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## Members and Outsiders: An Examination of the Models of United States Citizenship As Well As Questions Concerning European Union Citizenship

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**Members and Outsiders:  
An Examination of the Models of United States Citizenship  
As Well As Questions Concerning European Union Citizenship**

Ediberto Román\*

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**I. Introduction**

Be it in the United States or across the Atlantic, notions of citizenship conjure up thoughts of nationalism, membership, equality, price and patriotism. Though these notions suggest a sense of inclusion, the term citizenship also conjures up, for many, feelings of exclusion and subordination. This article will examine the fact that despite the virtuous rhetoric associated with the term, the status of citizen is often an elusive ideal, notwithstanding the attainment of such status. While the status is theoretically to include a litany of rights as well as a perception of belonging, for many in this society, citizenship means neither. Although many consider citizenship as deriving from a few sources and resulting in one form of membership, this article will demonstrate that in the United States there are differing forms of the status and each containing various levels of participation and inclusion.<sup>1</sup> The various forms include the Fourteenth Amendment Citizens, the Other Fourteenth Amendment Citizens, and the Alien-Citizens. These various forms of the status demonstrate that becoming a United States citizen does not result in becoming an equal member of the body politic.

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\* Professor of Law, St. Thomas University; J.D. University of Wisconsin, 1988; B.A. Lehman College, 1985. This work is a briefly cited version of a presentation the author made at the University of Malaga, Spain, in 1998. The author thanks the organizers of that conference for the opportunity to express these views. This work is dedicated in loving memory to Carmen Hernandez. Much thanks goes to Lani Menendez, James J. Malone, and Theron Simmons for their research assistance. A very special thanks goes to Christina D. Román, a.k.a. "peanut," for being the author's companion, closest friend, honest critic, cheapest analyst, and vision of true beauty.

<sup>1</sup> See e.g., Richard Delgado, *Citizenship: How Society Rejects the Very Person It Most Needs In the Coming Race War?* 142 (1996); Neil Gotanda, *Race, Citizenship, and the Search for Political Community Among "We The People,"* 76 OR. L. REV. 233 (1997); Kevin R. Johnson, *An Essay on Immigration, Citizenship and the U.S./Mexico Relations: The Tale of Two Treaties*, 55 W. J. L. & TRADE AM. 121 (1998); Sylvia R. Lazos Vargas, *Deconstructing-Homo[geneous] Americanus: The White Ethnic Immigrant Narrative and Its Exclusionary Effect*, 72 TUL. L. REV. 1493 (1998); Yxta Maya Murray, *The Latino-American Crisis of Citizenship*, 31 U.C. DAVIS L. REV. 503 (1998); George W. Gold, *The Racial Prerequisite in the Naturalization Law*, 15 B.U. L. REV. 462 (1935).

This article will also briefly engage in a comparative critique of the European Union's notion of citizenship. By exploring the varying United States models, this article will raise questions concerning the ability of the European Union to achieve the egalitarian goals of membership and equality. This article, with perhaps an apocalyptic tone, raises a host of possible scenarios, yet ultimately suggests that, given the history of the region, the European Union's notion of a fully unified and integrated Europe is unlikely. Yet another possibility is that if the goal of full integration is achieved, it may result in a form of citizen that is only applicable to economic constructs. However, if European citizenship includes substantive rights then such status will more likely be achieved if the Union remains white and Christian. Finally, if the skepticism raised in this work proves to be too grim and the laudable goal of a unified union is achieved, then the notion of European citizenship may truly become a transformative concept for the region and perhaps the world.

## II. The Scope of American Citizenship

For most citizens of the United States, citizenship is supposed to mean something, and something important.<sup>2</sup> "The concept of citizenship is fundamental to constitutional interpretation."<sup>3</sup> It is the adhesive that is supposed to establish the contours of the Constitution and bind the people to the republic.<sup>4</sup> Yet the founding fathers of this country did little to explain the term. For instance, the original Constitution of 1798 contained several provisions touching upon the concept, but failed to define it.<sup>5</sup> To this day the concept is replete with ambiguity. This can be evidenced by what President Clinton recently asked "[c]an we fulfill the promise of America by embracing all our citizens of all races, . . . can we define what it means to be an American, not just in terms of the hyphen showing our ethnic origins but in terms of our primary allegiance to the values America stands for . . ."<sup>6</sup>

The central discussion of the citizenship concept in the United States Constitution is addressed in the first and second clauses of the Fourteenth Amendment.<sup>7</sup> The first provides "All persons born and naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and the state wherein they reside."<sup>8</sup> The second clause, known as the Privileges and Immunities Clause, guarantees that no state shall abridge the rights of a citizen of the United States.<sup>9</sup> This section recognizes a form of dual citizenship in state as well as national. In the leading case attempting to address the term citizen, Justice Miller in

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<sup>2</sup> Sugarman v. Dougall, 413 U.S. 634, 652 (1972) (Rehnquist, J. dissenting).

<sup>3</sup> Johnny Parker, *When Johnny Came Home Again, A Critical Review of Contemporary Equal Protection Interpretation*, 37 How. L.J. 393, 396 (1994).

<sup>4</sup> *Id.*

<sup>5</sup> See generally U.S. CONST. amend. XIV, § 1.

<sup>6</sup> Remarks by President Clinton at University of California at San Diego Commencement, available at <http://www.whitehouse.gov/initiatives/oneamerica/1997061611894.html> (June 14, 1997).

<sup>7</sup> See generally the Privileges and Immunities Clause, U.S. CONST. Article IV.

<sup>8</sup> U.S. CONST. amend. XIV, § 1.

<sup>9</sup> *Id.*

the majority opinion in the Slaughter House cases,<sup>10</sup> indicated that the Fourteenth Amendment provided a definition of the concept.<sup>11</sup> However, as other scholars have noted,<sup>12</sup> section one of the Fourteenth Amendment identifies the conditions for attaining citizenship rather than define the term.<sup>13</sup>

#### A. The Fourteenth Amendment

##### (i) Clause One

"All persons born and naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and the state wherein they reside."<sup>14</sup> Over time both jurists and scholars have shed considerable light on the importance of this clause. Indeed, the term citizen has evolved to become something more than just being "born or naturalized in the United States."<sup>15</sup> The grant of citizenship is the formal recognition of these concepts and the guarantee of certain rights and duties, including the right to suffrage as well as other important constitutional rights.<sup>16</sup> It is recognized as the "right to have rights."<sup>17</sup> Its importance, however, does not merely lay with the delineated rights identified by the courts and legislatures.<sup>18</sup> Citizenship is considered to define the relationship between the individual and the state.<sup>19</sup> Citizenship is "the tangible status of dignity, legitimacy, participation, accountability, and equality."<sup>20</sup> It "entails being able to participate in society, to enjoy its fruits and to fulfill one's own potential . . ."<sup>21</sup> The status of citizen recognizes that such a person is ordinarily one who possesses political power.<sup>22</sup> It encompasses a recognized status of the individual in relation to the state and a relationship of equality among those individuals holding such status. It thus contains communal as well as individualistic privileges. It is a preferred status of those in a society.

The Aristotelian construction recognizes that "[h]e who has the power to take part in the deliberative or judicial administration of any state is said by us to be a citizen of that state."<sup>23</sup> Thus, citizenship is linked to the notions of freedom and

<sup>10</sup> Slaughter House Cases, 83 U.S. 36, 72 (1873).

<sup>11</sup> *Id.* at 73.

<sup>12</sup> See e.g., Douglas G. Smith, *Citizenship and the Fourteenth Amendment*, 34 SAN DIEGO L. REV. 681, 691 (1997).

<sup>13</sup> *Id.* at 693.

<sup>14</sup> U.S. CONST. amend. XIV, § 1.

<sup>15</sup> See Smith, *supra* note 12, at 683; Ediberto Román, *The Alien Citizen Paradox and Other Consequences of U.S. Colonialism*, 26 FLA. ST. U. L. REV. 1 (1998) [hereinafter, Román].

<sup>16</sup> Akhil Reed Amar, *The Bill of Rights and the Fourteenth Amendment*, 101 YALE L.J. 1193, 1262-84 (1992).

<sup>17</sup> *Perez v. Brownell*, 356 U.S. 44, 64 (1958) (Warren, C.J. dissenting).

<sup>18</sup> Jonathan C. Drimmer, *The Nephews of Uncle Sam: The History, Evolution, and Applications of Birthright Citizenship in the United States*, 9 GEO. IMMIGR.L.J. 667 (1995).

<sup>19</sup> ALEXANDER M. BICKEL, *THE MORALITY OF CONSENT* 33 (1975).

<sup>20</sup> Christine Chinkin & Kate Paradine, *Vision and Reality: Democracy and Citizenship of Women in the Dayton Peace Accords*, 26 YALE J. INT'L L. 103 (2001).

<sup>21</sup> ANNA COOTE, *INTRODUCTION TO THE WELFARE OF CITIZENS: DEVELOPING NEW SOCIAL RIGHTS* 1, 4 (1992).

<sup>22</sup> *THE BASIC WORK OF ARISTOTLE, ARISTOTLE'S POLITICS, BOOK II* (Richard McKeon ed. 1941).

<sup>23</sup> *Id.* at 1178.

participation in government.<sup>24</sup> Justice Brandeis recognized its importance, declaring that the loss of citizenship was equivalent to the loss of everything that makes life worth living.<sup>25</sup> Chief Justice Rehnquist more recently observed "[i]n constitutionally defining who is a citizen of the United States, Congress obviously thought it was doing something, and something important. Citizenship meant something, a status in and relationship with a society which is continuing and more basic than mere presence or residence."<sup>26</sup> Chief Justice Warren described citizenship as "that status, which alone, assures one the full enjoyment of the precious rights conferred by our constitution."<sup>27</sup> Justice Black in *Afroyim v. Rusk*,<sup>28</sup> observed "the citizenry is the country and the country is its citizenry."<sup>29</sup> The Supreme Court had earlier declared that citizenship "convey[s] the idea of membership of a nation."<sup>30</sup> In other words, citizenship is a broad concept that signifies not only the rights afforded in the Constitution, it is also supposed to guarantee an "individual's membership in a political community and the resulting relationship between allegiance and protection that binds the citizen and the state."<sup>31</sup> It includes "the sense of permanent inclusion in the American political community in a non-subordinate condition . . ."<sup>32</sup> Thus, citizenship signifies an individual's "full membership" in a political community where the ideal of equal membership is theoretically to prevail.<sup>33</sup> Scholars have argued that because "equality and belonging are inseparably linked," to acknowledge citizenship is to confer "belonging" to the United States.<sup>34</sup>

Scholars can find considerable support in the founding fathers' interpretation of this construct prior to the drafting of the Constitution. For instance, the authors of the Federalist Papers addressed a form of national citizenship, in which citizens were to be endowed with equal rights. John Jay in Federalist No. 2 observed that "to all general purposes we have uniformly been one people—each individual citizen everywhere enjoying the same national rights, privileges and protection."<sup>35</sup> Madison in Federalist No. 57 observed:

Who are to be the electors of the Representatives [in Congress].

Not the rich more than the poor; not the learned more than the ignorant; not the naughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United

<sup>24</sup> Parker, *supra* note 3, at 396.

<sup>25</sup> Ng Fung Ho v. White, 259 U.S. 276, 284 (1922).

<sup>26</sup> Sugarman v. Dougall, 413 U.S. 634, 652 (1973) (Rehnquist J. dissenting).

<sup>27</sup> See *supra* note 17.

<sup>28</sup> *Afroyim v. Rusk*, 387 U.S. 253 (1967).

<sup>29</sup> *Id.* at 257.

<sup>30</sup> *Minor v. Happersett*, 88 U.S. 162, 166 (1874).

<sup>31</sup> See Note, *Membership Has Its Privileges and Immunities: Congressional Power To Define and Enforce the Rights of National Citizenship*, 102 HARV. L. REV. 1925, 1932, n. 42 (1989).

<sup>32</sup> JOSE A. CABRANES, CITIZENSHIP AND THE AMERICAN EMPIRE 5, n. 12 (1979).

<sup>33</sup> See Román, *supra* note 15, at 8; see also Kenneth Kurst, *Citizenship, Race and Marginality*, 30 WM. & MARY L. REV. 1 (1988).

<sup>34</sup> Drimmer, *supra* note 18, at 667.

<sup>35</sup> THE FEDERALIST NO. 2, at 10 (John Jay) (Jacob E. Cooke ed., 1961).

States. No qualifications or wealth, of birth, of religious faith, or of civil profession is permitted to fetter the judgment or disappoint the inclination of the people.<sup>36</sup>

The concept of citizenship is thus invariably associated with notions of equality. Professor Ackerman observed "[i]n claiming citizenship, an individual – is first and foremost – asserting the existence of a social relationship between himself and others. More specifically, a citizen is (by definition) someone who can properly claim the right to be treated as a fellow member of the political community."<sup>37</sup> Professor Fox, who recently examined the history of the term, observed that while "Madison and the other authors of *The Federalist Papers* may have had little to say about the substance of citizenship, they did believe that such a thing existed, that it defined a sphere of equality..."<sup>38</sup> James Kettner similarly noted "revolution created the status of American Citizen and produced an expression of the general principles that ought to govern membership in a free society... and it ought to confer equal rights."<sup>39</sup>

As these authorities suggest, citizenship refers not only to delineated rights but a broad concept of full membership or incorporation into the body politic.<sup>40</sup> A correlative of this concept is a sense of belonging and participation in the community that is the nation.<sup>41</sup> This last component, which contains both legal and conceptual aspects, demonstrates a psychological component of the term. This construction of the term suggests the anointment of citizenship as recognizing an important title that goes to the heart of the individual's feeling of inclusion as well as the collective citizenry's sense of the virtue of this democracy.<sup>42</sup> This facet of the term in turn strongly suggests a subjective psychological or an "imagined"<sup>43</sup> quality to the term. These subjective imagined qualities perhaps help explain why, despite the widely held belief that citizenship confers full membership and equality, history belies these beliefs. Indeed, American history is replete with instances where those who should have been or actually were conferred with citizen status did not enjoy the benefits of citizenship. This suggests that citizenship is subjective and is to be applied depending upon whether the collective psyche believes an individual or group deserves the status. As Michael Walzer observed "we who are already members do the choosing, in accordance with our own understanding of what membership means in our community and of what sort of a community we want to have."<sup>44</sup> Accordingly, when the citizenry, through their officials, decides on

<sup>36</sup> THE FEDERALIST NO. 57 (James Madison) (Jacob E. Cooke ed., 1961).

<sup>37</sup> BRUCE A. ACKERMAN, *SOCIAL JUSTICE IN THE LIBERAL STATE* 74 (Yale University, 1980).

<sup>38</sup> James W. Fox, Jr., *Citizenship, Poverty, and Federalism: 1787-1882*, 60 U. PITT. L. REV. 421 (1999).

<sup>39</sup> JAMES H. KETTNER, *THE DEVELOPMENT OF AMERICAN CITIZENSHIP 1608-1807* (1978).

<sup>40</sup> See Román, *supra* note 15, at 3.

<sup>41</sup> *Id.*

<sup>42</sup> See CABRANES, *supra* note 32, at 5, n.12.

<sup>43</sup> See BENEDICT ANDERSON, *IMAGINED COMMUNITIES* 1 (1992).

<sup>44</sup> MICHAEL WALZER, *SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY* 32 (1983).

membership, whether they like us or not “we are supposed to consider them as well as ourselves.”<sup>45</sup>

### B. The Privileges and Immunities Clauses

The other major citizenship provisions in the United States Constitution are Privilege and Immunities Clauses contained in Article IV<sup>46</sup> and the Fourteenth Amendment.<sup>47</sup> The two privileges and immunities clauses contained in the U.S. Constitution were created during different historical periods and were enacted for different reasons, but both have common themes which run deeper than their textual similarities.<sup>48</sup> Today the terms seem mysterious and devoid of meaning.<sup>49</sup> However, an examination of history reveals that “privileges and immunities” was a more general term used for what was termed, in Article IV of the Articles of Confederation as “all the privileges of trade and commerce.”<sup>50</sup> Article IV of the Constitution embodied part of the language, and “Chief Justice White later stated that they were intended to perpetuate the limitations of the earlier Articles of Confederation.”<sup>51</sup>

The privileges and Immunities Clause of Article IV was called “the basis of the Union” by Alexander Hamilton in *The Federalist No. 80*.<sup>52</sup> Article IV of the Constitution provides “[t]he citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states.”<sup>53</sup> The framers of the Constitution envisioned that the clause would embody the failed Articles of Confederation which had stated: “The better to secure and perpetuate mutual friendship and intercourse among the people of the different states in this union . . .”<sup>54</sup> Thus, though the several states were seen as separate entities, the Privileges and Immunities Clause of Article IV served to protect the equality of these separate entities by ensuring that citizens from one state would enjoy the same privileges and immunities of a citizen from another state.<sup>55</sup> Prof. Tribe has observed:

In *Corfield v. Coryell*, the first major case decided under Article IV, § 2, Justice Bushrod Washington concluded that the Privileges and Immunities Clause encompassed those privileges “which are in their very nature, fundamental; which belong, or right, to the citizens of all free governments.” Among these fundamental rights he included “the right of a citizen of one state

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<sup>45</sup> *Id.*

<sup>46</sup> U.S. CONST. Art. IV.

<sup>47</sup> U.S. CONST. amend. XIV, § 1.

<sup>48</sup> LEONARD W. LEVY & KENNETH L. KARST, *ENCYCLOPEDIA OF THE AMERICAN CONSTITUTION* 2019 (2d ed. 2000).

<sup>49</sup> Raoul Berger, *Reflections On Constitutional Interpretation*, 1997 B.Y.U. L. REV. 517, 534 (1997).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *See supra* note 48, at 2019

<sup>53</sup> *Id.*; *See also* U.S. CONST. Art. IV, § 2.

<sup>54</sup> *Id.* (quoting from the language of the Articles of Confederation).

<sup>55</sup> Douglas G. Smith, *The Privileges and Immunities Clause of Article IV, Section 2: Precursor of Section 1 of the Fourteenth Amendment*, 34 SAN DIEGO L. REV. 809, 836 (1997).

to pass through or reside in any other state, for purposes of trade . . . or otherwise . . .”<sup>56</sup>

In fact, this right to travel for purposes of trade was not unique to the Articles of Confederation. In *Thurlow v. Commonwealth of Massachusetts*,<sup>57</sup> the Court examined the relationship between trading states and Article IV’s Privileges and Immunities Clause.<sup>58</sup> The case involved a tax imposed on goods entering a state, which was not applied to those items already in the state.<sup>59</sup> The Court, examining the past relationship of the states noted that states had in the past possessed the right to regulate and tax trade with other states, leading to “deep and malignant animosities” between the states.<sup>60</sup> Because of the restriction on trade between the states, “the interests and advancement of all was greatly enhanced.”<sup>61</sup> The Court observed that “there was an imperative necessity to wrest this dangerous power from the individual states, and vest it in the general government in order to secure a uniformity of its exercise.”<sup>62</sup>

The Fourteenth Amendment contains similar language to Article IV’s Privilege and Immunities Clause. This passage reads “[n]o State shall make or enforce any law which shall abridge the *privileges and immunities* of citizens of the United States. . .”<sup>63</sup> The Privileges and Immunities Clause of the Fourteenth Amendment, as most know, was undermined and essentially gutted by the Slaughter-House Cases.<sup>64</sup>

Nonetheless, there “are at least two possible interpretations of the Privileges and Immunities Clause of Article IV, Section 2.”<sup>65</sup> The first view asserts that the clause guarantees citizens from a foreign state the same privileges and immunities that the residents of that state enjoy. Thus, though a person from a foreign state may enjoy the same privileges and immunities as the residents of that state, those privileges and immunities might vary greatly from state to state.

The second interpretation of the clause is that it guarantees a uniform set of substantive privileges and immunities to citizens of the United States no matter what rights a particular state constitution might contain.”<sup>66</sup> Thus, the clause may “afford

<sup>56</sup> LAURENCE H. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 1251, (3<sup>rd</sup> ed. 2000) (emphasis added). See also *Corfield v. Coryell*, F. Cas. 546 (Cir. Ct. E.D. Pa. 1823).

<sup>57</sup> *Thurlow v. Commonwealth of Massachusetts*, 46 U.S. 504 (1847).

<sup>58</sup> See *id.*; see also Smith, *supra* note 55, at 854.

<sup>59</sup> See Smith, *supra* note 55, at 855.

<sup>60</sup> See *supra* note 57, at 568.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> TRIBE, *supra* note 56, at 1030 (citing U.S. CONST. amend. XIV § 1) (author noting that the art. IV Privileges and Immunities Clause and the 14<sup>th</sup> Amendment language is “misleadingly similar”) (emphasis added).

<sup>64</sup> See *supra* note 49, at 534; see also *supra* note 55, at 1303 (author asserting that the Supreme Court interpreted the Privileges and Immunities clause of the 14<sup>th</sup> Amendment so narrowly as to effectively eliminate it from the Constitution).

<sup>65</sup> See *supra* note 55, at 890.

<sup>66</sup> *Id.* at 890.



substantive protection for certain fundamental rights, as well as antidiscrimination protection in the regulation of those fundamental rights.”<sup>67</sup>

Recent United States Supreme Court cases suggest that Article Four's Privilege and Immunities Clause, while perhaps encompassing fundamental rights, is triggered to prevent economic discrimination. For instance, in *United Building & Construction Trades Council v. Camden*,<sup>68</sup> Justice Rhenquist, writing for the Court, struck down a New Jersey statute requiring at least 40 percent of the employees of contractors and subcontractors on city projects be Camden residents.<sup>69</sup> Justice Rhenquist specifically noted that “The Privileges and Immunities Clause [imposes restrictions] on state action in the interests of interstate harmony.”<sup>70</sup> Similarly, the Court in *New Hampshire v. Piper*,<sup>71</sup> held that a rule restricting bar admission to residents of the state violated the clause.<sup>72</sup> Justice Powell, writing for the Court, highlighted the Court's view of the proper intent of the Clause when he noted that it “was intended to create a national economic union.”<sup>73</sup> In *Baldwin v. Fish and Game Commission of Montana*,<sup>74</sup> Justice Blackman in upholding a state's hunting licensing system, specifically noted the Privileges and Immunities Clause “has been interpreted to prevent a state from imposing unreasonable burdens on citizens of other states in their pursuit of common calling with the state [and] . . . On the ownership and disposition of privately held property within the state . . .”

### III. The Models of United States Citizenship Under Clause One of the Fourteenth Amendment

Despite the notions of political membership, equality, and the Fourteenth Amendment's declaration bestowing citizenship on those born or naturalized in this country, this paper argues that there are several types of United States citizens. These varying forms of citizens are often merely citizens in name only. While a host of reasons for these forms will be suggested, the fact remains that despite the rhetoric of equality and egalitarianism, American citizens live under differing models of incorporation and participation. For instance, there are the traditional Fourteenth Amendment Citizens who enjoy the full panoply of rights and privileges associated with citizenship. Then there are the Other Fourteenth Amendment Citizens, who because of constructions of race and perhaps other impositions of subordination enjoy anything but equality and full-membership. Finally, there are the Alien-Citizens, which hold the title of United States citizens but are not Fourteenth Amendment citizens. These are the forgotten citizens in many respects, because even immigration and constitutional scholars who often examine citizenship

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<sup>67</sup> *Id.* at 891.

<sup>68</sup> *United Building & Construction Trades Council v. Camden*, 465 U.S. 208 (1984).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.* at 208.

<sup>71</sup> *New Hampshire v. Piper*, 470 U.S. 274 (1985).

<sup>72</sup> Justice Powell observed that the practice of law was a privilege, in part, because of the lawyer's role in the national economy. *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Baldwin v. Fish & Gaming Commission of Montana*, 435 U.S. 371 (1978).

rarely discuss the rights of this subordinate group. The citizens in this group derive their limited rights as a result of colonial conquests sanctioned by language in Article IV, Section Three of the United States Constitution, also known as the Territorial Clause.<sup>75</sup> The rights of this group do not derive from concepts of equality that are the bedrock of the Fourteenth Amendment, but notions of colonial conquest empowered by the plenary power of Congress.<sup>76</sup> Congress in turn has granted a lesser form of citizenship that has failed to include the right to suffrage.<sup>77</sup>

The models of American citizenship will be examined in this essay in an effort not only to expose the anomalous status in which many United States citizens exist, but also to engage in a comparative discourse. This paper will demonstrate that despite the inclusive rhetoric associated with the status of citizen, this country, after more than two centuries, is still struggling with the substantive rights and perception of belonging of its citizens. In light of these existing troubles, this essay will question the ability of the European Union to entertain and establish egalitarian substantive components to European citizenship. Given the history of the region as well as the racial, religious, and cultural differences of the Union's current as well as potential members, serious questions exist with regard to whether European Union citizenship will be nothing more than a means to facilitate commerce of the western continental powers.

The differing models of United States citizenship demonstrate that despite the rhetoric associated with the Fourteenth Amendment, full United States citizenship is a right for most Americans, but is merely an aspiration for millions of others labeled as citizens. For many that were forced into this country, conquered by this country, or arrived here seeking to be included, but have not been accepted because of racial and jingoistic constructions, citizenship represents something other than full membership. Instead, it reminds the outsider of his or her subordination and marginalization.

#### A. The True Fourteenth Amendment Citizens

The United States recognizes two basic forms of obtaining citizenship: derived by birth or by naturalization.<sup>78</sup> The citizenship derived by birth arises from *jus soli*, being born within the United States or by *jus sanguinis*, being born to a U.S. citizen.<sup>79</sup> The second form, naturalization, originates from art. I of the Constitution that empowered Congress to "establish an uniform Rule of Naturalization."<sup>80</sup>

For most birthright or *jus soli* and *jus sanguinis* citizens, the citizenship they enjoy comports with rhetoric about the status. These citizens enjoy the formal delineated rights and privileges of citizenship. This group also enjoys the broader

<sup>75</sup> U.S. CONST. art IV, § 3, cl. 2.

<sup>76</sup> See e.g., *Downes v. Bidwell*, 182 U.S. 244 (1901); *Delima v. Bidwell*, 182 U.S. 1 (1901). *Goetze v. U.S.*, 182 U.S. 221 (1901); *Crossman v. U.S.*, 182 U.S. 221 (1901); *Dooley v. U.S.*, 182 U.S. 222 (1901); *Huus v. New York & Porto[sic] Rico S.S. Co.*, 182 U.S. 392 (1901); *The Diamond Rings v. U.S.* 176 (1901); *Dorr v. U.S.*, 195 U.S. 138 (1904); *Balzac v. Porto[sic] Rico*, 258 U.S. 298 (1922).

<sup>77</sup> See Román, *supra* note 15, at 3.

<sup>78</sup> See U.S. CONST. amend. XIV, § 1.

<sup>79</sup> See *id.*

<sup>80</sup> U.S. CONST. art. I, § 8, Cl. 4.

attributes of the right. They enjoy and are perceived to enjoy the full membership in the body politic. They are members of that community who count, who are seen as well as heard. These citizens are, typically perceived to be white americans. Equality and full participation fully applies to them, but for many racial and ethnic minorities, irrespective of *jus soli* or *jus sanguinis* status, practice and rhetoric collide. The legal and moral principles that formed the basis for the Fourteenth Amendment's citizenship language were subordinated in an effort to exclude or marginalize the "other" citizens.

### B. The Other Fourteenth Amendment Citizens

Unlike the True Fourteenth Amendment Citizens, the Other Fourteenth Amendment Citizens enjoy the label of citizen, but have rarely enjoyed the actualization of the rights and privileges that are associated with citizenship. Irrespective of how they became associated with this country – the conquered inhabitants, the victims of the calamity of slavery or the groups of nonwhites, who believed in the fallacy of Emma Lazarus's poem written at the feet of the Statue of Liberty<sup>81</sup> – they are not full citizens. These other citizens demonstrate that in this country there are classes of citizens, and these differing groups do not enjoy the same rights.

Notions of subordinate citizenship have a history going as far as the genesis of the very concept. Greek citizenship developed into levels of membership.<sup>82</sup> As Aristotle observed "there still remains one more question about the citizens: Is he only a true citizen who has a share of office, or is the one to be included?"<sup>83</sup> The conclusion Aristotle reached was that "[s]ince there are many forms of government there must be many varieties of citizens . . . so that under some government the mechanic and laborers will be citizens."<sup>84</sup>

The Romans similarly used different classes of citizens.<sup>85</sup> For the Romans, some citizens could vote but others were forbidden.<sup>86</sup> Some would be exempt from obligations such as taxation, other were obligated to pay taxes.<sup>87</sup>

The United States philosophy towards citizenship was influenced substantially by theorists who approved of full, as well as, limited citizens. For instance, John Locke in two works on civil government developed a theory of citizenship that was extremely influential in both eighteenth and nineteenth century America.<sup>88</sup> Locke Observed:

because commonwealth not permitting any part of their dominions to be dismembered, nor to be enjoyed by any but those of their community, the son cannot ordinarily enjoy the possessions of his father but under the same terms his father did,

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<sup>81</sup> EMMA LAZARUS, *The New Colossus*, reprinted in EMMA LAZARUS: SELECTIONS FROM HER POETRY AND PROSE 48 (Morris U. Schappes ed., 3d ed. 1967)

<sup>82</sup> See Fox, *supra* note 38, at 421.

<sup>83</sup> ARISTOTLE, *supra* note 22, at 1182.

<sup>84</sup> *Id.* at 1183.

<sup>85</sup> *Id.*

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> See Smith, *supra* note 12, at 704.

by becoming a member of the society, whereby he puts himself presently under the government, he finds there established, as much as any other subject of that commonwealth [sic].<sup>89</sup>

According to Locke's social compact theory, consent was the central component to membership.<sup>90</sup> He nonetheless concluded that slaves are "not capable of any property," but are "subjected to the absolute dominion and arbitrary power of their master [and] cannot be considered in that state as any part of civil society . . ."<sup>91</sup> Though his views on the essence of liberty are widely accepted,<sup>92</sup> in a chapter entitled "Of Slavery" he argued that slavery is "nothing else but a state of war continued between a *lawful* conqueror and a captive."<sup>93</sup>

The influential philosopher Samuel Pufendorf, not unlike Locke, used natural law theories to justify disparate treatment of the citizenry, particularly women.<sup>94</sup> He argued "whatever inequality between citizens arises after the formation of states, owes its origin either to the public administration, whereby the supreme authority delegates to certain citizens the exercise of some special authority over the rest, or to some special privilege granted by the supreme authority."<sup>95</sup> These political philosophers, who championed a social compact theory of government based on natural law, significantly influenced American citizenship jurisprudence.<sup>96</sup> They recognized that an individual's consent to citizenship meant the individual succumbed certain rights to the government and nevertheless maintained certain basic rights.<sup>97</sup> This equality of the privileges and immunities concomitant with citizenship was, however, not available to certain groups, such as slaves, because these individuals were unable to enter into the compact. Interestingly, the philosophers who had such impact on domestic citizenship theories failed to examine the normative value of selective application of the rights of citizenship. These natural law theorists failed to examine the morality of slavery; they merely descriptively noted that slaves were incapable of citizenship.<sup>98</sup>

Indeed, this sort of intellectual sophistry was the theoretical basis for the *Dred Scott* court's denial of citizenship to an African-American in 1856.<sup>99</sup> Scott, the slave of John Sanford, brought suit in federal court for his emancipation.<sup>100</sup> Though enslaved in Missouri, a previous owner had taken Scott from Missouri to Illinois, a

<sup>89</sup> JOHN LOCKE, THE SECOND TREATISE ON CIVIL GOVERNMENT 66 (Prometheus Books ed. 1986).

<sup>90</sup> *Id.* at 69.

<sup>91</sup> *Id.* at 48.

<sup>92</sup> *Id.* at 33-34.

<sup>93</sup> *Id.* (emphasis supplied).

<sup>94</sup> See Smith, *supra* note 12, at 711-16 (discussing Pufendorf's theory of citizenship).

<sup>95</sup> SAMUEL PUFENDORF, DE JURE NATURE ET GENTIUM LIBRI OCTO (1688), *reprinted in* 2 CLASSICS OF INTERNATIONAL LAW 392 (C.H. & W.A. Old Father, trans., James Brown Scott ed., 1934).

<sup>96</sup> See Smith, *supra* note 12, at 711.

<sup>97</sup> *Id.*

<sup>98</sup> See LOCKE, *supra* note 89, at 54; Pufendorf, *supra* note 95, at 345.

<sup>99</sup> *Dred Scott v. Sanford*, 60 U.S. 393, 481-82 (1856).

<sup>100</sup> *Id.*

state that did not recognize slavery.<sup>101</sup> Justice Taney, writing for the Court, denied any claim that a "Negro" was part of "the people" under the Constitution.<sup>102</sup> He argued that "Negroes" were not intended to be part of the people because they were "considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race . . ."<sup>103</sup> Justice Daniel proclaimed:

[t]he African . . . was regard and owned in every state in the Union as property merely, and as such was not and could not be a party or an actor, much less a peer in my compact or form of government established by the states or the United States.... [S]o far as rights and immunities appertaining to citizens have been defined and secured by the constitution and laws of the United States, the African race is not and never was recognized [sic] either by the language or purposes of the former.<sup>104</sup>

Though the *Scott* decision was essentially overruled by the Fourteenth Amendment of the Constitution,<sup>105</sup> the *Scott* Court's sophomoric and descriptive analysis has support in the text of the Constitution. Article IV, section 2 of the Constitution guarantees citizenship (comity), but allowed for an exclusion for fugitive slaves.<sup>106</sup> This is a constitutional recognition that slaves could be excluded from the privileges and immunities enjoyed by citizens.

The following section demonstrates how African-Americans, Native-Americans, Mexican-Americans, and other non-white minorities have been denied the status of true or full citizenship.

#### (i) African-Americans

The subordinate and disenfranchised status of African-Americans is a perception that is not limited to the eras of *Scott v. Sanford*<sup>107</sup> and *Plessy v. Ferguson*.<sup>108</sup> Rather, it is a view still maintained by many Americans, particularly African-Americans. The words of Malcolm X illustrate the depth of frustration, estrangement, and alienation of these other citizens.

The Blackman should be exempt from all taxation . . . we want the federal government to exempt our people from all taxation as long as we are deprived of equal justice under the laws of the land . . . why should you be taxed if you don't get anything in return? How can you be charged the same tax as the white man . . . You have no business in a government, as a second class citizen, paying first class taxes. The government of the United States should exempt our people from all taxation as long as we're deprived of equal protection of the laws.

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<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 404.

<sup>103</sup> *Id.* at 404-05.

<sup>104</sup> *Id.* at 981-82 (Daniel J. concurring opinion).

<sup>105</sup> U.S. CONST. amend. XIV, § 1.

<sup>106</sup> U.S. CONST. art. IV, § 2.

<sup>107</sup> *Scott*, 60 U.S. at 481 (1856).

<sup>108</sup> *Plessy*, 163 U.S. at 537 (1896).

You don't have second class citizenship anywhere on earth, you only have slaves and people who are free.<sup>109</sup>

The very nature of how African-Americans arrived in this country suggests that, particularly those born here must be citizens, as they would have difficulty owing allegiance to any other government other than the one of their place of birth.<sup>110</sup> Thus, the principles of equality and membership should always have applied to African-Americans. They, however, did not. As the above quote suggests, many, including the author of this article, believe that the principles of membership associated with citizenship still do not fully apply to African-Americans.

The history of court-sanctioned exclusion of African-Americans stems from the United States Supreme Court's decision in *Dred Scott v. Sanford*,<sup>111</sup> where the Court held that African-Americans, even those residing or born in a free territory, were not United States citizens.<sup>112</sup> After engaging in an extensive discussion of the meaning of citizenship, Justice Taney, writing for the Court noted:

we think the Negroes are . . . not included and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures citizens of the United States.<sup>113</sup>

Although the Court claimed to apply the social compact theory, and presumptively its egalitarian underpinnings, it nevertheless refused to recognize citizenship of this group because of their perceived inferiority.<sup>114</sup> Specifically, the Court characterized African-Americans "as being of an inferior order, and altogether unfit to associate with the white race."<sup>115</sup> Essentially adopting the differing models of membership, the Court refused to recognize African-Americans even those born free, as citizens because "[i]t is not a power to raise to the rank of citizen anyone born in the United States, who, from birth or parentage, by the laws of the country, belongs to an inferior and subordinate class."<sup>116</sup>

African-Americans were subsequently reminded of their subordinate status, notwithstanding the enactment of the Fourteenth Amendment. In *Plessy v. Ferguson*,<sup>117</sup> Justice Brown, writing for the majority, upheld a statute that required the segregation of white and "colored" persons.<sup>118</sup> Justice Brown based the opinion's rationale on a constructed distinction between social and legal equality.<sup>119</sup>

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<sup>109</sup> Malcolm X, *The Wisdom of Malcolm X* (Black Label, Inc., Compact Disk Number BLCD3-001).

<sup>110</sup> Drimmer, *supra* note 18, at 691-94.

<sup>111</sup> Scott, 60 U.S. at 393 (1856).

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 407.

<sup>115</sup> *Id.* at 407.

<sup>116</sup> *Id.* at 417.

<sup>117</sup> Plessy, 163 U.S. at 537 (1896).

<sup>118</sup> *Id.*

<sup>119</sup> *Id.* at 544.

Specifically, the Justice observed "[t]he object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality."<sup>120</sup>

The social versus legal distinction of *Plessy* replicated the tortured logic of *Scott* even after the enactment of the Fourteenth Amendment. It reiterated that notwithstanding the amendment's declarations that "all persons born or naturalized" would be citizens, African-Americans were citizens in name, but not in practice. The concepts of "equality of rights" and "equality of opportunity" were inapplicable to them.<sup>121</sup> Even after the constitutional amendment that was enacted to acknowledge their freedom and equality, the Supreme Court reiterated that they were not true citizens, but second-class citizens or in Malcolm X's words, perhaps still slaves.

Notwithstanding *Brown v. Bd. of Education*,<sup>122</sup> African Americans are repeatedly reminded of their subordinate nature.<sup>123</sup> Whether it be racial profiling, such as DWB or "Driving While Black," or the more subtle forms of subordination as identified by Ellis Case in his book "The Rage of a Privileged Class,"<sup>124</sup> where he addresses how African-Americans, irrespective of their achievements, are repeatedly reminded of the inequality of society.<sup>125</sup> The question persists whether the African-American is a citizen solely in name or merely "on paper."<sup>126</sup>

## (ii) The Indigenous Peoples

For the original members of this community, the egalitarian notions of citizenship were again distorted and perverted. Despite being born in America even before the "Americans" had discovered America, the indigenous people<sup>127</sup> of this land were treated as the wards of the white man.<sup>128</sup> The American government

<sup>120</sup> *Id.* at 544.

<sup>121</sup> *Id.*; Drimmer, *supra* note 18, at 396.

<sup>122</sup> *Brown v. Board of Education*, 347 U.S. 483 (1954).

<sup>123</sup> The author is often reminded of the subordinated status of African-Americans when he recalls a discussion with his friend and closest version of a brother, who happens to be African-American and oddly enough named Rodney King, want to leave the author's house after a long debate about racial politics at around 2:00 a.m. The author told him to stay because the bus station, the New York/New Jersey Port Authority, wasn't very safe. Mr. King simply reminded the author, "Ed, remember I'm black, everyone sees me as a criminal, so they are scared - I've got more problems with cops." This sadden the author and still does because the author's friend, who happens to be an honest and honorable man could never take of f the chains of stigma and subordination. It reminds the author that despite his cultural pride and willingness to attack racial injustice, the author can hid or assimilate, yet his friend can rarely, if ever, do that.

<sup>124</sup> ELLIS CASE, *THE RAGE OF A PRIVILEGED CLASS* (1993).

<sup>125</sup> *Id.* at 4-10. ("You feel the rage of people, [of] your group . . . just being the dogs of society.")

<sup>126</sup> Here, the author undertakes the unconventional approach of quoting his research assistant, Mr. James Malone, who better study hard for his finals.

<sup>127</sup> Following Professor Robert Porter's important work on citizenship forced upon indigenous peoples, I will use the term indigenous peoples. Robert B. Porter, *The Demise of the Ongwehoweh and the Rise of the Native Americans: Redressing the Genocidal Act of Forcing American Citizenship Upon Indigenous Peoples*, 15 HARV. BLACK LETTER L.J.107 (1999).

<sup>128</sup> Drimmer, *supra* note 18, at 689.

refused to grant birthright citizenship to this group, who were viewed as different from the true citizens. Even after the ratification of the Fourteenth Amendment, courts continued to struggle with whether indigenous peoples were citizens by birthright. In an effort to protect the perception of what was an American, courts became resolute in not diluting citizenship with that which was perceived to be an inferior class of people. The government used the pretext that indigenous peoples should be treated as something other than citizens because they were a "free and independent people" who had never engaged in the social compact to swear allegiance to this country.<sup>129</sup> Shortly after the United States government considered this group to be something other than citizens, the government entered into treaties with tribes in order to maintain a relationship that would purportedly afford each side a sense of sovereignty.<sup>130</sup> Despite the pretext of sovereignty, the true basis for the subordination of indigenous peoples was based on the belief that they were "an inferior race of people."<sup>131</sup> Indeed, the subordination of indigenous peoples in decisions such as *Johnson v. McIntosh*,<sup>132</sup> facilitated the alternative models of subordinate citizens. This in turn facilitated the *Dred Scott* decision as well as the subordination of others, such as people of color seeking to be naturalized and the inhabitants of this country's overseas colonial conquests.

Not long after the euphemism of sovereignty was established and treaties were entered into, the United States government ceased to use treaties and simply told the indigenous peoples what they could and could not do, and where they could do it.<sup>133</sup> In large part because indigenous peoples were viewed as part of their own sovereign tribes and were subject to the laws of the tribe, the United States took the position that the indigenous people could be dismissed as a separate people living in certain sections of America that could be controlled without any recourse on their part.<sup>134</sup>

Eventually, the complete disregard for indigenous peoples gave way to comprise to another form of subordinate citizenship. The process of granting United States citizenship to indigenous peoples came in steps and occurred over a considerable period of time. The first step was the grant of citizenship as an "incentive" to remove these people to the West.<sup>135</sup> Thus, some of the early treaties

<sup>129</sup> Jackson v. Goodell, 20 Johns. Rep. 693, 712 ("Though born within our territorial limits, the Indians are considered as born under the jurisdiction of their tribes. They are not our subjects, born within the purview of the law, because they are not born in obedience to us.")

<sup>130</sup> Sharon O'Brien, *Tribes and Indians, With Whom Does the United States Maintain a Relationship?* 66 NOTRE DAME L. REV. 1461, 1462 (1991).

<sup>131</sup> See Johnson v. McIntosh, 21 U.S. (8 Wheat.) 543, 569-70 (1823).

<sup>132</sup> *Id.*

<sup>133</sup> O'Brien, *supra* note 130, at 1480 (In fact: Thomas Jefferson stated:

[W]e shall with great pleasure see your people become disposed to cultivate the earth, to raise herds or useful animals and to spin and weave, for their food and clothing . . . We will with pleasure furnish you with implements for the most necessary arts. and with persons who may instruct how to make and use them. *Id.*

<sup>134</sup> *Id.*

<sup>135</sup> Porter, *supra* note 127, at 111.



between the Indian Nations and the United States provided for the attainment of citizenship.<sup>136</sup> Congress then began to grant citizenship to certain tribes through legislation.<sup>137</sup> Other efforts were made via treaty with Mexico in the treaty of Guadalupe Hidalgo, in which the Pueblo Indians were deemed United States citizens by their failure to "choose" Mexican citizenship. Yet another step was through the Allotment Act, where indigenous peoples were granted citizenship upon issuance of an allotment.<sup>138</sup> Thus, by 1924, indigenous peoples could become United States citizens: through treaty, allotment, and a patent in fee simple by adopting the habits of civilized life.<sup>139</sup> With the passage of the Indian American Citizenship Act of 1924, the United States government imposed a form of citizenship on all indigenous peoples and allowed them to have concurrent citizenship with their respective tribes.<sup>140</sup> These people are endowed with a less than equal form of citizenship; they were, by no means, afforded the full complement of privileges and immunities available to birthright citizens. They are not allowed to attain presidential office or any other public office of this type.<sup>141</sup> They are citizens simply because they have been born on so-called American soil, but they are regarded as being part of their tribal communities and are afforded rights and immunities subject to their tribal governments.<sup>142</sup> Only the fundamental rights of the Constitution are applicable to this group of "citizens."<sup>143</sup>

This subordinate nature of their membership was again, premised on notions of inferiority. The group was characterized as existing in a state of "ignorance and mental debasement."<sup>144</sup> The Supreme Court, in *United States v. Ritchie*,<sup>145</sup> declared "[f]rom their degraded condition . . . and ignorance generally, the privileges extended to them in the administration of the government must have been limited; and they still, doubtless, required its fostering care and protection."<sup>146</sup> Though labeled as citizens, they too have limited rights. Their subordinate, alienated, and conquered status perhaps remains by virtue of the very citizenship status that the United States government forced upon them.

### (iii) Mexican-Americans

<sup>136</sup> *Id.* (citing Treaty with the Cherokee, July 8, 1817, art. 8, 7 Stat. 1256; Treaty with the Cherokee, Feb. 27, 1819, art. 2, 7 Stat. 195, 196; Treaty with the Choctaw, Sept. 27, 1830, art. 14, 7 Stat. 333, 335; Treaty with the Ottawa, June 24, 1862, art. 4, 12 Stat. 1237, 1238; Treaty with the Seneca, Mixed Seneca, Shawnee, Quapaw, Etc., Feb. 23, 1867, art. 13, 17, 28, 15 Stat. L. 513).

<sup>137</sup> *Id.* at 112 (citing Act of March 3, 1843, S. Stat. 647 which naturalized the Stockbridge Tribe.)

<sup>138</sup> *Id.* at 120.

<sup>139</sup> *Id.* at 123.

<sup>140</sup> Indian Citizenship Act of 1924, 8 U.S.C. § 1401(2); see also generally Rebecca Tsosie, *Sacred Obligations: Intercultural Justice and the Discourse of Treaty Rights*, 47 UCLA L. REV. 1615 (2000).

<sup>141</sup> O'Brien, *supra* note 130, at 1481.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> Goodell, 20 Johns, at 720.

<sup>145</sup> *United States v. Ritchie*, 58 U.S. 525 (1854).

<sup>146</sup> *Id.* at 540.

"Fifty-years before the pilgrims landed at Plymouth Rock, there were Hispanic urban centers in New Mexico and in Florida. Yet, Hispanics, according to most Americans, are our most recent arrivals."<sup>147</sup>

Though many Americans know that the United States conquered land from indigenous peoples,<sup>148</sup> consisting of approximately "two million square miles of territory by conquest and by purchase,"<sup>149</sup> what is not well known is the fact that the United States "conquered Mexico in 1848 and took over half its then-existing territory."<sup>150</sup> "The states of California, Nevada, and Utah, as well as portions of Colorado, New Mexico, Arizona, and Wyoming were carved out of that 529,000 square mile cession by the Republic of Mexico."<sup>151</sup>

The taking of the Mexican land was a result of the nation's westward expansion as journalist John O'Sullivan noted in 1845:

Away, away with all these cobweb tissues of rights of discovery, exploration, settlement, contiguity, etc. The American claim is by *the right of our manifest destiny* to overspread and to possess the whole of the continent which Providence has given us for the development of the great experiment of liberty and federative self-government entrusted to us. It is a right such as that of the tree to the space of air and earth suitable for the full expansion of its principle and destiny of growth.<sup>152</sup>

"Prompted by this spirit of 'manifest destiny,' the United States declared war against Mexico to acquire additional territory."<sup>153</sup> The result was the signing of the Treaty of Guadalupe Hidalgo, which states in part:

The United States of America, and the United Mexican States, animated by a sincere desire to put an end to the calamities of the war which unhappily exists between the two Republics, and to establish upon a solid basis relations of peace and friendship, which shall confer reciprocal benefits upon the citizens of both, and assure, harmony and mutual confidence, wherein the two peoples should live, as good neighbors . . .<sup>154</sup>

Among other things, the Treaty provided that the United States would respect private property rights of Mexican citizens in the newly created portions of

<sup>147</sup> Harry Pachon, *Crossing the Border of Discrimination: Has the Civil Rights Movement Ignored Generations of Hispanics?* 15 HUM. RTS. 32, 33 (1988).

<sup>148</sup> See Tsosie, *supra* note 140, at 1615 (noting the United States' use of treaties in the annexation of Mexican and indigenous territories).

<sup>149</sup> Christine A. Klein, *Treaties of Conquest: Property Rights, Indian Treaties, and the Treaty of Guadalupe Hidalgo*, 26 N.M. L. Rev. 201, 201 (1996).

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* at 208 (citing to RICHARD WHITE, *IT'S YOUR MISFORTUNE AND NONE OF MY OWN: A HISTORY OF THE AMERICAN WEST* 73 (1991) (emphasis added)).

<sup>153</sup> *Id.*

<sup>154</sup> Guadalupe T. Luna, *En El Nombre De Dios Todo-Poderoso: The Treaty of Guadalupe Hidalgo and the Narrativos Legales* 5 SW. J.L. & TRADE AM. 45 (1998) (citing to Treaty of Peace, Friendship, Limits and Settlement with the Republic of Mexico, Feb. 2, 1848, U.S.-Mex., 9 Stat. 922).

the United States and those individuals would be granted "guarantees equally ample as if the same belonged to the citizens of the United States."<sup>155</sup>

However, as had occurred with the indigenous peoples,<sup>156</sup> many of the treaty provisions were never honored.<sup>157</sup> As Professor Luna recently observed, despite the treaty's pledge to "secure Mexicans" their rights to property, by the turn of the century almost all Mexican-owned land was lost during the land grant adjudication process [and] . . . challenges from squatters, settler, land speculators also promoted land alienation." "Most fundamentally, many Mexican citizens, transformed by the Treaty into United States citizens of Mexican descent, and their descendants, never enjoyed full membership rights in this society, despite the Treaty's promise that they would."<sup>158</sup>

The Mexicans' "rights were denied, language and culture suppressed, opportunities for employment, education, and political representation were thwarted. The Constitution and the courts have done little to interfere with the racist immigration quotas, the Bracero system, and dragnet searches, seizures, and deportations of anyone who looks Mexican."<sup>159</sup> "In theory, the Treaty, which ended the Mexican-American War of 1846 to 1848, promised 'grace and justice' by codifying the principal diplomatic objective of each party. For the United States, 'grace' meant purchasing, for the bargain-basement price of \$15 million, territories . . . For Mexico, 'justice' meant protecting the civil and property rights of Mexican citizens, including Indians, who without moving had suddenly become new residents [and citizens] of a foreign nation."<sup>160</sup> As one writer observed:

In the Treaty of Guadalupe Hidalgo and in numerous Indian treaties, the United States promised to respect property rights of the conquered. To make such promises during the nation's idealistic youth or during its feverish expansion across a seemingly unlimited continent is one thing; to keep them is quite another.<sup>161</sup>

Despite the grant of United States citizenship pursuant to the Treaty of Guadalupe Hidalgo in 1848, over one hundred years later Mexican-Americans were still not accepted as full members of the body politic. For instance, in 1954, the United States government initiated "Operation Wetback," the campaign to deport

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<sup>155</sup> Klien, *supra* note 149, at 201.

<sup>156</sup> Richard Delgado, *Review Essay: Derrick Bell and the Ideology of Racial Reform: Will We Ever Be Saved? And We Are Not Saved: The Elusive Quest for Racial Justice*. By Derrick Bell. 97 YALE L.J. 923, 940 (1988). In fact, the Treaty of Guadalupe Hidalgo was "modeled after ones drawn up between the U.S. and various Indian tribes, and was given similar treatment . . . property [was] stolen, rights were denied, language and culture suppressed, opportunities for employment, education, and political representations were thwarted." *Id.*

<sup>157</sup> Luna, *supra* note 154, at 71.

<sup>158</sup> Johnson, *supra* note 1, at 123.

<sup>159</sup> Delgado, *supra* note 156, at 940.

<sup>160</sup> Christopher David Ruiz Cameron, *Mexican-Americans in the United States on the Sesquicentennial of the Guadalupe Hidalgo*, 5 SW. J.L. & TRADE AM. 5, 6 (1998).

<sup>161</sup> Klien, *supra* note 149, at 253; see also Guadalupe T. Luna, *On the Complexities of Race: The Treaty of Guadalupe Hidalgo and Dred Scott v. Sanford*, 53 U. MIAMI L. REV. 691 (1999).

undocumented Mexicans.<sup>162</sup> During this massive campaign, over a million<sup>163</sup> Mexican immigrants, as well as United States citizens of Mexican ancestry, and undoubtedly other Latinas and Latinos, were deported.<sup>164</sup> The Mexican-American community was directly affected by this campaign because it was aimed at a racial group, which meant that the burden of proving citizenship fell totally upon people of Mexican descent. Those unable to present such proof were arrested and returned to Mexico.<sup>165</sup>

Other examples of their outsider status include the popular depictions of illegal immigrants as Mexicans who have illegally crossed the border, despite the fact that at least, as many illegal immigrants are the result of individuals overstaying their visas.<sup>166</sup> A classic example of the current anti-Mexican-American fever and the potential consequences of such labeling is California's attempt to implement Proposition 187, which would have denied illegal aliens access to government-funded social services, including health care and education.<sup>167</sup> The campaign to pass Proposition 187, played a consequential role<sup>168</sup> in the former California Governor Pete Wilson's re-election campaign.<sup>169</sup> Television advertisements emphasized Wilson's support for the proposition as they depicted "shadowy Mexicans" crossing the border in large numbers.<sup>170</sup> Much of the support for the proposition used loaded pejorative such as "those little f—kers" and even suggested that California may become a "third world country" or "annexed."<sup>171</sup> Obviously, Proposition 187, though facially neutral, centered on the issue of race and proponents gained support by stirring the fear of the foreigner.<sup>172</sup> While some may suggest that appropriate immigration limits are warranted, if Proposition 187 was implemented, further stigmatizing of Mexican and other Latina-Latino immigrants would likely result with profound negative effects.<sup>173</sup>

Similarly, if Proposition 187 were implemented, authorities could presume that those of Mexican ancestry and even other Latinas and Latinos were illegal; this

<sup>162</sup> JUAN RAMON GARCIA, OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN UNDOCUMENTED WORKERS IN 1954 229-31 (1981); see also JULIAN SAMORA, LOS MOJADOS: THE WETBACK STORY 52 (1971).

<sup>163</sup> Garcia, *supra* note 162, at 227.

<sup>164</sup> See Kevin R. Johnson, *Race, the Immigration Laws, and Domestic Race Relations: A "Magic Mirror" into the Heart of Darkness*, 73 IND. L.J. 1111, 1138 (1998); see also Chon Noriega, *Citizen Chicano: The Trials and Titillations of Ethnicity in the American Cinema, 1935-1962*, 58 SO. RES. 415 (1991).

<sup>165</sup> See GARCIA, *supra* note 162, at 231; SAMORA, *supra* note 148, at 52.

<sup>166</sup> STEPHEN H. LEGOMSKY, IMMIGRATION AND REFUGEE LAW AND POLICY 955 (2ed. 1997).

<sup>167</sup> 1994 Cal. Legis. Serv. Prop. 187 (West); see also Michael Scaperlanda, *Partial Membership: Aliens and the Constitutional Community*, 81 IOWA L. REV. 707 (1996).

<sup>168</sup> See Ron Unz, *How the Republicans Lost California*, WALL ST. J., Aug. 18, 2000, at A18 (explaining that "California isn't too liberal for the GOP . . . [but that] Republicans simply scared away immigrant voters").

<sup>169</sup> Johnson, *Magic Mirror*, *supra* note 164, at 1144.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.* at 1143-45.

<sup>172</sup> *Id.*

<sup>173</sup> Unz, *supra* note 168, at 157.

presumption could lead to the denial of benefits and related deprivations for Latinas and Latinos unless they could prove citizenship. Such negative consequences have resulted from provisions of United States Immigration Laws that permit sanctions against those who employ undocumented persons.<sup>174</sup> In fact, the U.S. Commission on Civil Rights has found "no doubt that the employer sanctions have caused many employers to implement discriminatory hiring practices."<sup>175</sup>

#### (iv) The Naturalized Other-Citizens

As addressed in previous works,<sup>176</sup> American society has imposed a label of foreignness on several groups of American citizens.<sup>177</sup> These groups are constructed as both non-white and non-black in the traditional binary racial paradigm in this country. These groups of outsiders, irrespective of citizenship status, are members of an excluded group of society. They are viewed as different from true Americans. They include Latina and Latino citizens, Asian-Americans, Arab-Americans, and other non-whites.<sup>178</sup> In addition to being characterized as the "forgotten Americans" and "invisible" ones among us, they are endowed with the immutable characteristic of alien or foreigner.

Professor Gotanda in his work concerning "the Miss Saigon Syndrome" addressed the label of foreignness in what he termed as the "other non-whites dualism."<sup>179</sup> Noting that race relations in America are typically analyzed in the whit-over-black paradigm, Gotanda argued that this construct has the effect of facilitating the failure to examine the unique racism faced by the non-white, non-black racial minorities.<sup>180</sup> In the white-over-black paradigm, if a person is not white, then that person is socially regarded as something other than American.

#### C. The Alien-Citizens

The last type of United States citizen is the Alien-Citizen.<sup>181</sup> For this group there has never been any pretense concerning the applicability of the Fourteenth Amendment. These individuals did not receive the Fourteenth Amendment citizenship that other United States citizens have attained. They became associated with the United States as a result of being inhabitants of lands conquered by the United States.<sup>182</sup> These people resided in territories acquired after the Spanish-American War and World War II.<sup>183</sup> As acquired in this manner, the United States Supreme Court has effectively concluded that the Territorial Clause of Article Four of the Constitution and not the Fourteenth Amendment determined the rights of this

<sup>174</sup> Johnson, *Magic Mirror*, *supra* note 164, at 1139.

<sup>175</sup> U.S. COMMISSION ON CIVIL RIGHTS, THE IMMIGRATION REFORM & CONTROL ACT I, IV (1987).

<sup>176</sup> See generally, Román, *supra* note 15.

<sup>177</sup> See Johnson, *Magic Mirror*, *supra* note 164, at 1117.

<sup>178</sup> See NEIL GOTANDA, ASIAN AMERICAN RIGHTS AND THE "MISS SAIGON SYNDROME," IN ASIAN AMERICANS AND THE SUPREME COURT: A DOCUMENTARY HISTORY 1087, 1095-96 (Hyung-Chan Kim ed., 1992).

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> Román, *supra* note 114, at 3.

<sup>182</sup> See Ediberto Román, *Empire Forgotten: The United States' Colonization of Puerto Rico*, 42 VILL. L. REV. 1119 (1997)(hereinafter "Empire Forgotten").

<sup>183</sup> *Id.*

group.<sup>184</sup> As interpreted, this provision endowed Congress complete and absolute power over these people.<sup>185</sup> In turn, the Court and Congress has kept these groups in a subordinate and disenfranchised status.<sup>186</sup>

By the time the Spanish-American War ended in 1898, the United States had acquired considerable experience in creating subordinate citizenship with African-Americans, Indigenous Peoples and Asian-Americans.<sup>187</sup> As a result of the war, as well as the conquest of the Hawaiian nation, the United States began its endeavor as an overseas colonial power.<sup>188</sup> In the Treaty of Paris, Spain officially ceded "to the United States the island of Porto [sic] Rico and other islands now under Spanish sovereignty in the West Indies."<sup>189</sup> Consistent with the U.S. Constitution's grant to Congress plenary power under the Territorial Clause, Article 9 of the treaty granted Congress the power over "the civil rights and political status" of the territories and its people.<sup>190</sup> Prior to 1898, the United States' policy was to acquire territories with the vision of granting eventual statehood.<sup>191</sup> The Northwest Ordinance of 1787 illustrates the United States' multi-stage model for acquisition and eventual statehood.<sup>192</sup> The Treaty of Paris, however, endorsed the United States' imperialistic venture as it was one of the first times in American history that "in a treaty acquiring territory for the United States, there was no promise of American citizenship."<sup>193</sup> In addition, the treaty contained "no promise, actual or implied, of statehood."<sup>194</sup> As a result of the war, the United States acquired Puerto Rico, Guam and the Philippines.<sup>195</sup> Although the United States purportedly intervened in Spain's relationship with Cuba to help secure independence for Cuba,<sup>196</sup> as a result of the war, the United States became a colonial as well as world power.<sup>197</sup>

<sup>184</sup> See *De Lima v. Bidwell*, 182 U.S. 1 (1898).

<sup>185</sup> *Id.*

<sup>186</sup> See Román, *supra* note 15, at 3-4.

<sup>187</sup> See RUBIN FRANCIS WESTON, *RACISM IN U.S. IMPERIALISM: THE INFLUENCE OF RACIAL ASSUMPTIONS ON AMERICAN FOREIGN POLICY 1893-1946*, 35-36, 194-207 (1972).

<sup>188</sup> See generally, Roman, *Empire Forgotten*, *supra* note 182, at 1119.

<sup>189</sup> See Treaty of Paris, Dec. 10, 1898, U.S.-Spain Art. II, T.S. No. 343.

<sup>190</sup> Treaty of Paris, *supra* note 189, art. IX; see also U.S. CONST. art. IV, § 3, cl.2 ("The Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.")

<sup>191</sup> Roman, *supra* note 15, at 17.

<sup>192</sup> Afrin Rivera Ramos, *The Legal Construction of American Colonialism: The Insular Cases (1901-1922)*, 65 REV. JR. U. P.R. 225, 237 (1996).

<sup>193</sup> JULIUS W. PRATT, *AMERICA'S COLONIAL EXPERIMENT* 68 (1950).

<sup>194</sup> *Id.*; See also Treaty of Peace, Friendship, Limits, and Settlement with the Republic of Mexico, Feb. 2, 1848, available at <http://clubs.monterey.edu/mecha/treaty.html>.

<sup>195</sup> CABRANES, *supra* note 32.

<sup>196</sup> See H.R.J. Res. 233, 55<sup>th</sup> Cong., 2d Sess., 30 Stat. 738 (1898) ("that the people of the Island of Cuba are, and of right ought to be, free and independent"); H.R.J. Res. 24, Sec. 4, 55<sup>th</sup> Cong., 2d Sess., 30 Stat. 738 (1898) ("the United States disclaims any disposition or intention to exercise sovereignty, jurisdiction, or control over [Cuba]").

<sup>197</sup> See generally PHILIP S. FONER, *THE SPANISH-CUBAN-AMERICAN WAR AND THE BIRTH OF U.S. IMPERIALISM* xv-xxxiv, 1-150 (1972); see also PHILIP S. FONER, *A HISTORY OF CUBA AND ITS RELATIONS WITH THE UNITED STATES* 162-275, 347-59 (1963).

Following the war, intense congressional debate centered on what should be done with the inhabitants of the newly acquired territories.<sup>198</sup> While the inhabitants of Guam were, and in many respects remain forgotten, the focus of the debate was on what was to be done with the inhabitants of Puerto Rico and the Philippines.<sup>199</sup> The thrust of the concern was that these territories were different and inhabited by culturally, ethnically, and racially distinct peoples.<sup>200</sup>

Congress debated the status of the Filipino and Puerto Ricans simultaneously. One report portrayed the Filipinos as "physical weaklings of low stature, with black skin, closely curling hair, flat noses, thick lips, and large, clumsy feet."<sup>201</sup> Representative Sereno Payne trumpeted census reports taken of the people of Puerto Rico showing that "whites . . . generally full-blooded white people, descendants of the Spaniards" outnumbered by nearly two-to-one the combined total of "Negroes" and "mulattoes." Meanwhile, Congresspersons viewed the Filipinos as "non-white" and, therefore, uncivilized and un-American.<sup>202</sup> Comparing the Filipinos to the people of Puerto Rico, Representative Thomas Spight noted "how different the case of the Philippine Islands, 10,000 miles away . . . The inhabitants are of wholly different races of people from ours-Asiatics, and centuries cannot assimilate them."<sup>203</sup> Representative John Dalzell stated that he was unwilling "to see the wage-earner of the United State, the farmer of the United States, put upon a level and brought into competition with the cheap half-slave labor, savage labor, of the Philippine Archipelago."<sup>204</sup> Other representatives shared this sentiment; Dalzell's comments were greeted by loud applause in the House.<sup>205</sup> Similarly, Representative George Gilbert warned against "opening wide the door by which these Negroes and Asiatics can pour like the locust of Egypt into this country."<sup>206</sup> Senator William Bate likewise stated:

Let us not take the Philippines in our embrace to keep them simply because we are able to do so. I fear it would prove a serpent in our bosom. Let us beware of those mongrels of the East, with the breath of pestilence and touch of leprosy. Do not let them become a part of us with their idolatry, polygamous creeds, and harem habits.<sup>207</sup>

The fear of foreign influx was not limited to congressional debate. Even scholars have contributed to the xenophobia. In a series of articles published in periodicals such as the Harvard Law Review, this fear of foreigners prevailed. One writer noted:

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<sup>198</sup> Román, *supra* note 15, at 17.

<sup>199</sup> *Id.*

<sup>200</sup> CABRANES, *supra* note 32, at 4.

<sup>201</sup> Román, *supra* note 15, at 17.

<sup>202</sup> *Id.*

<sup>203</sup> *Id.* at 18.

<sup>204</sup> *Id.*

<sup>205</sup> *Id.*

<sup>206</sup> *Id.*

<sup>207</sup> 33 CONG. REC. 3613, 1616 (1990) (remarks of Sen. Bate).

Our Constitution was made by a civilized and educated people. It provides guaranties of personal security which seem ill adapted to the conditions of society that prevail in many parts of our new possessions. To give the half-civilized Moros of the Philippines, or the ignorant and lawless brigands that infest Puerto Rico, or even the ordinary Filipino of Manila, the benefit of such immunities . . . would be a serious obstacle to the maintenance there of an efficient government.<sup>208</sup>

These concerns and others eventually led to the United States continuing its ownership of Puerto Rico and Guam and granting independence to the Philippines.<sup>209</sup> Eventually, the people of Puerto Rico were granted a form of U.S. citizenship.<sup>210</sup>

Through the 1917 grant of U.S. citizenship to the inhabitants of Puerto Rico,<sup>211</sup> these people of "the empire forgotten" appeared to approach incorporation into the body politic, but in actuality were never afforded full or "equal" constitutional citizenship.<sup>212</sup> The people of Puerto Rico are not full citizens because they do not share the same rights held by other United States citizens: they are disenfranchised people with limited rights.<sup>213</sup> As inhabitants of a territory, their representation in Congress is limited to one non-voting member of the House of Representatives.<sup>214</sup> They cannot vote for President or Vice-President, and their laws and status come under the plenary authority of Congress.<sup>215</sup>

In addition to their inability to participate in the national political process, the people of Puerto Rico are not entitled to the full complement of civil rights available to those with constitutionally granted citizenship. The citizenship rights of the people of Puerto Rico come not from the constitutional authority under the Fourteenth Amendment, which is the traditional basis for citizenship for those born or naturalized in the United States, but from the Territorial Clause of the U.S. Constitution.<sup>216</sup> Under this clause, Congress had the authority to implement the Treaty of Paris,<sup>217</sup> which provided the United States with the power over the "civil

<sup>208</sup> Simeon E. Baldwin, *The Constitutional Questions Incident to the Acquisition and Government by the United States of Island Territory*, 12 HARV. L. REV. 393, 415 (1899).

<sup>209</sup> Román, *supra* note 15, at 17.

<sup>210</sup> *Id.*

<sup>211</sup> *Id.*

<sup>212</sup> See Román, *Empire Forgotten*, *supra* note 180, at 1119 (arguing that the United States has refused to acknowledge its imperialistic role while treating Puerto Rico as a colony).

<sup>213</sup> See H.R. Rep. No. 105-131, pt. 1, at 49 (1997) (statement of Rep. Gutierrez).

<sup>214</sup> See General Accounting Office, U.S. Insular Areas: Applicability of Relevant Provisions of the U.S. Constitution, GAO/HRD-91-18 (June 20, 1991) in 3 PUERTO RICO POLITICAL STATUS REFERENDUM 1989-1991, at 471 (P.R. Fed. Affairs Adm. Ed., 1992).

<sup>215</sup> See *Harris v. Rosario*, 446 U.S. 651 (1980) (holding that the lower level of Aid to Families with Dependent Children reimbursement provided to Puerto Rico did not violate the Fifth Amendment's equal protection guarantee).

<sup>216</sup> See U.S. Const. art. IV, § 3, cl.2 (stating that Congress has the "[p]ower to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." *Id.*

<sup>217</sup> See Treaty of Paris, Dec. 10, 1898, U.S.-Spain, 30 Stat. 1754.



rights" and "political status" of the inhabitants of Puerto Rico.<sup>218</sup> Consequently, the citizenship of the people of Puerto Rico is a legislated and colonial concession, not a constitutionally derived right, and it can be revoked altogether.<sup>219</sup> Unlike other United States citizens, who by virtue of the Fourteenth Amendment cannot be stripped of their full citizenship status,<sup>220</sup> the people of Puerto Rico are merely statutory citizens.<sup>221</sup> Unlike Fourteenth Amendment citizens, the people of Puerto Rico are similar to aliens because they are "partial members of the community with limited membership rights," subject to congressional revocation of their citizenship status.<sup>222</sup>

The Supreme Court has repeatedly acknowledged Congress' plenary power over the territories.<sup>223</sup> In the Insular Cases, the Supreme Court broadly construed the Territorial Clause and refused to limit Congress' legislative power over the territories.<sup>224</sup> Through the Insular Cases, the Supreme Court developed the "territorial incorporation doctrine."<sup>225</sup> Under this doctrine, all of the Constitution's provisions apply to territories that are incorporated into the United States, or assured eventual statehood, and only "fundamental" constitutional rights are applied to protect the residents of unincorporated territories.<sup>226</sup> The question then became which constitutional provisions were considered fundamental and applicable to the unincorporated territories.<sup>227</sup>

<sup>218</sup> See *id.* at art. IX, 30 Stat. at 1754.

<sup>219</sup> See Jose Julian Alvarez Gonzalez, *The Empire Strikes Out: Congressional Ruminations on the Citizenship Status of Puerto Ricans*, 27 HARV. J. ON LEGIS. 309, 318-30 (1990).

<sup>220</sup> See *Afroyim v. Rusk*, 387 U.S. 253, 262-68 (1967) (holding that Fourteenth Amendment citizenship may not be altered by the federal government, the states or any other governmental body).

<sup>221</sup> See Jones Act of 1917, ch. 145, 39 Stat. 951, 953 (1917) (codified as amended in scattered sections of 48 U.S.C.).

<sup>222</sup> See *id.*

<sup>223</sup> See *e.g.*, *De Lima v. Bidwell*, 182 U.S. 1, 197 (1901) (holding that a territory acquired by the United States belongs to the United States and is subject to disposition by Congress); *Murphy v. Ramsey*, 114 U.S. 15, 44 (1885) (stating that Congress could nullify the Utah Territory's polygamist law); *National Bank v. County of Yankton*, 101 U.S. 129, 132-33 (1879) (stating that Congress could nullify the law of the Territory of Dakota).

<sup>224</sup> See *e.g.*, *De Lima*, 182 U.S. at 197; *Goetze v. United States*, 182 U.S. 221, 221 (1901); *Crossman v. United States*, 182 U.S. 221, 221 (1901) (stating in both *Goetze* and *Crossman* that a board of tariff appraiser had no jurisdiction over goods imported from Puerto Rico or the Hawaiian Islands due to the fact that these were not foreign countries); *Dooley v. United States*, 182 U.S. 222, 235-36 (1901) (holding that Puerto Rico became part of the United States upon cession by treaty for purposes of tariffs); *Armstrong v. United States*, 182 U.S. 243, 243 (1901) (holding that tariff duties on goods imported from Puerto Rico were proper prior to cession by treaty); *Downes v. Bidwell*, 182 U.S. 244, 278-79 (1901) (concluding that because territories are not constitutional equivalents to states, they are subject to greater congressional control); *Huus v. New York & Port [sic] Rico S.S. Co.*, 182 U.S. 392, 397 (1901) (holding that steamship trade between New York and Puerto Rico came under U.S. trade laws); *The Diamond Rings v. United States*, 182 U.S. 176, 181-82 (1901) (construing broadly the Territorial Clause of the Constitution and refusing to limit Congress' legislative power over the American territories).

<sup>225</sup> See generally *id.*

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

The Puerto Rican people's disenfranchised status has not only caused inequality of political and civil rights, but has also manifested itself through unequal economic treatment.<sup>228</sup> As a result of their subordinated status, residents of Puerto Rico receive less favorable treatment than mainland citizens under a number of major federal benefit programs. For the residents of Puerto Rico, federal payments under Aid to Families with Dependent Children (AFDC), Medicaid, and food stamps are made at lower levels and are subject to an overall cap.<sup>229</sup> Similarly, the Supplemental Security Income Program (SSI) does not apply to Puerto Rico.<sup>230</sup> Benefits under a similar program are capped and are made at lower levels than SSI payments made to eligible persons residing in the states.<sup>231</sup> Benefits for needy children are likewise provided at appreciably lower levels.<sup>232</sup>

As inhabitants of an unincorporated territory, the people of Guam do not possess even the modicum of local autonomy brought by the anomalous commonwealth status.<sup>233</sup> Instead, they live in a state akin to the naked colonialism of centuries past. Guam, the other major acquisition of the Spanish American War, was ceded to the United State along with Puerto Rico in the Treaty of Paris.<sup>234</sup> Since said acquisition in 1898, the United States has maintained absolute and plenary power over Guam under the territorial clause of the United States Constitution.<sup>235</sup> Initially, the territory was under control of the Department of the Navy; then, after over fifty years of absolute rule, control of Guam was transferred to the Department of the Interior.<sup>236</sup> Yet this modification procured very little for the Guamanians because the Organic Act of 1950 only established a local government structure and granted

<sup>228</sup> For example, Puerto Rican citizens, with the exception of federal employees, are exempt from federal income taxes on Income earned in Puerto Rico. See e.g., 26 U.S.C. § 933 (1994).

<sup>229</sup> See S. REP. NO. 101-481, at 10-11 (1990) ("Under present law, federal social welfare programs under the Social Security Act such as AFDC, Medicaid, Aid to the Aged, Blind and Disabled, Foster Care and Adoption Assistance, and Social Services block grants operate differently in Puerto Rico than they do in the states. Under statehood, both the amount of the welfare benefits and the percentage of population receiving them would increase."); see also T. Alexander Aleinikoff, *Puerto Rico and the Constitution: Conundrums and Prospects*, 11 CONST. COMMENTARY 15, 15 (1994).

<sup>230</sup> See *Califano v. Torres*, 435 U.S. 1, 2-3 (1978) (holding that government benefits of a state citizen do not transfer when that citizen moves to Puerto Rico).

<sup>231</sup> See Social Security Amendments of 1972, Pub. L. No. 92-603, § 303(b), 86 Stat. 1329, 1484 (repealing Titles I, X, and XIV of the Social Security Act with the exception that these titles would still apply to Puerto Rico, Guam, and the Virgin Islands); 42 U.S.C. § 1308(a)(1)(Supp. 1997) (specifying the amount of social security payments to Puerto Rico, Guam, the Virgin Islands, and American Samoa); see also 42 U.S.C. § 1396(b)(1994).

<sup>232</sup> See 42 U.S.C. § 1396(b)(1994).

<sup>233</sup> H.R. 1720-01 (1993) ("as a possession of the United States, the island can be bought, sold, or traded by the federal government").

<sup>234</sup> See Samuel J. Cohen, *The Extension of U.S. Tax Treaties to U.S. Territories As Illustrated by the Example of Guam*, 11 UCLA PAC. BASIN BUS. L.J. 32 (1992).

<sup>235</sup> Lisabeth A. McKibben, *The Political Relationship Between the United States and Pacific Entities: The Path to Self-Government in the Northern Mariana Islands, Palau and Guam*, 31 HARV. INT'L J. 257 (1990).

<sup>236</sup> *Id.* at 287.

United States citizenship.<sup>237</sup> As such it failed to provide autonomy because it maintained the trappings of foreign control by, among other things, denying Guamanians the right to elect federal representatives.<sup>238</sup> In 1970, the people of Guam were afforded a form of quasi-representation similar to that afforded to the people of Puerto Rico which entails the election of a non-voting representative who exercises a lobbyist like role in Congress.<sup>239</sup> However, their inability to participate in presidential elections has remained unaltered.<sup>240</sup> This inequity was further heightened when the United States Supreme Court dissolved the Guamanian Supreme Court.<sup>241</sup> This action was consistent with the Court's previous pre-acquisition confirmation of Congress' unconditional authority over the territories which is "an accident of sovereignty and continues until granted away."<sup>242</sup>

This allowance has so inhibited the Guamanians' relentless quest for autonomy that their only option has been compromise. Hoping to emulate the inhabitants of Puerto Rico, the Guamanian legislature established a commission of self-determination with the belief that commonwealth status will procure greater autonomy.<sup>243</sup> Currently, this request for the greater local autonomy afforded by Commonwealth status is ongoing.

Despite the global emphasis on self-determination following World War II, the United State's policy towards Micronesia or the Trust Territory of the Pacific was blatantly imperialistic. The Trust Territory of the Pacific was, with United Nations approval, under the complete and total domination of the United States.<sup>244</sup> However, once it became the only remaining trusteeship in the world the United States was forced to create a less obvious colonial form of citizenship as it had granted to other territories. The United States created the concept of commonwealth and free association. Like citizenship status, commonwealth status turned on procedural self-determination. It masked the complete political and economic dependency upon the United States by focusing on the free choice of the habitants to remain dependent on U.S. aid and military protection. The Northern Mariana Islands were also annexed after World War II.<sup>245</sup> In 1972, the Marianas began negotiations toward its eventual commonwealth status<sup>246</sup>, which under the United Nations General Assembly Resolution 1471 suggests a form of autonomy, the United States maintained certain sovereignty so as to protect its strategic interest. The United

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<sup>237</sup> See 48 U.S.C. § 1423(a); 8 U.S.C. § 1407 (1986).

<sup>238</sup> See McKibben, *supra* note 233, at 281.

<sup>239</sup> *Id.*

<sup>240</sup> 48 U.S.C. § 1711-1715 (1986).

<sup>241</sup> See *generally* Territory of Guam v. Olsen, 431 U.S. 195 (1977).

<sup>242</sup> National Bank v. County, 101 U.S. 129, 132-33 (1880).

<sup>243</sup> See Guam's Quest for Commonwealth Status: Implications for the U.S. Virgin Islands, Address by Franklin J. Arceo Quitugua, speaker of the 19<sup>th</sup> Guam Legislature, at St. Croix, U.S. Virgin Islands (Dec. 9, 1988), at 7-8.

<sup>244</sup> See e.g., Hirayasu, *The Process of Self-Determination and Micronesia's Future Political Status Under International Law*, 9 U. Hawaii L. Rev. 487 (1987); Comment, *International Law and Dependent Territories: The Case of Micronesia*, 50 Temp. L.Q. 58 (1976).

<sup>245</sup> See Hirayasu, *supra* note 244, at 487; Comment, *supra* note 176, at 58.

<sup>246</sup> See Covenant to Establish a Commonwealth of the Northern Marianas, Pub. L. No. 94-241, 90 Stat. 263 (1976).

States has maintained that the covenant that created the commonwealth comes under the United States Congress' plenary power under the territorial clause.<sup>247</sup> The people of the Marianas have opposed its subordinate colonial status, including Northern Marianas Legislatures' resolution to the United Nations requesting that an agreement to terminate the trusteeship that would include the provision that the United States control over the internal affairs of the territory.<sup>248</sup>

As the preceding paragraphs suggests, these inhabitants of the United States' colonial conquests are provided with labels such as citizen and nation, yet they are anything but members of this Union.

#### IV. European Union Citizenship

In order to appreciate the nature of European citizenship, it is necessary to appreciate the context in which it arose. After the destruction of World War II, there was a great incentive to promote peace and unity in the region. On September 19, 1946, Winston Churchill promoted this when he envisioned a "sovereign remedy [to] . . . recreate the European family . . . We must build a kind of United States of Europe."<sup>249</sup> By 1951, six countries combined to create the goal of integration or a common market for coal and steel under the European Coal and Steel Community.<sup>250</sup> In 1957, the group entered into the European Atomic Energy Community and the Treaty Establishing the European Economic Community.<sup>251</sup> In part due to the belief that the goal of a common market needed substantive rights because such a market would affect the lives of individuals in substantive ways,<sup>252</sup> the member states entered into the Single European Act,<sup>253</sup> which did not rest solely on economics.<sup>254</sup> These, along with other treaties, led to the 1992 Maastricht Treaty, which, along with promoting the goal of a common market, created European citizenship.<sup>255</sup>

The Maastricht Treaty promoted a common European foreign and security policy<sup>256</sup> as well as established European citizenship.<sup>257</sup> The nationals or citizens of the member states of the European Union have attained the rights as citizens of the European Union, which can be upheld by national courts and by the European Court of Justice.<sup>258</sup> The concept of European citizenship creates a form of dual citizenship

<sup>247</sup> McKibben, *supra* note 235, at 280.

<sup>248</sup> 54 U.N. TCOR (1627<sup>th</sup> Mtg.) at 2-42, U.N. Doc. T/N 1627, Annex t/1908/Add.1 (1987).

<sup>249</sup> Sara L. Uberman, *The Brussels II Convention: A Tool Necessary to Enforce Individual Rights Relating to Matrimonial Matters Within the European Union*, 23 SUFFOLK TRANSNAT'L L. REV. 157 (1998) (quoting P.S.R.F. MATHUSEH, A GUIDE TO EUROPEAN UNION LAW 12 (6<sup>th</sup> ed. 1995)).

<sup>250</sup> *Id.* at 159 (citing Treaty Establishing the European Coal and Steel Community, April 18, 1951, 261 U.N.T.S. 140).

<sup>251</sup> See Euratom Treaty, March 25, 1957, 298 U.N.T.S. 257; EEC Treaty, Mar. 25, 1957, 298 U.N.T.S. 257.

<sup>252</sup> See Uberman, *supra* note 249, at 159.

<sup>253</sup> *Single European Act*, 1987 O.J. (L169) 30; 25 I.L.M. 503 (1986).

<sup>254</sup> See Uberman, *supra* note 249, at 159.

<sup>255</sup> *Id.* at 166.

<sup>256</sup> Treaty on European Union, Feb. 7, 1992, 1757 U.N.T.S. 3.

<sup>257</sup> *Id.* Part II, Art. 8(1), at 143.

<sup>258</sup> Closa, *A New Social Contract? EU Citizenship as the Institutional Basis of a New Social Contract*, EU Working Paper, RSC No. 96/48; see also Title I, Art. A.

in both the member state as well as in the Union. While many view the Union's creation of European citizenship as stemming from its supranational status, the Treaty on European Union establishes that European citizenship is to be complementary to the citizenship status of the member states. Specifically, Article 17 of the E.C. Treaty provides "every person holding the nationality of a member state shall be a citizen of the Union."<sup>259</sup>

The concept of European citizenship encompasses a host of rights. They were to include specific delineated rights, addressed below, as well as a sense of membership by the creation of "an ever closer union among the peoples of Europe."<sup>260</sup> Some writers have argued that European citizenship performs a binding function by creating a "direct political link between the individual . . . and the Union in order to bring them closer together."<sup>261</sup> Nonetheless, European citizenship is largely viewed as based on the principle of free economic movement and some have argued that it is "definitely not the expression of belonging to a political or social community."<sup>262</sup>

European citizenship rights, which have always been regarded by the Court of Justice as general principles that the European institutions were bound by, were written into treaties at various stages.<sup>263</sup> For instance, the Treaty of Rome began by outlawing discrimination based on nationality in matters connected with the free movement of workers.<sup>264</sup> Subsequently, three other instruments – the Single European Act<sup>265</sup> (1987), the Maastricht (1992) and the Amsterdam (1997) Treaties – added further rights, which can be divided into three major categories. The first two, which are largely based on promoting democracy and commerce, include: 1) rights inherent in the freedom of movement, and 2) individual procedural democratic rights.<sup>266</sup> The third category, which is more controversial, perhaps because it is substantive, is the right to invoke fundamental human rights.

In 1993, the amendments to the European Community Treaty introduce the political and economic components of European citizenship. These rights include:

The right to vote: European citizens are entitled to vote in their country of origin or residence in the European Parliamentary elections.<sup>267</sup> This right was considered particularly important in promoting the free access of workers in the

<sup>259</sup> Treaty Establishing the European Community, Feb. 7, 1992, O.J.C. 224/1 (1992), 1 C.M.L.R. 573.

<sup>260</sup> Treaty on European Union, Feb. 7, 1992, art. 1, O.J.C. 340/2, at 152 (1997). 137 I.L.M. at 68.

<sup>261</sup> See Shaw, *The Many Pasts and Futures of Citizenship in the European Union*, 22 E.L. REV. 554, 564 (1997).

<sup>262</sup> Annette Schrauwen, *Sink or Swim Together? Developments in European Citizenship*, 23 FORDHAM INT'L L.J. 778 (2000).

<sup>263</sup> Citizenship Towards Post-National Membership. available at <http://www.jeanmonnetprogram.org/papers/97/97-06-I>.

<sup>264</sup> *Id.*

<sup>265</sup> United for Intercultural Action, EU Citizenship and Equal Rights for All! available at <http://www.united.non-profit.nl/eurocit.gb.html>.

<sup>266</sup> *Id.*

<sup>267</sup> Article 8B(2) of the EC Treaty; see also J.C. HARTLEY, *THE FOUNDATIONS OF EUROPEAN COMMUNITY LAW* 8 (1998).

Union to attain employment within member states. Related to these rights is the ability to run as a candidate in European Parliament elections.<sup>268</sup> The Treaty also stipulates that a uniform voting procedure is to be introduced. Each member state therefore organizes the election in accordance with national electoral laws.<sup>269</sup>

**The right of petition:** It includes the power to submit a petition to the European Parliament on any matter regarding the Union, simply by sending a signed letter.<sup>270</sup> Parliament can then investigate any violation of an individual's rights by a member state or member institution. There is also the right to apply to the Ombudsman concerning matters of misadministration in the activities of the Union's institutions.<sup>271</sup> These also are ways for the public to make proposals aimed at improving the Union's legislation and executive action.<sup>272</sup>

**The right of free movement and residence:** European citizens have the right to move and reside freely within the territories of all member states.<sup>273</sup> This right was considered particularly important in promoting the free access of workers in the Union to attain employment within member states. Related to the right of movement is the concept of openness: this new obligation introduced by the Amsterdam Treaty gives the public: the right of access to all documents of the institutions, subject to limits laid down by the European Parliament and Council. European citizens also have access to documents produced by member states within their consent.<sup>274</sup>

**Diplomatic Protection:** When outside the Union, nationals of one member state may benefit from the protection of any of the other member states, subject to certain conditions.<sup>275</sup>

Other than these fairly limited political and economic rights, European citizenship is theoretically to include certain substantive fundamental rights. Critics of the limited character of the European citizenship concept argue that "[t]he only way the Union will be able to engage its citizens is the creation of a political and social community that goes beyond economic integration."<sup>276</sup> Accordingly, it appears that at least in its initial conception, the notion of European citizenship resembled not the substantive components of the United States Constitution's Fourteenth Amendment, but the Constitution's Article IV's Privileges and Immunities Clause. European citizenship has centered on the notion of free trade and movement of workers, not unlike the United States Supreme Court's interpretation of the Privileges and Immunities Clause *New Hampshire v. Piper*,

<sup>268</sup> Andreu Olesti-Rayó, *Some Remarks on the Participation of Citizens in the Process of European Integration*, 8 MSU-DCL INT'L L. 651, 651 (1999).

<sup>269</sup> See Shaw, *supra* note 259, at 793.

<sup>270</sup> Article 138E of the EC Treaty.

<sup>271</sup> Olesti-Rayó, *supra* note 266, at 651.

<sup>272</sup> *Id.*

<sup>273</sup> Article 8(c), EC Treaty. See also Theodora Kostakopoulou, *Nested "Old" and "New" Citizenship in the European Union, Bringing Out the Complexity*, 5 COLUM. J. EUR'L. 389 (1999)

<sup>274</sup> *Id.* at 391.

<sup>275</sup> Article 8(c)(2), Treaty of the European Union ["TEU"]; see also Kostakopoulou, *supra* note 273, at 391.

<sup>276</sup> Schrauwen, *supra* note 262, at 793.

where the United States Supreme Court noted the Privileges and Immunities Clause was intended to create a national economic union.<sup>277</sup>

Despite this fact, it appears that over time, European citizenship was to include something more, "something important." In Europe, in a series of treaties, while not intending to displace national citizenship, the European Union committed itself to human rights and fundamental freedoms.<sup>278</sup> The Treaty of the European Union provides: "The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights ("ECHR") and Fundamental Freedoms signed in Rome on November 4, 1950 and as they result from the constitutional traditions common to the member states, as general principles of community law."<sup>279</sup> The 1992 Amsterdam Treaty established procedures intended to secure their protection.<sup>280</sup> Specifically, the Treaty of Amsterdam notes that the Union is "founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law principles which are common to the member states."<sup>281</sup> The Treaty effectuates its goals by noting that the European Court of Justice is competent to address matters concerning institutions affecting human rights and fundamental freedoms, provided that the Court has jurisdiction under the European Community Treaty and the Treaty on the European Union.<sup>282</sup> Scholars have argued that this human rights regime forms a central part of Europe's self-image.<sup>283</sup> Others have argued that as a result of these events "respect for fundamental human rights is now accepted as a central element in the construction of a democratic and united Europe, and as a critical component of the EU's self-image as a space of civility and modernity, it is also the fault line on which Europe's internal and external borders are being inscribed."<sup>284</sup>

For instance, the Union has the theoretical power to take appropriate action to combat discrimination.<sup>285</sup> The possible grounds of intervention are discrimination based on sex, race, or ethnic origin, religion, belief, disability, age or sexual orientation. In this regard, the Union has implemented policies to achieve equal opportunities for women and men. The Amsterdam Treaty has formally empowered the European Court of Justice to ensure the respect of fundamental rights and freedoms by the European Institutions.<sup>286</sup> The European Council in Cologne, in June 1999, confirmed the importance of fundamental rights, stressing the need for the establishment of a European Charter of Fundamental Rights.<sup>287</sup> Despite the

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<sup>277</sup> New Hampshire v. Piper, 470 U.S. 274 (1985).

<sup>278</sup> See Article 6.2 (ex art. F.2), TEU.

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> Art. 6 (ex. art. F), TEU.

<sup>282</sup> Olesti-Rayo, *supra* note 268, at 651.

<sup>283</sup> See Chinkin & Paradine, *supra* note 20, at 103.

<sup>284</sup> See Article (2), TEU; see also Jacqueline Bhabha, *Belonging in Europe: Citizenship and Post-National Rights*, 11 INT'L SOC. SCI. J. 11, 21 (1999).

<sup>285</sup> See Monnet, *supra* note 163.

<sup>286</sup> *Id.*

<sup>287</sup> *Id.*

perceived complementary nature of European citizenship, these substantive fundamental rights components of European citizenship suggest that such status creates a supra-national status that supplements state citizenship through the use of and recourse to international bodies to resolve disputes.<sup>288</sup>

Despite the enumerated rights listed previously and the Union's proclaimed interest in fundamental rights, serious questions remain as to whether the European Union's notion of citizenship will attain a status that will include substantive rights, similar to ones held by most United States citizens. Indeed, the notion of European citizenship raises issues concerning "the meanings of belonging within Europe."<sup>289</sup> Put another way, "what does being European add to being British or French or Welsh or Breton?"<sup>290</sup>

Among the questions that arise include ones relating to membership in the Union. For instance, because European citizenship is limited to being a citizen of a member state, how much will that fact limit the force of European citizenship? Similarly, the question remains whether the perceived universal concept of citizenship is possible in a newly united multi-ethnic, multi-cultural polity that derives from a variety of countries and histories.<sup>291</sup> The people of this region speak different languages, construct different identities, and enjoy different cultures and histories. These facts in turn pose serious obstacles to overcome in an effort to form a new identity known as a European Union citizen.

As delineated previously, the incentive for as well as essential components of European citizenship are largely economic. The rights to free movement for instance, is recognized as a right to facilitate the free movement of workers in order to promote commerce.<sup>292</sup> While European citizens have turned to European Union institutions to assert rights based upon the Union's standards,<sup>293</sup> there still remain serious questions concerning the extent to which European citizenship will enhance the substantive rights of citizens within a member state, particularly when that state does not recognize such rights. Currently, the European Union consists of the historical western power on the continent. In fact the membership in the Union is a pre-requisite to citizenship. Related to this point is the fact that European citizenship as a concept draws a distinction between those who are citizens or members of the political unit and others who are viewed as outsiders. There is the question concerning the extent of the applicability of the Union's standard to non-member European states, such as Bosnia. Will such an excluded state "make a commitment to human rights commensurate to becoming European, or will it remain outside the European mainstream?"<sup>294</sup> These questions highlight concerns relating to the

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<sup>288</sup> See Chinkin & Paradine, *supra* note 20, at 103.

<sup>289</sup> See Chinkin & Paradine, *supra* note 20, at 111.

<sup>290</sup> *Id.*

<sup>291</sup> Interestingly, note unlike the proposition raised with respect to U.S. citizenship, some writers have argued the European citizenship creates nested "old" and "new" citizenships in the European Union. See Kostakopoulou, *supra* note 273, at 389; Chinkin & Paradine, *supra* note 20, at 111.

<sup>292</sup> See Chinkin & Paradine, *supra* note 20, at 135.

<sup>293</sup> See Maria Martinez Sala v. Freistaat Bayern, Case C-85/95, [1998] E.C.R. I-2691.

<sup>294</sup> *Id.* at 112.



exclusiveness of European citizenship. Recall that this status only applies to members of the Union.<sup>295</sup>

The fact is that currently the union's membership is considered predominantly white and Christian. Indeed, the largest party of the European parliament is the Christian Democrats. Despite the strong economic incentive for the union to succeed, the history of the region is filled with tension, strife and war. Given the historical troubles of the members of the region in accepting each other, particularly when we turn back as far as the crusade and more recently recall World War II and the recent strife in the Balkans, the question arises whether the Union will ever be open enough to accept peoples of other races and religions. And even if the Union is prepared to accept such differences, will member states feel that their sovereignty is compromised? For instance, both the United Kingdom and Germany have concluded that nationality for Union purposes does not have to coincide with nationality in all other respects in the member states.<sup>296</sup> This is particularly significant when one considers that access to social-welfare benefits by a Union citizen residing in a member state that is not his or her place of birth.<sup>297</sup>

Similarly, what if the member state is not prepared to be as accepting or inclusive as the Union? In France, in 1993, for instance, nationality reform was passed which required individuals born in France of foreign parents would have to file formal request to become French.<sup>298</sup> Additionally, the member state of Germany has a history of onerous and restrictive naturalization laws for foreigners.<sup>299</sup> Foreign individuals seeking German citizenship have historically had to demonstrate cultural integration, which included fluency in written and spoken German.<sup>300</sup>

Despite these considerable obstacles, the very thought of a supra-national form of citizenship has the potential to be truly transforming. Its wonder and idealistic vision is its potential to redefine our vision of membership and community. In fact, it could conceivably replace notions as "immigrant," "resident alien," or "temporary guest" with the status of "Union citizen."<sup>301</sup> These goals are indeed lofty. Time will tell if the long and often violent histories of areas such as the Balkans can be transformed by this new vision.<sup>302</sup> While there are undoubtedly facts that may suggest a new vision of inclusion, it will be interesting to see what will be done with Turkey's interest in joining the Union, a country that is predominantly Muslim. This is particularly so in relation to the long-standing friction with current European Union member, and predominantly Orthodox Christian Greece. The question remains: who will be the members and outsiders of the future?

<sup>295</sup> Treaty on European Union, Tit. II, art. 8(1), 1757 U.N.T.S. at 17.

<sup>296</sup> See Kostakopoulou, *supra* note 273, at 392.

<sup>297</sup> See Schrauwen, *supra* note 262, at 778; Uberman, *supra* note 249, at 157.

<sup>298</sup> MIRIAM FELDBLUM, RECONSTRUCTING CITIZENSHIP: THE POLITICS OF NATIONALITY REFORM AND IMMIGRATION IN CONTEMPORARY FRANCE 149 (1999).

<sup>299</sup> See KAY HAIBROMNER, CITIZENSHIP AND NATIONHOOD IN GERMANY: A CHAPTER IN IMMIGRATION IN EUROPE AND NORTH AMERICA 67 (1989).

<sup>300</sup> *Id.* at 68.

<sup>301</sup> See Kostakopoulou, *supra* note 273, at 392.

<sup>302</sup> See e.g., The Forced Immigration of German Jews, available at <http://www.mtsu.edu/2/baustin/emigrate.html>.

## V. Conclusion

This article demonstrates that the status of citizen is significant. It includes the ability to invoke rights and be recognized as an equal. In the United States, the attainment of such status suggests the achievement of a preferred status in society – the status of a member, of an equal participant in the body politic. The history of the United States' inclusion of people of color as citizens raise questions concerning whether those individual groups are members or equal participants. After 200 years of the concept, the United States still struggles with the issue.

The European Union has recently established a form of citizenship. This in turn has provoked a host of questions. Will European citizenship be truly substantive or will it be merely an aide to commerce? Will such status be available to non-western peoples, particularly those of different religions, or will admission to the Union dictate status?<sup>303</sup> Will European citizenship be similar to the United States' structure, where there are differing models of the status or will the New World order achieve its lofty goals? Time will tell, but this author believes that such status will have a difficult time attaining substantive components similar to U.S. citizenship. If the Union does achieve its goals, the question arises as to whether such substantive rights will be available to all interested groups. The Union perhaps will only achieve a substantive and inclusive form of citizenship if it is prepared to transcend the economic incentives behind integration and be prepared to transform visions of parochialism and nationalism to a vision of true acceptance to all within the region.

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<sup>303</sup> When raising this question, the author cannot help but recall the semester he taught in Spain, and the repeated times one of his students, who is of Greek descent, but apparently resembled a national of an Arab country, was repeatedly stopped by authorities and obligated to present identification.