

Do we need more states? An analysis of the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and U.S. Territories in the South Pacific

By Ann Lousin, delivered virtually to a meeting of The Chicago Literary Club on January 25, 2021

The origin of this paper lies in my research on the electoral college. Recently, I was searching for ways to improve the electoral college because I fear that neither of the major political parties has any real desire to abolish it in favor of the direct popular election of the President.

I came across some intriguing facts regarding who cannot vote for President or indeed Senators and Congressmen. Residents of The District of Columbia can, of course, now cast three votes in the electoral college. But the residents of the approximately sixteen U.S. territories----five of which are inhabited and eleven of which are not really inhabited by permanent residents---cannot vote for President or voting members of Congress.

So I began learning about those political orphans. It occurred to me that they are truly second-class citizens. Although they send delegates to national political conventions and have non-voting delegates in Congress, they cannot truly participate in the democracy. Why? And what can be done about it?

When I mentioned this to a friend of mine, also a lawyer, she said that there were more pressing problems facing our democracy these days, and, of course, that is true. But I still find it disturbing that there are “half-citizens” in our country.

My remarks are divided into three cases: the District of Columbia; the Caribbean territories of Puerto Rico and the U.S. Virgin Islands; and the U.S. territories of Oceania or the South Pacific, notably the three inhabited islands of Guam, American Samoa, and The Northern Mariana Islands.

There appear to be three ways to solve all of these anomalies.

The first way is by enacting a Congressional statute allowing these territories to become part of a neighboring state for purposes of voting for President and Vice-President and for both houses of Congress. This would be limited membership in the receiving states. I think such a statute would be constitutional.

For example, D.C. would become part of Maryland for limited purposes while retaining substantial home rule and, one would hope, freeing itself from Congressional oversight of the residential and commercial areas that are not part of the federal complex itself. So far, Maryland has rejected this solution and has even sponsored bills making D.C. a state. Why? Maryland already has Baltimore, a large city with substantial economic and racial problems, and apparently does not want to acquire another city with similar issues.

Puerto Rico and the U.S. Virgin Islands have some characteristics in common with Florida, now the third largest state in population. Since Hurricane Maria in 1917, Puerto Ricans have been moving to Florida in greater numbers, a situation that increases the Spanish-speaking population of a state that has many Cuban-Americans and Mexican-Americans. It is unclear whether Florida wants 3.6 million Puerto Ricans added to the political mix for that state.

What I call “U.S. Oceania” is far from Hawaii, its nearest neighboring state, but its population is closely related to Native Hawaiians, and there are some Native Hawaiians living on the islands in Oceania. But anyone running for office from an augmented Hawaii would have to travel thousands of miles to campaign in Oceania.

Nonetheless, expanding states to cover these territories is a distinct possibility. All it would take is Congressional action and the consent of both the receiving states and the territories.

There is a second way to solve the anomalies: the path of independence. Full independence is available to all except the District of Columbia. They could opt out of the United States entirely. Indeed, since World War II, several U.S. territories in the Pacific have obtained complete independence. Most of them became part of the United States only as a consequence of the Spanish-American War of 1898. Palau and the Marshall Islands are the most recent new countries in this category, although both retain close ties with the United States.

The two U.S. territories in the Caribbean, the Commonwealth of Puerto Rico and the Virgin Islands, could also become independent countries. Indeed, there has long been a Puerto Rican independence movement, albeit one that has declined in strength recently.

Whether the U.S. Virgin Islands and the Oceania territories would be viable is unclear; none is as strong a candidate for independence as Puerto Rico is.

That leaves us with the third possible way to solve the anomalies: new states admitted to the union. Having a hundred Senators seems like a nice, round number, but is that sacred? I remember that in the 1950’s one argument against the admission of the Territory of Hawaii and the Territory of Alaska was “let’s keep it sea to sea.” That meant not going beyond the so-called “natural borders” of the contiguous 48 states, the “mainland.”

Of course, there was an element of racism in that argument. And that was in the era before jet air travel. We might even consider raising the number of members of the U.S. House of Representatives from 435, a number set a century ago when the national population just topped 100 million. Now the population is over 330 million.

Let’s look at each of the three cases in detail: the District of Columbia; the Caribbean; and Oceania.

THE DISTRICT OF COLUMBIA

This area is completely different from the others. It is provided for in Article I, Section 8, paragraph 17 of the U.S. Constitution, which envisions a federal capital in the list of powers given to Congress:

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.

Through a deal between Hamilton and Jefferson, the seat of government became the District of Columbia, consisting of a diamond shape half in Maryland and half in Virginia, astride the Potomac River. Pierre L'Enfant laid out the district, which is coterminous with The City of Washington. In 1846 Congress deeded the Virginia part back to that state on the grounds that the federal government did not need it.

Although the Constitution appears to give Congress total control over Washington, D.C., the city/district has slowly gained some home rule powers over the years. Until fairly recently, the President of the United States appointed the Mayor of the city/district even though the residents elected the city council. Now they also elect the Mayor.

However, a Congressional Committee has virtual veto power over the city/district. Yes, there is a delegate who can vote in committees and speak on the floor, but she cannot cast final votes on legislation because she is not from a state.

Some Congressmen from socially conservative areas resent the so-called "liberal bias" of permanent residents of the city. In recent years, Washingtonians voted to fund abortions for poor women, but Congress vetoed that. Washingtonians voted to keep neighborhood schools and keep out charter schools, but Congress established charter schools. Washingtonians voted to abolish the death penalty, but Congress vetoed that, too.

Washingtonians suspect that Congressmen hold the interests of themselves and their staffs in higher regard than the interests of Washingtonians. The district's taxing power is limited. For example, it is not allowed to tax the incomes of those who work in the district, thereby obtaining some municipal benefits during the day, but who live in Maryland or Virginia, where they go in the evening---and from which they vote.

Washingtonians' sole power on the national level is to cast three votes in the electoral college, thanks to the Twenty-third Amendment. They have no real power in the legislative branch.

Over the years, there have been efforts to make the district a state. There are two reefs on which the efforts usually founder. The first is a partisan one----it is expected that the new state would favor Democrats strongly. The second is a practical one----what to do with the substantial federal properties in the district, such as the mall, the White House, the Supreme Court, and the Capitol, as well as the national monuments and museums.

The most recent proposal is to create a state called New Columbia. A college friend of mine who lives in D.C. and is active in the movement has told me about the New Columbia Act. This federal bill would reduce the size of the federal district to the key federal buildings, leaving the residential and commercial parts to the new state, the State of New Columbia. (Of course, since our last conversation about two years ago, Columbus has fallen out of favor, so they may have to consider a new name. Perhaps The State of Potomac would do.)

What's Washington, D.C., like? It has a permanent population of about 630,000. Fifty percent of the residents are Black, with most of the rest being White. There is considerable income disparity, with some very rich residents and some very poor residents. In the span of the decades I have been visiting D.C., I have seen Washington grow from a sleepy town that emptied out in the summer to a bustling, cosmopolitan center of culture.

THE CARIBBEAN

There are two territories in the Caribbean although each has some outlying islands, banks, and shoals with few or no inhabitants.

Puerto Rico is the larger of the two. It was effectively a spoil of the Spanish-American War. For centuries indigenous people lived there. Currently, of the population of about 3.6 million:

over 75% are White, mostly Hispanic in ethnicity and Hispanophones, although most speak English; and over 12% are Black. The remainder are of a variety of ethnicities.

The local laws are in Spanish, and signs are in two languages. In the early days, lawyers giving oral arguments in Puerto Rican courts followed the Spanish colonial custom of wearing white robes over their suits. In short, there has long been a strong Hispanic culture in Puerto Rico.

Before 1948, the President of the United States appointed the Governor of Puerto Rico, but since then, the people have elected their Governor. In 1952, the territory became the Free and Associated Commonwealth of Puerto Rico. Pursuant to Congressional act, it is an “organized territory,” but its constitution says it is a “free and associated commonwealth.” I knew the Harvard political science professor who was the principal advisor of the drafting committee. I once asked him what “free and associated” meant, and he said it meant “free and associated.”

There was a strong pro-independence movement for many years, a movement that sometimes turned violent. Nowadays, the two groups vying for dominance are the “stand patters”---let’s keep things the way they are, “free and associated”---and the statehood advocates. Referenda suggest the latter group is gaining in strength.

Because Puerto Ricans do not vote for either the President or members of Congress, they do not pay federal income taxes. However, they have their own taxes, imposed by their own elected government. Since 1917, they have all become U.S. citizens at birth.

They also pay a hidden surcharge imposed by the Jones Act of 1920. That Congressional Act forbids goods to be off-loaded for local consumption in Puerto Rico unless they come from a U.S. mainland port on a U.S. ship. As one businessman told me a few years ago, crude oil arrives in Puerto Rico and is refined there, but shipped to Miami, where the ship stays a few hours and then heads back to Puerto Rico, where the oil can be imported for consumption. Economists estimate that the Jones Act adds 10-15% to the cost of goods in Puerto Rico.

There seems to be little appetite in the federal government to ameliorate the situation. When Hurricane Maria struck in 2017, President Trump suspended the Jones Act to enable goods to get to Puerto Rico as part of the relief effort, but that was only temporary. Today, January 25, 2021, President Biden issued an executive order strengthening the Jones Act, which may well make matters even worse for Puerto Rico.

For some time, but especially since Hurricane Maria, Puerto Rico has been losing population, mostly to Florida. If Puerto Rico simply became a county of Florida, how would that change the political balance in the third-most-populated state?

The U.S. Virgin Islands have a very different history. They are a group of rather small islands southeast of Puerto Rico, some of which have permanent residents and some of which do not. The Virgin Islands were originally a colony of The Kingdom of Denmark. Their principal export was sugarcane, which enslaved Africans cultivated. When emancipation came in 1848 and when the world economy for sugar shifted, Denmark found the islands unprofitable. Denmark sold them to the United States in 1917.

Today, the population is probably just over 106,000, of whom about 76% are Black and just over 15% are White. Most of the rest are apparently Latinx. Tourism is a major industry. As with Puerto Rico, the islands used to be governed by a presidential appointee, but now have their own elected government. The residents are U.S. citizens. Like Puerto Rico, the Virgin Islands are an “organized territory” under an “organic act” passed by Congress. Unlike Puerto Rico, the Virgin Islands are not subject to the Jones Act surcharge.

If Puerto Rico and the Virgin Islands were combined into one state, it could be called The State of the Caribbean or the Caribbean Islands. With a combined population of over 3.7 million, it would be seven times larger in population than Wyoming, which has a half-million citizens.

Would Florida want the Virgin Islands? If Florida took both Puerto Rico and the Virgin Islands, the geographical area of Florida would extend into the Caribbean. Florida’s population would also increase by over 3.7 million residents.

OCEANIA OR U.S. OCEANIA

By “U.S. Oceania” I mean Guam, American Samoa, and the Northern Mariana Islands. There are other territorial islands scattered throughout the South Pacific, about eleven of them, but they do not have permanent inhabitants. One is Howland Island, the island Amelia Earhart was headed for when her plane went down. Then there are Wake Island, Johnston Atoll, Kingman Reef, and some others that have only military and natural science importance.

Guam has 161,000 people; American Samoa has over 57,000 people; and the Northern Mariana Islands have about 53,000 people. Total for the three: about 271,000 people. They are all predominantly Asian in ethnicity. They are all self-governing in that they have an elected Governor and legislature. But there are differences, especially in regard to American Samoa.

Guam, the largest, was acquired by the United States in 1898. An important naval base, it fell to the Japanese in 1941, but was retaken at the end of the war. It is still primarily a military installation. Its population of about 161,000 is almost entirely Asian and Catholic. There is a wide variety of Asian ethnic groups, with about a third being Chamorro and a fourth Filipino. Whites comprise just over seven percent of the permanent residents. Guam has a non-voting delegate to Congress.

American Samoa is the second-largest of the three, with about 57,000 residents. It was not acquired from Spain at the end of the Spanish-American war. Instead, the United States made a deal with Imperial Germany to split the Samoa Islands in 1899. The United States took the part of archipelago that had the excellent harbor of Pago Pago for the U.S. Navy, which was acquiring a greater and greater presence in the Pacific Ocean. It is east of both Guam and Australia.

The American Samoan population is almost entirely Christian Pacific Islanders. Very few White people live there. There is a very strong indigenous culture. Samoan is spoken although English is the second

language. It is not an organized territory created by an organic act. Like the others, it has a non-voting delegate to Congress.

Sentiment for the native culture is so strong that there is a strong movement to keep things the way they are for fear that the young people would leave if they could get U.S. citizenship. That is because, alone of the Pacific territories, American Samoans are not citizens. They are "U.S. nationals", and that is stamped on their U.S. passports. Despite that status, American Samoans volunteer for the U.S. military in record numbers. Recently, their non-citizen status became an issue when certain kinds of federal relief were extended only to "U.S. citizens."

The Northern Mariana Islands are formally the Commonwealth of the Northern Mariana Islands. Spain claimed the islands in 1667, naming them after Queen Mariana of Spain. They are northwest of Guam. Once part of the U.S. Trust Territory of the Pacific, the residents forewent independence to in the 1970's to become part of a "political union" with the U.S. They obtained that ambiguous status in 1976 and created their own government and constitution in 1978.

Today, the 51,000 or so residents are almost all Asian and Pacific Islanders. About half are Filipinx, while a third are Native Hawaiians and Pacific Islanders, as defined by the federal government. English is the official language, but many Asian languages are spoken. The residents, who are U.S. citizens, elect their Governor and legislature.

A dominant characteristic of the three parts of what I call The Oceania Territories or U.S. Oceania is that they are culturally Asian and are related to the people of the State of Hawaii.

Would the State of Hawaii, which has 1.4 million citizens, be willing to absorb over 270,000 people in the South Pacific? It would be possible to campaign in Guam, American Samoa, and the Northern Marianas, but only by aircraft. Yet would the three territories, if combined, be sufficient to constitute another state? I doubt it. And could they form an independent country as Palau and the Marshall Islands have done? Who knows?

CONCLUSION

So what are we left with? Remain the same, create new states, or grant independence to each of these areas?

The District of Columbia has the best chance of becoming a state in the foreseeable future. Of course, the "federal portion" might be carved out, much as The State and City of the Vatican was carved out of the City of Rome, Italy.

Puerto Rico has the next-best chance of becoming a state. But if it becomes a state, then what would become of its little neighbor, the U.S. Virgin Islands? Should they be combined into one state? Or should both be merged into Florida, already a state?

Oceania is the most difficult issue. My preference is for those three territories *and* the unpopulated islands to become part of the State of Hawaii, albeit with a lot of home rule powers.

It is up to the people of all these territories and Congress to decide. What troubles me is that as we are well into the 21st century, there are over four million people in an anomalous situation: they are

Americans, but not Americans with all of the rights of American citizens. And most of them are Black, Hispanic, or Asian.

Surely, we can do better than that.