Some Historical and Political Aspects of the Government of Porto Rico

By

PEDRO CAPÓ-RODRÍGUEZ

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I

UNDER THE RULE OF SPAIN

While it may be said with no small degree of accuracy and justice that the government of Porto Rico under Spanish rule, founded as it was upon the medieval and shortsighted colonial policy of Spain, never was, in substance, anything more than a military regime for the purpose of maintaining Spanish domination over the Island, and subjecting the native inhabitants to a greedy, cruel, and reckless system of exploitation, general exclusion, and debasement; yet there is no doubt that from the latter part of the nineteenth century Spain endeavored to give to the government of the Island a semblance, at least, of a civil character in harmony with Spanish institutions and the conceptions of colonial administration and prejudices prevailing in Spain. Previous to that time, however, the Island was strictly managed as a military post. At first the governors general were not assigned any military titles, although their powers and authority extended over all the military and naval forces stationed in the Island and, as a matter of fact, they were practically absolute military rulers; later, however, they began to assume military titles until, finally, the governor general came to be a

lieutenant general of the army and was known also as the captain general of the Island.[1]

It would be quite interesting to follow step by step the varying historical aspects of the early government of Porto Rico under Spanish rule up to the comparatively recent time when it began to assume a civil character somewhat in harmony with the growing necessities of the Island and the pressing demands of its inhabitants. Nor is the history of the political evolutions which Porto Rico underwent in the last century lacking in human interest and positive value to the American student of colonial development in the New World. In this connection it may be said in passing, that Spain went just as far as was possible, but could not, however, keep up with the times. While there were, undoubtedly, some Spanish statesmen, like Pí y Margall and Moret, for instance, who could clearly appreciate the situation, the immense majority of the Spanish legislators and statesmen of that time seemed always quite unable to realize the unjustifiable blunders of the mistaken policy of Spain in the management of its enlightened colonies of this hemisphere; and it must be, perhaps mainly for this reason at least that these colonies had to be forever separated from their mother country. It was because Spain could not maintain its superiority over Porto Rico and Cuba that Spanish rule there became obnoxious, oppressive, barbarous, and cruel. Spain could not solve the Cuban and Porto Rican problems better than the progressive natives of those Islands could, and for that reason its position there was almost ridiculous and certainly false. There was no reason why Spain should be there. It could claim no superiority and therefore the excuse for Spanish colonial claims in Porto Rico had no moral foundation. We will not, however, attempt to go into these matters, as they lie beyond the scope of this article.

[1] Of the 118 Spaniards who were vested with the royal governing prerogative all but 3 of the last 87 were designated by military titles of high rank. From the beginning of the last century all the governors general had the military rank of field marshal or lieutenant general, and it was provided by royal order that in case of extraordinary vacancy, the senior military officer present should temporarily succeed to the vacant governorship. *Report of the Military Governor of Porto Rico*, in *House Doc. No. 2, 56th Cong., 2nd Sess., 1900–1901*, xiv, 31 *et seq.*

Their study, however, may be quite useful to the American statesman and legislator who honestly aspires to understand and help to solve the Porto Rican problem.

In order to complete this brief historical sketch of the government of Porto Rico previous to the granting of the so-called *autonomía* in 1897, it may be said that for over three centuries Porto Rico was governed, as we have seen, as a military post, and that the governor, as the royal representative, was the source of all power and authority in the Island. Up to 1840 the towns were practically managed by army officers, whose duty it was to report directly to the captain general of the Island. From that time until 1870 the policy was gradually adopted of giving to the larger municipalities a local government administered by civilians appointed by the governor and chosen, as a rule, from among the natives of Spain residing in the Island.[2]

Yielding to the pressure of the Cuban revolution of 1868 which ended in the agreement of El Zanjón of 1878, which Spain so recklessly dishonored, and in response, perhaps, to the more liberal tendencies which had their inception in the Spanish revolution of September, 1868, Porto Rico was made a Spanish province in 1870 with an adequate representation in the Spanish parliament, a Provincial Assembly or *Diputación Provincial*, as it was called, and a Provincial Committee, and some other provisions which made the government of the Island somewhat more liberal and civil in character. It is to be noticed, however, that the jurisdiction and powers of all these bodies in charge of the administration of the public interests and government of the Island were practically subordinated to the will of the governor general, while in special cases the whole matter could be taken to the central government in Spain. It must not be forgotten, on the other hand, that from 1870 up to the time of

[2] For an interesting account of the history and government of Porto Rico as well as of the administration of justice and power of the clergy in the Island, previous to the nineteenth century, see Iñigo Abbad, *Historia . . . de la Isla de San Juan Bautista de Puerto Rico* (Madrid, 1788). This work was republished a century later by José Julián Acosta, in San Juan, Porto Rico. A fairly accurate statement wholly based upon Abbad's account may be found in the *Report of the Military Governor, ut supra*, pp. 65–67.

the cession of the Island by Spain to the United States, the status of Porto Rico was that of a Spanish province, exactly the same as that of any other province of Spain, and that by virtue of the Spanish Constitution, which was partially in force in the Island, its inhabitants were always considered as Spaniards, that is to say, as subjects or citizens of Spain.[3]

It is at this period of Porto Rican history that we see the most wonderful display of Porto Rican political ability and character. And here involuntarily comes to one's memory the names of such illustrious Porto Ricans as Baldorioty de Castro, Acosta, Blanco, Cintrón, Quiñones, Padial, whose vigorous and convincing patriotism and energetic appeals in the Spanish Parliament, commanded the respect and admiration of even their bitterest opponents. It was during this period and through the parliamentary efforts of these Porto Ricans, that the last traces of slavery were forever wiped out of the Island, and the central government began to assume a more liberal policy towards the Island.

Soon, however, the activities of the disgraceful institution of the *Voluntarios*, or the Spanish militia—in reality merely an armed political party composed of the *Peninsular* or native Spaniards residing in the Island, whose main purpose was to oppose the native Porto Ricans, and which was to play so important a rôle in the destinies of Porto Rico—together with the unwarrantable prejudices and partisanship of the Spanish governors who came to be real instruments of the *Voluntarios*, rendered practically useless, and even harmful, the new policy of the central government. Then followed a period of persecution and mismanagement which reached its most odious and abominable stage, with the *Componte*, in 1887, under the hateful General Palacios. Ten years later, due to a combination of events, including the Cuban War of Independence of 1895–1898, the strong

[3] Constitutional unity was attained by a royal decree of November 25, 1898. See translation of this decree in *U. S. Foreign Relations*, 1897, pp. 618–619. The Spanish original will be found in *Gaceta de Madrid*, November 26, 1897. For a comprehensive account of the laws regulating the government of Porto Rico under Spain, see *Report of the Military Governor, ut supra*; pp. 239–261.

and continued pressure of the United States upon the government of Spain, which culminated in the Spanish-American War, the representations of a handful of illustrious Porto Ricans representing the autonomist party headed by Muñoz Rivera, and the fear perhaps of a Porto Rican uprising unless greater justice were granted to the Island, the cabinet of Señor Sagasta resolved that self-government should be given to Porto Rico. This was accordingly bestowed by a royal decree of November 25, 1917, signed by María Cristina, as queen regent of the kingdom, in the name of her son, the present king, Don Alfonso XIII.[4]

It would be quite impracticable to attempt a complete review of all the important provisions of this decree, which is, moreover, quite lengthy and foreign to American law. It may be said, however, that the said decree contained provisions for an insular parliament composed of two chambers, equal in power, called the Chamber of Representatives and the Council of Administration. The power to legislate on colonial affairs, as provided by law, was to be deposited in the insular chambers with the governor general. The governor was to be the representative of the central government, and was to have supreme control and power. The Council of Administration was to consist of fifteen members, eight of whom, when duly qualified therefor, were to be elected by the qualified voters of the Island, and the other seven were to be appointed by the king and, at his request, by the governor general from certain specified persons who, according to the decree, were to be qualified for such appointment and no others. The appointment of the seven councillors nominated by the crown were to be made by special decree in which their qualifications were to be stated, and they were to hold office for life. The elective councillors were to be renewed by halves, every five years, and whenever the governor should, according to parliamentary procedure, dissolve the legislature, half or all the elective councillors were to go out of office. The

[4] The basis of this famous decree was a law of reforms passed by the Spanish *Cortes* in 1895. A complete translation of the decree will be found in *U. S. Foreign Relations*, 1898, pp. 636–644. The Spanish original will be found in *Gaceta de Madrid*, November 27, 1897.

Chamber of Representatives was to consist of duly qualified members appointed by electoral boards in the proportions of one to every twenty-five thousand inhabitants. The representatives were to hold office for five years and might be reelected indefinitely.

By the adaptation of the Spanish electoral law of 1890 to Porto Rico,[5] the suffrage was extended to all male Porto Ricans, who as already noted were considered as Spaniards, over twenty-five years of age, in the full enjoyment of their civil rights and residents of a municipality for two years. The exceptions were those who had forfeited their political rights, those convicted of crime, bankrupts or insolvents not discharged according to law, delinquent tax payers, paupers, and mendicants. There was to be an electoral registration determining the right to vote.

The chambers were to meet regularly every year, but in accordance with the parliamentary system, which was thereby established in the Island, it was the privilege of the king and of the governor in the king's name to convene, suspend, or close their sessions, and to dissolve separately or simultaneously the Chamber of Representatives and the Council of Administration with the obligation to reconvene or hold new elections within three months. The initiative and proposal of colonial legislation was vested in the governor general through his secretaries, as well as in the two chambers. Colonial laws requiring appropriations of public moneys were first to be submitted to the Chamber of Representatives for their approval. All the laws passed by the colonial legislature had to be submitted to the governor general for his approval and promulgation, and whenever in his judgment the "interests of the nation" were threatened by colonial statutes, he was to consult the central government before the presentation of the bills. If the bill were introduced by an individual member of the parliament, the colonial government was to postpone all discussion of the same until the central government had expressed its opinion. In both cases any correspondence between the two

[5] For a translation of the royal decree and general provisions relating to this subject see *U. S. Foreign Relations*, 1898, pp. 620–631. The Spanish original will be found in *Gaceta de Madrid*, November 26, 1897.

governments was to be forwarded to the chambers and published in the official bulletin.

The powers of the insular parliament extended to all such matters which had not been specifically reserved to the cortes of Spain or to the central government. In this sense, and with no thought of curtailing its powers, the insular chambers could legislate upon all matters pertaining to the Departments of Pardons, Justice, State, Treasury and Public Works, Education, and Agriculture. The said chambers had also power to legislate upon purely local affairs, and in this sense they could enact laws respecting administrative organization, territorial, provincial, municipal, or judicial divisions, public health on land and sea, public credit, banks, and the monetary system. The insular parliament could also legislate upon subjects committed to it by the cortes of the kingdom. In this sense it was within the powers of the parliament to act from the very beginning upon electoral procedure; the formation of the census; the qualifications of electors; and the manner of exercising the suffrage. This was to be done, however, without interfering with the rights of the citizen under the electoral law. It was the exclusive prerogative of the insular parliament to make the local budget, both in respect to expenditures as well as to income, and in regard to the necessary expenses to cover such a part of the national budget as belonged to the Island, and neither of the colonial chambers could deliberate on the colonial budget unless it had already voted finally on that part of it referring to the "expenses of sovereignty". It was, on the other hand, within the powers of the national cortes to determine the expenses which by their nature were "obligatory expenses inherent to sovereignty", as well as to fix the amount every three years and to state the income necessary to cover it. The cortes, however, had the right to change this provision.

There were in this decree some important provisions which are worthy of a literal transcription because they conferred upon the colonial government a very important prerogative. These provisions read as follows:

Art. 37. The negotiation of treaties of commerce affecting the Island of Porto Rico, whether they are due to the initiative of the insular government or to that of the central government, shall always be conducted by the latter, assisted in both cases by special delegates, duly authorized by the colonial government; and the conformity of these treaties to what has been agreed upon shall be shown when they are laid before the cortes of the kingdom.

These treaties, if approved by the cortes, shall be published as laws of the kingdom, and as such they shall remain in force in the territory of the Island.

Art. 38. Treaties of commerce, in the negotiations of which the insular government shall not have taken part, shall be communicated to it when they shall become laws of the kingdom, in order that it may, within three months, declare whether it desires to adhere to their stipulations or not. In case of its desiring to adhere to them the governor general shall publish a statement to that effect in the *Gazette* as a colonial statute.

Art. 39. It shall further be the duty of the insular parliament to prepare the tariff and to designate the duties to be paid on goods, both when imported into the territory of the Island and when exported therefrom.

As to the powers and functions of the governor general it may be said that, under this decree he was invested with the supreme government of the colony, and his appointment was made by the king on motion of the council of ministers. In his official capacity he exercised, as a vice royal patron, the powers inherent in the so-called *patronato* of the Indies. He had the chief command of all the armed forces, both naval and military, in the Island. He was the representative of the ministries of state, war, navy, and the colonies. All the authorities of the Island were subordinate to him, and he was to be responsible for the preservation of order and of the safety of the colony. He was also responsible for the publication and execution of all laws emanating from Spain, and when, in his judgment, and that of the secretaries of his administration, the decisions of her majesty's government might cause injury to the general interests of the nation, or to the special interests of the Island, he was to suspend their publication and execution, making to

the proper ministry a report thereof and of the reasons upon which his decision was founded. He was also, among other things, to see to it that the rights, powers and privileges recognized or thereafter to be recognized as belonging to the colonial administration, were duly enforced and observed. It was equally his duty to sanction and publish the enactments of the insular parliament which should be laid before him by the president and secretaries of the respective chambers. The veto power of the governor was to be exercised in the following manner:

> When the governor general shall consider that an enactment of the insular parliament goes beyond the powers of that body, violates the rights of citizens which are recognized in Title I of the Constitution, or the guarantees fixed by law for the exercise of those rights, or jeopardizes the interests of the colony or of the state, he shall send the enactment to the council of ministers of the kingdom, which, in a period not exceeding two months shall approve it or return it to the governor general with a statement of the reasons that it may have for objecting to its sanction and promulgation. The insular parliament, in view of these reasons, may again deliberate concerning the matter and modify the enactment, if it think proper, without the necessity of a special proposition.
>
> If two months shall pass without the central government having expressed its opinion concerning an enactment of the chambers that shall have been transmitted to it by the governor general, that officer shall sanction and promulgate it.

The governor general had also power to appoint, suspend, and remove the employees of the colonial administration, on motion of the respective secretaries of the government, according to law; and to appoint and remove freely the secretaries of the government. No decree of the governor general, however, issued in his capacity as representative and head of the colony could be carried out unless it were countersigned by a secretary of the government, who by this act alone, became responsible therefor.

The secretaries of the government were five, namely: Grace, Justice, and Interior; Finance; Public Instruction; Public Works and Communication; and Agriculture, Industry, and Commerce.

The secretary who should be appointed by the governor was to be the president. The governor could also appoint a president without portfolio. The insular parliament had power to increase or diminish the number of secretaries of the government, and also to determine the matters belonging to the department of each. The secretaries of the government might be members of the Chamber of Representatives or of the Council of Administration, and take part in the discussions of both bodies; but they were to have a vote only in matters pertaining to their respective departments; and they were to be responsible for their acts to the insular chambers.

The governor general could, on the other hand, notwithstanding the foregoing provisions, act by himself and on his own responsibility, without granting a hearing to the secretaries of the government, in the following cases:

1) When the question concerns the transmission to the government of the enactments of the insular chambers, especially when he considers that the rights guaranteed in Title I of the Constitution of the Monarchy or the guarantees provided by law for their exercise are violated by those enactments.

2) When the law relative to public order is to be executed, especially if there is no time or any way to consult the central government.

3) When the question is of the execution and fulfillment of laws of the kingdom sanctioned by his majesty, and operative throughout Spanish territory or that of its government.

A law shall provide for the procedure and means of action that may be used in such cases by the governor general.

There were in this decree other provisions relating to the municipal and provincial régime, and to guarantees for the enforcement of the colonial constitution; and four additional articles extending the application of the laws of the kingdom to all matters to be acted upon by the insular government pending publication of colonial statutes, and providing that the said constitution should not be modified except by a law and at the request of the insular parliament, etc. There were also other provisions of a transient nature intended to facilitate the transition from the old system to the new.

It would be perhaps pertinent to add by way of commentary on this remarkable piece of legislation, which was made extensive to both Porto Rico and Cuba, that while the Cuban patriots who were fighting Spain in the *manigua* rejected it as unworthy of their cause, the more conservative *autonomistas* of Cuba and the *liberales* of Porto Rico accepted it with real contentment as they saw in its provisions a rainbow of peace and future development and the dawning of a new era of harmony and better understanding with the old mother country whose colonies she had bound to her with the strong bands of a common blood, language, customs, laws, religion, and, from many points of view, admirable civilization. And yet, when we look back upon our past experiences and watch the ephemeral results of that Sagastine fusion[6] which committed the best of Porto Rican leaders to the acceptance of that boasted "autonomy" for the purpose of gaining a doubtful control of the government of the Island, we feel an indignant regret that this almost posthumous concession of Spain was not emphatically rejected by the Porto Rican patriots. If they had done so, the American forces would have found in Porto Rico a brave and noble people fighting for their independence. As it was, they only found a semblance of a Porto Rican government and an oppressed conglomerate of people receiving them as liberators.

And what was the result? Alas, it has taken over twenty years for the American Congress to begin to get a just conception of the Porto Rican people.

But returning to the consideration of our subject, it must be said that while, indeed, this once famous and now almost forgotten Spanish decree of 1897 has been the object of much adverse commentary and bitter criticism, and while it has been denounced as a mere concoction of the same old military régime which

[6] Reference is here made to a political move made by the late Señor Muñoz Rivera by which a fusion of the Autonomist Party of Porto Rico into the Spanish Liberal Party led by Señor Sagasta was accomplished upon the understanding that the Autonomist Party was to be considered as a sort of prolongation of the Sagastine Party with the name of "Partido Liberal," under the leadership of Señor Muñoz Rivera, and given governmental support by Señor Sagasta's party, whenever the latter should be in power in Spain.

practically centralized all power and authority under the governor, and defined as a makeshift calculated to give to the new government, which the decree purported to establish, a civil appearance, with the pretty garment of a colonial parliament and a few provincial frills of Spanish *autonomía* (which, as a matter of fact, was no self-government at all), yet when viewed in a dispassionate and calm spirit of justice, it cannot be denied that it contained some very liberal provisions. One must recognize that, from a Spanish point of view, the decree was really a long step toward a wiser policy of colonial administration. Had Spain twenty-five years earlier given this same organic act both to Porto Rico and to Cuba, which had always been inseparably united under the rule of the old mother country, there would have been in all probability no real occasion for the intervention of the United States in the destinies of these two islands, especially if this decree had been supplemented from time to time with those changes and additions that experience and the actual necessities of the situation had shown to be advisable. As it was, however, this belated *autonomía* or self-government of a Spanish type failed of its most cherished desires; for it had scarcely been put into successful operation when the Spanish-American War put an end to Spanish colonial power in America and to Spain's improvident, reckless, and disastrous mismanagement of the trust which providence had, through the discovery of Columbus four centuries before, confided to that country's care.

II

UNDER THE FORAKER ACT

With the invasion, occupation, and final acquisition of Porto Rico there ensued in the Island three legally different periods of military government under the authority of the United States. These three different aspects of the military government of Porto Rico under American rule have been already discussed by the present writer in the *American Journal of International Law*.[7] Now we will examine the principal features of the civil govern-

[7] Vol. IX, 887–912; vol. X, 318–327.

ment which was established in Porto Rico by the so called Foraker Act.[8] It is said that the authorship of the original draft of this measure, which bears the name of the late Senator Foraker from Ohio, who introduced it into the senate, belongs in reality to the Honorable Elihu Root, then secretary of war in the cabinet of President Roosevelt, who also it is asserted, prepared some time later, in the same capacity, the original draft of the so-called Platt Amendment regulating the relations between the United States and Cuba.

The Foraker Act was, as is quite apparent from its title,[9] a merely temporary measure, intended to substitute the existing military régime for a civil government, and was indeed the result of a rather hasty preparation and of still more hasty amendments and reforms made in both Houses of Congress, under the impression that Porto Rico was, like the Philippines, not quite fully prepared to assume the duties and obligations of a self-governing people. Furthermore, when the bill was presented to the senate it contained a provision extending to Porto Ricans the privilege of American citizenship; but this was left out by the committee in charge of the bill, apparently under the impression that such provision would affect the constitutionality of the act in respect to certain revenue provisions contained therein. This impression, however, was practically destroyed by the effect of the doctrine of non-incorporation sustained by the supreme court in the now famous insular cases.[10]

Conceived as it was, upon American philosophical theories of government, this law at once established, although imperfectly, for the government of the Island the wellknown divisions distributing the powers of the government into three distinct and separate departments: Executive, Legislative, and Judicial.

Examining somewhat in detail the provisions of the act, we notice, in the first place, that it did not concern itself with any special declaration of the political status of the Island but speci-

[8] *31 U. S. Stat. at Large*, p. 77.

[9] "An Act temporarily to provide revenues and a civil government for Porto Rico and for other purposes."

[10] *American Journal of International Law*, July, 1919.

fically stated that these provisions were to apply to the Island of Porto Rico and to the adjacent islands and waters thereof, and that the name Porto Rico, as used in the act, was to be held as including not only the Island of that name but all the adjacent islands as aforesaid.

Then followed several provisions dealing with the application of custom tariffs and internal revenue taxes. An interesting feature of these provisions was that the duties and taxes collected in Porto Rico in pursuance of the act, less the cost of collecting the same, and the gross amount of all collections of duties and taxes in the United States upon articles of merchandise coming from Porto Rico were not to be covered into the general fund of the Treasury of the United States, but were to be held as a separate fund at the disposal of the president to be used for the government and benefit of Porto Rico until the civil government provided by the act should have been organized, when all moneys belonging to this fund not yet expended were to be transferred to the local treasury of Porto Rico. And it was also provided that as soon as the said civil government should have been organized, all collections of duties and taxes in Porto Rico under the act should be paid into the treasury of Porto Rico for the government and benefit of the Island instead of being paid into the Treasury of the United States. It has been said that by error in the phraseology of the last provision all collections of duties and taxes in the United States upon articles of merchandise coming into the United States from the Island were excluded from going into the local treasury of Porto Rico. The error, if there was one, has been corrected in the more recent Jones-Shafroth Act.[11]

The aforesaid provisions of the Foraker Act also contained a proviso to the effect that whenever the legislature of Porto Rico should have enacted and put into operation a system of local taxation to meet the necessities of the government of the Island, all tariff duties on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico were to cease, and from and after such date all

[11] See *infra*, p. 570.

such merchandise and articles were to be entered at the several ports of entry free of duty. This provision was sometime after taken advantage of by the legislature of the Island, and Porto Rico was thus included in the custom union of the United States.[12]

As regards the status of the inhabitants of the Island, the Foraker Act contained the following provision:

Sec. 7. That all inhabitants continuing to reside therein who were Spanish subjects on the eleventh day of April, eighteen hundred and ninety-nine, and then resided in Porto Rico, and their children born subsequent thereto, shall be deemed and held to be citizens of Porto Rico, and as such entitled to the protection of the United States, except such as shall have elected to preserve their allegiance to the Crown of Spain on or before the eleventh day of April, nineteen hundred, in accordance with the provisions of the treaty of peace between the United States and Spain entered into on the eleventh day of April, eighteen hundred and ninty-nine; and they, together with such citizens of the United States as may reside in Porto Rico, shall constitute a body politic under the name of The People of Porto Rico, with governmental powers as hereinafter conferred, and with power to sue and be sued as such.[13]

As to existing laws there were provisions continuing in full force and effect all laws and ordinances of Porto Rico then in force, except as altered, amended, or modified by the act, or by such military orders and decrees in force at the time, and so far as the same were not inconsistent or in conflict with the statutory laws of the United States not locally inapplicable, until altered, amended, or repealed by the legislature of Porto Rico, or by an act of congress. There were also some specific exceptions to

[12] At the first session of the Legislative Assembly, a revenue act was passed known as the Hollander Act, which went into effect February 1, 1901, and on July 25, 1901, President McKinley issued a proclamation in accordance with the provisions of the Foraker Act, from and after which date free trade has existed between the United States and Porto Rico.

[13] It has been contended that this provision recognized by implication a Porto Rican citizenship based upon a Porto Rican sovereignty. See José de Diego, *Nuevas Campañas*. The contention, however, would seem to be founded on an erroneous conception of the American system of government, and the clear intention of Congress in describing the status of certain classes of the inhabitants of the Island for purely governmental purposes.

this provision relating to some old Spanish laws still in force such, for instance, as those forbidding the marriage of priests, etc., which were specifically repealed.

Provision was also made for the nationalization of Porto Rican vessels and their admission to the coastwise trade of the United States, as well as for the exchange of Porto Rican coins then in circulation for American money under certain rules and regulations relating thereto, a provision which, when carried into effect, soon afterwards, caused quite a revolution in the economic life of the Island and produced a general readjustment and consolidation of public and private wealth and values.

The act also contained provisions relating to the disposition of all property acquired in Porto Rico by the United States under the cession by Spain, and extending to Porto Rico such statutory laws of the United States as were applicable therein, except internal revenue laws which in view of the above provisions concerning revenues were not to be in force in the Island.

As concerns the Executive Department, Section 17 of the act provided as follows:

> That the official title of the chief executive officer shall be "The Governor of Porto Rico." He shall be appointed by the President, by and with the advice and consent of the Senate; he shall hold his office for a term of four years and until his successor is chosen and qualifies unless sooner removed by the President; he shall reside in Porto Rico during his official incumbency, and shall maintain his office at the seat of government; he may grant pardons and reprieves, and remit fines and forfeitures for offenses against the laws of Porto Rico, and respites for offenses against the laws of the United States, until the decision of the President can be ascertained; he shall commission all officers that he may be authorized to appoint, and may veto any legislation enacted, as hereinafter provided; he shall be the commander in chief of the militia, and shall at all times faithfully execute the laws, and he shall in that behalf have all the powers of governors of the Territories of the United States that are not locally inapplicable; and he shall annually, and at such other times as he may be required, make official report of the transactions of the government in Porto Rico, through the Secretary of State, to the President of the United States: *Provided*, That the President may, in his dis-

cretion, delegate and assign to him such executive duties and functions as may in pursuance with law be so delegated and assigned.

There was also a so-called Executive Council, composed of eleven members appointed by the president by and with the advice and consent of the Senate of the United States, for the term of four years, as follows: A secretary, an attorney general, a treasurer, an auditor, a commissioner of the interior, a commissioner of education, and five other persons of good repute. It was a specific provision of this act that five at least of the members of the executive council should be natives of Porto Rico.

It must be noticed here that the functions of this peculiar body were both executive and legislative in nature. As to its executive functions it could not perhaps be properly called a body, for aside from its executive action under local laws, executive functions were, under this act, practically centered in their entirety upon the aforementioned officials as duties and powers assigned to them in their respective capacities. In the case of the death, removal, resignation or disability of the governor, or his temporary absence from Porto Rico, the secretary was to succeed him in the exercise of all the powers and the performance of all the duties of the governor, during such vacancy, disability, or absence. All these executive officials were to transmit, through the governor to the attorney general, the secretaries of the treasury and of the interior and the commissioner of education, respectively, such reports concerning their duties as the latter might require, which were to be annually transmitted to congress. The secretary was also to transmit to the president, the president of the Senate, the speaker of the House of Representatives, and the secretary of state of the United States, one copy each of the laws and journals of each session of the legislative assembly.

It has been said that the greatest defect and evil of this law was to combine in the Executive Council corporate legislative powers and individual executive functions in a majority of its members, who as heads of departments might be interested in a legislative measure and vote upon it to insure or defeat its

passage, influenced merely by their views as executive officials. In this way it has been even charged that these officials often indulged in mutual concessions and bargainings in matters relating to their respective departments in order to insure harmony among themselves and thus be able to block all efforts of the people, through the House of Delegates, which were their only true representatives, to pass legislation beneficial to Porto Rico but contrary to their own individual interests as heads of such executive departments. This was practically admitted by Governor Yager in one of the hearings before the Committee on Insular Affairs of the House respecting the so called Jones-Shafroth Act which is now in force in Porto Rico. Another thing which certainly complicated matters and had a very detrimental effect upon the people was that the provision relating to the appointment of at least five natives of Porto Rico for this Executive Council was construed or at least acted upon as if it in substance prescribed that number not as a minimum but as a maximum ot Porto Rican representation in the council, with the result that since the acquisition of the Island up to the death of that body, under the Jones-Shafroth Act, Porto Ricans were always in minority in the council, simply because the administration never saw fit to appoint more than the five provided for in the law as a minimum. Is it then any wonder that the people should have begun to get restless and thoroughly dissatisfied with that body? It must be stated, however, that during the present administration, Governor Yager, who seems to be a man of largeness of mind and heart, of his own volition, and deeming perhaps that it was an act of plain justice which could result in nothing but great benefit to the Island, recommended to President Wilson the appointment of two more Porto Ricans for the Executive Council which gave them in that body a proportion of seven Porto Ricans as against four Americans, whereas until then it had been six Americans as against five Porto Ricans. President Wilson approved the recommendation and that relieved somewhat the situation which was becoming quite intolerable and prejudicial. Governor Yager himself has said upon this point:

When I went to Porto Rico, without any definite instructions from anybody but just feeling that that would be the proper thing to do, I recommended the appointment of two members of the Executive Council from among the Porto Ricans who had always heretofore been Americans. I selected the men with care and put them into executive positions and into the Executive Council. That produced an excellent impression in Porto Rico. There is no doubt about that, and I have had abundant evidence of it in the last 18 months—that the people of the Island generally feel that that was a step toward giving them a chance at the highest executive offices, and they appreciated it exceedingly. Of course, they did not agree with me entirely as to the best men. Some of them thought perhaps I could have done better. That is always the way, though. Nevertheless, they had the good sense and patriotism to see that the principle was the thing they wanted and the question of men was a minor matter. They showed good sense and judgment. They have appreciated that.[14]

Respecting the Legislative Department, it may be said that all local legislative power granted by this law was vested in a Legislative Assembly consisting of two houses: one was of course, the so-called Executive Council, which was, as we have seen, wholly appointive, and the other, a House of Representatives, consisting of thirty-five members elected biennially by the qualified voters of the Island; and the two houses thus constituted were designated "The Legislative Assembly of Porto Rico."

Concerning the qualifications for membership in the Executive Council, entire discretion was left to the President and the Senate of the United States in the matter of choosing. As to the representatives, there were no specific qualifying restrictions except that no person was to be eligible to membership in the House of Delegates, who was not twenty-five years of age and able to read and write either the Spanish or the English language, or who was not possessed in his own right of taxable property, real or personal, situated in Porto Rico. These features of the act are quite in contrast with the old Spanish *autonomía* in that the qualifying requisites for membership in the insular chambers

[14] *Hearings before the Committee on Insular Affairs*, House of Representatives, 64th Cong. First Sess., on H. R. 8501, January 13, 1916.

under the Spanish law were so numerous and exclusive that only few people could aspire to candidacy therefor. Owing, however, to the conditions which have been noticed respecting the manner of choosing the constituent elements of the Executive Council, the people of Porto Rico soon grew to regard the House of Representatives, which being an elective body was completely controlled by Porto Ricans, as the only truly Porto Rican element in the legislative department of the Island. The provision relating to the knowledge of reading and writing of either the Spanish or the English language, is rather out of place and amusing, but it shows in a measure the mistaken view of Congress as to the capacity of the people of Porto Rico in matters of self-government. To think that they could elect without this extemporaneous prohibition for their local legislature persons who could not read and write goes beyond any possible conception of "incapacity" unless the purpose was, as seems to be the case, to prevent the legislature of Porto Rico, which was the final arbiter in respect to the qualifications of its own members, to oust from its deliberations such Americans as had not learned as yet the Spanish language.

The suffrage under this law was extended, for the first election, to all citizens of Porto Rico who had been *bona fide* residents for one year and who possessed the other qualifications of voters under the laws and military orders in force on March 1, 1900,[15] subject to such modifications and additional qualifications and to such regulations and restrictions as to registration as the Executive Council might prescribe.[16] As to subsequent elections the Legislative Assembly was empowered to provide otherwise. Thus at the time of the passage of the present Jones-Shafroth Act universal suffrage of male citizens over the age of twenty-one years was the rule for the exercise of the franchise in Porto Rico, subject to proper provisions respecting registration and other

[15] For an interesting account of elections in Porto Rico, and the qualifications of voters under the old Spanish laws, and General Orders of the military governors, see *Report of the Military Governor, ut supra*, pp. 106–116.

[16] In this connection see *First Annual Report of Charles H. Allen, Governor of Porto Rico*, 1901, pp. 18–21.

matters relating to the conduct of elections and the proper use of the ballot. The method of election adopted by the legislature of Porto Rico was the Australian method of registration and balloting.

In respect to the legislative powers conferred by this law upon the Legislative Assembly of Porto Rico it may be said that its powers extended to all matters of a legislative character not locally inapplicable, including the power to create, consolidate, and reorganize the municipalities, so far as might be necessary, and to provide and repeal laws and ordinances therefor; and also to alter, amend, modify, and repeal any and all laws and ordinances of every character then in force in Porto Rico; or any municipality or district thereof, not inconsistent with the provisions of the act, with the proviso that all grants of franchises, rights and privileges or concessions of a public nature were to be made by the Executive Council, with the approval of the governor, and all franchises granted in Porto Rico were to be reported to Congress, which thereby reserved to itself the power to annul or modify the same.

The veto power over the legislature was expressed in the following provision:

Sec. 31. That all bills may originate in either house, but no bill shall become a law unless it be passed in each house by a majority vote of all the members belonging to such house and be approved by the governor within ten days thereafter. If, when a bill that has been passed is presented to the governor for signature, he approves the same, he shall sign it, or if not he shall return it, with his objections, to that house in which it originated, which house shall enter his objections at large on its journal, and proceed to reconsider the bill. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be considered, and if approved by two-thirds of that house it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered upon the journal of each house, respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after

it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the legislative assembly by adjournment prevent its return, in which case, it shall not be a law.

This is the veto power as we recognize it in the United States: that is to say, the power in the Executive to suspend the validity of a law until the legislature has had an opportunity to reconsider the measure. There was, however, a proviso to the effect that all laws enacted by the Legislative Assembly of Porto Rico were to be reported to the Congress of the United States, which thereby reserved to itself the power and authority, if deemed advisable, to annul the same. The Executive Council, on the other hand, acted as a sort of auxiliary in this respect, and all legislation originating in the House of Representatives which was opposed by the governor was quite sure to be killed by the Executive Council, and for this reason that body came to be regarded by the people of the Island as a mere instrument or executor of the will of the governor, which was pretty much like the old way under Spain, of placing in the hands of the governor both the executive and legislative functions of government.

The Judicial Department was constituted under this act of the same courts and tribunals already existing in the Island whether by virtue of the old Spanish laws or by the general orders of the military government.[17] The jurisdiction of these courts and the form of procedure in them, and the various officials and attachés thereof, respectively, were to be the same as defined and prescribed in and by said laws and general orders until otherwise provided by law. There was here a proviso to the effect that the chief justice and associate justices of the Supreme Court and the marshall thereof were to be appointed by the president,[18] by and with the advice and consent of the

[17] For an account of the judicial system of Porto Rico under Spain and its reorganization under the military regime of the United States, see *Report of the Military Governor, ut supra*, pp. 65–83. The Supreme Court was created by a military order on October 26, 1898, only slightly after the occupation of the Island by the military forces of the United States.

[18] As at present constituted this court is composed of five judges, three of whom including the chief justice are Porto Ricans, the other two being continental Americans. The marshal is also a Porto Rican.

Senate of the United States, and that the judges of the district courts were to be appointed by the governor, by and with the advice and consent of the Executive Council, and that all other officials and attachés of all the other courts were to be chosen as might be directed by the legislative assembly which was to have authority to legislate from time to time as it might see fit with respect to said courts, and any others which the said legislature might deem it advisable to establish, their organization, and number of judges and officials and attachés for each, their jurisdiction, their procedure, and all other matters affecting them.

Porto Rico, on the other hand, was to constitute a judicial district to be called "the District of Porto Rico". The president, by and with the advice and consent of the Senate, was to appoint a district judge, a district attorney, and a marshall for said district each for a term of four years, unless sooner removed by the president. This court, which was to be the successor of a United States provisional court established by a military order promulgated by General Davis,[19] was to be called the "District Court of the United States for Porto Rico," and it had power to appoint all such personnel as might be necessary. The jurisdiction of this court was to extend, in addition to the ordinary jurisdiction of district courts of the United States, to all cases cognizant in the circuit courts of the United States, and was to proceed therein in the same manner as a circuit court.[20] It was also provided in this respect that the laws of the United States relating to appeals, writs of error and certiorari, removal of causes and other matters and proceedings as between the courts of the United States and the courts of the several States were to govern in such matters and proceedings as between the district court

[19] For the organization, purpose, jurisdiction, and procedure of this provisional court which came to be known as the Federal Court, see *Report of Military Governor, ut supra*. p. 74 *et seq.*

[20] The jurisdiction of this court was enlarged by sec. 3 of a subsequent act of Congress, approved March 2, 1901, amending the Foraker Act, so that the latter might extend to and embrace controversies in civil cases when the partics, or either of them, were citizens of the United States, or citizens or subjects of foreign states, wherein the matter in dispute exceeded, exclusive of interest or costs the sum or value of one thousand dollars. *31 U. S. Stat. at Large*, p. 953.

of the United States and the court of Porto Rico. All pleadings and proceedings in the said district court were to be conducted in the English language.[21]

Another provision decreed that writs of error and appeals from the final decisions of the Supreme Court of Porto Rico and the district court of the United States were to be allowed and might be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the territories of the United States; and in all cases where the constitution of the United States, or a treaty thereof, or an act of Congress was brought in question and the right claimed thereunder was denied; and the supreme and districts courts of Porto Rico and the respective judges thereof had power to grant writs of habeas corpus in all cases in which the same are grantable by the judges of the district and circuit courts of the United States. Here also all such proceedings in the Supreme Court of the United States were to be conducted in the English language.

This law contained also a prohibition against the imposition of duties on exports from Porto Rico, and a provision authorizing the imposition of taxes and assessments on property and license fees for franchises, privileges, and concessions, for the purpose of the Insular and municipal governments respectively, as might be provided and defined by the Legislative Assembly. By this law Porto Rico, or any municipal government therein, was authorized when necessary to anticipate taxes and revenues, to issue bonds and other obligations, to provide for expenditures authorized by law and to protect the public credit, etc.; but no public indebtedness of Porto Rico or any municipality thereof was to be authorized or allowed in excess of seven per centum of the aggregate valuation of its property.

Following somewhat the practice established for the territories, this law provided for a resident commissioner of Porto Rico to

[21] For obvious reasons the district judge appointed for this court has always been an American. Practice in this court has been largely confined to American lawyers until recent years when Porto Rican lawyers trained in American universities and colleges began to participate therein as well as in many other matters relating to the government of the Island.

the United States, who was to be entitled to official recognition as such by all departments, upon presentation to the department of state of a certificate of election issued by the governor of the Island. This resident commissioner was to be elected by the qualified voters of Porto Rico every two years, and was to be a *bona fide* resident of the Island, no less than thirty years of age, and able to read and write the English language. By the courtesy of Congress, and quite outside of this law, he was also accorded a seat and voice, but no vote, in the House of Representatives, with practically all the same privileges and the same salary enjoyed by the regular members of Congress.

This act became a law on April 12, 1900; but owing to the necessary delays connected with the appointment of the officials created thereby as well as the final establishment of the new machinery provided by the act, it was deemed advisable to reorganize the military government in some of its details to make it conform to the provisions of the act. And by this method the new functionaries, with the exception of the governor who had been appointed by the president and was already in the Island, were appointed by the military governor, held over and continued to perform their duties until their places were filled in the manner prescribed by the act.[22] The new government was in this manner inaugurated on May 1, 1900 when the executive functions of the government were transferred by the last of the military governors, General George W. Davis, U. S. A., to the first so-called civil governor of the Island, Hon. Charles H. Allen.[23]

As a final commentary upon the effects of this law it may be said that another capital defect and evil of the most obnoxious

[22] By a joint resolution of May 1, 1900, the military officers in charge of the government of Porto Rico were empowered to fill the civil positions created by this act, which was of course intended to permit such officers to continue exercising the functions of the government until the new executive officers created by the act should be appointed and qualify. By this resolution were also introduced some amendments relating to grants of franchises, privileges, etc. *31 U. S. Stat. at Large*, pp. 717–718.

[23] For an account of the establishment and working of the new civil government of the Island under this law, see *Report of the Military Governor, ut supra*, pp. 56–57, and *Reports of the Governors of Porto Rico*, 1901–1917.

nature of its provisions was that practically all executive officials, including the governor and members of the Executive Council, judges, and nearly all public functionaries from the highest rank to the lowest, were purely appointive positions controlled either by the president, by the Executive Council or by the governor, with the result that the people of Porto Rico had no voice on the designation of the persons who were to serve theoretically as their servants and practically as their masters in the administration of their government. It is no wonder therefore that Porto Ricans as a rule should have been practically ousted and excluded from the higher positions in that government, and that on account of that atavic and ever-present tendency of men everywhere to show preference for those of their own kind, nationality, or breed, Americans were as a rule preferred. And the pretext was always the same: Porto Ricans were not prepared; they were not fit to exercise the powers and perform the duties connected with those higher offices which controlled the management and direction of their own affairs and government. The result of all this was that there came an ever-increasing influx of carpet-baggers into the Island who sought to belittle and obscure Porto Ricans to the end of preserving to themselves or their American favorites the benefits of the Porto Rican treasury and the honor and prerogatives belonging and appertaining to the higher offices of the insular government. And while it is undoubtedly true that many learned and honored Americans who came to the Island have rendered noble and distinguished service to Porto Rico, yet illustrious and competent Porto Ricans were thrown back into undeserved obscurity and branded as incompetent, as incapable, as unprepared to assume the sacred duties and obligations of their own government, while obscure and even disqualified and incompetent Americans were placed in positions of responsibility and trust. Is it then any wonder that there should have developed in the Island a strong public sentiment against this system which made possible all this exclusion, and misrepresentation, and all this imposition and abuse? Is it then any wonder that some Porto Ricans should have come, as a consequence of these things, to regard American sovereignty over

the Island as nothing more or less than the personification of a new master still more formidable than Spain? And when the constant failure of the repeated efforts of Porto Ricans to have Congress correct these terrible errors is considered, is there any wonder that the more excitable and the more impatient should have begun to talk of despotism and independence and regard those Americans who went to Porto Rico to profit by their misfortunes and conditions of political inferiority and preterition, not as real friends or fellow Americans, but rather as office seekers and despoilers of their government, of their wealth, of their prestige, and of their faith?

And yet during all those years of political trials and tribulations the saner Porto Rican elements did not lose their faith and trust in the American people: they knew that this great and noble and generous nation would some day begin to do them justice. That law, the Foraker Act, was only a temporary measure: it was not the final word of the American Congress. Some day that law would have to be revised and amended or completely superseded by some other measure. Some day the American people would have to consider Porto Rico and render it complete justice. And the counsel and example of these saner men prevailed throughout the Island. And the people sat tight and waited, waited bravely, courageously, for nearly twenty years, until at last one day Congress saw fit to pass another organic act for the Island. Whether or not this new organic act fulfilled and satisfied completely the aspirations of the Porto Rican people will be considered later. For the present we must add that in spite of its excessive conservativeness and glaring defects, the Foraker Act was undisputably an admirable measure. Under its provisions Porto Rico accomplished more than could really have been expected. As a provisional measure, the Foraker Act will always stand as a monument to American ability and statesmanship, in framing, without previous experience in colonial matters, a law so well calculated to obviate and avoid the ominous dangers attending that difficult period of transition from the oppressive, degrading, and ruinous domination of Spain to the liberal, uplifting, and prosperous

rule of the United States. And let it be said loudly, under its provisions Porto Rico has developed politically, socially, economically, and in every possible sense, to such an extent that it might not be recognized today by those who beheld it languishing under the sovereignty of Spain. The greatest mistake, however, was to let it endure so long.[24] However wise its provisions might have been at first, in later years they were productive of much mischief. Had it been superseded earlier by a more appropriate measure, the Foraker Act would today deserve only favorable comment and praise. As it was, it must be criticised, and much of the good in it was in great measure destroyed, not so much perhaps from a lack of elasticity and adaptability to the new conditions which had developed in the Island, as from the inflexible ultraconservative interpretation given to its terms by the American administration during so many years of congressional indifference, procrastination, and delay.

III

THE PRESENT JONES-SHAFROTH ACT: A MEASURE OF RELATIVE SELF-GOVERNMENT FOR PORTO RICO

Although the procrastinating and fateful "mañana" of the Spaniards seemed to have contaminated Congress in respect to the enactment of more appropriate legislation for Porto Rico, after more than four years of dilly-dallying in the consideration of no less than four different bills[25] which were repeatedly intro-

[24] By an act of Congress approved July 15, 1909 (*36 U. S. Stat. at Large*, p. 11) two important amendments were introduced in this act: one providing that the general appropriations for any fiscal year for which the legislature fails to pass an appropriation measure shall be the same as in the previous year; and the other prescribing that all reports required by law to be made by the governor or members of the executive council to any official in the United States shall be made to an executive department of the government of the United States designated by the president, and the president is thereby authorized to place all matters pertaining to the governor of Porto Rico in the jurisdiction of such department. The War Department, theoretically, but practically the Bureau of Insular Affairs as a branch of that department and at present constituted as a sort of Ministry of the Colonies, has at present entire charge of Porto Rican affairs.

[25] Two of these bills originated in the senate, and the other two in the House. They were introduced respectively by Senators Shafroth of Colorado and Sauls-

duced in both houses of Congress, and after many hearings, discussions, and comments upon the same without any practical results, at last a new organic law was passed by Congress,[26] the title of which is as follows: "An Act to provide a Civil Government for Porto Rico and for other purposes." This law, which was approved on March 2, 1917, was the result or combination of two bills introduced respectively in the House of Representatives and the Senate by Representative William A. Jones of Virginia and Senator John F. Shafroth of Colorado: hence the actual name given to this law, "Jones-Shafroth Act".

Much has been said in respect to the authorship of this act, but as a matter of fact it may be stated that whoever may have planned its general scheme and purpose, it suffered so many modifications and amendments by so many suggestions coming from so many sources, that in justice to all it could be scarcely called anything else than the offspring of many minds and of many hearts.

Mr. Jones and Mr. Shafroth undoubtedly are entitled to a good share of the credit for it; but so are also the Hon. Arthur Yager, the present governor of Porto Rico, and General McIntyre and Colonel Walcutt, both of the Bureau of Insular Affairs. Not the least credit and praise for this measure were undoubtedly due to the Hon. Resident Commissioner of Porto Rico, the late Señor Luis Muñoz Rivera, who was also the author of another bill, which was killed in committee because of its more radical features. Entitled to credit are also a good many Porto Ricans and distinguished Americans who either in some official or even purely personal capacity, or as representatives or members of commissions representing the different political parties of the Island, contributed with their suggestions and proposed amendments and modifications to give to the said measure its present acceptable form.

bury of Delaware, Representative Jones of Virginia, and Resident Commissioner Muñoz Rivera, of Porto Rico. The Saulsbury bill proposed to make Porto Rico an incorporated territory of the United States and was killed in committee; Señor Muñoz Rivera's bill provided for complete self-government for the Island and shared the same fate as the Saulsbury bill. The Shafroth and the Jones bill were finally combined into the present Jones-Shafroth Act.

[26] The Jones-Shafroth Act, Public No. 368, 64th Cong. H. R. 9533.

Owing to the great length and importance of this measure and in order to avoid a misconception or misinterpretation of its terms, which might be the result of making a condensed statement of them, we will content ourselves with giving here a general outline of its principal features, referring the reader, who may be interested in knowing its exact provisions, to the text of this law.[27]

In examining this law, the first thing we notice is that, like the old Foraker Act, it does not concern itself with a determination of the status of the Island, evidently preferring to leave it in the same condition that it was theretofore, namely, as declared by the Supreme Court in the consideration of the famous insular cases, which we have quite extensively reviewed.[28]

Then follows a "Bill of Rights" in which are included a good many matters which ought to have been left to the legislature of Porto Rico to determine. The insertion of this "Bill of Rights" of course carries with it in a good many provisions the implication that the Constitution is not to be considered as in force in the Island, at least to the extent that it is not absolutely controlling the action of Congress therein; for if there had been an opposite intention, it would have been enough to make a declaration to that effect, without the necessity of including in it a few provisions of that instrument relating to the rights and guaranties of the citizen thereunder.

The most important feature of this law is in respect to the political status of the inhabitants of the Island. By it, it is declared that all citizens of Porto Rico, as defined by the old Foraker Act, and other Porto Ricans, who by a defect in the drafting of that law, were excluded from Porto Rican citizenship, are citizens of the United States. There is also a proviso by which any of the above persons described by this law may retain his old political status by making a declaration to that effect before a competent court within a certain time from the taking effect of the act. This proviso was of course intended to prevent

[27] See above, note 26.

[28] *American Journal of International Law;* vol. X, pp. 317–327, see also July, 1919.

any one from contending that American citizenship had been forced upon him against his will or consent, because under its terms he could decline to receive this citizenship by simply making a formal declaration to that effect in the manner prescribed by law. It may be said, however, that the number of persons who availed themselves of this proviso is so small that it can scarcely be considered as of any particular importance. According to the report of the governor of Porto Rico to the secretary of war for the year 1917, not more than 290 persons for the whole Island made renunciation of American citizenship; while on the other hand more than 800 persons born in Porto Rico of alien parents have voluntarily availed themselves of another provision of the act permitting them to become American citizens by a sworn declaration of allegiance to the United States.

Another characteristic feature of this act is that the divisions pertaining to the powers of the government are more precisely marked out and established than in the old Foraker Act as between the executive and legislative departments. Under this law the executive power is vested in the governor who has general supervision and control of all the departments and bureaus of the government and is responsible for the execution of the laws of Porto Rico and of the United States applicable in the Island. There are also created by this law six executive departments called respectively: Justice, Finance, Interior, Education, Agriculture and Labor, and Health. The heads of these several departments, who are designated as the attorney general, the treasurer, and the commissioners of the interior, education, agriculture and labor, and health, respectively, form, in a collective capacity, a council to the governor, known as the Executive Council. Of all these executive officials, the governor, the attorney general and the commissioner of education are appointed by the president, by and with the advice and consent of the Senate of the United States; the heads of the four remaining departments, that is to say, the treasurer, the commissioner of the interior, the commissioner of agriculture and labor, and the commissioner of health being appointed by the governor, by and with the advice and consent of the Senate of Porto Rico.

The powers, duties, and obligations of each of all these executive officials are specifically set out and provided in this law, and will not be repeated here. Attention, however, must be called to the very extraordinary powers given to the commissioner of education, who not only has authority to superintend public instruction throughout the Island, but all proposed disbursements on account thereof must be approved by him, and all courses of study must be "prepared" by him, subject to disapproval by the governor if he desires to act. The commissioner of education is also to prepare rules governing the selection of teachers, and their appointment by local school boards is to be subject to his approval.

The reasons of these provisions are not indeed very apparent; but a clue to their discovery may be found, perhaps, in the fact that under the old Foraker Act the educational policy of the Island was under the practical control of American officials through a constant majority of Americans in the Executive Council; whereas, under the present organic act, this control, except for the terms of the above provisions, would pass to the hands of Porto Ricans through the Legislative Assembly which is entirely composed of Porto Ricans and should have competent jurisdiction to regulate these matters. It would seem therefore, that the idea was to preserve the control of the educational policy of the Island in the hands of an American official.

There is no doubt, therefore, that this idea may have been inspired in the belief that an American educator appointed by the president for this office would probably be better qualified than any Porto Rican for the all important task of mapping out an educational policy which should promote a rapid Americanization of the Island and its inhabitants. For this purpose, it seems to have been the idea of Congress that the said official should not be handicapped in his plans by the interference of the local legislators whose points of view in respect to pedagogical and Americanization matters might not be entirely in accord with those of the said official.

It would seem, however, that there are involved in this matter a good many questions which undoubtedly require a proper

regard for the opinions and sentiments of the Porto Rican people; furthermore, in dealing with Porto Rico's problems in a spirit of fairness and justice, the fact should not be forgotten that the unprecedented success of the American administration in the Island, not only in this all important matter of education, but also in all other matters pertaining to the government of Porto Rico, has been made possible by the constant and efficient collaboration of Porto Ricans, and it is indeed rather unjust and impolitic to discourage their collaboration in a matter which is so near to their hearts and so important for their future progress and development. This policy of exclusion can arouse nothing but resentment, opposition, and distrust. In regard to such an important matter for the Porto Rican people as public education is, no one can be more interested than the Porto Rican people themselves. This has been shown beyond the pale of a reasonable doubt by their unequivocal and resolute determination to place education above everything else in Porto Rico. The question of Americanization is perhaps premature, at least in so far as American public opinion has not as yet crystallized as to the future destiny of Porto Rico; and to place this serious matter of education in the hands of a single man unacquainted with Porto Rican conditions and needs, just because he must be an American, entails the risk of mere experimenting, and the difficulty with this is that neither Porto Rico nor the United States can indulge in this sort of thing, as experiments are generally costly and in the long run may retard the educational advancement of the Island. In this connection it may not be entirely amiss to consider also that the expenses of public education in Porto Rico are not paid, as many assume to believe, out of the Treasury of the United States, but are defrayed by the public treasury of the Island. On the other hand, Congress might render a much greater service to Porto Rico and promote the cause of a rapid Americanization of the Island more efficiently by appropriating an adequate sum of money—say, four or five million dollars every year—to help the Porto Rican educational establishment, for the construction of new school houses in the rural districts and small towns, and to increase the number of

teachers, which is what Porto Rico most urgently needs in this respect.

There is also created by this act an auditor, appointed by the president of the United States, who has the general control of all accounts pertaining to revenues and receipts, from whatever source, of the government of Porto Rico and of the municipal governments of the Island. It is the duty of this official whose office is under the general supervision of the governor, among other things, to bring to the attention of the proper administrative officer, expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant, and his decisions are final, except that any person aggrieved by this action or decision in the settlement of his account or claim may take an appeal to the governor within a specified time. The decision of the governor in such cases is final, subject to such right of action as may be otherwise provided by law. This provision would seem to be in keeping with the general treasury policy of the United States by which the decision of the auditor is subject to revision by the controller of the treasury, whose decision is final, the governor, in the case of Porto Rico assuming the rôle of the controller of the treasury, and the aggrieved party having the right to sue, if that should be allowed by the Legislature of Porto Rico, or general law. It is to be observed, however, that in the matter of allowing or refusing to allow money to be drawn from the Porto Rican Treasury upon his own interpretation of existing laws, there is always the danger of a too narrow construction of the organic law of the Island by the auditor, in respect to the appropriation powers of the local legislature under the said law, and the consequent conflict of opinion and friction between him and the said legislature. This has been already shown in several instances, and will probably continue to be shown in many others, unless some effective means are devised to prevent its repetition.

There is also created by this law an executive secretary who is to be appointed by the governor and whose executive duties greatly resemble those of the secretary of Porto Rico under the old law, except that in the case of absence or of accidental vacancy

in the office of governor, he is not the official to assume its place, but the president may from time to time designate the head of an executive department of Porto Rico to act as governor in such a case.

A further characteristic feature of the Jones-Shafroth Act is as already suggested, the creation of an elective Senate which is to exercise all of the purely legislative functions which belonged to the old Executive Council under the Foraker Act, including confirmation of appointments and such other powers and authority as are conferred upon it by the present Organic Act. As to the House of Representatives it is now established much along the same lines as in the former law. The qualifications for membership in the Senate are not at all restrictive, the only provision in this respect being that "no person shall be a member of the Senate of Porto Rico who is not over thirty years of age, and who is not able to read and write either the Spanish or English language, and who has not been a resident of Porto Rico for at least two consecutive years, and, except in the case of Senators at large, an actual resident of the senatorial district from which chosen for a period of at least one year prior to his election". The same provision practically applies to membership in the House of Representatives except that the age limit is fixed at twenty-five instead of thirty years as in the Senate; and the Senate and House of Representatives, respectively, are the sole judges of the elections, returns, and qualifications of their members, and exercise all the powers with respect to their proceedings which usually appertain to parliamentary legislative bodies.

The electoral franchise or suffrage under this law is subject to a double provision, dealing with the first election held pursuant to this act, when the qualified electors were those having the qualifications of voters under the old laws,[29] and with successive elections when the voters shall be citizens of the United States, twenty-one years of age or over and have such additional qualifications as may be prescribed by the Legislature of Porto Rico,

[29] See above pp. 562–563 and notes 15 and 16.

with the proviso that no property qualification shall ever be imposed upon or required of any voter.

The Legislature under this law is to meet biennially for an unlimited period, but there are some provisions relating to the salaries of its members which would seem to tend to limit its sessions to a period of ninety days. The governor, however, may call special sessions of the Legislature or of the Senate at any time when in his opinion the public interest may so require, but no special session is to extend beyond the period of ten days, and no measure can be considered at such session other than that specified in the call.

Respecting the legislative powers there are to be found a good many restrictions which are deemed by many Porto Ricans to be quite unnecessary and even a curtailment of the powers enjoyed by the Legislature under the old Foraker Act. On the whole, however, these restrictions, in many cases will be found in the last analysis to be quite salutary and wise. As to others it may be said that they are the result of mere prejudice or of a lack of real information as to the actual conditions prevailing in the Island.

As to the veto power the provisions of this act are worthy of special notice, because they involve quite a departure from the generally accepted theory of that power. The pertinent portion of those provisions are as follows:

> . . . . No bill shall become a law until it be passed in each house by a majority yea-and-nay vote of all of the members belonging to such house and entered upon the journal and be approved by the governor within ten days thereafter. If when a bill that has been passed is presented to the governor for his signature he approves the same, he shall sign it; or if not, he shall return it, with his objections, to the house in which it originated, which house shall enter his objections at large on its journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the members of that house shall agree to pass the same it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members of that house it shall be sent to the governor, who, in case he shall then not approve, shall transmit the

same to the President of the United States. The vote of each house shall be by yeas and nays, and the names of the members voting for and against shall be entered on the journal. If the President of the United States approves the same he shall sign it and it shall become a law. If he shall not approve same he shall return it to the governor so stating, and it shall not become a law; *Provided*, That the President of the United States shall approve or disapprove an Act submitted to him under the provisions of this section within ninety days from and after its submission for his approval; and if not approved within such time it shall become a law the same as if it had been specifically approved. If any bill presented to the governor contains several items of appropriation of money, he may object to one or more of such items, or any part or parts, portion or portions thereof, while approving of the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items, parts or portions thereof to which he objects, and the appropriation so objected to shall not take effect. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him, it shall be a law in like manner as if he had signed it, unless the legislature by adjournment prevents its return, in which case it shall be a law if signed by the governor within thirty days after receipt by him; otherwise it shall not be a law. All laws enacted by the Legislature of Porto Rico shall be reported to the Congress of the United States as provided in section twenty-three of this Act, which hereby reserved the power and authority to annul the same. . . . .

So far as referring the bill to the president in the case of a disagreement between the governor and the Legislature is concerned, this provision is the result of a compromise. As it will be remembered, under the old Foraker Act the veto power had merely the effect of suspending the passage of a law until the legislature should have an opportunity to reconsider the measure upon the reasons submitted by the governor, but that at all events the bill was to become a law if the legislature persisted in its adoption as such in spite of the objections made to it by the executive. In the original drafting of the new organic act it was proposed to give to the governor power to veto absolutely any law that he should see fit against the wishes of the Legislature. In support of this absolute veto power in the governor

it was contended that under the old Foraker Act the legislative power was partly in the hands of the Executive Council which could be more or less influenced by the governor and which until later years was effectively controlled by Americans whereas the said legislative power was now vested in the Legislature of Porto Rico which must be entirely controlled by Porto Ricans by reason of its being elective, and therefore that some check must be created to prevent any misuse or abuse of those powers. Aside from the unreasonableness and prejudice of this contention, it was argued on the other side that this absolute veto power in the governor would render nugatory all the legislative powers of the Porto Rican Legislature and place them virtually into the hands of the governor who could by the exercise of this autocratic veto power impose entirely his will, in all legislative matters, upon the people, and thereby cause great dissatisfaction, unrest, and even conflicts of a very serious nature. To this it may be added that in view of the honorable and successful legislative record of Porto Ricans in the House of Representatives, which has been entirely Porto Rican since the establishment of the civil government of Porto Rico under the Foraker Act, and in the Executive Council at least since they were in majority in that body, there should not have been any cause for misapprehension, prejudice, or mistrust. But the reactionary elements were bent on prevailing at all events, and thus, those who better understood the character, patriotism, ability, and temper of the Porto Rican people, although fully realizing the injustice and impracticability of the thing, suggested, as a compromise, that in case of the said disagreement between the governor and the Legislature of the Island, the measure in dispute should be referred to the president of the United States. This somewhat resembles the procedure under the old Spanish autonomy.

It would be quite interesting to follow step by step the discussion of all this section of the Jones-Shafroth Act referring to the veto-power and approval or disapproval of the laws enacted by the Legislature in accordance with the assumed purpose of the act to give a larger measure of self-government to the Island, but such a discussion would be quite impracticable from the

standpoint of space. Attention, however, will be called to the anomalous feature relating to the budget of receipts and expenditures, which is to be prepared and submitted to the Legislature by the governor as the basis for the ensuing biennial appropriation bill. It will be noticed that when this bill is presented to him for his signature he may object to one or more of the items of appropriation, or any part or parts thereof, while approving the other portions of the bill, so that those items which he disapproves shall not take effect. To any unprejudiced and liberal mind this must necessarily appeal as a glaring outrage, for under these provisions the governor is empowered practically to dictate a budget of receipts and expenditures to the Porto Rican people, without the sanction of their Legislature.

Worthy of notice are also the provisions of this act creating a public service commission, consisting of the heads of executive departments, the auditor and two elective commissioners. This commission is to make all grants of franchises, rights, and privileges of a public or quasi public nature, and is also empowered and directed to discharge all the executive functions relating to public service corporations theretofore conferred by law upon the old executive council. Franchises, rights, and privileges granted by the said commission are not effective until approved by the governor, and they are to be reported to congress, which reserves the power to annul or modify the same.

As to Porto Rican representation in Congress the provisions of this act resemble those of the old Foraker Act relating to the subject except that the term of incumbency for the resident commissioner shall be four years, and no person is to be eligible to election as such resident commissioner who is not a *bona fide* citizen of the United States, and who is less than twenty-five years of age, instead of thirty as under the Foraker Act. And in case of a vacancy in the office of resident commissioner by death, resignation, or otherwise, the governor, by and with the advice and consent of the Senate is to appoint a substitute for the unexpired term. This later provision is an improvement upon the Foraker Act, as under that law, in case of an accidental vacancy in the office of resident commissioner, there was no

provision made for filling it until the next election. This precisely happened while the Jones-Shafroth Act was pending owing to the premature death of the incumbent, the Honorable Luis Muñoz Rivera, when Porto Rico was entirely bereft of official representation in Congress until the election, nearly one year later, of the present incumbent under the Jones-Shafroth Act.

It seems almost incredible that the representation of Porto Rico should not have been increased under this act but left in the same condition as before, namely, limited to a single resident commissioner, when the Island has a population of nearly a million and a quarter of inhabitants which is larger than double, triple, and even quadruple the population of some states of the union. And when this representation is compared with sixteen Representatives and three Senators which Porto Rico was entitled, under the Spanish rule, to send to the *Cortes* of the Kingdom of Spain, it would seem that the Jones-Shafroth Act might have been a little more generous and considerate of the sentiments of the islanders and accord to Porto Rico one or two more delegates with seats and voice in both houses of Congress until a definite solution should be given to the Porto Rican problem.

As to the Judicial Department, it may be said that the Jones-Shafroth Act leaves its organization practically as it was under the former organic law, except that the jurisdiction of the federal court is so modified and enlarged as to extend to and embrace all controversies where all of the parties on either side of the controversy are citizens or subjects of a foreign state or states, or citizens of a state, territory, or district of the United States not domiciled in Porto Rico, wherein the matter in dispute exceeds, exclusive of interest or costs, the sum or value of three thousand dollars, and of all controversies in which there is a separable controversy involving such jurisdictional amount and in which all of the parties on either side of such separable controversy are citizens or subjects of the character aforesaid. Although a great deal of opposition has been manifested in the Island[30] against this extraordinary jurisdiction of the federal

[30] See statements of Señor Rodríguez Serra and Señor Barceló in *Hearings before the Com. on Pacific Islands and Porto Rico*, U. S. 56th Cong., 1st Sess., on S. 1217, pp. 33, 44.

court, it cannot be denied that it is quite in keeping with the principles involved in the diverse citizenship clause in the constitution of the United States, a principle most salutary and beneficent, especially so in the case of Porto Rico, if it is intended to overcome the objections and legitimate desires of all such Americans and foreigners who have not as yet, by long and permanent residence in the Island, become acquainted with general conditions there and acquired an implicit reliance on the wisdom and absolute integrity of the Porto Rican courts.

On the whole it may be said with respect to this act that its general provisions constitute quite a large improvement on the old Foraker Act, especially with respect to the status of Porto Ricans, the divisions of governmental powers, the establishment of an elective Senate and a public service commission, although the powers of the latter are perhaps a little excessive and in some respects might have been placed in the hands of the Legislature of the Island.

The powers of the governor are no doubt unnecessarily excessive, specially, with respect to the veto power, which in its present form is practically absolute, since an appeal to the president will seldom if ever be taken by the legislature for reasons which will be quite obvious to any impartial observer of matters of this kind. It may be conjectured, however, that these powers of the governor may become a harmless weapon in his hand if he realizes the self-evident proposition that Porto Rican problems are not always susceptible of an American solution but as a general rule must be worked out and solved by the Porto Ricans themselves in a Porto Rican way, and that his mission at least in such cases, is more in the nature of a steadying power, a sort of regulator in local conflicts of opinion and opposite views, his rôle as a rule being that of a friendly adviser and counselor rather than that of a dictator or overbearing schoolmaster bent on imposing his own personal views based on a purely American conception of the situation in hand; otherwise there will be always the danger of unnecessary misunderstandings and friction between the governor and the Legislature of the Island. Thus far, however, whenever any controversy has arisen between them

it has been completely smoothed out, owing in the first place to the patriotic spirit animating all the elements concerned, and then to the level headedness of both Governor Yager and the leaders of the Legislature of Porto Rico, without regard to party politics, who have united in a commendable effort to collaborate and work together, with the greatest possible harmony, for the complete success of this new experiment in self government for the Island.

In conclusion, it may be observed that under the provisions of this act, a large share of the government of the Island is placed in the hands of the Porto Ricans themselves, and as the president, in the exercise of the appointing powers granted to him by this law, may if he so deem it advisable and proper, select Porto Ricans for the office of governor, attorney general, commissioner of education, auditor, and all other appointive positions entrusted to his judgment and discretion to fill by and with the advice and consent of the Senate, or otherwise, it is apparent that a much larger measure of self-government may be confided to Porto Ricans under this law.[31] In this sense, therefore, this act while still conservative may yet be made much

[31] There is at the present time a strong movement in Porto Rico in favor of having the President appoint a Porto Rican for the office of Attorney General and another for Governor of Porto Rico. As to the office of Governor of the Island, it may be said that while some Porto Rican politicians insist that it should be made an elective office, others more conservative or less sanguine of radical changes, would prefer to make haste slowly and experiment first by having a Porto Rican appointed instead of an American as heretofore. The advantages of following this procedure at least for a time are quite obvious and should not be disregarded. Any unprejudiced observer can readily see that, by appointing a Porto Rican for this office a high compliment would be paid to the ability and preparation of Porto Ricans for self government, while at the same time the Porto Rican Governor would be placed beyond the reach and control of the political parties of the Island, and thus while the chances for corruption and abuse of power would be minimized, he could feel entirely at liberty to act independently from party politics and do as he should see fit in accordance with the duties of his office and the dictates of his conscience. The people on the other hand would continue to regard this office as the highest representation of American sovereignty besides the flag, and at the same time would learn to regard him not only as the personification of the highest Porto Rican executive authority in the Island, but also as the emblem of Porto Rican capacity for self government.

more liberal by the action of the president, to whom, therefore, Porto Ricans must look in this respect for a substantial increase of their share in the government of the Island, at least for the present, until Congress shall see fit to legislate less conservatively and more liberally for Porto Rico.

PEDRO CAPÓ-RODRÍGUEZ.