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Dual Consciousness About Law And Justice: Puerto Ricans' Battle For U.S. Citizenship In Hawai'i

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ABSTRACT

In *Sanchez v. Kalauokalani* (1917), the Supreme Court of the Territory of Hawai'i held that Manuel Olivieri Sánchez and Hawai'i's Puerto Ricans became U.S. citizens pursuant to the Jones Act. Centering on *Sanchez* and its aftermath, this essay investigates their fight for U.S. citizenship—both its attainment and the realization of the supposed benefits of that citizenship—in the face of laws and policies that legitimized unequal treatment. Drawing on critical theory insights, it explores how Hawai'i's Puerto Ricans held both a deep criticism of law as a tool of the powerful, as well as a transformative vision of law as a vehicle to validate their place in the U.S. polity. Embracing a "double consciousness" about law and rights assertion, Hawai'i's Puerto Ricans fought for legal rights in *Sanchez*, but recognized that U.S. citizenship would not mean immediate freedom from discriminatory treatment. They therefore pushed for the attendant rights of that citizenship, and against cultural vilification and inferior treatment in their daily lives. In doing so, they sought to compel powerful actors and institutions to recognize their humanity and dignity. [Key words: Puerto Ricans, Hawai'i, law, citizenship, double consciousness, Sanchez v. Kalauokalani]

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I. INTRODUCTION

Only weeks after the passage of the Jones Act—which in 1917 collectively naturalized "citizens of Puerto Rico" as U.S. citizens—Manuel Olivieri Sánchez, a Puerto Rican residing in the Territory of Hawai'i, traveled to the Honolulu county clerk's office to register to vote in the upcoming Hawai'i elections. David Kalauokalani, the county clerk, refused to place Olivieri Sánchez's name on the great register of voters. The clerk admitted that Olivieri Sánchez "[was] a [U.S.] citizen according to the cable which came from Washington," but he claimed that "I don't know anything officially, and I must hear from the Governor, and he must issue a proclamation."[1] Across the territory, Puerto Ricans who attempted to register to vote were turned away (Carr 1989, 235).

Olivieri Sánchez fought back. He filed a writ of mandamus to compel the clerk to register him and other Puerto Rican residents. In the first and only case to rule upon the citizenship of Puerto Ricans in Hawai'i following the Jones Act, the lower court ruled that Olivieri Sánchez did not become a U.S. citizen upon the Act's passage. According to the court, Congress intended to make Puerto Ricans U.S. citizens only if they "remained inhabitants of Porto Rico, giving them thereby a citizenship anal[o]gous to State citizenship . . . which would be lost by removal from Porto Rico" (*Sanchez v. Kalauokalani* 1917, 7; see also Porto Ricans Here Not Entitled to Vote in Territory 1917, 7).[2] Puerto Ricans in Hawai'i were declared a people "without a country."[3]

Six months later, the Supreme Court of the Territory of Hawai'i reversed. In *Sanchez v. Kalauokalani*, the court held that Olivieri Sánchez became a U.S. citizen pursuant to the Jones Act even though he had moved to Hawai'i in 1901. According to the court, under the Jones Act, all "citizens of Porto Rico"

(as defined by the 1900 Foraker Act) acquired U.S. citizenship. Nothing in the Act, it found, evinced Congress' intent "to exclude . . . citizens of Porto Rico, . . . who were at the date of the act of March 2, 1917, absent from Porto Rico" (*Sanchez v. Kalauokalani* 1917, 27). Hawai'i's Puerto Ricans celebrated this hard-fought legal victory. As newly recognized U.S. citizens—and because of Olivieri Sánchez's advocacy and the community's solidarity—Puerto Ricans in Hawai'i attained the right to vote in the Territory and a measure of economic mobility (Carr 1989, 354).

At the same time, U.S. citizenship changed little about the legal and social climate for Puerto Rican laborers in Hawai'i. They were still cast as "vagrants" and "lawbreakers," rounded up and imprisoned based on actions of a few, forced to live in some of the worst plantation housing, and marginalized based on the fear that they—as U.S. citizens—would gain increased political power (see Part IV, section C of paper). Puerto Ricans therefore continued to protest laws that governed the territory, both on and off of the sugar plantations. They sent petitions to newspapers in Puerto Rico and to the federal and local governments asserting that they were denied basic rights, treated inhumanely on the plantations, arrested and punished without cause, and left without recourse (Córdova Dávila 1919).[4] In 1919, for example, a group of Puerto Ricans urged the Puerto Rico legislature to prevent additional Puerto Rican laborers from traveling to Hawai'i because, while "the law of the lash does not exist today on the plantations[,] there is still committed a large number of wrongs against the Porto Ricans…" (Córdova Dávila 1919).

They knew the value of rights under law—and fought for them—but at the same time were aware that legal recognition as U.S. citizens would not mean freedom from discriminatory treatment through policy and by the populace.

Sanchez v. Kalauokalani—decided amidst harsh plantation practices and vagrancy laws deployed to subjugate Puerto Ricans and other workers of color—sheds light on Puerto Ricans' experiences with law and legal process in Hawai'i. Rather than rejecting the law as a tool only of the powerful, or blindly embracing the law as a silver bullet, I contend that Hawai'i's Puerto Ricans embraced what W.E.B. Du Bois termed a "double consciousness" about their experience with law and rights assertion (DuBois 2007, 8; Matsuda 1987, 340–

41). Puerto Ricans held both a deep criticism of the ways in which laws were used to benefit those in power as well as an aspirational and transformative vision of law as a vehicle to validate their place in the U.S. polity. They knew the value of rights under law—and fought for them—but at the same time were aware that legal recognition as U.S. citizens would not mean freedom from discriminatory treatment through policy and by the populace. This duality served as a source of resilience in the face of injustice.

As critical theorists recognize, the double consciousness of those at the bottom "accommodates both the idea of legal indeterminacy as well as the core belief in a liberating law that transcends indeterminacy" (Matsuda 1987, 341). Indeed, outsiders have intimate knowledge of the legal system's injustice against subordinated others, and acknowledge that aspects of that subordination would continue even if they achieve "legal rights." But these outsiders also have "passionately invoked legal doctrine, legal ideals, and liberal theory in the struggle" against injustice and have succeeded in part because of the "passionate response that conventional legalism can at times elicit" (Matsuda 1987, 338; Harris 1994, 744). For this reason, critical race theorists underscore the importance of rights assertion for oppressed peoples and communities of color as a vehicle to compel powerful actors and institutions to recognize disempowered people's dignity and humanity.

Drawing on realist and critical theory insights, and through archival research, this article explores how Puerto Ricans in Hawai'i, despite their small numbers and lack of political clout, asserted their claims to U.S. citizenship in the same courts and political climate that regularly contributed to their subjugation. They did so knowing that it would be difficult to achieve judicial recognition of new legal rights and that, even if so recognized, mere possession of those rights would not necessarily transform their treatment or status in society. By simultaneously being "aware of the historical abuse of law" while embracing "law as a tool of necessity," they made "legal consciousness their own in order to attack injustice" (Matsuda 1992, 298). Indeed, although the sugar oligarchy controlled the legal system, Puerto Ricans perceived the distinct value of rights and fought for and attained U.S. citizenship in *Sanchez*. While recognizing that formal U.S. citizenship would not automatically confer "first class" citizenship, they saw the need to push for the attendant rights of that citizenship as well as against cultural vilification and inferior treatment in their daily lives.

Part II provides a brief overview of the early Puerto Rican experience in Hawai'i, focusing particularly on the systematic negative racialization of Puerto Ricans by plantation interests and Hawai'i's territorial government to control the labor force and suppress political activity. Part III explores the concept of "double consciousness." Looking to realist and critical theories, this Part explores the ways in which oppressed groups can have a profound cynicism about law and legal process while embracing the historical and social role that rights have played in securing justice (Hutchinson 2003, 632). Part IV applies the double consciousness concept to the Hawai'i Puerto Rican experience during the years surrounding Puerto Ricans' collective naturalization. Centering on the *Sanchez* case and its aftermath, this Part investigates Hawai'i Puerto Ricans' fight for U.S. citizenship—both its attainment and the realization of the supposed benefits of that citizenship—in the face of laws and policies that legitimized unequal treatment for laborers of color. As described below, while Olivieri Sánchez and the Puerto Rican community achieved a measure of justice in *Sanchez*, they were keenly aware of the law's conflicting ability to oppress and liberate. Part V concludes.

II. PUERTO RICANS IN HAWAI'I: A BRIEF OVERVIEW

When the first group of Puerto Ricans arrived in Hawai'i in 1900 (Carr 1989, 61),[5] Westerners controlled nearly all aspects of Hawai'i's economic and political life (Fuchs 1961, 152–53). In the mid-1800s, Europeans and Americans acquired vast tracts of land when Native Hawaiian communal land tenure was converted into a Western private property system (MacKenzie, Serrano and Sproat 2015, 12–16; Osorio 2002, 44–50). Native Hawaiian lands were divided, confiscated, sold away. Plantations diverted water from agrarian Hawaiian communities (MacKenzie, Serrano and Sproat 2015, 532; Sproat 2010, 189). Native Hawaiians were separated from the land, thereby severing cultural and spiritual connections (MacKenzie, Serrano and Sproat 2015, 784; Kame'eleihiwa 1992, 25–29, 305).

Private land ownership and the Reciprocity Treaty of 1875—which lifted tariffs on Hawai'i-grown sugar exported to the United States—paved the way for massive sugar plantations and impending U.S. control (Van Dyke 2008, 118–20, 155). Following the illegal overthrow of the Hawaiian nation in 1893, American military and plantation owners lobbied hard for Hawai'i's annexation to the United States. With a military base at Pearl Harbor and sugar at stake, the United States annexed Hawai'i in 1898 and took control of the

provisional government as well as all former Hawaiian government and royal lands (Serrano et al. 2007, 205, 208).

Desperate for cheap labor to support large-scale sugar production, planters began importing "plodding Chinese coolie[s]" under low-wage contracts (Third Report 1905, 62; Beechert 1985, 37–41, 59–60, 62–63; Takaki 1983, 22). To induce competition and racial divisions between workers, the sugar planters shipped in laborers from Japan and Portugal, and later, from Korea, Puerto Rico, the Philippines, and even the U.S. South (Lind 1990, 4). Important to this enterprise was the Westerners' belief in their racial superiority and "the notion that the white race could not perform labor under the difficult conditions of tropical and subtropical plantations" (Beechert 1985, 40). Plantation owners used physical force and tight economic control to dominate these workers of color (Takaki 1983, 66–75). The stage was set for what would become a highly racially stratified plantation system throughout the 1900s (Takaki 1983, 76).

At the same time, debates swirled over the United States' new "imperial" role and how to handle the "racially inferior people inhabiting the conquered areas" (Perea 2001, 141).[6] Decision-makers warned against bestowing constitutional guarantees upon the "ignorant" and "half-civilized" peoples of Puerto Rico and the Philippines. Even those who supported "an honorable and fruitful association" with Puerto Rico "accept[ed] the proposition that the United States could not and would not 'incorporate the alien races, [or the] civilized, semi-civilized, barbarous, and savage peoples of [the] islands into [the U.S.] body politic'" (Cabranes 1978, 432—citing 33 Cong. Rec. 3622 (1900); Malavet 2004; Rivera Ramos 1996, 2001; Román 2006). In the infamous *Insular Cases*, the U.S. Supreme Court worried that Puerto Rico's "racially different others" threatened the very heart of white Anglo-Saxon dominance (Perea 2001, 158): Justice Brown's opinion in *Downes v. Bidwell* warned that the offspring of the colonies' inhabitants, "whether savages or civilized," would be "entitled to all the rights, privileges and immunities of citizens" (1901, 279).

Race was also key in legitimizing the Hawai'i sugar oligarchy's confiscation of land and exploitation of laborers of color from around the globe (Beechert 1985, 40–41). While the sugar planters "used race to legitimize conquest, denigrating, in racial terms, those colonized" (Yamamoto and Betts 2008, 558—citing Albert Memmi's *The Colonizer and The Colonized*), they also sought to civilize those colonial people "through the acquisition of [W]estern values and work discipline" (Beechert 1985,40—citing Kuykendall 1938, 171). At that time, cheap labor was in desperate demand: Hawai'i's annexation to the United

States halted the importation of Chinese and alien contract laborers,[7] and Japanese were considered overly "demanding" (Takaki 1983, 150–51; Porto Ricans Arrive 1900, 1). The planters thus found a solution in "Porto Ricans and . . . Negroes from the Southern States" (Report of the Commissioner of Labor on Hawaii 1902, 19; see also Reports of the Immigration Commission 1911, 702). With false promises of high wages, plantation owners recruited Puerto Ricans to work as cheap labor and strikebreakers (Report of the Commissioner 1902, 32; Porto Ricans to be Imported 1900; Carr 1987, 103). About 5,000 Puerto Ricans arrived in Hawai'i between 1900 and 1901 (Carr 1987, 102).

The powerful white plantation oligarchy easily exploited Puerto Rican laborers because of their ambiguous citizenship status. The Treaty of Paris between the United States and Spain, which ended the Spanish-American War in 1898, did not confer citizenship on the "native inhabitants" of Puerto Rico (Treaty of Peace 1898, 1759), and the 1900 Foraker Act establishing a civil government for Puerto Rico described them as "citizens of Porto Rico"—not citizens of the United States (Foraker Act 1900; Torruella 2008, 14). In 1904, the United States Supreme Court ruled that Puerto Ricans were not "alien immigrants" and could not be barred from entering the United States, but they were not U.S. citizens, either (*Gonzales v. Williams* 1904, 12; Burnett 2008, 661).

This ambiguity in citizenship and its attendant rights and privileges gave authorities license to treat Puerto Ricans arbitrarily, and oftentimes, unfairly (Burnett 2008, 689–91; Venator Santiago 2001). As early as 1900, Puerto Rican workers bound for Hawai'i entered the United States through New Orleans as if they were citizens—with the help of a special immigration official sent to facilitate the process (Porto Ricans Classed As American Citizens 1900; To Enter Hawaii 1900; Carr 1987, 97). On the plantation, on the other hand, Puerto Ricans' "place in the occupation hierarchy was determined by the fact that they were not citizens of America, [even though] they were from an American possession" (Camacho Souza 1984, 168). At the same time, because they were not "aliens," Puerto Rican laborers did not have representatives from their homeland to advocate for their rights, as other laborers did (Porto Rican Petition 1904, 3).

The Hawai'i Republican Territorial Committee immediately asked the Territory Attorney General to determine whether Puerto Ricans were U.S. citizens entitled to vote.

Hawai'i's sugar planters also sought to ensure that Puerto Ricans did not have the same rights as U.S. citizens. In 1902, only two years after the first group arrived, sixty Puerto Rican laborers sent a petition to the *San Juan News* chronicling widespread mistreatment by sugar planters and police in the Territory of Hawai'i (Carr 1989, 187). The Hawai'i Republican Territorial Committee immediately asked the Territory Attorney General to determine whether Puerto Ricans were U.S. citizens entitled to vote. The Committee was alarmed that "if [Puerto Ricans] were allowed to vote it would . . . introduce[] a new element into the political situation of the Hawaiian Islands of a rather uncertain quality" (No Right to Vote 1902, 3).[8] The Attorney General, of course, determined that Puerto Ricans were not U.S. citizens and thus had no right to vote in Hawai'i Territory. Because citizenship was an "indispensable qualification for the suffrage in [Hawai'i] Territory," the Attorney General wrote, "[i]t follows that Porto Ricans cannot vote here without being first naturalized" (1902, 3).

To justify its treatment of Puerto Ricans as unworthy of participating in the polity, Hawai'i's sugar oligarchy strategically characterized them as uncivilized and inferior (Carr 1987, 102; McGreevey 2008, 59). Plantation-controlled news accounts and U.S. and Hawai'i government reports depicted Puerto Rican laborers alternatively as "squalid" and "piteous," "indolent" and "shiftless," "unruly" and "treacherous," or "happy" and "contented" (Serrano 2011, 58). U.S. decision-makers had already deployed some of these depictions to bolster the United States' conquest of Puerto Rico, and U.S. agribusiness and Hawai'i's government spread these images to destabilize and dehumanize Puerto Ricans as a means of controlling and suppressing labor.[9]

Puerto Ricans in Hawai'i were thus acutely aware from the start that Hawai'i's legal system reflected the interests and values of those most powerful. But, as discussed below, they invoked legal doctrine and the language of "rights" to pursue their justice claims to citizenship, and later their claims to the rights attendant to that citizenship—because those claims held transformative potential. The law, for them, could both sanction oppression and also provide openings to liberation.

III. "DOUBLE CONSCIOUSNESS" ABOUT LAW AND LEGAL PROCESS

The awareness of this tension between the law's ability to oppress and liberate developed partially as critical race theory's response to critical legal studies.[10] Critical legal studies scholars in the 1970s and 1980s deconstructed formalist methods of legal analysis and understandings of law as inherently neutral and objective (Kennedy 1976, 1983; Gabel 1980, 1984; Gabel and Kennedy 1984; Matsuda 1987, 324–32). Taking their cue from the legal realist movement as well as poststructuralism and postmodernism, critical legal scholars demonstrated that the law is indeterminate, contradictory and politically charged; and that legal decision-making is deeply influenced by judges' ideological views, history, and political conditions (Gordon 1984; Hutchinson and Monahan 1984; Singer 1984; Tushnet 1984, 1986; Unger 1983).

Employing the deconstruction methodology of theorists such as Derrida and Foucault, critical legal scholars exposed how the law maintains hierarchies, particularly those regarding class (Boyle 1992). They contended that legal language tends to mask politics and reflect the interests of those in power, and that the law's images and technical language operate to convince people that legal arrangements are natural and inevitable.

Critical legal scholars also maintained that the rhetoric of liberalism and the seductiveness of "rights" deceives oppressed groups, resulting in a "false consciousness" about the fairness of the legal system (Tushnet 1984, 1385–86). According to Marxist thought, members of subordinate classes suffer from false consciousness—they are unable to see the ways in which surrounding social relations of production conceal the realities of exploitation and domination embodied in those social relations (Eyerman 1981, 44). In the legal setting, critical legal studies scholars employed the concept of false consciousness to mean that liberalism's claims of equality and fairness have duped subordinated groups into blindly accepting an oppressive legal system (Cook 1990, 992).

Thus, many critical legal scholars "trashed" rights-based approaches to equality. They argued that rights are malleable, offer artificial hope, and alienate people from each other (Hutchinson 2003, 632). As a result, critical legal scholars claimed that individuals and groups "should abandon a rights-centered approach to social justice, replacing it with more informal, often undefined, mechanisms for the attainment of justice" (Hutchinson 2005, 21; 2002, 1476–78).

Despite its pathbreaking insights, critical legal studies was challenged as elitist, overwhelmingly white, and disconnected from the concrete struggles of ordinary communities (Sproat 2011, 163—citing Matsuda 1987, 342-46). It also failed to fully resonate with marginalized groups who were acutely aware of the law's ability to subordinate, but who also refused to wholly abandon the legal system because of its potential to uplift and liberate in certain contexts (Delgado 1987, 307–08).

But for critical race theorists, critical legal studies lacked an understanding of the role of race and racism in both the U.S. legal system and in society itself.

Critical race theorists in the 1980s embraced many of the methodologies and insights of critical legal studies. They shared, for example, critical legal scholars' insights about the law's indeterminacy, lack of neutrality, and reinforcement of hierarchical social relations. But for critical race theorists, critical legal studies lacked an understanding of the role of race and racism in both the U.S. legal system and in society itself. Because critical race theorists found value in civil rights discourse (while acknowledging its limitations), they critiqued critical legal studies' excessively pessimistic views about the prospects for social change through law (Yamamoto n.d. 37–38).

Also drawing from philosophers and theorists such as Gramsci, Foucault, and Derrida (see Gramsci 1971), critical race theorists exposed the "legal manifestations of white supremacy and the perpetuation of the subordination of people of color" (Delgado 1995; Crenshaw et al. 1995). In challenging the efficacy of both liberal legal theory and communitarian ideals as vehicles for racial progress, they "traced racism in American law to the birth of the American legal system, and found it to be an integral part of the system, rather than a minor aberration" (Wing 2009, 51). Thus, they illuminated how the "law ignores cultural domination within [its] own processes and the ways in which those processes contribute to racial oppression" (Yamamoto 1997, 868). Critical race theorists therefore offered scholarship and discourse that "looks to the bottom"—to the experiences of the most oppressed—to contextualize and give meaning to their theory (Matsuda 1987).

Drawing from complex litigation experiences, critical race theorists also embraced W.E.B. Du Bois' concept of "double consciousness," which describes the way in which African Americans held two perspectives at once—the majority perspective (which demonized and despised them) as well as their own. According to Du Bois:

> **It is a peculiar sensation, this double-consciousness, this sense of always looking at one's self through the eyes of others, of measuring one's soul by the tape of a world that looks on in amused contempt and pity. One ever feels his two-ness,—an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder. (DuBois 2007, 8)**

Frantz Fanon similarly describes how Black colonial subjects experience a deep sense of inferiority rooted in their divided perception of the world:

> **Overnight the Negro has been given two frames of reference within which he has had to place himself. His metaphysics, or, less pretentiously, his customs and the sources on which they were based, were wiped out because they were in conflict with a civilization that he did not know and that imposed itself on him. (Fanon 1967, 110)**[11]

For critical race theorists, this duality laid a foundation for understanding oppressed groups' limited but compelling legal and political challenges to existing social arrangements (Yamamoto n.d., 7). As legal scholar Mari Matsuda contends, this duality gives subordinated people strength: "[a]pplying the double consciousness con[c]ept to rights rhetoric allows us to see that the victim of racism can have a mainstream consciousness . . . as well as a victim's consciousness. These two viewpoints can combine powerfully to create a radical constitutionalism that is true to the radical roots of this country" (1987, 333–34).[12]

Critical race theorists therefore maintain that oppressed groups can have a profound cynicism about law and legal process while acknowledging the historical and social role that rights have played in both liberating (even if imperfectly) and elevating the psyche of subordinated groups (Hutchinson 2003, 623). Rather than a mere "false consciousness," critical race scholars contend that marginalized groups possess a "critical consciousness": the subordinated can both "understand subordination and derive means of

liberation from it" (Matsuda 1990, 1778; see also Delgado 1987, 312). Critical race scholars thus recognize that the dual consciousness of those at the bottom accommodates the concept of legal indeterminacy alongside "the core belief in a liberating law that transcends indeterminacy" (Matsuda 1987, 341; see also Barnes 1990, 1864–65).

In the context of Japanese Americans' struggles for reparations for World War II internment, Matsuda contends that Japanese Americans embraced this dual consciousness by simultaneously protesting against illegal government actions while embracing and transforming America's seminal text, the Constitution. According to Matsuda, "[i]f trust in the Constitution sustains Japanese-Americans in their uphill battle against racist oppression, then the Constitution for them has become a radical document" (1987, 340). Even if their efforts fail in the courtroom, "[t]heir consciousness . . . of the ultimate legitimacy of their fight against racism allows them to hold unpopular and ultimately transformative opinions with confidence, and to risk retribution from powerful opponents" (1987, 340–41).[13]

For these reasons, critical race theorists underscore the importance of rights assertion for oppressed peoples and communities of color. While critical race theorists similarly maintain that rights are malleable and can lead to false consciousness, they depart from the critical legal studies approach because, for them, rights can be a vehicle to compel powerful white actors and institutions to recognize disempowered people's dignity. In rejecting rights, they argue, critical legal scholars not only failed to "analyze the hegemonic role of racism" (Crenshaw 1988, 1356), but also "ignore[d] the degree to which rights-assertion and the benefits of rights [sometimes] have helped" subordinated groups (Yamamoto n.d., 38; see also Williams 1987, 405). Critical race theorists thus viewed critical legal studies' "rights trashing" as divorced from communities' complex experiences with law and legal process (Yamamoto 1992, 239).

Drawing from the African American historical experience, legal scholar Patricia Williams illuminates the seeming dissonance between African Americans' disbelief in and passionate embrace of rights. She acknowledges that rights were "shaped by whites, parcelled out to blacks in pieces, ordained in small favors, as random insulting gratuities" (Williams 1987, 430). But "the recursive insistence of those rights is also defined by black desire for them, desire not fueled by the sop of minor enforcement of major statutory schemes like the Civil Rights Act, but by knowledge of, and generations of existing in, a world without any meaningful boundaries" (1987, 431).[14] For African

Americans, rights provide a sense of definition, a familiar vision, a "sign for and a gift of selfhood" (1987, 431). As Williams asserts, "[t]he concept of rights, both positive and negative, is the marker of our citizenship, our participatoriness, our relation to others" (1987, 431). Rights are also crucial to mobilizing support for a particular agenda as part of a larger social movement (Calmore 1992, 2214). Thus, for disempowered groups, "the conferring of rights is symbolic of all the denied aspects of their humanity: rights imply a respect that places one in the referential range of self and others, that elevates one's status from human body to social being" (Williams 1991, 153).

Therefore, as legal scholar Angela Harris explains, critical race theorists do not wholly embrace modernist principles because "the old optimistic faith in reason, truth, blind justice, and neutrality, have not brought us to racial justice, but have rather left us 'stirring the ashes'" (Harris 1994, 759). On the other hand, they do not totally embrace postmodernism because "faith in reason and truth and belief in the essential freedom of rational subjects have enabled people of color to survive and resist subordination" (1994, 753).[15] For critical race theorists, then, the aim is to inhabit this tension (1994, 760). This double consciousness—the simultaneous acknowledgment of the oppressive effect of differential power in the enforcement of law, and the value in rights discourse and legal claims even if they may fail (Yamamoto n.d., 38)—is, therefore, a source of strength.

As described below, Hawai'i's Puerto Ricans also possessed a critical consciousness: they both comprehended subordination and derived methods of liberation from it. They possessed a deep distrust of law and legal process, stemming from their lived experience on Hawai'i's sugar plantations. At the same time, they saw the important role that the fight for U.S. citizenship—and the rights attendant to that citizenship—played to compel powerful actors and institutions to recognize their humanity and dignity.

IV. PUERTO RICANS' DUAL CONSCIOUSNESS

Hawai'i's Puerto Ricans were uniquely situated among the racial groups on Hawai'i's sugar plantations. While they experienced oppression in common with other racial communities, they also faced particular hardships because they inhabited an undefined space between citizen and alien. From this vantage point, they grappled with the subordinating effects of law, but they also embraced the American promises of "rights" and "justice." And, as discussed below, the *Sanchez* case provided an opening for Puerto Ricans to compel

enforcement of their rights and secure a measure of legal equality. Even after obtaining U.S. citizenship, however, Puerto Ricans knew that freedom from discriminatory treatment would not come easily.

A. Life on the Sugar Plantation: The Subordinating Effects of Law

Puerto Ricans in Hawai'i learned very early that the white plantation oligarchy wielded inordinate power over Hawai'i's legal, political and economic systems. Five former missionary families-turned-multinational corporations, known as "The Big Five," spun their "web of control" over nearly every facet of life, from banking and shipping to the courts and governmental decision-making (Fuchs 1961, 152–53; Cooper and Daws 1990, 3; Kent 1993, 69–81). The Hawaii Sugar Planters' Association (HSPA), controlled by the Big Five, exerted considerable direct influence over the growth of agribusiness in the United States, helping to transform agriculture from small farms into multi-national corporate-controlled "big business" (Cooper and Daws 1990, 208–13; ; Kent 1993, 104–09).

When a number of Puerto Rican laborers left their plantation because they were "whipped and maltreated," a Spanish interpreter used by the police labeled them "a rather lazy and worthless lot . . . a sort of floating, shiftless element . . . inclined to be lazy."

To further Hawai'i's agribusiness trade, plantation owners had to exert control over recalcitrant workers. Working in conjunction with local authorities, sugar planters used vagrancy laws to maintain order on the plantations and to capture and selectively criminalize "deserters" (Takaki 1983, 72; Merry 2000, 187). When Puerto Ricans left their assigned plantations because of maltreatment or lack of services (Beechert 1985, 130), the sugar planters and territorial authorities characterized Puerto Ricans as lazy "vagrants" and began rounding them up for that reason. One news article, "City Full of Beggars," explained how the Puerto Rican had "a desire to get something for nothing" (1901, 6). Another warned that "the town was infested with Porto Rican idlers" (J.A. M'Candless 1901, 15.). Yet another decried "The Lazy and Thriftless Porto Rican" (Ride To Work in Hacks 1901, 14; see also Poor Labor Proposition 1901, 7). When a number of Puerto Rican laborers left their plantation because they were "whipped and maltreated," a Spanish interpreter

used by the police labeled them "a rather lazy and worthless lot . . . a sort of floating, shiftless element . . . inclined to be lazy" (Hidalgos Out 1901, 14). One prominent member of society called Puerto Ricans "a bad lot, taken as a whole," "indolent," "unruly and mean"; a potential source of "serious trouble in Hawaii" (Davis 1901, 1).

Other Puerto Ricans who moved to more humane plantations were also rebuked by the sugar planter-dominated newspapers, which "branded those hard-working laborers who moved from one plantation to another as 'irresponsible' and . . . 'lazy'" (López 2005, 47). As a result, the HSPA passed a resolution that forbade Puerto Ricans—and only Puerto Ricans—from obtaining work without HSPA permission or an honorable discharge from the plantation from which they left (Beechert 1985, 131).

A U.S. Labor Commissioner report echoed these negative characterizations. It explained that, because the Puerto Ricans were "morally upset by their long travels and changed environment" and could not "adapt themselves to any sort of an industrious life," many became "strollers and vagabonds" and drifted into the towns to "form a class of malcontents and petty criminals" (Report of the Commissioner, 1901, 26).[16] The "boss" of the O'ahu jail attributed this new "evil" to the Puerto Ricans' inherent nature: "The evil of vagrancy is growing in the community, owing perhaps to the character of our new population" (Hard Times 1901, 5). Casting Puerto Ricans as vagrants implied that they needed discipline and that the plantation was the place to supply it.

For the sugar planters and territorial authorities, Puerto Ricans' "vagrancy" was not only bothersome—it was criminal. A jail boss explained, "I think it is a good idea to deal with [vagrancy] severely. The Porto Ricans who are in [jail] now and at work in the crusher are likely to be very careful how they lay themselves liable to capture again" (Hard Times 1901, 5; see also Vagrants Pleaded Guilty 1901, 5). One news article reported that "[t]here are quite a number of Porto Ricans now serving heavy sentences of imprisonment for vagrancy" (Few Porto Ricans 1904, 1). It proclaimed that "the city has been pretty well cleared of Porto Rican loafers. By following the custom of arresting Porto Ricans who were without employment[] and . . . [sentencing them] to terms of imprisonment[,] the police have succeeded in clearing the city of very disreputable characters" (1904, 1). A court interpreter warned of Puerto Ricans' criminal nature: "They are vindictive and treacherous; they never forget, and sooner or later they will probably find a chance to get back at the one who injured them, and it will probably be by a stab from behind" (Hidalgos Out 1901, 14; see also López

2000, 45).

Hawai'i's sugar oligarchy used these so-called criminal characteristics of Puerto Ricans to justify its often indiscriminate round up and imprisonment of Puerto Ricans. After a Puerto Rican man, José Miranda,[17] allegedly murdered a prominent white missionary descendant, law enforcement officials were ordered to "round up every Porto Rican who [was] not working" (The Law Moves 1904, 1, 5). During the first sweep, eleven individuals—both men and women—were arrested as a "result of a crusade" to find the murderer (After the Vagrants 1905, 5; Porto Rican Vags 1904, 1). Thus, although only one Puerto Rican man was accused and convicted of murder, and even though many Puerto Ricans were simply trying to escape harsh plantation conditions for a better life, all Puerto Ricans were targets of accusation and effectively cast as lawbreakers.

They contended, among other things, that other racial groups' rights were valued, but that they were "unprotected" in their American "home."

Employing the language of rights, Puerto Ricans resisted in ways big and small. In 1904, Puerto Rican laborers sent a petition to the Territorial Governor calling for an investigation into their inhumane treatment on a plantation on the island of Kaua'i. They contended, among other things, that other racial groups' rights were valued, but that they were "unprotected" in their American "home." At the same time, they fought for the enforcement of their rights, and demanded "justice" for the wrongs done to them:

> **. . . In this country, the subjects of Portugal, of Japan, and China . . . have one to represent them as Consul who sees to and investigates their complaints, and fights for their rights.**
>
> **We Porto Ricans only (although we call this American country "our home") form or constitute an exceptionally rare and very painful exception. We are denied almost everything[.]**
>
> **. . . [W]e are not ignorant of our duties and of our rights, complying with the former and resolved to have the latter respected, for the flag which floats over our heads is a guaranty for our future.**

They questioned why Puerto Ricans were singled out for harsh treatment based on the actions of a few:

> **Sir, while it is beyond a doubt true that not a few of our fellow countrymen, who have come to this country, have by their vicious habits and bad conduct prejudiced others against them . . . and that our jails are filled with Porto Ricans is also true. . . . Is it possible that we Porto Ricans are treated all alike and that no distinction is made? Such, we are sorry to say, has been the custom among the managers of plantations.**

They protested the inhumane working and living conditions on the plantation and "demand[ed] justice":

> **. . . In this plantation (Kekaha) there is a movement in course of progress which is unqualifiedly inhuman, to which movement we energetically protest, denouncing it, within the limits of our perfect right to the prime gubernatorial authority of this Territory . . .**
>
> **. . . [O]thers among us, though suffering are working as much as they can, and others are living on charity coming from our fellow countrymen. No aid whatsoever is given by the plantation, nothing more than the small and poor habitations where we are sheltered. This situation, Honorable Sir, is terrible without our being able to remedy it. . . .**
>
> **What then, Sir, are we to do? Is there any other course left to us than, by means of this missive to appeal to you and demand justice? (Porto Rican Petition 1904, 3; see also Kauai Has 1904, 5).**

The plantation and Hawai'i officials investigated and rejected the petition, finding that the plantation managers and overseers "were kind and good to them," and that the Puerto Ricans on that plantation were "contented" (Kekaha Porto Ricans 1904, 2).

As this early petition suggests, because they were a "rare and very painful exception," Puerto Ricans were acutely aware of the law's ability to subordinate. They were jailed at a disproportionate rate, offered "nothing more than . . . small and poor habitations," and had no representative to "fight[] for their rights." At the same time, they refused to wholly abandon the legal system

because of its potential to uplift and liberate in certain contexts. For them, the American promise of rights under law was a "guaranty of [their] future." The *Sanchez v. Kalauokalani* case, discussed below, and its affirmation of U.S. citizenship for Hawai'i's Puerto Ricans reflects Puerto Ricans' understanding that even though the law could often be subordinating, it could at times provide small openings toward justice.

B. *Sanchez v. Kalauokalani* and U.S. Citizenship: A Transformative View of Law

Indeed, in 1917, Hawai'i's Puerto Ricans turned to the same courts that had historically denied their rights to full participation. In Hawai'i, as elsewhere, their turn to the courts can be explained in part by their desire for the full participatory selfhood that rights elicit; they, like others, while recognizing the sharp limits of the law, embraced a transformative vision of law as a vehicle to validate their place in the U.S. polity. Their fight for U.S. citizenship in *Sanchez v. Kalauokalani* offered that transformative potential.

In April 1917, about one month after the enactment of the Jones Act, Manuel Olivieri Sánchez, a Puerto Rican former plantation laborer-turned-court reporter residing in the Territory of Hawai'i, attempted to register to vote in the local Hawai'i elections. The clerk of the city and county of Honolulu, David Kalauokalani, refused to register Olivieri Sánchez, "claiming that [Olivieri Sánchez] was not and is not a citizen of the United States and therefore not entitled to register as a voter" (*Sanchez v. Kalauokalani* 1917, 22).

Olivieri Sánchez took the case to court. Represented by a small law office, he filed a petition for writ of mandamus to direct the clerk to place his name on the voting register (Petition for Writ of Mandamus 1917, 3). At the same time, he rallied other fellow Puerto Ricans to refuse the draft—to which they had recently become eligible as U.S. citizens—if they were not allowed to vote (Carr 1987, 101). Olivieri Sánchez contended that the clerk wrongfully refused to put his name on the great register of electors because, under the Foraker and Jones Acts, Olivieri Sánchez was a citizen of the United States (Petition for Writ of Mandamus 1917, 2). To support his argument, he declared that he was born in Yauco, Puerto Rico, in 1888, that his parents became "citizens of Porto Rico" under the Foraker Act and did not "elect to retain allegiance to the crown of Spain," and that he and his mother had arrived in Hawai'i Territory in September 1901 when he was thirteen years old (Petition for Writ of Mandamus 1917, 1; *Sanchez* 1917, 23).[18] Thus, he contended, upon passage

of the Jones Act, which collectively naturalized all "citizens of Puerto Rico," he, too, became a U.S. citizen.

In response, Kalauokalani argued that because the Foraker and Jones Acts established a body politic for the government of Puerto Rico, the Jones Act did not apply to Olivieri Sánchez: the Act was "not intended to apply to persons who, at the date thereof, had ceased to be residents of Porto Rico and had acquired a permanent residence elsewhere" (Kalauokalani 1917, 4).

First Circuit Court Judge S.B. Kemp ruled for Kalauokalani. Looking first to the Foraker Act, the court explained that in order to determine whether Olivieri Sánchez "was on April 11, 1917, the time he sought to register as an elector, a citizen of the United States," it needed to determine "whether or not on or prior to March 2, 1917, he was a citizen of Porto Rico as defined by Section 7 of the Act of April 12, 1900" (First Circuit Court Decision 1917, 5). According to Judge Kemp, Olivieri Sánchez did become "a citizen of Porto Rico, not having elected to retain his allegiance to the Crown of Spain" (First Circuit Court Decision 1917, 5).

However, wrote Judge Kemp, Olivieri Sánchez's removal from Puerto Rico and establishment of a permanent residence in Hawai'i altered his status as a citizen of Puerto Rico. Equating Puerto Rican citizenship with state citizenship, the court declared that "when [Olivieri Sánchez] left Porto Rico in 1901, with no intention of returning . . . he thereby automatically ceased to be a citizen of Porto Rico, and was not on March 2nd, 1917, such citizen of Porto Rico, and therefore did not become by the terms of that Act a citizen of the United States" (First Circuit Court Decision 1917, 7). Without pointing to any legislative history or direct legal authority, the court concluded that Congress intended to make Puerto Ricans U.S. citizens "so long as they remained inhabitants of Porto Rico, giving them thereby a citizenship anal[o]gous to State citizenship as distinguished from National citizenship which would be lost by removal from Porto Rico" (First Circuit Court Decision 1917, 7).[19]

The impact was immediately felt. In the media, Olivieri Sánchez's attorney contended that the court's decision "place[d] the Porto Rican who is not in Porto Rico in a serious situation. . . . He is a citizen of no country. He is not a citizen of Porto Rico and he is not a citizen of the United States" (Porto Ricans Here 1917, 2.; see also Porto Ricans of Hawaii 1917, 1). According to a major Hawai'i newspaper, the decision "affect[ed] the status of between 500 and 700 Puerto Ricans who had hoped to be able to exercise the right of franchise at the coming primary and general elections in the Territory" (Porto

Ricans Here 1917, 7). Olivieri Sánchez and his attorneys gathered delegations of Puerto Ricans from all of the major Hawaiian islands to decide whether to appeal, and to enlist financial support from other Puerto Ricans throughout the Territory (Porto Rcans Here 1917; Porto Ricans of Hawaii 1917, 1).

In response, Kalauokalani contended that Olivieri Sánchez "continued to be an American subject, but ceased to be a citizen of Porto Rico as soon as the permanent residence in Hawaii began."

On appeal, Olivieri Sánchez again argued that he was a U.S. citizen based on the plain language of the Foraker and Jones Acts. In response, Kalauokalani contended that Olivieri Sánchez "continued to be an American subject, but ceased to be a citizen of Porto Rico as soon as the permanent residence in Hawaii began" (Brief for Appellee 1917, 17). Echoing the paternalistic arguments of many decision-makers of the time, he contended that Olivieri Sánchez was not the type of Puerto Rican slated for U.S. citizenship by the Jones Act:

> **A new people was to be trained in the art of self-government. Those who continued to reside in the islands could take part in this self-government. Those who left, must shift for themselves. . . . After seventeen years of self-government these 'youths' in popular government were made full fledged citizens of the republic. Those who had ceased to reside in Porto Rico were not in the mind of Congress which focused its attention upon the youthful Territory of Porto Rico and its inhabitants. (1917, 17–18)**

In other words, argued Kalauokalani, Olivieri Sánchez "did not attend the 'Porto Rican School of training in popular government' as to which Congress legislated in 1900 and 1917. Not knowing the circumstances or condition or training of those who left the Island, Congress was silent as to their status other than the status of 'American Subjects' acquired by the treaty[.]" (1917, 19). In the end, neither party could point to relevant case law in support of their arguments, but instead referenced inapposite cases such as *Gonzales v. Williams*, a 1904 U.S. Supreme Court case that determined that "citizens of Porto Rico" were neither citizens nor aliens (1904, 12).

In October 1917, the Supreme Court of the Territory of Hawai'i reversed the lower court. It unanimously held that Olivieri Sánchez became a U.S. citizen pursuant to the Jones Act even though he had moved to Hawai'i in 1901. According to the court, one need look only to the language of the Treaty of Paris and the Foraker and Jones Acts: on April 12, 1900, the expiration of one year from the ratification of the Treaty of Paris, Olivieri Sánchez's political status "was fixed." He and his father "were on April 11, 1899, Spanish subjects and they resided in Porto Rico; they remained in Porto Rico until the expiration of the year and elected to renounce their Spanish allegiance and adopt the nationality of the United States, and thereby became citizens of Porto Rico" as defined by the Foraker Act (*Sanchez* 1917, 27).

Therefore, up until the time that Olivieri Sánchez left Puerto Rico and moved to Hawai'i, there was no change in his political status: "he was then a citizen of Porto Rico, and at all times since April 12, 1900, the petitioner has been a subject of the United States and was not a Spanish subject, and this political status existed at the time of the enactment and taking effect of the act of Congress of March 2, 1917" (1917, 27). As such, the court concluded that "[t]here is nothing in the [Jones] act showing an intent to exclude from its operation persons who are . . . citizens of Porto Rico, but who were at the date of the act of March 2, 1917, absent from Porto Rico" (1917, 27).

Importantly, according to the court, the Jones Act's language, "'are hereby declared, and shall be deemed and held to be, citizens of the United States' . . . shows the intent to immediately invest citizens of Porto Rico with United States citizenship, and there is no claim that the petitioner ever exercised the option (if it was given him) to reject the citizenship conferred by the act, but the contrary does appear" (1917, 28). The court therefore held that "by virtue of the . . . act of Congress of March 2, 1917, the petitioner became a full-fledged citizen of the United States at the time that the said act went into effect[.]" (1917, 28). Hawai'i's Puerto Ricans celebrated this significant legal victory.[20]

Thus, while often questioning law's efficacy to remedy the "inhuman[e]" treatment on the plantations, Hawai'i's Puerto Ricans "passionately invoke[d] legal doctrine [and] legal ideals" (Matsuda 1987, 338) in their quest for U.S. citizenship. Indeed, *Sanchez* represents their fight for formal recognition as members of the U.S. polity—their quest for a sense of definition, a marker of their "participatoriness" (Williams 1987, 431). At the same time, as discussed below, they pursued their claims knowing that the plantation laws still controlled much of their daily lives and that mere possession of formal U.S. citizenship

would not automatically transform their treatment or status in society. They continued to protest laws that governed the territory for that reason.

C. *Sanchez*'s Aftermath: The Law's Conflicting Capacity Simultaneously to Oppress and Open Paths Toward Liberation

As newly recognized U.S. citizens, Hawai'i's Puerto Ricans obtained the right to vote in Hawai'i elections, but because of their numbers, still held little political clout. They also experienced some economic benefit, such as eligibility for defense industry jobs (particularly at Pearl Harbor) and increased job opportunity and mobility (Carr 1987, 101; López 2005, 47).[21] And for some, U.S. citizenship also contributed to a sense that, notwithstanding the challenges, Hawai'i would become their permanent home.

For many, however, the acquisition of U.S. citizenship changed little about their treatment. In many instances, Puerto Ricans were pitted against other racial groups on the plantations, were targeted by plantation and governmental authorities, and faced discrimination in broader Hawai'i society.

For this reason, as illustrated below, Puerto Ricans in Hawai'i possessed a critical consciousness—they understood oppression and "derive[d] means of liberation from it" (Matsuda 1990, 1778). In the face of ongoing derogatory treatment, even as U.S. citizens, "[t]heir consciousness . . . of the ultimate legitimacy of their fight" permitted them to hold "unpopular and ultimately transformative opinions with confidence, and to risk retribution from powerful opponents" (Matsuda 1987, 340–41). Through grassroots and media advocacy, they called on authorities to remedy deprivations of their liberty and to extend basic human rights on the plantations, all while acknowledging that they would not easily escape unjust treatment or damaging characterizations as "lawbreakers" and "illiterates."

For example, in 1919, two years after becoming U.S. citizens, a group of Puerto Ricans sent a detailed petition to the Puerto Rico legislature, urging it to prevent additional Puerto Rican laborers from traveling to Hawai'i (Córdova Dávila 1919—see petition attached to letter). In it, they chronicled the abuses they experienced on the sugar plantations:

> **In Hawaii, we Porto Ricans are abused and d[e]spised more than any race . . . . Today the law of the lash does not exist today on the plantations, but there is still committed a large number of wrongs against the Porto Ricans . . . .**

> **The Porto Ricans live in the worst houses. On the estate of the Honokaa Sugar Company[,] the houses are pig-stys, and we live like goats in a corral. . . . All the other races have better houses, and their conditions are better than ours, except the Filipinos.**
>
> **The cost of living is very high, and what we earn is not enough to cloth[e] our families.**

They also described biased territorial authorities who targeted and criminalized Puerto Ricans for petty crimes:

> **In the island of Hawaii, which is the most important of this Territory, there is no justice for the Porto Rican. . . . When a Porto Rican commits a small offense, they send the whole police force to take him to jail, and put him in a cell, where he is given a "componte" in order to have him confess to a crime which he has not committed.**

They recounted the denials of their voting rights and praised the "Democratic lawyers" who valiantly defended those rights:

> **They usurp our civil rights, as we can prove by the case of Sanchez vs. Kalauokalani. Mr. David Kalauokalani, City and County Clerk of Honolulu, refused to register the Porto Ricans as electors, claiming that Porto Ricans of Hawaii are not American citizens under the Jones Bill.**
>
> **We Porto Ricans engaged to defend us Messrs. Joseph and J. Bert Lightfoot, Democratic lawyers of Honolulu, and after a brilliant defense, the Supreme Court of Hawaii decided that the plaintiff, Manuel Olivieri Sanchez and all Porto Ricans residing in Hawaii are as much citizens of the United States as those who have resided, or who do reside in Porto Rico. Messrs. Lightfoot defended us because of love of the profession, for we paid them little for so important work, owing to the perplexed circumstances through which we are passing. . . .**
>
> **During the last electoral campaign in Oct[o]ber, 1918, Mr. A. A. Hapai, County Clerk of Hawaii, refused to register us as electors on account of political intrigues, and we appealed to the Board of Registration**

> **of Electors, who decided in our favor.**

They also identified the consequences faced by those who dared to defend Puerto Rican rights:

> **Here, any one who rises in defense of the Porto Ricans is hated by the chiefs. The only Porto Rican, who from time to time publishes articles defending us in the newspapers, is Mr. Manuel Olivieri Sanchez, and for this is unpopular, not finding employment, and has been persecuted and freely insulted through the press. (Córdova Dávila 1919—see petition attached to letter)[22]**

The petition was forwarded to the Bureau of Insular Affairs, the Department of Interior, the Governor of Hawai'i, and the Hawai'i Territory Attorney General. The Puerto Rico Senate and House of Representatives adopted resolutions to investigate their justice claims. The Senate declared the Puerto Rican laborers "victims of unjust treatment, contrary to the American laws . . . [and that] the authorities of said islands who allow such treatment are responsible for these acts" (Córdova Dávila 1919).[23] The House found that Puerto Ricans in Hawai'i "are abused and live in bad conditions . . . [and] in the Island of Hawaii there is no justice for Porto Ricans" (Córdova Dávila 1919).[24] The House urged the Resident Commissioner to conduct an investigation "causing the Porto Ricans living in Hawaii to be respected in their rights" (Córdova Dávila 1919—see House Resolution) and the Senate called for the repatriation of Puerto Ricans "who do not wish to remain in those islands under such conditions" (Córdova Dávila 1919—see Senate Resolution).[25]

The petition, according to the HSPA, was "gotten up by a bunch of agitators in Honolulu headed by a disgruntled ex-plantation laborer named M. O. Sanchez."

The HSPA claimed that the petition was "without the slightest foundation in fact" and that "no discrimination against the Porto Ricans is made in the Islands" (Charges Made by Porto Ricans 1919, 1). The petition, according to the HSPA, was "gotten up by a bunch of agitators in Honolulu headed by a disgruntled ex-plantation laborer named M. O. Sanchez" (1919, 1). The

Hawai'i Attorney General conducted an investigation by requesting that the accused officials and plantation managers respond to the Puerto Rican laborers' charges. The investigation resulted in a voluminous report that included positive testimonials from "happy" Puerto Rican laborers on selected plantations (Carr 1989, 336). They contended that their living conditions were much better than what they had in Puerto Rico and that their work hours were fair (Irwin 1919).[26]

Thus, only two years after obtaining U.S. citizenship, many Puerto Ricans in Hawai'i were still "abused and despised," as they had argued in their petition. But by petitioning the Puerto Rico legislature, as well as participating in larger labor struggles alongside other racial groups—such as a major walkout in 1920[27]—Puerto Ricans resisted subordination on and off of the plantations.

Moreover, U.S. citizenship did not halt, or even slow, the damaging racial characterizations of Puerto Ricans spread by governmental bodies, plantation managers, and media. In the 1920s, the U.S. War Department wanted to ship more Puerto Ricans to Hawai'i to build up "the class of resident most desired, loyal Americans" (Carr 1989, 341). The Bureau of Insular Affairs and War Department instructed the Commander of the Hawaiian Department of the Army to consider the "military advantage" of stimulating the immigration of Puerto Ricans to Hawai'i to increase the numbers of enlisted men (1989, 345). The military report commissioned to study the importation of Puerto Ricans to Hawai'i again reproduced racialized images of Hawai'i's Puerto Ricans. The study reported that Puerto Ricans were "so difficult of accomplishment," "ha[d] the highest ratio as law breakers," and had the highest "percentage of illiterates . . . except [for] the Filipinos" (1989, 347—quotng report). Their "redeeming characteristic," the study claimed, reflected their simple-mindedness and lack of ambition: "succeeding generations of Porto Ricans stay with the land and remain in rural districts," while the Japanese, Chinese, and Filipinos "haunt the Cities . . . preferring 'White collar' jobs to labor in the fields" (1989, 347).

On the other hand, the report also attributed Puerto Ricans' perceived military ability to their racial heredity: "In comparing the Porto Rican with other types, such as the Filipino, one must go back to their blood. They have some good fighting blood. Their Spanish blood was excellent Infantry stuff. The Carib Indian was rather a good fighter" (Carr 1989, 350). This praise for Puerto Ricans was partly done to discourage importation of Filipino laborers and to limit the political power of other Asian laborers: bringing in U.S.

citizen Puerto Ricans would "neutralize the present political menace of the predominating Oriental races . . . who[], it was feared, would] eventually exert a powerful political influence in Governmental affairs" (1989, 351). Hawai'i's sugar planters opposed the U.S. government's attempts to bring in more Puerto Ricans because the planters did not want a new block of U.S. citizen voters with constitutional rights, and because they worried that "the mulatto[,] being in the ascendancy politically in Porto Rico[,] would undoubtedly . . . create many complications which might destroy [the planters'] efforts to get jibaros [poor whites]" (1989, 358—quoting Letter from J.K. Butler, Secretary-Treasurer of Hawaiian Sugar Planters' Association, to Patrick J. Hurley, 14 October 1931).[28]

Even through the 1930s, local politicians sparred over whether to import additional "loyal American citizens" from Puerto Rico to cultivate and harvest sugar cane in Hawai'i. After the media reported that the sugar planters intended to bring in 10,000 more workers from Puerto Rico, Manuel Olivieri Sánchez penned an op-ed in the newspaper contending that the sugar planters were threatening to bring in more Puerto Ricans to force the "anti-Puerto Rican" unemployed laborers back to work on the plantations (Olivieri Sánchez 1931).[29] In reality, he argued, "Porto Rican labor is not wanted here nor any other imported labor with citizen rights" because such laborers would take jobs away from others and because "as American citizens they complicate Hawaiian politics" (Olivieri Sánchez 1931). "[S]ince when did American citizens complicate local politics?" he asked. "Supposing the Porto Ricans come here and take advantage of their rights as American citizens and vote, does that make them undesirable? Don't the American citizens from Japan, Scotland and Alabama do the same thing? I sincerely believe that 10,000 Porto Rican voters will not complicate Hawaiian politics but would leaven the electorate and thus preclude any other racial group from 'block-control' of both political parties" (Olivieri Sánchez 1931).

As shown by their acts of protest, Puerto Ricans were deeply critical of the ways in which laws were used to benefit the powerful.

Thus, rather than rejecting the law and rights assertion as futile, or blindly embracing the law as a cure-all, Hawai'i's Puerto Ricans, like Olivieri Sánchez, embraced a complex "double consciousness" about their experience with law and legal process. As shown by their acts of protest, Puerto Ricans were deeply critical of the ways in which laws were used to benefit the powerful. At the same time, they held an aspirational vision of law as a vehicle to validate their place in the U.S. polity, and fought for and attained U.S. citizenship in *Sanchez*.

They realized, however, that mere legal recognition as U.S. citizens would not mean true equality on the plantation and in society. But they had an "unalterable conviction that something must be done, that action must be taken" (Bell 1992, 199) within the law and beyond; that they needed to take the fight simultaneously to judges, policymakers, bureaucrats and the general populace. Indeed, they continued to fight for both the rights attendant to citizenship and against continued cultural oppression and unequal treatment, all while acknowledging the law's dual power to oppress and open small paths toward liberation. As critical race theorists recognize, their double consciousness embraced the concept of legal indeterminacy alongside "the core belief in a liberating law that transcends indeterminacy" (Matsuda 1987, 341).

V. CONCLUSION

Over six months after the Jones Act collectively naturalized citizens of Puerto Rico as U.S. citizens, the Supreme Court of the Territory of Hawai'i held that all "citizens of Porto Rico" acquired U.S. citizenship, including those "who were at the date of the act of March 2, 1917, absent from Porto Rico" (*Sanchez v. Kalauokalani* 1917, 27). As a result of Manuel Olivieri Sánchez's advocacy and the community's solidarity, Puerto Ricans in Hawai'i attained the right to vote in the Territory and gained a measure of economic mobility.

As described above, the *Sanchez* case—viewed in the context of the harsh practices and laws that governed the plantation system—sheds light on Puerto Ricans' experiences with law and legal process in Hawai'i. Hawai'i's Puerto Ricans long understood the harsh plantation law's ability to subordinate, but at the same time embraced the distinct value of rights and the promise of liberal legalism. They passionately invoked these legal ideals in their struggle for U.S. citizenship in *Sanchez*, while recognizing that aspects of subordination would continue even if they achieved the legal status of "United States citizen." They therefore continued to battle for the rights associated with that citizenship and against cultural vilification and unjust treatment on the plantations and in

greater Hawai'i society. For Hawai'i's Puerto Ricans, these two viewpoints—this double consciousness—combined powerfully to create a source of strength in the face of adversity.

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NOTES

[1] Transcript of Mandamus Hearing, *Sanchez v. Kalauokalani* (1917, 3). (No. 1024), Apr. 26, 1917, at 3, microformed on Judiciary Supreme Court Case Records (1904–1960).

[2] In my citations to archival materials and historical cases, I have used the names and words as they appear in the original documents. In my own references to these names and words, I have attempted to correct misspellings, provide accents according to current usage, and refer to individuals using both surnames according to Latina/o naming customs, where available.

[3] News articles reported that "a great many of the Porto Ricans of Hawaii are apparently without a country" (Porto Ricans of Hawaii Not Citizens 1917, 1) and quoted Olivieri Sánchez's attorney as stating that, "[u]nder that decision, which it is law now, a Porto Rican anywhere but in Porto Rico is a man without a country" (Porto Ricans Here Not Entitled to Vote in Territory, 191, 7).

[4] Attached to the letter was a Puerto Rican laborer petition to Puerto Rico Legislature, dated 5 March 1919).

[5] Between 1900 and 1901, eleven groups of Puerto Ricans arrived in Hawai'i (Beechert 1985, 21). Many of the members of the first group were victims of the 1899 San Ciriaco hurricane that decimated acres of homes and farmland in Puerto Rico (Malavet 2008, 125). Portions of Parts II and IV of this article are drawn substantially verbatim from Serrano (2011).

[6] The "cession of lands resulting from the victory in the Spanish-American War, with their fairly dense populations posed difficulties" for the new colonial power (Román and Simmons 2002, 452). Even though the United States desired to control overseas territories, it had no intention of inviting the racially and culturally different peoples to "one day join the American body politic as full and equal citizens" (Lazos Vargas 2001, 929). For a description of U.S. Representatives' racialized characterizations of Puerto Ricans, see Román (1998, 29). One American leader stated that Puerto Ricans "have the Latin-American excitability, and I think America should go slow in granting them anything like autonomy. Their civilization is not at all like ours yet. . . . The mixture of black and white in Porto Rico threatens to create a race of mongrels of no use to anyone . . . . A governor from the South or with knowledge of Southern remedies for that trouble, could, if a wise man, do much. . . ." (Wagenheim and

Jiménez de Wagenheim 1994, 122). For a description of early racialized characterizations of Puerto Ricans, Hawaiians, Guamanians, Filipinos and Cubans in the context of U.S. imperialism in 1898, see Thompson (2010, 27–30).

7 The Chinese Exclusion Act of 1882, which was extended to the new Territory of Hawai'i, prohibited the entry of Chinese to the United States (Takaki 1983, 25; Ancheta 1998, 25). The Foran Act, also called the "1885 Alien Contract Labor Law," prohibited immigrants from entering the United States to work under labor contracts (Foran Act 1885). The Foran Act became applicable to Hawai'i upon its official annexation to the United States (Beechert 1985, 326).

8 The newspaper article also noted that the Attorney General's ruling "will, however, settle the question, as it is not likely that any of the Porto Rican laborers will insist upon the right to vote" (No Right to Vote 1902, 3).

9 For example, one news article reported that the U.S. "has just come through one of the most serious industrial crises of the century—a hand-to-hand contest between capital and labor" and that Hawai'i contains "an object lesson which statesmen at Washington would do well to study on the eve of the reconvening of Congress [because] . . . . [t]he labor problem of the Hawaiian Territory contains many aspects which must be encountered in the development of the Philippines" (The Labor Issue in the Islands 1902, 1).

10 Both critical race theory and critical legal studies draw many of their insights from legal realism, a pragmatic school of thought in law that emerged as a response to legal formalism (Singer 1988, 503).

11 Also from Memmi (1965, 123): "The candidate for assimilation almost always comes to tire of the exorbitant price which he must pay and which he never finishes owing . . . . [H]e has assumed all the accusations and condemnations of the colonizer, that he is becoming accustomed to looking at his own people through the eyes of their procurer."

12 Matsuda (1987, 334) asserts that Frederick Douglass also engaged in this type of "radical constitutionalism" when he broke from the Garrisonian abolitionists and embraced the Constitution as a tool to fight against slavery.

13 Similarly, legal scholar Derrick Bell urges activists to embrace this dual reality—to know that efforts may be unsuccessful, but to take action because it is necessary:

> [I]t is not a matter of choosing between the pragmatic recognition that racism is permanent no matter what we do, or an idealism based on the long-held dream of attaining a society free of racism. Rather, it is a question of *both*, *and*. *Both* the recognition of the futility of action—where action is more civil rights strategies destined to fail—*and* the unalterable conviction that something must be done, that action must be taken. (Bell 1992, 199)

[14] Williams further describes the deep meaning of rights to African Americans:

> To say that blacks never fully believed in rights is true; yet it is also true that blacks believed in them so much and so hard that we gave them life where there was none before. We held onto them, put the hope of them into our wombs, and mothered them—not just the notion of them. We nurtured rights and gave rights life. And this was not the dry process of reification, from which life is drained and reality fades as the cement of conceptual determinism hardens round—but its opposite. This was the resurrection of life from 400-year-old ashes; the parthenogenesis of unfertilized hope. (Williams 1987, 430)

[15] Indeed, critical race theorists "embrace both a postmodernist skepticism toward the efficacy, neutrality, and inevitability of law and a concomitant modernist reliance upon law and enlightened reasoning as sources of antiracist resistance" (Hutchinson 2002, 1477).

[16] The report also described them as "untidy . . . compared with the tidy Japanese and other Asiatics employed in the islands[.]" (1901, 26). This fact, the report states, "has prejudiced plantation managers and the people of the islands against the Porto Ricans" (1901, 26).

[17] Miranda was described as "a fine specimen of the half-breed Spaniard of the Antilles, yet his bold demeanor under the awful circumstances in which he stood denoted him a dangerous man of thoroughbred type" (Justice Is Not Slow 1904, 3). Even his own lawyer urged the jury to consider his low mental condition: he was "but one degree above a brute" (Murder First Degree 1904, 1).

[18] Noting that his father, a mayor of a town in Puerto Rico, swore allegiance to the United States and would call meetings in the family house to advise Puerto Ricans to "stick to the United States."

[19] See *Lokpez v. Fernández* (1943, 514)—ruling that under the Jones Act, the phrase "citizens of Puerto Rico" no longer refers to a general political status, but rather, a political status restricted to residence in Puerto Rico.

[20] See Puerto Rican Petition (1919) praising the lawyers' "brilliant" representation of Sanchez, and Porto Rican Held American Citizen (1917, 7) characterizing the decision as "of deep interest to all Porto Ricans in these islands who have not taken out papers of citizenship."

[21] For example, two Puerto Rican women, Henrietta Ortiz and Margaret Maldonado, became teachers in 1924 and 1925, respectively (Carr 1987, 101).

[22] They ended with a call for repatriation to Puerto Rico because "a Porto Rican in Hawaii is of less importance than a criminal in Porto Rico," and urged the Puerto Rico legislature to send a commission to Hawai'i and to publish the petition in a Puerto Rico newspaper, *La Democracia*, to "prevent our brothers from emigrating" (Córdova Dávila 1919—see petition attached to letter).

[23] The letter from Resident Commissioner Félix Córdova Dávila to Bureau of Insular Affairs, also attached a Puerto Rico Senate Resolution.

[24] In addition to the workers' petiton and the Puerto Rican Senate Resolution, Resident Commissioner Córdova Dávila's letter to Bureau of Insular Affairs contained a Puerto Rico House Resolution of 30 April 1919.

[25] The petition "caused a sensation in [Puerto Rico] and was the subject of considerable press comment[.]" (Charges Made By Porto Ricans 1919, 1). Shortly thereafter, the Puerto Rico legislature passed an act that authorized the Commissioner of Agriculture and Labor of Puerto Rico "to intervene . . . in all matters concerning emigration of laborers from Porto Rico," among other things (Whalen 2005, 20).

[26] The letter transmitted the report.

[27] In January 1920, three hundred Puerto Rican and Spanish sugar plantation laborers joined 2,600 Filipino laborers in walking off their jobs at various plantations on O'ahu (Okihiro 1991, 70).

[28] The group of 342 Puerto Ricans who emigrated to Hawai'i in 1921 was recruited by the HSPA after thousands of Japanese workers left the plantations following the strikes of 1918–20 (Carr 1987, 101). Many in this group of Puerto Ricans were union activists (López 2005, 48).

[29] Olivieri Sánchez (1931) argued that the sugar planters were sending a message to the local "anti-Porto Ricans in Honolulu—the unemployed citizen-laborers" that if they did not get back onto the plantations to harvest the cane, the planters would be forced to go to Puerto Rico for American citizen workers.

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