profit veterans' organization. The practical effect of the lease was to bar Negroes from the pool. The city maintained that the loss of profit prompted the lease which was therefore valid. The petitioners (officials of N.A.A.C.P.) maintained that the question involved was whether the city by lease of pool facilities could relieve itself of the constitutional obligation to afford Negroes equal rights with those of white citizens in use of public recreational facilities. The court here regarded the veterans organzation as a mere agent of the city and held that a city's power to lease the municipal pool, does not include power to discriminate against members of a minority race in the exercise of their constitutional rights under the Federal Constitution. The court further held that the city's loss from permitting Negroes to use the pool is immaterial in enforcing constitutional rights against discrimination, as operation of recreational facilities is not ordinarily viewed as a source of profit.

The foregoing decisions force the conclusion that any lease of public recreational facilities with the direct intent and effect of excluding Negroes from the use of such facilities, will be construed by the federal courts as a "colorable" lease with the intent of evading municipal obligations to protect the constitutional rights of its Negro citizens. It would appear under recent decisions that citizens have the right to the use of public recreational facilities without discrimination on the ground of race. And it further appears that this right may not be abridged by the leasing of such facilities with ownership remaining in the municipality.

However, such facilities may be closed to both races and sold without danger of interference by the federal courts; for the governmental unit is under no legal obligation to provide recreational facilities. Act No. 20 vests authority in the governing body of Georgia governmental levels to abandon public recreational facilities thus ending any public interest therein. That such abandoned public property may be sold is undisputed.

MITCHELL P. HOUSE, JR.

THE UNIQUE STATUS OF PUERTO RICO IN RELATION TO THE FEDERAL GOVERNMENT

In 1950 the Congress of the United States passed Public Law 600[1] to provide for the organization of a constitutional government by the people of Puerto Rico. A constitutional convention was authorized and

1. 64 STAT. 319 (1950), 48 U.S.C. §§ 731 *et. seq.* (1952).

the Puerto Rican Constitution was drafted. After approval of the Constitution by the people of Puerto Rico this document was forwarded to Congress, who, after making two amendments which are not important here, approved it.[2] Under this new constitution Puerto Rico became a Commonwealth.[3] The purpose of this paper is to discuss the possible significance of this change in relation to the Federal government and Federal legislation.

Prior Status

In order to determine just what changes have been made by these statutes we must examine Puerto Rico's status before they were passed. In 1899, at the close of the Spanish American War, Spain ceded the island of Puerto Rico to the United States in accordance with the Treaty of Paris.[4] This treaty provided that the political status of the island was to be determined by Congress.[5] The Foraker Act[6] was the first federal statute passed dealing with the political status of Puerto Rico. The Supreme Court in *Downes v. Bidwell*[7] held that under the Foraker Act Puerto Rico was a territory of the United States but was not an incorporated territory. As such the Federal Constitution as a whole did not apply to Puerto Rico; only certain fundamental rights were applicable.[8] Under the Foraker Act the inhabitants of Puerto Rico were not American citizens.[9]

In 1917 the Jones Act[10] was passed which among other things provided for an elective senate. Perhaps the most significant feature of the Jones Act was the granting of United States citizenship to the people of Puerto Rico.[11] Under the Jones Act the Governor of Puerto Rico was appointed by the President of the United States. In 1946, for the first time, a native born Puerto Rican was appointed governor. Then in 1947 Congress passed an Act[12] giving the people of the island the right to elect their own governor. This right had never been accorded any other territory of the United States.

Under the Foraker Act a federal district court was established in Puerto Rico.[13] Also, insular courts were set up but even under the

2. 66 STAT. 327, 48 U.S.C. § 731d (1952).
3. *Ibid.*
4. 30 STAT. 1754 (1899).
5. 30 STAT. 1759 (1899).
6. 31 STAT. 77 (1900).
7. 182 U.S. 244, 21 S. Ct. 770, 45 L.Ed. 1088 (1901).
8. Balzac v. Puerto Rico, 258 U.S. 298, 42 S. Ct. 343, 66 L.Ed 627 (1922).
9. 31 STAT. 79 (1900).
10. 39 STAT. 951 (1917).
11. 39 STAT. 951, 953 (1917).
12. 61 STAT. 770 (1947).
13. 31 STAT. 84 (1900).

Present Status

Public Law 600, which granted this Commonwealth form of government, was in the nature of a compact.[14] We must examine first just what type of compact it was and secondly the results of this compact in so far as it has changed Puerto Rico's status.
later Jones Act the judges of the Supreme Court of Puerto Rico were appointed by the President of the United States.

It can hardly be said that this compact or agreement was between sovereign nations. Puerto Rico was and still is, internationally at least, under the government of the United States. However, it would also be erroneous to catalogue it as a unilateral act. Even if it may be argued that a subsequent congress could legally revoke this law, moral sanctions from the other nations make this course of action highly improbable. It should be understood, however, that Congress may pass general legislation which will affect Puerto Rico, without the consent of the Puerto Rican people. This is analogous to the position of any other state in the union, which also has complete sovereignty over local matters.

The passage of Public Law 600 did not, in itself, make any drastic changes in the rights and freedoms previously enjoyed by the people of the island. With the exception of the Governor's power to appoint the Supreme Court judges, the provision for adequate minority representation and a few other changes, it is simply a reaffirmation of political gains achieved since the turn of the century. It is, however, very important that this present form of government was adopted with the *consent* of the people of Puerto Rico. This is the fact that tends to take Puerto Rico out of the category of "Territory" as we traditionally know it.

Puerto Rico today is neither a state nor a territory. Since most Federal legislation refers to either the states or territories or to both, the question arises as to where Puerto Rico stands in regard to such legislation.

As to prior legislation, the Act[15] provides that statutory laws of the United States not locally inapplicable shall have the same force and effect in Puerto Rico as in the United States. The district court has held that the Fair Labor Standards Act,[16] the Smith Act[17] and the

14. 64 STAT. 319 (1950), 48 U.S.C. § 731b (1952).
15. 69 STAT. 427 (1955), 48 U.S.C.A. § 734 (1956).
16. Mitchell v. Rubio, 139 F.Supp. 379 (P.R. 1956).
17. United States v. Callion, 140 F.Supp. 226 (P.R. 1956); Callion v. Gonzalez, 125 F.Supp. 819 (P.R. 1954).

Taft Hartley Act[18] are all still applicable to Puerto Rico. However, what was "locally applicable" to pre-commonwealth Puerto Rico is not necessarily in the same category now. In *United States v. Rios*[19] the court held that the Firearms Act did not apply to the Commonwealth. Also it is now necessary to have a three-judge court to enjoin enforcement of a local statute.[20]

How Congress will refer to Puerto Rico in the future can only be conjecture. However, the recent amendment to the diversity section of the Federal jurisdictional statute[21] indicates that where legislation is intended to apply to Puerto Rico the words "Commonwealth of Puerto Rico" will be used. It seems doubtful that the word "territory" alone, in future legislation, will include Puerto Rico in its present status.

Conclusion

It will probably be some time before the position of this new "commonwealth" becomes settled in relation to the Federal Government and Federal legislation. This situation is to be expected as the status is unique. There is no precedent to look to for guidance. The important thing is that this arrangement, consensual in nature, has strengthened the ties between the people of the United States and Puerto Rico. Of course this present form of government in no way precludes ultimate statehood or independence for Puerto Rico in the future.

STANLEY R. SEGAL

18. United States v. Mejias, 131 F.Supp. 957 (P.R. 1955); Consentino v. International Longshoremen Assn., 126 F. Supp. 420 (P.R. 1954).
19. 140 F.Supp. 376 (P.R. 1956).
20. Mora v. Mejias, 115 F.Supp. 610 (P.R. 1953).
21. 70 STAT. 658 (1956), 28 U.S.C.A. § 1332(b) (1956). *cf.* Detres v. Lions Building Corporation, 234 F.2d 596 (7th Cir. 1956) which reached same result without amendment.