of the judicial system of the country, can prevent its arbitrary use or abuse" (*Balzac*: 310). This sounds like an advertisement for a jury system—an explanation of the benefits it brings to the people of the mainland and could bring to the people of the territories—yet it appears as part of Taft's explanation as to why the United States has chosen *not* to extend a jury system to the territories. The surrounding sentences are somewhat misleading—Puerto Rico had enjoyed some elements of popular government under Spanish rule before losing them with the change of sovereignty after the Spanish-American War (see Torruella

2013: 79) and Puerto Rico did already have experience with jury trials at this point—but without that background knowledge and with Taft repeatedly distinguishing between the peoples and the legal systems to which they were accustomed, the description of the U.S. judicial system and of the corresponding responsibilities of its citizens could at first glance seem like a logical argument against implementing the system in an environment of unprepared citizens. However, once Taft reaches the sentence about the jury system's greatest benefit, he abandons all relevance to the territories and simply celebrates the democratic value of the system and the protection it gives the people against tyranny. This brief tangent once again indicates a self-interested attitude in the U.S. and particularly the Supreme Court, a view focused on both the welfare and merits of the country in contrast with those of the territories. Additionally, even as the U.S. Supreme Court considers a case centered around the possible infringement of a citizen's rights by the judicial system, it apparently does not occur to the Justices that Puerto Ricans might also benefit from such a participatory judicial system and the corresponding reassurance that they have the power to watch for and prevent perversion of that system. Taft praises this aspect of the system as one of its greatest benefits, yet does not seem to consider the possibility that U.S. citizens outside the mainland might require the same protections against the courts and government. "[T]he colonizer[']s invariable assumption about his moral superiority means that he will rarely question the validity of either his own or his society's formation and that he will not be inclined to expend any energy in understanding the worthless alterity of the colonized" (JanMohamed 1995: 18). The mentality in the *Balzac* opinion is one of superiority, centered on the United States' side of the territorial relationship and how any changes to that relationship could be advantageous or detrimental to the country, while disregarding the effects on the territories themselves and overlooking the possibility that the United States might overstep in any way. The main concern surrounding the possibility of incorporation seems to be not whether it would adversely affect the inhabitants of the territories if the process were rushed (though that is the *explicit* reasoning), but rather "the difficulties which incorporation of the Philippines and Porto Rico presents" and "the consequences which would follow" (*Balzac*: 309, 313) for the audience that Taft is addressing and which he considers his own community: the mainland.

The portrayal of the United States' identity and nature that emerges upon analysis of the discourse of the *Balzac v. Porto Rico* opinion, though often implicit or vague, is one of a homogeneous society reluctant to accept the heterogeneous characteristics that Puerto Ricans would introduce if their territory were incorporated. The homolingual worldview that

Sakai (1997: 15-16) describes posits pre-existing, natural, internally homogeneous and externally distinct linguistic and cultural unities, each defined (and indeed originally established) through the schema of cofiguration by comparison and contrast with another, similar unity.

> Precisely because they are represented in equivalence and resemblance, however, it is possible to determine them as conceptually different. The relationship of the two terms in equivalence and resemblance gives rise to a possibility of extracting an infinite number of distinctions between the two. Just as in the cofiguration of "the West and the Rest" in which the West represents itself, thereby constituting itself cofiguratively by representing the exemplary figure of the Rest, conceptual difference allows for the evaluative determination of the one term as superior over the other. (Sakai 1997: 16)

Indeed, any sort of hierarchy presupposes separate unities that lend themselves to comparison and categorization, and that is the impression given by the *Balzac* opinion: by defining Puerto Rico and its inhabitants in contrast to the rest of the country (and vice versa), the text not only establishes each side as a homogeneous unity, separate from each other and distinct in various specific points such as language, geography, customs, culture and origin, but also creates a hierarchy between them, implicitly establishing the mainland and federal government as superior to Puerto Rico in all the points of perceived difference.

4.1.4. Conclusion: belonging to but not part of the country

One of the questions that Ruth Wodak (2001: 73) suggests to orient analyses of potential racist or ethnicist discrimination in discourse is "[b]y means of what arguments and argumentation schemes do specific persons or social groups try to justify and legitimize the exclusion, discrimination, suppression and exploitation of others?" In *Balzac*, as in many of the earlier Insular Cases, the simple answer is the incorporation doctrine. This is Taft's principle (explicit) argument in the opinion, for most of the text is dedicated to examining and rebutting contentions that Puerto Rico had been incorporated by any act of Congress since acquisition of the territory. However, not only has the doctrine been shown to discriminate against non-white communities (see e.g. Jiménez 2015: 46-47, 86-87, 96-98; Kent 2018: 375, 381, 392-393), but Taft also cites other subjective differences to justify distinguishing between the former Spanish colonies and the rest of the United States, and not always in connection with the incorporation argument. The incorporation doctrine regulates the expanding boundaries of the nation by determining which new territorial acquisitions become a part of the United States and which simply belong to it. For this reason it is logical that the factors that distinguish incorporated Territories and the States from unincorporated territories match those drawn upon to establish and maintain national identity, including geographical limits, race and ethnicity, and language, all of which combine to create a sense

of internal unity or shared identity and social difference to an outgroup (see McClintock 1996: 260; Mill 2011: 106; Fukuzawa 2008: 30; Sakai 2005: 3; Lewandowski & Dogil 2010: 389). Underlying these proclaimed differences, in turn, some items on Wodak's (see 2001: 74-77) list of topoi often used to argue for or against nationalism, racism and ethnicism can be found in *Balzac*'s argumentation. Being a United States Supreme Court opinion, *Balzac* is a juridical text and thus it is no surprise that many of its conclusions are reached by way of the topos of law and right ("if a law or an otherwise codified norm prescribes or forbids a specific politico-administrative action, the action has to be performed or omitted"; Wodak 2001: 76), most obviously in relation to the incorporation doctrine itself: because the doctrine is now established law, it must be followed and cannot be altered or avoided without explicitly changing the laws. Thus the incorporation doctrine justifies all related decisions because to act otherwise would be illegal or unconstitutional; indeed, such decisions barely appear to even be decisions, for the fact of the incorporation doctrine's legality and official acceptance leaves no room for decision-making, only for recognition of reality, as when Taft writes that "it is just as clearly settled that [certain constitutional provisions] do not apply to territory belonging to the United States which has not been incorporated into the Union" (*Balzac*: 304-305) or that the Philippines "are certainly not incorporated in the Union" (*Balzac*: 313). Other arguments that make use of the topos of law and right include the considerations of Puerto Ricans' right "in theory and in law" to expect protection from their sovereign (both before under Spain and now under the United States; see *Balzac*: 308), the discussions of who (legally) could or would bestow the right of trial by jury on Puerto Ricans and when and how (see *Balzac*: 309, 310, 311), or the elucidation of the role of the district courts in Puerto Rico compared to those in the States, especially in regard to their constitutional basis or organization (see *Balzac*: 312). The topoi of culture ("because the culture of a specific group of people is as it is, specific problems arise in specific situations"; Wodak 2001: 76) and to some extent danger and threat ("if a political action or decision bears specific dangerous, threatening consequences, one should not perform or do it. Or, formulated differently: if there are specific dangers and threats, one should do something against them"; Wodak 2001: 75) support Taft's portrayal of the United States as a benevolent, thoughtful and just sovereign that takes the needs of its territorial subjects into account, as when he points out the potential injustice, harm or even danger of forcing onto a territory a judicial system unsuited to the inhabitants' needs and customs, then expounds on the responsibilities involved in "participation in the machinery of justice which it is hard for people not brought up in fundamentally popular government at once to acquire" or under-

stand due to their cultural background of being "trained to a complete judicial system that knows no juries, living in compact and ancient communities, with definitely formed customs and political conceptions" (*Balzac*: 310). However, as discussed above, not all of these claims of preserving justice and protecting the rights of Puerto Ricans were entirely accurate (given that, for example, "without question, by 1922 jury trials and popular government had been operating vigorously in Puerto Rico for some time and were an accepted fact of life by its citizens", Torruella 2007: 327). These claims were also not as selfless as they may at first seem, as revealed by the presence of some of Wodak's other topoi, notably those of danger or threat (this time to the mainland rather than to the territory, e.g. when Taft speaks of "the consequences which would follow" incorporation of Puerto Rico, *Balzac*: 313), as well as those of usefulness and advantage or uselessness and disadvantage ("if an action under a specific relevant point of view will be useful, then one should perform it" but "[i]f one can anticipate that the prognosticated consequences of a decision will not occur, or if other political actions are more likely to lead to the declared aim, the decision has to be rejected. If existing rulings do not help to reach the declared aims, they have to be changed"; Wodak 2001: 74-75), particularly in relation to geography. The comparison between Alaska and Puerto Rico clearly shows the advantages that acquiring Alaska represented for the country and the uselessness (to the United States) and even "difficulties which incorporation of the Philippines and Porto Rico presents" (*Balzac*: 309), the implication being that the incorporation of Puerto Rico would not accomplish the same goals as the incorporation of Alaska had and that the inference from Alaska's case that a grant of citizenship constituted incorporation was in need of revision before being applied to Puerto Rico. The uses of the topos of advantage or usefulness in *Balzac* fall into Wodak's (2001: 74) categories of "to the advantage of them" (e.g. Puerto Rico's culture is not yet conducive to a jury system, so one should not be forced upon them (see *Balzac*: 309-311), and the grant of U.S. citizenship was intended to be an advantage to Puerto Ricans (see *Balzac*: 311)) or "to the advantage of us" (e.g. Alaska's geographical advantages over Puerto Rico (see *Balzac*: 309), and avoiding the difficulties and danger of incorporating a community so different from "our continental people" (*Balzac*: 311)), but never "to the advantage of all". In the *Balzac* argumentation there is therefore clearly an "us" and a "them" and the two groups are distinct with distinct needs and interests that cannot be thought of as overlapping in any way.

All of these themes and factors, the subtle as well as the explicit, whether consciously or unconsciously expressed, indicate a conviction that a natural distinction exists between the former Spanish colonies and the rest of the United States (incorporated Territo-

ries included). In establishing the nonincorporation of Puerto Rico, the discourse of *Balzac* divides or maintains the division of the former Spanish colonies from the rest of the country, establishing Puerto Rico and its supposed analogs as "other" than American through allusions to geographical borders and distance, belonging to different language communities, and the different historical, cultural and ethnic backgrounds of the respective inhabitants. Such categories

> appear as being produced naturally, not historically, [and] they serve to root the histories of connected peoples in separate territories and to sever the links between them. Thus, the illusion is created that their identities are the result of independent histories rather than the outcome of historical relations. (Coronil 1996: 77)

Insisting on these differences between the unincorporated territories and the rest of the country is a way of bordering, citing what appear to be natural, fixed categories that are in fact man-made and established and maintained through social and historical relations as well as through discourse such as that of *Balzac*. The artificial aspect of these categories becomes perceptible in this discourse through internal contradictions and inconsistencies (e.g. that incorporation both had always been important and had only become important at the close of the Spanish-American War, see *Balzac*: 311, 306), misinformation (e.g. that Puerto Ricans were incapable of comprehending the jury system when they had already been using it for some time, see *Balzac*: 303, 310-311; Torruella 2007: 326-327) and intertextuality (e.g. citing *Downes v. Bidwell* (1901) and *Dorr v. United States* (1904) as having established and upheld the incorporation doctrine, see *Balzac*: 305), while the presentation of these distinctions as obvious and therefore in no need of evidence shows (the expectation of) their pervasion. Through the schema of cofiguration, by which these artificial but seemingly natural unities of language, national territory etc. are constructed and maintained, this bordering process establishes exactly the sort of externally distinct but internally homogeneous groups upon which the regime of homolingual address rests (see Sakai 1997: 8-9 & 2005: 18, 21-22) and between which intercultural communication translates (see Buden et. al. 2009: 200). In addition to establishing the two groups as separate and their mingling as undesirable, it is clear that the addressees of this text do not include both groups: the *Balzac* opinion implicitly establishes Puerto Ricans as less desirable U.S. citizens than the mainland variety, focuses on the acquired land more than its inhabitants, elaborates potential advantages and disadvantages that Puerto Rico presents to the United States but largely ignores the potential effects of United States policy in Puerto Rico (except to say that forcing a jury system on the territory could be detrimental to their society, a claim based on the false information that Puerto Rico "knows no juries," *Balzac*: 310), and most obviously excludes Puerto Ricans

from the categories of "we" (*Balzac*: 312), "our" (*Balzac*: 306) or "our continental people" (*Balzac*: 311) and Puerto Rico from "this country" (*Balzac*: 308), "our country" (*Balzac*: 306), "our own country" (*Balzac*: 312) "the United States proper" (*Balzac*: 311) or "the American homeland" (*Balzac*: 311), indicating that Puerto Ricans do not belong to the ingroup expected to receive this text. Homolingual address is characterized by the expectation of immediate and unhampered reception of the message due to perceived homogeneity in the group of addressees (to which the addresser also usually belongs) and the exclusion of the outgroup that would not easily receive the same message due to differences in language, culture, history, and so on. Because it establishes Puerto Ricans as "other" than American, presents each group as internally homogeneous and only attends to the concerns of the ingroup, the *Balzac v. Porto Rico* opinion is a patent product of the regime of homolingual address.

4.2. *Insularismo* – "Intermezzo: Una nave al garete" (1934)

For the first five decades after the Treaty of Paris, the United States maintained a great deal of influence and control over the government of Puerto Rico. With the Jones Act of 1917 this influence decreased but by no means disappeared: though Puerto Rico's legislature was now entirely popularly elected, the executive branch was made up of people appointed by either the United States President or Puerto Rico's governor (himself appointed by the President) (see Fors 1975: 237, 239-240). The judicial branch of government also remained under strong U.S. influence, since the Jones Act "*[p]rovided, however,* That the chief justice and associate justices of the supreme court [of Puerto Rico] shall be appointed by the President [of the United States], by and with the advice and consent of the Senate of the United States" (United States Congress 1917: 965) and some of those associate justices came to Puerto Rico from the mainland (see Malavet 2000: 68). The Jones Act also set up "[a] department of justice, the head of which shall be designated as the attorney general [… who] shall be appointed by the President, by and with the advice and consent of the Senate of the United States" (United States Congress 1917: 955) and who "wielded considerable power. The supreme court, district courts, municipal courts, and justice of the peace courts all reported to the attorney general" (Cabán 2002: 123). At around the time that Chief Justice Taft was distilling the federal government's position on the status of the territories into the U.S. Supreme Court opinion in *Balzac v. Porto Rico* (1922), therefore, the opinions of the Puerto Rico courts cannot be said to represent the voice of the Puerto Rican people nor to provide unadulterated examples of Puerto Rican discourse regarding the relationship between the island and the mainland. Thus the following analysis will not examine an early

20th century judicial text from Puerto Rico, but rather an essay that sought to define Puerto Rico's position in the world and in relation to the United States and to analyze the development and prospects of Puerto Rican culture.

As the Insular Cases established, as of 1898 Puerto Rico belonged to but was not part of the United States, and as *Balzac v. Porto Rico* (1922) in particular made clear, one major obstacle keeping Puerto Rico from becoming part of the United States was the fact that it was too small, too populated, and too far away to be easily settled by mainland U.S.-Americans. Since the island could not easily be filled with Anglo-Saxon people, the people already on the island needed to be Americanized before further assimilation could be considered. One of the main methods intended to Americanize Puerto Rico was to make English a co-official language with Spanish and impose the use of English as the language of instruction in schools and of administration in government (see Malavet 2000: 68). The U.S. Bureau of Education had stated in 1902 that focusing on public schools and education was a much more cost effective approach to colonization than war; public education and the confrontation of English and Spanish thus became some of the main points of contention in the process of trying to Americanize Puerto Rico, developing into as much (if not more) a political question than one of education (see Nickels 2005: 229). United States officials expected Puerto Ricans to be receptive to Americanization because most were uneducated and illiterate (see Malavet 2000: 68) and spoke "a very imperfect Spanish", leading the Education Commissioner to assume that "English will develop marvelously" (Brumbaugh 1900: 65). Indeed, the expectation was that the inhabitants of the island could be made bilingual within one generation, and the English-based educational policies (an estimated seven different policies over the first fifty years of U.S. rule) were initially meant to achieve that goal (see Nickels 2005: 229). The Puerto Rican people, however, turned out not to be as malleable as expected, and resisted the efforts to adjust their culture to match that of the mainland.

Having passed from Spanish to U.S. control without a chance to govern themselves in between, Puerto Ricans' sense of nationality and their

> resistance to colonialism has largely been displaced from party politics to the contested terrain of culture. As a result, local intellectuals—especially college professors, scholars, and writers—have played a role disproportionate to their numbers in the construction of a nationalist discourse. Here as elsewhere, the local intelligentsia has helped to define and consolidate a national culture against what it perceives as a foreign invasion. (Duany 2000: 9)

This resistance manifested itself in part in the work of the literary movement known as the *generación del treinta*, a school of Puerto Rican authors writing in the 1930s. The "generations" of Puerto Rican literature refer not to the birth dates of the authors but to the eras of

their productivity, often influenced by historical events. In the case of the *generación del treinta*, that historical event was the change of sovereignty, for they were the first literary generation to grow up under U.S. rule and additionally the first to really explore the general disenchantment with that situation in their writing, realizing and drawing attention to the fact that the United States had come to stay, not just to liberate (see Basáñez 2017: 210-211). In their writing, the *generación del treinta* worked to counteract the degrading reality of their status as a U.S. colony by constructing and honing imagery of Puerto Rico as a utopia and the United States' government and attempts at Americanization as a crisis to be overcome through loyalty to Puerto Rican culture (see Sancholuz 1997: 2). They sought to define what it means to be Puerto Rican and what elements make up Puerto Rican culture, developing a catalog of five fundamental components:

> First, the Spanish language is considered the cornerstone of Puerto Ricanness, as opposed to English, which is typically viewed as a corrupting influence on the vernacular. Second, the Island's territory is the geographic entity that contains the nation; beyond the Island's borders, Puerto Ricanness is threatened with contamination and dissolution. Third, the sense of a common origin, based on place of birth and residence, defines Puerto Ricans. Fourth, the shared history of a Spanish heritage, indigenous roots, and African influences offers a strong resistance to U.S. assimilation. Fifth, local culture—especially folklore—provides an invaluable source of popular images and artifacts that are counterposed to images of U.S. culture, avoiding unwanted mixtures. (Duany 2000: 11)

Elaborating a common Puerto Rican identity is the main theme running through the literature of the *generación del treinta* as it sought to define "what we are, what we're like, and why we are the way we are"[3] (Basáñez 2017: 211, my translation). Puerto Rican culture took on a patriotic connotation and the shared identity based on it was akin to a sense of belonging to a nation (see Sancholuz 1997: 2-3); cultural nationalism gained importance while political nationalism soon declined (see Duany 2000: 9). Additionally, the *generación del treinta* began consolidating a nationalist canon, both by taking up or ignoring previous works depending on whether they considered them worth archiving, and guiding the continued development of this new canon by adding their own works (see Duany 2000: 11; Basáñez 2017: 211). Reminding her readers that the creation of a literary canon is just as much a political act as a literary one, Carolina Sancholuz (1997: 3) goes so far as to say that the authors of the *generación del treinta* compensated for Puerto Ricans not being able to govern their own independent nation by creating a sort of substitute constitution through their works and criticism. This literary movement shaped the way that Puerto Ricans saw themselves and the United States, strongly influencing the interwoven sectors of discourse, culture and politics for decades to come.

[3] Original: "qué somos, cómo somos y por qué somos como somos."

While neither the literature of the *generación del treinta* nor its authors were by any means homogeneous, subsequent discourse has come to portray the movement as largely uniform and one work in particular has emerged as the definitive example: Antonio Salvador Pedreira's *Insularismo: Ensayos de interpretación puertorriqueña*, first published in 1934. Pedreira has been called the flagship of the *generación del treinta* as well as its nucleus, the gravitational center around which the rest of the movement revolved like a solar system (see Basáñez 2017: 210-211), and *Insularismo* "the single most influential study of Puerto Rican culture" (Flores 1978: 6). Pedreira's contemporaries admired and sought to emulate his concern for and dedication to Puerto Rico in his life and writing, emphasizing that his patriotism did not manifest itself as mindless admiration for all things Puerto Rican to the exclusion of all else; rather, Pedreira addressed both positive and negative characteristics of Puerto Rico and advocated travel abroad and the experience and introduction of positive elements of outside cultures that could serve as instruments or inspiration for the further development of Puerto Rico's culture and compensate for the ostensible disadvantage of the island's small size and isolation, of which Pedreira was acutely aware (see Rodríguez López 1940: 5-6). The metaphors that he developed to describe Puerto Rico and its society, particularly those of geographic isolation (hence the very title of his book, "insularism", emphasizing that Puerto Rico has a clearly delineated border that both protects and limits it, marginalizing its population from the rest of the world; see Duany 2000: 11; Sancholuz 1997: 3) and portraying Puerto Rico as a ship, a house, one big family, a child, or as diseased (the disease being colonialism) and in need of medicine, have become enduring features of Puerto Rican nationalist discourse and crop up in multiple later literary works (see Duany 2000: 12; Sancholuz 1997: 4, 7, 12, 13), as do some of his other rhetorical strategies and elements such as Hispanophilia, elitism and androcentrism (see Duany 2000: 12). *Insularismo* quickly became a classic of Puerto Rican literature and in the decades after its publication was considered to be not so much literature as a text bearing the 'truth' of Puerto Rican nationality (see Sancholuz 1997: 3-4). The book is required reading in most public schools on the island (see Duany 2000: 12; Sancholuz 1997: 4), thus perpetuating its discourse and solidifying its position in the canon of Puerto Rican literature.

> To this day, despite intervening deep-going social changes and numerous subsequent attempts to delineate the national character and culture, Antonio S. Pedreira's *Insularismo: Ensayos de interpretación puertorriqueña* stands since its publication in 1934, as the main watershed and germinal source of thinking about Puerto Rican culture (Flores 1978: 4)

and is the "founding text of Puerto Rican cultural nationalism"[4] (Sancholuz 1997: 2, my translation), while "Pedreira is a foundational figure in the contemporary discourse on Puerto Ricanness. The current intellectual discussion on national identity in Puerto Rico is still framed largely in Pedreira's terms" (Duany 2000: 12). "Virtually every modern Puerto Rican writer and critic of any prominence [… has] paid explicit homage to Pedreira's paramount contribution. […] With little hesitation, Pedreira may be considered the father of modern Puerto Rican letters" and his "legacy of pioneering studies, and especially his major work *Insularismo*, has marked the standard and the philosophical tone for all Puerto Rican cultural interpretation since his death in 1939" (Flores 1978: 6-7, 8). Because Pedreira specifically sought to define the contemporary state of Puerto Rico and Puerto Ricanness in the face of U.S. sovereignty, and because *Insularismo* caused such a stir at the time (see Basáñez 2017: 211) and continues to influence Puerto Rican thought and discourse on the subject, the text lends itself to analysis to determine the Puerto Rican view of the relationship between Puerto Rico and the rest of the United States in the early 20th century.

The following analysis will focus on one essay in *Insularismo*, namely chapter 3 of section III, titled "Intermezzo: Una nave al garete." Many of the essays in *Insularismo* cover topics such as Puerto Rico's racial makeup, climate, culture, and history up until 1898, which provides a useful foundation to understand the collective, homogeneous personality (as Pedreira portrays it) of the island's inhabitants. The chosen essay, however, deals specifically with the contemporary state of Puerto Rico and its culture, as well as its relationship with the United States, and thus is the most appropriate subject for this analysis. The essay's title itself—describing Puerto Rico as "a ship without direction" (Duany 2000: 12)—characterizes the disorienting transitional status "between two cultures, two languages, two flags"[5] in which Puerto Rico found itself in the first decades after the change of sovereignty (Sancholuz 1997: 6, my translation) and is another example of a metaphor repeated by many authors in Puerto Rico since Pedreira (see Duany 2000: 12). The essay's exploration of this newly ambiguous status and of the changes that Puerto Rican society underwent during the first three decades of U.S. sovereignty is well suited for an analysis of the bordering strategies and resulting putative unities into which early 20th century Puerto Rican discourse divided the world, highlighting as it does the differences between Puerto Rican and United States society that Pedreira found most evident, most significant and, in many cases, most alarming.

[4] Original: "texto fundante del nacionalismo cultural puertorriqueño."
[5] Original: "en medio de dos culturas, dos lenguas, dos banderas"

4.2.1. Culture vs. civilization

Pedreira's main concern in this essay (and one of his main concerns throughout *Insularismo*) is the culture of Puerto Rico: its strengths and weaknesses and whether or not it can or should adapt. Since "Intermezzo: Una nave al garete" specifically explores the relationship between Puerto Rico and its new sovereign in comparison with life under Spanish rule, in this chapter he compares Puerto Rico's (and Spain's) culture to that of the United States, coming to the conclusion that the latter does not offer culture, only civilization. Juan Flores (see 1978: 70-73) contends that this dichotomy of culture and civilization in Pedreira's text was adopted from Oswald Spengler—who identified "culture" as the "vibrant, living expression of the 'soul' of a people or an epoch" and "civilization" with the death of culture (Flores 1978: 70-71)—and that at the core of Pedreira's adoption of this culture/civilization dichotomy lies the separation of "soul" and "mind" or "intellect", the soul being "divorced not only from scientific reason and intelligence but from the external, material world itself" (Flores 1978: 72-73). Thus the "soul" of a people is the very opposite of what the United States' civilization represents to Pedreira, and through his adherence to these dichotomies, Pedreira's quest to ascertain the existence of a Puerto Rican soul (see *Insularismo*: 167; Flores 1978: 9-10, 72-73) simultaneously suggests U.S. soullessness.

Explicitly, Pedreira praises the benefits of U.S. rule multiple times throughout the essay, for "every Puerto Rican […] must recognize the wonderful progress achieved in the last thirty years. […] No one can deny that this new civilization favorably transformed our existence"[6] and "[i]t must be recognized that the United States is a progressive, organizing and technical nation"[7] (*Insularismo*: 97, 104). Since the change of sovereignty, Pedreira recognizes that industry, commerce and agriculture have expanded significantly, business and economic proficiency have increased, health services, infrastructure and education have improved and illiteracy has declined; summing up these developments, he cites Dr. Juan Bautista Soto González's claim that Puerto Rico's progress since 1898 was unprecedented in the economic history of humanity and that Puerto Rico could now measure up to some of the most civilized nations in the world (see *Insularismo*: 97, 99). However, despite this explicit approbation of the advances brought about by U.S. rule, the overall attitude of the essay is one of rejection of this so-called civilizing influence on Puerto Rico in favor of preserving Hispanic culture and traditions (see Sancholuz 1997: 5). Though Pedreira and his

[6] Original: "Todo puertorriqueño […] tiene que reconocer el maravilloso progreso alcanzado en los últimos treinta años. […] Nadie podrá negar que la nueva civilización transformó halagadoramente nuestra existencia."
[7] Original: "Hay que reconocer que Estados Unidos es una nación progresista, organizadora, y técnica."

contemporaries argued that the amount of attention he paid to Spain and to Puerto Rico's Hispanic heritage did not stem from sentimental longing for the past but from a desire to understand Puerto Rico's roots and thus discern its future trajectory and make the most of its patrimony (see Arce 1940: 7), later authors recognize that

> the intellectual current […] taken up by Pedreira may be regarded as the posing of the "Latin" ideals inherited from the former "mother country" against the contaminating influence of the real and present threat, Nordic, Anglo-Saxon culture. This recourse to Latinity, with its glorification of […] spirituality and revulsion toward the […] image of Northern mediocrity, lies at the heart of intellectual and cultural opposition to United States imperialism throughout Latin America (Flores: 1978: 55)

and is in keeping with the Puerto Rican nationalists' tendency "to idealize the pre-industrial rural past under Spanish rule and to demonize U.S. industrial capitalism in the 20th century" (Duany 2000: 10). Every mention of advances in "Intermezzo: Una nave al garete" is qualified by allusion to negative side effects: those who trumpet the increase in everything good such as the number of schools fail to mention the accompanying increase in suicides, crime, bankruptcy and general unhappiness (see *Insularismo*: 99), the teaching of English is a lifeline for Puerto Ricans yet the way it is taught is torturous and drives students to despair and the bilingualism striven for will result not in a doubling but in a halving of capability (see *Insularismo*: 102), and the "admirable" communication media now available on the island have reduced distances and made Puerto Rico seem smaller and more cramped, to the point that "[w]e do not fit in our own home"[8] (*Insularismo*: 107). The civilization of the United States, as Pedreira portrays it (drawing on Spengler's use of the term), comes with a fixation on numbers, statistics, comparative quantities and standards, but "culture, which is not so much advancement as a life force, must not be confused with civilization; it is more a qualitative than a quantitative issue. Numbers, the symbol of our times, do not entirely succeed in comprehending it"[9] (*Insularismo*: 98) for

> statistics are the slander with which science tends to take its vengeance on the spirit. […A culture] cannot be reduced to numbers. It is not possible to imprison men in the uncomfortable cage of a **standard**, that fetish invented by democracy to avoid the complications that differences tend to give rise to.[10] (*Insularismo*: 108, original emphasis)

Indeed, this becomes the main distinction between the United States and Puerto Rico in this essay: the United States is civilized, while Puerto Rico (thanks to its Spanish ancestry) is cultured (see *Insularismo*: 97). The other attributes that Pedreira both explicitly and implic-

[8] Original: "No cabemos en nuestra propia casa"
[9] Original: "La cultura, que más que adelanto es intensidad vital, no debe confundirse con la civilización; es asunto más cualitativo que cuantitativo. El número, símbolo de nuestra época, no logra atraparla por completo."
[10] Original: "La estadística es la calumnia con que la ciencia suele vengarse del espíritu. [...Una cultura] no se puede reducir a número. No es posible encarcelar a los hombres en la incómoda jaula de un **standard**, fetiche que la democracia ha inventado para evitarse las complicaciones que suelen engendrar las diferencias."

itly ascribes to the United States—economy before sociology (see *Insularismo*: 97), materialism and utilitarianism (see *Insularismo*: 100, 106, 108-109, 111), guile and audacity (see *Insularismo*: 103), excessive hurriedness (see *Insularismo*: 105-106), and even mediocrity, which Pedreira labels as "civilized" (perhaps an implicit jibe at the stated source of civilization; see *Insularismo*: 102) and sees as stemming from the democratic principle of equality that drags down the greats more than it lifts up the humble (see *Insularismo*: 102-103)—all seem to relate to or stem from this obsession with statistics and standards and result in the impression and indeed outright statement that "the current government [i.e. the United States] is not interested in literature, nor in music, nor in painting, nor in anything that involves aesthetic pleasure"[11] (see *Insularismo*: 109). Meanwhile, the attributes that Pedreira ascribes to Puerto Rico or, more often, to Spain (from whom Puerto Rico inherited them) tend more toward the cultural: sociology and tradition (see *Insularismo*: 97), respect for merits, dignity and principles (see *Insularismo*: 103), architecture made to endure, reflecting a slow and conservative society ("the act of conservation carries with it implicit aspirations toward the eternal,"[12] *Insularismo*: 105), "admirable longevity" ("admirable longevidad") compared to the U.S.'s ephemerality (see *Insularismo*: 106), and support for museums, libraries, musical academies, painting competitions and similar cultural or artistic enterprises that Pedreira laments have dwindled into near nonexistence under the regime of a sovereign interested only in tangible, countable output (see *Insularismo*: 109-110). Though Pedreira insists that he is focusing on culture and not civilization and that the two terms should not be confused, he quite clearly states at the beginning of the essay that, with the change of sovereignty, Puerto Rico had "passed from […] the cultured to the civilized,"[13] (*Insularismo*: 97) and maintains that association of everything Spanish or Puerto Rican with culture and everything U.S.-American with civilization throughout the essay. Because Puerto Rican culture and U.S.-American civilization so thoroughly clash in Pedreira's account, the indication is that the two cannot mix and are mutually exclusive.

"The most profound effect of imperialist occupation was, for Pedreira, the rude interruption of the life-span of Puerto Rican culture and its replacement with cosmopolitan progress and civilization" (Flores 1978: 71). According to Pedreira, Puerto Rican culture had suffered with the influx of United States civilization and the corresponding compulsion to measure everything "as if the territorial spirit could be reduced to statistics. The greater

[11] Original: "Al gobierno actual no le interesan las letras, ni la música, ni la pintura, ni cosa alguna en que intervenga el placer estético."
[12] Original: "El acto de conservar lleva implícitamente aspiraciones de eternidad."
[13] Original: "Pasamos […] de lo culto a lo civilizado."

number, that little bit more, the official figure serves as the standard in the comparison of the past with the present"[14] (*Insularismo*: 98; the past/present distinction will be discussed further in the following section). This impression that U.S. influence and civilization were enveloping and smothering Puerto Rico's culture and identity was not entirely unfounded, given "the assimilationist attempts to destroy and to replace [Puerto Rican culture] with an essentialized version of 'American' culture" (Malavet 2000: 67) that included the imposition of U.S. holidays and heroes not celebrated in Puerto Rico before 1898, activities and programs designed to encourage loyalty to and emulation of the U.S., filling Puerto Rican school curricula with United States courses and textbooks that reflected mainland interests and concerns, favoring professors from the mainland U.S. over those from Puerto Rico, attempts to require English competency of Puerto Rican professors and have them educated on the mainland, and generally attempts to promote an assimilationist attitude and suppress anti-U.S. or pro-independence sentiments (see Negrón de Montilla 1998: 9-10; Cabán 2002: 126-127). Such impositions corroborate Pedreira's assertion that "[t]wo fundamentally very different lifestyles thus find themselves face to face"[15] (*Insularismo*: 110) and account for his designation of the situation as a "time of acute crisis for our culture"[16] as well as his call for Puerto Ricans to actively protect and preserve that culture (see *Insularismo*: 112). Both sides adhered to an either/or attitude when it came to the survival and propagation of their cultures and were confident of the superiority of their own culture and background, so that while the United States felt Puerto Ricans "were incapable of self-government because of their Spanish cultural legacy and lack of education" and "lacked the innate cerebral capacities for abstract thought [but] could be adequately trained to mimic the colonizer and perhaps learn to appreciate its higher moral character" (Cabán 2002: 126-127), the authors of the *generación del treinta* elaborated a nostalgia for Hispanic culture and life under Spanish rule as preferable to their uncertain future under U.S. rule (ignoring that Puerto Rico's status was colonial under both sovereigns; see Basáñez 2017: 212; Sancholuz 1997: 5) and Pedreira in particular depicts the remaining manifestations of Spanish influence in Puerto Rico such as architecture and infrastructure as being exceptionally sturdy and difficult to eradicate, providing the solid foundation upon which the United States has established its own precarious and ephemeral institutions (see *Insularismo*: 105). However, this view that their disparate cultures represent "the definitional schism between the United States and the

[14] Original: "como si el espíritu territorial pudiera reducirse a estadísticas. El mayor número, el tanto más, el dato oficial sirve de norma al confrontar el pasado y el presente."
[15] Original: "Frente a frente se encuentran, pues, dos estilos de vida de fondos muy distintos."
[16] Original: "estas horas de aguda crisis para nuestra cultura"

Puerto Rican peoples" (Malavet 2000: 67) itself further divides and cements the two groups, obscuring the diversity to be found within each and ignoring any overlap between the two. Pedreira's presentation of Puerto Rican culture and United States civilization as incompatible and battling for the upper hand reveals his adherence to preconceived notions of internally homogeneous, externally distinct categories into which the grand spectrum of U.S. citizens may and should be naturally and easily divided. Such a view takes for granted the unitary unity of a culture and the plurality of cultural unities and is thus situated squarely within the regime of homolingual address that treats such putative unities as self-evident (see Sakai 1997: 10).

4.2.2. Past vs. present

The Spanish-American War served as one of the borders that Taft's discourse drew between incorporated and unincorporated territories in *Balzac v. Porto Rico* (1922), separating the former Spanish colonies from the United States' other territorial possessions according to provenance and timing of acquisition (see Section 4.1.1.1). In *Insularismo* and particularly in the chapter "Intermezzo: Una nave al garete", Pedreira makes use of temporal borders as well, but in his case his choice of grammatical tenses and references to time allow him to implicitly compare Puerto Rico's sovereigns and their respective influences on Puerto Rican life by dividing Puerto Rico's own history into before and after segments. Throughout the essay he refers to the differences between past and present, with the implicit understanding that the past was under Spanish rule and the present under U.S. rule. To achieve this, he simply implies that the "present" began at the moment power changed hands three and a half decades earlier, separating Puerto Rico's timeline at "the Spanish-American War" ("la guerra hispanoamericana"), the "change of sovereignty" ("el cambio de soberanía"), "the events of '98" ("los hechos consumados en el 98"), when "[w]e entered the 20th century" ("Entramos en el siglo XX […]") or "the invasion" ("la invasión") (*Insularismo*: 96, 102 & 111, 101, 111 and 109, respectively). Once that division is established, he has no need to explicitly assign traits to one sovereign or the other, for it is understood that anything that characterized Puerto Rico's *past* had to do with Spain and Spanish sovereignty, while all *present* characteristics are related to the United States and U.S. sovereignty.

For example, returning to his condemnation of the use of statistics as the only measuring stick to calculate the changes in Puerto Rican society and particularly in something as impossible to measure as culture, he asserts that "if I were to join the group that defines everything in terms of more and less, I would say that *today* we are more civilized, but

yesterday we were more cultured"[17] (*Insularismo*: 99-100, emphasis added). Or, lamenting the changing concept of time in Puerto Rico: "The same difference that exists between the danza, soft and slow, and the brisk foxtrot, exists between the *life of yesterday* and the *existence of today*"[18] (*Insularismo*: 106, emphasis added; note as well that in the past, with the benefit of culture, Puerto Ricans *lived* while in today's civilization they merely *exist*). Pedreira's distinction between the good old days and the present thus allows him to underpin the dichotomy of United States civilization vs. Hispanic culture (discussed in the previous section) with more general expressions of the same grievances, such as the assertion that "in the past" ("antiguamente") social and cultural life thrived on the island and that "the culture of the past" ("la cultura de antes") had greatly enlivened places that "today" are mere lackluster cities (see *Insularismo*: 109-110). In the following paragraph, Pedreira implicitly holds the U.S. accountable for the fact that the few cultural activities and old hobbies still practiced in Puerto Rico *now* have an entry fee and that their enjoyment can *now* seemingly only be guaranteed by alcohol; even his use of tenses contributes to this stark but implicit distinction between the new sovereign and the old, for the Spanish preterit tense indicates a one-time event completed in the past with a discernible beginning and end (see *Nueva gramática básica de la lengua española* 2011: 148-149) and thus here implicitly identifies the moment that recreation *turned into* a business and horse races *became* paid spectacles (see *Insularismo*: 110), whereas using the imperfect tense would have portrayed these as gradual transformations without a clear beginning or end (see *Nueva gramática básica de la lengua española* 2011: 149) and thus without an obvious cause (i.e. the change of sovereignty and subsequent U.S. influence). All of these examples come from paragraphs that do not once explicitly mention the change of sovereignty or the entities in power before or after it, yet it is clear here and throughout the essay that nostalgic mentions of "yesterday" or any other words designating the past (as well as the use of past tense) refer to the time before the Spanish-American War, while "today" and related words or the use of present tense designate the present situation that had developed under U.S. sovereignty over the previous three and a half decades. Thus Pedreira can implicitly blame U.S. influence for the problems he sees in Puerto Rico, while explicitly remaining more neutral on the subject and conceding that not all of the changes are for the worse nor the fault of the United States. He even briefly tempers his implicit criticisms with the explicit and less accusatory statement that

[17] Original: "Si yo fuera a sumarme al grupo que todo lo define en términos del más y del menos, diría que hoy somos más civilizados, pero ayer éramos más cultos."
[18] Original: "La misma diferencia que existe entre la danza, tenue y lenta, y el rápido fox-trot, existe entre la vida de ayer y la existencia de hoy."

> [t]wo fundamentally very different lifestyles thus find themselves face to face. Let us not attribute to either the universal conditions that have prevailed in each era; many of the changes that people in our country credit to the North Americans do not necessarily stem from them but rather from the times that impose them equally on Australia, on Spain, on Chile, on Puerto Rico…[19] (*Insularismo*: 110-111)

However, prefacing a call for an equitable analysis of the situation with a reminder of the fundamental differences between the two sides defeats the purpose somewhat, indicating the author's conviction that, no matter how universal the conditions nor how equally imposed, these two entities' fundamental differences preclude a comparable experience of those conditions. Pedreira's own discourse does not reflect his explicit acknowledgement that recent changes in Puerto Rico may be not the fault of the United States' policies and influence but rather simply the local manifestation of a contemporary global shift: by the end of the following paragraph his implicit temporal border between sovereigns resurfaces in conjunction with references to other factors already established as characterizing the United States and its influence (such as utilitarianism, deteriorating culture, or the instability of Puerto Rico's current situation due to its unclear status within the U.S. system). Thus the problems that Pedreira sees in Puerto Rican society remain associated specifically, though implicitly, with U.S. sovereignty, and Puerto Rico's culture (developed in the *past* under Spanish sovereignty) remains fundamentally at odds with the outside (read: United States) forces that have been acting upon it in the *present*.

In this essay and indeed throughout *Insularismo* Pedreira clearly divides Puerto Rico's history into three periods, with the dividing line between the second and third marked by the Spanish-American War, which he portrays as having interrupted Puerto Rico's development and changed its course, setting it adrift in unfamiliar waters (see e.g. *Insularismo*: 95, 168, and particularly 96-113 for the essay that is the subject of this analysis, describing this third period of Puerto Rico's history under the title "Una nave al garete"—"a ship without direction"). Despite his own explicit acknowledgment that contemporary global changes could be responsible for the transformation of Puerto Rican society, Pedreira's division of Puerto Rico's timeline into before and after the Spanish-American War clearly, though often implicitly, differentiates between Puerto Rican life and culture under Spanish vs. United States sovereignty, and favors the former. This further demarcates the cultural unities taken for granted in the regime of homolingual address, establishing and upholding boundaries between the allegedly fundamentally different but internally homogeneous cul-

[19] Original: "Frente a frente se encuentran, pues, dos estilos de vida de fondos muy distintos. No achaquemos a ninguno las condiciones universales que en cada época han prevalecido; muchos de los cambios que se adjudican en nuestro país a los norteamericanos, no provienen precisamente de ellos, sino de la época que los impone igualitariamente en Australia, en España, en Chile, en Puerto Rico… "

tures of the United States and Puerto Rico and ignoring that "all social formations, not just multicultural ones, are composed of multiple cultures, and that this multiplicity of cultures should not be conceived of as a numerical multiplicity of coexisting units" (Sakai 2005: 7), but rather as a spectrum on which every individual finds him or herself at a unique spot.

4.2.3. Whether and how to name "them"

Though "Intermezzo: Una nave al garete" explores Puerto Rico's circumstances since the Spanish-American War and warns of the detrimental effects the change of sovereignty had had and continued to have on Puerto Rican culture, the ostensible omnipresence of U.S. influence in Puerto Rico at the time is rarely mentioned explicitly, appearing instead as subtext throughout most of the essay. By directing conscious attention to Puerto Rico (and Spain) while relegating the United States to a more subconscious, background position, Pedreira's discourse reinforces the cohesion of his chosen ingroup while denying the invading outgroup admission and reducing its agency. To begin with, Pedreira only mentions the United States by name twice in this chapter, and in both cases naming the country is essentially unavoidable. First he observes that "[t]oday we belong to but are not part of the United States, according to judicial phrasing, incubator of uncertainties."[20] (*Insularismo*: 100). This paraphrases a now infamous statement from one of the original 1901 Insular Cases: "We are therefore of opinion that the Island of Porto Rico is a territory appurtenant and *belonging to the United States, but not a part of the United States* within the revenue clauses of the Constitution" (*Downes v. Bidwell* 182 U.S. (1901): 287, emphasis added). Being part of the paraphrase, the mention of the United States belongs to the original quote and is hardly Pedreira's own choice of terminology; the second mention of the new sovereign's name occurs in a comparison of the United States' character with that of Spain (see *Insularismo*: 104-105) and thus calling both countries by name makes the comparison clearer. Yet Pedreira returns to that comparison multiple times throughout the essay without referring to the United States by name anywhere else—indeed, he mentions Spain by name twice as often as the United States.

The next most specific term that Pedreira uses to refer to the U.S. is "North American" ("norteamericano") or, in one case, simply "American" ("americano"). In English the latter would not be unusual: as the colonies that were to become the United States began to resist British rule, their inhabitants started to use the term "American" to refer to themselves,

[20] Original: "Hoy por hoy pertenecemos a pero no formamos parte de Estados Unidos, según frase jurídica, incubadora de incertidumbres."

and by the beginning of the 19th century that had become the common meaning of "American" in English (see *BBC Mundo* 08.06.2017). However, in the Spanish of the so-called New World, the words "América" and "americano" gained traction even earlier as the criollos (Latin American-born descendants of Spanish settlers) sought to distinguish themselves from the peninsular Spanish, so that by the time Alexander von Humboldt was traveling Mexico at the beginning of the 19th century, he could discern an element of long-standing resentment behind the criollos' proud insistence that they were "americanos" and not "españoles" (see Álvarez de Miranda 2007). The community that first adopted "americanos" as a term to describe itself thus did not originally include the British colonies in North America (see Moreno de Alba 2008: 3), and the resistance to what is perceived in Latin America as the U.S. appropriation of the term "americano" has grown over the years, particularly among those who resent the United States' interventions in Latin America (see *BBC Mundo* 08.06.2017). Today, according to the Real Academia Española (Spain's institution to safeguard the unity and stability of the Spanish language, see *Orígenes*), the correct adjective to refer to anything to do with the United States is "estadounidense", though widespread usage has made it acceptable to use "norteamericano" as a synonym despite the fact that the latter term technically refers to the entire North American continent and thus includes Canada and Mexico. The use of "americano" to refer to just the United States, however, should be avoided, for "América" refers to the whole of North and South America, whose inhabitants are thus all "americanos" (see *Diccionario panhispánico de dudas* 2005). "Estadounidense" was admittedly a relatively new term when Pedreira published *Insularismo*, but was in use among "Hispanists over there" (i.e. in the Americas; *La Vanguardia* 17.04.1919, my translation) as early as 1919 and thus was available to him. A more in-depth diachronic study of the different uses of "americano," "norteamericano" and "estadounidense" in Puerto Rico compared to the rest of Latin America or Spain would be an interesting subject for further study, but whether Pedreira chose to use "norteamericano" over "estadounidense," over "americano," or simply to avoid a more cumbersome sentence structure involving the country's name, the term certainly distinguishes between residents of the mainland United States and those of Puerto Rico. Indeed, if Pedreira did specifically opt against the word "estadounidense," that could have been his reason: since Puerto Ricans had become U.S. citizens with the Jones Act of 1917, they would now be included in the term "estadounidense" so that only the term "norteamericano" could refer to the United States without including Puerto Rico and thus allow comparison. Building the mainland United States up as the "them" to his "we," every use of "norteamericano" further demarcates the U.S. from Puerto

Rico (and occasionally from Spain or Europe, e.g. when he describes the change of sovereignty as the needle of Puerto Rico's compass acquiring a new north as they passed from a European to a North American polarization; see *Insularismo*: 96). By referring to the United States with a term that does not include Puerto Rico, Pedreira can juxtapose the mainland and island cultures and attitudes, as when he discusses whether "the North Americans" can be blamed for all recent changes in Puerto Rican society (see *Insularismo*: 110) or laments the apparent eagerness of his compatriots to use statistics to determine whether life in Puerto Rico has improved or worsened since 1898 "as if every item and every attitude had a price in American gold"[21] (*Insularismo*: 104) or "as if the progress of North American technology and mechanization were a thermometer fit for taking the temperature of a people brought up in another moral climate"[22] (*Insularismo*: 98), or when he relates the new government's attitude toward the arts with a quote: "One of the first acts of the (North American) regime in Puerto Rico – says Don Fernando Callejo [Ferrer] – was the suppression of all subsidies of an artistic nature"[23] (*Insularismo*: 109; Pedreira abbreviated Callejo Ferrer's sentence and thus had to add "North American" in parentheses to maintain the original meaning, see Callejo Ferrer 1915: 57). While referring to the United States with this more general term rather than by name, Pedreira does use Puerto Rico's name in relation to two of the above examples and variations of "we" in every single one of them, thus building and reinforcing a connection to (and among) his Puerto Rican readers while separating them (and himself) from the rest of the United States by minimizing the attention given to the latter.

Otherwise, apart from one specific mention of a U.S. President ("President McKinley put the King of Spain in checkmate and the Puerto Rican chess board has felt ever since that its pieces are moving in other directions"[24], *Insularismo*: 96-97), Pedreira's references to the United States are far less explicit, instead alluding to "the official language" ("la lengua oficial," i.e. English, to which he also tends to refer euphemistically, as will be discussed in the following section), "democracy" or "democratization" ("democracia" or "democratización"; as opposed to the Spanish monarchy to which Puerto Rico had belonged), the "federal government" ("gobierno federal"; as opposed to the local island government), and the "current government" ("gobierno actual"; another example of the use of past vs. present to

[21] Original: "como si cada cosa y cada actitud tuviera un precio en oro americano."
[22] Original: "como si el progreso de la técnica y el maquinismo norteamericano fuese un termómetro a propósito para medir las temperaturas de un pueblo formado en otro clima moral."
[23] Original: "uno de los primeros actos del régimen (norteamericano), en Puerto Rico – dice D. Fernando Callejo – fué [*sic!*] la supresión de todas las subvenciones de carácter artístico."
[24] Original: "El Presidente McKinley dió [*sic!*] un jaque mate al Rey de España y el tablero de ajedrez puertorriqueño ha sentido desde entonces que sus piezas se mueven en otras direcciones."

distinguish between Spanish and U.S. sovereignty, as discussed in the previous section) (see *Insularismo*: 102, 103 & 108, 105 and 109, respectively). Simply the use of such terms—and of such a variety of them—in place of proper nouns reveals further categories and distinctions that Pedreira considers important to the definition of Puerto Rico, for with each such indirect reference to the United States he introduces and emphasizes an additional perceived difference or border between it and Puerto Rico (in the above examples, differences of language and of type and proximity of government), propounding aspects of the "other" with which to compare and contrast "ourselves" in the schema of cofiguration (see Sakai 1997: 15-16).

4.2.4. Language

Pedreira was a professor of Spanish literature and language at the University of Puerto Rico (see Arce 1940: 7) and the first director of that same university's Department of Hispanic Studies (a position he held from 1927 until his death in 1939; see Flores 1978: 7; Arce 190: 8), and his love for the language manifested itself not only in his written work but also in related research, criticism, conferences, and the promotion of cultural and educational exchange among Spain, Latin America and Puerto Rico (see Arce 1940: 7-8). In short, "Pedreira knew what the vernacular language means for a people's culture"[25] (Arce 1940: 7, my translation); it is therefore no surprise that the area where the clashes between culture and civilization and between the Spanish past and U.S. present overlap most clearly for Pedreira is that of language, particularly in education (see Sancholuz 1997: 6).

> The problem, as I see it, is more one of quantity than of quality. The degradation of our mother tongue lapses into nasal stammering, and over the years the consequences will be disastrous for our culture. Today, despite English being official, the vernacular remains in the lead. Stagnation must be avoided at all costs.[26] (*Insularismo*: 101)

Pedreira defends Spanish not only as a fundamental part of Puerto Rican culture, but as the yeast that ferments the Puerto Rican spirit and affords great ambition, its mission obstructed when "the other [language] gets in the way, monopolizing"[27] Puerto Rican youth's formative years (*Insularismo*: 102). Consistent with his division of Hispanic culture vs. U.S. civilization, Pedreira presents the Spanish language itself as more spiritual and a superior vehicle for cultural expression than English; learning English (among other useful foreign languages

[25] Original: "Sabía Pedreira lo que la lengua vernácula significa para la cultura de un pueblo […]"
[26] Original: "El problema, a mi ver, es más de cantidad que de calidad. El empobrecimiento de la lengua materna degenera en gangosa tartamudez, y al cabo de los años las consecuencias tienen que ser fatales para nuestra cultura. Hoy por hoy, y a pesar de la oficialidad del inglés, la lengua vernácula aun lleva la ventaja. Hay que evitar a toda costa el estancamiento […]"
[27] Original: "[…] la otra se interpone monopolizando […]"

such as French, German and Italian), meanwhile, is simply a necessity and a duty, the language policy of the overly standard- and statistics-obsessed United States stifles the spirit and diminishes the profundity and expressiveness of Puerto Rican culture, and insisting on bilingualism results in mediocrity (see *Insularismo*: 101-102).

Such reasoning did not sway the U.S. view that Puerto Ricans' lives would be much improved by learning English, the language of the enlightened, republican, democratic, more intelligent Anglo-Saxon race (see Cabán 2002: 126), as one mainland-born teacher with thirty years of experience in Puerto Rico made plain:

> the talk about culture, traditions and so on which is often produced when this subject of language comes up […] is insincere, an invented reason for not doing a difficult but necessary thing, an excuse for having failed to follow a course which every practical consideration dictates. It may be that no people wants to admit that it is satellitic; but not wanting to admit it does not and cannot change the fact. The hard truth is that the best, almost the only outlet for Puerto Rican youth of ability is in the States; and that not to provide these young people with a colloquial knowledge of English is to start them with a serious and needless handicap. There should be some better reason for not doing this than a sentimental allegiance or the coddling of psychological discomfort. (Quoted in Tugwell 1947: 389)

Puerto Rico's first education commissioner, Martin G. Brumbaugh, agreed that "[t]he problem of education for Spanish-America is, first of all, a problem of language" and, though he recognized that "it would be a great injustice to the Spanish-American civilization to undertake to remove the language of their native country, so rich in literature, so glorious in history," he nevertheless felt that "[t]he first business of the American republic, in its attempt to universalize its educational ideals in America, is to give these Spanish-speaking races the symbols of the English language in which to express the knowledge and the culture which they already possess" (Brumbaugh 1907: 65). Shortly before he left his position as governor of Puerto Rico in 1946, Rexford Guy Tugwell wrote that "there had been about a decade now of pretense and avoidance" in Puerto Rico regarding the need to learn English, and he associated the language dilemma with the island's political status: by refusing or simply neglecting to learn English, Puerto Ricans would isolate themselves from the world and prove themselves "a hostile, suspicious, foreign country" in the eyes of the United States—an infeasible course of action, for after nearly five decades of dependence upon "her rich Northern associate" the island was no longer capable of self-sufficiency—while embracing bilingualism would help Puerto Rico "become part of the larger world, accepting common standards, contributing and receiving as part of the whole" (Tugwell 1947: 390). But, as discussed above in Section 4.2.1, Pedreira balks at standards and democracy's homogenizing effects on society, considering them the source of mediocrity and the result of distaste for difference and for the complications that it brings (see *Insularismo*: 102-103, 108). While Tugwell implied that Puerto Rico's relationship with the outside world depended upon lan-

guage policy in education, twelve years earlier Pedreira wrote in *Insularismo* that a definitive educational policy could not be settled on until Puerto Rico's political status was no longer in limbo.

> Our teachers have not had the luxury of formulating an educational philosophy that would point our youth toward a particular target. Where are we going? What will the island's definitive status be? Statehood? Independent republic? Autonomous protectorate? Today we belong to but are not part of the United States, according to judicial phrasing, incubator of uncertainties. Without the certainty of a stable political future, schools have not been able to launch the Puerto Rican citizen with a fixed orientation.[28] (*Insularismo*: 100)

The instability of the situation, in turn, could "clearly be seen in the fluctuations of bilingualism"[29] (*Insularismo*: 101); this is one of the areas where Pedreira's discourse takes on a medical tone, describing the negative effects of the English curriculum and particularly bilingualism on the Puerto Rican vernacular and culture as if diagnosing a malady, and advocating a unified national identity (with linguistic unity as one of the most important elements thereof) as a countermeasure to help overcome it (see Sancholuz 1997: 6). It is not the mere presence of English to which Pedreira takes exception, but rather the way in which it is taught, blanketing the school curriculum and stifling the imagination. He dismisses the calls of those who, unable to accept "the reality of the events of '98, passionately attack the teaching of English"[30] (*Insularismo*: 101-102); Pedreira assures his readers that Spanish itself has not (yet) greatly suffered under the increased pressure from English, and that what little damage the purism of Spanish may have suffered is more than compensated by the affection and care with which the language is now studied. The problem as Pedreira sees it is the policy of teaching all classes in English to try to achieve bilingualism, a method that he feels diminishes students' Spanish vocabulary, thus rendering them often incapable of expressing themselves in Spanish on the simplest of subjects (see *Insularismo*: 101). In line with his theme of protecting Puerto Rican culture from U.S. influence, Pedreira calls not for an attack on English—a language he seems to consider a necessary evil—but for a defense of Spanish. Governor Tugwell insisted that "English was necessary to Puerto Ricans" (Tugwell 1947: 389) and President Franklin D. Roosevelt worried that

> [m]any of [Puerto Rico's] sons and daughters will desire to seek economic opportunity on the mainland or perhaps in other countries of this hemisphere. They will be greatly handicapped if they have not mastered English. […] What is necessary […] is that the American citizens of Puerto Rico should profit from their unique geographical situation and the unique historical circumstance which has

[28] Original: "Nuestros pedagogos no han podido formular a sus anchas una filosofía de la educación que dispare nuestra juventud hacia un blanco fijo. ¿Adónde vamos? ¿Cuál ha de ser el status definitivo de la isla? ¿Estado federal? ¿República independiente? ¿Autonomía con protectorado? Hoy por hoy pertenecemos a pero no formamos parte de Estados Unidos, según frase jurídica, incubadora de incertidumbres. Sin la certeza de un futuro político estable, la escuela no ha podido lanzar al ciudadano puertorriqueño con definida orientación."
[29] Original: "[…] se verá claramente en la [*sic!*] fluctuaciones del bilingüismo."
[30] Original: "la realidad de los hechos consumados en el 98, ataca[n] apasionadamente la enseñanza del inglés."

> brought to them the blessings of American citizenship by becoming bi-lingual. (United States Congress, Senate 1945: 486)

Nevertheless, Puerto Ricans did not see a need to learn English unless they expected to have direct contact with the mainland and thus, like Pedreira, considered teaching English as a subject sufficient and teaching all subjects in English excessive and unreasonable (see Tugwell 1947: 389; *Insularismo*: 102). While Commissioner Brumbaugh had championed bilingualism in Puerto Rico, arguing that "if the trend of life, social, economic and political, is to be from the north to the south in our American continents, they must acquire two languages […] A man is as many times a man as he has languages in which to think and with which to express his thought" (Brumbaugh 1907: 65), Puerto Rican nationalism resisted that influx of social, economic and political life from the north, rallying around the defense of Spanish even while recognizing the benefits of learning English. "Consequently, overt popular support of English acquisition coexists with covert popular resistance" (Pousada 1999: 33), a situation reflected in Pedreira's explicit statements that the need and duty to master both languages is beyond argument (see *Insularismo*: 101) and that learning English is "a lifeline for our people"[31] (*Insularismo*: 102) combined with his insinuation that English is detrimental to Puerto Rican culture and that Spanish is part of the Puerto Rican collective identity that he argues throughout "Intermezzo: Una nave al garete" needs protection from U.S. civilization. Though he does advocate learning foreign languages, including English, he does not condone the multilingual approach because he feels that expression in the mother tongue can only achieve its full potential if uninhibited by a second language. Pedreira begins the section on language in apparent agreement with Brumbaugh when he champions the perfect mastery of both languages, but ends it with a rejection of Brumbaugh's view of bilingualism, agreeing instead with fellow Puerto Rican Epifanio Fernández Vanga's opinion that bilingualism does not make a "double man" ("un hombre doble") but rather "half a man" ("medio hombre;" see *Insularismo*: 102). Pedreira clearly views Spanish as the language of Puerto Rico and English as an outside influence with the potential to harm Puerto Rican expression and culture if given the opportunity; by championing the vernacular he seeks to save Puerto Ricans from the fate of becoming half men under their new sovereign.

In addition to openly criticizing the bilingual language policy in education and establishing an apparently fundamental difference between the two languages that in turn represents a fundamental difference between the peoples that speak them, Pedreira's manner of discussing the subject serves to further define his group of addressees, building up the

[31] Original: "una tabla de salvación para nuestro pueblo"

feeling of community between himself and his fellow Puerto Ricans as a separate group from continental U.S.-Americans. Pedreira dedicates nearly two pages solely to the subject of language but refers to Spanish and English euphemistically almost as often as he mentions them by name, trusting that his readers will know which languages he means. Even the first two sentences of the first paragraph on language policy simply mention "bilingualism" ("bilingüismo") and "both languages" ("ambas lenguas"), indicating that Pedreira expects his readers to already know which are the two languages in question; meanwhile, he does consider it necessary to name the *additional* languages that he feels Puerto Ricans should learn (i.e. French, German and Italian; see *Insularismo*: 101). Not until the third sentence on this topic does Pedreira specify the two languages as "the English language" ("la lengua inglesa") and "the Hispanic language" ("la lengua hispánica"). As he discusses the subject, he calls the English language by name a total of six times as well as referring to it euphemistically as "the official language" ("la lengua oficial," juxtaposed with "the Hispanic language"; *Insularismo*: 102) and once simply as "the other [language]" ("la otra," juxtaposed with "our mother tongue" ("nuestra lengua materna"); *Insularismo*: 102). It should be noted that, since the Official Language Act of 1902, English and Spanish had been co-official languages in Puerto Rico (and have been ever since, with the exception of a brief Spanish-only period from 1991 to 1993; see Pousada 1996: 502 & 1999: 38), so that "the official language" in reality refers to both, but that Pedreira clearly uses the term to refer only to English, thus distancing himself, his fellow Puerto Ricans and their common language from the language imposed upon them. Meanwhile, Spanish receives a more familiar treatment, being referred to by name (either as "Spanish" ("español") or "the Hispanic language") only three times (in addition to one reference to "Spanish words" ("voces españoles"), *Insularismo*: 101), while being referred to twice as "the vernacular language" ("la lengua vernácula" and "el idioma vernáculo"; *Insularismo*: 101 & 102, respectively), once as "the mother tongue" ("la lengua materna") and once specifically as "*our* mother tongue" (*Insularismo*: 101 & 102, respectively, emphasis added). These euphemistic terms for the two languages make it clear that Pedreira is writing from a Puerto Rican perspective and addressing only other Puerto Ricans, for the United States as a whole has never had an official language (and while over half of the individual States now do, the overwhelming majority of those were not declared until the late 20th century; see Schildkraut 2001: 445) and the average mainland citizen, upon hearing references to "the vernacular," would most likely think of English and would not share Spanish as "our mother tongue": bilingualism is often only a transitional stage on the way to English monolingualism in the United States—descendants of bilingual

speakers tend to lose their non-English language within three or four generations—and in the early 20th century only 2 percent of the U.S. population were Spanish speakers (see Austin et. al. 2015: 32-34). Additionally, Pedreira's repeated use of the first person plural establishes not only that he and his readers all speak Spanish as "our mother tongue," but also that they share a responsibility to protect their common, internally homogeneous language (and, consequently, culture) from external threats; for example, the manner in which English is taught has already diminished Puerto Ricans' Spanish vocabulary so that "there are moments when *we* even lack the vocabulary to express *ourselves* in simple and basic conversations"[32] and "[t]hus *we* are losing the most expressive dimension of culture: its depth"[33] (*Insularismo*: 101 & 102, emphasis added).

> The most effective device for producing a palpable "sentiment of nationality," however, is to create the *positivity* of a "mother" tongue. Closely related to this is the idea of the "native speaker." If we are to criticize the constructs of national and ethnic culture, we must begin by analyzing unitary notions of the mother tongue, native language, or national language. This is because the figure of culture as an organic unity in most cases depends upon the figure of a linguistic unity as its original form. Moreover, the regime, by which cultural difference is figured out in terms of specific difference between two cultures posited as entities, relies on the same schema that is mobilized to represent failure in communication as taking place between two different languages. (Sakai 2005: 18, original emphasis)

Thus, the concepts of "mother tongue" or "native speaker" are part of the regime of homolingual address, for they rely on the discursively established language unities and expectation of uninhibited reciprocal communication within a language community that form the basis of that regime. The homolingual nature of Pedreira's view is clearly discernible in his discussion of language policy in Puerto Rico as he consistently distinguishes between the language unities of English and Spanish and by extension between the cultural unities of the mainland United States and Puerto Rico, cofiguratively building up the latter's sense of collective and national identity by differentiation from the former.

Once a language unity, in this case Spanish, has been established as a group's "mother tongue" and representation of their shared culture, thus

> determining an individual's total and personal identity, almost as if it were a fate, [… then] the shift from one "language" to another in accordance with pragmatic necessity can be perceived as if it were a betrayal of authenticity, an escape from fate, so to speak. […O]ne "language" and another "language" will be assumed to exist within an exclusionary relation to each other. The mother tongue (or national mother tongue) acquires its identity as a negation of the "other" language, in such a way that people are seen to possess their authentic "mother tongue" by virtue of their own ethnic or national origins. This is precisely the manner by which the native speaker is born—as one who bears the mother tongue or national mother tongue as the ground of personal authenticity. (Sakai 2005: 24)

[32] Original: "hay momentos en que hasta carecemos de vocabulario para expresarnos en conversaciones simples y elementales."
[33] Original: "Así vamos perdiendo la dimensión más expresiva de la cultura: la profundidad."

In Puerto Rico there is the added perception of the need to defend "our mother tongue" against the encroaching foreign tongue, whether as the simple unconscious resistance that often arises from the imposition of a language on an ethnic group, or the conscious retention and protection of their native language and culture in the face of the threatening intrusion of the United States (see Pousada 1999: 53). Belonging to a linguistic community as a "native speaker" is as much a social construct based on one's choice of identity or membership in a group as it is a linguistic construct based on language knowledge and ability (see Lewandowski & Dogil 2010: 389), and Pedreira's concerns about the potential effects of U.S. language and educational policy in Puerto Rico were not solely linguistic nor entirely divorced from the motives behind that policy. "The most obvious effort to re/construct Puerto Rican identity was the imposition of English as the language of administration and instruction and the accompanying use of public education as a weapon against Puerto Rican consciousness" (Malavet 2000: 68-69).

> The educational process in Puerto Rico was imbued with the ideological vision of exercising direct domination over the colonial subjects by persuasively devaluing and diminishing their identity. The everyday representation of Anglo-Saxon civilization as a desirable but ultimately unattainable goal for the inferior colonial subject was a conscious device for holding Puerto Ricans in a permanent state of subjugation. (Cabán 2002: 128)

Both the island and mainland perspectives of Puerto Rico equated language with identity and culture, thus homogenizing these unities and facilitating the distinction and juxtaposition of Puerto Rican and mainland languages, identities and cultures. While the United States sought to Americanize and thus assimilate Puerto Rico, generously saving an inferior people (see Malavet 2000: 84-85), Pedreira's bordering discourse serves to pinpoint the in-group in contrast with the outgroup and identify the elements that make up the former and that are in need of protection from the threat of the latter. This cofigurative (see Sakai 1997: 15-16) distinction between the two language unities—and by extension between the two cultural unities—allows Pedreira to call on Puerto Ricans to unite in the defense of their perceived common language (and culture), while also building and homogenizing their collective identity, ignoring all internal diversity (see Duany 2000: 6).

4.2.5. Intertextuality

Just as Pedreira's *Insularismo* has been referenced and quoted by subsequent Puerto Rican authors, so too did he quote and reference other writers before him. A section of Norman Fairclough's (see 2003: 47-49, 192) critical discourse analysis checklist covers intertextuality, and his questions regarding which of relevant other texts an author includes or excludes—and whether or not those that are included are (specifically or non-specifically)

attributed—are particularly apposite to the present analysis of Pedreira's essay "Intermezzo: Una nave al garete." First of all, the citations in this essay refer almost exclusively to Puerto Rican or other Spanish-speaking figures: Pedreira draws on the opinions and observations of one Cuban, one Spanish and various Puerto Rican—as well as two French—essayists, journalists, scholars and philosophers as he questions and condemns some of the changes in Puerto Rican society and particularly in the educational system since the change of sovereignty. However, despite exploring contemporary Puerto Rican society under U.S. dominion in the essay, Pedreira only makes one remotely obvious reference to a United States text, namely one of the Insular Cases. As touched on above in Sections 4.2.3 and 4.2.4, one of Pedreira's conclusions upon analyzing the public education system and policies is that the difficulty of setting educational goals results from the instability of Puerto Rico's political situation, for "[t]oday we belong to but are not part of the United States, according to judicial phrasing, incubator of uncertainties."[34] (*Insularismo*: 100), and the judicial phrasing to which he refers is the conclusion of Justice Henry Billings Brown's statement announcing the U.S. Supreme Court's judgment in *Downes v. Bidwell* in 1901: "We are therefore of opinion that the Island of Porto Rico is a territory appurtenant and *belonging to the United States, but not a part of the United States* within the revenue clauses of the Constitution" (*Downes v. Bidwell* 182 U.S. (1901): 287, emphasis added). Pedreira demonstrates respect and even admiration for the rest of the writers and texts he cites, bolstering his distinction between culture and civilization (see Section 4.2.1) with the "authority [of] a series of illustrious thinkers from Jean-Jacques Rousseau to José Ortega y Gasset"[35] (*Insularismo*: 98), relating a "beautiful postulate" ("hermoso postulado", *Insularismo*: 100) of Cuban scholar José de la Luz Caballero, proudly claiming assistant commissioner of education Pedro A. Cebollero and poet Luis Palés Matos as Puerto Rico's own by calling them "our educator" and "our poet" respectively ("nuestro educador" and "nuestro poeta", *Insularismo*: 103 & 104) and praising the way the latter "admirably encapsulated" ("admirablemente sintetizó", *Insularismo*: 104) the confusion and disorder in Puerto Rico so concisely, explicitly agreeing with statements by Puerto Rican intellectual Epifanio Fernández Vanga, French critic Paul Bourget, and Puerto Rican composer Fernando Callejo Ferrer (see *Insularismo*: 102, 103, 109), and even calling Puerto Rican essayist and journalist Dr. Juan Bautista Soto González a "reasoning man" ("hombre razonador", *Insularismo*: 99) before going on to ac-

[34] Original: "Hoy por hoy pertenecemos a pero no formamos parte de Estados Unidos, según frase jurídica, incubadora de incertidumbres."
[35] Original: "[…] autoridad [de] una serie de ilustres pensadores que empieza con Juan Jacobo Rousseau y acaba con José Ortega y Gasset."

cuse him of belonging to the group of overzealous comparatists whose enthusiasm Pedreira feels it necessary to curb. The one text from Puerto Rico's new sovereign that Pedreira cites in this essay, however, seems to have earned not his respect but his exasperation, for he calls the sentence and its juridical discourse—and by extension perhaps also its source, the U.S. Supreme Court—an "incubator of uncertainties." Additionally, he names neither the specific text nor its author even though he does so for the Caribbean and European sources he cites, indicating either that the source was common knowledge among his readers and need not be explained, or that he felt the source did not merit a mention. It is also possible but by no means certain that the Fernández Vanga quote mentioned in the previous section (expressing the opinion that bilingualism produces half-men rather than double-men) is a rebuttal of Brumbaugh's statement thirty years earlier (saying that multilingualism produces manifold-men, also quoted in Section 4.2.4), but if that is the case, then Pedreira once again omits the reference to the U.S. source, citing (and by name) only the Puerto Rican author with whose opinion he agrees. Even if the Fernández Vanga quote is not a direct response to Brumbaugh's statement, it is worth noting that all of the above attributed references—with the exception of the quote by Soto González—serve to uphold Pedreira's opinions and assertions as he identifies and challenges the United States' influence in Puerto Rico, while the U.S.'s policies and motives are left without the legitimization of any such third party sources.

In addition to attributed or unattributed citations of other texts, the influence of other authors and works can be seen in Pedreira's style and philosophy, and again these influences tend to stem from Europe or Latin America. Fellow *generación del treinta* author Margot Arce (see 1940: 8-9) admired Pedreira's affinity for Spanish and Latin American literature—citing his correspondence with prominent men of letters in the Americas, the commendations he received from countries such as Mexico and the Dominican Republic in recognition of his literary merit and advocacy of Hispanic cultural unity, and his special interest for the literature and authors of Spain as evidenced by the topics of courses he chose to teach—and noted several similarities between Pedreira's work (particularly *Insularismo*) and that of Spanish author Miguel de Unamuno. Juan Flores also mentions Unamuno among the authors involved in "the 'Arielist' movement that swept through the Spanish-speaking intellectual world through the first three decades of the 20th century", the clearest Puerto Rican example of which was *Insularismo*, particularly as "the entire chapter 'Intermezzo: Una nave al garete,' in fact […], reads like a paraphrase of *Ariel*" by Uruguayan philosopher José Enrique Rodó, itself based on a French philosophical adaptation of Shakespeare's *Tempest*

(Flores 1978: 51-52 & 54-55). Additionally, one of the Spanish authors that Pedreira names in "Intermezzo: Una nave al garete", José Ortega y Gasset (see *Insularismo*: 98, 104), greatly influenced Latin American literature and philosophy by not only "transmitting the concerns of modern Spanish philosophy to contemporary thinkers of Latin America", but also acting "as an intellectual bridge", providing the Spanish-speaking world access to other European philosophies and discourse, including that of Oswald Spengler (Flores 1978: 66), already cited in Section 4.2.1 as a source of Pedreira's use of the culture/civilization dichotomy. Thus, the literature that more generally influences Pedreira's work, like the texts and authors he specifically cites, comes from Europe and Latin America. Pedreira advocated travel and interaction with outside cultures to broaden Puerto Ricans' horizons and enrich their own experience and culture (see Rodríguez López 1940: 5), but it would seem that he favored the potential contributions of certain cultures over others, for his endeavors to promote such cultural exchange, the literary influences detectable in his own work, and particularly his choice of texts to reference directly in "Intermezzo: Una nave al garete," all indicate an affinity to Latin American (particularly Caribbean) and European (particularly Spanish) sources that he does not seem to feel toward North American ones.

This dearth of U.S. sources and influence in "Intermezzo: Una nave al garete", along with Pedreira's interest in cultural exchange with Latin America and Europe and apparent disinterest in such exchange with North America, could stem from his conviction that the United States had no culture to offer, only its potentially detrimental antithesis: civilization, as discussed in Section 4.2.1. It certainly was not for lack of knowledge of U.S. society and texts, for Pedreira was born in June of 1899 (see *Isla: Homenaje a Antonio S. Pedreira* 1940: 1), half a year after the ratification of the Treaty of Paris, and thus grew up subject to the United States public education policies that sought to Americanize Puerto Rico. Martin G. Brumbaugh wrote in his first report as Commissioner of Education in October of 1900 that "[t]he spirit of American institutions and the ideals of the American people, strange as they do seem to some in Porto Rico, must be the only spirit and the only ideals incorporated in the school system of Porto Rico" (Brumbaugh 1900: 62), and Reverend James H. Van Buren, who served as a bishop for Puerto Rico from 1902-1912, wrote in 1913 that "loyalty to American principles and standards is a leading feature of the public school curriculum in Puerto Rico" (quoted in Cabán 2002: 127). By the time Pedreira published *Insularismo* in 1934, the United States had spent over three decades encouraging U.S. patriotism, loyalty and an assimilationist attitude while discouraging feelings of independence in Puerto Rico through public and education policy (see Negrón de Montilla 1998: 10). Given the imposed

pervasiveness of North American ideas, texts, symbols and language in Puerto Rico throughout Pedreira's life as well as the fact that Pedreira himself both attended and taught at universities in New York (see *Isla: Homenaje a Antonio S. Pedreira* 1940: 1), it is significant that the intertextuality of this essay almost entirely omits references to United States sources while instead drawing on views expressed in Caribbean and European works (and citing their authors by name), for this establishes "Intermezzo: Una nave al garete" (and the Puerto Rican society it describes) as a product and part of the latter discourses and canons.

> Americanization was not only a generalized project to assimilate and transform an inferior people and its institutions but also a celebratory discourse on the power and wisdom of the American political system and American business. The hesitancy of Puerto Ricans to embrace this myth was a sobering realization to U.S. empire builders. (Cabán 2002: 142)

Whether a conscious choice by Pedreira or simply a sampling of the literature most readily available to him in Puerto Rico, the heavily Caribbean and European intertextuality in this chapter of *Insularismo* exhibits that hesitancy to embrace the myth of U.S. exceptionalism, representing a rejection—and probably intentional exclusion—of the influence of a cultural unity perceived to be foreign and even threatening to that of Puerto Rico.

4.2.6. Geography & space

Though the texts he draws on are international, Pedreira portrays Puerto Rico as isolated from the rest of the world throughout *Insularismo*. Indeed, Juan Flores (1978: 46) cites the "geographical attribution as the leading, defining metaphor" of the book's discursive argument, and that metaphor is not limited to just *Insularismo*'s discourse, for "Pedreira's image of geographic isolation was inscribed as a master metaphor for national character" (Duany 2000: 12) and endures well beyond the one work. Because geography and space are seen as pre-existing, fixed and natural, they often serve as the discursive basis for anchoring a people's history and culture to a particular territory, so that

> the results of social-historical relations among peoples appear as intrinsic attributes of naturalized, spatialized, bounded units. […] Typical markers of collective identities, such as "territory," "culture," "history," or "religion," appear as autonomous entities. Identified by these markers, interconnected peoples come to lead separate lives whose defining properties appear to emerge from the intrinsic attributes of their "histories," "cultures," or "motherlands." […T]he material, thinglike, tangible form of geographical entities becomes a privileged medium to represent the less tangible historical relations among peoples. (Coronil 1996: 77)

Pedreira's discourse in *Insularismo* reveals such an assumption that the apparent stability of geographical boundaries has a profound and unavoidable effect on all other aspects of life, culture and even personality. In seeking answers to the questions he posed at the beginning of the book regarding what it means to be Puerto Rican and how to define their identity in relation to the rest of the world (see *Insularismo*: 10), one of his main conclusions is that

> geographically, it is an island marginalized from world history. According to Pedreira, the Puerto Rican character was primarily determined by territorial isolation, hence the title emphasizing insularity. The Island's geographic situation conditioned Puerto Ricans to feel small, dependent, and passive. In the end, the Islanders' collective personality was dominated by an intense inferiority complex that forced them to rely on more powerful, continental countries like Spain and the United States. (Duany 2000: 11)

Indeed, it must be noted that Pedreira uses geographical size, location and distance to distinguish Puerto Rico not only from the mainland United States, but also from Spain and even the rest of the world as a whole. He feels the island's geographical position interested Spain for commercial reasons and the United States for strategic reasons, but its small size left it unable to command respect and its relative isolation left it long cut off from current events and intellectual, political and cultural influences beyond its shores; in short, despite its central position between North and South America, Puerto Rico was left on the sidelines (see *Insularismo*: 45-46, 54). Under Spanish sovereignty Puerto Ricans had accused Spain of ruling from too great a distance, not taking local needs or circumstances into account when legislating for them (see *Insularismo*: 93-94; Pedreira later repeats this sentiment in reference to both Madrid and Washington D.C., see *Insularismo*: 160), and the island had long been essentially ignored in favor of larger and more conveniently placed islands such as Cuba and Hispaniola (see *Insularismo*: 150) or richer Spanish colonies such as Mexico and Peru (see *Insularismo*: 85), to the point that Puerto Rico appeared in the wrong position or didn't appear at all on some 17th and 18th century European maps (see *Insularismo*: 151). With the change of sovereignty, Puerto Rico's geographical position and expected forthcoming bilingualism led U.S. politicians to dream of the "important cultural and commercial, as well as political, benefits from making Porto Rico a liaison point between English-speaking and Spanish-speaking America" (Clark et. al. 1930: 90). Even such increased attention and external communication did little to assuage Pedreira's worries that Puerto Rico would remain a mere stop on the way to other places; he considers acting as "interpreters between the two cultures of the New World" an admirable mission, but only "as long as we do not run the risk of becoming a bridge for the rest of the world to pass over us"[36] (*Insularismo*: 162)—a concern that did indeed echo the United States' objective of greater and easier commercial exchange with Latin America using Puerto Rico as a bilingual, geographically well-placed go-between (see Cabán 2002: 119, 137).

> The cliché of Puerto Ricans as a "bridge between two cultures" was coined in a reactionary, assimilationist spirit, to suggest the convenient marriage of that age-old mythical pair, Anglo-Saxon materialism and Latin spirituality; or, in its more pertinent, "commonwealth" version, the neighborly

[36] Original: "[…] intérpretes de las dos culturas del nuevo mundo […] siempre que no corramos el peligro de convertirnos en puente para que todo el mundo nos pase por encima."

> co-existence of the benevolent, self-sufficient colossus and that helpless speck of tropical subculture. Such "bridges," of course, are no more than imperialist wish-dreams, invidious constructs intended to conceal and legitimize the real relations between North American and Puerto Rican societies. (Flores 1978: 1)

Such a portrayal of Puerto Rico's and Puerto Ricans' role may sound unifying but continues the discursive division of geographical, cultural and linguistic unities, for portraying Puerto Rico as a bridge or liaison point between two entities requires the positing of those entities as pre-existing and characterized by attributes unique to each that distinguish them from each other (i.e. Anglo-Saxon materialism vs. Latin spirituality, civilization vs. culture, English vs. Spanish, continent vs. island, etc.) and thus separated by an otherwise insurmountable chasm (see Sakai 1997: 5-6, 51 & 2012: 355-356), as well as once again revealing the perception that language, culture and other aspects of human life are bounded by and to geographical space (see Coronil 1996: 77).

Within the essay that is the subject of this analysis, however, Pedreira's focus is more on space than on geography. "Intermezzo: Una nave al garete" never mentions the distance between Puerto Rico and other landmasses nor their differences in landscape and climate, despite the repeated references elsewhere in *Insularismo* to the remoteness and geographically-conditioned cultural extraneousness of the island's former and contemporary continental sovereigns. Three uses of "the island" ("la isla", see *Insularismo*: 100, 107, 109) are the only explicit use of geographical attributes to distinguish Puerto Rico from the rest of the world in this essay. Instead, Pedreira describes the perception of space on the island, implying that U.S. sovereignty has reduced it (along with reducing the spiritual or mental space Puerto Ricans occupy and changing their perception of time so that they seem to have less of that as well; see *Insularismo*: 105-108). The other essays in *Insularismo* had already established that Puerto Rico's small, remote, bounded space affects the character and personality of those who live there, so that a decrease in that space (spiritual and temporal as well as geographical) would also affect the population. Once again Pedreira portrays the Puerto Rican spirit and culture as under threat, though the source of that threat remains implicit in this section. He mentions a few causes for the dwindling amount of available space, each of which he has already established as results of the change of sovereignty and U.S. influence over Puerto Rican life: the improved modes of communication available "today" seem to have decreased the distance between towns and thus shrunk the whole island (as established in Section 4.2.2, Pedreira's references to the present day indicate changes that have occurred under United States rule; see also *Insularismo*: 43 for a similar description of the changes in Puerto Rico's landscape over the previous thirty years (i.e. since the change

of sovereignty), with technical progress "invading" the countryside and communication technology shortening distances); the spacious estates of old (i.e. under Spanish rule) have given way to smaller homes in an attempt to economize on valuable space (an echo of the materialism and economic preoccupation learned from the new sovereign); the obsession with scrupulously measuring and charging for everything (characteristics attributed to the United States' influence, as discussed in Section 4.2.1) has taught Puerto Ricans to build apartments stacked on top of each other or to pack too many people unhygienically into each home; and Pedreira even seems to attribute an active role to the census, saying that it "piles 485 inhabitants into each square mile"[37] and has thus diminished the space that had been available in the past (see *Insularismo*: 107). A decade later Governor Tugwell would cite overpopulation as the main reason that independence was no longer conceivable for Puerto Rico, as the population had grown too large for self-sufficiency to be feasible on such a small island, leaving them dependent upon external aid; "[h]ow then was [Puerto Rico] to isolate herself culturally and defy the world?" (Tugwell 1947: 390). Despite indirectly referring to overpopulation with his mention of the census results, however, Pedreira largely ignores that factor in favor of portraying Puerto Rico's territory (temporal, spiritual and geographical) as contracting under the influence of their new sovereign. His continued use of "we" and "our" reinforce the sense of community that includes himself and his Puerto Rican readers but excludes anyone who does not live in this gradually contracting space, that is, the outside forces causing that contraction. This bordering through the strengthening of Puerto Rico's collective identity is particularly clear in Pedreira's concluding sentence on space, in which he laments that insufficient living space deprives Puerto Rico of its fair share of the happiness to which every people has a right, for "[w]e do not fit in our own home"[38] (*Insularismo*: 107). As with the categories discussed in the previous sections, Pedreira uses the sense of space and geography to establish differences and a border between Puerto Rico and the United States and to help define his ingroup as contained within that space and belonging to it, establishing the islanders as the addressees of his text and calling on them to band together and protect what they share—in this case their "home," the island of Puerto Rico—from the outside forces closing in around them and threatening to contaminate their very Puerto Ricanness (see Duany 2000: 11).

[37] Original: "[…] el censo, que amontona 485 habitantes en cada milla cuadrada […]"
[38] Original: "No cabemos en nuestra propia casa."

4.2.7. Race

Similar to *Balzac v. Porto Rico* (1922), "Intermezzo: Una nave al garete" belongs to a series of texts that include race among the distinguishing factors called upon to differentiate the "Self" and the "Other," but does not itself mention that factor. Puerto Rico's population has long been a mix predominantly of European (especially Spanish), African and Amerindian races (see Malavet 2000: 64; Duany 2000: 13), a racial makeup that the United States deemed different and inferior to its own (see Malavet 2000: 31-32). "[B]y virtue of their cultural, linguistic, and racial characteristics the people of the former Spanish possessions were judged inferior and would be excluded from the body politic of the United States" (Cabán 2002: 118); that conviction of racial inferiority can be clearly seen in the early Insular Cases (see for example *Downes v. Bidwell* 182 U.S. (1901): 287; *DeLima v. Bidwell* 182 U.S. (1901): 219). Pedreira had a similar view of the Puerto Rican racial makeup, dedicating the first post-introduction essay in *Insularismo* (see *Insularismo*: 21-36) to examining the different races on the island and the characteristics that each bring to the mix, determining that the intelligence, conviction and drive contributed by European blood is bogged down in the doubt and resentment that comes of African blood, while what little rebellious Taíno blood remains in the mix is suffocated by the other two races (see *Insularismo*: 22, 28-30) and coming to the conclusion that "racially, it is an extremely mixed and confused population" (Duany 2000: 11). Throughout *Insularismo*, Pedreira dismisses the African race as the basest of the three, and when he deigns to mention the pre-Columbian inhabitants (rather than portraying Columbus' crew as the first men to see the island, as at *Insularismo*: 44) it is generally only a brief reference to a race that could have contributed positive characteristics had it not been too weak to survive the clash of the European and African races. He makes no secret of his belief that the white European race is the superior element in Puerto Rico's racial makeup and tends to exclude the other races or racial mixes from his definition of Puerto Ricanness, considering racial diversity and mixing to be the origin of Puerto Rico's ills (see Flores 1978: 43; Sancholuz 1997: 3, 4). After that initial essay the references to race in *Insularismo* decrease, and "Intermezzo: Una nave al garete" is entirely devoid of them. One possible reason for this is that Pedreira's discourse and the prevailing political and legal discourse of the mainland United States each greatly homogenized the groups they described, and in the case of race, the racially diverse populations of both the island and the mainland were portrayed by these authors to be white communities, dismissing the presence of racial minorities. Pedreira could not use race to distinguish the

Puerto Rican ingroup from the mainland outgroup if both communities were portrayed as homogeneously of European descent. To use this distinguishing factor, he would have had to admit "inferior" races into the composition of the definitive Puerto Rican culture that he sought to define and preserve. Thus it was perhaps necessary to set his racialist convictions aside for this essay because of the difficulty of reconciling his admiration for the characteristics he believed were a result of European descent with his rejection of the United States and its likewise largely European-descended population,

> [f]or despite the evident trappings of Eurocentric racialist thinking, and their central function in Pedreira's argument, the most pressing spiritual motivation of the book is directed not against the "backwardness" of non-European peoples, but against the political and social developments of modern Western civilization, meaning, most obviously, the United States. The ambiguities of this position as it appears in *Insularismo* can be unraveled in their full intricacy only if account is taken of the direct and total domination of Puerto Rico by North American imperialism and of the impact of this historical fact on all aspects of the colonial society. (Flores 1978: 50)

Though it is undeniable that "racial determinism figures as the conceptual pillar and structural pivot" of *Insularismo*'s discursive argument (Flores 1978: 46), Pedreira does not use racial difference to distinguish between Puerto Ricans and mainland U.S.-Americans, nor does the subject come up in the chapter "Intermezzo: Una nave al garete."

4.2.8. Conclusion: two fundamentally different lifestyles, face to face

Though Pedreira's essays belong to a different genre than Supreme Court opinions such as the Insular Cases, allowing for less formality and a greater acceptance of subjectivity, his arguments are based on many of the same elements and assumptions. Both sets of texts seek to distinguish between the U.S. mainland and Puerto Rico and to describe their inhabitants as two fundamentally different but internally homogeneous groups. Two more of Ruth Wodak's questions to orient the analysis of potentially discriminatory discursive elements and strategies are "How are persons named and referred to linguistically?" and "What traits, characteristics, qualities and features are attributed to them?" (Wodak 2001: 72). Though Pedreira does not refer to many individual people (other than citing the authors of some of the texts and ideas he references, the only specific person he names in "Intermezzo: Una nave al garete" is former U.S. President McKinley at *Insularismo*: 96), he does discuss several attributes of the U.S. and Puerto Rican cultures and peoples as he sees them. Indeed, these features are what make the two societies so distinct and incompatible in his eyes, as seen particularly in his juxtaposition of U.S. *civilization* (characterized by hurriedness, utilitarianism, materialism, and most of all a fixation on statistics) and Puerto Rican *culture* (as evidenced in their art and architecture, sense of tradition and greater interest in longevity

than fashion or speed). His frequent use of euphemisms in place of proper nouns also serves not only to diminish the discursive presence of the United States in his text by not directly naming it and to distance the outgroup while establishing a closer association with the in-group by using often exclusionary terms for the former and inclusive ones for the latter (e.g. "the other [language]" vs. "our mother tongue" at *Insularismo*: 102; see also Sections 4.2.3 and 4.2.4), but also to further entrench the differences between the two groups, for all of the alternative terms he employs specifically allow him to distinguish between their cultures, so that each new term highlights a new difference, such as language or form and location of government (as discussed in Section 4.2.3). Though Pedreira is pessimistic about the Puerto Rican personality and culture elsewhere in *Insularismo*, finding them passive, isolated, dependent and suffering from an inferiority complex (see Duany 2000: 11-12), when comparing them to the mainland U.S. culture and personality in this essay, he attributes most negative aspects either to U.S. culture (e.g. materialism, disinterest in art, and ineffective or even detrimental language policy in schools) or to its influence on Puerto Rican culture (e.g. the changing perception of time, the diminishing sturdiness of architecture, and putting a price on everything), while praising qualities and characteristics of pre-Spanish-American-War Puerto Rican culture as worthy of preservation or revival. Here again he reinforces the feeling of solidarity among his fellow islanders, rallying them against the intruding out-group.

"Culturally speaking, Puerto Rico now meets most of the objective and subjective characteristics of conventional views of the nation, among them a shared language, territory, and history"; though not an independent nation politically, a strong feeling of cultural nationalism developed in Puerto Rico at least as early as the 1930s with the help of the *generación del treinta*, and "[t]he classic text in the development of a nationalist discourse on the Island is Antonio Pedreira's *Insularismo*" (Duany 2000: 8, 10-11). Given this feeling of cultural nationalism, it is not surprising that, as with the *Balzac* opinion, Pedreira's text calls upon many of the same elements that routinely define national or collective identities to distinguish Puerto Rico's identity from that of the mainland United States, including, as Duany mentions, territory, language and history, but also an emotional connection to a common past, collective pleasure and pride and regret and humiliation, reinforcement and emphasis of internal unity or shared identification with the ingroup and social difference to the outgroup, etc., all in service of his examination of his and his addressees' shared political reality and the configuration of their collective memory and history (see McClintock 1996: 260; Mill 2011: 106; Fukuzawa 2008: 30; Sakai 2005: 3; Lewandowski & Dogil 2010: 389;

Liebhart 2010: 275-276). Underpinning these distinctions, several of Wodak's (see 2001: 73-77) nationalism- and discrimination-related topoi appear in Pedreira's argumentation just as they did in Taft's. First of all, the topos of culture ("because the culture of a specific group of people is as it is, specific problems arise in specific situations"; Wodak 2001: 76) permeates the entire essay, for the common theme among Pedreira's arguments is the cultural difference between Puerto Rico and the mainland United States and how that difference can and has given rise to problems in Puerto Rico since the change of sovereignty. The topos of disadvantage ("If one can anticipate that the prognosticated consequences of a decision will not occur, or if other political actions are more likely to lead to the declared aim, the decision has to be rejected. If existing rulings do not help to reach the declared aims, they have to be changed"; Wodak 2001: 74-75) can be seen particularly in reference to language policy as Pedreira highlights the disadvantages of U.S. interference, finding it detrimental to Puerto Rican education, thought and culture—not to mention that it has not and will not accomplish the declared goal of bilingualism, of which, in turn, Pedreira also disapproves—and therefore advocates its rejection in favor of a defense of Spanish and a more monolingual education policy (see *Insularismo*: 101-102). The topos of danger or threat ("if a political action or decision bears specific dangerous, threatening consequences, one should not perform or do it. Or, formulated differently: if there are specific dangers and threats, one should do something against them"; Wodak 2001: 75) also pervades this essay, arising more frequently with each specific cultural distinction examined: Pedreira goes from contemplating the current language policy's potential detrimental effects on Puerto Rican language and culture (while assuring his readers that English has yet to damage Spanish; see *Insularismo*: 101-102) to warning that Puerto Rican culture is in crisis and in dire need of defense and of collective faith and hope to preserve it during these uncertain times of changing policy and influence (see *Insularismo*: 112). The topos of responsibility ("because a state or a group of persons is responsible for the emergence of specific problems, it or they should act in order to find solutions to these problems"; Wodak 2001: 75) plays a related role as Pedreira lays some of the blame for the crisis on innate Puerto Rican laziness and passivity, demanding active participation in and defense of Puerto Rican culture to build its strength and overcome the crisis (see *Insularismo*: 111-112). Note, however, that though Pedreira implicitly attributes much of the blame for this crisis to U.S. influence, he does not call upon the United States to solve the problems he feels it caused, convinced as he is that the mainland's variety of civilization and government is incompatible with Puerto Rico's culture and would therefore be incapable of devising a workable solution. Finally, numbers and finances ("if the

numbers prove a specific topos, a specific action should be performed or not be carried out" and "if a specific situation or action costs too much money or causes a loss of revenue, one should perform actions which diminish the costs or help to avoid the loss"; Wodak 2001: 76) come up repeatedly in "Intermezzo: Una nave al garete," but in this case Pedreira does not so much use these topoi himself as reject them as the basis for U.S. argumentation. In his view, the United States (and many Puerto Ricans under the influence of the U.S. way of thinking) are overly fixated on numbers and statistics, celebrating anything that has increased in number as progress (see *Insularismo*: 98-99); Pedreira, on the other hand, points out that increasing numbers are not always positive, for suicides, bankruptcy, insanity and crime have also increased (see *Insularismo*: 99) and thus the statistics do not *all* support U.S. policy, and argues that quality is more important than quantity (see *Insularismo*: 101). He then argues that this obsession with numbers grew out of an obsession with economics and finances (see *Insularismo*: 104), a fixation that has informed many unfortunate U.S. policy decisions, not least of which was the immediate cessation of support for the arts because they did not produce a tangible return on investment (see *Insularismo*: 108-109). Such logic and argumentation, in Pedreira's opinion, is a product of the United States' civilization and has no place in Puerto Rican culture; thus both numbers and finances uphold further distinction between the two groups, just not in the way that Wodak describes.

Norman Fairclough offers a spectrum of scenarios that may characterize a text's orientation to difference; Pedreira's attitude in this text can best be described as "an accentuation of difference, conflict, polemic, a struggle over meaning, norms, power" (Fairclough 2003: 42). In other words, his discourse both draws and perpetuates a border between what he perceives as distinct and natural cultural, linguistic and geographical entities. Hand in hand with establishing the border between two entities comes the homogenization of each, particularly of the ingroup. Upon reading the whole of *Insularismo*, one sees that Pedreira considers Puerto Rico to be fragmented, confused and adrift, characteristics he seeks to combat by constructing a totalizing Puerto Rican identity rooted in the values of territorial, linguistic, ethnic, cultural and literary unity (see Sancholuz 1997: 6). Indeed, his homogenizing discourse gives the impression of a harmonious Puerto Rican identity and perpetuates the "nationalist thinking and practice [that has] tended to embrace an essentialist and homogenizing image of collective identity that silences the multiple voices of the nation, based on class, race, ethnicity, gender, and other differences" (Duany 2000: 11). It is only possible for Pedreira to establish the elements of the Puerto Ricanness he seeks to define by choosing an "other" with which to compare it and thus pinpoint the elements that do

not make up Puerto Ricanness (in this essay that "other" is the mainland United States, but elsewhere in *Insularismo* the relevant "other" varies, e.g. colder, non-tropical countries (see *Insularismo*: 32), other islands of the Antilles (see *Insularismo*: 34), Mexico and Peru (see *Insularismo*: 85), Spain (see *Insularismo*: 89-95), and so on).

> The nation constructs itself as culturally homogeneous by "externalizing" alien cultures. […] Homogeneity within the nation can, moreover, only be posited as a negative reflection through the accounts of other nations, races and ethnic groups. This "other" that constitutes the term of contrast is ceaselessly transformed and shifted (Sakai 2005: 30),

but it is difficult to imagine a group or nation as a homogeneous sphere without the schema of cofiguration, i.e. without that comparison to and contrast with an "other" (see Sakai 2012: 353). In this essay, contrasting the elements of Puerto Rico's culture and personality that Pedreira believes predate the change of sovereignty with those elements that arose under U.S. influence or were specifically imposed upon Puerto Rico by the new sovereign—that is, contrasting Puerto Rico's culture with the U.S. mainland's civilization—allows him to construct a homogeneous image of Puerto Rico as uniformly Spanish-speaking, social, traditional, meritocratic, unrushed, abiding, Renaissance men (women's cultural participation or contributions did not interest him, see Sancholuz 1997: 3) with a cultural and literary affinity for Latin American and European texts and ideas, because they are *not* English-speaking (except by necessity or force), business-minded, progressive, egalitarian, hurried, ephemeral, blinkered experts in a single, narrow field convinced that everything can and should be measured and counted to determine its value. Thus, Pedreira discursively builds an arbitrary, fictitious community (see Sancholuz 1997: 3): "the great Puerto Rican family" of harmoniously integrated (that is, ignored) ethnic, gender, class, cultural, or regional differences (see Duany 2000: 13; Sancholuz 1997: 4). That this community or family is his intended readership can easily be inferred from his use of variations of "we" to refer to Puerto Ricans and rally them together to defend their culture from U.S. influence; other indications that he is writing for Puerto Ricans from a Puerto Rican perspective are his choice of euphemisms (particularly referring to Spanish as "our mother tongue" or to the start of the Spanish-American War as "the invasion", see *Insularismo*: 102 & 109) or his portrayal of shared experiences such as the feeling of being cramped and stuck within the geographical confines of the island (see *Insularismo*: 107). While the ingroup is expected to easily and fully comprehend Pedreira's references, explanations, opinions and vision of the Puerto Rican community, the outgroup (in this case specifically the mainland United States) is not, for the two groups do not speak the same language, do not share a climate, a culture, or a preferred manner of government, and do not agree on the significance of Puerto Rico's history, culture

or potential. Moreover, according to his analysis of Puerto Rico's situation, United States influence and policy have clashed with Puerto Rican culture ever since the change of sovereignty, indicating differences too fundamental to allow the new sovereign to receive Pedreira's message. A central assumption of the regime of homolingual address is that one's addressees all belong to one homogeneous community and will therefore all receive one's message as it was intended and will all understand it in the same way and to the same extent (see Sakai 1997: 5-6). This discursively established homogeneity within the ingroup creates a perceived "region of flawless communication" (Sakai 2005: 21) outside of which mutual understanding is anything but guaranteed and for that reason may not even be sought. Indeed, the differences between Puerto Rican and U.S. society are portrayed as so extensive and fundamental in the discourse of "Intermezzo: Una nave al garete" that mutual understanding seems an impossibility, while shared experiences, sentiments and language within the Puerto Rican community are expected to guarantee unimpaired understanding among Pedreira's addressees. This assumption of complete understanding within Puerto Rico and the impossibility of full comprehension between Puerto Rico and the United States—as well as the discursively created and perpetuated linguistic, cultural, geographical, etc. distinctions between the two groups that sustain that assumption—are hallmarks of the regime of homolingual address.

4.3. *Pueblo v. Sánchez Valle* (2015) and *Puerto Rico v. Sanchez Valle* (2016)

In the eight decades that passed between the publication of Pedreira's *Insularismo* (1934) and the final two texts under analysis here—namely the Puerto Rico Supreme Court case *Pueblo v. Sánchez Valle* (2015) and subsequent U.S. Supreme Court case *Puerto Rico v. Sanchez Valle* (2016)—the most significant changes in Puerto Rico's constitutional status occurred over the course of five years. First, the Elective Governor Act of 1947 granted Puerto Rico "a right never before accorded in a U.S. territory" (US *Sanchez Valle*: Kagan 3), namely the popular election of Puerto Rico's governor, until then appointed by the President of the United States as stipulated in the Jones Act, (see Lluch Aguilú 2018: 293; United States Congress 1917: 955). Three years later, in 1950, the U.S. Congress passed Public Law 600, which outlined and set in motion the process of writing and approving a constitution for Puerto Rico; it also included provisions that became the Federal Relations Act, which now upholds the relationship between Puerto Rico and the federal government (as opposed to local government within Puerto Rico) that had been established by the Foraker Act of 1900

and the Jones Act of 1917 (see Garrett 07.06.2011: 11; Lluch Aguilú 2018: 293; Malavet 2000: 33). Pursuant to Public Law 600, Puerto Ricans elected representatives to a Constitutional Convention, those representatives drafted a constitution and submitted it first to the Puerto Rican people and, upon their approval, to the U.S. Congress, Congress reviewed, amended and approved it, the Puerto Rican Constitutional Convention accepted the amendments and the people of Puerto Rico finally ratified the Constitution by popular vote; thus the Constitution of Puerto Rico went into effect on July 25th, 1952, creating the Commonwealth of Puerto Rico or Estado Libre Asociado (ELA) de Puerto Rico (see Malavet 2000: 33-36; Garrett 07.06.2011: 9-10).

> [T]he timing of Public Law 600's enactment suggests that Congress intended it to work a significant change in the nature of Puerto Rico's political status […] In 1945 the United States, when signing the United Nations Charter, promised change. It told the world that it would "develop self-government" in its Territories (US *Sanchez Valle*: Breyer 6),

and between 1946 and 1953, the United States submitted annual reports to the United Nations on its non-self-governing territories and their progress toward decolonization and self-governance (see Garrett 07.06.2011: 11). The wording of statements such as Public Law 600's declaration "[t]hat, fully recognizing the principle of government by consent, this Act is now adopted in the nature of a compact so that the people of Puerto Rico may organize a government pursuant to a constitution of their own adoption" (United States Congress 1950: 319) and the Puerto Rican Constitutional Convention's explanatory resolution stating that, by drafting a constitution, "we attain the goal of complete self-government, the last vestiges of colonialism having disappeared in the principle of Compact, and we enter into an era of new developments in democratic civilization" (United States Congress, Senate 1959: 103) allowed the United States to declare Puerto Rico's self-governance to the United Nations in 1953, persuading the UN to remove Puerto Rico from the list of remaining colonized territories and to cease requiring annual reports on its status from the United States (see Malavet 2004: 44-45; *The Atlantic* 10.06.2016). However, "it is recognized today that Commonwealth—at least in its 1950s form—is not a permanent solution to the status question. Decolonization of Puerto Rico remains a work in progress" (Aleinikoff 1994: 15) because becoming a "Commonwealth" did not actually change Puerto Rico's territorial status (see Saavedra Gutiérrez 2011: 976); the designation itself, chosen by the Constitutional Convention as the English equivalent of Estado Libre Asociado (a more literal translation would be "free associated state") is a misnomer because, "[t]o the extent that this term was intended to suggest a relationship similar to that of the Commonwealth of Virginia or the Commonwealth of Massachusetts, the legal reality of Puerto Rico's continued territorial status makes

it incorrect as applied to the island" (Malavet 2004: 43; to avoid confusion, for the remainder of this thesis the term "Commonwealth" denotes the sort of Commonwealth that Puerto Rico is, not the sort that Virginia or Massachusetts are, unless otherwise specified). Far from settling the issue of political status, Puerto Rico's new Constitution simply gave their continued colonial status a new name (see Jiménez 2015: 287).

The post-WWII rejection of colonialism and resulting reevaluation of legitimate governance of territories that led to Puerto Rico being allowed to adopt its own Constitution also called into question the attitudes toward territorial acquisition and governance expressed in the early Insular Cases (see Neuman 2001: 185); in particular, "the frank racism and enthusiastic colonialism that formed part of the explicit justification of the *Insular Cases* could no longer be maintained in the postwar environment" (Neuman 2001: 189). Beginning in the lower courts and eventually reaching the U.S. Supreme Court, the opinions expressed in various cases in the latter half of the 20th century often either went to great lengths to avoid using Insular Case doctrine or explicitly condemned that doctrine as antiquated and in need of review (see Saavedra Gutiérrez 2011: 977), and as unpersuasive, unconstitutional, a departure from previous Supreme Court decisions regarding the application of the Constitution to territories, and a subversion of the system of checks and balances established by the Constitution (see Brief for Scholars of Constitutional Law et. al. at 15-17, Tuaua v. United States (2016)). The first U.S. Supreme Court case to question the Insular Case doctrine was *Reid v. Covert* in 1957, in which the Court found that the Insular Cases not only did not apply to the case in question, but also

> it is our judgment that neither the [Insular Cases] nor their reasoning should be given any further expansion. The concept that the Bill of Rights and other constitutional protections against arbitrary government are inoperative when they become inconvenient or when expediency dictates otherwise is a very dangerous doctrine and, if allowed to flourish, would destroy the benefit of a written Constitution and undermine the basis of our Government. (*Reid v. Covert* 354 U.S. (1957): 14)

Justice William Brennan's concurring opinion in *Torres v. Puerto Rico* in 1979 quoted that same passage from *Reid v. Covert* and added that

> [w]hatever the validity of the old cases such as *Downes v. Bidwell*, *Dorr v. United States*, and *Balzac v. Porto Rico*, in the particular historical context in which they were decided, those cases are clearly not authority for questioning the application of the Fourth Amendment—or any other provision of the Bill of Rights—to the Commonwealth of Puerto Rico in the 1970's. (*Torres v. Puerto Rico* 442 U.S. (1979): 475-476)

The following year, *Harris v. Rosario* was taken to the Supreme Court specifically as an opportunity to revoke the Insular Case doctrine (see Saavedra Gutiérrez 2011: 979-980). However, the Supreme Court chose not to hear oral arguments, instead opting for a summary decision that angered Justice Thurgood Marshall, who in his dissenting opinion

pointed out that at least four of the Court's nine Justices believed that the entire Bill of Rights applied to Puerto Rico, but that

> the Court suggests today, without benefit of briefing or argument, that Congress needs only a rational basis to support less beneficial treatment for Puerto Rico, and the citizens residing there, than is provided to the States and citizens residing in the States. Heightened scrutiny under the equal protection component of the Fifth Amendment, the Court concludes, is simply unavailable to protect Puerto Rico or the citizens who reside there from discriminatory legislation, as long as Congress acts pursuant to the Territory Clause. Such a proposition surely warrants the full attention of this Court before it is made part of our constitutional jurisprudence. (*Harris v. Rosario* 446 U.S. (1980): 654)

But a slim majority of the Court was unwilling to face the constitutional avalanche that would follow the reversal of the Insular Cases (see Saavedra Gutiérrez 2011: 980), and thus their doctrine has merely been subtly modified over the decades, never overruled (see Neuman 2001: 185). So despite the above demurs and despite Puerto Rico having nominally become a self-governing Commonwealth in 1952, the U.S. Supreme Court has continued to consider Puerto Rico an unincorporated territory subject to the Territorial Clause of the U.S. Constitution and therefore to the almost unlimited power of Congress (see Malavet 2004: 46). In 2008, the U.S. Supreme Court case *Boumediene v. Bush* cited and reaffirmed the Insular Cases and applauded that,

> noting the inherent practical difficulties of enforcing all constitutional provisions "always and everywhere," the Court devised in the Insular Cases a doctrine that allowed it to use its power sparingly and where it would be most needed. This century-old doctrine informs our analysis in the present matter. (*Boumediene v. Bush* 553 U.S. (2008): 759)

In Puerto Rico, meanwhile, the federal courts have acted on the belief that the Constitution of 1952 did change Puerto Rico's status and relationship with the United States, giving the former unincorporated territory the same level of sovereignty as any State in matters not controlled by the U.S. Constitution and leaving it no longer subject to the plenary powers of Congress (see PR *Sánchez Valle*: Fiol 59, 64-65); a 2008 decision of the United States District Court for the District of Puerto Rico (Puerto Rico's highest federal court) was particularly clear, setting aside the requirement established in *Balzac v. Porto Rico* (1922) that incorporation be an explicit step taken by Congress and holding that "[a]ctions speak louder than words. Although 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" (*Consejo de Salud Playa de Ponce v. Rullan* 586 F. Supp. 2d 22 D.P.R. (2008): 26). However, none of the three branches of the federal government has yet acknowledged the District Court's argument (see *The Atlantic* 27.04.2016).

With *Pueblo v. Sánchez Valle* and *Puerto Rico v. Sanchez Valle*, the legal and politi-

cal relationship between Puerto Rico and the federal government once again came into question, and the decision of the Puerto Rico Supreme Court and subsequent concurrence of the United States Supreme Court "is the most definitive and authoritative statement on the nature of the ELA in recent times" (Lluch Aguilú 2018: 295). In September of 2008, Puerto Rican prosecutors charged Luis M. Sánchez del Valle and Jaime Gómez Vázquez separately for violating the Puerto Rico Arms Act of 2000; subsequently, both defendants were indicted by federal grand juries for violating similar federal statutes regarding weapons trafficking in interstate commerce. Each defendant filed a motion to dismiss the charges in the Commonwealth court on the grounds that they had already been tried and charged in the federal District Court for the same offenses and that both the U.S. Constitution (see U.S. Const., amend. V) and the Puerto Rican Constitution (see Constitution of the Commonwealth of Puerto Rico, art. II, §11) protected against double jeopardy and thus precluded a second trial for the same offense (see PR *Sánchez Valle*: Martínez 2-5; US *Sanchez Valle*: Syllabus 1). Though the double jeopardy protections ordinarily prohibit successive prosecutions of the same person for the same offense, exceptions have been made under the dual-sovereignty doctrine, which states that separate sovereigns may successively prosecute such a defendant, for if the offense violates the laws of each sovereign then it constitutes separate triable offenses against each (see US *Sanchez Valle*: Kagan 1, 6). Under this doctrine, the United States contains multiple separate sovereigns: the individual States are separate sovereigns both from the federal government and from each other, and Native American tribes also have separate sovereignty from the federal government (see Lluch Aguilú 2018: 295; *Harvard Law Review* 2016: 350). Under this doctrine, the term "sovereign" does not have its usual meaning, but rather dual sovereignty is determined by the question of the "ultimate source" of the entities' power to prosecute: if their prosecutorial power originates from the same source, then they are the same sovereign and may not each separately prosecute someone for the same offense (see US *Sanchez Valle*: Kagan 1). Thus the central question in the cases of Sánchez Valle and Gómez Vázquez (which were combined by the Court of Appeals because they dealt with the same question) was whether Puerto Rico and the U.S. federal government are separate sovereigns that may each successively prosecute the two defendants for the same offense. The Puerto Rico Supreme Court had ruled in 1988 that Puerto Rico's Constitution was not simply another Organic Act like the Foraker and Jones Acts before it, but had in fact changed the relationship between Puerto Rico and the federal government so that Puerto Rico's power to adopt and enact its own laws was no longer derived solely from the U.S. Congress, but also from the people of Puerto Rico, and that Puerto Rico

was therefore now a separate sovereign from the federal government and the double jeopardy protections no longer prohibited the two sovereigns from successively prosecuting someone for the same offense (see *Pueblo v. Castro García* 120 D.P.R. (1988): 776-781). Nevertheless, in *Pueblo v. Sánchez Valle* the Puerto Rico Supreme Court overruled that precedent and found that the "ultimate source" of Puerto Rico's prosecutorial power was still the United States Congress and that Puerto Rico and the federal government were therefore not separate sovereigns, a decision upheld by the U.S. Supreme Court in *Puerto Rico v. Sanchez Valle* (see US *Sanchez Valle*: Kagan 17-18; *Harvard Law Review* 2016: 349). This "is a landmark in considering just what Puerto Rico is, in a legal and political sense" (*The Atlantic* 10.06.2016), for it "is a veritable reassertion of the subordinate nature of the ELA, absolutely subject to the Territorial Clause of the U.S. Constitution" (Lluch Aguilú 2018: 296). Though Commonwealth status gave Puerto Rico sovereignty over internal affairs and though its level of autonomy has often been compared to that of the States and the U.S. Supreme Court has treated the ELA as a State on various occasions (see PR *Sánchez Valle*: Martínez 61 for a list of such cases), this ruling reaffirms that Puerto Rico is still in many ways a colony, dependent on Congress and governed by a different set of rules than apply to the States, thus undermining the United Nations declaration of 1953 that Puerto Rico was no longer a colonized territory (see *The Atlantic* 10.06.2016).

The intention of this analysis, however, is not to determine how much the relationship between Puerto Rico and the rest of the United States has changed legally and politically, but rather whether the corresponding discourse has changed over the last century. While Puerto Rico's political and legal relationship to the federal government remained essentially the same with the ratification of Puerto Rico's Constitution and adoption of the designation Commonwealth or ELA, the government of local affairs did undergo some dramatic changes, and the social dynamic between the two entities may have done so as well. Jorge Duany (2000) contends that increased migration between Puerto Rico and the rest of the United States has undermined all of the traditional categories by which the island and the mainland used to be distinguished in discourse, including those categories seen in the analyses of *Balzac v. Porto Rico* (1922) and *Insularismo* (1934) in the preceding sections. The dichotomy propounded by Pedreira's *Insularismo* and its contemporaries and successors, artificially separating the English-speaking, Protestant, Anglo-Saxon, continental, modern United States from the Spanish-speaking, Catholic, Hispanic, insular, traditional Puerto Rico, "no longer exists in Puerto Rico, if it ever did anywhere" (Duany 2000: 10).

> In short, Puerto Rico is a nation on the move. Its cultural identity is not legally defined by citizenship, since all Puerto Ricans are U.S. citizens by birth. Its geographic frontiers span two clearly bounded territories—the Island and the mainland—for there are no formal barriers to travel or trade between both places. Spanish is no longer an exclusive identity marker because many Puerto Ricans now speak English as their first language and most are bilingual to some degree. Yet contemporary Puerto Rican culture flourishes along the porous borders of political, geographic, and linguistic categories long taken as the essence of national identity. If anything is clear at this juncture, it is that such categories can no longer capture the permeable and elastic boundaries of the Puerto Rican nation. (Duany 2000: 23)

According to Carolina Sancholuz (1997: 11), such social changes led to an evolution of the previously exclusionary and homogenizing nationalist discourse in Puerto Rico in the 1960s and '70s, when various groups broke from the traditional manner of expression and began using more inclusive discourse that reflected society's heterogeneity, disrupted established hierarchies and restructured traditions and the nationalist literary canon. The following analysis seeks to determine whether legal and political discourse in the Puerto Rico and United States Supreme Courts has also come to reflect these practical changes in the relationship between the island and the mainland.

As noted above, the U.S. Supreme Court's endorsement of the Insular Case doctrine and its application to Puerto Rico, which peaked with *Balzac*'s unanimous decision, has since waned and fragmented, and the initially widely accepted conclusions reached by the authors of the *generación del treinta* in Puerto Rico have since been questioned and challenged. Neither *Pueblo v. Sánchez Valle* nor *Puerto Rico v. Sanchez Valle* was a unanimous decision; the first consists of the opinion of the Court, a concurring opinion and a dissenting opinion, while the second is made up of the opinion of the Court, two concurring opinions and one dissenting opinion. In the interest of space and time, this analysis will focus on the two opinions of the Courts, delivered by Justice Rafael Martínez Torres and Justice Elena Kagan, respectively, though the concurring and dissenting opinions will also be taken into account.

4.3.1. "Incorporation" and other designations

The nature of the relationship between the United States and its island territories was instituted and molded by the series of Insular Cases in the early decades of the 20th century. Pedreira recognized that Puerto Rico's stability and prospects were dependent upon clarification of *Downes v. Bidwell*'s (1901) ambiguous determination that the territory belonged to the United States without being part of it (see *Insularismo*: 100; *Downes v. Bidwell* 182 U.S. (1901): 287), and the incorporation doctrine established in *Downes* was eventually unanimously accepted in *Balzac v. Porto Rico* (1922), in which Taft further re-

fined that doctrine to specifically distinguish the territories acquired during the Spanish-American War from the rest of the United States' territories, subsuming various other less constitutionally justifiable distinctions (such as geography, distance and language) under the doctrine's purview (see Section 4.1.1). Since the U.S. Supreme Court still adheres to the precedent set by the Insular Cases, it stands to reason that any case involving aspects of the relationship between Puerto Rico and the federal government—such as determining the extent to which the 5th Amendment to the U.S. Constitution or the dual-sovereignty exception to that Amendment apply to Puerto Rico—would involve an evaluation of Puerto Rico's territorial status, that is, whether the island is still a territory and if so, incorporated or unincorporated? However, analysis of the two *Sánchez Valle* Supreme Court opinions shows that incorporation is no longer the main distinguishing factor used to justify different treatment of Puerto Rico. The Puerto Rico Supreme Court does still cover the Insular Cases and specifically the incorporation doctrine in *Pueblo v. Sánchez Valle*, with Martínez dedicating an entire section of the opinion of the Court (namely part V, section A, "Puerto Rico and the territorial clause of the Constitution of the United States" (PR *Sánchez Valle*: Martínez 33 ES/33a EN)) to examining U.S. Supreme Court cases related to Puerto Rico's status, from the initial batch of Insular Cases in 1901—with special emphasis on *Downes*' conclusion that Puerto Rico belonged to but was not part of the United States and Justice White's initial exposition of the incorporation doctrine—through *Balzac*'s conclusion that a grant of citizenship did not necessarily mean incorporation, to more recent cases like *Boumediene v. Bush* (2008) that uphold the doctrine established in the original Insular Cases (see PR *Sánchez Valle*: Martínez 33-40). A later section of *Pueblo v. Sánchez Valle* (part V, section C, "Judicial interpretation of the relationship between the Commonwealth of Puerto Rico and the federal government" (PR *Sánchez Valle*: Martínez 45 ES/46a EN)) continues this examination of U.S. Supreme Court cases, this time to see if Puerto Rico's becoming a Commonwealth changed its political relationship to the federal government and concluding that, in the eyes of the U.S. Supreme Court, it did not (see PR *Sánchez Valle*: Martínez 45-57). Both of these sections of *Pueblo v. Sánchez Valle* broach the subject of the Insular Cases and specifically the incorporation doctrine, acknowledging that they are still in force and thus must be taken into account in answering the questions Martínez wishes to resolve, but the last paragraph of part V, section A also references "the criticism of [the incorporation doctrine's] disdainful and contemptuous tone towards the inhabitants of the territories, and of the obsolescence of much of the holdings of the Insular Cases" (PR *Sánchez Valle*: Martínez 40 ES/40a EN) and quotes two articles on the Insular Cases, both of which indicate

that their doctrine is outdated and in need of reexamination (see PR *Sánchez Valle*: Martínez 40-41 ES/40a-41a EN), while part V, section C ends with a paragraph pointing out that even some U.S. Supreme Court Justices have called for review and revision of the Insular Case doctrine, quoting specific examples from *Harris v. Rosario* (1980) and *Torres v. Puerto Rico* (1979) that explicitly question the continued validity of the Insular Cases (see PR *Sánchez Valle*: Martínez 56-57). Thus, though Martínez does include the Insular Cases and the incorporation doctrine in his deliberations about Puerto Rico's current status because (unless the U.S. Supreme Court overrules them) they are still good law and thus cannot be ignored (see Malavet 2008: 141), he does not heedlessly perpetuate the more discriminatory elements of their discourse by blindly accepting them or leaving their validity unquestioned. Additionally, one of his footnotes entirely dismisses the relevance of the incorporation doctrine in questions of double jeopardy and the dual-sovereignty doctrine, for

> [t]he difference between an incorporated territory and an unincorporated territory is inconsequential for the analysis that must be done in this case. The caselaw of the U.S. Supreme Court, by concluding that territories derive their authority from the same sovereign as the United States, does not make that distinction. (PR *Sánchez Valle*: Martínez 53 ES, footnote 20/55a EN, footnote 20)

Indeed, once *Puerto Rico v. Sanchez Valle* reached the United States Supreme Court, neither the Insular Cases (as a group or individually, with the exception of *Grafton v. United States* (1907), a case that did not involve the question of incorporation) nor specifically the incorporation doctrine were even mentioned in the opinion of the Court (nor, for that matter, in the two concurring opinions or the dissenting opinion). While the decision in *Puerto Rico v. Sanchez Valle* is "a ruling which reaffirms the so-called 'Insular Cases'" (*The Atlantic* 10.06.2016) and is recognizably their direct descendent, the opinion text does not explicitly acknowledge that ancestry and finds other justification for the conclusions reached. It would appear that the distinction between incorporated and unincorporated territories is no longer assigned as much importance as it was in the early 20th century, for Martínez brings it up but then criticizes and ultimately dismisses it, and Kagan does not mention it at all.

Instead, the principal manner of distinction has shifted to such terms as "territory" alone—that is, whether Puerto Rico is still a territory subject to the Territorial Clause of the U.S. Constitution and thus to the plenary powers of Congress even after becoming a Commonwealth (see e.g. PR *Sánchez Valle*: Martínez 43, 45, 49; US *Sanchez Valle*: Kagan 16), and whether territories could or should be treated as States (see e.g. PR *Sánchez Valle*: Martínez 1, 32, 46-47, 60-61; US *Sanchez Valle*: Kagan 2, 11, 13, 14). Both the Puerto Rico Supreme Court (see PR *Sánchez Valle*: Martínez 60-61) and the United States Supreme Court (see US *Sanchez Valle*: Kagan 13) point out that Puerto Rico often has been treated as

a State, both by Congress and by the U.S. Supreme Court—increasingly so since becoming a Commonwealth, but even before that "[t]he aim of the Foraker Act and the Organic [Jones] Act was to give Puerto Rico full power of local self-determination with an autonomy similar to that of the states and incorporated territories" (PR *Sánchez Valle*: Martínez 61-62, quoting Puerto *Rico v. Shell Co.* 302 U.S. (1937): 261-262), with the Foraker Act allowing Puerto Rico's legislature to enact local laws similarly to the way the States do and the Jones Act making that legislature entirely popularly elected (see US *Sanchez Valle*: Kagan 2-3). Both Justices agree that "Puerto Rico has thus not become a State in the federal Union like the 48 States [as of 1953], but it would seem to have become a State within a common and accepted meaning of the word" (PR *Sánchez Valle*: Martínez 47, quoting *Mora v. Mejías* 206 F.2d 377 (1st Cir. 1953): 387) and that this "made Puerto Rico 'sovereign' in one commonly understood sense of that term" (US *Sanchez Valle*: Kagan 13), as the States are. Thus, in that commonly understood sense of the term "sovereignty," it would seem that Puerto Rico is practically indistinguishable from a State in everything but name; however, that is not the definition of "sovereignty" that matters under the dual-sovereignty doctrine and therefore that finding does not resolve the questions of this case, so neither Martínez nor Kagan concludes the investigation there. Both *Sánchez Valle* opinions (see PR *Sánchez Valle*: Martínez 15-28; US *Sanchez Valle*: Kagan 8-11) include a brief history of U.S. Supreme Court decisions regarding the dual-sovereignty doctrine as it has been applied to the States, Native American tribes, Washington D.C. and municipalities over the years, in order to examine the reasons behind its application or inapplicability, then compare territories to those other political entities and determine to what extent the dual-sovereignty doctrine has applied to the territories and specifically to Puerto Rico during that time, if at all. Then, in order to determine whether and to what extent Commonwealth status changed Puerto Rico's sovereignty, both opinions also examine the process by which Puerto Rico wrote its Constitution and became a Commonwealth (see PR *Sánchez Valle*: Martínez 41-45; US *Sanchez Valle*: Kagan 3-4, 12-13, 15-17). While both come to the conclusion that Puerto Rico is clearly still a territory and subject to the Territorial Clause of the U.S. Constitution (see PR *Sánchez Valle*: Martínez 45; US *Sanchez Valle*: Kagan 16), Martínez goes on to specify that the processes for becoming a State or becoming a Commonwealth are practically identical until a certain point when Congress must decide whether to accept the territory as a new State; if Congress does not accept it, the territory remains a territory (albeit one with a Constitution of its own composition rather than one imposed by Congress, which is the essential difference between the usual territorial relationship and that between a Commonwealth and the

federal government; see PR *Sánchez Valle*: Martínez 48-49). That is where the type of "sovereignty" relevant to the Double Jeopardy Clause and its dual-sovereignty exception comes into play: to determine if two entities are separate sovereigns, the U.S. Supreme Court has developed a test that involves tracing the entities' prosecutorial authority back to its "ultimate source", and if they share that source, they are a single sovereign, while separate ultimate sources mean separate sovereigns (see US *Sanchez Valle*: Kagan 7). Because the original thirteen colonies that first constituted the United States preceded Congress and had original or inherent sovereignty (only some of which they then delegated to Congress upon forming the Union), and because all States have equal capabilities and characteristics once they join the Union, all of the States are separate sovereigns from Congress (see US *Sanchez Valle*: Kagan 8-9); meanwhile, because territories (even Commonwealths) do not have primeval or pre-existing sovereignty and have not been accepted by Congress as States (which would confer original sovereignty upon them), they are still administered by Congress and even if they have written their own constitutions, the "ultimate source" of their power is still Congress (see US *Sanchez Valle*: Kagan 12-16). Thus, in questions of double jeopardy, what matters now is not the distinction between incorporated and unincorporated territories, nor even between territories that have become Commonwealths and those that have not written their own constitutions, but between territories of any sort and States, because the very thing that distinguishes a territory from a State is the same thing that distinguishes sovereignties under the dual-sovereignty doctrine: the "ultimate source" of their prosecutorial power.

Though the distinction between types of territories has been set aside and though both Martínez and Kagan point out that Puerto Rico's level of sovereignty is often equal to that of a State, the terminology in the two *Sánchez Valle* cases does still distinguish the territories from the rest of the United States throughout. This brings to mind Sakai's schema of cofiguration in the way that different types of political entity within the United States are compared in order to define territories and the scope of their autonomy and rights by comparing and contrasting them with the States (and, less extensively, with Native American tribes, municipalities and Washington D.C.); however, Sakai (see 1997: 15-16) uses the schema of cofiguration to explain how the perception of multiple distinct and internally homogeneous unities such as national languages came about, that is, to explain how something that is actually more of a single spectrum or continuity (e.g. language) has been discursively divided into multiple, apparently natural and pre-existing unities (e.g. national language unities). Such were the distinctions and borders that made the Puerto Rican culture

and personality unique and worthy of preservation and defense in Pedreira's discourse, and upon which Taft based his reasoning as to which territories Congress had incorporated and which it had not, treating those unities and the incorporation doctrine as given, pre-existing and fixed even as his discourse adjusted the doctrine's parameters to exclude territories exhibiting undesirable or insufficiently American attributes. The categories such as "territory," "Commonwealth" or "State" scrutinized in the *Sánchez Valle* texts, on the other hand, are political entities that neither Martínez nor Kagan perceives as naturally occurring nor necessarily internally homogeneous; rather, the man-made origins of the entities in question make up a significant part of the argumentation in both opinion texts, and both texts also recognize that they are not permanent, but rather a territory can, for example, become a State under certain circumstances.

4.3.2. Other previously important factors

If "incorporation" no longer carries the significance it did a century ago and if, as Jorge Duany (2000) contends, practical circumstances have made it increasingly difficult to maintain the bordering categories previously used to distinguish between Puerto Rico and the United States, an important question in the analysis of these final two texts is whether and to what extent the relevant discourse on either side (as far as it is still appropriate to separate the "two sides") still uses those same categories—or new ones—to uphold the discursive border between the two groups, and in answering that question, to confirm or refute Carolina Sancholuz's (1997) observation that Puerto Rican discourse has become more inclusive in the intervening decades.

4.3.2.1. The Spanish-American War

The first such category is timing and provenance. This was the factor that most effectively carved out the unincorporated territories and distinguished them from the incorporated Territories as well as from the rest of the United States in *Balzac*, for the fact of having been acquired during the Spanish-American War is the only thing that differentiates these island territories from *all* other previous or contemporary U.S. territories (see Section 4.1.1.1). Likewise, in *Insularismo* Pedreira divided Puerto Rico's timeline at the Spanish-American War and divided the two peoples according to cultural and ethnic origin, using both factors to implicitly separate the two groups and refer to them individually without the need to continuously explicitly name them (see Sections 4.2.1 and 4.2.2). To some extent, the two

Sánchez Valle cases uphold this bordering category, but to a far lesser degree than those earlier texts.

Kagan cites *Grafton v. United States* (1907) as the precedent for holding that territories do not have separate sovereignty from the federal government. In that case, she writes, "we held that the Philippine Islands (then a U. S. territory, also acquired in the Spanish-American War) could not prosecute a defendant for murder after a federal tribunal had acquitted him of the same crime" (US *Sanchez Valle*: Kagan 10-11). While the information that the Philippines was a U.S. territory at the time is a legitimate point because that is what makes it relevant here in the case of the territory of Puerto Rico, the fact that the Philippines was also acquired during the Spanish-American War is completely superfluous. There is no need for her to draw attention to the shared characteristic of provenance as if it were the main reason that the Philippines and Puerto Rico had been in the same situation, the way Taft had done to distinguish the unincorporated territories from the incorporated ones: incorporation is never mentioned in *Grafton* nor in *Puerto Rico v. Sanchez Valle*, for the point in both instances is that *no* territory (whether incorporated or not and whether acquired during the Spanish-American War or not) can prosecute someone for an offense that the federal government has already prosecuted. It is not the fact that both the Philippines and Puerto Rico were acquired from Spain during the Spanish-American War that makes a case involving the Philippines relevant to this case involving Puerto Rico, but simply the fact that both were U.S. territories. However, for the rest of *Puerto Rico v. Sanchez Valle*, Kagan refers to territories in general, or specifically to the territory of Puerto Rico but without associating it exclusively with other former Spanish colonies; thus, with the one exception, her distinctions are made between territories on the one hand and other types of political entity on the other, not between particular territories according to their provenance. While Martínez also briefly refers to all of the former Spanish colonies as one group identifiably distinct from the United States, in his case it is pertinent to the historical context, being part of his summary of the history of the Spanish-American War (when "Spain ceded the island of Puerto Rico to the United States, as well as others that were under its sovereignty in the West Indies and the Pacific"; PR *Sánchez Valle*: Martínez 33 ES/33a EN) and of the 1901 Insular Cases that covered "the constitutional validity of the acquisition of Puerto Rico and other possessions" and consisted of "several cases involving different controversies regarding the possession and administration of the new territories" (PR *Sánchez Valle*: Martínez 33-34 ES/34a EN). The consensus among scholars of those cases, he writes, is that they ruled that the U.S. Constitution applies in its entirety within the United States, but that "the

United States" is defined in this instance as the States of the Union, Washington D.C., and the incorporated Territories (see PR *Sánchez Valle*: Martínez 39), thus again assigning the unincorporated territories (i.e., those acquired during the Spanish-American War) to a different category than the rest of the country. However, Martínez's later criticism of the Insular Case doctrine (see PR *Sánchez Valle*: Martínez 40-41, 56-57) then undermines this division that those cases promoted between the United States and the "new territories" or islands that had been under Spain's sovereignty, and he ceases to distinguish them along that particular border.

It should also be noted that, unlike *Insularismo* or even *Balzac*, neither of the *Sánchez Valle* opinions covers Puerto Rico's history before the Spanish-American War beyond the fact that it had been a Spanish colony (see PR *Sánchez Valle*: Martínez 33, 63; US *Sanchez Valle*: Kagan 2, 14). Other than its status immediately before acquisition and the manner of that acquisition, the history of Puerto Rico prior to becoming a U.S. territory is irrelevant to this case because it has no effect on the territory's current relationship with its sovereign; dwelling only on Puerto Rico's and the United States' *shared* history implicitly binds the two entities together rather than drawing attention to the time when they had no association with each other. While Pedreira made multiple references to Puerto Rico's past under Spanish rule and highlighted this separate origin and history as one of the root differences between Puerto Rico and its new sovereign in *Insularismo* (see Sections 4.2.1 and 4.2.2), and while Taft pointed out that Puerto Ricans had been subjects of the Spanish crown for centuries prior to passing under U.S. sovereignty and had enjoyed the protections of the Spanish government during those centuries in *Balzac v. Porto Rico* (see *Balzac*: 308), Martínez and Kagan no longer feel a need to emphasize Puerto Rico's separate origin and history, and thus the bordering category of timing and provenance seems to have lost a great deal of importance. Instead, both of these Supreme Court opinions focus on the two entities' affiliation rather than their previous polarity. In relating how "*our* system of government" (PR *Sánchez Valle*: Martínez 12 ES/12a EN, emphasis added) was established, Martínez describes events and people active on the mainland long before the acquisition of Puerto Rico but refers to them as part of the *whole* country's history (including Puerto Rico's). Moreover, it is clear from his explanation that he expects his addressees, be they Puerto Rican or from elsewhere in the United States, to share historical background knowledge, for he uses but does not elaborate on such terms and names as "the Constitutional Convention" (PR *Sánchez Valle*: Martínez 11 ES/11a EN), "the Founding Fathers" (PR *Sánchez Valle*: Martínez 11 ES/11a EN & 13 ES/13a EN), and James Madison (see PR *Sánchez Valle*:

Martínez 12); the fact that he does not explain which constitutional convention he means, who the Founding Fathers were, or that James Madison was one of said Founding Fathers and present at said Constitutional Convention and as such is an apt source of the information regarding the balance of federal and State powers in the U.S. Constitution that Martínez quotes, shows that Martínez expects such details to be familiar to his addressees (note also that he later uses "the Constitutional Convention" to refer to the Puerto Rican one (PR *Sánchez Valle*: Martínez 43 ES/45a EN & 44 ES/46a EN), so that the only thing that distinguishes the convention that drafted the U.S. Constitution from the one that drafted the Puerto Rico Constitution in his discourse is context and his addressees' knowledge thereof). Though these people and events took place in the United States a century before Puerto Rico became a U.S. territory, the Puerto Rico Supreme Court has done away with the temporal border and distinction of provenance between the island and the mainland by treating such people and events as shared cultural property and is confident its addressees share this knowledge. This evokes John Stuart Mill's list of possible causes for a community's feeling of nationality, for "the strongest of all is identity of political antecedents; the possession of a national history, and consequent community of recollections; collective pride and humiliation, pleasure and regret, connected with the same incidents in the past" (Mill 2011: 106). The Puerto Rico Supreme Court's adoption of U.S. political antecedents that preceded the Spanish-American War as *ours* strongly indicates that, in that Court's discourse, Puerto Rico is now part of the United States—that both form one national community. This solidarity is also visible in Kagan's text, whose focus on Puerto Rico's and the United States' shared experiences and co-evolution since the Spanish-American War results in a depiction of the two entities as working together to achieve common goals. She writes for example that the United States Supreme Court applauds how, "[i]n the ensuing hundred-plus years [since the Treaty of Paris], the United States and Puerto Rico have forged a unique political relationship" (US *Sanchez Valle*: Kagan 2) and emphasizes that Puerto Rico's increased autonomy since passing their own Constitution has "brought mutual benefit to the Puerto Rican people and the entire United States" (US *Sanchez Valle*: Kagan 13). Such statements could still be interpreted to single out "the Puerto Rican people" as a separate group from "the entire United States", but unlike Taft's implications that Puerto Ricans were lesser "American citizens" than the mainland variety in *Balzac* or Pedreira's calls to defend Puerto Rican culture from the unwanted and detrimental influences of North American civilization in *Insularismo*, the emphasis now lies on the "mutual benefit" of the relationship forged by *both* entities working *together*. Thus U.S. legal discourse may still often present Puerto Rico and the

rest of the United States as two distinct entities, but the hierarchy has leveled out and each is (at least discursively) attributed an active role in their relationship. In both *Sánchez Valle* texts the Supreme Courts have ceased to emphasize Puerto Rico's and the United States' disparate origins, histories and experiences before the Spanish-American War, dwelling instead on commonalities and their postwar association.

4.3.2.2. The populace

When writing specifically about the inhabitants of the island and the mainland, both Taft's and Pedreira's discourse subtly separated those two groups and established a hierarchy between them. The *Balzac v. Porto Rico* (1922) opinion seemed far more concerned with Puerto Rico as a U.S. territory than with its people as U.S. citizens, but even upon acknowledging that that citizenship had been granted by the Jones Act five years earlier and repeatedly alluding to the benefits that that had brought the Puerto Ricans, Taft implied that their citizenship was not equal to that of mainland U.S. citizens and did not comprehend the same rights, leaving Puerto Ricans inferior to continental U.S.-Americans and sometimes even excluding them from his uses of such terms as "citizen of the United States" or "American citizens." Pedreira's intention of defining what it meant to be Puerto Rican in *Insularismo* (1934) meant that the entire book was heavily focused on Puerto Rico and its people while other peoples, cultures or countries tended to be touched on more peripherally and discussed only in terms of how they affected Puerto Rico; the essay "Intermezzo: Una nave al garete" in particular described how the Puerto Rican people and culture were suffering under the influence of the more amorphously portrayed United States (e.g. how Puerto Rican students and teachers were struggling under the United States' language and education policy; see *Insularismo*: 100-102). By discussing Puerto Rico as a human population and the United States as a faceless entity (a government, a set of policies, a language, etc.) and calling on Puerto Ricans to protect their culture and language from those detrimental invading foreign influences, Pedreira's discourse maintained a clear distinction between the two entities and gave Puerto Rican interests and concerns priority. Such bordering is significantly less pervasive in the discourse of either of the *Sánchez Valle* texts, though hints of it can still be detected. Many of those hints can be attributed to the subject matter—the point at issue is "[w]hether *two prosecuting entities* are dual sovereigns in the double jeopardy context" (US *Sanchez Valle*: Kagan 7, emphasis added), which inherently separates and distinguishes between whichever specific "two entities" are in question in any given example—and to the fact that Puerto Rico is a territory and therefore a particular type of political entity

with a particular relationship to the federal government distinct from that of other entities, so that any case centered around an aspect of that relationship will invite or even require comparison to and distinction from other types of political relationships. Indeed, both texts spend a great deal of time analyzing which political entities are separate sovereigns from the federal government (States, Native American tribes) and which are not (Washington D.C., municipalities), and establishing that territories belong to the latter category, justifying different treatment of Puerto Rico and thus different treatment of its residents. Beyond such inevitable comparisons to other political entities and their residents, inhabitants of Puerto Rico and of the mainland are no longer so starkly separated in the discourse of the *Sánchez Valle* texts as they were in early twentieth century texts, though there are exceptions.

For the majority of *Pueblo v. Sánchez Valle*, Martínez's discourse either includes the Puerto Rican population as part of the United States population or at the very least does not actively separate the two into distinct groups. For instance, he quotes a federal circuit court opinion to explain that Public Law 600 and Puerto Rico's Constitution established "a political entity created by the act and with the consent of the *people of Puerto Rico and joined in union with the United States of America* under the terms of the compact" (PR *Sánchez Valle*: Martínez 47, quoting *Mora v. Mejías* 206 F.2d 377 (1st Cir. 1953): 387, emphasis added), wording that emphasizes a newfound unity between what had been portrayed as separate and incompatible groups by Taft and Pedreira. Notable, though unsurprising, exceptions to this impression of unity in Martínez's text are the passages describing the early history of the Puerto Rico-U.S. relationship and in particular the Spanish-American War and the Insular Cases. These passages reflect not only the territory's different political circumstances, but also the corresponding attitude and discourse of the early 20th century, for example: "[a]ccording to Justice Brown [in *Downes v. Bidwell* (1901)], the power to acquire territories included the power to govern them, to establish the terms under which their inhabitants would be received and what their status would be" (PR *Sánchez Valle*: Martínez 35 ES/35a EN), which makes clear the subordinate status of inhabitants of such territories and the power of the mainland to decide when, how or even if that subordination would change. However, Martínez's emphasis on solidarity over polarity leaves such hints at Puerto Rico's subordinate status far less pervasive in *Pueblo v. Sánchez Valle* than they easily could be. As seen in the previous section, Martínez refers to historical events that preceded the U.S. acquisition of Puerto Rico as shared national history, presupposing his addressees' recognition and acceptance of such references as communal; some of the events or processes he thus references, however, do not in fact include or benefit Puerto Rico and, if portrayed from

a different angle, could easily emphasize a continued distinction between its inhabitants and those of the mainland, yet in Martínez's discourse they are praiseworthy aspects of the *whole* country's history and government. This is particularly true of his explanations of how the Founding Fathers "created a system in which there was a direct link between the people of the United States and the new national government" (PR *Sánchez Valle*: Martínez 11 ES/11a EN) and that "[t]he People of the United States granted Congress, through the Constitution, ample power to manage the territories. For this reason, Congress cannot irrevocably renounce a power that was conferred on it by the People of the United States" (PR *Sánchez Valle*: Martínez 55 ES/57a EN). As of the Jones Act's grant of citizenship in 1917 at the latest, Puerto Ricans are part of "the People of the United States" and thus seem to be included here among those who have "a direct link" to the national government and who granted power to Congress through the Constitution during the organization of "*our* system of government" (PR *Sánchez Valle*: Martínez 12 ES/12a EN, emphasis added), yet the U.S. Constitution was ratified over a century before the United States acquired Puerto Rico as a territory, and thus Puerto Rico did not participate in the grant to Congress of power over the territories that now subjects Puerto Rico to Congress and prevents its people from participating in federal elections or having voting representation in Congress, i.e. prevents them from full participation in that "direct link between the people of the United States and the national government." Martínez's explanation of U.S. federalism also disregards the territories' less advantageous situation as he celebrates how the

> system [was] conceived so that, through the balance of power between the federal government and the state governments, the most basic liberties would be protected. […] Additionally, this system promotes decentralized governments that are more attuned to the diverse needs of a heterogeneous society, increases opportunity for the people to get involved in the democratic process, allows for greater innovation and experimentations in the government, and makes the governments more responsive because they will have to compete for a mobile population. (PR *Sánchez Valle*: Martínez 13 ES/14a EN)

Though Martínez explicitly and positively recognizes here the heterogeneity of U.S. society that was disguised under the artificial homogeneity built up in Taft's and Pedreira's respective discourses, he again praises several aspects of the U.S. system of government that in reality do not benefit Puerto Rico to the same extent as the States, since the territories' exclusion from federal elections and congressional representation leaves their residents less "involved in the democratic process" than State residents, means the federal government does not have as much incentive to be "more responsive" to their needs, and excludes territorial governments from the balance of power that guarantees that "the most basic liberties would be protected."

> In a nutshell, the federal government legislates for Puerto Rico, without any form of specific consent

> from Puerto Rico's inhabitants […] Under modern US constitutional law, this means that Congress wields an enormous power over the daily lives of Puerto Ricans without any of the legitimating features of representative democracy. (Álvarez González 2009: 243)

Including such observations would call attention to a remaining distinction between territorial and State residents, but that information remains unsaid here as Martínez opts instead to highlight the parts of the U.S. system of government that do exemplify the democracy, autonomy, independence and equality that "the People of the United States" purportedly enjoy as a community. Through this omission Martínez ultimately portrays a greater unity among residents of Puerto Rico and of the States where Taft or Pedreira emphasized the differences and used them to pigeonhole the two groups.

Additionally, Martínez's text includes several references to the people of Puerto Rico as a source of political power and prosecutorial authority on the island since the ratification of the Puerto Rico Constitution in 1952—references that, though they single out Puerto Ricans from the rest of the U.S. body politic (as would be done with the population of any individual State in the same context), discursively place the people of Puerto Rico on the same level as those of the rest of the country rather than relegating them to second class citizenship as the Insular Cases had done (see Malavet 2008: 142), or portraying the two groups as fundamentally different and incompatible as Pedreira had done. For instance, in discussing a previous Puerto Rico Supreme Court case (*Pueblo v. Castro García*, 1988), Martínez points out that the two main premises upon which the decision in that case was based were that Puerto Rico had the same level of sovereignty as any State, and that Puerto Rico's political power emanates from the consent of the people of Puerto Rico according to Puerto Rico's Constitution (see PR *Sánchez Valle*: Martínez 31-32); though Martínez ultimately rejects the precedent set in that case (that the dual-sovereignty doctrine applies to Puerto Rico for those two reasons), he upholds both premises throughout his *Sánchez Valle* opinion, so that even when Puerto Ricans are singled out from the rest of the country, they appear to retain the same amount of authority and the same level of participation in the country's democratic system of government as the population of any State. Any remaining hierarchization in Martínez's discourse lies not in the references to the people of Puerto Rico and of the mainland being inherently distinct and separate, but rather has to do with the political status of the island: he makes clear that, under the dual-sovereignty doctrine, territories do not have the same rights or authority as States, but his discourse does not portray the people inhabiting those territories as foreign, alien or savage, nor the people of the

mainland as uncultured, pernicious or otherwise objectionable; in short, the incompatibility that Taft and Pedreira saw between the two groups is absent from Martínez's discourse.

Initially, Kagan's discourse in *Puerto Rico v. Sanchez Valle* seems to faintly echo Taft's focus on the land mass and its potential effects on the mainland more than on the inhabitants of Puerto Rico and their needs, rights and expectations, but that quickly changes within the first paragraph of her description of the history of the relationship between the island and the mainland. Like in Martínez's text, in Kagan's the passages less concerned with the citizens are mostly to be found in her references to the Spanish-American War, its immediate aftermath and early Supreme Court cases regarding the new territories:

> Puerto Rico became a territory of the United States in 1898, as a result of the Spanish-American War. The treaty concluding that conflict ceded the island, then a Spanish colony, to the United States, and tasked Congress with determining "[t]he civil rights and political status" of its inhabitants (US *Sanchez Valle*: Kagan 2),

and, returning to the subject later,

> Puerto Rico cannot benefit from our dual-sovereignty doctrine. For starters, no one argues that when the United States gained possession of Puerto Rico, its people possessed independent prosecutorial power, in the way that the States or tribes did upon becoming part of this country. Puerto Rico was until then a colony "under Spanish sovereignty." (US *Sanchez Valle*: Kagan 14)

In this first example, the use of descriptors and pronouns ("territory," "island," "Spanish colony" and even "it") in place of a proper noun not only highlights differences from the mainland in the same way Pedreira's discourse did—presenting multiple aspects of the Other that then stand in implicit contrast to the Self—but also reveals that the focus is mainly on Puerto Rico as a territory and former colony and how it changed ownership, while the mention of the people living there almost seems like an afterthought and reveals the ambiguity of their situation at the time; by the second example, though the point is still Puerto Rico's lack of original sovereignty first as a Spanish colony and later as a U.S. territory, and though it remains unclear whether Puerto Rico has become "part of this country" like the States or Native American tribes, it is now the inhabitants and not just the land they live on that receive attention in determining the outcome of this case.

Where Kagan diverges most obviously from Taft's tendency to gloss over the people of the territory to focus on the mainland's interests is in the descriptions of various federal acts and their effects on Puerto Rico. Much of the *Balzac* opinion was spent dissecting the Jones Act and determining whether its grant of citizenship had incorporated Puerto Rico, but the focus of that discussion was primarily on the *mainland's* view of the issue, for

> [f]ew questions have been the subject of such discussion and dispute in *our country* as the status of *our* territory acquired from Spain in 1899. The division between the *political parties* in respect to it, the diversity of the views of the members of *this Court* in regard to its constitutional aspects, and the

> constant recurrence of the subject in the *Houses of Congress fixed the attention of all on the future relation of this acquired territory to the United States*. (*Balzac*: 306, emphasis added)

He went on to reject arguments that would require the U.S. Supreme Court "not lightly to infer, from acts thus easily explained on other grounds, an intention to incorporate in the Union these distant ocean communities of a different origin and language from those of our continental people" (*Balzac*: 311), concluding that "we find no features in the Organic [Jones] Act of Porto Rico of 1917 from which we can infer the purpose of Congress to incorporate Porto Rico into the United States with the consequences which would follow" (*Balzac*: 313). Even when Taft did specifically write about how the inhabitants of Puerto Rico had been affected by the Jones Act, it was clear that he considered them a separate class of citizen from those on the mainland, as when he explained that the Act "enabled them to *move to 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" (*Balzac*: 308, emphasis added). In *Puerto Rico v. Sanchez Valle*, meanwhile, Kagan rarely mentions any relevant federal act without specifically mentioning the Puerto Ricans and what effect said act had on them. The Foraker Act of 1900 set up a civil government for Puerto Rico that was mostly appointed by the U.S. President, but "*the Puerto Rican people* elected the lower house [of the legislature] themselves" (US *Sanchez Valle*: Kagan 2, emphasis added); the Jones Act, "in addition to giving *the island's inhabitants* U.S. citizenship, replaced the upper house of the legislature with a *popularly elected* senate" (US *Sanchez Valle*: Kagan 2-3, emphasis added); the Elective Governor Act of 1947 "empowered *the Puerto Rican people* to elect their own governor" (US *Sanchez Valle*: Kagan 3, emphasis added); and in 1950 "Congress enabled Puerto Rico to embark on the project of constitutional self-governance […and] authorized *the island's people* to 'organize a government pursuant to a constitution of their own adoption'" in a statute that "submitted its own terms to an up-or-down referendum of *Puerto Rico's voters*" (US *Sanchez Valle*: Kagan 3, emphasis added). While such statements necessarily refer to Puerto Ricans as a distinct, enclosed group—as cannot be avoided when discussing such cases and acts that apply specifically to Puerto Rico—the clear hierarchy present in Taft's discourse that placed mainland residents above Puerto Ricans and championed mainland interests while ignoring the potential needs or concerns of the island population is not to be found in Kagan's discourse here. The U.S. Supreme Court now takes into account the effects that federal acts have had or may have on the territory's population rather than weighing only the potential benefits to the mainland in its decisions and interpretation of constitutional rights. This concern with the effects of

legislation on the people is one of the points brought up in the *Harvard Law Review*'s analysis of *Puerto Rico v. Sanchez Valle*, in which Kagan's apparent "great reluctance" (*Harvard Law Review* 2016: 347) to apply the "dual-sovereignty carve-out from the Double Jeopardy Clause" (US *Sanchez Valle*: Kagan 5-6) is attributed to her recognition of

> how the formalist-grounded dual-sovereignty doctrine denies the Constitution's promise of democratic self-rule in its focus on classifications of political entities over the people who created them. If indeed "the People" control their government and not vice versa, then *Sanchez Valle* results in nothing short of a figurative coup, consigning Puerto Rico's sovereignty to the whims of the very Congress "ordain[ed] and establish[ed]" by their power and in their name. (*Harvard Law Review* 2016: 352)

Thus the precedent that Kagan feels bound to follow—despite her express concern that "[f]or whatever reason, the test we have devised to decide whether two governments are distinct for double jeopardy purposes overtly disregards common indicia of sovereignty" (US *Sanchez Valle*: Kagan 6)—requires the definition and examination of the type of political entities in question and their relationship with each other, virtually ignoring the people involved, but her discourse reveals that she still has those people and their rights and needs in mind. The continued discursive separation of the various entities—territories vs. States, Puerto Rico vs. the federal government, etc.—results from the requirements of the legal system of which this text is part, but the discrimination against the Other and resistance to interaction or interchange between the groups found in both Taft's and Pedreira's texts nearly a century ago have given way to a recognition that the two groups' members are equally qualified citizens and that the Court's decision must therefore take all into account, not just one side. In the discourse of both *Sánchez Valle* opinions, the remaining differences and hierarchy portrayed between Puerto Rico and the rest of the country are due now solely to the territory's political status rather than having any basis in perceived inherent incompatibility of their residents.

4.3.2.3. Geography, distance & space

Another category upon which both Taft and Pedreira relied heavily in establishing a border between Puerto Rico and the rest of the United States is that of geography, distance and space. *Insularismo* was more general about it, indicating that Puerto Rico's small size and geographic isolation cut it off from most outside influence (whether that of the rest of Latin America, North America, Europe or specifically Spain while Puerto Rico was still a Spanish colony) and thus formed the inhabitants' character (see Section 4.2.6). Meanwhile in *Balzac*, despite announcing the U.S. Supreme Court's decision in a case regarding the constitutional rights of citizens in Puerto Rico, Taft's discourse focused disproportionately on the geographical aspects of the island and the related benefits or disadvantages they pre-

sented to the United States, thus relegating the *people* of the territory to a secondary position, not to mention ignoring that all of his geography-related complaints regarding Puerto Rico were also true of the incorporated Territory of Hawaii and therefore fell short of substantiating Puerto Rico's nonincorporation (see Section 4.1.1.2). Still, in both texts the apparent naturalness and lack of ambiguity of geographical borders made this distinction seem obvious and objective. However, borders, even those along apparently obvious geographical lines such as the shore of an island or continent, are always man-made and subjective (see Sakai 2012: 348), and the discourse of both the Puerto Rico and United States Supreme Courts has all but dropped references to geographical features as a distinguishing factor between the two entities. Instead, such distinctions are now due to political status rather than geographic location or characteristics, and it is because Puerto Rico is a territory—not because it is a "distant ocean communit[y] of a different origin and language from those of our continental people" (*Balzac*: 311*)*—that Congress may have legitimate "grounds for […] unequal treatment of Puerto Rico" (PR *Sánchez Valle*: Martínez 53 ES/55a EN) and "may treat Puerto Rico differently from States so long as there is a rational basis for its actions" (PR *Sánchez Valle*: Martínez 53 ES/55a-56a EN, quoting *Harris v. Rosario* 446 U.S. (1980): 652). Indeed, because references to geographical distance and difference have largely given way to examinations of political status in determining a political entity's rights, many of the remaining apparent geographical references—namely comparisons and associations of Puerto Rico with other U.S. island territories such as the Philippines (see US *Sanchez Valle*: Kagan 10-11), the other islands in the West Indies and the Pacific ceded by Spain in the Treaty of Paris (see PR *Sánchez Valle*: Martínez 33), the Commonwealth of the Northern Mariana Islands (see PR *Sánchez Valle*: Martínez 26-27, 47-48), the U.S. Virgin Islands (see PR *Sánchez Valle*: Martínez 26) and Guam (see PR *Sánchez Valle*: Martínez 27)—are coincidental, due not to geographic similarity but to comparable political status: all of those island territories were or are in a similar situation to Puerto Rico's in relation to the rest of the country at the time of comparison. Beyond that, the only remaining geographical reference is also the most ubiquitous: the repeated use of "the island" as a synonym for Puerto Rico.

Both *Balzac* and *Insularismo* used that synonym as well, but referring to Puerto Rico as "the island" seemed to have more negative connotations then than now. Considering Taft's portrayal of Puerto Rico as prohibitively distant and isolated and thus an unreasonable candidate for settlement by Americans, let alone for incorporation, his repeated references to "the island" serve as a subtle reminder of that distance and isolation—particularly when one

takes into account that four of his five uses of the synonym associate it directly with the discussion of whether Puerto Rico had been incorporated (see *Balzac*: 305, 306, 307, 311). Meanwhile, the very title of *Insularismo* emphasizes Puerto Rico's geographical isolation and insularity (see Duany 2000: 11) and any mentions of "the island" within the book inevitably echo that sense of confinement and limitation—for example, Pedreira's observation that due to progress in communication technology and the decreasing availability of space and time under U.S. sovereignty, "it seems as though the island has shrunk"[39] (*Insularismo*: 107), or his own association of the synonym with political status, asking "[w]hat will the island's definitive status be?"[40] (*Insularismo*: 100). Without the rest of the geographical argumentation bordering between the two entities, references to "the island" in the *Sánchez Valle* opinions lose Pedreira's isolationist connotations and cease to represent an insurmountable geographical obstacle to settlement or incorporation as they did for Taft, becoming little more than an alternative way of referring to Puerto Rico. Indeed, Martínez only directly refers to Puerto Rico as "the Island" twice in his opinion, once in a sentence that already contains "Puerto Ricans" and would thus be repetitive if he wrote "Puerto Rico" instead (see PR *Sánchez Valle*: Martínez 49-50 ES/51a EN), and once as "the island of Puerto Rico" in describing the terms of the Treat of Paris (PR *Sánchez Valle*: Martínez 33 ES/33a EN; all of his other uses of "the island" are contained in quotes from other texts, all of which likewise use it to avoid repetition or as part of the single term "the Island of Puerto Rico"), and Kagan alternates evenly between "the island" and "Puerto Rico" and thus avoids repetition of one term or the other within sentences or in consecutive sentences. None of this is to say that using these terms does not distinguish at all between Puerto Rico and the rest of the country, for any term used to refer to something (whether it be a common or proper noun, whether "the island" or indeed "Puerto Rico") singles it out from everything else according to a discursive category that has been determined to be an important distinction worth articulating. However, in the *Sánchez Valle* opinions, just as in the present analysis, it has to be possible to refer to Puerto Rico and the rest of the United States individually in order to explore their relationship with each other and its evolution over the last century. Both *Sánchez Valle* opinions find that Puerto Rico's Constitution was "designed to replace the *federal statute* that then structured *the island's governance*" (US *Sanchez Valle*: Kagan 13, emphasis added), that through that Constitution

[39] Original: "Tal parece como si la isla se hubiera empequeñecido."
[40] Original: "¿Cuál ha de ser el status definitivo de la isla?"

> *Congress* delegated to *Puerto Ricans* the power to manage *the government of the Island* and *its own internal affairs*, subject to the will of the people. In that sense, the *People of Puerto Rico* is a sovereign only for purposes of local matters that are not governed by the *Constitution of the United States* (PR *Sánchez Valle*: Martínez 49-50 ES/51a EN, emphasis added),

that "[t]hat makes *Congress* the original source of power for *Puerto Rico's prosecutors*—as it is for *the Federal Government's*. The *island's Constitution*, significant though it is, does not break the chain" (US *Sanchez Valle*: Kagan 16, emphasis added), and that the dual-sovereignty doctrine therefore does not apply and "the Double Jeopardy Clause bars *the Federal Government* and *Puerto Rico* from successively prosecuting a defendant on like charges for the same conduct" (US *Sanchez Valle*: Kagan 5, emphasis added), all of which is impossible to articulate without separate sets of terms for "federal," "Congress," "the Federal Government" and "the Constitution of the United States" as opposed to "the island," "Puerto Rico," "the People of Puerto Rico" and "the island's Constitution." Yet as a simple synonym for "Puerto Rico," "the island" seems to have largely lost the negative and discriminatory connotations that it carried when geography, distance and space were still such important factors in the discursive establishment of Puerto Rico and the United States as separate, incompatible, hierarchically ranked entities naturally isolated from each other.

4.3.2.4. Race & ethnicity

As seen in Sections 4.1.1.4 and 4.2.7, the first two texts analyzed for this thesis did not directly reference race among the distinguishing factors expected to make coexistence of Puerto Rico and the rest of the United States so difficult, but the topic was still indirectly present. Taft's *Balzac* opinion references and upholds previous Insular Cases that did explicitly highlight racial differences and whose decisions "help to illustrate how the Court's logic, steeped in white supremacist and racist ideas of the inferiority of afro-descended and mixed race peoples, engaged in much legal gymnastics in order to maintain spaces of exclusion for racial others" (Jiménez 2015: 46-47), given that "this racist rhetoric would become a significant component of the mantra running throughout these [Insular C]ases and their progeny" (Torruella 2007: 294). Meanwhile, though the chapter of *Insularismo* analyzed for this thesis does not cover race, Pedreira does dedicate one entire chapter of the book to the subject and brings it up in various other chapters, so that the subject is on the mind of the reader even if not explicitly discussed in the chapter "Intermezzo: Una nave al garete." By the time the concept of race lost its scientific foundation after the Second World War (see Miles 1999: 51), it had already been established through discourse and is still widely used in everyday language and sometimes legitimized by legal language as well (see Miles 1999:

52); however, today, the concept of 'race' has acquired negative connotations and is no longer a socially acceptable category for forming communities or excluding people from those communities (see Miles & Brown 2003: 15), and this bordering category has all but disappeared from the discourse of the 21st century Supreme Court opinions analyzed here. Like Taft, Martínez references past Insular Cases and thus implicitly draws the topic of race into his opinion; however, as discussed above in Section 4.3.1, he closes both of his sections covering the Insular Cases with references to criticism of those cases by other authors (including some U.S. Supreme Court Justices) and censures the obsolescence of much of their reasoning (see PR *Sánchez Valle*: Martínez 40-41, 56-57). Particularly his rejection of the Insular Cases' "disdainful and contemptuous tone towards the inhabitants of the territories" (PR *Sánchez Valle*: Martínez 40 ES/40a EN) suggests that, though he must acknowledge that the Insular Case decisions are still valid unless or until the U.S. Supreme Court overturns them, Martínez wishes to make it clear that he is only perpetuating their constitutional interpretations, while rejecting the outdated racist (and other) prejudices that influenced those interpretations. In her concurring opinion, Puerto Rico Supreme Court Chief Justice Liana Fiol Matta also explicitly acknowledges but subsequently sets aside those prejudices, saying that "[e]vidently, the racial and cultural differences of the Puerto Rican people, and the imperialistic ambitions of the time, were the elements that produced the Insular Cases and are the basis of the colonial politics that the United States established for Puerto Rico" (PR *Sánchez Valle*: Fiol 48 ES/122a EN) and citing Taft's differentiation between Puerto Rico and Alaska in *Balzac* as evidence that the U.S. Supreme Court's reasons for establishing the incorporation doctrine were political rather than legal (see PR *Sánchez Valle*: Fiol 48, footnote 139). She brings this up to establish context for her discussion of Public Law 600 and Puerto Rico's constitution-writing process, at the end of which she finds that, with those events, Puerto Rico became sovereign over its internal affairs and was thus freed from its colonial status and the imperialist aspirations of the early 20th century United States that were based so heavily on racial and cultural differences (see PR *Sánchez Valle*: Fiol 48-57). The U.S. Supreme Court, in turn, mentions neither race nor any of the Insular Cases that reference the topic in its *Sanchez Valle* texts (whether the opinion of the court, the concurring opinions or the dissenting opinion), having presumably not found either relevant to the case. Even ethnic distinctions barely make an appearance: the closest any of the minority opinions come to referencing ethnicity is Justice Stephen Breyer's recognition in his dissenting opinion that Puerto Rico's customs, culture and even legal system differ from those of many (though not all) other parts of the country because

they developed out of the Spanish civil law tradition rather than the British common law tradition—a fact that he cites in support of his argument that Puerto Rico be considered as sovereign as a State for purposes of the dual-sovereignty doctrine, for "[c]onsiderations of knowledge, custom, habit and convention argue with special force for autonomy in the area of criminal law" (US *Sanchez Valle*: Breyer 12-13) and "longstanding customs, actions and attitudes [of the government and courts], both in Puerto Rico and on the mainland, uniformly favor Puerto Rico's position (i.e., that it is sovereign—and has been since 1952—for purposes of the Double Jeopardy Clause)" (US *Sanchez Valle*: Breyer 13). Race and ethnicity, already weakened as a distinction between the people of Puerto Rico and those of the mainland in *Balzac v. Porto Rico* in 1922 and *Insularismo* in 1934, has continued to dissipate in the decades since, leaving little to no trace in the discourse of the two *Sánchez Valle* opinions. At most, race is acknowledged as a motivating factor in decades-old court decisions but rejected in the present case, while ethnicity, if mentioned, now serves as an argument for equal treatment of Puerto Rico and individual States rather than for separating and hierarchizing them.

4.3.2.5. Language

The nationalist authors of the *generación del treinta* in Puerto Rico considered the Spanish language a key element of Puerto Ricanness, and the discursive borders they established to single themselves out included a linguistic one between Spanish-speaking Puerto Rico and the English-speaking United States (see Duany 2000: 10-11); Pedreira's *Insularismo* and particularly his essay "Intermezzo: Una nave al garete" was no exception, with its criticism of the language policy in Puerto Rico's schools since the change of sovereignty, concern for the future of creative expression in the vernacular, and rejection of bilingualism (see Section 4.2.4). Taft had not dedicated as much of his *Balzac* opinion text to language as Pedreira later would, but all the same his single mention of the topic made it clear that, in his view, the people of the continental United States spoke one language (inferable from the context to be English), that the inhabitants of the territories spoke another, unspecified language and that this difference was one of the potential obstacles to those territories' incorporation (see Section 4.1.1.3). Much like the factor of geography, the distinction between the language unities themselves has not disappeared completely from the discourse of the two Supreme Courts in the *Sánchez Valle* opinions, but it has become far less discriminatory than it was nearly a century ago. Spanish and English are no longer used to

distinguish between Puerto Rico and the rest of the United States; instead, the appearance of or reference to both languages in both texts simply acknowledges the presence of both.

The Puerto Rico Supreme Court text is composed in Spanish but contains multiple references to English-language texts (particularly previous U.S. Supreme Court opinions), some of which are paraphrased or quoted in Spanish with or without the English original in parentheses or as a footnote, while other quotes or individual terms are used directly in English with or without an accompanying Spanish translation or explanation, and if there is a particular logic behind the choice of which texts to quote or paraphrase in English or Spanish, it is not immediately clear to the reader. Rather than dismissing the presence of one language in favor of the other or avoiding, disparaging or discouraging the use of the "foreign" language, Martínez simply uses whichever language lends itself to his needs in a given part of the text, without drawing undue attention to their co-presence. In fact, apart from italicizing the English terms and quotations, little in his discourse separates the two languages, and it is merely for the sake of this analysis that *I* am paying attention to which language(s) Martínez uses and am myself assigning them the labels of widely accepted language unities simply to point out that Martínez does *not* do so. Moreover, at no point does Martínez avail himself of the previously pervasive generalization that anything in Spanish is Puerto Rican and everything Puerto Rican is in Spanish, while anything in English has to do with the mainland and federal government and that everything to do with the federal government is in English. Fiol's concurring opinion, on the other hand, does mention language differences between Puerto Rico and the rest of the country, but only in the context of establishing the historical background of their relationship in order to track its development and ascertain the status quo, in the same way that she did with the concept of race (as mentioned in the previous section). Specifically, she describes the imperialist and colonialist thinking that led the U.S. Supreme Court to institute the incorporation doctrine in the Insular Cases and thus constitutionally justify not incorporating new territorial acquisitions populated by peoples of different races, languages and customs into the United States (see PR *Sánchez Valle*: Fiol 46-49). She also assesses characteristics such as "a language and idiosyncrasies of our own that differentiate us from any other nation" (PR *Sánchez Valle*: Fiol 51 ES/125a EN) that qualify Puerto Rico for the sort of protections and fostering that Article 73 of the Charter of the United Nations affirmed was the duty of colonizing nations toward their non-self-governing territories—demands which, in turn, led to Public Law 600 in 1950 and the ratification of Puerto Rico's Constitution in 1952 (see PR *Sánchez Valle*: Fiol 50-52; Section 4.3). That last example does subscribe to the homolingual view of pre-existing, distinct and

internally homogeneous linguistic and cultural unities, for the impression is that all Puerto Ricans (and no one else) share their "language and idiosyncrasies", a sentiment reminiscent of Pedreira's in *Insularismo*. However, Fiol's references to language differences, like her references to race, do not serve to argue for the separation or different treatment of Puerto Ricans and mainland U.S.-Americans as Taft and Pedreira had done, but rather to dismiss that outdated logic, arguing instead against hierarchization and for equal treatment.

Meanwhile, the opinion of the U.S. Supreme Court is composed entirely in English and the only specific reference to any language is at the end of the description of Puerto Rico's constitution-making process: "The Puerto Rico Constitution created a new political entity, the Commonwealth of Puerto Rico—or, in Spanish, Estado Libre Asociado de Puerto Rico" (US *Sanchez Valle*: Kagan 4). Indeed, that is the only context in which language differences or specific language unities are ever mentioned in *Puerto Rico v. Sanchez Valle*, with the only other example being Justice Breyer's repetition of that same information in his dissent: "the constitutional convention adopted a resolution stating that Puerto Rico should be known officially as 'The Commonwealth of Puerto Rico' in English and 'El Estado Libre Asociado de Puerto Rico' in Spanish" (US *Sanchez Valle*: Breyer 8). At no point in the case is there any mention of a language barrier or of potential difficulties arising from the meeting of different language unities, and, like Martínez's text, even Kagan's and Breyer's statements regarding Puerto Rico's English and Spanish names do not attribute one language or the other to one group or the other, but rather simply provide the two name options without commentary. Despite the concerns that Taft touched on in the *Balzac* opinion, by 2016 the U.S. Supreme Court seems unfazed by the co-presence of multiple languages in Puerto Rico-mainland relations, and the Court's discourse now hardly mentions language at all and has ceased to split the two populations along a linguistic border.

While the two Supreme Courts approach language differently in the two *Sánchez Valle* opinions—with Martínez's text being composed in both English and Spanish but labeling neither and Kagan's text being composed in only English but mentioning Spanish—neither Court's discourse divides the population by language as Taft's and Pedreira's discourses did. It seems that the two languages are no longer seen as at odds with each other and keeping two easily distinguishable groups separate—the one language an impediment to incorporation, the other an encroachment on the local lifestyle or culture—but rather are simply accepted as a small measure of diversity within the one whole.

4.3.3. Conclusion: so who are the addressees now?

Language use alone cannot determine whether a text or its author subscribes to the homolingual regime or takes a more heterolingual approach. The monolingual character of Kagan's text does not necessarily make it homolingual, just as Martínez's use of multiple languages does not make his text heterolingual, for "the plurality of languages in a given situation does not in itself guarantee access to the heterolingual mode of address, which still requires the recognition of and commitment to heterogeneity in all situations, even those normally thought to be 'monolingual'" (Solomon 2007). What is important is not the language(s) of composition or of reception, but the attitude toward the "otherness" of the addressees and whether or not it arises from a perception of distinctively enclosed communities (see Sakai 1997: 9). So the question becomes: do Martínez and Kagan address themselves to a particular community (or to multiple particular communities) and do they expect a particular reception and level of understanding of their message based on their addressees' perceived community membership(s)?

The discourse of *Balzac* and *Insularismo* clearly bordered between Puerto Rico and the rest of the United States; Taft addressed himself only to the latter while Pedreira's addressees were clearly the former, with neither author expecting any barriers to reception of his message in his "own" community and both indifferent to the possibility or type of reception in the "other" community. Those texts were therefore homolingual in that they posited separate, pre-existing communities divided according to categories that were presented as natural and abiding distinctions, with the authors expecting flawless reception of their message in their "own" community but not in the "other" community. In this analysis so far, it has been shown that the bordering categories that Taft and Pedreira used to distinguish so precisely between the two communities have largely fallen by the wayside in the *Sánchez Valle* texts, or at the very least are no longer used to hierarchize or demonstrate incompatibility. The reduced (or nonexistent) attention paid to these earlier borders means that the "two" communities are now often treated as one, so that both *Sánchez Valle* texts address "both" communities equally rather than favoring one or the other. But the decreased bordering between the two is not the only evidence that the Supreme Courts' addressees now include both the island and the mainland. Other examples explored above were Martínez's treatment of United States historical imagery that predated U.S. acquisition of Puerto Rico as shared history and his expectation that all of his addressees would recognize those references, his explicit acknowledgement and praise of the heterogeneity of U.S. society, or his

apparently indiscriminate use of Spanish and English in his text that shows that he does not confine himself or his intended addressees to one of those two language unities or communities. Kagan's text provided similar examples, particularly her awareness that, unlike Taft's, her pool of addressees was not limited to mainland citizens but included Puerto Ricans as well, as evidenced by her concern with *all* U.S. citizens (especially Puerto Ricans, since this case pertains specifically to Puerto Rico) in discussing the potential or actual effects of federal acts and Supreme Court decisions on the population.

Additional evidence can be found in the use of "we" and "our" in both texts; for the most part, both Justices use these pronouns to refer to themselves and the other Justices of the corresponding Supreme Court, but occasionally they include the readers of the text (e.g. Martínez's use of "as we will see" or "as we have seen" to refer to later or earlier parts of his own text, see PR *Sánchez Valle*: Martínez 43 ES/44a EN & 63 ES/65a EN), and sometimes these pronouns refer to the entire country (including Puerto Rico) as one: Kagan agrees with an earlier U.S. Supreme Court case's conclusion that "Puerto Rico boasts 'a relationship to the United States that has no parallel in our history'" (US *Sanchez Valle*: Kagan 17, quoting *Examining Bd. v. Flores de Otero* 426 U.S. (1976): 596) and rejects part of the dissenting opinion's argument on the grounds that it "contradicts the most fundamental conceptual premises of our constitutional order, indeed the very bedrock of our Union" (US *Sanchez Valle*: Kagan 9, footnote 4), and Martínez refers to "our system of government" (PR *Sánchez Valle*: Martínez 12 ES/12a EN) and to "the importance of precedents in the development of our caselaw" (PR *Sánchez Valle*: Martínez 64 ES/66a EN). This is not to say that neither *Sánchez Valle* text contains any examples in which their uses of these pronouns refer only to the mainland or to Puerto Rico, respectively—the above quote from Kagan about the "bedrock of our Union" could for instance be interpreted to refer only to the States (particularly as she is specifically refuting the argument that only the first thirteen States had original and separate sovereignty from the federal government while the remaining thirty-seven were admitted into the Union by Congress and therefore their sovereignty was not original but derived from Congress); Martínez, meanwhile, holds "that the development of the Commonwealth of Puerto Rico had not granted our courts a source of punitive authority derived from an inherent sovereignty" (PR *Sánchez Valle*: 30 ES/31a EN), meaning by "our courts" the courts of Puerto Rico—yet unlike in *Balzac* and "Intermezzo: Una nave al garete," in the *Sánchez Valle* texts the "other" group is not excluded from *every* use of "we" or "our" and is therefore not (or certainly not consistently) so strongly othered in Martínez's and Kagan's discourse as in Taft's or Pedreira's.

Another important indicator that the authors of both *Sánchez Valle* texts are attuned to "both" sides' needs and opinions is the intertextuality of the texts. As seen in Section 4.1.1.5, Taft misrepresented or simply ignored contemporary jury practices in Puerto Rico when he composed his *Balzac* opinion, indicating that he did not pay attention to Puerto Rican voices and texts; Section 4.2.5, meanwhile, explored how Pedreira dissociated his own text *Insularismo* from the North American canon, situating it instead amongst Caribbean and European authors and literature through his use of quotes and references to their texts. In comparison, the two *Sánchez Valle* opinions are a veritable web of intertextuality between the Puerto Rican and federal judicial systems. In addition to referencing Puerto Rican juridical and legal texts such as earlier Puerto Rico Supreme Court cases and the Puerto Rico Constitution, the arguments and final decision in *Pueblo v. Sánchez Valle* are built on the U.S. Constitution, various congressional acts such as the Foraker and Jones Acts and Public Law 600, multiple U.S. Supreme Court opinions (including specifically *Balzac v. Porto Rico* (see PR *Sánchez Valle*: Martínez 38-39, 51) and the same passage of *Downes v. Bidwell* (1901) quoted by Pedreira in *Insularismo*, saying that Puerto Rico belongs to but is not part of the United States (see PR *Sánchez Valle*: Martínez 35)) and some other federal court decisions. Even the manner of Martínez's use and explanation of these various texts shows their inherent interconnectedness: for example, the Court's decision in *Pueblo v. Sánchez Valle* requires overturning the precedent set in the 1988 Puerto Rico Supreme Court case *Pueblo v. Castro García* (see PR *Sánchez Valle*: Martínez 32 & 65), which in turn was based on the view expressed by the federal First Circuit Court of Appeals (see PR *Sánchez Valle*: Martínez 31) that Puerto Rico had become a separate sovereign from the federal government with the passing of the Federal Relations Act and the Puerto Rico Constitution (see PR *Sánchez Valle*: Martínez 29). Meanwhile the United States Supreme Court, due to its jurisdiction, focuses more on federal court cases and texts rather than on internal Puerto Rican ones (though Breyer cites a series of Puerto Rico Supreme Court cases as precedent in his dissent; see US *Sanchez Valle*: Breyer 12), but Kagan does directly reference and quote *Pueblo v. Sánchez Valle* itself as well as mentioning the Puerto Rico Constitution multiple times and specifying both the Puerto Rican and federal laws under which the defendants were charged in this case. Additionally, she cites Puerto Rico's views in this case throughout and engages directly with them in an almost conversational tone, for example (here "we" is the U.S. Supreme Court and "petitioner" is the Commonwealth of Puerto Rico, see US *Sanchez Valle*: Kagan 1):

> *Petitioner urges*, in support of its different view, that Congress itself recognized the new Constitution as "a democratic manifestation of the [people's] will,"—but far from disputing that point, *we readily acknowledge it to be so*. *As petitioner notes*, Public Law 600 affirmed the "principle of government by consent" and offered the Puerto Rican public a "compact," under which they could "organize a government pursuant to a constitution of their own adoption." And the Constitution that Congress approved, *as petitioner again underscores*, declares that "[w]e, the people" of Puerto Rico, "create" the Commonwealth—a new political entity, "republican in form," in which the people's will is "sovereign[]" over the government. With that consented-to language, Congress "allow[ed] the people of Puerto Rico," *in petitioner's words*, to begin a new chapter of democratic self-governance.
> *All that separates our view from petitioner's* is what that congressional recognition means for Puerto Rico's ability to bring successive prosecutions. (US *Sanchez Valle*: Kagan 16, internal citations omitted, emphasis added)

By engaging in such a back and forth between the two political entities and drawing on the views, opinions and texts of both the federal and Puerto Rican governments and courts in the process, the two *Sánchez Valle* opinions further weave themselves together. This is perhaps best exemplified by the fact that both opinions cite the other Supreme Court as a main part of their argumentation: the Puerto Rico Supreme Court explicitly employs the "ultimate source" test established by the United States Supreme Court to determine whether two political entities are separate sovereigns (see PR *Sánchez Valle*: Martínez 19, 62), and the United States Supreme Court in turn cites that part of the Puerto Rico Supreme Court's argument: "as Puerto Rico itself acknowledges, our test hinges on a single criterion: the 'ultimate source' of the power undergirding the respective prosecutions" (US *Sanchez Valle*: Kagan 7). With so much overlap and so many reciprocal references, it is impossible to separate the two texts or indeed the judicial canon(s) to which they belong from each other in order to consider one or the other on its own; rather, they clearly belong to one highly intertextual canon and their authors listen to and address "both" sides.

In many ways, the larger and more diverse pool of addressees and the diminished bordering between Puerto Rico and the mainland in these later texts has indeed made them more heterolingual than the first two texts analyzed for this thesis. The representation of translation under the regime of homolingual address "discriminatorily posit[s] one language unity against another (and one cultural unity against another)" (Sakai 1997: 15), but the *Sánchez Valle* texts have largely ceased to separate Puerto Rico from the rest of the country along those lines, addressing both of the formerly discursively separated cultural unities equally and mixing the supposed language unities indiscriminately (in Martínez's case) or declining to treat them as a definitive characteristic exclusive to one group or the other (in Kagan's case). With very few exceptions (e.g. that the self-evidence of the unities of "Spanish" and "English", though no longer used to divide the population into one Spanish-speaking and one English-speaking group, is still present in the U.S. Supreme Court's discourse

(see US *Sanchez Valle*: Kagan 4, Breyer 8; see also Sakai 1997: 10 & 2012: 349-350) or that the notion of a national culture and language unique to Puerto Rico is key to part of Fiol's argument in her concurring opinion (see PR *Sánchez Valle*: Fiol 51; see also Sakai 1997: 15 & 2005: 5-8, 18)), the remaining categories found in these texts—particularly the determination of and distinctions between States, (unincorporated) territories, Native American tribes, Washington D.C. and municipalities—are recognizably man-made and treated as such, rather than as naturally occurring, predetermined unities, for their unnatural origin and potential for change is explicit. All of the categories, unities and the borders between them discussed throughout this thesis are man-made (see Sakai 2012: 348; Said 1995: 89), but unlike the apparently natural linguistic, cultural, ethnic, etc. unities into which the regime of homolingual address divides the world, these remaining categories are *recognized* as man-made in the discourse of the *Sánchez Valle* opinions, for both mention that none of these political entities has always existed in its present form (see e.g. PR *Sánchez Valle*: Martínez 11-13, 18, 20, 60, 63; US *Sanchez Valle*: Kagan 8-10, 12-17) and describe the (likewise man-made) procedures by which their nature and relationship to each other have been or may yet be created or changed through human intervention (see e.g. PR *Sánchez Valle*: Martínez 21, 25, 48-49, 60-61, 66; US *Sanchez Valle*: Kagan 13-14, 16-17), with particular focus on what has been *said* by the different branches of government regarding the status and rights of these various political entities, thus highlighting their changeable nature and definition by people rather than by inherent characteristics. Indeed, the effect of some of those very changes on the overall relationship between the various political entities involved is the central question of the case.

The use in these texts of the various topoi that Wodak (see 2001: 73-77) cites as often being used in exclusionary, nationalist or racist argumentation has evolved in much the same way. First of all, the presence of these topoi is greatly diminished in the *Sánchez Valle* opinions compared to *Balzac* and *Insularismo*, and secondly, while some of the argumentation upholding the distinct treatment of Puerto Rico compared to the rest of the United States that makes use of these topoi still does not acknowledge the man-made nature of the borders thus drawn and maintained, the vast majority of it now does. The topos from Wodak's list that comes into play most often in both Martínez's and Kagan's discourse—namely that of law and right ("if a law or an otherwise codified norm prescribes or forbids a specific politico-administrative action, the action has to be performed or omitted", Wodak 2001: 76)—is tied into arguments that are now clearly acknowledged as separating groups into categories born of active human decisions rather than of inherent qualities of the groups to be sepa-

rated. This topos often appears in conjunction with that of reality ("because reality is as it is, a specific action/decision should be performed/made", Wodak 2001: 76), but in the discourse of the *Sánchez Valle* opinions the reality in question is (usually explicitly) the *legal* or *political* reality—and thus established by legislation and other human decisions—rather than "objective" reality, so that even this topos is ancillary to that of law and right in these texts. "After an objective analysis of the history and immense juridical literature on the subject" (PR *Sánchez Valle*: Martínez 63 ES/65a EN), for example, Martínez is obliged to conclude that the dual-sovereignty doctrine does not apply to Puerto Rico even after 1952 because the ratification of the Puerto Rico Constitution "did not alter that objective legal reality. That is the current state of law. We cannot reverse a decision of the United States Supreme Court or refuse to abide by it, especially if just for mere convenience" (PR *Sánchez Valle*: Martínez 66 ES/68a EN; see also e.g. PR *Sánchez Valle*: Martínez 11, 41, 42, 45, 47, 62, US *Sanchez Valle*: Kagan 6, 8, 10, 12-13, 14-15, 17). And that objective legal reality and current state of law in turn are the basis for the entire argument in both opinions due to their juridical nature. Both Supreme Courts comb through precedents to determine what actions the laws and current political status prescribe or forbid, arriving at the conclusion that, whether the justices personally agree or not, Puerto Rico is still a territory despite its "transformative constitutional moment" (US *Sanchez Valle*: Kagan 15) and must both act and be treated as such until or unless its political status is changed—and it is quite clear from the discourse of both opinions that such a change has in the past been and would in the future have to be *made* rather than occurring on its own (see e.g. PR *Sánchez Valle*: Martínez 42, 66; US *Sanchez Valle*: Kagan 15). Unlike the use of the topos of law and right in the *Balzac v. Porto Rico* (1922) opinion, this argumentation does not here appear to be so self-evident, but rather is explicitly attributed to the laws and previous decisions (themselves explicitly written or reached by human legislators or justices) that currently determine Puerto Rico's status and different rights and treatment, separating the territory from the States in an act of bordering now recognized within the discourse of the *Sánchez Valle* opinions as man-made and arbitrary, agreed upon and put in place by people (see Sakai 2012: 348). Sakai contends that in the common understanding of translation and of such homolingual unities as languages, cultures, or ethnicities established through the schema of cofiguration,

> the separation of two languages or the border between them is already presupposed. This view of translation always presumes the unity of one language and that of another because their separation is taken for granted or already a given; it is never understood to be something drawn or inscribed. (Sakai 2012: 349)

Such were the unities and borders upon which the argumentation in *Balzac* and *Insularismo* relied, but here the Supreme Courts base their arguments on unities and borders that *are* "understood to be drawn or inscribed" rather than "taken for granted or already a given". Thus the bordering between the territories (and therefore Puerto Rico) and the rest of the country continues in the Supreme Courts' discourse, but because the demarcation lines are now almost exclusively the borders between political entities and because the texts now seem conscious of those entities' subjective nature and do not present the distinctions between them as natural or historically constant, the unities into which they divide the U.S. body politic are not so homolingual.

The dissipation of bordering between homolingual unities that had previously divided Puerto Rico from the rest of the United States, defining them as two separate cultures with their corresponding separate languages, customs and territories, may be a sign of a more heterolingual point of view in both Supreme Courts, but there remains a discursive border around the country as a whole, dividing it from the rest of the world and thus still situating the Supreme Courts' discourse within the regime of homolingual address. "[T]he international world cannot but be pre-determined as the juxtaposition of distinct nationalities that are external to one another. The economy of the international world thus excludes the potentiality of *heterolingual address* from the outset" (Sakai 2012: 350, original emphasis). To a great extent this is only to be expected, given the context and discourse plane: the jurisdiction of each Supreme Court limits its field of action and the people and territory affected by its decisions, so it makes sense for them to address their texts to the residents of the nation or territory whose Constitution and laws these courts interpret, and not to citizens of any other nation not subject to the U.S. judicial system. Thus, while Sakai made "deliberate efforts to avoid the regime of homolingual address and to articulate a relation of a nonaggregate community with the readers […by] learn[ing] how to never designate the collective alliance of the narrator and the readers by […] the 'we' of national affiliation" (Sakai 1997: 7), such national communality is part of the discourse of both *Sánchez Valle* opinions. Not only do both opinions literally use the word "our" to refer to the country as a whole, but their use of presuppositions (e.g. Martínez's references to the U.S. Constitutional Convention and Founding Fathers discussed in Section 4.3.2.1 (see PR *Sánchez Valle*: Martínez 11-13) or Kagan mentioning "the Double Jeopardy Clause" four times before finally specifying in what document that clause can be found (and even then only doing so because she directly quotes the clause and therefore cites the U.S. Constitution; see US

Sanchez Valle: 1, 5, 6)) also implies an expectation that readers of these texts will understand, identify with and not question those references due to their shared nationality, for such references to national history and national culture unite national sentiment by "making us feel as if events that are distant in both social space and historical time are in fact 'our events'" (Sakai 2005: 18). Thus is the newly acknowledged inner cultural, ethnic and linguistic heterogeneity of U.S. society subsumed under the national unity of the United States—a unity that, while not internally homogeneous, is nevertheless bounded and considered distinct and separate from other equivalent unities, and furthermore one that accommodates a somewhat homolingual expectation of, if not flawless communication within a homogeneous linguistic community, certainly mutual comprehension within a national community due to shared experiences, history and background.

5. Conclusion: not so fundamental differences

This thesis consisted of a diachronic discourse analysis of four texts—one each from the mainland United States and Puerto Rico in the early 20th century (the opinion of the United States Supreme Court composed by Chief Justice William H. Taft in *Balzac v. Porto Rico* (1922) and the essay "Intermezzo: Una nave al garete" in Antonio S. Pedreira's *Insularismo* (1934)) and one each in the early 21st (the opinion of the Puerto Rico Supreme Court drafted by Justice Rafael Martínez Torres in *Pueblo v. Sánchez Valle* (2015) and the opinion of the United States Supreme Court written by Justice Elena Kagan in *Puerto Rico v. Sanchez Valle* (2016))—with the intention of exploring the portrayal in discourse of the U.S.-Puerto Rico relationship and the evolution of that portrayal during the intervening century. A wealth of research and commentary had already described how U.S. Supreme Court cases involving Puerto Rico or other U.S. island territories at the beginning of the 20th century had established those territories essentially as colonies, excluding them and their inhabitants from the United States body politic and often citing differences of language, race, religion, culture, etc. as justification for that exclusion (see e.g. Torruella 2007: 289 & 2013: 62-63; Kent 2018: 381, 383, 390-393; Malavet 2000: 2-5 & 2008: 143; Jiménez 2015: 11, 45-46, 76), and how shortly thereafter a generation of authors in Puerto Rico had begun distinguishing Puerto Rico from its new sovereign along similar lines in their discourse (see e.g. Duany 2000: 10-11; Sancholuz 1997: 3-5; Basáñez 2017: 212-213; Torruella 2013: 89). Social and practical changes later rendered such categories less effective in drawing a clear-cut border between the two communities, for it has become less socially acceptable to employ some of those categories to single out a part of the population (particularly the category

of race; see Neuman 2001: 189, Miles & Brown 2003: 15), and increased movement and communication between the two communities has obscured and blended their borders. "Circular migration, in particular, forces one to move away from the easy dichotomy between here and there, between the Island and the mainland, between identity and alterity. The Puerto Rican nation is better defined as the crossroads of these borders" (Duany 2000: 22). Thus the expectation at the beginning of this thesis was that the discourse of the later two texts would not distinguish so starkly between Puerto Rico and the rest of the United States, or, if it did, would not rely so heavily (if at all) on the same categories to do so.

Naoki Sakai's theories regarding bordering, the schema of cofiguration and the regime of homolingual address provided an intriguing angle from which to approach such a discourse analysis. First of all, "[t]he analytic of bordering requires us to simultaneously examine both the presence of border and its drawing or inscription" (Sakai 2012 343), and the intention of the present analysis was to examine potential discursive borders between Puerto Rico and the mainland United States and their drawing or inscription; secondly, such borders are drawn via the schema of cofiguration,

> a means by which a national community represents itself to itself, thereby constituting itself as a subject. But […] this autoconstitution of the national subject would not proceed unitarily; on the contrary, it would constitute itself only by making visible the figure of an other with which it engages in a translational relationship (Sakai 1997: 15-16)

and from which it distinguishes itself through comparison and contrast, thus defining its own characteristics (e.g. national language, culture, ethnicity etc.) as those distinct from the other's; finally, the regime of homolingual address rests on such contrasts and the consequent perception of internally homogeneous and externally distinct communities "foreign" to each other that creates and maintains an expectation of flawless reciprocal communication within one such community and inevitable failures of communication between communities (see Sakai 1997: 6-8 & 2005: 21, 29). Because the categories that had been shown to play an important role in early 20th century discourse fragments concerning the Puerto Rico-U.S. relationship are exactly the sort of discursive positivities that Sakai describes, the expectation here was that *Balzac* and *Insularismo* would clearly belong to the regime of homolingual address, while the two *Sánchez Valle* texts would not border so strongly, would no longer consider the unities discursively established by the schema of cofiguration to be signs of fundamental difference between groups, and would therefore exemplify Sakai's answer to the regime of homolingual address: heterolingual address.

In the end, that was not entirely the case. "Sakai's point of departure is his own experience of addressing what would appear in a classical structuralist view as two distinct

'linguistic communities', an experience linked with the practice of publishing texts in both Japanese and English over many years" (Buden et. al. 2009: 203-204). The expectation that the discourse strand analyzed for this thesis would develop similarly because it also involved two linguistic communities (in this case, Spanish and English) was itself homolingual, based as it was on an overly simplified perception of those communities as given, natural and self-evident. The presence of multiple linguistic communities alone does not ensure a heterolingual approach (see Solomon 2007), for the point in heterolingual address is the attitude toward the otherness of the addressees, regardless of how many putative language unities are present (see Sakai 1997: 9). In heterolingual address there is no expectation of homogeneous reception of a message within any community because no community is homogeneous; rather, the addresser is aware that every receiver of any given message will receive it differently, interpreting it according to his or her own knowledge, experience and point of view. "In this respect, you are always confronted, so to speak, with foreigners in your enunciation when your attitude is that of the heterolingual address" (Sakai 1997: 9). Thus the discourse strand analyzed for this thesis remained homolingual to a certain extent, for though the pool of addressees had expanded during the 20th century and come to span what had previously been perceived as a chasm (discursively established along borders of linguistic, cultural, ethnic, etc. difference), and though the discursive portrayal of that newly expanded group's cultural, linguistic, etc. makeup became far more heterogeneous in the *Sánchez Valle* texts than it had been in either *Balzac* or *Insularismo*, the addressees continued to be limited to members of a bounded national community and were therefore expected to receive the message without difficulty because they were *not* foreign to the addresser or to each other.

However, for the most part the analysis did confirm the hypothesis that the later two texts would be less homolingual than the first two. While a few unities and borders expected to contribute significantly to the distinction between the Puerto Rican community and the mainland U.S. community in the early texts turned out to have little or no impact (e.g. religion and race, both of which had been important distinguishing factors in the earlier Insular Cases (see e.g. *DeLima v. Bidwell* 182 U.S. (1901): 119; *Downes v. Bidwell* 182 U.S. (1901): 287) and in Puerto Rican nationalist discourse at the time (see Duany 2000: 10-11; Sancholuz 1997: 3-4) but were only passively included in *Balzac* or "Intermezzo: Una nave al garete" through association with earlier texts, if at all), the majority of the anticipated categories such as language, geographic distance and isolation, ethnic origin, or culture were indeed used heavily in the first two texts but hardly present at all in the later two texts. Those that did remain in the *Sánchez Valle* opinions—references to "the island" that faintly

evoked earlier reservations based on geographic characteristics, the lingering self-evidence of the language unities English and Spanish, etc.—no longer served as the basis for the separation or distinct treatment of the two communities. Because the borders between cultural or linguistic communities within the United States had grown fuzzy and less important in juridical discourse, such categories or unities could no longer be used to easily divide and hierarchize groups of people. Sakai (see 2012: 351) describes such unities as regulative ideas, that is, as concepts that are not empirically verifiable but that help organize knowledge about something (a language, for example), making it easier to recognize its identity. Thus,

> by subscribing to the idea of the unity of language, we can organize knowledge about languages in a modern, systematic, and scientific manner.
> To the extent that the unity of national language ultimately serves as a *schema* for *nationality* and offers a sense of national integration, the idea of the unity of language opens up a discourse to not only discuss the naturalized origin of an ethnic community, but also the entire imaginary associated with national language and culture. A language may be pure, authentic, hybridized, polluted, or corrupt, yet regardless of a particular assessment of it, the very possibility of praising, authenticating, complaining about, or deploring it is offered by the unity of that language as a regulative idea. […Thus] this unity of national language […] offers not an object in experience but rather an *objective* in praxis, toward which we aspire to regulate our uses of language. […I]t indicates and projects what we must seek as our proper language, what we must avoid as heterogeneous to our language, and reject as improper for it. The unity of a national language as a schema guides us in what is just or wrong for our language, what is in accord or discord with the propriety of the language. (Sakai 2012: 352-353, original emphasis)

This is equally true of the other discursive positivities examined in the four texts analyzed for this thesis, because they all tend to be anchored in the myth of a common national language or mother tongue (see Sakai 2012: 352) and all "such unities as ethnos, nation, race, and national/ethnic culture may be thought of as produced by nearly identical regimes" as language unities, that is, "regulated through the formation of an idea that provides that unity, and secondly, defined in terms of a specific difference to another language" or to another ethnos, nation, race or national/ethnic culture (Sakai 2005: 22). In *Balzac* and *Insularismo* these unities acted as standards, helping to pinpoint and characterize the otherness of the outgroup and identify and authenticate the shared, homogeneous qualities of the ingroup. However, in the *Sánchez Valle* texts the internal homogeneity of these unities was no longer taken to be a given and the borders between them were no longer so easily and regularly highlighted, and thus these unities no longer provided such reliable standards against which to measure the relative purity, authenticity, corruption, etc. of the categories or groups in question.

Thus the discourse regarding the Puerto Rico-U.S. relationship has evolved over the past century, whether or not Puerto Rico's political status and legal relationship to the rest of

the United States has changed significantly in that time (many agree that the territory remains a colony even if that term is not officially used for it (see Torruella 2013: 81-92), and its residents, though U.S. citizens, do not enjoy all of the same rights as citizens living on the mainland; note also that Puerto Ricans were already U.S. citizens when each of the four texts analyzed here was written, but were only discursively portrayed as such in the later two texts). Even the presence of distinctions between Puerto Rico and the rest of the United States remained constant in the corresponding discourse strand, but the reasons behind those distinctions changed—both those given explicitly and those discernible via discourse analysis. The discourse of the earlier two texts analyzed for this thesis constructed a dichotomy between the two entities, relying heavily on the standards provided by apparently inherent characteristics of the respective ingroup and outgroup to pinpoint and maintain the border between them; the perceived inherence of such differences seemed to preclude any sort of development (within either group, or of their mutual relationship), for characteristics so deeply ingrained and thought to be representative of innate disparity leave no room for change, acceptance or mutual understanding. The discourse of the later two texts, however, distinguished almost exclusively by the legally designated parameters of the relevant political entities, portraying such distinctions as the man-made decisions that they are and dropping the supposedly natural, pre-existing and self-evident distinctions or standards so crucial to the arguments in *Balzac* and *Insularismo*. Because the *Sánchez Valle* texts base the justification of different treatment of Puerto Rico on legal distinctions having to do with the island's political status rather than on inherent differences between peoples, the discourse of these later two texts leaves open the possibility of revision. Though still presented as separate communities, neither community's identity is defined by fundamental characteristics inescapably ascribed to its members, and nor is their mutual relationship. Two inherently disparate groups will remain at odds for all eternity, but two groups separated merely by the current legal designation of the political entities they inhabit have room to evolve, both individually and in relation to each other, because the law allows for changes in political status. Whether or when Puerto Rico's political status will change remains to be seen, but the discourse surrounding it—what is said and sayable about the territory's status and residents—has grown more flexible and now accommodates that possibility, rather than dismissing the notion as self-evidently absurd from the outset.

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Abstract EN

This thesis explores the portrayal of the relationship between Puerto Rico and the United States in juridical and political discourse and how that portrayal has evolved since the early 20th century, with particular emphasis on identity and othering. It consists of a diachronic discourse analysis of four texts: the United States Supreme Court opinion *Balzac v. Porto Rico* (1922), the chapter "Intermezzo: Una nave al garete" from Antonio S. Pedreira's *Insularismo* (1934), the Puerto Rico Supreme Court opinion *Pueblo v. Sánchez Valle* (2015) and the United States Supreme Court opinion *Puerto Rico v. Sanchez Valle* (2016). Naoki Sakai's theories regarding bordering and the regime of homolingual address help orient the analysis.

The discourse of the two earlier texts reveals a tendency to portray Puerto Ricans and mainland U.S.-Americans as inherently different and therefore incompatible groups, easily distinguished by such factors as language, culture, ethnic origin and geographical location or isolation. While the discourse of the later two texts still distinguishes between Puerto Rico and the rest of the U.S., it does so to a lesser degree, as it is largely devoid of such supposedly natural distinctions and relies instead primarily on legal definitions and judicial precedent to determine the current political status of Puerto Rico and its relationship to the United States. Thus the finality of the apparently self-evident distinctions between Puerto Rico and the rest of the U.S. in early 20th century discourse has given way in early 21st century discourse to a more flexible portrayal that recognizes heterogeneity and accommodates the possibility of extra-discursive change.

Abstract DE

Diese Arbeit untersucht die diskursive Darstellung der Beziehung zwischen Puerto Rico und den Vereinigten Staaten sowie die Entwicklung dieser Darstellung seit dem frühen 20. Jahrhundert auf der juridischen und politischen Diskursebenen, mit Schwerpunkt auf Identität und Othering. Sie besteht aus einer diachronen Diskursanalyse von vier Texten: der Auffassung des US-Verfassungsgerichts im Fall *Balzac v. Porto Rico* (1922), dem Kapitel „Intermezzo: Una nave al garete" aus der Aufsatzsammlung *Insularismo* von Antonio S. Pedreira (1934), der Auffassung des puerto-ricanischen Verfassungsgerichts im Fall *Pueblo v. Sánchez Valle* (2015) und der Auffassung des US-Verfassungsgerichts im Fall *Puerto Rico v. Sanchez Valle* (2016). Die Theorien von Naoki Sakai bezüglich *Bordering* und *Regime of homolingual address* tragen zur Orientierung der Analyse bei.

Der Diskurs der beiden früheren Texte neigt dazu, Puerto Ricaner und kontinentale US-Amerikaner als grundsätzlich unterschiedliche und deshalb unvereinbare Gruppen darzustellen, die durch Merkmale wie Sprache, Kultur, ethnische Herkunft und geographische Lage oder Abgeschiedenheit leicht auseinanderzuhalten sind. Der Diskurs der beiden späteren Texte unterscheidet zwar immer noch zwischen Puerto Rico und den restlichen USA, aber in geringerem Maße, denn er ist größtenteils frei von solchen vermeintlich naturgegebenen Unterscheidungsmerkmalen und baut stattdessen hauptsächlich auf Rechtsbegriffen und Präzedenzfällen, um den aktuellen politischen Status Puerto Ricos und dessen Beziehung zu den Vereinigten Staaten zu eruieren. Die Endgültigkeit der angeblich selbstverständlichen Unterschiede zwischen Puerto Rico und dem Rest der USA im Diskurs des frühen 20. Jahrhunderts ist im frühen 21. Jahrhundert einer flexibleren Darstellung gewichen, die Heterogenität anerkennt und die Möglichkeit extradiskursiven Wandels einräumt.